



## IVIEWIT HOLDINGS, INC.

Eliot I. Bernstein  
Founder & President  
Direct Dial: 561.364.4240

### **By Overnight Mail**

March 22, 2004

Noel D. Sengel  
Senior Assistant Bar Counsel  
Virginia State Bar  
100 N. Pitt Street, Suite 310  
Alexandria, Va. 22314-3133

**Re: Rebuttal of Iviewit Holdings, Inc. to Response of William J. Dick, VSB  
Docket #04-052-1366**

Dear Attorney Sengel:

By way of introduction, I am Founder & President (Acting) of Iviewit Holdings, Inc. and its subsidiaries (collectively, "Company"), I have co-authored this document and signed with P. Stephen Lamont Chief Executive Officer (Acting). I write to rebut all those material feints and contradictions in the response of William J. Dick, Esq. ("Respondent") to the Company's Virginia Bar Complaint of September 23, 2003, more precisely defined by the Company's letter of October 30, 2003 (collectively, "Complaint").

Moreover, Respondent's feints are so numerous, so outlandish of nature, and, hence, so consumed with falsehoods, akin to the falsehoods he attempted to inflict upon the Company, that prior to arriving at the very hearts of the matters, it is only fair to outline them in paragraph form with corresponding headings, the contents of which shall clearly show Respondent's bountiful attempts at insults to the intelligences of the Virginia Bar, and what follows below is an introduction to those feints and the eventual evidentiary materials of the Complaint.

Lastly, from the benefit of the narrative and attached exhibits below, the Company shall prove beyond a reasonable doubt that Respondent, though not directly prosecuting patents himself, otherwise oversaw, directed, controlled, feloniously opined, sometimes impeded, altogether unfavorably aided and abetted, and otherwise positioned himself

Noel D. Sengel  
March 22, 2004  
Page 2

between said patent prosecutions, Utley, and the *bona fide* inventors all to the detriment of the patent filings and fortunes of the Company.

Accordingly, on behalf of the Company, and for ease of reference I insert the major allegations of the Complaint within the framework of the Rules of Professional Conduct of the Virginia State Bar, so that the Virginia Bar may further quantify Respondent's professional misconduct as to Virginia attorneys, and shall cite specific documentation in exhibits attached hereto.

Finally, per our conversation last week, we went to secure the patent files from the patent office on several patents listed on the Company portfolio and filed by William Dick and his underlings at Foley & Lardner and we were unable to get records because to our surprise the Company is not listed on these filings in Brian Utley's sole name. The Company and the Company inventors are not listed on the application and therefore have no rights, title or interest in some of these patents and await further confirmation from the USPTO of such. We may, according to the USPTO, in fact have to sue Mr. Brian Utley under his employment contract to receive these patents back and therefore we request the Virginia Bar allow us to submit these documents as we receive them, as you stated that would be allowable. Therefore, we submit the complaint response without them. Further, if this information gathered from the United States Patent & Trademark Office is correct, it then becomes apparent that the portfolio submitted to the Virginia Bar in Mr. Dick's response is materially false as patents that are not the property of Iviewit should not be listed on an Iviewit Intellectual Property docket. This docket similarly has been used to raise capital for the Company and thus constitutes fraud upon the shareholders and the Virginia Bar.

Again, we have filed this complaint without access to our original files (a large part of the delay caused by lost files by our former attorneys) and therefore since we are awaiting further evidence to support the allegations accurately we have signed this copy and yet remain obligated to update you as new information is forwarded or secured. We also explained the problems we faced this weekend and hoped you would grant time and leeway but we were unable to reach you today and therefore we send this incomplete draft with much of the pertinent information and thank you for the opportunity to send a final copy shortly.

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THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.

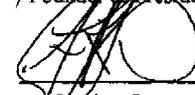
Noel D. Sengel  
March 22, 2004  
Page 3

Due to the volume of information contained in the exhibits, we have submitted this response and all the documentation on a CD-ROM in Adobe format for ease of review. If the Virginia Bar would like a printed copy of the several thousand pages contained therein we would be more than happy to comply with such request. If viewing the Adobe document it is extremely helpful to use the "bookmark" tab along the left side of the page for easy indexing.

Very truly yours,

**IVIEWIT HOLDINGS, INC.**

By:   
Eliot I. Bernstein  
Founder & President (Acting)

By:   
P/ Stephen Lamont  
Chief Executive Officer (Acting) by Eliot I. Bernstein his attorney fact

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**Iviewit Holdings, Inc.**  
10158 Stonehenge Circle  
Boynton Beach, Fla. 33437

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**confidential**  
**fax**

To: **Eliot I. Bernstein**  
Fax Number: 1-561-364-4240

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Pages: 2  
Date/Time: 3/22/2004 8:25:37 PM  
Subject:

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## 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, Suite 801, 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 Bar Complaint of William J. Dick..

**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 March 21, 2004 through April 20, 2004 ("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.

By:  P. Stephen Lamont

Signature valid  
P. Stephen Lamont, Principal

Digitally signed by P. Stephen Lamont  
DN: cn=P. Stephen Lamont, o=Iviewit  
Holdings, Inc., ou=Corporate, c=US  
Date: 2004.03.22 17:06:28 -0500



## TABLE OF CONTENTS

- I. INTRODUCTION..... 6
- II. RESPONSE TO RESPONDENT’S MISINFORMATION..... 9
  - A. RESPONDENT’S REFERENCE TO THE COMPANY’S MENTION OF RESPONDENT’S INVOLVEMENT IN THE DIVERSION OF PATENTS TO DTE AS NOT RELEVANT TO IVIEWIT..... 9
  - B. RESPONDENT’S REFERENCE TO NO GRANTED PATENT IN THE NAME OF UTLEY..... 10
  - C. RESPONDENT’S REFERENCE TO LACK OF ASSIGNMENT PROVISIONS UNDER UTLEY’S EMPLOYMENT CONTRACT WITH DTE..... 10
  - D. RESPONDENT’S REFERENCE TO ASSIGNMENT REQUIREMENTS UNDER UTLEY’S EMPLOYMENT CONTRACT WITH THE COMPANY..... 12
  - E. RESPONDENT’S REFERENCE TO LISTED INVENTORS BERNSTEIN, UTLEY, ROSARIO, SHIRAJEE, AND FRIEDSTEIN IN VARIOUS COMBINATIONS..... 14
  - F. RESPONDENT’S LACK OF UNDERSTANDING OF THE TERM “BURYING.” ..... 15
  - G. RESPONDENT’S REFERENCE TO THE COMPANY’S NEW YORK BAR COMPLAINTS AGAINST KENNETH RUBENSTEIN AND RAYMOND A. JOAO AS “DISMISSED.” ..... 16
  - H. RESPONDENT’S REFERENCE TO THE COMPANY’S FLORIDA BAR COMPLAINTS AGAINST CHRISTOPHER C. WHEELER AS “DISMISSED.” ..... 17
  - I. RESPONDENT’S REFERENCE TO THE DENIAL OF THE COMPANY’S COUNTERCLAIM IN THE FLORIDA STATE LITIGATION AND SUBSEQUENT PROCEEDINGS GOING TO TRIAL..... 17
  - J. RESPONDENT’S REFERENCE TO ALL THE COMPANY’S BAR COMPLAINTS BEING DISMISSED... 18
  - K. RESPONDENT’S REFERENCE TO THE UNPAID LEGAL BILLS OF FOLEY & LARDNER LLP (“FOLEY”)..... 18
  - L. HEARSAY STATEMENTS OF P. STEPHEN LAMONT ..... 19
  - M. RESPONDENT MADE NO LEGAL DECISIONS CONCERNING IVIEWIT..... 19
  - N. RESPONDENT HAS NO KNOWLEDGE OF LAPSES BY JOAO..... 20
- III. SPECIFIC RULES VIOLATIONS AND EVIDENCE THERETO ..... 22
  - A. RULE 1.8 (B) CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS..... 23
    - 1. *Provisional Patent Application 60/233,341*..... 24
    - 2. *Provisional Patent Application 60/233,344*..... 25
    - 3. *Non-Provisional Patent Application 09/630,939* ..... 26
    - 4. *PCT Patent Application US00/15602*..... 27
    - 5. *Non-Provisional Patent Application 09/587,734* ..... 29
    - 6. *PCT Patent Application US00/15406*..... 29
  - B. RULE 3.3 CANDOR TOWARDS THE TRIBUNAL..... 30
    - 1. *PCT Patent Application US00/15408*..... 31
    - 2. *Non-Provisional Patent Application 09/522,721* ..... 31

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THE COMPANY’S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.



Noel D. Sengel  
March 22, 2004  
Page 5

- C. RULE 1.6 (C) (3) CONFIDENTIALITY OF INFORMATION (REPORTING MISCONDUCT OF ANOTHER ATTORNEY)..... 32
  - 1. *Non-Provisional Patent Application 09/630,939*..... 32
- D. RULE 8.3 REPORTING MISCONDUCT ..... 32
- E. RULE 1.16 (E) DELIVERY OF FORMER CLIENT’S FILE..... 33
  - 1. *PCT Patent Application US00/15602*..... 33
- F. RULE 1.8 (C) CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS ..... 33
- IV. CONCLUSION..... 34
  - A. DECLARATION OF BRIAN G. UTLEY ..... 34
  - B. DECLARATION OF DOUGLAS A. BOEHM..... 34
  - C. DECLARATION OF STEVEN C. BECKER ..... 35
  - D. DECLARATION OF BARRY L. GROSSMAN..... 35
- V. TESTIMONIALS IN SUPPORT OF COMPANY’S COMPLAINT..... 35
  - A. STEPHEN J. WARNER AND CROSSBOW VENTURES, INC. .... 36
- VI. EXHIBITS ON CD-ROM
  - A.
  - B.
  - C.
  - D.
  - E.
  - F.
  - G.
  - H.
- OTHER EXHIBITS

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## I. INTRODUCTION

This subsection provides a convenient reference to the point in time and unequivocally points to Respondent's involvement in the patent prosecution process with Brian G. Utley ("Utley") who, from this point forward, aids and abets Respondent's professional misconducts in representation of the Company.

Moreover, upon referral by a one Christopher C. Wheeler ("Wheeler"), a Partner in the Boca Raton, Fla. office of Proskauer Rose LLP ("Proskauer"), the Company appoints Utley as President & Chief Operating Officer of the Company in 1999; Utley began working for the Company and reviewing the provisional patent filings on or about June 1999. Furthermore, in Respondent's role as overseer of the Company's patent portfolio, the evidence of which is attested to by Section II and III and the Exhibits thereto in collusion with Mr. Utley, the Company finds Mr. Utley, after his termination by the Company, and through the work of Blakely Sokoloff Zafman & Taylor LLP ("BSTZ"), writing Company inventions into his own name without assignment to the Company, and sent to his home address, using Respondent; Wheeler played a role in recommending Respondent as the Company's new patent counsel with Utley to replace Raymond A. Joao ("Joao"), formerly of counsel to Meltzer Lippe Goldstein & Schlissel LLP ("MLGS") and Respondent, factually, attended several of the initial patent meetings with his then employer, Foley & Lardner LLP ("Foley"), of which full disclosures by the inventors was given to Mr. Dick and the strategy the Company would follow was determined by Mr. Dick and Mr. Dick was hired to execute his strategy for the Company. Mr. Dick then brought in two of his underlings he mentored at Foley and later was aware of several meetings in which the errors of Joao (including fraud upon the United States Patent and Trademark Office) were discussed with his associates, as well as discussions of further errors by Foley, under Respondent's direction that have caused the Company further hardships. Moreover, Respondent was the patent attorney for Utley in his alleged misappropriations of intellectual property from his past employer, Diamond Turf Equipment, Inc. ("DTE") (see Section II, paragraph A below) and the events are so similar in nature to Iviewit's problems with Mr. Dick and Mr. Utley as to leave one wondering how Mr. Dick can now try and say that he was not involved in these events blaming his underlings instead.

Moreover, in an effort to aid the Virginia Bar in its review of the circumstances surrounding the factual allegations of the Complaint, the Company attaches as Exhibit A

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Noel D. Sengel  
March 22, 2004  
Page 7

herein the submitted resume of Utley by Wheeler and excerpts from depositions in a 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) ("Florida State Litigation"), the resume of which misrepresents Utley's tenure and termination at DTE, and the involvement of, recommended by Wheeler and Mr. Utley, Respondent in said DTE circumstances. Moreover, from the first of Wheeler's introduction of Utley to the Company, and although Wheeler is continually copied on Utley's biography in various drafts of Company business plans authored and disseminated by Wheeler, and Wheeler's representations of Utley to various Board members of the Company, Wheeler claims he was uncertain of the Utley resume misrepresentations, was negligent in recommending and forcing the appointment of Utley as the only means for the Company to secure the seed investment of Huizenga Holdings, without Wheeler's own prior independent background checks of Utley, though by Wheeler's testimony in the Florida State Litigation, states he had known Mr. Utley in social surroundings since 1990, had formed a corporation with him, upon information and belief the Premiere Connections company referenced by Respondent, on or about 1994, continues to know Utley in social surroundings until introduction to the Company in 1999, and thereafter serves as chief counsel to the Company and self-appointed overseer of the Company's patent portfolio with Rubenstein and Joao prior, in collusion with Mr. Utley, to the arrival of Respondent in or about 2000; Utley, for his part, and under deposition in the Florida State Litigation, claims Wheeler was fully cognizant of the circumstances surrounding his patent malfeasances at DTE.

Additionally, the Company's references the sworn testimony of Utley in the Florida State Litigation wherein Utley directly refutes oral statements collected by the Company from Monte Friedkin, the principal of DTE ("Friedkin") and a resident of the State of Florida with a telephone number of 954-972-3222 x310, who relates to the Company and Caroline P. Rogers, Esq. ("Rogers") a resident of the State of Illinois with a telephone number of (708) 450-9400 x19, that Utley's tenure was marred by misappropriations of intellectual property naming Utley as an inventor, with no assignment to his employer, for inventions learned while working for said employer and written with the assistance of Respondent. Moreover, Friedkin stated that these circumstances led to the closure of his business in diametric opposition to the aforementioned resume of Utley, a biography that Wheeler authored, reviewed, and approved for many business plans which states that due to Utley's inventions in his position, DTE proceeded to good fortunes. It is interesting to note that, in his resume, Utley claims the innovative designs were done on the job by Friedkin's engineering group and yet he attempts to patent those ideas as his own in a separate company set up by Wheeler and prosecuted by Respondent. Equally interesting, to note that Utley states to the Virginia Bar, that he told Eliot I. Bernstein ("Bernstein"),

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Noel D. Sengel  
March 22, 2004  
Page 8

founder of the Company, of the past patent disputes, yet submits through Wheeler, a resume remiss of these facts and with information that is contrary to the truth.

Furthermore, upon the conclusion that the provisional patent filings for the Company by Joao, and under the oversight of Rubenstein, that Joao had done a poor job of capturing the inventions, that Joao had failed to list all *bona fide* inventors, and was found to be writing patents in his own name similar to disclosures made to him by the Company, Wheeler and Utley suggest, as Mr. Joao's replacement, Respondent and that Rubenstein would work well with the Respondent who would handle the filings while Rubenstein would handle potential litigations. Unbeknownst to the Company, it was Respondent who had been involved with Utley regarding intellectual property disputes at the DTE company; Respondent, owing a duty of forthrighteousness, absent of any suspicions of wrongdoings alleged in the Complaint, did not disclose such happenings by and between Respondent, Utley, and DTE. Had these issues been exposed by Respondent, Utley and Wheeler truthfully, it would be highly unlikely that the Company and its Board of Directors would have ever retained Respondent, Utley or Wheeler. Further, Utley in his deposition states that Iviewit never hired Mr. Dick and that he only referred the Company to Foley, yet the Foley bills are full of entries by Dick and in meetings with Wachovia and other investors who relied on Mr. Dick's assessments and strategies and not his underlings.

Moreover, equally devastating to the Company's prospects, under the oversight of Respondent as the overseer of the Company's patent portfolio, the evidence of which is attested to by Section III, paragraphs A to F below, the oversight of Respondent results in the filing of patents with: (i) incorrect math; (ii) further filing patents with missing inventors with full knowledge of the rightful inventors; (iii) changing patent titles and content to harm the Company's prospects; (iv) without any knowledge of the Company, filing of patents into Utley's own name, with no assignment to the Company for Company inventions in an attempt by Utley and Respondent to make a "spectacular grab" for the Company inventions, heralded as having the potential to generate billions of dollars in revenue on an annual basis, and similar to the contentions of Utley's past employer, DTE; and (v) the knowing and willful incorrect conclusions that certain patent bodies could not be rewritten as they contain new subject matter, and inventors can be easily changed (except in instances where intent to deceive the USPTO is the case as is the case with Iviewit) in contradiction to the views of the Company's current patent review counsel and the United States Patent & Trademark Office.

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## **II. RESPONSE TO RESPONDENT'S MISINFORMATION**

**DISCLAIMER:** Throughout this Section II, the Company does not attest to the validity of any documents as the Company cannot source original documents that have been lost by past patent counsels and, further, that it is the Company's contention that many of such documents may be fraudulent representations of the originals in an effort by past patent counsels, including Foley, to cloak the professional misconducts enumerated herein. Both Joao and Foley maintain that they have not even kept copies, including their retainer agreements, which have not been forwarded, nor does the Company have copies in its possession.

### **A. Respondent's Reference to the Company's Mention of Respondent's Involvement in the Diversion of Patents to DTE as Not Relevant to Iviewit<sup>1</sup>.**

First, the Company instructs Respondent that the Complaint is not akin to the procedural rules in a court of law, whereby the Federal Rules of Civil Procedure, or its counterpart in any State court, may preclude pleadings in support of the pattern of professional misconduct by Respondent and the breaching of fiduciary duties by Utley. Moreover, following upon the introduction to this misinformation above, the Company submits this pattern of misconduct by Respondent to support the factual allegations below.

Consequently, when Respondent embraces the argument that the diversion of intellectual property by Respondent and Utley is not relevant to the Complaint, Respondent's rationale is a feint that constitutes the first of Respondent's copious attempts at insults to the intelligences of the Virginia Bar.

Furthermore, and upon information and belief, the Company is aware of certain patent assignments by the Premier Connections company of Utley, formed by Wheeler, and attested as the applicant by Respondent of those certain DTE inventions therefore, the Company suspects that this pattern of professional misconduct by Respondent, with the collusion of Utley and Wheeler, may have a history prior to the DTE circumstances, but more investigation would be needed.

Finally, while it is the Company's end with respect to the Complaint to charge the Respondent with the professional misconducts cited herein, it is only fair to advise the

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<sup>1</sup> William J. Dick, Declaration of William J. Dick in Response to the Complaint From P. Stephen Lamont of Iviewit Holdings, Inc., VSB Docket #04-052-1366, 6 (January 8, 2004).

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Noel D. Sengel  
March 22, 2004  
Page 10

Virginia Bar that, upon investigation, the allegations cited in this paragraph, *interalia*, constitute intent to deceive the United States Patent and Trademark Office (“USPTO”).

**B. Respondent’s Reference to No Granted Patent in the Name of Utley<sup>2</sup>.**

In this respect, Respondent’s attempt to mislead the Virginia Bar is frighteningly misrepresentative, and bordering on the outright falsehoods he inflicted upon the Company, to the Virginia Bar on account of the patent filing following lineage attached herein as Exhibit B.

Consequently, when Respondent challenges the Company to put forth one granted patent (the eight step process described in Exhibit B) in the name of Utley, Respondent conveniently fails to mention the patterns of deception that occurred according to the lineage of Exhibit B, and where he conveniently fails to mention the patterns of deception, but steadfastly clings to the singular argument of one granted patent, Respondent’s argument is a feint that constitutes the second of Respondent’s ample attempts at insults to the intelligences of the Virginia Bar.

In fact, the mere application by Utley, the neglect in assignment by Utley, Dick and Wheeler, currently leaves the shareholders of the Company in a state of loss that borders on catastrophic. Finally, while it is the Company’s end with respect to the Complaint to charge the Respondent with the professional misconducts cited herein, it is only fair to advise the Virginia Bar that, upon investigation, the allegations cited in this paragraph, *interalia*, constitute intent to deceive the USPTO.

**C. Respondent’s Reference to Lack of Assignment Provisions Under Utley’s Employment Contract with DTE<sup>3</sup>.**

In this instance, Respondent again attempts to mislead the Virginia Bar by citing the technical shortcomings of the Utley employment contract with DTE, Utley’s just prior employer to the Company, by citing the technical aspect of a lack of an intellectual property assignment provision in Utley employment contract with DTE, a company manufacturing golf course equipment.

Moreover, what Respondent fails to mention to the Virginia Bar is that under common law as well as decisional law, courts have held that all work product of an employee becomes property of his or her employer, for, if not, then all employees, of any company,

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<sup>2</sup> Supra Note 1 at 4.

<sup>3</sup> Supra Note 1 at 2

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Noel D. Sengel  
March 22, 2004  
Page 11

in any State, and in any country on the planet, could then become competitors of their employers, thus confounding workplace productivity gains and the bond of trust inherent in any employee-employer relationship. Furthermore, recall the Utley resume of Exhibit A that states that his inventions contributed to the success of DTE and then claims that he would not assign them to DTE when Friedkin inadvertently discovered the patents Utley was claiming in his individual capacity; relying on the oral statements of Friedkin, this is why Utley was fired (also not in the resume and cloaked in his Virginia Bar statements of Utley to mislead ones of the truth) and Friedkin dissolved DTE incurring an approximate Three Million Dollar (\$3,000,000) loss. Respondent and Utley both attempt to mislead the Virginia Bar to believe that Mr. Utley "left" DTE when in fact he was terminated with cause, as is the exact case with Iviewit.

Additionally, by the formation of a separate company with Wheeler, to misappropriate inventions with Respondent, whereby it is already part of the record in the response of Respondent, that Respondent was aware of Utley's employment with DTE and, therefore, knew the relation of the patent pending invention, a hydraulic motor circuit device, to the position held by Utley, and the Company finds itself asking "Was the intention of Utley and Respondent to form a licensor-licensee relationship with DTE as well as Utley's role as President," and finds itself answering "No, but only when Utley and Respondent continue their pattern of invention misappropriation similar in respect to the Complaint of the Company. This shows the diabolical nature of Utley and Respondent and their continued pattern of lies and deceit that have now caused great harm upon two South Florida businesses.

Moreover, Utley, in his deposition statement in the Florida State Litigation, states that Wheeler never did any work for him in the past and then in Wheeler's deposition in the Florida State Litigation, he states that he formed the Premiere Connections company for Utley, and one may conclude that Respondent, Utley, and Wheeler, have had similar involvement in the circumstances surrounding DTE, and then proceeded on to cause problems at the Company that acted as the trigger for the Complaint, but more investigation would be needed as to the tripartite or dual nature of the Respondent/Utley pattern of deception.

Consequently, when Respondent clings to the technical aspects of Utley's employment contract with DTE, and where he conveniently fails to mention the common law, as well as decisional law, requirements of all an employee's work product becoming property of his or her employer, but steadfastly embraces to the singular argument of the absence of an intellectual property clause in Utley's DTE employment contract, that was the basis for attempting invention theft from DTE and Friedkin, Respondent's argument is a feint

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Noel D. Sengel  
March 22, 2004  
Page 12

that constitutes the third of Respondent's abundant attempts at insults to the intelligences of the Virginia Bar.

Finally, while it is the Company's end with respect to the Complaint to charge the Respondent with the professional misconducts cited herein, it is only fair to advise the Virginia Bar that, upon investigation, the allegations cited in this paragraph, *inter alia*, constitute intent to deceive the USPTO.

**D. Respondent's Reference to Assignment Requirements Under Utley's Employment Contract With the Company<sup>4</sup>.**

Here, Respondent again attempts to mislead the Virginia Bar by citing the technical positive aspects of the Utley employment contract with the Company, by citing an intellectual property assignment provision in Utley employment contract with the Company, a technology company designing and developing video frame manipulation techniques and digital zoom and pan systems.

Furthermore, what Respondent fails to mention to the Virginia Bar is that under the Patent Act, courts have held that where all *bona fide* inventors fail to be named on any provisional or non-provisional patent application, the assignment of that patent application fails, but only for any correctly named *bona fide* inventor. In other words, where Respondent knowingly and willfully inserts the name of Utley on any of the Company's provisional or non-provisional patent applications, the Company only benefits from the eventual assignment of a *bona fide* inventor, but not the other *bona fide* inventors that Respondent effectively "bumps off" the patent application and substitutes them with Utley; in some cases, the Company benefits from only two thirds of the invention (Bernstein/Utley/Shirajee or Rosario patent applications) or one-third of the invention (Bernstein and Utley patent applications) or none of the invention (Utley only patent applications), and irrespective of whether said patent application was abandoned or continued or denied or issued, the subjects of which are described below and all according the intellectual property docket of Blakely Sokoloff Zafman & Taylor LLP ("BSTZ"), the Company's most recent patent counsel, attached herein as Exhibit C. We have also enclosed a new portfolio updated with the USPTO that confirms many of the Company's allegations.

Moreover, as it is plain to see, Exhibit C contains patent applications written into Utley; the filing of a patent application requires the submission of Declaration that requires *bona fide* inventors to sign oaths and Respondent had those oaths signed and submitted to the

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

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THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.

Noel D. Sengel  
March 22, 2004  
Page 13

USPTO with knowingly wrong information by both the Respondent in his supervisory capacity and Utley. Still further, in Utley's deposition in the Florida State Litigation when asked about his knowledge of patent applications in his name, Utley denies such knowledge, and such patent applications in Utley are not the property of the Company, and further, when asked about the Company's technology being embedded into digital cameras, Utley steadfastly, again denies such knowledge, when it is plain to see from Exhibit C that Utley is the named inventor on a Foley patent application, written under the supervision of Respondent, titled "Zoom and Pan Imaging Design Tool" and "Zoom and Pan Imaging Using a Digital Camera;" Respondent withholds these records from the Company.

Additionally, where harm befalls the Company, it similarly befalls its stakeholders such as its shareholders, fraud on a registered bank holding company Wachovia Corporation through its affiliate Wachovia Securities, Inc., and others who were under the impression that the Company had full right, title, and interest in the patent applications; the uncovering of this debacle led Wachovia to remove itself from a potential private placement of \$12 million for the Company, as well as the likes of AOL/Time Warner and SONY Corporation canceling licensing agreements and strategic investments in the Company, where, upon information and belief, the lieutenant of Respondent, Douglas A. Boehm ("Boehm") of Foley, was terminated as a result of these circumstances under the direction of Respondent in the continuance of his pattern of invention misappropriations with Utley<sup>5</sup>. Many assignments were never made and many patents have been allowed to lapse due to this negligence.

Consequently, when Respondent clings to the technical aspects of Utley's employment contract with the Company, and where he conveniently fails to mention the Patent Act's requirements of all *bona fide* inventors named on a patent application for undisputed assignment of the invention to the Company, but steadfastly embraces to the singular argument of the intellectual property clause in the Utley employment contract with the Company, Respondent's argument is a feint that constitutes the fourth of Respondent's profuse attempts at insults to the intelligences of the Virginia Bar.

Finally, while it is the Company's end with respect to the Complaint to charge the Respondent with the professional misconducts cited herein, it is only fair to advise the

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<sup>5</sup> It was represented by Becker of Foley that Boehm was fired for filing patents with knowingly wrong content and became the scapegoat for Foley after an August 4, 2000 meeting in which the main topic of discussion was how errors that were found a day before filing on patent applications never seen by the Company, and found in Utley's possession, the errors of which constituted errors in inventors, content, and math of the inventions.

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Noel D. Sengel  
March 22, 2004  
Page 14

Virginia Bar that, upon investigation, the allegations cited in this paragraph, *interalia*, constitute intent to deceive the USPTO.

**E. Respondent's Reference to Listed Inventors Bernstein, Utley, Rosario, Shirajee, and Friedstein in Various Combinations<sup>6</sup>.**

In this respect, Respondent's attempt to mislead the Virginia Bar is frighteningly misrepresentative, and bordering on the outright falsehoods he inflicted upon the Company, to the Virginia Bar on account when he so casually inserts Paris Conference Treaty ("PCT") cover pages into his response citing listed inventors as Bernstein, Utley, Rosario, Shirajee, and Friedstein, in various combination.

Furthermore, and as stated in paragraph D above, what Respondent fails to mention to the Virginia Bar is that under the Patent Act, courts have held that where all *bona fide* inventors fail to be named on any provisional or non-provisional patent application, the assignment of that patent applications fails, but only for any correctly named *bona fide* inventor. In other words, where Respondent knowingly and willfully inserts the name of Utley on any of the Company's provisional, non-provisional, or PCT patent applications, the Company only benefits from the eventual assignment of a *bona fide* inventor, but not the other *bona fide* inventors that Respondent effectively "bumps off" the patent application and substitutes them with Utley; in some cases, the Company benefits from only two thirds of the invention (Bernstein/Utley/Shirajee or Rosario patent applications) or one-third of the invention (Bernstein and Utley patent applications) or none of the invention (Utley only patent applications), and irrespective of whether said patent application was abandoned or continued, the subjects of which are described below, and all according to Exhibit C. Again, since Utley should not be an inventor on these applications as the inventions were done by others, these points become mute in light of the fact that the Company has now been forced to file with the USPTO the claim of "intent to deceive" when changing the patents as the simple fix attested to by Respondent only works when clerical errors are the cause. The Company now must have inventors added or subtracted through a much more time consuming and costly fashion.

Moreover, the Company theorizes, that the only reason these combinations exist is as a result of the confrontation between the inventors and Utley (see Section III for the many differing and incorrect combinations of inventors) and that Respondent had to account for a second set of patents naming Utley as sole inventor; several of these filings have no inventor oaths or signatures which is not uncommon except in instances whereby

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<sup>6</sup> Ibid.

Noel D. Sengel  
March 22, 2004  
Page 15

inventors are added without knowledge of other inventors, all part and parcel of Respondent's elaborate cover up.

Consequently, when Respondent embraces the various combinations of *bona fide* inventors, and where he conveniently fails to mention the Patent Act's requirements of all *bona fide* inventors named on a patent application for undisputed assignment of the invention to the Company, but steadfastly clings to the singular argument of the various combinations of *bona fide* inventors, except for Utley, Respondent's argument is a feint that constitutes the fifth of Respondent's copious attempts at insults to the intelligences of the Virginia Bar. When Mr. Utley is included in application this is materially false and now causes the Company harm in fixing such applications with USPTO. Were assignments are today still incomplete, investors and potential investors are concerned over what they own.

Finally, while it is the Company's end with respect to the Complaint to charge the Respondent with the professional misconducts cited herein, it is only fair to advise the Virginia Bar that, upon investigation, the allegations cited in this paragraph, *inter alia*, constitutes intent to deceive the USPTO, the European Patent Office ("EPO"), and the Japanese Patent Office ("JPO").

#### **F. Respondent's Lack of Understanding of the Term "Burying<sup>7</sup>."**

In this instance, Respondent admits to having no knowledge of the term "burying" when referencing patent applications originally filed by Joao under the direction of Rubenstein, but at the same time denies any and all of the Company's charges of the knowing, willful, and with malice "burying" of the Company's inventions, and the Company finds itself asking "Is this a non-denial denial by Respondent," and answers itself by stating "No, but only when Respondent attempts, yet again, to mislead the Virginia Bar by his supposed lack of understanding of the term "burying" when referencing patent applications."

Moreover, following upon this seemingly non-denial denial, and for Respondent's benefit, the Company turns to the URL at <http://www.onelook.com/> and selects the Merriam-Webster's Online Dictionary, 10th Edition's definition of "burying" finding, *inter alia*:

- 1 to dispose of; and
- 2 to conceal; and
- 3 to cover from view.

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<sup>7</sup> Supra Note 1 at 5.

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Noel D. Sengel  
March 22, 2004  
Page 16

More specifically, example of burying the patent would be whereby Respondent directs Boehm and Becker to file patents with wrong or sparing information in the Company patents so as to prevent their issuance<sup>8</sup>, while writing patents into Utley without knowledge, consent, or authorization of the Company and fails to disclose these patents to the Company until after the fact, further after being caught with this other set of patents, Foley is ordered to carbon copy Company inventors and Bernstein and yet we find them filing these patents without a single acknowledgement of anyone but Utley who stood to prosper from such. Moreover, had this series of events continued, patent applications for inventions such as digital zoom and pan systems on a digital camera would be in the sole possession of Utley; circa 1998, the time period of this invention, there was no other effective way of zooming on a digital image, let alone panning, without significant distortion for the viewer.

Consequently, when Respondent's non-denial denial of the term "burying" when referenced to patent applications, Respondent's argument is a feint that constitutes the sixth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar.

**G. Respondent's Reference to the Company's New York Bar Complaints against Kenneth Rubenstein and Raymond A. Joao as "dismissed."<sup>9</sup>**

Here, Respondent again attempts to mislead the Virginia Bar by reciting the status, and incorrectly I might add, of the Company's New York bar complaints against individuals, that bear not one scintilla of relevance to the Company's Complaint against Respondent.

Nevertheless, to set the record straight, and for Respondent's information, the above referenced bar complaints have NOT been dismissed, but were temporarily deferred pending the outcome of the Florida State Litigation, and since the final adjudication of the Florida State Litigation where no trial of the matters contained herein ever occurred, the Company has requested the reinstatement of the above referenced bar complaints with the New York bar and have resubmitted same for investigation which is currently under way.

Consequently, when Respondent knowingly and willfully recites misinformation concerning the status of the above referenced bar complaints, Respondent's argument is a

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<sup>8</sup> 35 U.S.C. § 112 requires both that the applicant discloses to one skilled in the art how to make and how to use the claimed invention.

<sup>9</sup> Supra Note 1 at 17.

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Noel D. Sengel  
 March 22, 2004  
 Page 17

material falsehood that, while it constitutes the seventh of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar, factually should make the Virginia Bar stand up and take notice of what material falsehood one of its members, in Respondent, would bring forth in a matter as serious as the Complaint.

**H. Respondent's Reference to the Company's Florida Bar Complaints against Christopher C. Wheeler as "dismissed."<sup>10</sup>**

In this respect, Respondent again attempts to mislead the Virginia Bar by reciting the status, and incorrectly again I might add, of the Company's Florida Bar complaint against an individual, that bears not one iota of relevance to the Company's Complaint against Respondent. The Florida Bar has never formerly investigated the case and therefore the Florida Bar cannot make an opinion in favor of either party at this time.

Still further, and as of January 2004, the complaint stands before the Chairperson of the Grievance Committee of The Florida Bar, and the Company fully expects the opening of an investigation, and that Wheeler shall receives discipline, whether by admonishment, reprimand, suspension, resignation, or disbarment.

Consequently, when Respondent knowingly and willfully recites misinformation concerning the status of the above referenced bar complaint, Respondent's argument is a material falsehood that, while it constitutes the eighth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar, factually should make the Virginia Bar stand up and take notice of what material falsehood one of its members, in Respondent, would bring forth in a matter as serious as the Complaint.

**I. Respondent's Reference to the Denial of the Company's Counterclaim in the Florida State Litigation and Subsequent Proceedings Going to Trial<sup>11</sup>.**

Here, Respondent again attempts to mislead the Virginia Bar by intentionally misconstruing the ruling on the Company's motion to assert a counterclaim for damages, whereby said counterclaim was denied, **not heard**, but for the singular reason of the amount of time between February 2002 to January 2003 that the Company's counsel, Steven M. Selz, Esq., took to review what amounts to tens of thousands of pages of evidence procured from a variety of sources and build the counterclaim.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

Noel D. Sengel  
 March 22, 2004  
 Page 18

Secondly, the proceedings **did not go to trial**, but resulted in a default judgment against the Company for failure to *timely* retain replacement counsel for what had begun as a simple billing dispute to circumstances of grand proportions. Moreover, this feint when combined with the bar complaint misinformation, is intended to lead the Virginia Bar to think that a trial was held where the allegations were tried and that the Company lost after a trial, and after all the allegations of the counterclaim were heard and tried. Respondent then attempts to link the outcome of this case with the false statements he makes about the Bar complaints to give the impression that the respective State Bars have decided in favor of the respective respondents, where again it is implied that the respective State Bars had reviewed the facts of the case in an investigation and similarly concluded with the results of the trial to vindicate the various respondents.

Consequently, when Respondent knowingly and willfully recites misinformation concerning the final adjudication of the above referenced case, Respondent's argument is a material falsehood that, while it constitutes the ninth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar, factually should make the Virginia Bar stand up and take notice of what material falsehood one of its members, in Respondent, would bring forth in a matter as serious as the Complaint.

**LASTLY, FOR THE CONVENIENCE OF THE VIRGINIA BAR, THE COMPANY ATTACHES THE COUNTERCLAIM HEREIN AS EXHIBIT D, BUT UNLIKE THE COUNTERCLAIM, THE COMPANY'S ONLY GOAL WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY THE CIVIL ACTIONS OF THE COUNTERCLAIM THROUGH THE MECHANISM OF THE VIRGINIA BAR.**

**J. Respondent's Reference to all the Company's Bar Complaints Being Dismissed<sup>12</sup>.**

See paragraphs G to I above.

**K. Respondent's Reference to the Unpaid Legal Bills of Foley & Lardner LLP ("Foley").**

In this respect, Respondent again attempts to mislead the Virginia Bar by recalling the past due payables of the Company from the professional misconducts of Respondent, Boehm, and Becker of Foley. Moreover, the Company accounts for those payables on its

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<sup>12</sup> Ibid.

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Noel D. Sengel  
March 22, 2004  
Page 19

general ledger as long-term accounts payable that at the resolution of the facts of the counterclaim in the Florida State Litigation in any court of competent jurisdiction at the Federal or State level, the Company is highly confident that those payables shall be reduced to nil upon the final adjudication or settlement of any claims according to the counterclaim in the Florida State Litigation; the Company notes with interest that, suddenly, Foley through Respondent claims that they have an unpaid bill, and without one telephone call or one letter asking for payment, but now in response to the Complaint the Company finds itself threatened with litigation, perhaps another attempt at cloak the professional misconducts of Respondent.

Consequently, when Respondent rolls to the right and hopes that the Virginia Bar looks to the left on this issue, Respondent's argument is feint that constitutes the eleventh of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar.

#### **L. Hearsay Statements of P. Stephen Lamont**

In this instance, Respondent points to the signature of P. Stephen Lamont, the duly appointed Chief Executive Officer of the Company since December 3, 2001 ("CEO Lamont"), who executes the Complaint along with Eliot I. Bernstein, the Company's Founder & President, whereby Mr. Lamont's participation has not relied upon the statements of Mr. Bernstein, but, rather relies upon his review, along with Selz and Rogers, Esq., of the tens of thousands of pages of documents which include patent documents, teleconference transcripts, and taped conversations surrounding the circumstances of the Complaint, and the documentation of which, in part, the Company submits as conclusive evidence of professional misconducts in Section III below.

Consequently, when Respondent's charges that by virtue of Mr. Lamont's signature on the Complaint, he has benefited by the hearsay statements of Mr. Bernstein, despite Mr. Lamont's review of tens of thousands of pages of documentation that include, but are not limited to patent documents, teleconference transcripts, and taped conversations, Respondent's argument is a feint that constitutes the twelfth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar. Additionally, the initial complaint was co-signed by Mr. Bernstein and duly noted by Noel Sengel of the Virginia Bar.

#### **M. Respondent made no legal decisions concerning Iviewit<sup>13</sup>.**

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<sup>13</sup> Supra Note 1 at 3

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In this respect, the Company points to Respondent's own statements that he did the initial legal work, made the decision to assign the day-to-day duties to Boehm and Becker, under his supervision, and billed for various services as the lead on the Company's account. Moreover, Utley points to Respondent as a world renowned patent expert from IBM, and it is this status the Company sought and secured for its patent prosecution process, but like any other engagement, the Company must accept the junior patent attorneys of Boehm and Becker, in handling the more mundane day to day duties under the supervision of Respondent, all documentation attached herein as Exhibit E. Moreover, as exhibited in the letters from Alan Epstein, Esq. of Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris, letters reviewed and approved by Utley, it is Respondent who is headlined for investors as the person in charge of the Company's account; all investors and the Board of Directors were reliant on Respondent leadership and supervision of the filings, and where the experience of subordinate attorneys such as Boehm and Becker, the Florida based Company did not need to travel to Wisconsin to secure, but could have done so in its own backyard. As shown by Exhibit E, all decisions were made by Respondent with Utley and their past history at DTE points to a pattern of invention misappropriation that can only be cloaked where Respondent hides behind his subordinate attorneys, whom he admittedly mentors and teaches, but "mentors and teaches what?", asks the Company.

Further, Dick states to the Virginia Bar that he was not involved with Wachovia Securities and inducing them, with others into working with Iviewit and yet as is illustrated from the billing entries for Mr. Dick he was present at several of the key meetings with Wachovia Securities and Maurice Buchsbaum (representative of Crossbow Ventures the Companies lead investor) wherein it is apparent that it was Mr. Dick whom everyone turned to in regard to Iviewit patent matters and certainly not his underlings. Mr. Dick at these meetings made the major representations regarding Iviewit and the patent filings.

Consequently, when Respondent knowingly and willfully claims to have made no legal decisions when viewing the documentation of Exhibit E, Respondent's argument is a material falsehood that, while it constitutes the thirteenth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar, factually should make the Virginia Bar stand up and take notice of what material falsehood one of its members, in Respondent, would bring forth in a matter as serious as the Complaint.

**N. Respondent has no knowledge of lapses by Joao<sup>14</sup>.**

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<sup>14</sup> Supra Note 1 at 5.

Noel D. Sengel  
March 22, 2004  
Page 21

In this instance, the reasons for the engagement of Respondent, through the introduction by Utley and Wheeler, was a result of the missteps by Joao, wherein Respondent was engaged to calm the outcries of investors, and throughout that period, in supervision of Boehm and Becker, the discussions surround correcting Joao's work, identifying problems in Joao's patent applications, as Respondent was monitoring work according to the teleconference transcripts and letters attached herein as Exhibit F. These conversations took place after Utley was found with two sets of patent book and whereby the Company found patents fraught with errors and incorrect inventors and fragments of what appeared to be evidence indicating that Utley was patenting concepts in his own name learned in the Iviewit lab and invented by others and not disclosing his intentions to anyone. Prior to these taped transcribed meetings contained herein Bernstein found Foley taping meetings in which they were asking many strange questions regarding the patents and the inventorship, trying to have Bernstein agree to Utley as an inventor and all after months of knowing and having met with the inventors in an attempt to cover up what had occurred. When Bernstein asked if they were taping the call Foley's patent group replied that indeed they were. After Bernstein advised Board members of this, it was determined that Bernstein would tape all subsequent meetings. Bernstein was outraged at the attempt to have him answer questions while taping him without his knowledge and stated that no tapes without his authorization should be done again and that all prior tapes be destroyed.

Moreover, a series of taped meetings transpired wherein the discussion, the first centered around many of the problems with Joao's initial patent filings, Respondent was then charged with correcting the errors of Joao's filings through his orders to his underlings and was to investigate and report Joao for the errors while the underlings corrected them. None of the changes were completed, including assigning the patents to Company that prior had been claimed to be assigned by Foley and in the transcript it is clear that the Board members were very concerned about investor fraud, including fraud upon the seed investor Wayne Huizenga. Further, Foley states that Joao's work is so off base that they would need to completely re-write a new patent and that the Company would have some risks. As Board members become very concerned it then was decided that Foley would go back and amend the Joao work to save the original filing date but that because Joao failed to patent key elements the patent office could reject the work as new matter therefore causing loss of the invention. Even in the new filing they filed the Company is at the same risk of rejection and now stands with more problems than when they took over. After the meetings Dick and his team are charged with making the inventor changes and content changes and reporting Joao for his errors.

From the Company's recent work with the patent office to correct these errors caused by Respondent which are still wrong as of this date, we find that the process whereby

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Noel D. Sengel  
March 22, 2004  
Page 22

inventors were left off applications with intent to deceive which is what the Company claimed to Foley regarding Joao's work, would have taken a petition to the Commissioner of Patent & Trademarks stating fraud upon the United States Patent and Trademark Office. All changes to inventors from the Joao filings to the Foley filings would have had to undergone this procedure of petitioning the commissioner and therefore we ask how could these changes have been made by Foley without this process. Finally, the changes to inventors even if done without claiming fraud upon the USPTO would have had to written statements filed by each inventor approving of the inventor changes and certain forms would have had to be filed in this regard, the Company has no record of these, nor are they in any copies of any law firms files.

The assignments that were to be filed on Joao's filings were not made and Foley claims they were filed to Virginia Bar but have no files to verify their claim. The reason they have no copies of these is that they remain today not filed. Furthermore, several of the new filings Foley made are still unassigned. The fact that Foley lawyers state in the transcripts that they are completing the assignments that week, although the Company had been prior told they were filed, Foley still never filed them and they remain unassigned as of this date. Again, this is in response to the issue of fraud raised in the transcripts committed upon the shareholders of Iviewit if they were not filed and the lack of filing them indicates that fraud indeed has been committed upon the shareholders of Iviewit. Maurice Buchsbaum, an agent for Crossbow Ventures and Simon Bernstein then (Chairman of the Board), brought up the question of fraud. Mr. Wheeler was charged with answering the question and reporting back to the Company, which he failed to ever do.

Consequently, when Respondent claims to have no knowledge of the lapses by Joao, and when viewing the documentation of Exhibit F, Respondent's argument is a material falsehood that, while it constitutes the fourteenth of Respondent's numerous attempts at insults to the intelligences of the Virginia Bar, factually should make the Virginia Bar stand up and take notice of what material falsehood one of its members, in Respondent, would bring forth in a matter as serious as the Complaint.

### **III. SPECIFIC RULES VIOLATIONS AND EVIDENCE THERE TO**

**DISCLAIMER:** Throughout this Section III, the Company does not attest to the validity of any documents as the Company cannot source original documents that have been lost by past patent counsels and, further, that it is the Company's

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Noel D. Sengel  
March 22, 2004  
Page 23

**contention that many of such documents may be fraudulent representations of the originals in an effort by past patent counsels to cloak the professional misconducts enumerated herein.**

For ease of reference and to pictorially frame for the Virginia Bar the specific rules violations, the Company references the intellectual property docket ("IP Docket") attached herein as Exhibit G, constructed from the dockets of past patent counsel, and continually cited by the Company in this Section III.

**A. RULE 1.8 (b) Conflict of Interest: Prohibited Transactions.**

That Respondent used information relating to the representation of the Company, for the advantage of Respondent and a third party, and to the disadvantage of the Company by knowingly, willfully, and with malice, transferring patents using Boehm, Becker, and Foley so as to name Utley as the sole holder of multiple patents in his individual name and capacity when in fact they were and arose from the technologies developed by Bernstein and others and held by the Company prior to Utley's employment with the Company.

That Utley confronted Mr. Bernstein, on the night before filings were due at the USPTO, to sign blank signature pages for patent applications, contrary to the assertion of Respondent that inventors had time to review or correct applications<sup>15</sup>. Moreover, when Mr. Bernstein demanded to review the patent applications, Utley refused, forcing Mr. Bernstein and another employee, James F. Armstrong ("Armstrong") a resident of Fair Haven, N.J. with a telephone number of 732-747-4353, to seize the patent books from Utley who became irate, and wherein Mr. Bernstein and his assistant, Jennifer Kluge, photocopied the two sets of books.

Moreover, what Mr. Bernstein and Armstrong then discovered was: (i) patent applications in one book did not match at all the patent applications in the other book and that in one book, the inventors were all changed and incorrect and the content was not describing to one skilled in the art how to make and use the invention;<sup>16</sup> (ii) fragmented evidence of patent materials indicating that Utley might be filing other patents as his own that the Company had never been aware of; and, (iii) later, what Respondent ended up filing is completely different than what the inventors changed and signed for. After meetings in which the errors are addressed and corrected Foley still files incorrect filings leaving the Company to hire counsel to fix the mistakes at further expense to the

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<sup>15</sup> Supra Note 1 at 7.

<sup>16</sup> Thus failing the "enablement" requirement of 35 U.S.C. §112, resulting in a failed patent application

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Noel D. Sengel  
March 22, 2004  
Page 24

Company as Foley billed for these mistakes. Further, after all this was exposed they began an assault on Bernstein that lingers in the response of Dick submitted, as well as, a host of letters and calls insinuating that he was not a good inventor or a wildcard, Bernstein has felt slandered by such insults.

That Respondent, Utley, Wheeler, Rubenstein, Joao, Foley, and Proskauer with such intent, directed that certain patent rights be put in the name of Utley (indicating future benefits to Respondent) and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of Respondent, Wheeler, Rubenstein, Joao, and Proskauer to make use of such technologies without being liable to the Company for royalties normally arising from such use as described in the specific patent applications below, and attached herein as Exhibit H. All information in the patent documents contained herein is second hand information as our former patent counsel has now lost the Company's original files. We had informed our former counsel that we needed them for many of the Federal and State complaints now filed, including the Virginia Bar and they claim to have sent them with no receipts or verification that they were received and the Company. The Company is now preparing yet another attorney complaint for this. Therefore, the records the Company maintains of the patents are missing filing stamps for verification and we await the help of the USPTO who is working overtime to help the Company get its patents suspended while these matters can finally after years of attorneys failing to report other attorneys and thereby neglecting to fix the patents so as to not expose their brethren is finally about to come undone and the wrongs may get righted. We are currently in the process of securing a set of documents for verification from the USPTO and per the Virginia Bars direction we are submitting the complaint with the documents in the Company's possession yet we attest not to the validity of any of them. In speaking with the Virginia Bar we were requested upon asking for an extension to send them in without verification as the Virginia Bar was in a hurry to begin work on this matter and the Company was informed that we would be able to supplement the complaint as this additional information is gathered:

#### **1. Provisional Patent Application 60/233,341**

##### **Areas of Professional Misconduct**

- An invention of learned in the Iviewit labs is written and filed in the singular name of Utley at the direction of Respondent; and
- The invention, according to the IP Docket of Exhibit G, provides for no assignment to the Company, and contrary to the representations of Respondent to

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Company investors. The inclusion of this patent in the portfolio that the Company has no rights, title or interests in, is again a fraud upon the shareholders and investors of Iviewit, as well as, the Virginia Bar as it is included in Dick's response; and

- As this patent application does not appear in the Foley docket from which, in part, Exhibit G, was constructed until after Utley was terminated for cause and Respondent was discharged; the Company states this patent application was one contained in a second set of patent books at the direction of Respondent; and
- The Company and its Counsel have an incomplete record of this filing, missing virtually all filing information and no signatures or verification of any of the information regarding this application. The Company is waiting for information from the USPTO who has informed the Company that they may have to sue Utley under his employment contract to get them returned to Iviewit, as, while listed on the Company's IP Docket, the Company presently has no right, title, or interest, in this application; and
- Despite repeated requests throughout the transcripts Exhibit F to have the Company notified and copied on any correspondences regarding the patents, including copies to Bernstein, Foley fails to copy anyone but Mr. Utley regarding these filings and it is the contention of the Company that these letters were created after the fact; and
- The listing of this patent on the portfolio also constitutes shareholder fraud.
- Finally, this patent work for Utley then gets included in Iviewit's billings, and it is the Companies contention that this occurred only after Utley was caught with his second set of filings. As a means to cover up, they later went back and changed the billing records, yet it appears unethical to bill a Company for a patent they do not own.

## **2. Provisional Patent Application 60/233,344**

### **Areas of Professional Misconduct**

- An invention of Bernstein, Zakirul Shirajee ("Shirajee"), and Jude Rosario ("Rosario") is written and filed, on information and belief, in the singular name of Utley at the direction of Respondent; and
- The invention, according to the IP Docket of Exhibit G, provides for no assignment to the Company, and contrary to the representations of Respondent to Company investors. The inclusion of this patent in the portfolio that the

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THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.

Company has no rights, title or interests in, is again a fraud upon the shareholders and investors of Iviewit; and

- An invention of Bernstein, Shirajee, and Rosario fails to list them as inventors; and
- As this patent application does not appear in the Foley docket from which, in part, Exhibit G, was constructed until after Utley was terminated for cause and Respondent was discharged; the Company states this patent application was one contained in a second set of patent books at the direction of Respondent; and
- The Company and its Counsel have an incomplete record of this filing, missing virtually all filing information and no signatures or verification of any of the information regarding this application. The Company is waiting for information from the USPTO who has informed the Company that they may have to sue Utley under his employment contract to get them returned to Iviewit, as, while listed on the Company's IP Docket, the Company presently has no right, title, or interest, in this application according to the invention of Bernstein, Shirajee, and Rosario; and
- Despite repeated requests throughout the transcripts Exhibit F to have the Company notified and copied on any correspondences regarding the patents, including copies to Bernstein, Foley fails to copy anyone but Mr. Utley regarding these filings and it is the contention of the Company that these letters were created after the fact; and
- Although Foley & Lardner claims this patent was invented by Utley and Bernstein, both the USPTO and counsel BSZT & Greenberg Traurig have verified that Mr. Bernstein is not listed as an inventor; and
- Finally, this patent work for Utley then gets included in Iviewit's billings, and it is the Companies contention that this occurred only after Utley was caught with his second set of filings. As a means to cover up, they later went back and changed the billing records, yet it appears unethical to bill a Company for a patent they do not own.

### **3. Non-Provisional Patent Application 09/630,939**

#### **Areas of Professional Misconduct**

- An invention of Bernstein, Zakirul Shirajee ("Shirajee"), and Jude Rosario ("Rosario") is written and filed in the name of Utley and Bernstein at the direction of Respondent; and

Noel D. Sengel  
March 22, 2004  
Page 27

- The invention, according to the IP Docket of Exhibit G, has no assignment to the Company, and contrary to the representations of Respondent to Company investors. Foley states in the transcripts that assignments have been filed and no assignment as of this date is on file with the USPTO; and
- A BLANK Power of Attorney is submitted to the patent office and five months later Foley secures a supposed signature of Bernstein & Utley, although Bernstein never saw an application for this and claims his signature on the Power of Attorney and Declaration and Oath were switched. Either way, one year later the Oath and Declaration are still missing from the patent office and BSZT then has to file it again and they amazingly file one for Utley and Bernstein.
- An invention of Bernstein, Shirajee, and Rosario fails to list them as inventors; and
- As this patent application does not appear in the Foley docket from which, in part, Exhibit G, was constructed until after Utley was terminated for cause and Respondent was discharged; the Company states this patent application was one contained in a second set of patent books at the direction of Respondent; and
- The Company and its Counsel have an incomplete record of this filing, missing virtually all filing information and no original signatures or verification of any of the information regarding this application.; and
- Despite repeated requests throughout the transcripts Exhibit F to have the Company notified and copied on any correspondences regarding the patents, including copies to Bernstein, Foley fails to copy anyone but Mr. Utley regarding these filings and it is the contention of the Company that these letters were created after the fact; and
- Finally, this patent work for Utley then gets included in Iviewit's billings, and it is the Companies contention that this occurred only after Utley was caught with his second set of filings. As a means to cover up, they later went back and changed the billing records, yet it appears unethical to bill a Company for a patent they do not own.

#### **4. PCT Patent Application US00/15602**

That Respondent, through the Declaration of Becker in an attached exhibit from Grossman, claims "There is no file for Foley & Lardner 57103/117. This number was skipped in our numbering sequence<sup>17</sup>." Yet, Respondent submits, through the Declaration of Becker in an attached exhibit addressed to Utley with a carbon copy to Boehm, the

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<sup>17</sup> Supra Note 1 at 34

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**THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.**

Noel D. Sengel  
March 22, 2004  
Page 28

existence of a Foley “Our Ref.: 57103/117<sup>18</sup>,” the Company maintains that Mr. Bernstein and Friedstein saw the 117 filing with the *bona fide* inventors and this file 117 was replaced by Foley docket no. 118 naming Utley as an inventor, the day before filing. It would appear highly unusual that the inventors would change after months of work, the day before the filing and that applications would be thrown out and portfolio numbers such as 117, that were billed for would disappear instead of being corrected on the docket. In all drafts reviewed by inventors Friedstein and Bernstein, of either 117 or 118 there is no Utley listed as an inventor on the application and only on the filed document the next day does Utley’s signature appear. This file was not maintained in the Company files and was only found when files were transferred from Foley, after Utley was caught with two sets of patent books. Foley claims that on the day before filing 117 after drafting the application that it was Bernstein whom cancelled the application in one of the letters the Company cannot attest to the validity of. As mentioned, the Company found that Foley and Utley were taping conversations in which they were trying to couch the inventors into statements regarding the inventors. Once the Company found out they were taping we requested that no tapes be made without all parties agreeing and asked them to destroy any such recordings. These tapes are what led to the Company taping all further calls at the direction of several Board members so as to protect the Company. In fact, in the taped calls that are exhibited herein, Foley is made to explain what would allow Utley to be on any applications and continuously state that he should not be on any applications whatsoever in the event that any previous unauthorized taping is exhibited as any defense of any actions they may have taken.

One must understand that finding Mr. Utley with a second set of “cooked” patent books led the Company to take very calculated steps, such as playing along to find out more information while we ascertained the scope of the problems that confronted the shareholders. Several letters drafted by Foley, all indicate them trying to change these inventors the day before filing, letters the Company cannot attest to the validity of, other than as attempts to cover up for these malfeasances after the fact. Further, the letters try and indicate that these changes were approved, yet it would have taken more than verbal approval according to the patent procedures to change inventors, such as filing forms with all inventors agreeing to such changes in writing or declaring intent to deceive regarding the provisional filings to have any new inventors added to the non-provisional filings. Finally, due to the gross neglect of Foley and Respondent in properly correcting the inventors and further trying to add Utley to the patents, the Company has now had to petition the Commissioner directly with the USPTO.

#### **Areas of Professional Misconduct**

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<sup>18</sup> Supra Note 1 at 37

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THE COMPANY’S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.

- Utley in deposition states he invented nothing on this application yet he is listed as an inventor.
- Utley reviews a copy of Foley Docket 118 without him as an inventor and makes no changes.
- An invention of Bernstein and Friedstein before Utley was even at the Company, originates as the Foley file 117, where Respondent fails to file the application with the USPTO, blaming it on conversations with Bernstein. Bernstein requests that all written documentation regarding this decision be procured by the Virginia Bar to ascertain this claim. In all drafts reviewed by inventors Friedstein and Bernstein, of either 117 or 118 there is no Utley listed as an inventor on the application and only on the filed document does Utley's signature appear. This file was not maintained in the Company files and was only found when files were transferred from Foley, after Utley was caught with two sets of patent books.
- An invention of Bernstein and Friedstein is written and filed in the names of Bernstein, Friedstein and Utley at the direction of Respondent. Inventors Friedstein and Bernstein review 117 and then the very next day, upon filing the inventors change to Friedstein, Bernstein and Utley and the docket 117 is lost and is replaced with 118.
- A US filing is missed and may be unrecoverable
- Utley's employment contract is submitted to remove him from the patent

#### **5. Non-Provisional Patent Application 09/587,734**

##### **Areas of Professional Misconduct**

- An invention of Bernstein, Shirajee, and Rosario is written and filed in the names of Bernstein, Rosario, and Utley at the direction of Respondent; and
- Application is made with blank power of attorneys for Bernstein, Rosario and Utley; and
- Utley signs and executes as an inventor knowing that he was not and Respondent submitted it.

#### **6. PCT Patent Application US00/15406**

##### **Areas of Professional Misconduct**

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Noel D. Sengel  
 March 22, 2004  
 Page 30

- An invention of Bernstein, Shirajee, and Rosario is written and filed in the names of Bernstein and Shirajee (or just Bernstein as the Company awaits information) at the direction of Respondent; and
- As this patent application does not appear in the Foley docket from which, in part, Exhibit G, was constructed until after Utley was terminated for cause and Respondent was discharged; the Company states this patent application was one contained in a second set of patent books at the direction of Respondent..
- Filed without inventor signatures on Oath and Declaration

The remaining patents are shown with evidence to the misconduct committed after these have been illustrated, we will update the Virginia Bar on these shortly.

To the best of my knowledge I, Eliot I. Bernstein, have not invented anything with Brian Utley. I can attest that I know that Shirajee, Rosario and Friedstein have never invented anything with Brian Utley. In any instance where Brian Utley is an inventor a fraud upon the USPTO has been committed by Dick and Utley, the other attorneys were merely casualties of their behavior who were "just following orders." Dick was fully apprised of the problems with the Joao and Rubenstein filings, he was the person in charge of fixing everything, any attempt at a mentor to hide behind his underlings is ridiculous, he must be held accountable for all errors. Letting him cloak behind his juniors would be similar to saying that Osama Bin Laden is not guilty for the World Trade Center because he just gave the orders and did not pilot the plane.

What the inventor's saw and what was filed is materially different and Dick and Utley were reviewing all applications. I have met Dick several times and he was the person that every investor relied on in charge of overseeing the patents and what they now have to show for his work is a travesty. The cost of repair is an unknown at this point because of Respondent and the inventions may be lost. Certainly the Virginia Bar must see a pattern here that has cost two companies their fortunes and must revoke Dick's license immediately to prevent further instances of damage to the trusting public.

#### **B. RULE 3.3 Candor Towards the Tribunal.**

That Respondent, in his representation of the Company, *inter alia*, has made a false statement of fact and law to a tribunal, and failed to disclose a fact to a tribunal when disclosure is necessary to a criminal or fraudulent act, and has offered documentations that the lawyer knows to be false, or has offered documentations that the lawyer comes to know as being false and fails to take remedial measures whereby Respondent had

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Noel D. Sengel  
March 22, 2004  
Page 31

knowledge that Mr. Bernstein and several members of the Company's board of directors ("Board") members were not content with the provisional filings of Joao.

More specifically, and as background to the Joao deficiencies, the Company did not seek simple verbal assurances, but wanted a review of the patents applications, akin to the 1999 review of the patent applications by a one Steven Filipek, Esq, engaged for that specific purpose by the Company's seed investor, an affiliate of Wayne Huizenga, of Blockbuster and Waste Management fame. Furthermore, during the Joao engagement, the invention description of the patents seemed altered, and, factually, Joao did alter the invention descriptions before being filed with the USPTO, instances of which Respondent was apprised.

That Respondent knowingly, willfully, and with malice, transferred patents using Foley so as to name Utley as the sole holder of multiple patents in his individual name and capacity when in fact they were and arose from the technologies developed by Bernstein and others and held by the Company prior to Utley's employment with the Company

That Respondent, 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.

That Respondent, knowingly, willfully, and with malice changed the titles of patent applications so as to limit their scope and the claims they stake.

That Respondent knowingly, willfully, and with malice failed to file copyrights for the source code linking the Company's inventions.

That Respondent, Utley, Wheeler, Rubenstein, Joao, Foley, and Proskauer with such intent, directed that certain patent rights be put in the name of Utley (indicating future benefits to Respondent) and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of Respondent, Wheeler, Rubenstein, Joao, and Proskauer to make use of such technologies without being liable to the Company for royalties normally arising from such as described in the specific patent applications below, and attached herein as Exhibit I:

- 1. PCT Patent Application US00/15408**  
Refer to CD ROM exhibit
  
- 2. Non-Provisional Patent Application 09/522,721**  
Refer to CD ROM Exhibit

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Noel D. Sengel  
March 22, 2004  
Page 32

See also Section III, paragraph A, subparagraphs 1, 2, 3, 4, 5, and 6 above.

**C. RULE 1.6 (c) (3) Confidentiality of Information (Reporting Misconduct of Another Attorney).**

That Respondent had information concerning the misconduct of another attorney and did not reveal that information to the appropriate professional authority, upon the discovery of the "lapses" by Joao, that caused Wheeler and Proskauer to refer the patent matters to Respondent who equally becomes aware of such "lapses" (where lapses as referenced herein are termed knowing, willful, and with malice burying of the Company's inventions in patent applications) as described in the specific patent applications below, and attached herein as Exhibit J:

**1. Non-Provisional Patent Application 09/630,939**

**Areas of Professional Misconduct**

- That the predecessor Non-Provisional Patent Application 09/522,721 of Joao when considering the knowing, willful, and with malice burying of the Company's inventions, Respondent should have reported the misconduct of Joao; and
- That if preparing and filing this patent application, Respondent, Boehm, and Becker should have consulted the *bona fide* inventors; and
- An invention of Bernstein, Shirajee, and Rosario is written and filed in the names of Bernstein and Utley at the direction of Respondent; and
- The invention, according to the IP Docket of Exhibit G, provides for no assignment to the Company, and contrary to the representations of Respondent to Company investors; and
- An invention of Bernstein, Shirajee, and Rosario fails to list Shirajee and Rosario as inventors.

**D. RULE 8.3 Reporting Misconduct**

That Respondent had reliable information that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law and failed to inform the appropriate professional authority, as a result of the discovery of the "lapses" by Joao, where Respondent equally becomes aware of such "lapses" (where lapses as referenced herein

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Noel D. Sengel  
March 22, 2004  
Page 33

are termed knowing, willful, and with malice burying of the Company's inventions in patent applications), as described in the specific patent applications below, and attached herein as Exhibit J (See Section III, paragraph C, subparagraph 1):

#### **E. RULE 1.16 (e) Delivery of Former Client's File**

That Respondent shall return all original, client-furnished documents and any originals of legal instruments upon termination of representation, but that Respondent knowingly, willfully, and with malice destroyed Company documents to insert reasonable doubt as to the above allegations, and failed to ensure their proper transfer to new patent counsel.

That, the Company maintains, Respondent and the subordinate attorneys, once Mr. Bernstein and Armstrong discovered the second set of patent books, began to falsify their billings records, to insert reasonable doubt as to the above allegations, as described in the specific patent applications below, and attached herein as Exhibit K:

#### **1. PCT Patent Application US00/15602**

##### **Areas of Professional Misconduct**

Contained on CD ROM with evidence

#### **F. RULE 1.8 (c) Conflict of Interest: Prohibited Transactions**

That a lawyer shall not prepare an instrument giving the lawyer a substantial benefit in representation of a client, wherein Respondent, Utley, Wheeler, Rubenstein, Joao, Foley, and Proskauer with such intent, directed that certain patent rights be put in the name of Utley (indicating future benefits to Respondent) and/or that such patent rights were modified or negligently pursued so as to fail to provide protection of the intellectual property, resulting in the ability of other clients of Respondent, Wheeler, Rubenstein, Joao, and Proskauer to make use of such technologies without being liable to the Company for royalties normally arising from such use (See Section III, paragraph A, subparagraphs 1,2,3,4,5, and 6.

## **IV. Conclusion**

#### **A. Declaration of Brian G. Utley**

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THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.

Noel D. Sengel  
March 22, 2004  
Page 34

As to the declaration of Utley in support of Respondent, the Company references an electronic mail message from William R. Kasser, a former accounting consultant of the Company to Mr. Bernstein attached herein as Exhibit L.

In the electronic mail message sent by Mr. Kasser to Eliot Bernstein on April 23, 2002, Mr. Kasser, as a result of an account reconciliation, alleges gross fraud in the booking of Company revenues by Utley and a one Raymond T. Hersch, former Chief Financial Officer of the Company.

Thus, and combined with the misrepresentations of Utley as to the circumstances surrounding the intellectual property of DTE and the circumstances surrounding the distorted resume of Utley and the patent application in the singular name of Utley and the Boca Raton, Fla. Police Department report surrounding the theft of the Company's proprietary equipment by Utley and the inconsistencies in his deposition in the Florida State Litigation, as to the reliance in any of Respondent's filings, and/or proceedings in this matter on the testimony of Utley that would seemingly exculpate Respondent, it should be clear to the Virginia Bar that the testimony of Utley is utterly worthless.

#### **B. Declaration of Douglas A. Boehm**

As to the Declaration of Boehm, that Boehm, through the Declaration of Becker in an attached exhibit from Grossman, claims "There is no file for Foley & Lardner 57103/117. This number was skipped in our numbering sequence<sup>19</sup>." Yet, Respondent submits, through the Declaration of Becker in an attached exhibit addressed to Utley with a carbon copy to Boehm, the existence of a Foley "Our Ref.: 57103/117<sup>20</sup>;" the Company maintains that Mr. Bernstein and Friedstein saw the 117 filing with the *bona fide* inventors and this file 117 was replaced by Foley docket no. 118 naming Utley as an inventor.

Thus, as to the reliance in any of Respondent's filings, and/or proceedings in this matter on the testimony of Boehm that would seemingly exculpate Respondent, it should be clear to the Virginia Bar that the testimony of Boehm is utterly worthless.

#### **C. Declaration of Steven C. Becker**

As to the Declaration of Becker, that Becker, through his Declaration in an attached exhibit from Grossman, claims "There is no file for Foley & Lardner 57103/117. This

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<sup>19</sup> Supra Note 1 at 34.

<sup>20</sup> Supra Note 1 at 37.

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Noel D. Sengel  
March 22, 2004  
Page 35

number was skipped in our numbering sequence<sup>21</sup>.” Yet, Respondent submits, through the Declaration of Becker in an attached exhibit addressed to Utley with a carbon copy to Boehm, the existence of a Foley “Our Ref.: 57103/117<sup>22</sup>,” the Company maintains that Mr. Bernstein and Friedstein saw and reviewed the 117 filing with the *bona fide* inventors and this file 117 was replaced by Foley docket no. 118 naming Utley as an inventor.

Thus, as to the reliance in any of Respondent's filings, and/or proceedings in this matter on the testimony of Becker that would seemingly exculpate Respondent, it should be clear to the Virginia Bar that the testimony of Becker is utterly worthless.

#### **D. Declaration of Barry L. Grossman**

As to the Declaration of Grossman, that Grossman, through the Declaration of Becker in an attached exhibit from Grossman, claims “There is no file for Foley & Lardner 57103/117. This number was skipped in our numbering sequence<sup>23</sup>.” Yet, Respondent submits, through the Declaration of Becker in an attached exhibit addressed to Utley with a carbon copy to Boehm, the existence of a Foley “Our Ref.: 57103/117<sup>24</sup>,” the Company maintains that Mr. Bernstein and Friedstein saw the 117 filing with the *bona fide* inventors and this file 117 was replaced by Foley docket no. 118 naming Utley as an inventor.

Thus, as to the reliance in any of Respondent's filings, and/or proceedings in this matter on the testimony of Grossman that would seemingly exculpate Respondent, it should be clear to the Virginia Bar that the testimony of Grossman is utterly worthless.

### **v. Testimonials in Support of Company's Complaint**

Lastly, in addition to the counterclaim filed in the Florida State Litigation by Selz and the review of documentation by Rogers in supervision of Selz and the review of documentation by CEO Lamont as a basis for the filing of the Complaint along with Mr. Bernstein, in support of the Company's Complaint, we attach as Exhibit M:

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<sup>21</sup> Supra Note 1 at 34.

<sup>22</sup> Supra Note 1 at 37.

<sup>23</sup> Supra Note 1 at 34.

<sup>24</sup> Supra Note 1 at 37.

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Noel D. Sengel  
March 22, 2004  
Page 36

**A. Stephen J. Warner and Crossbow Ventures, Inc.**

Mr. Warner, the Chairman and Co-Founder of Crossbow Ventures, Inc., and the Company's lead investor, knowing and willing executes an inventor change submission submitted by the Company to the USPTO, wherein that submission contains allegations sufficiently similar to those of the Complaint.

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THE COMPANY'S END WITH RESPECT TO THE COMPLAINT IS CHARGING THE RESPONDENT WITH THE PROFESSIONAL MISCONDUCTS CITED HEREIN, AND NOT AS A MEANS TO TRY ANY CIVIL, CRIMINAL, OR PATENT RULE VIOLATIONS THROUGH THE MECHANISM OF THE VIRGINIA BAR.



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Suite 801  
Boynton Beach, FL 3343-3546  
Tel: 561 364 4240  
Fax: 561 364 4240

**CONFIDENTIAL FACSIMILE COVER PAGE**

**MESSAGE:**

Ken,

Attached is the inventor change form for 09 630 939 signed by the assignor on the patents. I am still awaiting the other inventors to sign and will forward when I get them. Also, I will be sending in similar signatures for the other applications.

Eliot

To: Kenneth Weider	From: Eliot I Bernstein
Fax #: 17033053991	Fax #: 561 364 4240
Company: United States Patent &	Tel #: 561 364 4240

Subject: 09 630 939 Iviewit Inventor Change Form	
Sent: 3/3/2004 at 2:39:52 PM	Pages: 9 (including cover)

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!



## IVIEWIT HOLDINGS, INC.

Eliot I. Bernstein  
Founder  
Direct Dial: 561.364.4240

VIA – FACSIMILE

Thursday, February 12, 2004

U.S. Patent and Trademark Office  
Commissioner of Patent & Trademarks

Re: **CHANGE OF INVENTOR REQUEST – INTENT TO DECIEVE AND  
COMMITT FRAUD UPON THE USPTO IS CLAIMED**

**US SERIAL NO. 09 630 939**

Dear Commissioner of Patent & Trademarks:

Please let the attached changed of inventors request serve as an official request pursuant Section 37CFR 1.48 to change the inventors. Whereby, intent to commit fraud on the USPTO is the listed reason.

Very truly yours,

A handwritten signature in black ink, appearing to read "E.I. Bernstein", is written over a light-colored background.

Eliot I Bernstein  
President  
I View It Holdings, Inc. and any/all affiliates



U.S. Patent and Trademark Office  
Commissioner of Patent & Trademarks  
Thursday, February 12, 2004  
Page 2 of 8

**CHANGE OF INVENTOR REQUEST**  
**US SERIAL NO. 09 630 939**

**PURSUANT TO 37CFR 1.48**  
**INTENT TO DECEIVE AND COMMIT FRAUD UPON THE USPTO**

I, Eliot I. Bernstein, as acting President of Iviewit and its affiliates, and as a named inventor on this application, hereby request that the true and correct inventors be added and the wrong inventors removed from this Non Provisional application 09 630 939 to properly name the inventors of this invention.

The listed and **incorrect** inventors for this application are:

Eliot I. Bernstein  
Brian G. Utley

The **true and correct inventors** for this application are:

Eliot I. Bernstein  
Zakirul Shirajee  
Jude Rosario

The reason for this correction:

The true and correct inventors have been purposefully been left off this patent application by three different counsels all failing to correctly fix the inventor issues and wrong disclosures. Since the creation of the invention, our initial counsel in the Provisional filing **60 125 824** attorneys Kenneth Rubenstein of Proskauer Rose LLP ("PR") and Raymond Joao of Meltzer, Lippe, Goldstein, Wolf & Schlissel, P.C., ("MLGS") failed after repeated requests to make the inventor and content changes, although they had full knowledge of the correct inventors and the correct invention. In addition, the content of the Provisional application had changed from what the inventors disclosed initially and pertinent disclosures were left out with malice and intent to deceive the USPTO and further deprive the inventors of their inventions. Subsequent counsel to "PR" attorneys William Dick, Douglas Boehm and Steven Becker of Foley & Lardner ("FL") on this Non Provisional filing, created further errors with the inventors and failed to correct either the inventors or the content of the Provisional. This may now leave the pertinent disclosures left off and incorrect inventors, to serve as new matter in the in subsequent



U.S. Patent and Trademark Office  
Commissioner of Patent & Trademarks  
Thursday, February 12, 2004  
Page 3 of 8

Non Provisional filings that claim priority to the Provisional application. Successor counsel to "FL" attorneys Norman Zafman, Thomas Coester and Farzad Amini of Blakely Sokoloff Taylor & Zafman LLP ("BSZT") also failed to file the corrections despite repeated requests by the Company to get the corrections to the patent office.

Initially, attorneys Kenneth Rubenstein of "PR" and Raymond Joao of "MLGS" knowingly, with malice and intent to commit fraud upon the USPTO, left inventors off the Provisional application after obtaining their signatures and disclosures in meetings. Mssrs: Rubenstein and Joao, on the subsequent Non Provisional Filing (09 522 721) and the PCT (00 07772) filings, despite being aware of the prior problems discovered, made no attempt to fix their errors on the Non-Provisional filing. They further continued the errors of their Provisional filing, despite having the inventors sign and fix the new Non-Provisional filings; these changes and signatures were completely discarded by them and again a different application was filed. Mr. Rubenstein, an Advisor to the Board and Shareholder, who under deposition claimed to not know the Company now, had been the first patent attorney to meet with the inventors and receive the disclosures and he represented that he was directing his underling Mr. Joao to do the Provisional filings with his oversight. Raymond Joao was terminated as counsel for this and other patent malfeasances that became uncovered.

To replace "MLGS", "FL" was retained to make corrections to the patents and get the correct inventors listed. Again, it was fully disclosed who the correct inventors were and what the inventions were to each of these attorneys at "FL" for this application and other applications of the Company. After reviewing Mssrs: Joao and Rubenstein's work "FL" found that Raymond Joao had failed to properly list the inventors and left out pertinent disclosures on the filings. Upon finding out about the correct inventors, "FL" attorneys stated that the corrections were being made to the Provisional & Non-Provisional applications. After meeting with and taking disclosures and signatures of the true inventors, "FL" failed to make the corrections knowingly, with malice and intent to further commit fraud on the USPTO in their Provisional, Non-Provisional and PCT applications filed by them. Further, in instances such as this application where Brian G. Utley is a listed inventor, "FL" added inventor Brian G. Utley, knowingly, with malice and intent to further commit fraud upon the USPTO, knowing that he was not an inventor in any material way to the patents and was not even there when they were invented. Finally, in instances such as this filing, true and correct inventors have been partially left off the application and others were replaced by Mr. Utley as a new inventor.

This application is also a replacement of the original patent the Company had filed with Mssrs: Joao and Rubenstein for the original invention in an effort to let the original patent expire and replace it with this application. Yet, amazingly, the application does not get



U.S. Patent and Trademark Office  
Commissioner of Patent & Trademarks  
Thursday, February 12, 2004  
Page 4 of 8

corrected it further gets an entirely new set of inventors, again these inventors are wrong knowingly, with malice and intent to commit fraud on the USPTO. In this Non Provisional application, some of the true and correct inventors were dropped and replaced by Brian G. Utley. Mr. Utley should not be on any applications for the Company, as he has not invented anything.

It will serve to note here that it has come to the attention of the Company after an investigation into Mr. Utley's background that quite the opposite of what his resume states about his prior employment to the Company is true. At his former job as President of Diamond Turf Equipment Inc. in Florida, a company owned by a Mr. Monte Friedkin of Benada Aluminum of Florida, Mr. Utley with the aid of Mr. William Dick of "FL", had stolen off with ideas learned while employed at Friedkin's company relating to turf equipment. Mr. Utley had written these patents into his own company, Premiere Consulting, and his own name as inventor with no assignment to the company he worked for, Premiere Consulting was separate and apart from his employer. Upon discovering the absconded with patents, Mr. Friedkin demanded that the patent applications be turned over to the company as they were learned while working at his company by Mr. Utley. Mr. Utley refused to sign them over to his employer and was fired with cause immediately for these patent malfeasances. Mr. Friedkin was forced to immediately close the business and take a substantial multi-million dollar loss on the company due directly to this incident. Additionally, the company, Premiere Consulting, that was set up to receive the patents Mr. Utley misappropriated, was set up by Christopher Wheeler of Proskauer Rose LLP, who was the first person to see the technologies, who then brought to the Company to handle our patents Mssrs: Rubenstein, Joao, Utley and Dick. What Mssrs: Wheeler, Utley and Dick failed to disclose to our Company was the past patent malfeasances and the damage caused to Mr. Friedkin by their actions. I quote from the resume Mr. Wheeler submitted on behalf of his dear friend Mr. Utley to the Company to hire him as President and handle our most prized possession the patents:

*Personal Resume*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.

In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.



U.S. Patent and Trademark Office  
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Thursday, February 12, 2004  
Page 5 of 8

This resume is materially different from the truth. Mr. Utley was fired for cause and the company Diamond Turf Equipment Inc. closed upon his firing. Understanding that the same people (Wheeler, Utley & Dick) who had caused this calamity are the very same people who have caused similar harm to our Company, using similar patent malfeasances is core to understanding why our patents have such a bizarre array of problems. The very fact that this was not disclosed in writing and waivers, by any of the attorneys and further lied about in Utley's resume by Mr. Wheeler who procures the false resume to cover this up, is a sign of their intent to commit similar crime upon our Company and perpetrate similar fraud upon the USPTO. Had the Company been aware of this past patent malfeasance they were involved with the Company surely would have never hired any of them.

With this understanding, it appears that the intent of "FL" was to replace patents of the original inventions with patents whereby Mr. Utley was now named an inventor and finally in some instances Mr. Utley was named sole inventor of certain inventions of the Company. These applications in Utley's sole name are for part of the core technology that he did not invent such as this application. Further, "Zoom and Pan Imaging Design Tool" Provisional patent 60 233 341 and "Zoom and Pan Imaging Using A Digital Camera" Provisional patent 60 233 344 are further instances whereby "FL" writes patents directly into Mr. Utley's name in an attempt to abscond with core formula's and ideas of the original inventions by the true and correct inventors. These Provisional patents with Mr. Utley as sole inventor with no assignment to the Company, were not disclosed to the Company or its shareholders and were only revealed when the Company found in Mr. Utley's possession a set of patents that was markedly different than what the inventors were seeing and signing for. These inventions were undisclosed to the Company and appear to be filed in an attempt to abscond with core features of the original inventions from the true and correct inventors listed above. When caught with two sets of patent books, similar to maintaining cooked accounting books, Mr. Utley was terminated with cause and "FL" was terminated as patent counsel. This patent 09 630 939, has similar elements to their prior patent scam at Diamond Turf, Inc. in that Mr. Utley rewrites with the aid of Mr. Dick and other "FL" attorneys, patents again into his name that were not his inventions. This Non Provisional patent 09 630 939 was replacing the original Provisional, which Joao had already filed as Non Provisional, which "FL" then claimed Joao's work was so wrong, that correcting it was impossible, and this new Non-Provisional needed to be filed with the correct content and correct inventors. Knowing the true and correct inventors and having had them sign applications for what appeared the true invention, "FL" attorneys then threw those signatures and the application out and replaced it with this application before the USPTO, claiming Mr. Utley as an inventor and replacing himself with inventors Mssrs: Rosario and Shirajee.



U.S. Patent and Trademark Office  
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Thursday, February 12, 2004  
Page 6 of 8

Finally, "BSZT" the last attorneys of record handling the patents, also failed to file the correct inventors knowingly, with malice and intent to further perpetrate and cover up such fraud of prior attorneys to the USPTO, after repeatedly being requested to make the changes to them. Upon finding that Mr. Utley was not an inventor of anything and that the inventors were wrong, "BSZT" assured the Company that these issues were being corrected. They had me sign a power of attorney on Mr. Utley's behalf to turn the inventions back over to the Company in his name and remove him from any applications his name appeared on, due to his employment and invention agreements signed with the Company that strictly prohibited such misappropriations. Mr. Utley was to be removed from any/all patents that have his name on them and the ones in which he was named as the sole inventor, were to be corrected and turned back over to the Company. Now, upon contacting the USPTO we find that many of these changes remain unchanged, in what appears another attempt to continue this fiasco and cover up for the attorneys before them, "BSZT" made virtually no changes requested by the Company.

At all times, all attorneys were fully cognizant of the true inventors and the true invention for this application. Finally, all these attorneys failed to report the prior counsels misconduct in these matters to the OED Director or any other department at the USPTO or other Federal Agencies and left the Company with many serious problems in the patents. The incorrect inventors are a great risk to the shareholders of the Company and need to be remedied immediately if possible, as the assignment of these patents to the Company and any successive assignments are not signed by the true and correct inventors and thus pose the question of what they currently have rights to in relation to their investments. Finally, many of the attorneys involved in these patents appear to have financial interests and severe conflicts of interest with the Company whereby the company's inventions being approved would stand in direct conflict with either with inventions of their own (Raymond Joao) or patent pools overseen by them (Kenneth Rubenstein).

Currently, I am listed on the patents for examination purposes and after reviewing the inventors listed have determined on behalf of Iviewit and its affiliates, and, on my own behalf as an original inventor at the time of creation, that the true inventors are as listed above and not what exists currently on this application. I was there at the time of invention and all times relevant hereto, and, swear that all of the following statements are true and correct statements to the best of my knowledge.



U.S. Patent and Trademark Office  
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Thursday, February 12, 2004  
Page 7 of 8

These issues and many other of attorney misconduct in the above mentioned application are currently under a pending investigation with the Director of OED whom advised me to begin correcting the inventor issues with the USPTO Examiners.

Signed on this 11<sup>th</sup> day of February 2004,

By:

X \_\_\_\_\_  
Eliot I. Bernstein  
President Iviewit and any/all affiliates

X \_\_\_\_\_  
Eliot I. Bernstein  
Inventor



U.S. Patent and Trademark Office  
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Thursday, February 12, 2004  
Page 8 of 8

I have read the attached reasons for change in inventor with the USPTO and approve of the changes.

By:

X \_\_\_\_\_  
Zakirul Shirajee - Inventor

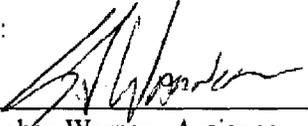
On this \_\_\_\_ day of February 2004

By:

X \_\_\_\_\_  
Jude Rosario - Inventor

On this 2nd day of <sup>March</sup> ~~February~~ 2004 <sup>sw</sup>

By:

X  \_\_\_\_\_  
Stephen Warner - Assignee  
Alpine Venture Capital Partners LP

**Eliot I. Bernstein**

**From:** Eliot I. Bernstein [iviewit@adelphia.net]  
**Sent:** Tuesday, March 23, 2004 5:23 PM  
**To:** 'Huizenga Holdings, Inc. - H. Wayne Huizenga Jr.'; 'The Goldman Sachs Group, Inc.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'; 'Huizenga Holdings Incorporated - Cris Branden'; 'Crossbow Ventures™ - Stephen J. Warner'; 'Atlas Entertainment - Allen Shapiro President'; 'Benada Aluminum of Florida - Monte Friedkin, President'; 'Bridge Residential Advisors, LLC - James A. Osterling, President'; 'Cornell Partners - Caroline Prochotska Rogers, Esq.'; 'Crossbow Ventures™ - René P. Eichenberger, Managing Director'; 'Flaster Greenberg P.C. - Marc R. Garber, Esq.'; 'dg\_kane@msn.com'; P. Stephen Lamont (E-mail); 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'; John Bartosek (Business Fax); '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); Mitchell Zamarin (E-mail); Mitchell Zamarin (E-mail 2); Mollie Anne DeKold (E-mail); Robert Roberman (E-mail); Sal Gorge (E-mail); George deBidart (E-mail); Ginger Ekstrand (E-mail)

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**Importance:** High

**Sensitivity:** Confidential

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	'The Goldman Sachs Group, Inc.'	
	'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'	
	'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'	
	'Huizenga Holdings Incorporated - Cris Branden'	
	'Crossbow Ventures™ - Stephen J. Warner'	
	'Atlas Entertainment - Allen Shapiro President'	
	'Benada Aluminum of Florida - Monte Friedkin, President'	
	'Bridge Residential Advisors, LLC - James A. Osterling, President'	
	'Cornell Partners - Caroline Prochotska Rogers, Esq.'	
	'Crossbow Ventures™ - René P. Eichenberger, Managing Director'	
	'Flaster Greenberg P.C. - Marc R. Garber, Esq.'	
	'dg_kane@msn.com'	
	P. Stephen Lamont (E-mail)	
	Jude Rosario (E-mail 2)	

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 'Warner Bros. - John D. Calkins, Senior Vice President New Media Business Development'  
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 Joan & Jeff Stark (E-mail)  
 Joseph A. Fischman (E-mail)  
 Lisa Sue Friedstein (E-mail)  
 Maurice R. Buchsbaum (E-mail)  
 Mitchell Zamarin (E-mail)  
 Mitchell Zamarin (E-mail 2)  
 Mollie Anne DeKold (E-mail)  
 Robert Roberman (E-mail)  
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Dear Shareholders and Friends of Iviewit,

Today Iviewit's worst fears were realized when the United States Patent and Trademark Office (USPTO) contacted me regarding a certain provisional patent application in Mr. Brian Utley's name that we are supposed to have as the possession of Iviewit. I have attached the correspondence from the USPTO, which basically states that since neither Iviewit nor myself are listed on such applications we have no rights, title or interest in the patent application. Therefore, the USPTO cannot disclose any information regarding the application to us. I am astounded that our counsel Foley & Lardner who filed the application for Utley and Blakely Sokoloff Zafman and Taylor have never told us of this issue and never reported this to any authorities. In fact they made it part of the Company portfolio.

More disturbing is that this patent application has been listed on all of our portfolios (I have attached an excerpt from our most recent portfolio) prepared by the law firms Foley and Lardner and distributed to shareholders and investors as property of Iviewit. I am uncertain which application of Utley's this is ("Zoom & Pan Imaging on a Digital Camera" or "Zoom & Pan Imaging Design Tool") but either way it is not our property as represented on the portfolios. There has never been assignment by Utley or any of the law firms to the Company. I am saddened to report this loss to all of you but this is the case. There are several other patents Utley has found his way onto and we are also attempting to correct those. I am not sure what crimes this constitutes but I am checking with counsel as to our remedies.

As I have stated prior, Mr. Utley and Mr. William Dick, Esq. of Foley and Lardner have had similar patent problems in the past, which led to the loss of a business Utley ran for another South Florida businessman. Chris Wheeler our attorney from Proskauer Rose had set a company up for Utley, in which Dick and Utley wrote patents into, patents that related to Mr. Utley's employment as President of a lawnmower company Diamond Turf Equipment. The patent applications were for lawnmower stuff and Utley would not assign them to his employer when he was caught, he was fired with cause (opposite of what the resume submitted to all of you stated) and the company was forced to close, the owner taking a three million dollar loss.

I have been working with the USPTO who is looking into these matters and a team of their agents to attempt to attempt correct everything so that your investment may one day inure benefits to you, not Utley et al. I have found out that several patents we thought were assigned to the Company and its investors by our attorneys also have never been completed despite what we have been told. I will keep everyone posted as we find out more. Finally, I have attached an inventor change form, one of several that we have filed with the USPTO to correct this Utley insertion and deletion of Zakirul and Jude and inventors and it is signed by Stephen Warner of Crossbow Ventures who has recently been very helpful in his efforts to help the Company.

I truly am sorry for any misleading information that was distributed by these firms and it was no fault of the Companies (except in regards to Utley et al.) as we too were misrepresented. My heart nevertheless is truly broken with this news for all concerned.

Thank you,

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](mailto:iviewit@adelphia.net)

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**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."

# CONFIDENTIAL

**Ken,**

**Thank you again for your most valuable information. I was inquiring regarding application number 60/233,341 and if I could get the owner, inventor and assignee information on this application.**

**Thank you,**

**Eliot Bernstein**

**To: Kenneth Weider**

**From :**

**Pages: 1**

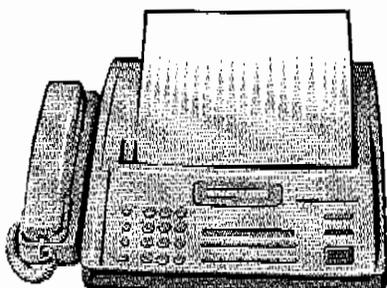
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(NAME)

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Ken,

Thank you again for your most valuable information. I was inquiring regarding application number 60/233,341 and if I could get the owner, inventor and assignee information on this application.

Thank you,

Eliot Bernstein

REPLY:

I AM UNABLE TO PROVIDE YOU THE  
INFORMATION REQUESTED ABOVE

*Kenneth Wieder*  
KENNETH WIEDER  
SPECIAL PROGRAM EXAMINER  
TECHNOLOGY CENTER 2600

To: Kenneth Weider

From :

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# CONFIDENTIAL

**Ken,**

**Can you please state the reason that you cannot provide such information to me or Iviewit.**

**Eliot**

**To: Kenneth Weider**

**From :**

**Pages: 3**

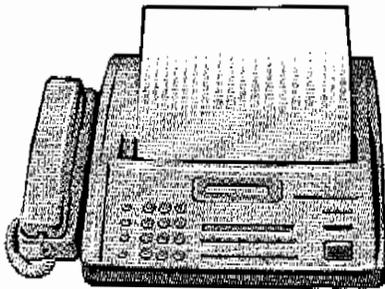
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From: To: Kenneth Weider

# CONFIDENTIAL

Ken,

Can you please state the reason that you cannot provide such information to me or Ivivwit.

Eliot

SEE 37 CFR 1.14  
 35 U.S.C. 122  
 - ... APPLICATIONS ARE KEPT IN CONFIDENCE ...

Eliot Note:  
 USPTO cannot give information to Ivivwit or Eliot Bernstein because we are not listed on the application and have no rights, title or interest in it. USPTO will not even discuss with Ivivwit any details of this patent which is listed in the name of Brian Utley. All portfolios prepared by our attorneys with this patent as the property of Ivivwit are blatantly false and misleading.

*Kenneth A. Weider*  
 KENNETH WIEDER  
 SPECIAL PROGRAM EXAMINER  
 TECHNOLOGY CENTER 2601

To: Kenneth Weider
From :
Pages: 3
For Information Call:
Fax Number :

Nov. 29, 2000; paras. (a)(1) and (a)(2) revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003]

### § 1.13 Copies and certified copies.

(a) Non-certified copies of patents, patent application publications, and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public, will be furnished by the United States Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the appropriate fee. See § 2.201 of this chapter regarding copies of trademark records.

(b) Certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name, upon payment of the fee for the certified copy.

[Revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 65 FR 57024, Sept. 20, 2000, effective Nov. 29, 2000; para. (b) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; para. (b) revised, 68 FR 70996, Dec. 22, 2003, effective Jan. 21, 2004]

### § 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications that have not been published under 35 U.S.C. 122(b) are generally preserved in confidence pursuant to 35 U.S.C. 122(a). Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) Records associated with patent applications (see paragraph (g) for international applications) may be available in the following situations:

(i) *Patented applications and statutory invention registrations.* The file of an application that has issued as a patent or published as a statutory invention registration is available to the public as set forth in § 1.11(a). A copy of the patent application-as-

filed, the file contents of the application, or a specific document in the file of such an application may be provided upon request and payment of the appropriate fee set forth in § 1.19(b).

(ii) *Published abandoned applications.* The file of an abandoned application that has been published as a patent application publication is available to the public as set forth in § 1.11(a). A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of the published application may be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b).

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the application, or a specific document in the file of a pending application that has been published as a patent application publication may be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (h) of this section.

(iv) *Unpublished abandoned applications (including provisional applications) that are identified or relied upon.* The file contents of an unpublished, abandoned application may be made available to the public if the application is identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application publication of an international application that was published in accordance with PCT Article 21(2). An application is considered to have been identified in a document, such as a patent, when the application number or serial number and filing date, first named inventor, title and filing date or other application specific information are provided in the text of the patent, but not when the same identification is made in a paper in the file contents of the patent and is not included in the printed patent. Also, the file contents may be made available to the public, upon a written request, if benefit of the abandoned application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, or has published as a statutory invention registration,

a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

(v) *Unpublished pending applications (including provisional applications) whose benefit is claimed.* A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (h) of this section.

(vi) *Unpublished pending applications (including provisional applications) that are incorporated by reference or otherwise identified.* A copy of the application as originally filed of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (h) of this section.

(vii) *When a petition for access or a power to inspect is required.* Applications that were not published or patented, that are not the subject of a benefit claim under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an

international patent application publication that was published in accordance with PCT Article 21(2), or are not identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article 21(2), are not available to the public. If an application is identified in the file contents of another application, but not the published patent application or patent itself, a granted petition for access (see paragraph (h)) or a power to inspect (see paragraph (c)) is necessary to obtain the application, or a copy of the application.

(2) Information concerning a patent application may be communicated to the public if the patent application is identified in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. The information that may be communicated to the public (*i.e.*, status information) includes:

(i) Whether the application is pending, abandoned, or patented;

(ii) Whether the application has been published under 35 U.S.C. 122(b);

(iii) The application “numerical identifier” which may be:

(A) The eight-digit application number (the two-digit series code plus the six-digit serial number); or

(B) The six-digit serial number plus any one of the filing date of the national application, the international filing date, or date of entry into the national stage; and

(iv) Whether another application claims the benefit of the application (*i.e.*, whether there are any applications that claim the benefit of the filing date under 35 U.S.C. 119(e), 120, 121 or 365 of the application), and if there are any such applications, the numerical identifier of the application, the specified relationship between the applications (*e.g.*, continuation), whether the application is pending, abandoned or patented, and whether the application has been published under 35 U.S.C. 122(b).

(b) *Electronic access to an application.* Where a copy of the application papers or access to the application may be made available pursuant to paragraphs (a)(1)(i) through (a)(1)(vi) of this section, the Office may at its discretion provide access to only an electronic copy of the specification, drawings, and file contents of the application.

(c) *Power to inspect a pending or abandoned application.* Access to an application may be provided to any person if the application file is available, and the application contains written authority (e.g., a power to inspect) granting access to such person. The written authority must be signed by:

- (1) An applicant;
- (2) An attorney or agent of record;
- (3) An authorized official of an assignee of record (made of record pursuant to § 3.71 of this chapter); or
- (4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

(d) *Applications reported to Department of Energy.* Applications for patents which appear to disclose, purport to disclose or do disclose inventions or discoveries relating to atomic energy are reported to the Department of Energy, which Department will be given access to the applications. Such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or is an invention or discovery, or that such application in fact discloses subject matter in categories specified by 42 U.S.C. 2181(c) and (d).

(e) *Decisions by the Director or the Board of Patent Appeals and Interferences.* Any decision by the Director or the Board of Patent Appeals and Interferences which would not otherwise be open to public inspection may be published or made available for public inspection if:

- (1) The Director believes the decision involves an interpretation of patent laws or regulations that would be of precedential value; and
- (2) The applicant, or a party involved in an interference for which a decision was rendered, is given notice and an opportunity to object in writing within two months on the ground that the decision discloses a trade secret or other confidential information. Any objection must identify the deletions in the text of the decision considered necessary to protect the information, or explain why the entire decision must be withheld from the public to protect such information. An applicant or party will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of a deci-

sion are made public under this paragraph over his or her objection.

(f) *Publication pursuant to § 1.47.* Information as to the filing of an application will be published in the *Official Gazette* in accordance with § 1.47(c).

(g) *International applications.* (1) Copies of international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with PCT Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated, and upon payment of the appropriate fee (see § 1.19(b)), if:

(i) With respect to the Home Copy (the copy of the international application kept by the Office in its capacity as the Receiving Office, see PCT Article 12(1)), the international application was filed with the U.S. Receiving Office;

(ii) With respect to the Search Copy (the copy of an international application kept by the Office in its capacity as the International Searching Authority, see PCT Article 12(1)), the U.S. acted as the International Searching Authority, except for the written opinion of the International Searching Authority which shall not be available until the expiration of thirty months from the priority date; or

(iii) With respect to the Examination Copy (the copy of an international application kept by the Office in its capacity as the International Preliminary Examining Authority), the United States acted as the International Preliminary Examining Authority, an International Preliminary Examination Report has issued, and the United States was elected.

(2) A copy of an English language translation of a publication of an international application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(4)).

(3) Access to international application files for international applications which designate the U.S. and which have been published in accordance with

PCT Article 21(2), or copies of a document in such application files, will be permitted in accordance with PCT Articles 30 and 38 and PCT Rules 44<sup>ter</sup>.1, 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

(4) In accordance with PCT Article 30, copies of an international application-as-filed under paragraph (a) of this section will not be provided prior to the international publication of the application pursuant to PCT Article 21(2).

(5) Access to international application files under paragraphs (a)(1)(i) through (a)(1)(vi) and (g)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

(h) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of all or part of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, all or part of any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to all or part of the application.

[42 FR 5593, Jan. 28, 1977; 43 FR 20462, May 11, 1978; para. (e) added, 47 FR 41273, Sept. 17, 1982, effective Oct. 1, 1982; para. (b), 49 FR 552, Jan. 4, 1984, effective Apr. 1, 1984; para. (d), 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; para. (b), 50 FR 9378, Mar. 7, 1985, effective May 8, 1985; 53 FR 23733, June 23, 1988; para. (e), 54 FR 6893, Feb. 15, 1989, effective April 17, 1989; para. (b) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; para. (e) amended, 60 FR 20195, Apr. 25, 1995, effective June 8, 1995; paras. (a), (b) and (e) amended, 61 FR 42790, Aug. 19, 1996, effective Sept. 23, 1996; para. (a) revised & para. (f) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (g) added, 63 FR 29614, June 1, 1998, effective July 1, 1998, (adopted as final, 63 FR 66040, Dec. 1, 1998); revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a), (b), (c), (e), (i) and (j) revised, 65 FR 57024, Sept. 20, 2000, effective Nov. 29, 2000; para (h) corrected, 65 FR 78958, Dec.

18, 2000; para.(i)(2) revised, 66 FR 67087, Dec. 28, 2001, effective Dec. 28, 2001; para. (d)(4) revised, 67 FR 520, Jan. 4, 2002, effective Apr. 1, 2002; paras. (g) & (g)(1) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; revised, 68 FR 38611, June 30, 2003, effective July 30, 2003; paras. (g)(1)(ii) & (g)(3) revised, 68 FR 58991, Oct. 20, 2003, effective Jan. 1, 2004; para. (g)(1)(ii) corrected, 68 FR 67805, Dec. 4, 2003; para. (g)(5) revised, 68 FR 67805, Dec. 4, 2003, effective Jan. 1, 2004; para. (g)(2) revised, 68 FR 70996, Dec. 22, 2003, effective Jan. 21, 2004]

**§ 1.15 [Removed and Reserved]**

(Editor’s note: substance supplanted by Part 102)

[32 FR 13812, Oct. 4, 1967; 34 FR 18857, Nov. 26, 1969; amended 53 FR 47685, Nov. 25, 1988, effective Dec. 30, 1988; removed and reserved, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003]

**FEES AND PAYMENT OF MONEY**

**§ 1.16 National application filing fees.**

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.27(a)) . . . \$385.00  
 By other than a small entity . . . . \$770.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)) . . . . \$43.00  
 By other than a small entity . . . . \$86.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a)) . . . . \$9.00  
 By other than a small entity . . . . \$18.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)) . . . \$145.00  
 By other than a small entity . . . . \$290.00

(Subsection (e) amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-564, 588, 589 (S. 1948 secs. 4503(b)(2), 4801 and 4802).)

(Subsections (f) and (g) added Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-589 (S. 1948 sec. 4802).)

### **35 U.S.C. 120 Benefit of earlier filing date in the United States.**

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

### **35 U.S.C. 121 Divisional applications.**

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under

this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

### **35 U.S.C. 122 Confidential status of applications; publication of patent applications.**

(a) **CONFIDENTIALITY.**— Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.

(b) **PUBLICATION.**—

(1) **IN GENERAL.**—

(A) Subject to paragraph (2), each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

(B) No information concerning published patent applications shall be made available to the public except as the Director determines.

(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

(2) **EXCEPTIONS.**—

(A) An application shall not be published if that application is—

## VIEWIT.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	6/2/2000	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

Utley patents  
with arrows

This portfolio was prepared and submitted by William Dick for the Virginia Bar and further corresponds to the one prepared by Foley and Lardner after Utley was found with two sets of patent books. Prior, Utley only patents were not in any records. Further it is wrong to list assets like 341 which are not the property of the Company on a patent portfolio that is distributed to shareholders and investors.

## **EXHIBITS**

**ARE ALL CONTAINED IN ADOBE PDF FORMAT FOR EASE PLEASE USE  
THE BOOKMARK TAB ON LEFT SIDE OF THE DOCUMENT FOR  
BOOKMARKS FOR THE EXHIBITS OR UPON PRINTING THEY WILL  
PRINT IN ORDER.**

**EXHIBIT "A"**

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

**From:** iviewit, inc. (E-mail) [mailto:viewmaster@iviewit.com]

**Sent:** Thursday, August 05, 1999 9:03 PM

**To:** Alan Epstein (E-mail); Michele M. Mulrooney (E-mail); James F. Armstrong (E-mail); Simon L. Bernstein (E-mail); Patti & Lester Daniels (E-mail); Andrew R. Dietz (E-mail); Donna Dietz (E-mail); Gerald R. Lewin (E-mail); Guy Iantoni (E-mail); James R. Jackoway (E-mail); James A. Osterling (E-mail); Albert W. Gortz (E-mail); Christopher C. Wheeler (E-mail); Jude Rosario (E-mail); Jude Rosario (E-mail 2); Zakirul Shirajee (E-mail); Friedstein, Jeff; Donald G. Kane II (E-mail); Brian G. Utley (E-mail 2)

**Subject:** iviewit.com Welcomes Brian Utley.

Dear Shareholders,

As of August 3rd, 1999 the Board of Directors of iviewit.com has approved and confirmed Brian Utley as President and COO. Mr. Utley will assume leadership of the company and the responsibility for organizing our strategic initiatives and licensing opportunities. Brian brings over thirty years of management experience from IBM and is highly respected within the computer industry. We are fortunate to bring Brian to iviewit.com and look forward to his valuable contribution to the success of the company.

Brian can be reached at [utley\\_b@bellsouth.net](mailto:utley_b@bellsouth.net)  
[mailto:utley\\_b@bellsouth.net](mailto:utley_b@bellsouth.net) or soon at [utley@iviewit.com](mailto:utley@iviewit.com)  
<<mailto:utley@iviewit.com>>.

By phone at work through Goldstein & Lewin at 561-994-5050 or cell at 561-289-8145.

Brian's Personal Resume

Professional History:

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.

In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250,000. Since that time the company has been transformed into a manufacturer of new machines that compete favorably with the best of the market leaders and expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

President, Premier Connections Inc., November, 1991 to Present.  
Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, 1955 to 1991.

Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton.

Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small Systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and Systems manager for many major IBM computer Systems that earned IBM billions of dollars in revenue. The most notable of these was the 5E3E and AS400, one of IBM's most technology aggressive development programs ever and still one off IBM's most popular systems.

Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. Because of this, he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.

From his start in October 1955 to the time he entered the laboratories Brian was a customer engineer responsible for maintaining IBM equipment on customer premises. During this time he self-taught computer technology and transistor theory and developed the first IBM field course in transistors. This is the accomplishment, which led to his assignment in the laboratories.

**Hobbies:**

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.

**Other Activities:**

Brian has been a director of the Florida Atlantic University Foundation Board of Trustees since

1992 and has served as Treasurer, head of the Investment Committee, and is currently Chairman of the Board.

In addition, he is a director of the Soaring Society of America and Chairman of the Soaring Society of America Foundation. In the past, he has served on the Boca Raton Chamber of Commerce Board, the Florida Philharmonic Board of Directors, and the Florida Governor's Council of One Hundred and is past president of the Soaring Society of America.

**Family:**

Brian is married to Sharon, is the father to 5 children and has lived in Boca Raton since 1988.

Sincerely,

Board of Directors

iviewit.com

EXHIBIT "A" - BRIAN UTLEY RESUME SUBMITTED TO BOARD BY CHRISTOPHER WHEELER

1416 SW 8th Street  
Dania Beach, FL 33485

*Personal History*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1993 to July 1999.

In 1993 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

President, Premier Connections, Inc., November, 1991 to present.

Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.

Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton.

Prior to his assignment in Boca Raton Brian spent 3 years in Europe as Group Director for PC's and small systems. His responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported back to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/36 and AS/400, one of IBM's most technology aggressive development programs ever and still one of IBM's most popular systems.

Brian entered the IBM engineer on his first job. The German IBM lab awarded a number of Fred. His start in Oct engineer responsible

eliot	3/10/2004 1:40:36 PM
Note	
Here Utley is not a graduate from college but in the Wachovia Private Placement he states he is, in deposition he states he is not.	

self-taught computer technology and transistor factory and developed the first IBM field course in transistors. This is the accomplishment which led to his assignment in the laboratories.

*Education:*

Having been born in England, he attended Beverley Grammar School and graduated in 1948 at 16. In 1949 he emigrated to the United States and completed his senior year at Ogden High School, Ogden, Utah.

He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

*Hobbies:*

Brian is a jogger and for 45 years has been an avid glider pilot with many competitive successes.

Q. Okay. You just failed to mention

102

that in your previous --

A. I'm sorry, yes.

Q. Okay. And what did you do at

Diamond Turf Lawn Mower?

A. I was president.

Q. You were president. For the full

four years?

A. Yes.

Q. Okay.

A. My recollection is a little hazy.

It could have been 95, 96 when I started.

Q. Okay. So you were president of this

company for approximately three to four years?

A. Yes.

Q. And what was your role at Diamond

Turf Lawn Mower as president; what did you do?

A. I ran the company.

Q. Did you take on the position not

only of president but also as CFO or anything of

that nature, or you just did strictly like a

chief operating officer; what was your role

exactly?

A. I suppose you could consider it to

be a cross between a chief operating officer and

the chief engineer.

103

Q. And what did Diamond Turf Law Mower do; what sort of company is that?

A. It produced maintenance equipment for golf courses.

Q. Okay. And were you working also doing engineering for the company as well?

A. Yes.

Q. And that engineering capabilities that you have, was that something you garnered through your employment with IBM or is that something that you had specific knowledge of outside of your employment with IBM?

A. Both.

Q. This was not engineering of electrical components; this was engineering of mechanical systems; is that what this was?

A. Every, virtually every mechanical system has an electrical component.

Q. Okay.

A. And a hydraulic component in this particular case.

Q. And when did you -- when you ceased worked with Diamond Turf Lawn Mower, was that an amicable leaving or was there some problem or did

everything work out okay with that?

104

A. Well, there was a, there was a  
dispute over intellectual property. There was no  
intellectual property agreement in my employment  
agreement and there were certain inventions that  
I made that we were unable to resolve ownership  
of.

Q. Okay. So these were inventions that  
you developed while you were employed by Diamond  
Turf Lawn Mower?

A. Yes.

Q. Okay. Can you describe those  
inventions to me.

A. They related to hydro-mechanical  
equipment.

Q. Okay. What exactly with hydraulic  
mechanical equipment?

A. How much detail you want me to go in  
to?

Q. Well, were they related somehow to  
the operations of the hydraulics of the equipment  
or were they strictly mechanical?

A. They related to a hydro-mechanical  
system, which means that it involves the  
integration of hydraulics into a mechanically

operating piece of equipment.

105

Q. Okay. And that's what all these patents, or were all these patents or were all these inventions, rather, the subject of?

A. Yes. Almost all the equipment that Diamond Turf produced or was involved with was hydro-mechanical.

Q. Are there any current patents or patents pending or applications for patents on these things that you hold?

A. No.

Q. Who holds the patent rights or if there are any patent rights, who has applied for those?

A. I'm not aware of any one.

Q. So you're not aware of any one making claim to these intellectual properties at this point?

A. No.

Q. When were you first introduced to Iviewit or its products by Mr. Wheeler? I'm assuming that Mr. Wheeler was the one who introduced you to the company.

A. Yes.

Q. And when was the first time that you

we're talking about them because you said billing statements, which could be something totally different, I don't know.

MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?

A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.

THE WITNESS: There was a

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of

Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

eliot  
Note

Monte Friedkin his last employer has stated that he did not tell him and that when he found out he fired him

president and COO of Iviewit to Wachovia?

243

A. We shared nondisclosure agreements and communicated as required in order to construct the business plan.

Q. And did they require or request that you provide them with a CV as part of the business plan to evidence your expertise.

A. I believe so.

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll restate the question.

By MR. SELZ:

Q. Did Wachovia Bank request that you provide personal information to them as part of that business plan?

A. Yes.

Q. And did you provide that personal information in the form of a curriculum vitae or CV?

A. It was integrated in prior editions of the business plan and flowed into the one that was developed with Wachovia.

Q. Now, when Chris Wheeler first introduced you to Iviewit, was he aware of the situation at Diamond Turf and yourself and

Mr. Monte Freedkin or what was Mr. Wheeler's

244

knowledge of your position at Diamond Turf, to the best of your knowledge?

MR. PRUSASKI: Objection to form.

MR. SELZ: Okay. I'll restate the question. I'm sorry. Getting a little tired.

MR. PRUSASKI: I'm just objecting to the extent that you're asking him what Chris Wheeler's personal knowledge was.

MR. SELZ: Okay.

By MR. SELZ:

Q. To the extent that you know, what was Chris Wheeler's personal knowledge of that situation?

MR. PRUSASKI: Objection to form.

THE WITNESS: I believe Chris, Mr. Wheeler was fully cognizant of my relationship to Diamond Turf Equipment and to Mr. Freedkin.

By MR. SELZ:

Q. And he was aware about your departure from that company and that situation?

A. Yes.

Q. Involving your employed and your change of employment when you left Diamond Turf?

A. Yes.

Q. Other than your retirement at IBM, was there any other reason why you left IBM's employ?

A. No.

Q. Do you have any ongoing dispute with either IBM or Diamond Turf?

A. No.

Q. Going back to the employment of an attorney when you were at Diamond Turf, was there a retainer agreement that you recall signing on behalf of Diamond Turf to employ an attorney there? Or I'll take that back. I think you said that you never employed an attorney there; is that correct?

A. That is correct.

Q. When you hired an attorney personally, did you have a retainer agreement that you signed?

A. No.

Q. Do you have any letter or any other document evidencing the rates to be charged and the services to provided by that attorney?

A. I would have to research that question.

1 training that you've had or maybe you -- you did 113  
2 indicate that you had any degree in mathematics.  
3 Is that something that you have some experience  
4 from from some other portion of your employment  
5 or background?  
6 A. I have training and experience in  
7 mathematics.  
8 Q. I'm sorry.  
9 A. I say I have training and experience  
10 in mathematics.  
11 Q. How about in the scaling video  
12 invention; is that part of what you've already  
13 described?  
14 A. That is readily derived from a  
15 mathematical background.  
16 Q. How about the remote control video  
17 applications?  
18 A. That's different.  
19 Q. Okay. Now going back to --  
20 A. What --  
21 Q. -- the patent dealing specifically  
22 with remote control applications.  
23 A. What I did there was I established  
24 the fact that the design point that Elicot had  
25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Elliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1           Q.       Okay. And the correlation was for           115  
2           development of future cameras or was that simply  
3           an observation that was made?  
4           A.       It was an observation that current  
5           camera technology incorporates zoom and pan  
6           technology.  
7           Q.       Okay. How about any patent or  
8           patent applications dealing with scales video or  
9           zoom video imaging applications other than what  
10          we've already discussed?  
11          A.       Without looking, and I apologize for  
12          this, without looking at the specific patent  
13          filings by name and number, I think, you know,  
14          we're not really going to be able to get much  
15          further on this discussion.  
16          Q.       Okay.  
17          A.       I don't want to put you off at all,  
18          but I just want to say that to pursue a detailed  
19          questioning in this specific area, I need to be  
20          able to refresh my mind with what is in the  
21          record.  
22          Q.       Okay. And are those documents that  
23          you have in your possession someplace?  
24          A.       No.  
25          Q.       You don't have any of the paperwork

THE WITNESS: There was a

266

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

that what it is?

A. Yes.

Q. And Iviewit would be listed as a  
primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are  
you aware of any police report that was ever  
filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if  
you can, sir.

A. There was a dispute over the nature  
of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my  
question. My question was are you aware of a  
police report? And it's really a yes or no type  
of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a  
report.

By MR. SELZ:

Q. Okay. Do you know who filed that  
report?

A. Iviewit filed that report as far as

**U.S. PROVISIONAL PATENT APPLICATION**

**for**

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

**Inventors:**

**Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.**

**FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400**

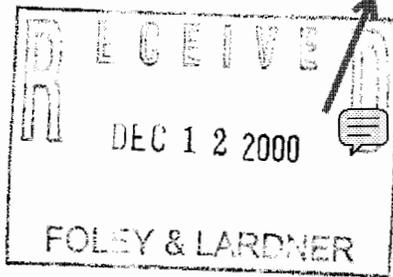


UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
777 East Wisconsin Avenue  
Firstar Center  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



Date Mailed: 12/04/2000

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

MP  
RESPONSE DUE 04 FEB 2001  
DECL FEE

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 200.

*A copy of this notice MUST be returned with the reply.*

*James Washington*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367


**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- **The balance due by applicant is \$ 200.**

---

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 \_\_\_\_\_  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/233,341	09/18/2000		0	57103/123	7		

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367

FILING RECEIPT



\*OC00000005592299\*

Date Mailed: 12/04/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

← Brian G. Utley, Boca Raton, FL ;

Continuing Data as Claimed by Applicant

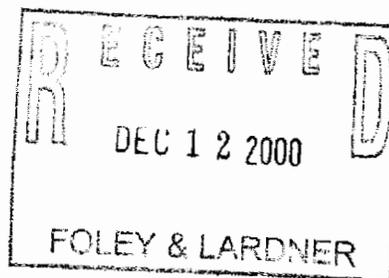
Foreign Applications

If Required, Foreign Filing License Granted 12/01/2000

Title

Zoom and pan imaging design tool

Preliminary Class



Data entry by : WASHINGTON, JAMES

Team : OIPE

Date: 12/04/2000



1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
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22 A. Not specifically. It was, it was  
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24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?

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5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

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18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed

**Management**

Whereas the Company has retained Korn / Ferry to assist in the identification and recruitment of a high impact Chief Executive Officer (preferably from the media or entertainment industry) and Chief Technical Officer, iviewit has assembled a complementary and seasoned, management team with Fortune 100 and early-stage, entrepreneurial experience. This team consists of the following personnel:

**Brian G. Utley, President (67)** — For over 30 years, Mr. Utley was responsible for the development and world-wide management of many of IBM's most successful products such as the AS400 and the PC. His career with IBM culminated with his responsibility as Vice President and General Manager of IBM Boca Raton with a work force of over 6,000 professionals. He is a graduate of San Francisco City College.

**Eliot I. Bernstein, Founder and Vice Chairman (37)** — Prior to founding iviewit, Mr. Bernstein spent 15 years with SB Lexington where he was President of the West Coast Division creating and developing many innovative, computer-based multi-media marketing tools which remain in use supporting multi-billion dollar service industries. Mr. Bernstein is a graduate of the University of Wisconsin.

**Michael A. Reale, Vice President of Operations (60)** — Mr. Reale has over 20 years of operations experience, including P&L, quality, and delivery performance accountability. Most recently, Mr. Reale was the Chief Operating Officer for Boca Research (Nasdaq:BOCI), a manufacturer of personal computer enhancement and Internet thin client products. Mr. Reale received his BA and MBA from Pace University.

**Raymond T. Hersh, Vice President of Finance (58)** — Mr. Hersh has over 35 years of successful business and operating experience involving financial services, telecommunications, manufacturing, and corporate strategic planning. For over 20 years, Mr. Hersh has operated and grown companies in Florida, and most recently, he was co-founder and President/CEO of New Medical Concepts, Inc., a telecom company specializing in providing healthcare information. Earlier, he spent five years as an Enforcement Attorney with the U. S. Securities and Exchange Commission in New York City where he exited as a Branch Chief. He is a member of the New Jersey and New York Bars. Mr. Hersh received his BA from Lafayette College and his LLB/JD from the University of Pennsylvania.

**Kevin J. Lockwood, Vice President of Sales and Business Development (40)** — Mr. Lockwood joins iviewit from Cylex Systems where he held the position of Executive Vice President of Sales and assisted in securing three rounds of funding exceeding \$20 million. He also held the position of Head of Sales for Acer America, Inc. where he increased sales from a run rate of \$150 million annually to over \$1.5 billion annually in only a 17-month time. In addition, Mr. Lockwood successfully launched the Fujitsu P.C. into the U.S. and in the first year amassed revenues of over \$200 million. He is a graduate of the University of Maryland with a Bachelor of Science degree in Business Administration.

**Guy Iantoni, Vice President of Sales (35)** — Prior to joining iviewit in 1999, Mr. Iantoni was Senior Financial Representative with Fidelity Investments. From 1995 to 1997, he served as an Investment Management Consultant to the private client group of Morgan Stanley Dean Witter & Company, Inc. Mr. Iantoni has developed computer databases and systems to effectively market and target segments in both the financial markets and the healthcare industries. Mr. Iantoni is a graduate of the University of Wisconsin with an advanced degree in Pharmacy.



**eliot Note**  
 Utley claims he is a graduate and contradicts in his deposition

**Strategic Alliances**

iviewit is creating a stable of strategic partners in the areas of technology, R&D, applications development, and video hosting and delivery. The Company has partnered with key industry leaders to develop precedence in the market. Partners include Greg Manning Auctions, Atlas Entertainment, Medical Online, Digital Island, Burst.com, and Versifi.

or where the site of that lawsuit was?

94

A. No.

Q. Was it in the federal court or state court?

A. I don't know.

Q. Was your deposition taken in the State of Florida --

A. No.

Q. -- or taken elsewhere?

A. It was taken in New York.

Q. In New York. Okay. Now, going back to something that Mr. Prusaski started but I don't think he completed with was some of your background information about your education. If you can just tell me from undergraduate onward what your educational background is, Sir, schools you attended, years of attendance and degree.

A. I don't have a degree.

Q. Okay.

A. I attended Weaver State University, which was then Weaver College, 1950.

Q. Okay.

A. San Fransisco City College, 1957, 1958.

Q. Okay. And you graduated from San

Francisco College or did not?

95

A. I don't have a degree.

Q. Okay. So you never completed your course at San Fransisco then?

A. Right.

Q. With regard to your employment experience, you had stated your employment with IBM. What years was that from, Sir?

A. 1955 through 1992.

Q. 92. And your first employment with IBM in 1955, what position was that in if you can recall?

A. I was employed as a customer engineer.

Q. All right. And after that, you were promoted to what position?

A. In 1960 I was promoted to development engineer, electrical engineer.

Q. At that point, were you supervising a staff or working with other engineers below you at that point?

A. I was involved in design of a computer.

Q. Were you the leader of any design team or were you just an individual engineer

**EXHIBIT "B"**



## EXHIBIT "B"

### Patent Filing Process

- (i) a patent attorney's first contact with a *bona fide* inventor is where that attorney receives a "disclosure" from that inventor, or a series of disclosures, to begin the framework of a provisional<sup>25</sup> patent application or a non-provisional<sup>26</sup> patent application, and where said inventor certainly was not Utley, Utley was not there at the time of the inventions, as the first disclosures were made to Rubenstein and, upon information and belief, the patent evaluator of, among others, the multimedia patent pools commonly known as Motion Picture Experts Group ("MPEG") 2 and MPEG 4; and
- (ii) from the framework of the first disclosures, a patent counsel then forms "claims" to that invention where the claims are meant to precisely identify to which areas of protection an inventor gleans from the exact description of his or her invention according to the disclosures, and where the drafting of such claims are the exclusive affair of patent counsel subject to review by the inventor, and where said inventor certainly was not Utley; and
- (iii) once the framework of the invention and the claims are approved by an inventor, and in all cases herein, said inventor was not Utley, patent counsel then puts forth to a *bona fide* inventor what is known as the Declaration and Power of Attorney document that contains strict requirements according to the law for inventors and where said inventor was not Utley as he took no part in the formulation of the invention, took no part in the first disclosures of the inventions, took no part, or rather, should have taken only a limited role supporting the inventor in reviewing the claims, and, consequently, signing an Oath of the Applicant according to the evidence presented below, falls outside the requirements of the law in this disingenuous ploy by Respondent and Utley; and
- (iv) once patent counsel has completed all steps in (i) to (iii), and only then, patent counsel actually files a patent application with the United States Patent and Trademark Office ("USPTO"), and where the damage by Respondent had already occurred in (iii); and
- (v) once patent counsel has actually filed an application with the USPTO, from time to time, he or she may be called upon to respond to challenges to the inventions from the USPTO (commonly referred to as office actions) and where the damage by Respondent had already occurred in (iii); and

---

<sup>25</sup> Define provisional

<sup>26</sup> Define non-provisional



(vi) and once favorably responded to and having such responses accepted by USPTO to office actions, patent counsel will receive what is known as a Notice of Issuance of the patent for the inventions disclosed and where the damage by Respondent had already occurred in (iii); and

(vii) some three months or so after receiving a Notice of Issuance, the USPTO will afford the applicant (*bona fide* inventor or his assignee as the case may be) a granted patent, and where the damage by Respondent had already occurred in (iii).

**EXHIBIT "C"**

05707

IVIEWIT.COM PATENT STATUS REPORT

UNITED STATES PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Iviewit Holdings, Inc.	Pending. First Office Action received dated 11/10/03.
System and Method for Providing An Enhanced Digital Video File	P011	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for a Digital Video File	P014	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018	Eliot I. Bernstein Brian Utley	United States	Serial No. 09/630,939	Filed 08/02/00	Not assigned.	Pending. First Office Action received 10/29/03.
Apparatus and Method for Producing Enhanced Digital Images	P017	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Abandoned. Claims benefit of Provisional Application No. 60/125,824. Deadline to enter National Phase 9/23/01.

09/587,730  
EIB & ZAK  
IVIEWIT TECHNOLOGIES INC TO IVIEWIT HOLDINGS TO ALPINE  
Date:

09/587,734  
BERNSTEIN + BGU + SHIRAJEE  
IVIEWIT TECHNOLOGIES, INC TO ALPINE  
Date:

09/587,026  
BERNSTEIN + SHIRAJEE  
IVIEWIT TECHNOLOGIES, INC TO ALPINE  
Date:

09/630/939  
BERNSTEIN + UTLEY  
ASSIGNEE IVIEWIT TECHNOLOGIES, INC. TO ALPINE  
DATE

09/522,721  
BERNSTEIN ONLY  
IVIEWIT TECHNOLOGIES INC.  
DATE

PER WIEDER CALL  
3/22/04

**FOREIGN PATENT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010EP	Eliot I. Bernstein Zakirul A. Shirajee	EPO - Europe	Serial No. 00938126.0	Filed 06/02/00	Iviewit.com, Inc.	Pending.  Published: 3/06/02. Publication No.: 1183870  First Office Action received. Request for Extension to respond pending.
System and Method for Streaming an Enhanced Digital Video File	P010JP	Eliot I. Bernstein Zakirul A. Shirajee	Japan	Serial No. 2001-502364	Filed 06/02/00	Iviewit.com, Inc.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P011EP	Eliot I. Bernstein, Zakirul A. Shirajee	EPO - Europe	Serial No. 00944619.6	Filed 6/20/2000	Iviewit.com, Inc.	Pending.  Published: 3/20/02. Publication No.: 1188318  First Office Action received.
System and Method for Streaming an Enhanced Digital Video File	P011JP	Eliot I. Bernstein, Zakirul A. Shirajee	Japan	Serial No. 2001-502362	Filed 6/20/2000	Iviewit.com, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018EP	Eliot I. Bernstein Brian Utley	EPO - Europe	Serial No. 00955352.0	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.  Published: 5/2/2002 Publication No.: 1200935
System and Method for Providing and Enhanced Digital Image File	P018JP	Eliot I. Bernstein Brian Utley	Japan	Serial No. 2001-514379	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.

05707

## IVIEWIT.COM PATENT STATUS REPORT

## LAPSED PCT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	APPLICANT	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P009PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07772	Filed 03/23/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/125824 (P001Z).
System and Method for Streaming an Enhanced Digital Video File	P010PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15408	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Providing an Enhanced Digital Video File	P011PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15405	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Playing a Digital Video File	P012PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15406	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Video Playback Over a Network	P016PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15602	Filed 06/07/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,921 (P003Z), 60/141,440 (P004Z) and 60/155,404 (P007Z).
System and Method for Providing an Enhanced Digital Image File	P018PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/21211	Filed 08/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/125824 (P001Z), 60/146,726 (P005Z), 60/149,737 (P006Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P001Z	Elliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Remstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0526	Lapsed  <i>P009PCT and P018PCT filed based on this provisional application.</i>
60/125,824 BERNSTEIN TO IVIEWIT LLC to IVIEWIT HOLDINGS INC.,IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE							
Apparatus and Method for Producing Enhanced Video Images	P002Z	Elliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0494	Lapsed  <i>P010PCT and P011PCT and P012PCT filed based on this provisional application.</i>
60/137,297 BERNSTEIN to IVIEWIT LLC to IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE:							
Apparatus and Method for Playing Video Files Across the Internet	P003Z	Elliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0497	Lapsed  <i>P016PCT filed based on this provisional application.</i>
60/137,921 BERSNTEIN to IVIEWIT LLC to IVIEWIT HOLDINGS INC DATE							
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004Z	Elliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc. Assigned: 01/03/00 Reel/Frame: 010523/0574	Lapsed  <i>P016PCT filed based on this provisional application.</i>
60,141,440 BERNSTEIN to IVIEWIT HOLDINGS INC.to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE:							
Apparatus and Method for Producing Enhanced Digital Images	P005Z	Elliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0509	Lapsed  <i>P018PCT filed based on this provisional application.</i>
60/146,726 BERNSTEIN to IVIEWIT HOLDINGS, INC to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE							

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN                      TO IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE                      DATE:                 </div>							
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN                      TO IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE                      DATE:                 </div>							
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN + UTLEY                      NO ASSIGNMENT                 </div>							
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN + UTLEY                      NO ASSIGNMENT                 </div>							
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     CANNOT TALK TO EIB - NOT BERNSTEIN OR IVIEWIT                 </div>							

VIEWIT.COM PATENT STATUS REPORT

FILE NO.	TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED DATE	ASSIGNEE	REMARKS
05707	Apparatus and Method for Producing Enhanced Digital Images	P001 (Ka 102)	Eliot I. Bernstein	United States	Serial No. 60125824	Filed 03/24/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Video Images	P002 (Ka 103)	Eliot I. Bernstein	United States	Serial No. 60137297	Filed 06/03/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Playing Video Files Across the Internet	P003 (Ka 104)	Eliot I. Bernstein	United States	Serial No. 60137321	Filed 06/07/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004 (Ka 105)	Eliot I. Bernstein	United States	Serial No. 60141440	Filed 06/29/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Digital Images	P005 (Ka 106)	Eliot I. Bernstein	United States	Serial No. 60146746	Filed 08/02/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006 (Ka 107)	Eliot I. Bernstein	United States	Serial No. 60164737	Filed 08/19/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007 (Ka 108)	Eliot I. Bernstein	United States	Serial No. 60155404	Filed 09/22/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Franchise: 01/05/2005/26	

VIEWIT/COMPATIENT STATUS REPORT

TITLE	MATTER	INVENTOR/PATENTEE	COUNTRY	SERIAL NO./PATENT NO.	FILE/ISSUE DATE	ASSIGNEE	REMARKS
05707							
System and Method for Producing Enhanced Video Images and/or Video Files	P008 (Re 169)	Ellot L. Bernstein	United States	Serial No. 69169259	Filed 12/08/99	Ivewill Holdings, Inc. Assigned: 01/06/00 Re-assigned: 01/06/00 0106236220	Abandoned (Provisional Application)
Application and Method for Streaming an Enhanced Digital Image	P009PCT (Re 110)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 772	Filed 03/22/99	Not assigned.	Pending
System and Method for Streaming an Enhanced Digital Video File	P010PCT (Re 111)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 408	Filed 03/22/99	Not assigned.	Pending
System and Method for Providing an Enhanced Digital Video File	P011PCT (Re 112)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 405	Filed 06/02/99 Priority 03/26/99	Applicant Ivewill Holdings, Inc.	Pending Written opinion due 06/23/01.
System and Method for Playing a Digital Video File	P012PCT (Re 113)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 406	Filed 06/02/00 Priority 03/06/99	Applicant Ivewill Holdings, Inc.	Pending Written opinion due 06/23/01.
System and Method for Streaming an Enhanced Digital Video File	P013 (Re 114)	Ellot L. Bernstein Zakirul A. Shingje	United States	Serial No. 69957730	Filed 06/06/00	Applicant Ivewill Holdings, Inc.	Pending
System and Method for Playing a Digital Video File	P014 (Re 115)	Ellot L. Bernstein Zakirul A. Shingje	United States	Serial No. 69957730	Filed 06/05/00	Applicant Ivewill Holdings, Inc.	Pending

## IVIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Fgs/Shts	Priority
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	15/4	N/A
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/3/1999	Apparatus and Method for Producing Enhanced Video Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/7/1999	Apparatus and Method for Playing Video Files Across the Internet	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
4	57103/105	5865-4.1	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	Eliot I. Bernstein	Iviewit Holdings, Inc.	25/2	N/A
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/2/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	18/4	N/A
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	21/4	N/A
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	29/4	N/A
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/8/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	47/5	N/A
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	14/4	60/125,824

## VIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Priority
10	57103/111	N/A	PCT (International)	PCT/US00/15408	6/2/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
11	57103/112	N/A	PCT (International)	PCT/US00/15405	6/2/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Utley, Rosario		33/3	60/137,297 60/155,404 60/169,559
12	57103/113	N/A	PCT (International)	PCT/US00/15406	6/2/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
13	57103/114	N/A	U.S. (Non-Provisional)	09/587,730	6/5/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
14	57103/115	N/A	U.S. (Non-Provisional)	09/587,026	6/5/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
15	57103/116	N/A	U.S. (Non-Provisional)	09/587,734	6/5/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Utley, Rosario		33/3	60/137,297 60/155,404 60/169,559 57103/112PCT
16	57103/118	N/A	PCT (International)	PCT/US00/15602	6/7/2000	System and Method for Video Playback Over a Network	Bernstein, Friedstein, Utley		24/2	60/137,921 60/141,440
17	57103/119	5865-1	U.S.	09/522,721	3/10/2000	Apparatus and Method for Producing Enhanced Digital Images	Bernstein		15/4	60/125,824

05707

IVIEWIT.COM PATENT STATUS REPORT

UNITED STATES PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.  First Office Action received dated 11/10/03.
System and Method for Providing An Enhanced Digital Video File	P011	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for a Digital Video File	P014	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018	Eliot I. Bernstein Brian Utley	United States	Serial No. 09/630,939	Filed 08/02/00	Not assigned.	Pending.  First Office Action received 10/29/03.
Apparatus and Method for Producing Enhanced Digital Images	P017	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Abandoned.  Claims benefit of Provisional Application No. 60/125,824.  Deadline to enter National Phase 9/23/01.

**FOREIGN PATENT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010EP	Eliot I. Bernstein Zakirul A. Shirajee	EPO - Europe	Serial No. 00938126.0	Filed 06/02/00	Iviewit.com, Inc.	Pending.  Published: 3/06/02. Publication No.: 1183870  First Office Action received. Request for Extension to respond pending.
System and Method for Streaming an Enhanced Digital Video File	P010JP	Eliot I. Bernstein Zakirul A. Shirajee	Japan	Serial No. 2001-502364	Filed 06/02/00	Iviewit.com, Inc.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P011EP	Eliot I. Bernstein, Zakirul A. Shirajee	EPO - Europe	Serial No. 00944619.6	Filed 6/20/2000	Iviewit.com, Inc.	Pending.  Published: 3/20/02. Publication No.: 1188318  First Office Action received.
System and Method for Streaming an Enhanced Digital Video File	P011JP	Eliot I. Bernstein, Zakirul A. Shirajee	Japan	Serial No. 2001-502362	Filed 6/20/2000	Iviewit.com, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018EP	Eliot I. Bernstein Brian Utley	EPO - Europe	Serial No. 00955352.0	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.  Published: 5/2/2002 Publication No.: 1200935
System and Method for Providing and Enhanced Digital Image File	P018JP	Eliot I. Bernstein Brian Utley	Japan	Serial No. 2001-514379	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.

**LAPSED PCT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

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TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	APPLICANT	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P009PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07772	Filed 03/23/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/125824 (P001Z).
System and Method for Streaming an Enhanced Digital Video File	P010PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15408	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Providing an Enhanced Digital Video File	P011PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15405	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Playing a Digital Video File	P012PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15406	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Video Playback Over a Network	P016PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15602	Filed 06/07/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,921 (P003Z), 60/141,440 (P004Z) and 60/155,404 (P007Z).
System and Method for Providing an Enhanced Digital Image File	P018PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/21211	Filed 08/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/125824 (P001Z), 60/146,726 (P005Z), 60/149,737 (P006Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P001Z	Elliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Remstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0526	Lapsed  <i>P009PCT and P018PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images	P002Z	Elliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0494	Lapsed  <i>P010PCT and P011PCT and P012PCT filed based on this provisional application.</i>
Apparatus and Method for Playing Video Files Across the Internet	P003Z	Elliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0497	Lapsed  <i>P016PCT filed based on this provisional application.</i>
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004Z	Elliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc. Assigned: 01/03/00 Reel/Frame: 010523/0574	Lapsed  <i>P016PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Digital Images	P005Z	Elliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0509	Lapsed  <i>P018PCT filed based on this provisional application.</i>

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  <i>P018PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  <i>P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  <i>P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.</i>
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed

VIEWIT.COM PATENT STATUS REPORT

TITLE	MATTER	INVENTOR/ PATENTER	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
05707 Apparatus and Method for Producing Enhanced Digital Images	P001 (fka 102)	Eliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0526	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Video Images	P002 (fka 103)	Eliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0494	Abandoned (Provisional Application)
Apparatus and Method for Playing Video Files Across the Internet	P003 (fka 104)	Eliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0497	Abandoned (Provisional Application)
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004 (fka 105)	Eliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc.  Assigned: 01/03/00 Reel/Frame: 010523/0574	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images	P005 (fka 106)	Eliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0509	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006 (fka 107)	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0506	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007 (fka 108)	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0183	Abandoned (Provisional Application)

VIEWIT.COM PATENT STATUS REPORT

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008 (fka 109)	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images	P009PCT (fka 110)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07 772	Filed 03/23/00	Not assigned.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P010PCT (fka 111)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 408	Filed 06/02/00	Not assigned.	Pending.
System and Method for Providing an Enhanced Digital Video File	P011PCT (fka 112)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 405	Filed 06/02/00	Applicant Iviewit Holdings, Inc.	Pending. Written opinion due 06/20/01.
System and Method for Playing a Digital Video File	P012PCT (fka 113)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 406	Filed 06/02/00	Applicant Iviewit Holdings, Inc.	Pending. Written opinion due 06/20/01.
System and Method for Streaming an Enhanced Digital Video File	P013 (fka 114)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.
System and Method for Playing a Digital Video File	P014 (fka 115)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.

**VIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Providing An Enhanced Digital Video File	P015 (fka 116)	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.
System and Method for Playback Over a Network	P016PCT (fka 118)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/15 602	Filed 06/07/00	Applicant Iviewit Holdings, Inc.	Pending Response due 6/29/01.
Apparatus and Method for Producing Enhanced Digital Images	P017 (fka 119)	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Pending Claims benefit of 60/125,824
System and Method for Providing an Enhanced Digital Image File	P018PCT (fka 120)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/21 211	Filed 08/02/00	Applicant Iviewit Holdings, Inc.	Pending. Deadline for entering into National Phase 04/02/01.
System and Method for Providing and Enhanced Digital Image File	P019 (fka 121)	Eliot I. Bernstein Brian Utley	United States	Serial No. 09630,939	Filed 08/02/00	Not assigned.	Pending. Deadline to file missing parts 11/29/00.
Zoom and Pan Imaging Using a Digital Camera	P020 (fka 122)	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Pending (Provisional Application expires 09/18/01)
Zoom and Pan Imaging Design Tool	P021 (fka 123)	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Pending (Provisional Application expires 09/18/01)

**EXHIBIT "D"**

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

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

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

COPY / ORIGINAL  
RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

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

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

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

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

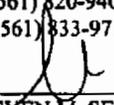
2. That as a result of fact that additional evidence in support of the Defendants' counterclaims is found in the Plaintiff's own files and records, the Plaintiff will not be prejudiced by the amendment of the Defendants' answer in this matter, nor will this matter be delayed as to the trial of same.

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

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 26<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By:   
STEVEN M. SELZ  
FBN: 777420

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

PROSKAUER ROSE, LLP, a New York  
limited partnership,

CASE NO.: CA 01-04671 AB

Plaintiff,

vs.

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

Defendants,

COUNTERCLAIM FOR DAMAGES

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

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

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

of interest, taxable costs and attorneys fees.

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

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

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

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

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

Boca Raton, Palm Beach County, Florida.

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

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

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

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

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

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

and,

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

and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e) By knowingly representing and agreeing to accept representation of

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

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

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

#### **COUNT II- CIVIL CONSPIRACY**

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

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

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

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

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

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

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

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

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

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

**COUNT III- BREACH OF CONTRACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

damage and detriment of Counter Plaintiffs.

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 10<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By:   
STEVEN M. SELZ  
FBN: 777420

**EXHIBIT "E"**



May 19, 2000

**VIA MESSENGER**

Mr. Gregg W. Ritchie  
Pacific Capital Group, Inc.  
360 N. Crescent Drive  
Beverly Hills, CA 90210

Re: [iviewit.com](http://iviewit.com)

Dear Gregg:

I very much enjoyed meeting you for lunch earlier this week. As promised, enclosed is a copy of the Business Plan for our client, [iviewit.com](http://iviewit.com).

Iviewit has developed two proprietary and complimentary technologies to enhance video and images delivered on the internet. The first is a state-of-the-art technology which enables full-screen, full-frame rate (i.e., 30 frames per second) streaming video to be viewed by any internet video player at bandwidths as low as 150 kbps, with increased quality and reduced file size. The second digital imaging technology creates an opportunity for full screen still images and 360° panoramic views that can be magnified with minimal image distortion.

Iviewit has protected its technologies by filing and securing eight patent pending applications, and is currently buffering and expanding those patents through a significant supplemental filing. Iviewit is represented by several of the most prominent patent law firms and attorneys in the world. Bill Dick, who is the head of the intellectual property department of Foley & Lardner in Milwaukee, Wisconsin, was formerly in charge of IBM's foreign patent division. Mr. Dick and his patent team of attorneys are preparing all of iviewit's supplemental patent filings and are drafting all of iviewit's license agreements. Iviewit's potential patent litigation (if any) will be handled by Ken Rubenstein, who is the head of intellectual property litigation group at the law firm of Proskauer Rose in New York City. Mr. Rubenstein is in charge of all patent litigation on behalf of the MPEG patent pool, in addition to a number of other high-profile technology litigation matters.

Mr. Gregg W. Ritchie

May 19, 2000

Page 2

Iviewit has licensed its technology and providing services to a number of substantial clients, such as hollywood.com, broadway.com, Hyatt Hotels and Resorts, and Great Expectations Dating Service. Iviewit also is in final negotiations to license its technology to playboy.com, medicalonline.com (x-rays, MRI's CT-scans, etc.) americanenterprise.com (multi-hour surgical and educational videos), gregmanningauctions.com (one of the largest auction houses) and many other clients in the entertainment, health care, automotive and other industries.

Iviewit initially raised \$500,000 of seed capital from Wayne Huizenga's venture group (at a \$10 million post-money value). Within the last few months, Iviewit raised \$1.5 million in a Series A round at a \$25 million post-money valuation from an investment group led by several individuals who previously ran Merrill Lynch's venture division. Iviewit is currently seeking an additional \$1-\$2 million in the Series A round, with a Series B round (\$10 million minimum) to follow later this year. The proceeds will be used to provide working capital (including the leasing/purchase of equipment and facilities) which will enable iviewit to fulfill its substantial backlog of orders and to expand its licensing operations. Iviewit is currently in discussions with several of the nation's leading investment banks to lead the Series B fundraising efforts.

The iviewit technology is most easily explained through a demonstration. If Pacific Capital or its Venture Group are interested in learning more about the company, please let me know and I will arrange to have the principals fly to Los Angeles for a meeting. Although you can see some of the company's technology and applications on the website ([www.iviewit.com](http://www.iviewit.com)), the highest-quality work is not available for public viewing and is best seen through a private demonstration.

I look forward to hearing from you.

Best regards.

Very truly yours,

Alan J. Epstein

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

A PROFESSIONAL CORPORATION

KARL R. AUSTEN  
JOSEPH D. ONOFRIO  
ALAN J. EPSTEIN  
HOWARD A. FISHMAN  
ANDREW L. GALKER  
ROBERT S. GETMAN  
GEORGE T. HAYUM\*  
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OF COUNSEL  
ALLAN L. ALEXANDER  
ARTHUR O. ARMSTRONG  
RONALD J. BASS  
GERALDINE S. HEMMERLING

OUR FILE

May 30, 2000

\*ALSO ADMITTED IN NEW YORK

iviewit  
-sent  
mmm

**VIA MESSENGER**

Ms. Kimberly Chu  
WaterView Advisors, LLC  
2425 Olympic Boulevard  
Suite 4050  
Los Angeles, CA 90404

Re: [iviewit.com](http://iviewit.com)

Dear Kimberly:

Following up on our telephone conversation last week, enclosed is a copy of the Business Plan for our client, [iviewit.com](http://iviewit.com).

Iviewit has developed two proprietary and complimentary technologies to enhance video and images delivered on the internet. The first is a state-of-the-art technology which enables full-screen, full-frame rate (i.e., 30 frames per second) streaming video to be viewed by any internet video player at bandwidths as low as 150 kbps, with increased quality and reduced file size. The second digital imaging technology creates an opportunity for full screen still images and 360° panoramic views that can be magnified to the optical limit with minimal image distortion.

Iviewit has protected its technologies by filing and securing eight patent pending applications, and is currently buffering and expanding those patents through a significant supplemental filing. Iviewit is represented by several of the most prominent patent law firms and attorneys in the world. Bill Dick, who is the most senior member of the intellectual property department of Foley & Lardner in Milwaukee, Wisconsin, was formerly in charge of IBM's patent and licensing operations in the Far East and in other territories. Mr. Dick and his patent team of attorneys are preparing all of iviewit's supplemental patent filings and are drafting all of iviewit's license agreements. Iviewit's potential patent litigation (if any) will be handled by Ken Rubenstein, who is the head of intellectual property litigation group at the law firm of Proskauer Rose in New York City. Mr. Rubenstein is in charge of all patent litigation on behalf of the MPEG patent pool, in addition to a number of other high-profile technology litigation matters.

Ms. Kimberly Chu

May 30, 2000

Page 2

Iviewit has licensed its technology and providing services to a number of substantial clients, such as Hollywood.com, Broadway.com, Hyatt Hotels and Resorts, and Great Expectations Dating Service. Iviewit also is in final negotiations to license its technology to Playboy.com, MedicalOnline.com (x-rays, MRI's CT-scans, etc.) AmericanEnterprise.com (multi-hour surgical and educational videos), GregManningAuctions.com (one of the largest auction houses) and many other clients in the entertainment, health care, automotive and other industries.

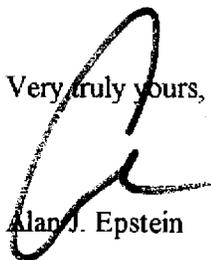
Iviewit initially raised \$500,000 of seed capital from Wayne Huizenga's venture group (at a \$10 million post-money value). Within the last few months, Iviewit raised \$1.5 million in a Series A round at a \$25 million post-money valuation from an investment group led by several individuals who previously ran Merrill Lynch's venture division. Iviewit is currently negotiating with an investment group for an additional \$2 million in the Series A round, with a Series B round (\$10 million minimum) to follow later this year. The proceeds will be used to provide working capital (including the leasing/purchase of equipment and facilities) which will enable iviewit to fulfill its backlog of orders and to expand its licensing operations. Iviewit is currently in discussions with several of the nation's leading investment banks to lead the Series B fundraising efforts.

The iviewit technology is most easily explained through a demonstration. If you or your colleagues at WaterView are interested in learning more about the company in the context of a Series A and/or Series B round investment or a licensing or other strategic relationship, please let me know and I will arrange to have the principals fly to Los Angeles (or New York, if you prefer) for a meeting. Although you can see some of the company's technology and applications on the website ([www.iviewit.com](http://www.iviewit.com)), the highest-quality work is not available for public viewing and is best seen through a private demonstration.

I look forward to hearing from you.

Best regards.

Very truly yours,



Alan J. Epstein

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

Ms. Kimberly Chu

May 30, 2000

Page 3

AJE/rdq

GAWPAJELETTERS@RITCHIE.COM

cc: Mr. Eliot Bernstein

Mr. Brian Utley

Mr. Maurice Buchsbaum

(w/o encls.)

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

Ms. Kimberly Chu

May 30, 2000

Page 4

bcc: Michele M. Mulrooney, Esq.  
James R. Jackoway, Esq.

M M M  
Newt, inc

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

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OF COUNSEL  
ALLAN L. ALEXANDER  
ARTHUR O. ARMSTRONG  
RONALD J. BASS  
GERALDINE S. HEMMERLING  
OUR FILE

June 9, 1999

9999

Via Facsimile 561-241-7145

Christopher C. Wheeler, Esq.  
Proskauer Rose LLP  
2255 Glades Road  
Suite 340 West  
Boca Raton, Florida 33431-7360

Re: iviewit

Dear Christopher:

I would very much appreciate your sending two Confidentiality Agreements to Mr. Gemal Seede, one addressed individually and one to Netcubator, the company which employs him at address below:

Mr. Gemal Seede  
Netcubator  
30 W. Green Street  
Pasadena, California 91105  
Facsimile: 626-449-4395

Please send the Confidentiality Agreements directly to Mr. Seede, with a copy to my attention. Also please include in your cover letter a statement, similar to the one set forth in the Confidentiality Agreement you sent to Richard Rossman on April 26th, regarding Proskauer's general views on the novel and protectible nature of the patents and technology.

Very truly yours,

  
Alan J. Epstein

AJE:jbn  
AE\LETTERS\WHEELER\LTR

Christopher C. Wheeler, Esq.  
June 9, 1999  
Page 2

cc: Mr. Eliot Bernstein  
Mr. Jeff Freedstein  
Michele M. Mulrooney, Esq.  
James R. Jackoway, Esq.

**PROSKAUER ROSE LLP**

2255 Las Road  
Suite West  
Boca Raton, FL 33431-7360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.432.7746  
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NEW YORK  
LOS ANGELES  
WASHINGTON  
NEWARK  
PARIS

**Christopher C. Wheeler**  
Member of the Firm

Direct Dial 561.995.4702  
cwheeler@proskauer.com

June 8, 1999

Via Fax

Mr. Amre Youness  
Mr. Ahmed Alfi  
Mr. Frank Khulusi  
301 North Lake Avenue, Suite 910  
Pasadena, CA 91101

Gentlemen:

At the request of Alan Epstein, I am forwarding the enclosed Confidentiality Agreements to you. I would appreciate your signing and returning your Agreement to me.

We have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far too early to make any final pronouncements. We do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Sincerely,



Christopher C. Wheeler

CCW/gb

cc: Alan J. Epstein - Via Fax

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06/08/99 04:48 PM (2743)

world. Founded in 1875 in New York City, the firm employs 475 attorneys and has wide experience in all areas of practice important to businesses, including corporate finance, mergers and acquisitions, real estate transactions, bankruptcy and reorganizations, taxation, litigation and dispute resolution, intellectual property, and labor and employment law.

**Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.**

One of the nation's leading entertainment law firms. Based in Los Angeles, California, it represents many of the most prominent actors, writers, directors and producers of feature films, television programming and other entertainment content. The firm also represents various content and technology companies in the Internet industry, including prominent web sites, entertainment-oriented portals, aggregated celebrity sites and various e-commerce companies. The firm is assisting in developing the business structure and strategic relationships for iviewit.

**Foley & Lardner**

One of the oldest and largest law firms in America. Founded in 1842, the firm now has more than 750 attorneys in 14 offices, following the February 1996 merger with Weissburg and Aronson, Inc. Foley & Lardner's over 100 highly skilled intellectual property attorneys constitute one of the largest and most sophisticated technology groups in a general-practice law firm in the United States. As one of the few large national law firms with a global intellectual property law group, it is uniquely positioned to help iviewit capitalize on its foreign filings. The firm's broad-based representations in litigation, regulatory affairs and general business counseling is complemented by one of the world's most highly trained staffs, which includes 65 engineering and advanced technical degrees, including 12 Ph.D.'s. The list of clients using Foley & Lardner to fill their intellectual property legal needs ranges from small entrepreneurial start-up companies to large international and multinational corporations. Foley & Lardner attorneys provide solutions and successfully serve the needs of clients around the world, including those situated in the United States, Canada, Latin America, the European Union, Eastern Europe, the Middle East, and the Pacific Rim.

- 
- **William J. Dick** - Special Counsel to the West Palm Beach office of Foley & Lardner. A member of the firm's Intellectual Property Department (Electronics Practice Group), Mr. Dick currently focuses on mentoring other members of the Electronics and Consumer Products Practice Groups in various IP related matters. He also conducts weekly classes in patent related matters for new associates. Mr. Dick joined Foley & Lardner after 26 years with IBM. He began as a patent attorney, and has handled all phases of patent, trademark and copyright duties, including litigation. Mr. Dick's most recent position with IBM was as Assistant General Counsel to IBM Asia Pacific. Mr. Dick is a graduate of the University of Virginia (B.M.E., 1956; L.L.B., 1962 changed to J.D., 1970)
  - **Douglas Boehm** - a partner in the Milwaukee office of Foley & Lardner and a member of the firm's Intellectual Property Department (Consumer & Industrial Products Practice Group and Health Information Technology Practice Group), Mr. Boehm practices in the areas of patent, trademark, copyright, and trade secret counseling; U.S. and foreign patent prosecution; and computer software and intellectual property licensing and technology transfers. Mr. Boehm's technical focus encompasses electrical and electronic engineering, including analog/digital/RF circuitry, radio telecommunications, lasers and fiber optics, and computer hardware and software. He has extensive experience in private industry, having worked as a development engineer and patent agent for Motorola, and as patent counsel for a subsidiary of Amoco Technology Company.

reason that you can recall whatsoever why these  
two computers were given the names Nitro and  
Bomber?

155

A. Well, at their inception, they were  
reasonably current in the state of the art.

Q. Okay. So they were basically quick  
and they were high-capacity machines and they  
were desirable; is that what they were?

A. Well, let me position that.

Q. Okay.

A. At the time of their inception, they  
would be considered to be reasonably current in  
the state of the art. But we all know at what  
rate the technology moves.

Q. Okay. So about three months after  
they were created, they were no longer state of  
the art?

A. That's very often the case.

Q. Okay. With regard to William Dick  
and Foley & Lardner, do you have any relationship  
or continue a relationship with either Foley &  
Lardner or Mr. Dick?

A. No.

Q. Have you known Mr. Dick in any other  
setting other than related to Iviewit?

A. He worked for me at IBM as manager of the intellectual property department. 156

Q. And is that why -- or strike that. Did you recommend that Mr. Dick be retained for the intellectual property work for Iviewit?

A. Actually, I used Mr. Dick as a reference or a consultant to determine who Iviewit should consider retaining for its intellectual property work.

Q. And Mr. Dick was subsequently, Foley & Lardner and Mr. Dick was subsequently employed for that purpose?

A. Mr. Dick was never employed by Iviewit, but Mr. Dick was retained by Foley & Lardner as a senior staff member because of his broad experience both before the bench and worldwide in intellectual property matters and, and he endorsed Foley & Lardner as a competent intellectual property company that would handle our affairs. I trusted his judgment.

Q. Now, are you aware of any relationship between Iviewit and Real 3D?

A. Real 3D were brought into the picture by Mr. Wheeler. They were a resource by

## WILLIAM DICK BILLING ENTRIES FOR FOLEY AND LARDNER

Date	Firm	Partner	Partner	Partner	Notes	
4/3/2000	FL	Dick	Utley		Call to arrange meeting for 4/7/00	57103
4/7/2000	FL	Dick	Utley		Conf Utley re meeting cancellation	57103
4/10/2000	FL	Boehm	Dick		Conf re IP matters	57103
4/10/2000	FL	Dick	Utley	Bernstein	Meeting with Utley & Bernstein	57103
4/10/2000 cont	FL	Dick	Becker		Re conflicts check	57103
4/10/2000	FL	Dick			Draft Engagement Letter	57103
4/10/2000 cont	FL	Dick	Boehm	Becker	Discussion with????	57103
4/10/2000 cont	FL	Dick	Utley	Teth	Note re sending firm materials	57103
4/13/2000	FL	Dick	Boehm		Re: engagement letter to Utley conf	57103
4/21/2000	FL	Boehm	Dick	Becker	Office conf regarding patent matters????	57103
4/21/2000	FL	Becker	Dick		Phone Dick??	57103
4/21/2000 cont	FL	Becker	Boehm		Office conf??	57103
4/21/2000	FL	Dick	Utley		Meeting??	57103
4/21/2000 cont	FL	Dick	Bernstein		Discussion?	57103
4/21/2000 cont	FL	Dick	Bernstein		Briefly review 8 patent apps in attempt to understand scope of work needed, request copies of materials	57103
4/24/2000	FL	Boehm	Dick		Re patent matters?????	57103

4/24/2000	FL	Becker	Dick		Conf???	57103
4/24/2000	FL	Dick	Utley		Conf??	57103
4/24/2000 cont	FL	Dick	Becker	Boehm	Conf re copying material, pick up material, sort and send to Boehm.	57103
4/25/2000	FL	Dick	Mantecon		Conf re copying of material, pick up, sort and send to Boehm	57103
4/25/2000	FL	Dick	Various People???		Meeting w various people (WHO??) during visit to pick up material	57103
4/26/2000	FL	Dick	Boehm	Becker	Note re files	57103
4/27/2000	FL	Boehm	Dick		Re IP file status	57103
4/28/2000	FL	Dick	Boehm	Becker	Meeting with?	57103
5/1/2000	FL	Boehm	Dick	Becker	Conf re IP portfolio and Iviewit tech	57103-0101
5/1/2000 cont	FL	Becker	Boehm	Dick	Office conf??	57103-0101
5/1/2000 cont	FL				Search for patents and background art	57103-0101
5/1/2000	FL	Dick	Utley		Communications with Mr. Utley. Vague	57103-0101
5/1/2000	FL	Dick	Becker	Boehm	<b>Conf call (MAYBE THIS CALL IS RELATED TO WHEELER / JOAO ANONYMOUS BILLING IN PR BILL)</b>	57103-0101
5/2/2000 cont	FL	Boehm	Dick		<b>Re schedule meeting</b>	57103-0101
5/2/2000	FL	Becker	Dick		Conf???	57103-0101
5/2/2000	FL	Dick	Boehm		<b>Discussion re schedule and meeting with Utley</b>	57103-0101
5/3/2000	FL	Boehm	Utley	Dick/Becker	<b>Travel to Boca and discuss various ip matters</b>	57103-0101
5/3/2000	FL	Becker	Utley	Dick/Becker	<b>Travel to Boca and discuss various ip matters</b>	57103-0101
5/5/2000	FL	Boehm	Dick		Conf re meeting results	57103-0101
5/16/2000 cont	FL	Boehm	Becker	Dick	Re iviewit inventions	57103-0101
5/16/2000	FL	Dick	Boehm		Regarding IP matters	57103-0101
5/30/2000	FL	Boehm	Dick/Becker	Joao	Re iviewit Technology and prov apps	57103-0101
5/30/2000	FL	Becker	Dick	Boehm	Office conf	57103-0101
5/30/2000	FL	Dick	Boehm/Becker	Utley/Bernstein	<b>Conf. Forgets Joao</b>	57103-0101
6/9/2000	FL	Boehm	Dick		Conf with Dick re iviewit matters. Vagueness	57103-0101

6/12/2000	FL	Boehm	Dick	Buchsbaum	Conf re upcoming investor (WHO??) meeting and materials required, prepare notes re same	57103-0101
6/12/2000	FL	Becker	Dick		Office conf???	57103-0101
6/12/2000	FL	Dick	Buchsbaum		Discussion with Buchsbaum	57103-0101
6/12/2000 cont	FL	Dick	Boehm	Becker	Later discussion regarding session with investors	57103-0101
6/20/2000	FL	Boehm	Dick		Conf w Dick regarding NDA	57103-0101
6/20/2000 cont	FL	Boehm	Dick	Utley	Revise NDA and send to Utley	57103-0101
6/20/2000	FL	Dick	Boehm		Re NDA and disclosure of patent app for eval purposes	57103-0101
7/11/2000	FL	Boehm	Dick		Conf w Dick (WHO DOES NOT BILL FOR THIS) re technology lics agreements	57103-0101
8/7/2000	FL	Boehm	Dick/Wachovia Securities	Utley/Bernstein in	Conf Bernstein Utley Dick Wachovia reps re IP licensing matters	057103-0101 General File
8/7/2000 cont	FL	Boehm	Bernstein		Attend to misc correspondence regarding copies of Video Imaging Apps	057103-0101 General File
8/7/2000	FL	Dick	Wachovia		Tele conf with Wachovia reps (WHO??) and client (WHO???) re technology licensing strategy	057103-0101 General File
8/7/2000 cont	FL	Dick	Boehm		Tele conf with Boehm re Tele conf with Wachovia reps (WHO??) and client (WHO???) re technology licensing strategy	057103-0101 General File

**EXHIBIT "F"**

CORRECTED VERSION - CORRECTED ON 5/14/2003

Transcription of Telephone Conference

Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table

Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of the firms' files.

<Inaudible comment.>

Utley: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

Simon Bernstein: You have no notes, no data on...?

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

Wheeler: The work product is yours. He may maintain copies of his files and everything; or his confidential notes to himself are not necessarily yours. But the work "product" is...

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here—this was before Brian came—I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did - now going to that same nature, that's the provisional I think we're talking about...

Wheeler: Right.

Bernstein: But he flew out here again with me and Brian and went through this as he went to file this--this is a 3/23/2000 file--that also fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't see them...

Bernstein: Well, you saw because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep maintaining it as...

Bernstein: Okay, but you have every record...

Wheeler: Everything you gave me we maintain. We don't...

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

Simon Bernstein: I know you don't you're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we had it in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?

Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.

Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, correct?

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.

Bernstein: But then when I look through this...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's described in this document, and without "undue" experimentation, without inventing it himself.

Simon Bernstein: Right.

Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

Simon Bernstein: Is that what we've done so far?

Bernstein: No.

Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

Wheeler: That's what we're aiming to do, that's what we're hoping to do.

Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

Wheeler: He was trying to do it in a broad...

Wheeler: He did say conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

Simon Bernstein: In the provisional.

Boehm: Uhhuh To that text, or you lose your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean...

E. Bernstein: It's not even in there.

Wheeler: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional? You can't add subject matter to the provisional?

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

E. Bernstein: It's not in the filing either.

Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.

Bernstein: It didn't pixelate. Not in here at all.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, explain to him where it's missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have without it being construed as an addition.

Boehm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another

lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average designer of this type of software—can he read this document and make and use of your invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't mater as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

Simon Bernstein:           What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm:                   Does that support our...Sure...

Simon Bernstein:           I mean, if we were to litigate against another person that infringes on our...

Boehm:                   An infringer.

Simon Bernstein:       Supportable for the sake of argument?

Boehm:                   Right. Yes. That is a fair argument

Simon Bernstein:           OK so then I don't know that, at least from first blush

Bernstein:           That's the provisional you're reading though, right?

Boehm:                   Aren't they the same? I think they're identical, aren't they?

Boehm:                   You can check in his notebook.

Boehm:                   Are there differences?

Bernstein:           Where did you find that piece that you just read?

Wheeler:               Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that Joao. I thought that we had agreements for doing everything, but apparently Joao filed...

Boehm:                   For that one, yes.

Wheeler:               But he didn't bother telling anybody.

Boehm:                   That's the one that we didn't find out until way late.

Wheeler: Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least resistance, and he thought he could go back...is there an amendment procedure?

Boehm: Yeah, there's an amendment procedure.

Wheeler: That he could do it a few months later or something like that?

Utley: We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.

Wheeler: Okay.

Bernstein: And you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. How did a guy to file a patent without any of us--obviously, not me, but Eliot, Brian.?

Boehm: Jim wasn't around yet.

Simon Bernstein: Okay, but Chris was and so on and so forth--how did they get through the crack that he did this?

Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do--his time factor--he was going to...he didn't think he would get this in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and file it.

Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

Utley: he knew at the time that he probably would be leaving?

Utley: Right.

Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.

Boehm: Just speculating.

Eliot Bernstein: What day did you give him those notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: That could be too. One other reason is...

Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the feature..."

Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? it has caused iviewit. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about...

Eliot Bernstein: Well 1<sup>st</sup>- lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

Simon Bernstein: Someone comes after you the second day after...

Boehm: Who's the first inventor, that's what you're after.

Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One-year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file that, but you need to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

Simon: Which might have short-circuited us because of all of the lack of funds.

Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: Yeah two things happened during the year. One, the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

Simon: Here's what we did. We hired Ray Joao on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been made.

Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray Joao...just an observation.

Boehm: Hmm...is it all patent attorneys? <Laughter>

Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit personally, I haven't heard of a patent attorney in my life telling me that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now

why is that going to hurt you? Two main reasons. One is if you put it on sale—offered it for sale— or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had publicly disclosed it, that would protect...getting the application on file will protect you from losing your date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone—you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new matter

Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: whose judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side would, say that's baloney that's too broad you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.

Boehm: So the offers for sale won't normally kick off a foreign...

Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year grace period.

Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes--yes we are within that grace period

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our knowledge, we have swept up all this in this filing, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original formal filing to strengthen the claims - broaden the claims ... to the maximum extent that we can.

Boehm: if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into the application.

Utley: What we're trying to do is protect the date day of March 24

Boehm: The original...

Utley: The original date as March the 24<sup>th</sup>, but filing should remain an objective.

Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

Buchsbaum: You mean the examiner of the commission

Bernstein: We're not going to be able to say it was in the claim.

Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.

Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file an continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but as far as, doing it broadly, if you're saying to claim it broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.

Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: Foley & Lardner. It identifies what you're trying to do. [not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.

Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your forum of law there's always going back and refining and refining and refining that was wrong.  
<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7<sup>th</sup>, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.

Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. Correct?

Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted a feature which

typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

Wheeler: I mean, he's describing I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see, this is different.

Boehm: But it doesn't matter right now

Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of having described this

Boehm: This is the background that's...problem. He's got...

Boehm: That kind of invention, right, it's got to state...

Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...

Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you

want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

Boehm: March 24<sup>th</sup>, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.

Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention actually. What we do understand a little bit about is the theory in business; and now that we know that Ray Joao was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

Simon Bernstein: Who owns them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]

Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

Boehm: So I've so I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of this? Sure.

Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that has an obligation to sign is on the list of names in these patents right, because the company was part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because you may due corporate due diligence for financial reasons or if...and they will say has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

Buchsbaum: Has everybody signed off on these? Brian?

Boehm: See these tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over but you're real clean on it because these are all based on the original filing , which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: So all of the other inventors would have a helluva problem trying to say they owned anything.

Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were it went into bankruptcy, what would happen to those patents? How would those patents [ ]?

Wheeler: It depends on which at iviewit you're talking about.

Simon Bernstein: The one that they are held in.

Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

Wheeler: There is a possibility, but that's one of the main reasons... But the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors getting a piece back?

Wheeler: No, no, no. On the \$800,000 loan, those people, it's secured by the patent.

Simon Bernstein: What about the \$600,000...or the other \$800,000 loan?

Wheeler: The others weren't loans. The others were equity, as I recall.

Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where note holders

Wheeler: No, because there was no quid pro quo at that time. The note holders I mean you can't go back and do it, we had that talk Si

Wheeler: I mean, you can't go back...

Bernstein: The note? I believe they're not final, even though we told people they would be by this time.

Wheeler: The note holders took their money in without taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't ... back to a failure to the corporation

Simon Bernstein: ...Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem

Buchsbaum: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because ...posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga lose his?

Bernstein: Would Huizenga lose his stake in it to Crossbow?

Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of...??

Simon: We all could have put in another \$10. I mean, at the time we did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

Wheeler: There would have had to have been some material consideration, not just \$10. It would have been...

Simon: So it would have been \$10,000...

Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new

considerations that you could demand as a condition to be collateral.

Simon:                   What we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley:                   That's new subject matter.

Simon:                   Well, I only brought it up because it had to do with the patents.

Utley:                   I know but can we finish the patent discussions before we bring up new subject matter.

Simon:                   You can, but I want to make sure that we do finish.

Utley:                   No, I agree with you Si.

Si:                       The problem is that I made claims to certain people like Don Kane, who put up \$100,000, who thinks...

Bernstein:               Let's get back to that. No, let's get back to it. It's a definite point. There are people.

Buchsbaum:               This is a business issue for later.

Bernstein:               No, we're asked by these very people these questions.

Boehm:                   Did you get your question answered on the...

Buchsbaum:               Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

Boehm:                   Yeah, but after...I find everybody, we can get guys to sign.

Buchsbaum:               We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum:               There aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm:                   No, there's not.

Boehm:                   So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum:               You just have to get people around and sign.

Boehm:                   No, that should not be and issue.

Buchsbaum: That might be questions brought up when people do do due diligence. Is everybody else on these?

Bernstein: That's why we're closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

Utley: The other piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined process—the mathematical representations of what's in and how it works and stuff like that.

Wheeler: (...???)

Buchsbaum: That will also be included in there, right?

Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form my opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps we would have liked to have tidied up some things better, like to have had Mr. Joao tidy them up. The good news is considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24<sup>th</sup> last year. Second, we will look at the March 24<sup>th</sup> year 2000 filing and determine how we should amend that to include additional claims and broaden that filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back...

Boehm: as long as you don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.

Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

Boehm: The question never even gets answered half the time in the real world. I will claim priority back on the document, and then if the examiner doesn't care, nobody cares

Bernstein: It gets through.

Boehm: It gets through.

Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

Wheeler: So I'm not adding flesh in defense...

Simon: New flesh.

Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray Joao numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

Utley: No Crossbow notes would be converted to equity when someone else comes in.

Si? Of course, and that's gone. And those issues are gone.

Wheeler: Well, Yeah, so that it was the ...it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of your collateral.

Simon: Yes, of course. As soon as it converts to equity, it's gone.

Wheeler: But I mean, what if you didn't convert yours to equity[ ]?

Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for

distribution. But of that amount[ ] unless there's nothing to distribute.

Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

Buchsbaum: You're talking about the small amount of money, that have any value, it should be reasonable value, and those would be taken out anyway.

Simon: Except that we seem to feel that we have an obligation to those, to protect the other stockholders who...had all good...I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?].

Utley: Will you look it up and see what it's going to take to do it?

Wheeler: I'll coordinate that

Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

Simon: I don't know. Can you handle the old money the same way? I don't think so.

Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on subsequent money.

Simon: Well, but to ask Don Kane to put up \$10,000 when he's got \$160,000 in the...\$135,000 in the company, and then he only gets 10%...\$10,000 worth of consideration...I'd like to protect his whole \$165,000, which is what he has.

Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$400,000 that's on the books. Then there's another \$100,000 besides what he put in originally. Sal has a loan on the books of \$25,000. Your guy should have had a loan on the books for \$250,000.

Utley: No, that's equity. Okay.

Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me \$10,000 to pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and Mitch.

Simon: You haven't sold any of your stock?

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.

Buchsbaum: That's the way to do that?

Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

Simon: Sure, I just wanted to make sure that it was done. I didn't even know ...???that bank account

Bernstein: Not that I didn't.

Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop to the US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

Simon: Let me ask you. You're not a lawyer, what do you recommend?

Boehm: Well, it's more money up front.

Simon: How much money? A great sum of money?

Boehm: No, it's another grand to file.

Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.

Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those earlier filings?

Boehm: Those other two.

Buchsbaum: That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: Plus you're gonna get an office action back from the patent office on him...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

Boehm Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?

Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to...???

Utley: Because he's claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorders off, right? <Recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?

Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess \$5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, well get Rays to another indiscriminate level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products--or whatever it is--per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..

Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That the patent will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.

Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be approved. The investors are going to say...

Buchsbaum: The first one that we're going to be issued will be issued in May.

Bernstein: And the investors are going to say what happened to patent one.

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in. 18 months to two years

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and wasn't able to and got clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah. Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

Boehm: But what, the test - I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say

Utley Doug come back, close it out again.  
<Inaudible comment.>

Boehm: There were two points. One was the PCT and I got that in correct.

Buchsbaum: Right.

Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it issues. You never do it before. I don't even like to do it then. I like to do it after all the...

Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.

Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.

Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.

Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.

Boehm: Now it's intentional!

Utley: But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?

Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly—if that's the goal, which sounds like it's a good goal—then, no, I think we should amend the claims with a preliminary amendment before the examination.

Utley: A preliminary amendment?

Boehm: A preliminary amendment.

Bernstein: Encompassing everything we can throw in there?

Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...

Bernstein: So we're going back to the original

Boehm: So I'll fix the 119 case yeah

Bernstein: March 3, 2000, to encompass what we've embraced.

Utley:               When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm:               Yeah, that's...

Bernstein: That's my guess.

Utley:               When will you be in a position to...

Boehm:               I'd have to...a few days...

Utley:               About a week or so?

Boehm:               Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>

Transcription of Telephone Conference  
Conducted August 2, 2000  
Participants:  
Eliot Participant, Jim Armstrong,  
Brian Utley, Doug Boehm  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Bernstein: Patent meeting.

Utley: ...all [it?] is is a set-top box doing that same function. It acts as a scan converter so that you can display on a raster display device as a pixel-based image.

Bernstein Armstrong: Okay. I wanted to start out by just making that comment because I think as we go through this, we just need to be sensitive to how it's stated so that in certain areas we make sure that it's stated in the way that Brian just indicated.

Boehm: Let's talk about that a little bit more up front here. Brian, can you give me...when you say a display is displayed as a raster, not pixels, a TV display versus a monitor? Or both?

Utley: Both. They operate at different frequencies, they have different scanned characteristics; but basically, they are quite similar. In fact, the very early monitors were TV screens.

Boehm: The reason we focused on pixels is because we needed to draw a line in the sand where we said something went [eeky].

Utley: The technology is pixel based. There isn't any question about that.

Boehm: He's right. I mean, pixels, schmixels. Is there any other way to draw that line in the sand and just use pixels as one embodiment; and is there a way to define the way you would pre-pack an image when it's going to be displayed on a display in terms of raster? Or anything else that you can think of. What we're doing is pre-packing sufficient information so that no two picture elements, whatever the heck they are, are displaying the same piece of information. Right?

Utley: Right. Of course, the trap is as soon as you get into the digital world, you are basically in a bit image format unless you use a more complex method which basically is you describe...

Boehm: Which is vector based, you mean?

Utley: Which is vector based where you describe line segments as vectors, but that's very, very, very much more complex and it does not lend itself at all to this kind of imagery that we're dealing with here. It just doesn't work.

Boehm: And it wouldn't pixelate, obviously, when you magnify it.

Utley: We'd have other problems.

Boehm: But you'd have other problems, right. But we're not worried about covering vector-based systems in this invention right now.

Bernstein: But should we limit ourselves...but we don't limit ourselves, either, do we?

Boehm: I'm thinking that a court could hold that you are, yeah, because we're talking pixels all over the place. We've defined some of the claims in terms of how to draw that line in the sand in terms of number of pixels versus

what's displayed versus what's pre-packed in; and maybe the whole string of claims wouldn't make sense unless you were talking in terms of pixels or picture elements. Maybe we don't have the word "pixel" in every claim, but my point is that...

Armstrong Bernstein: Is there any way to do it vector based?

Boehm: Yeah, there are generic ways...we'll, I'm not sure you want to do it vector based because now we can't draw the line in the sand.

Bernstein: Okay. I was thinking a separate filing if there was a way.

Boehm: Yeah, but I'm thinking of...you brought up a good point. We're thinking pixels or a digitized image. Technically, a photograph is grains.

Utley: Right.

Boehm: Is there a grain-based quality factor that we can tap onto?

Utley: No, not really. I think the closest...the part of that that [varies] is when you do the enlargement of the source photo image.

Boehm: Maybe we should talk data elements. Is there a...

Bernstein: That's the word I liked versus this...value data, additional data.

Boehm: But this is not...in the product, there is a big difference.

Utley: But because there's a big [batch] of formulas, you can't...<unclear; everyone talking at once.>

Bernstein: I understand that, I understand that.

Armstrong: But we could use data elements with pixels being an exemplary method for using data elements...here's one example of a data element, it's a pixel.

Boehm: The problem with that, though, is somebody could find a piece of Prior Art that uses the data for vector based.

Bernstein: Oh, [then we are beat] on vector base?

Boehm: No, if it's Prior Art...if it's done ten years ago...vector based...and you're saying in your spec that your claim language data elements cover is broad enough to cover pixel, vector based, and everything. Your claim now reads on the Prior Art, and your patent would be invalid. It could be interpreted that way.

Bernstein: Brian, were we ever able to do it vector based?

Utley: Well, there are certain things which you can do vector based.

Bernstein: That you can't do pixel based?

Utley: That you can do pixel based as well as vector based.

Bernstein: So we've got to be careful that they can't cross that same line.

Utley: Certain kind of graphics are done in vector based. For instance, AUTOCAD works on a vector-based system. CAD programs are typically vector based.

Boehm: Does the concept of your invention, of pre-packing the number of picture elements so you can zoom it and pan it, does that have anything to do with vector-based systems?

Armstrong Utley: No.

Utley: I think, Doug, it really doesn't. Vector-based systems don't play here, and I don't think the data elements buy you a thing.

Boehm: I think it could buy you trouble.

Bernstein: Okay.

Boehm: A good point in trying to broaden it, and we'll keep that in mind...

Bernstein: My question is, so does this cover if you could do it on a TV for a set-top box?

Boehm: I thought it did until...

Bernstein: That's what I was after. I didn't know if a pixel was involved in a TV.

Utley: Not in a direct sense.

Bernstein: In the display sense, though?

Utley: No.

Bernstein: Because we make a distinction between...

Armstrong: <Inaudible comment.>

Utley: But I told you that. But you do

Bernstein: Then were covered

Utley: Yeah...everything is carried up to a scan convertor which is simply a translation medium to translate from pixels into a raster.

Bernstein: Gotcha. Okay.

Utley: So you can display all of that on a laptop, and then it's direct mapping, pixel to pixel.

Bernstein: Or you can convert it to whatever you want.

Utley: Right. That's right. You can convert it to a NTSC or [PAL] or C-CAM or...HDTV

Bernstein: Or any display.

Bernstein: What about a game? What about a game are we set up to cover a game.

Utley: Yeah

Armstrong: I think if we look through this, You said that it need's to be...

Utley: Any kind of display device...

Armstrong: In it's invention, it's a calculation based on pixels, and we just need to be careful that the way this is worded doesn't preclude us from displaying it on a non-pixel-based system.

Bernstein: And that's what he just said. He said that...

Armstrong: He said we're converting the wordage here because we ran into it a number of times. As we all look at it together, let's just be cognizant of that.

Boehm: Absolutely. When we go through, we'll all keep an eye out for it. But when you say a non-pixel-based system is a raster system, I really don't agree with that. A raster is derived from the picture elements, right?

Bernstein: From the pixels. That's what Brian just said.

Boehm: Yeah.

Bernstein: So we can convert the pixels to any display medium we want.

Boehm: Yeah, but even if you look at the...when we get to some of the claims, when you look at the resolution of the monitors, they talk about pixels.

Bernstein: Well, that's what I'm concerned about a little bit.

Utley: Because what they're referencing when they talk about pixels on the monitor, they're really referencing the scan buffer that scans it out to the monitor, and it's not a representation inherently within the monitor itself.

Boehm: Oh, okay.

Utley: The monitor has no pixels. But the monitor has a [shatter vast] which, depending on the monitor technology, whether it's a Sony or a non-Sony—a Sony has an aperture grill—but they have a three-color dot matrix which has no direct connection with a bitmap.

Boehm: Oh, really? No association to the pixel elements coming in?

Utley: No, none whatsoever. A standard TV tube...a 17" TV tube has a dot-spacing at a [4.?] [4.?] inches, and a good display tube has got a lot of the diodes at .26, .27, .28 at the higher resolution, but it's where it's visually higher resolution, not necessarily what your scan buffer has.

Boehm: You don't turn the screen...the gun on and off for each pixel.

Utley: Right. It's a continuous beam scan, and you're modulating the beam.

Boehm: So I think the best we can do is keep that in mind when we talk about the language to converting this over to television display stuff[ ].

Utley: Yeah, on this page I did have an additional comment. On line 18 and 19, where it talks about ideal image quality requiring a minimum bandwidth for transmission. All I was saying here is instead of a limited bandwidth, it works regardless of the bandwidth, but it has less demand on bandwidth.

Boehm: Okay.

Bernstein: Let me ask you this. Let's say [Take bandwidth out of the equation and just say you play our image off your hard drive. It's still cool, so it has all the features we're patenting. Why do I even care about a limited bandwidth? Why do I care that that statement be there at all?

Boehm: Do you have any knowledge...I mean, ...

Bernstein: No, I have no knowledge that in Prior Art you can pull off your hard drive any differently. People did not say to me, "oh, what you did is cool because you can play it over a network." They said, "it's cool, so I'm gonna play it off my hard drive." And by the way, in the end, the file is on your hard drive. Even if you had a 2400-baud modem, the only difference is you have to wait 11 minutes to get the cool image. The coolness did not decrease by the time it took to download the image.

Boehm: Okay, again, we'll keep that in mind. I believe it's covered when we claim the digital image file because I don't think the digital image file claims pertain to a network. Let me...

Bernstein: None of it should pertain to a network really. It's an added benefit that we're able to transmit these rich pictures over a limited bandwidth network, but it is nothing even close to dependent or part of the coolness of the invention.

Boehm: Can I take a counter-position, Eliot?

Bernstein: Sure.

Boehm: The reason that you'd want...first of all, you have to describe the best mode of your invention. There's no question we have to leave network in there.

Bernstein: That's fine. Okay.

Boehm: And the more stuff you leave in there, the better it is for us.

Bernstein: As long as we're not limited to it.

Boehm: The claims are what defines what's limited, but again, if we are so broad brush in...the claims are interpreted in the language in this...

Bernstein: Well, don't be broad here. If you want to be broad, it can be your hard drive or it could be over a network, it doesn't matter.

Boehm: Right. The problem would be if the digital file that we're claiming in some claim #29 or whatever, if the wording of that claim says "uploading"...no, it says "transferring data," and that would mean over an Internet, and in the spec we come back and say that means over the Internet or...

Bernstein: ..or your hard drive, yes, I agree. That's why I put in some places upload, download. I don't care what you call it, don't limit as to download what I see in some places.

Boehm: Okay, that patent issue is three years down the road you sue your closest competitor. They had a guy that just came out of the print industry, and they have been downloading images in print off of hard drives for photo-processing applications for the past twenty years. He comes out with one article. Your claim directly reads on it because it's off the hard drive now because you have interpreted that claim to mean off a network. Your claim is dead.

Bernstein: No, but that's not...

Boehm: Then you run to claim two, which is dependent on one, which is going to say, by the way, it's over a network.

Bernstein: But it doesn't have to be.

Boehm: Claim two will have to say that, yeah, because otherwise your patent will fall, Eliot.

Bernstein: Why?

Boehm: What?

Bernstein: What my question is...

Boehm: Why will it fall?

Bernstein: Let's stick to the invention.

Utley: What he's saying is...let me see if I can...claim one is as broad as possible. Now, if something happens to lay[ ] on claim one in the Prior Art, you bypass that by going to claim two, which reads on claim one, which further defines claim one, which takes you out of the concept situation and into [cleaner].

Boehm: Right. You've narrowed the scope of your part of this technology world—the part that's protected—but you want to make sure that part is over what your business is.

Bernstein: Well, my business is...you see, my business doesn't need to involve a network. I could send somebody a CD of their hotel properties, like Hyatt, and say, "Here, you still have all the cool effects of my digital imaging products..."

Utley: But claim one doesn't say anything about networks.

Bernstein: Okay. That's all I'm saying, Brian. As long as you're not limiting me to a network.

Utley: Claim one doesn't. We used that deliberately.

Bernstein: Okay.

Utley: I'm going to talk about that again when we get to the claims.

Boehm: Let's talk about that when we get there, but again, my point is is you've got to be careful about what you say in the spec because the way claims are

interpreted is by referring to the spec. When you say "providing a digital image file," that doesn't mean much in the claim. The guy's going to go read the spec, see how you did it, look at your figures, and that's how this language is going to be interpreted. There's no broad brush back there. And you say, "oh, well it means everything," now claim one means everything, it reads on all the old prior art.

Bernstein: But it does, Doug, mean the hard drive, the CD...

Armstrong: Let me suggest something else. Let me suggest that what we're really saying, whether it's over a network or off the hard drive, is that the unique nature of our process results in high-quality images at low-file size, and so whether that low-file size...

Utley: <Inaudible comment.>

Boehm: Well, it's not file size.

Armstrong: Right. It could be huge files.

Bernstein: It could be huge files...

Armstrong: Hold on. Isn't it true that it is a low-file size given the amount of information that you're able to draw from it?

Bernstein: No, it's the large-file size. It's the opposite. You gave them more data. The file size is not relevant, nor is the bandwidth. That is a must-understand. This idea is cool whether it's played off your hard drive, played off the CD, played off the tape back-up, whatever you want to call it, over a network...whether you Fed-ex, this, Doug, because its the same effect whether you send it over the Internet, and that effect is the same as if it is a 2400-baud modem receiving it or a super-high-speed, as if the only difference between Fed-ex and the Pony Express is three days' wait, but you still are going to have this same package.

Utley: Right. But what you want to do in your claim is make sure that you're not...

Bernstein: Limited.

Utley: No, make sure that you haven't stated your claim so broadly that what is over here excludes your ability to claim over here. So you parse the claims, one very broadly, and then you keep narrowing it down so that if something happened over here, you've got...the network delivers it to you.

Bernstein: Okay. And if you're saying that limited bandwidth isn't in claim one, then we don't care.

Utley: Right.

Bernstein: But I just wonder why it needs to be here other than to describe what we did. You don't, by the way, need a network to describe what we did.

Utley: So we can strike network. We don't have to.

Boehm: Well, we're not striking it. We can take it from the claims when we get there, but I've got to leave it in as your preferred embodiment. That's important.

Utley: Right. We're on page one.

Bernstein: Why? Let me ask you why.

Boehm: Okay, there's something called the best mode...

Bernstein: Okay, let me explain that to you because I do understand that. The best mode of this invention stops as soon as you have the image, whether you ever sent it or not, or played it on your computer for that matter.

Boehm: Okay, Eliot, I don't think you would want to stick to that statement. You're saying right now that your invention is so bloody broad that if somebody had done this before on CDs but never done it on the Internet, and we can go sue them because they're now doing it on the Internet and your claim is valid, and when you interpret your claim to read "on the Internet," and

that's all you ever care about, but now we're going to get you up on the...

Bernstein: That's not all I ever care about.

Boehm: You care about stopping your competitors.

Bernstein: No, but I care about putting it on CDs and all those kind of things or using it for any other application. That's the key here, Doug...the file creation--the concept, the invention--stops before it ever hits the network.

Armstrong: What Eliot's really saying is that our invention does not include a delivery system.

Boehm: Right. So in one embodiment, it would. If you wanted to put a picture claim on your business, it's going to be one of our claims that includes a network, that includes pixels, that includes...I want a pixel claim...

Bernstein: That can include.

Boehm: Pardon?

Bernstein: That can include as one of the methods of delivery, but the delivery method could be a network, a hard drive, a CD-ROM, etc. As long as you cover all that, I'm fine.

Boehm: Okay, what I think we're arguing about is the mine field. You want a claim that's broad enough that if it gets blown away, okay it gets blown away; but I want a claim that's narrow enough that there's a less chance of it being blown away by Prior Art sneaking out of the woodwork because we're not experts in this field like Chris Taylor or something that could say, "Oh, you can't do that...here's a reference." That's why I'm a little...

Bernstein: Can't we say that that's an added benefit of what we've done? I mean, I don't want to be confined to a network, that's for certain.

Utley: You're not.

Boehm: Okay. In one claim, you're not; in another claim, I want you to be.

Bernstein: Okay, that's great. That's what I'm saying. AS long as you've got me covered on CDs or DVDs--somewhere in the future--that's fine.

Boehm: Okay.

Bernstein: Um, page 1.

Utley: In fact...I just want to cap this conversation. When you go through the methodology of the creation of the image and the display of the image and the formulas, there's nothing about a network.

Bernstein: Nothing.

Utley: Okay. So all of that gives you total freedom to claim wherever you want to place that...whatever environment you want to place that. I did have a thought, Doug, on the display and a way to kind of be a little bit more embracing.

Boehm: Than pixel based you mean?

Utley: Yeah, instead of saying display monitor, we just say display system, and display system can be defined as anything with a visual user interface, be it a TV or...

Boehm: That sounds...where is that?

Utley: Page 2, line 6, is the first one. It says "display monitor." If we just say "display system" wherever we have "display monitor"...

Boehm: Okay, not everywhere. This is the background. We're not really talking about our invention yet. The first time we talk about display is describing figure

1, which is element 3, is the display, so that's where we'll stick in it's the display...just the word "display."

Utley: Okay.

Bernstein: Yeah, system. Right.

Boehm: So, let's hold that in abeyance.

Bernstein: I had a comment on line 15: "Improved resolution for zooming and/or panning within a single image."

Boehm: This is the field of the invention. That's fine if you want to say that. All this paragraph does is points the examiner in the right art for the search.

Bernstein: Okay, and I would just clarify, too, on that, it's a single image, not a bunch image—the zooming and everything. This is one file that has all these attributes.

Boehm: Right. So it's "and..."

Bernstein: It can be additional files added into it, but those files retain the single image.

Utley: As long as it's understood that a single image embraces fixed images.

Boehm: How about a single window?

Bernstein: How about a single file?

Armstrong: That's probably good.

Bernstein: That's the right terminology.

Armstrong: Line 22 seems to me to be an incomplete sentence.

Utley: It is.

Armstrong: It should say, "It is known that one can view a digital image on a display."

Utley: That's what we talked about yesterday, Doug.

Boehm: Yeah.

Utley: And you had terminology for that.

Boehm: Yeah, let me find that. I know I do, but apparently it's not that handy where did it go. Yeah, here. We're talking about in the Prior Art it is known.

Utley: Right.

Boehm: And that's the concept. I can fix that sentence by saying...

Bernstein: That "one can" instead of "two."

Boehm: <Speaking as he writes.> "It is known that one can view a digital image on the display screen..."

Bernstein: In other words, it is known in Prior Art or whatever.

Boehm: How about "It is previously known that..."?

Bernstein: Yeah.

Boehm: Okay. "It is known."

Armstrong: "It is known." Period. Previously or now. "It is known that one can view..."

Boehm: "...one can view a digital image..." and get rid of two..."and zoom and pan within that image." Right?

Utley: Uh, huh.

Boehm: Boy, at this rate this is going to be a long conversation.

Bernstein: Yeah, it is because we go now to the next page, too, thank God, and where it's circled pixels, let's just be clear.

Boehm: I'm sorry, I've got to back up. "The limited bandwidth network," how are we changing that?

Utley: We're going to remove that.

Boehm: We're going to get rid of what?

Bernstein: Well, you don't need it.

Armstrong: Delivered through its display system. "The viewer desires ideal image quality delivered to his display system."

Boehm: Okay.

Utley: And then you can go on. "In a network environment..."

Bernstein: This is even more...

Utley: Right. And then you say, "In the network environment, it's important to transfer an [idea or image] in a reasonable amount of time."

Bernstein: There you go. That covers everything. Okay, so we go to pixels and pixelization terms, and my question is, and Brian will help me here, when you're looking at the screen and you zoom, are you seeing pixels?

Utley: You are seeing pixels.

Bernstein: But the screen has no pixels.

Utley: No, but pixels are mapped into a raster-based generation; but yes, there are pixels.

Bernstein: Okay.

Utley: You see pixels.

Bernstein: Okay. You do?

Bernstein: Yes. There's no pixels but yet you see them?

Utley: It's not a pixel-based medium, but the raster presents pixels.

Bernstein: And it presents them distorted?

Utley: It will present them distorted.

Bernstein: Once you magnify them?

Bernstein: Okay.

Utley: It may take more than one raster to represent a pixel. In other words, a pixel is a composite. If it's a very large pixel, it'll take several raster scans to create a pixel.

Bernstein: But you will still see...

Utley: To see a pixel.

Bernstein: And then when you blow it up, you'll still see a distorted...

Utley: Right.

Bernstein: Okay.

Armstrong: This is the first opportunity where if we wanted to, we could say, in line 3,  
 "...in which the pixels comma (data elements) comprising the image"...

Bernstein: We can't.

Utley: We don't want data elements, we don't want data elements.

Bernstein: Because do you see what's happening? You still are drawing off a pixel base.

Boehm: Pixel, and then this is goofy because in the next paragraph, we define what a  
 pixel is. We're defining pixelation first, and then next we're defining  
 pixel. Why don't we not define pixel up above...oh, yeah, I have to. "In  
 which the pixels, i.e. picture elements..." How's that?

Bernstein: Yeah.

Boehm: In other words, everybody knows what a pixel is, but we're just throwing it...

Utley: It's a picture element.

Bernstein: Okay, that's fine.

Boehm: "Pixels, i.e., picture elements."

Bernstein: Right. That might even cover us in other space that we don't even know yet. Okay.  
 Go to page 3...

Utley: On line 6, this is an opportunity to introduce the notion of a display system  
 instead of a display monitor.

Boehm: It is...

Utley: Is that a problem to you?

Boehm: It depends on where we have to go with it, Brian. Where do you see us going? Do we  
 need the differences defined later?

Bernstein: You could be very accurate here, Doug, because when this was invented, I ran my  
 computer slash my TV at times. So it was through both displays. Remember,  
 Brian? I brought you over. So I've always been running through a scan  
 converter, my TV.

Boehm: So where do you want to go with this, Brian?

Utley: I just want to say "display system," and the reason I say that is because if you  
 say display system, you integrate into the description the scan converter.  
 If you say "display monitor" itself, a display monitor does not contain  
 the scan converter. That's generally housed outside in a set-top box or in  
 the computer hardware itself.

Boehm: Okay, I agree with you that you want to make that distinction; but do we want to  
 make that distinction? We're still in the [background]. We're describing  
 somebody else's, not ours yet.

Utley: Yeah, you tell us where you think the best place is to put it, Doug.

Boehm: Well, I definitely want to put it when we first represent what display 30 is.

Utley: Okay.

Boehm: What I don't know if...

Bernstein: Okay. By the way, here it's true, too, [what he says]. Brian's saying...

Boehm: It really is.

Bernstein: Yeah. In Prior Art, if you play that on your TV, it's still pixelated. It didn't  
 matter if it's a monitor or TV. So Prior Art, no matter how you played it,  
 did that, and that's good to say.

Boehm: In the background here, it's not important. What we do in the background is try and set up that the strawman of the Prior Art had these problems, and then you knock them down with your invention. So whether you set him up with the display or display system and you knock him down, he'll fall just as hard. I don't think that's going to make a big.

Utley: That's not a big deal here.

Bernstein: But it has to come somewhere in here.

Boehm: What if we're making some stupid statement here. Let me read those paragraphs to you real slow here, and then let's make a call on it because; or if this is a good opportunity where we have to figure out the difference between a raster and pixel-based system or scanning lines or anything, if we have to make that...if we have to educate the people in order to interpret the claims later, then now is as good a time to educate them as far as what's the background. I don't think we need to do that.

Armstrong: I personally feel that if we're going to be later using display system to define more broadly how we display things, we might as well refer to Prior Art in the same way since it does include it.

Bernstein: It doesn't hurt. It can't hurt because all it's saying is that Prior Art, no matter what system you played on. Here what you're saying is Prior Art, when you play it on a monitor.

Boehm: I guess just from experience, there's really no right or wrong answer on this, guys; but just from experience, I would tend to disagree with you. Whenever I define a term that I care about, I always define it in the spec, especially if it's not a normal, common, everyday-type term that you want to talk about in the background because when you're saying that it's the same in the Prior Art as it is in your invention, you say that today and you may want to argue that today, but maybe you want to change your mind tomorrow; and when the litigators litigate this, they're going to wish like hell you never said that it was the same in the Prior Art.

Bernstein: Okay.

Boehm: You can point to your spec and say, "voila!"...

Bernstein: And say we were working on our TV...

Boehm: ...our display system, and it's defined as such.

Bernstein: That's fair.

Boehm: And you can't go back to the Prior Art to define it.

Bernstein: Okay.

Boehm: So there's legal ways of doing it.

Bernstein: Okay, so let's see where we insert that correctly.

Boehm: Yeah, I think it'll be later when we're talking about element 30 when he defines the blocks of the system. Let's see...

Utley: On line 14, where you say "represented as a triple..."

Boehm: Yeah?

Utley: I think the correct word is "triplet."

Boehm: Okay, Steve pulled this from something on the Internet, so if you say "triplet," that is right, yeah. Triplet. Good catch. It took five of us to catch that! <Reading out loud to himself...> Here's the bandwidth.

Bernstein: Yeah, "...thereby speeding the transmission." Now that is true, but it's not necessary.

Boehm: "...decrease the file size..." No, he's got it right here, right?

Bernstein: Well, "...this results in a small source image file size," period.

Boehm: No. The whole sentence says "plus the teaching in the art..."

Bernstein: Okay, okay, yeah. That's right.

Boehm: No background. We're still setting up the strawman to knock him down.

Bernstein: Gotcha, but we don't need a network or Internet.

Utley: We're not talking about us—we're talking about the other guys.

Boehm: Yeah, Prior Art, and they were compressing the hell out of it and moving information because they knew they had to go through this limited...

Bernstein: No, but let me ask you this. Let's say you just set it up on your computer—you never put it on a network, I'll just give you the same argument—you wanted to display your family photos on your own display system. You built a frame, you put a picture, matched the size to the frame; and voila! It's on your system, you can't do anything with it. You can't zoom. You haven't communicated it over a network; you haven't sent it to anybody...but you still can't zoom on it.

Boehm: But you still can zoom and pan, you mean?

Bernstein: You still can't.

Boehm: Oh, you still cannot?

Bernstein: No, because you built the frame wrong.

Boehm: Oh! Okay, okay.

Bernstein: So I mean you built the image to target wrong.

Boehm: Oh, I see what you're saying.

Bernstein: Yeah. So it didn't matter if you transmitted over any network.

Boehm: Now this will get really hairy...how did you build it wrong?

Bernstein: Well, because you only gave the frame the appropriate size as was necessary to fill the frame.

Utley: You designed the frame to the image.

Boehm: Yeah, so it doesn't magnify at all?

Utley: Right.

Bernstein: Right, whether you had a network involved or not.

Boehm: Okay, and if it's a little bit bigger than the frame, you can still pan but not magnify—but not zoom.

Bernstein: Right, but the teaching in the Prior Art would be to match the frame to the image.

Boehm: Okay.

Bernstein: That's how the world's been working for a long time.

Boehm: I totally agree. Maybe we should throw that...does that say that here?

Bernstein: Well, I guess there are a lot of places where we're going to add it.

Boehm: Well, that's a great line what you just said..."match the frame to the image."

Bernstein: You see, that's going to become critical when you say that "two times magnification at least" because the truth is nobody built a picture

saying, "I'm going to give it a little more edge so I get a little more zoom." That's the difference. You built the picture...you had a frame size...you popped in their image to be that frame size...you created the image for that size. You didn't say, "I'm going to give them an extra pixel so they can zoom a little," or an extra pixel or two, or two times. So one drop, one pixel more than is required, is the new out.

Utley: Well, the only thing we have to be careful about is that there are applications that allow you to create an image which is larger than your viewing window and operate on an image which is larger than your viewing window. What's different is that that image, when you see it in the viewing window, what you're looking at is the image as it is intended, you're not looking at a compressed form of the image--by compressed, I mean a scaled form of the image--so that...

Boehm: Or it sits in the frame.

Utley: Right. So it's not sized to the window, it's sized to the system frame, whatever the application is, but it doesn't allow you to zoom into the image which will allow you to avoid pixelation.

Boehm: Right, and I [ ] when we had Chris Taylor say he had done years ago on his website...you can look at his website, by the way--[msoe.edu](http://msoe.edu)--and Dr. Chris Taylor has his own link to his own personal web page, and he...

Bernstein: Where is it?

Armstrong: [msoe.edu](http://msoe.edu).

Boehm: [msoe.edu](http://msoe.edu), and Dr. Chris Taylor is his name, and it'll have a subdirectory for him. Then on his subdirectory, it'll say, "Go see images from my own website," and then he has his own personal thing; and in that, he has pictures of stuff. And he says those pictures, which were done way before you guys--when he first got here to Milwaukee, I guess is what he said--but he said that there are more pixels there than are needed, and that's just the way it just happened to come out. There was no intent to do it one way or the other way--he didn't intentionally match the frame size to the image--that's what happened when he did it. But he's not providing scanning and zooming, and...

Bernstein: Well, that's the difference.

Boehm: And, but he is not providing more than two times the pixels.

Bernstein: Well, that doesn't matter [ ] because really we're just saying that our art is based on the fact that we're providing extra data that allows, whether it's one pixel or not. One pixel might give you a zoom factor of .00004...

Boehm: I see what you're saying...

Bernstein: So why should be ever limit...the object of the invention is to create zoom by giving more data.

Boehm: Right. Can you zoom, Brian, without going twice the number of pixels?

Utley: Sure. Well, you can zoom to...what you're saying is you have a target image which is 2x the window, or 2x the viewing image, and, yes, it can be anything over and above the size of the viewing image. It's just a practical question of does it have any value...

Boehm: Right.

Utley: ...when they have such a limited...

Boehm: Magnification factor.

Bernstein: But we don't know into the future if it will. Somebody could get around us by getting it somehow under a 2, or, as a matter of fact, what if you only need 1.5? Why should we limit ourselves because that's not what was created?

Boehm: Okay.

Bernstein: You know what I mean? We didn't pencil it out and say two times is what we need to do this.

Boehm: That's a good...we got that...Steve and I must have come up with that two times.

Bernstein: We all came up with it just because the first button on your magnifying glass is two times.

Boehm: Okay.

Bernstein: And we were thinking...here was our thinking...that you were able to click that button on a regular image, and you were still okay—a little fuzzy—but you hadn't blown apart. So we were thinking anything beyond that. But actually as I re-thought that, I said that's not the issue here. If you're designing screen size to match frame size, it doesn't matter if you give it one drop more. That adds to the zoom capability by some factor...that extra data. But one and half times. What if you only wanted...what if your client says "I've got a picture of my wife, and she's ugly, so I only want a one and a half times magnification on her face."

Utley: Okay, we all agree.

Armstrong: Anything more than one times is the definition.

Boehm: And I think he's got it in claim 1. He scratched out "at least twice" and put in "is greater than."

Bernstein: Right.

Utley: So the right way to say that is that the target image is larger than the viewing image, and you've said it.

Boehm: But just claiming that concept.

Bernstein: Right.

Boehm: No...and providing zooming capability?

Bernstein: Absolutely.

Boehm: Right.

Utley: Which is the way you have it worded in claim 1.

Bernstein: I don't care if you built the picture and your frame size was "x", but that wouldn't achieve anything that we thought was cool. That would just mean you have an oversize picture in a frame and you could move around by grabbing the picture. By the way, that brings me to what made us start thinking about this was your Adobe example. You are grabbing a larger image, but you're moving it around kind of clumsily and it's not achieving what we achieve. Do you follow? Because you're just grabbing and kind of moving. As a matter of fact, there's a technology that's out...

Boehm: Yeah, but you can zoom, zoom, zoom in there.

Bernstein: Yes, straight in, and then you've got to grab it.

Boehm: Yes.

Bernstein: And move the larger image from that portion around. There's a technology called [Zif X] out today that allows for something similar to that, but yet it's very annoying that once you're in, you're in and have to grab and move around. It's a much different effect and feel than what you get when you look at our images and grab and move around. You know what I mean? In our image, the whole thing is there pretty much.

Armstrong: And this is a distinction that we begin to make on page three where the ability...our art allows you to, on a single image, once that image is

received by the system or displayed on the display system, it is complete. You're able to zoom in and pan around on it, and there isn't a requirement for the system to re-draw the image or any section of the image.

Utley: No, no, no, you can't say that.

Armstrong: Why? Let me first say what I'm saying, then we'll take out the parts that are wrong. Then the difference between some of our competitors is that they require if you are to zoom into an image and look at that zoomed portion of the picture and then pan at that zoom level to another section of that image, that image needs to re-draw the new information in order for you to see it.

Utley: And that's the trap because. In fact, the display system only buffers what is on the screen; and when you pan, you refresh the display buffer.

Armstrong: Even in ours?

Utley: Yes. You have no control over that.

Armstrong: But you have to because that's how you get a new image.

Utley: That's just the way the system works.

Armstrong: Right, right. You can't really do without what you're seeing on the screen. You've got to redraw.

Armstrong: Well, maybe this is the distinction for..

Boehm: But you're not grabbing a new file...you're not grabbing more files.

Armstrong: Right, and that's what I was about to say. The distinction perhaps is for the delivery over a network, and that when it is delivered over a network, they require the transmission of additional data, whereas our data has already been received in its totality.

Boehm: Well, that's the exact thing that the Yahoo! Map will do, right? You want to zoom into a map...

Armstrong: Precisely.

Boehm: ...it grabs a new image, and there is the network. But what Eliot was saying earlier was well why not make the network the link to your hard drive.

Bernstein: Right, it is.

Boehm: So then do you have to go get more information off the hard drive? That's the question.

Bernstein: Yeah.

Utley: No, be careful because in this day and age of virtual memory systems, there's a big grey area between the RAM and hard drive. The system may put part of that image on the hard drive.

Bernstein: It might put part in RAM; it might put half of it in the network.

Utley: That system can reside in several different places, and you don't know it. The system is managing the resources.

Boehm: I agree. So we have to figure out how to define in broader terms, just put it in memory or, I don't know, put it in sourced image storage. In other words, if a file comes over and gets lumped in Memory Means A, then it gets displayed to the display using however you want to do it, the question is, when you're zooming, do you have to go back to Memory Means A, whether that Memory Means A is across a network or on your hard drive or in a different PIM.

Bernstein: Or B, that's right. And that's a big difference, Brian.

Boehm: Because now you're getting real technical, and I don't know that you're not doing that.

Utley: The problem is that as you try to increase the precision of what you're saying, you have to be very careful.

Bernstein: Well, then we've got to take back "...one drawback of this type of system is that each zoom or pan operation requires the downloading..."—downloading is definitely the wrong word—"...of additional data over the network..."

Armstrong: Line 8?  
Bernstein: Yeah. That's all wrong.

Boehm: What page are we on?

Bernstein: We're on page 3, line 8: "One drawback of this type of system is that each zoom or pan operation requires the downloading of additional data over the network connection." Well, that's not exactly what we're...

Utley: We're talking about the art...the state-of-the-art now. We're not talking about...

Bernstein: Or mapping the travel?

Utley: We're not talking about our system.

Bernstein: Okay. Then that's fine.

Boehm: That's exactly what the advantage of this system is, isn't it?

Utley: Yeah, exactly. It's not designed to work that way. It's designed to be an integral component of the displaying system.

Boehm: And also we're talking about the Yahoo! Map.

Bernstein: Once again, however, it's not limited...Let me ask you this question because I don't see networks at all, right? Let's just look at the Yahoo! Map program.

Armstrong: I've got it on CD ROM.

Bernstein: No, no, that's okay. I know what we're doing. When you move, whether you move on a network or off the network, it grabs that image, and it's different than what we look like. There's a definite difference of how those two things work. Do you follow me, Doug? So it doesn't matter whether it's on your hard drive drawing the data, over a network drawing the data, what matters is that you perceive a difference between the way that the Yahoo! Map goes and grabs another closer section of the map and you're stuck there. Now you can't move back without going backwards to that other image or to the left to that other image or to the right to that other image. All these things are broken down into "other image" basically.

Boehm: Right, you're getting another what you called the hotspot. These are all hotspots.

Bernstein: Right. Which is that technically a new file?

Boehm: That's a new file.

Bernstein: Then maybe that's our differentiation.

Utley: We have to be careful.

Bernstein: Well, we don't go from another file.

Utley: No, but they're going to go...

Bernstein: They may say that's all in one file. Right.

Utley: So that would be...

Boehm: I think that they are going for another file because whenever you click on another map...

Bernstein: So Brian's right. So what? Even if they were and there were 8 million files, we could combine it into one and call it one. But then if you just made what we do...

Utley: You really have to be very careful because you don't know how they organized and structured that whole mapping system.

Bernstein: You know what you do, Doug? You describe the optic. You say this is what you see with their system, and this is what you see with ours.

Boehm: That's what we're trying to do here.

Bernstein: And let's not let that get too complicated. Let's what we're trying to get explained out over time.

Boehm: You can't.

Bernstein: If somebody wants....

Boehm: That's the key. That's what our frustration is as patent attorneys. We have to define your invention in the legal technical words. You can't wave your hands at it. If you do, you won't get a clean street of passage.

Bernstein: You can't say it looks prettier?

Boehm: It won't be upheld in court.

Bernstein: You can't say it looks prettier, huh?

Boehm: No, you can't. And that's what I'm saying. I agree with you...I'd love to say, "When it looks like idea technology..."

Bernstein: Well, explain to me what's happening in my brain, then, on an electrical signal impulse, because there's a definite perception definite between what I see, why I see it differently, and how it relates to what I do, which gives you a completely different spatial representation within an image because of the way that I'm manipulating data. See, I always looked at our technology--and maybe this stupidity might define something here--I always looked that when you take that big image of ours versus one technology where you could...let's say we both have big pictures, okay? Let's just say we both go with the big picture in a small viewing frame. One says you can move the frame or the picture and get a new image of that image, or you can go deeper on it by drawing another whole separate image, okay? Mine, I always looked at it is that it puts the frame in the center; and as you hit zoom, you're sucking in data towards you that's coming from the outside peripheral, not in separate little chunks and new images, but as one image, and it's pulling it into like a vortex, so to speak, and giving you that new data to let you zoom or move. Follow me?

Armstrong: Let me ask a clarifying question of Brian. When we transmit a file to a user, he gets the entire file into a .TMP file?

Bernstein: No, it's just hard drive.

Armstrong: Right onto a hard drive. Now, as he manipulates the image on his screen...as I zoom to level one and then to level two or level three, or I pan within it, what sort of access to that file is made inside the computer, let's say?

Utley: It varies.

Armstrong: Okay, but there is regular access back and forth to data points within the file?

Utley: Yeah. Part of the picture may be residing on the file; part of it may be in active RAM.

Bernstein: Doug?

Boehm: Um, hum?

<Utley and Armstrong continue their conversation in the background as Bernstein continues with Boehm.>

Bernstein: Let me ask you to try and help me define something. Take a frame...take a small piece of paper and make a frame, okay? You ready? You got a square piece of paper?

Boehm: You want me to cut it? Yeah, I've got a sticky yellow pad here.

Bernstein: Perfect. Use that on top of your patent application and put it in the center. In my thinking where I don't understand that, when we do the Prior Art, when we take that frame and we want to see the upper-left corner--now remember, our piece of sticky is in the center--we now want to go to the upper-left corner, we've got to move the frame over the upper-left corner and now we're seeing that part of the paper.

Boehm: Which means you're moving the viewing window over a huge image.

Bernstein: Right. Or, you're moving the image to fit in the frame.

Boehm: Right.

Bernstein: Okay. Now with mine, put that viewing window in the center again; and let's say you want to zoom in or go to the...zoom in, what you're really doing is sucking in this data, aren't you? You'd be almost pulling through the paper through that frame. That's why you have that attached.

Boehm: No, what you're doing is you're scaling the...

Utley: You're scaling the total image.

Boehm: Yeah, the total image specifically or to fit a reduced frame.

Utley: But they're leaving the image as it is.

Bernstein: Ah, then there is a defining difference.

Utley: I know, that's why you call it zooming. That's why the invention is described the way it is. That's why when I do all the pictures and show all those relationships, that's why it's designed...it's laid out that way.

Boehm: Can we define our zooming in...

Utley: In fact, there's a scaling...

Boehm: ...as a scaling mechanism?

Utley: ...viewing window.

Bernstein: That's the question...can you...

Boehm: Can we define our zooming as the scaling of the image to a different window, which is the normal way, I think, of zooming and scaling. I don't think of...

Utley: The effect of zooming is to rescale the target image into the viewing window, or some portion of the target image. What you're doing when you zoom in, you're now scaling the complete target image to a portion of the target image, and then what you're able to do is take that scaled portion and move it around to the entire image, but it's at its given scale level. You don't have to re-compute the for every portion of the image.

Boehm: Right. I think we're fine with what we're doing. I just think we've got to...there's this topic 14, to be cognizant of as we go through this, to make sure that we distinguish our zooming from hotspot zooming by zooming by grabbing another file.

Bernstein: Right.

Boehm: Our zooming is scaling.

Bernstein: It's also by grabbing another file because it would be our view that that set of hotspots could be combined into a single file, and it definitely could be designed that way. I mean, I could write the file to be that.

Utley: But it would be another file?

Bernstein: No. I could take all five hotspots and write them into one file.

Utley: So the [ ] will be in one file?

Bernstein: Right. Exactly.

Bernstein: So you've got to be very careful here of what the difference is. It's such a minute, yet it's such a profound difference what we do...

Utley: But it is another image.

Bernstein: It is another...right. Not another file. That's the difference, right.

Boehm: It's another image?

Utley: Yes.

Bernstein: Of course. A hotspot would be second shot of that image at a closer scale...at a closer view...but it could be combined in one file in the end, even though it's two separate images. And the hotspot could drive right through it in that single file source.

Boehm: I'm thinking that if the mechanism for our zoom is to do the scaling kind of on the fly as you're walking around, we never go grab for another file...

Bernstein: Or we never...

Boehm: Hotspot or not—I don't know how many you put in there—you see, what I'm worried about is, guys, don't you have hotspotting on your website?

Utley: No, here's what...

Boehm: Yeah, we've had them.

Boehm: You've had them, right.

Bernstein: Yeah.

Boehm: And that concept of zooming is grabbing another image file.

Bernstein: Well, but it has the same attributes as our current file, so it's just grabbing another enhanced digital image.

Utley: It's grabbing another image, and you don't have to define it as a separate file. Just grabbing another image. Let me tell you what I think differentiates between one of these systems and what we have. We have, if you think of the target image as the user interface, we have an encapsulated image. It is an encapsulated image that is [ ] into a file that is transported as a an encapsulated object, and it is manipulated as an object, and you zoom into that object. It is an object whereas in a mapping system, your object is really the whole map system, whatever that is, and...

Boehm: It's the system application for that.

Utley: Right. What happens with the mapping system is the application will create mapped objects according to what you...

<End Side 1, Tape 1; begin Side 2, Tape 1.>

Utley: ...which are then handled individually as you need them or as you request them. What we're talking about is an encapsulated image which has all these attributes contained within that encapsulation.

Boehm: And that would be true whether or not it's on a hard drive?

Utley: Right.

Boehm: I guess that's right...yeah.

Bernstein: And then, so we are striking downloading and additional data over the network connection.

Utley: Prior Art doesn't need that either.

Bernstein: Prior Art doesn't need that. To do Yahoo!'s Map, you don't need a network and you don't need more data over that network. You see, you'd never beat this argument. A network is just a hard drive because really in the end all you've done is like added a cable to your hard drive, and all you're talking about is the length of that cable, really. So networks are not applicable really to what we do. They are an added-value benefit that we can get through that cable quicker or whatever, but they are not the key. The network could be considered the cable between your hard drive and the display. You know what I mean, Brian? We don't need any...

Utley: No, but what you want to do is you want to make sure that you specifically address a network environment.

Bernstein: I wholly agree.

Utley: In addition. You absolutely want to make sure that the...

Bernstein: That's huge, as an additional wire, meaning it's got different...

Utley: Then that's the way to approach it.

Bernstein: Okay. You follow that, Doug?

Boehm: No. Slow it down.

Bernstein: Okay, it's all based on this. You can do our invention off a hard drive, and it's still cool. The fact that you can transmit it over a fat pipe or a small pipe or FedEx it has no bearing. It does what Brian says: it is more valuable in a network environment because it now has the attributes to give greater, richer data that you didn't think was possible in the shorter time. In the end, you see the network and the limited bandwidth, that never mattered because no matter, let's say your pipe was a toothpick, it would get there by tomorrow. Let's say your pipe is a direct line to the hard drive that's able to suck it up at 10,000 RPM or whatever...what's the term?

Boehm: RPM, yeah.

Bernstein: What's the term? Not RPM.

Boehm: Bits per second or...

Utley: BPMs.

Bernstein: Is that what you talk about a hard drive?

Utley: Well, RPMs.

Bernstein: Is it?

Utley: Well, yeah. Technically.

Boehm: The data transfer rate...

Bernstein: Yeah, I'm talking about how fast you can access your hard drive as a number that you buy hard drives based on 7200...

Utley: Oh, no, you buy millisecond access time.

Bernstein: Okay. So we're now 20 years into the future, and Brian invented a pipe that can suck down that speed he just said--hard drive speed. Well, there's no difference now, is there?

Boehm: Sell me on the concept that there's no difference between one hard drive and a network, and you're going to put the whole network industry out of business if you go there.

Bernstein: No, no, because it's a cabling system.

Boehm: I know, but...

Bernstein: It's just an accessed tour drive.

Boehm: And I think your point, and I think we've been there, that we're going to try and claim the broadest embodiment of your invention to be independent of any network or any hard drive or any...

Bernstein: And Prior Art also doesn't need any downloads or any networks. Prior Art, you can do Yahoo! zoom and pan, and Jim Armstrong just said it a minute ago, "I have it on my hard drive." And the program still operates by moving and grabbing this additional data. It has no network attached to it. He's doing it off his hard drive on a CD.

Utley: I thought we already covered that.

Bernstein: Well, I'm just saying one drawback of this type of system is that...and what it should say, if you want, is one drawback of this type of system in a network environment...

Boehm: I'd be happy to say that, but that says that over the network connection. The whole paragraph is to describe another example of prior systems.

Bernstein: But those prior systems don't require networks.

Armstrong: Let me suggest that...

Utley: Wait a minute, wait a minute. Come on. The first sentence says, "...over websites."

Bernstein: But all I'm saying is it doesn't have to.

Utley: Well, it's describing Prior Art, and this particular example is over Web sites.

Bernstein: Ah, versus Web CDs?

Utley: Yeah.

Bernstein: Or Jim's Yahoo! CD.

Bernstein: Okay, then I understand one example.

Boehm: And that's where we're going with the background. We're spinning our wheels here. Now if you want to add that to clarify, that's fine; but I don't want you to take away the distinguishing features that you have over networks because you may have to go run there some day.

Bernstein: Then do what Brian said: add it as an additional factor.

Boehm: Absolutely, but I guarantee you're going to have to argue this when we go to the foreign countries, like at the European office examiner, they're going to be really mean and nasty. I will bet you that they will find some very, very close art, and we will have to be throwing in all kinds...and my guess is that we're going to have to be throwing in all kinds of words that will have to be supported in the spec now to come up with something to survive a European examination if they find anything close, if we're not right that this is totally a broad concept. I'm just trying to...

Bernstein: Okay.

Boehm: We have to have a direction to run, and I need the ammo to do that; and I can't run to the network argument if you've either taken it out...

Bernstein: No, we're not taking it out, we're just...

Boehm: Or just minimized it.

Bernstein: We're not minimizing it. We're just saying you don't need it, but in that environment, it is also added value.

Utley: Let me point out one other thing why it's important...even more so. If you take the implementation like a Zif X, if it's local on your local system on your hard drive, you wouldn't care whether when you pan you reconstruct the piece that you're moving to.

Bernstein: Sure, that's different from what we do.

Utley: Because it moves very quickly.

Bernstein: But it still looks different from what we do.

Utley: But I'm not talking about that. I'm talking about when you move the magnifier, you reconstruct the piece that's coming into the window, but you would never see that. But over the network where you have elements which extend the response time of the system, it becomes a big deal, and therefore what you've got becomes more valuable...even more valuable over a network.

Bernstein: That's what I'm saying. Okay, I agree with that. So we're all hip on that.

Boehm: I think so.

Bernstein: Okay.

Bernstein: All right, let's move on.

Boehm: Where were we?

Bernstein: We're on page...

Boehm: Three, right?

Bernstein: We're through page 3. We're onto page 4.

Armstrong: Oh, and by the way, we also had a change on 21, if you noticed.

Boehm: Okay, let me run over the changes on page 3. <Reading out loud> "...additional map data" should read just "additional new images and sends it over..." that would be fine with me. Oh, how about "additional data as additional new images"?

Bernstein: "Additional source material"?

Boehm: That would be...

Bernstein: "Additional source data..."

Boehm: "...as additional map images"?

Bernstein: Yeah.

Armstrong: I don't think you need "new images." I think just "source data."

Boehm: But it's really getting a new image. It's getting a new map. You're looking to the file. You're going back every time.

Bernstein: Okay, "additional source data." Well, ours goes back and grabs more source data, too.

Boehm: Exactly. But we've got to be careful. But we're not going getting additional new images. I may have to argue that, so you've got to have that in there.

Bernstein: Yeah, okay.

Boehm: "...retrieves additional source data..." how about ", e.g., additional new map images"?

Bernstein: Right. That's fine.

Boehm: Okay, "...and sends it to the user computer." Wonderful. Okay. Next change.  
<Reading out loud.>

Bernstein: We already dealt with that.

Boehm: So what do I do? Scratch it? Do I leave it in there, or what do I do?

Bernstein: Well, that's just saying our stuff, so you're still talking about the prior stuff.

Boehm: We're talking prior art.

Bernstein: Okay, so that's scratched.

Boehm: Okay. Next comment...

Bernstein: And that, again, scratch that one.

Boehm: Okay.

Bernstein: Because we're talking Prior Art here.

Boehm: I'm setting up the strawman, but now we're starting to knock him down.

Bernstein: Okay. Also, "there's a need for a system and method for providing a digital image suitable for sufficient file transfers." I don't care if it's hi, low, medium.

Utley: On 21.

Bernstein: 21.

Boehm: It says...I just think that "high-speed file transfers" is a pretty good term of art.

Bernstein: Well, but then somebody will say, "Is that high-speed cable or modem?"

Boehm: Oh, I see what you're saying.

Bernstein: Efficient.

Boehm: Higher speed?

Bernstein: No, we don't care about speed. You could do it at 2400 baud.

Boehm: We don't care. Whether...

Bernstein: The other system didn't care either.

Boehm: Okay, that's fine. I'll leave it, then get rid of high...

Bernstein: You're just stuck with whatever speed the guy's got.

Boehm: <Reading out loud.>..."to engage in long and slow conventional continuous file downloads..."

Armstrong: And that's fine.

Boehm: What's a continuous file versus a regular file?

Armstrong: Get rid of continuous. You don't need it.

Bernstein: Yeah, you don't. What we were trying to say is that additional data there, but we've already got that.

Boehm: As long as...yeah. And that's why I need that language up top to say, "...additional data," "additional new images..." Somewhere where I can go argue that this is what we meant, and that's what the Prior Art does. Okay. Whew! What's on the bottom?

Armstrong: What we've been talking about. It's all we just discussed.

Bernstein: Forget the top comment.

Boehm: I can't really...it's cut off at the top.

Bernstein: That's fine. It's not relevant here.

Boehm: Okay.

Bernstein: "At least twice greater than..."

Boehm: "At least greater than..." that's good.

Armstrong: Not "at least," just "an image size greater than..."

Bernstein: Right.

Boehm: Yeah, duh! Okay. <Laughter> I'll tell you why I'm kind of groggy here now, later.

Bernstein: We were groggy, too. We were doing pans 'til 4:00.

Boehm: Til 4:00?

Bernstein: Yes.

Boehm: And then...so how many hours sleep did you get?

Bernstein: None.

Armstrong: Four.

Bernstein: Well, Jim got four. I got none.

Boehm: Okay, I got ya beat. You got none?

Bernstein: No.

Boehm: I spent the night at O'Hare.

Bernstein: Oh! That's my favorite place to sleep on a bench.

Boehm: On the bench. You got it!

Bernstein: I've been there a bunch of times!

Boehm: Yep, I hear you. I think Doug's black cloud follows him when he travels. Every plane I got on was delayed or broken!

Bernstein: It just follows the travel industry.

Utley: You should have rented a car and driven home.

Bernstein: I almost...I was thinking about that, but I was worried about falling asleep too.

Armstrong: So we're into line 15, 16.

Boehm: Okay, and that's the one that's scratched.

Bernstein: No, and 15 I would say, "The enhanced digital image file replayed on a client viewing device..."

Armstrong: "...displayed on a client's display system."

Bernstein: Yeah. The viewing window having a pre-determined franchise.

Boehm: Do that again. On line 15...

Armstrong: "The enhanced digital image file is displayed on a client's displaying system..."

Boehm: Instead of just...

Bernstein: "...downloadable..."

Boehm: Oh, I see. "...is displayed." I'm sorry, the same sentence is up above. "...is displayed..."

Armstrong: "...on a client's display system, the viewing window..." and then the rest is fine. And then line 22, get rid of "at least two" and create "greater than."

Bernstein: Where?

Armstrong: Line 22: "...a magnification factor greater than..." Wait, what does it say. Hold on. <Reading out loud.> "...a magnification factor..."

Boehm: Oh, "...a magnification factor of at least two..."

Bernstein: No, "...greater than one."

Boehm: Okay.

Armstrong: "...greater than one without pixilization."

Bernstein: We don't mean without pixilization. No...

Armstrong: Yeah, that's right. It should be, "...a magnification factor greater than one." We haven't yet, I don't believe, defined a magnification factor yet, though.

Boehm: No.

Armstrong: It comes later.

Utley: It comes later, yes.

Bernstein: And you can use, where I was telling you, Doug, where it was built onto a frame size, so therefore there's not additional data to draw from, therefore your zoom is zoomed to expanding the fixed pixel set.

Armstrong: And the next sentence, "The enhanced digital file further includes control data to allow the user to control the magnification factor." The question we had here was it seems as though we might be talking about the applet here.

Boehm: Yes, we're talking about the applet.

Bernstein: Then it's two different files.

Utley: Yeah, but...

Boehm: Yeah, but the file...oh, I see, we're calling the enhanced digital image file the encapsulated [sloping? full thing?].

Bernstein: Yeah, and there are two separate files that go to the user.

Utley: But it's encapsulated. It's actually [copied]. They always travel together.

Bernstein: They travel together, separately.

Utley: Right. Then we shift.

Armstrong: They travel together, but they are two separate files.

Bernstein: Virtually, it's one, but really it's two.

Utley: And associated with each other.

Armstrong: But we're calling it "the enhanced digital image file," but that's not necessarily true, Brian?

Bernstein: No, he's saying...here's what the story is, Doug. You got one file above an image, and there's not a single drop of other data in that file. It's called a .JPG...we use it. There's also a file...there's two or three files actually that get downloaded to the computer--or he has it on his system already, it doesn't matter to us--that allow him to zoom and pan.

Armstrong: And those are transmitted simultaneously.

Utley: There is additional data that is required, whether you have a plug-in or not.

Armstrong: Really?

Utley: A plug-in by itself has no information relative to the size of the image, to the number of steps you're going to take to drive into it.

Armstrong: But that's all built in...

Utley: There's another file, like an index file.

Bernstein: Oh, there is. Okay.

Utley: That's what I'm saying.

Bernstein: Okay. I gotcha. The person could have pieces of the file, like the applet, already on his system. But what Brian's saying is there's control data that goes with the image that was based on the image specs that then tells that interface to operate according to a set of assumptions. Right, Brian?

Boehm: Okay. I agree with you. I think what we're...

Bernstein: No, not within the .JPG file. You've got to be very careful. So we're not talking the same thing. Those are additional files.

Bernstein: Okay. Look at page 24, claim 1. "A method of dividing a digital image file comprising two elements, a digital image file...having an image file..." and "2. A user interface for the digital image file."

Bernstein: But we don't have to provide that. That could already be on his system.

Boehm: Oh, my gosh.

Bernstein: He has to have one to view the image; we don't have to provide it.

Utley: But he has to have the control data.

Bernstein: He has to have the control data to tell him how to view the picture, and that could one day be part of the .JPG file, I don't know. But today how we do it is as three separate pieces: an applet, a control file that tells him certain things about the .JPG, and a .JPG. Those things come packaged together. Now, a guy might already have the applet on his machine; therefore, I don't need to send him that packet--the user interface.

Armstrong: If that's true, don't we send it anyway?

Bernstein: No.

Armstrong: We don't?

Utley: We do.

Bernstein: We don't have to, but like...

Utley: We always do.

Boehm: But that doesn't matter with your infringer. That's how you have to think when we're talking about the claims.

Bernstein: What do you mean?

Boehm: Would the infringer on your patent send it?

Bernstein: No.

Boehm: No, he'd send it to you once on the hard drive...

Bernstein: He'd Fed-ex it to you, and then not...

Boehm: He'd start sending you images, and each time he wouldn't be sending...but each time you would be sending some kind of control data?

Armstrong: Yeah.

Boehm: That's what I'm thinking, and that could be interpreted as the second element of the claim here.

Utley: And that control data really controls the motion of the zooming and panning.

Boehm: Right.

Bernstein: But that could even lie technically on his computer.

Boehm: Right.

Utley: The only case where that would actually work is if you knew that the...

Bernstein: The size of the .JPG.

Utley: The size of the .JPG and the size of the window.

Bernstein: And that could be for medical imaging where they give you the specs and say send me every image of this size, you don't have to send every single little thing.

Utley: If that was the only kind of image that everyone wanted.

Bernstein: Okay, we're doing x-rays. There's an X, Y, and Z size; here's our frame size; we never need to get that control data from you because it's built in.

Utley: <Inaudible comment.>

Bernstein: Okay, but let's say we're dealing with a bone doctor who takes strictly legs, and it's always the same. I'm just giving you the case.

Utley: I know, I'd <Inaudible comment.>

Bernstein: Right, and I don't want to get around that.

Utley: The fact that there's radiography is a little bit more than one image size. Theoretically, you're right. You could find an application where there's one and only one image size, then you could put everything in the system.

Bernstein: A size.

Armstrong: MRI always have the same size, don't they?

Bernstein: Right-2'x2'.

Boehm: We thought we had this one nailed down.

Armstrong: In MRIs you also...

Bernstein: You did have it nailed. We're missing...you just want to say "optionally provided."

Boehm: You can't use the word "optionally" in the claim.

Bernstein: We'll change that rule.

Boehm: No you won't. What we'll do is isn't the user interface provided from somewhere...we don't say where it's provided.

Bernstein: It could be any of four hundred of them.

Boehm: It could be provided from his hard drive.

Bernstein: Absolutely. It could be provided from somebody else's hard drive through a network.

Boehm: Exactly. That's why this covers it because the word "providing" is so broad it doesn't mean that we're sending it. See, we're providing a file...the digital image..we're fine.

Bernstein: Okay, I see exactly what you just said.

Boehm: We're providing a file for viewing.

Bernstein: Totally. I totally understand. Well, now we might not be providing the user interface...

Armstrong: Yeah, this still reads that it is "...a method comprising the providing of..."

Boehm: Yeah, you might be doing only step A at a time.

Bernstein: Yeah.

Boehm: Oh, damn. Okay.

Bernstein: Oh, yeah.

Boehm: Okay, that's a good...let's...boy. Let me think about that. What I want to do is make the element A that you're providing a digital image file having this and that, and you're also having control data to work with the user interface for the digital image.

Bernstein: But you might not need the control data. That's what I just said to Brian. What if a client says to you every one of my images is going to be a 2'x 2', and I want 50 time magnification. You never have to give him control data, you just have to...

Boehm: If we make the second part, B, a dependent claim. We can try it.

Bernstein: Do you see what we're saying?

Boehm: Yeah, absolutely. We don't...

Bernstein: And we don't want somebody to get around this.

Boehm: Absolutely. Great broadening work here. We've been through this claim, I thought we had it, everybody agreed to it! And that's where I'm going to run into a problem. I can't re-write this from scratch and get it on file today from working at half-speed here, you know what I mean?

Bernstein: Yeah, we've got to change that, though.

Boehm: These claims are not final.

Bernstein: No, I know, I know.

Boehm: We can file the claims as-is without one word. What we need to do is correct and amplify the specification because we can never add to the specification and keep the same priority date. I can go change the wording of the claims as long as that wording and explanation and interpretation is in the spec.

Bernstein: Okay.

Boehm: So I agree with you. This should be a dependent claim for the bottom half of claim one.

Bernstein: He's going to make that dependent because we don't have to do it but we do.

Boehm: Right. That's how you do optional.

Bernstein: Yeah. I like that. And then claim 1.

Boehm: Now does that read on the Prior Art? You provide a digital image file, having an image...

Bernstein: No, that's the invention right there.

Boehm: Right.

Bernstein: That if you ever looked at what I did back there, it was create a bigger picture for a small frame.

Armstrong: Now if we circle back to where this started on page 4, in the last sentence, that refers to "a digital image file, including control data," which is not correct.

Bernstein: Where?

Armstrong: The last sentence of page 4. It's not "the enhanced digital image file" that provides that, it's an additional option file...

Bernstein: Element.

Armstrong: Right...that would provide that.

Boehm: Okay. This is the summary. I can throw the word "optional" in here. So the "enhanced digital image file A..."

Armstrong: "...may be accompanied by..."

Boehm: I think just "...may further include..." most of the time, right?

Armstrong: Well, no, the file itself won't. It may be accompanied by additional files.

Bernstein: It could be in the file. We don't know. One day you could write [ ] that has a header inside it that says, "Here's your information." all bundled into...

Armstrong: But this is an exemplary embodiment, which means that today the enhanced digital image file may be accompanied by an additional file which...

Boehm: How about "associated with"?

Armstrong: That's fine, I think. Brian? "Associated with an additional file containing control data."

Utley: I think you should have a very general statement which will always be true, and then you could say, "The enhanced digital image file is associated with control data which allows the user to control the magnification factor."

Armstrong: And the control data...

Bernstein: That absolutely always has to be there, Brian.

Utley: Yeah, okay.

Armstrong: Otherwise you don't have our invention, so that's the right answer. Did you hear that, Doug? "The enhanced digital image file is associated with control data," and that's the only change right there. Strike "further includes" and replace it with...

Boehm: But I thought you said that once you've associated the first one, you never have to associate the rest of them.

Armstrong: When we said the associated was something that was on the hard drive, so we don't necessarily send it, but it will continue to be associated.

Boehm: Okay, okay.

Utley: Yeah, it's always associated. The data always has to be there to prevent zooming and panning.

Bernstein: Right, whether it's in the file, out of the file, with three files, nine files, however the hell you want.

Armstrong: So it will finally read, "The enhanced digital image file is associated with control data."

Bernstein: Hold it. "The enhanced digital image file is associated with control data to allow the user to..."

Armstrong: So "is associated with" replaces the two words "further includes".

Bernstein: Beautiful.

<Inaudible comments.>

Boehm: The rest of this is just comments?

Armstrong: Just on this page, and actually we struck this...5, we struck that. You have to put digital later.

Boehm: I'm still on page 4, guys. With the comments on the bottom, can I scratch them?

Armstrong: No, we took care of that.

Boehm: Yes, I think we've discussed this.

Bernstein: No, that seamless zoom, I love that word because everybody else isn't a seamless zoom, we are. We seamlessly zoom around an image. Everybody else has to grab and give you another frame and stop you and you have to remove to a different image in the picture. We're seamless. You can just go around and move and go, and it's in a virtual environment really.

Boehm: Now is not the place.

Bernstein: No, I know. I just want you to know.

Boehm: We can if you want.

Bernstein: No.

Boehm: "Seamless..." I like that. Let's...

Utley: Seamless may mean continuous motion and zooming is a step procedure. There's steps.

Bernstein: That's true.

Armstrong: It's not seamless.

Utley: The panning is seamless, but the zooming is not.

Bernstein: Right.

Boehm: But, in fact, what I'm trying to get at is Eliot is trying to claim and describe the invention in terms of what the user sees, which is great. As long as you can come up with good words and descriptions, we'll throw that in because we may have to run there if our technical description, which is what I've been trying to do to define the boundaries, fall because some bozo did this before and didn't really make it very public because he didn't know what the hell he was doing. We may have to say, "Oh, yeah, but try putting it on his. It doesn't do what ours does even though we couldn't figure out technically distinguish it in our..."

Bernstein: Right. It was a brand new phenomenon that was hard to...

Boehm: But in order to argue that, I have to have your concept of seamless zooming.

Bernstein: Well, let's use Brian's. It's seamless pan and...what kind of zoom? Continual? Flowing zoom?

Boehm: It appears to be seamlessly zooming...what do you mean "seamlessly zooming"? Do you mean panning?

Armstrong: Both. Both happen seamlessly in ours. When you increase your Adobe picture, you move in and grab a new frame of reference basically at that stage. You're kind of stuck there. In ours, you're not. You can seamlessly...you know what I mean? You can drive further and further and still have the rest of the peripheral view. When you do Adobe, the magnification...is that true, Brian? No? Because when you pull in the painting and you've got the signature... you see, it's not describing what I want to say, the seamless for zoom. It is for pan.

Boehm: The seamless zoom, right. The seamless panning, I like that.

Bernstein: But the zoom is different in look.

Boehm: I agree. Now how do we describe your zoom versus Adobe or...?

Armstrong: Why do you feel different when you zoom in our picture than when you put some magnification in Adobe?

Bernstein: It's not seamless, is it? It's fluid.

Boehm: I don't feel any different. Sorry, Eliot! <Laughter> The only difference that I feel is that I know I'm going to end up pixelating yours and all bitmapped images, whereas I know I'm not going to end up pixelating, I'm going to hit a brick wall, but it's going to be a clean brick wall, for Adobe, and that is...

Bernstein: No, it feels different. You're 100% wrong because you will be the only guy I've shown this to that's said that. Everybody found it unique and everybody who I showed it to said Adobe.

Boehm: For viewing an Adobe vector-based file?

Bernstein: Or a Corel pixel-based file.

Boehm: No, pixel based I'll give you, but yours is different. But when you're talking vector based, I think you can zoom vectors until the cows come home without pixelating.

Bernstein: But you can't...the perspective is different. When you take Adobe and zoom in on the image, you drive straight down to one point and then have to somehow have to move differently to get to other points than you do in ours.

Boehm: Yeah, generally you have to back up.

Bernstein: Right, or something.

Boehm: Zoom and then to go find out where the hell you are. But that's not always the case either, right Brian? Like Adobe PhotoShop or other...

Bernstein: No, I've been using all of these, and it's always been different. Our technique is different than all those. I've been using graphics programs.

Boehm: Yeah, I know, and haven't you seen a graphics program that shows you where you're zooming? I know what it is! On Adobe IV, when you zoom, the left window when you have it there with the bookmarks, it'll show you where you're zooming.

Armstrong: It has the box around that area? Kind of a miniaturized photo of it?

Boehm: Exactly.

Armstrong: Yeah, I've seen that too.

Bernstein: But that's just trying to give you what we give you in a pre-pack...ours encompasses that without having to need that. See, there's a difference that every engineer in graphics that's ever seen that has said "cool," not "oh, I can go over in Adobe and move around images."

Boehm: That's why I wish I were an expert in this graphics area. I would have figured this out...the difference.

Bernstein: Well, now that you say you're not, I need somebody to step in who can because I think that we should file with what we have here, but this area needs to be absolute, not less kind of vague. Because there is a critical difference. It is something that can be optically seen, so therefore it can be electrically defined.

Boehm: And we're trying to do that in the video side with Chris Taylor.

Bernstein: Maybe we do that with him on this. You want to ask him?

Boehm: I don't...he's going to have a kid this summer, and I think he's not even going to be around much in August.

Bernstein: Well, maybe he's got somebody.

Boehm: Yeah, maybe he knows of somebody.

Bernstein: Or go over to my old alumni at Madison, their graphics engineer.

Boehm: This is a...in order to protect our butts, we have to do that by September 1, and that's a big thing to do.

Bernstein: Why? I thought we could always go in and amend our claims on this stuff.

Boehm: You can amend the claims as long as it's supported in the spec. Now if we have to get down to the nitty-gritty of the definition of the technical excuse to amend your claims to distinguish over what has been done before...in other words, if we have to limit our claim to the histogram between a range of X frames per second and Y frames per second, that is our invention. If you incurred less than—I don't know what the histogram shows...17.6 frames per second—that is not our invention, and we may have to go there, to be that narrow to survive if somebody else has done it at 17.

Bernstein: Wow, wait a minute! I hope that's not correct because at lower bandwidth you might have only 17 frames, but you have greater data. But let's get to video later, right?

Boehm: But my point is that you want support in specification, including technical excuse language, because I made need that to put that in the claim to make your patent survive.

Bernstein: Well, let's put something in here that defines this.

Boehm: Yeah.

Bernstein: Something that defines the...

Boehm: But the point is that we can't hire a technical expert to get the...

Bernstein: Then let's get someone in then we'll get a technical expert to define later.

Boehm: If it's to be considered new subject matter...

Bernstein: No, it's never a new subject matter because the first image that did this, did this.

Boehm: No, no, no...new subject matter for the document on the day you file it. They don't care about what you did in your basement. The patent office doesn't care. They care about the words and figures that you put on this paper

when you file it. That's all the patent office cares about. You can't go back...

Bernstein: That's not what you told Chris the other day. Chris said, "What happens with the Mom-and-Pop inventor who later discovers the equation to what they did?"

Boehm: Finding who was the first inventor, that's in an interference. The question isn't whether the patent's valid or not in the scope of your claims, the question then is was Mom and Pop doing it a year before the other guy? But if Mom and Pop didn't describe their invention in the spec, they will never get to an interference or the interference will be blown away because it didn't meet the rule that you have to clearly and distinctly and accurately describe the invention.

Bernstein: Well, we clearly describe it, but we might not know the technical underpinnings, and I've got to go recheck my notes, but I think that's exactly what Chris Wheeler asked you.

Boehm: Absolutely, and I agree with you. We don't need to know the reason why.

Bernstein: But later we can put it in?

Boehm: If it does not add new subject matter.

Bernstein: But this wouldn't be new subject matter, this would just be an explanation of why.

Boehm: Yeah, but if we're up in the fog right now and we are using words that are so broad...let's say our claim said, "Our zoom and pan works really neat." That's our claim. There's no way we're going to be able to go back and say it really means having a frame rate between 30 and...

Bernstein: Then you know what? Put in the word "seamlessly" because I'll be able to argue that until the cows come home that there's a difference between what we do and what they do, and somebody will argue out what seamless meant.

Boehm: You won't get the chance to argue. If we put the word "seamlessly" in the claim and it's not supported in the spec, the court will determine by itself without ever talking to you what it thinks "seamlessly" is.

Armstrong: Do we have to then, in order to cover this particular issue, do we have to get into a description of Prior Art and the standard by which zooming and panning is occurring in Prior Art, and then distinguish as clearly as possible in words, how ours is differentiated from it?

Boehm: That's the ideal way to do it, Jim. That's why I'm saying, and if all of us knew that technical underpinnings, this would be a much more [ ] written document...

Armstrong: Is it necessary, Doug, to describe it in terms of technical underpinnings, or can we describe it in terms of a user's observation?

Boehm: You're halfway there. "User's observations" would probably give us sufficient...

Utley: "...allows you to seamlessly pan..." and all the <inaudible comment>

Boehm: The claim will be interpreted by the spec.

Bernstein: That's true. <Responding to Utley above.>

Utley: Now the only differentiation is the zoom without pixelating.

Bernstein: Okay. I'll agree with that.

Boehm: And then you saw that I went to umpteen degrees to define what the hell pixelation was because that's a word in my claim. Do you see that?

Bernstein: Yeah, that's fine, and I'm going to concede on that because Brian just made a good point.

<Everyone talking at once.>

Boehm: Because [ ] will know the reason why in terms of [ ], but you do have to know enough about what you're doing in order to convey to the average person skilled in the art so he can make and use it and he understands just what the hell it is.

Bernstein: You see, Brian, that's my question now. That comes back to what's different between our zoom without pixelating versus theirs, but we've already described it in the way we built the frame.

Utley: Right.

Bernstein: That's the difference.

Armstrong: Okay, let's stick with that.

Utley: No, we bounded how you prevent pixelation.

Bernstein: Okay, then that's the key.

Utley: We totally bounded it.

Boehm: Okay, I'm lost now.

Bernstein: We're fine.

Boehm: ..."Seamlessly..."

Bernstein: Forget "seamlessly."

Boehm: Okay.

Armstrong: Page 6...we're off of 6.

Bernstein: No, on page 5, I only had one more question. Figure 2, just print film is what it's showing...it can be digital, and we talk about that later, correct?

Utley: We separate it now.

Bernstein: That's where I'm confused.

Armstrong: Page 6, "24 to 32-mm lenses.."

Bernstein: Why? We can use any lens.

Boehm: It's a "such as"...it's an example.

Armstrong: Okay.

Bernstein: As long as it includes every lens.

Boehm: Oh, sure.

Bernstein: Okay.

Boehm: And it says, "may include," but then if we ever needed...you see the reason we get so specific on this, Eliot, is because if somebody else just happens to be doing it out there in the world with a 2mm lens and it doesn't haven anything to do...it doesn't come out looking like yours at all, but it just so happens our claim reads on what the hell he was doing, we can come back and say, "Oh, no, that's not really what we were doing. We really meant this; and if this is important enough, we'll put the words '24 to 32 mm' as a dependent claim."

Bernstein: But it's any lens, isn't it?

Boehm: Yeah. My point is if this 24-32 means anything...

Bernstein: But we can still say any? We are saying "any," but we've defined something.

Boehm: If that was your preferred embodiment, that's the other reason.

Bernstein: Okay, that's fine.

Boehm: It's not limiting.

Armstrong: As long as it's not limiting.

Bernstein: And then "the image of a scene..."

Armstrong: On 10.

Bernstein: Just strike it...."of a scene."

Boehm: Okay.

Bernstein: "...has utilized an image which is being photographed."

Boehm: Okay.

Bernstein: And then you see "The image may be a print film image, analog image, digital image, negative, TV signals..." Can that be, Brian?

Utley: No,

Bernstein: No? "The camera captures shoot.."

Utley: Well, yes, you can use TV signals to create an image, but you can't enlarge TV signals.

Bernstein: Okay.

Utley: But you can use TV signals to get an image.

Bernstein: Okay.

Boehm: Isn't an image just broader than that? It's what the eye perceives; and once it's digitized, then it's a signal...or it's analogized, once it's captured in some format. So an image isn't really captured. It's a captured image when it's analog or digital or negative or film or something, right?

Bernstein: Um, hum.

Boehm: So a TV signal is already captured.

Bernstein: Gotcha. Okay.

Boehm: So what I'm saying here is the image...that the camera is utilized to do the capture.

Bernstein: I've got you. I'm set with that point, actually. Okay?

Boehm: And again, this isn't really...as long as you're best-moded in there, we're fine. And we shouldn't use the wishy-washy language "may be." That's not restrictive.

Armstrong: In line 20, we inserted the word "may" only because it also may not include a developing device.

Boehm: That's fine. The next sentence says that, though.

Armstrong: Oh, it does?

Bernstein: Jim, I noticed that after the "may" came in. And we definitely talked about a digital file, although...

Boehm: Then should we leave the "may" out? Because it will include some...you've got to develop print. I think he was right.

Bernstein: Well, what if it did it all on one system?

Utley: Well, it doesn't matter. It's still developed. Like a Polaroid.

Bernstein: That's what I was thinking was Polaroid.

Utley: That's what I thought, but it does have a developing device.

Bernstein: Yeah, actual images developing device.

Utley: Well, it's self contained.

Bernstein: Right, but it's still...

Utley: Part of the film.

Bernstein: And it's still developing it.

Boehm: I think you better leave the word "may" out.

Bernstein: Yeah, that's what we're talking about. Now my bottom comment is wrong here, but it definitely comes in when we describe a digital image because I'm completely confused by some of the logic there.

Boehm: Where? At the bottom of the page?

Bernstein: Yeah. On a digital image, when we size it, we say we don't make a bigger target frame than we have sourcing for.

Utley: Because as soon as you do, you introduce pixelation.

Boehm: You don't want to enlarge anything unless it's not been digitized yet.

<Everyone talking at once.>

Armstrong: It's part of the shooting.

Utley: A digital image is a digital image. It has pixels, and it has a height and a width.

Bernstein: And it's just placing them all in the frame.

Utley: You see, you place it into...

Bernstein: We've gone over all the developing and scanning and art frame, Brian. Right, by picking "I want my limiting size to be four football fields.

Boehm: Exactly! Now you've got the...[ ] source image. <Everyone talking at once.> But you don't...usually you don't enlarge that because if you do...

Bernstein: You start pixelating...

Boehm: ...pixelating, and that's...

Utley: Because you're enlarging pixels.

Armstrong: We just create it large, we don't create it small and enlarge it.

Bernstein: But we don't create it to fit the frame, we create it to blow away the frame.

Boehm: Am I understanding correct, though, that you never enlarge a digital image before you process it? That's not a step for a digital image. You only enlarge a print-film image, correct?

Utley: Right.

Bernstein: But what you do do is set...

Armstrong: Set your...the image that you're taking, your target image, add a size so that when it is taken, it is already at a size that exceeds the view window.

Boehm: I see what you're saying, but I don't call that enlarging, I guess.

Bernstein: Okay.

Boehm: Good, good.

Armstrong: Okay.

Bernstein: But let's make this clear because I don't understand it still within the verbiage that's here.

Boehm: Okay, what line?

Bernstein: Well, we'll get to it. That's why I said it's there because I started to get confused, and then later we'll get into it...into the mathematics of it. Just wanted you to be aware of that.

Utley: Okay, page 7.

Armstrong: Page 7...

Boehm: I'm sorry, I want to back up. Did he get into the enlarger? The only enlarging is on page 6, line 24. "System can also include [ ] 16 for enlarging the image which is developed by developing ..."

Bernstein: Yeah, that's fine.

Boehm: 99.9% of the time, this is going to be a photographic enlarging device.

Armstrong: Right.

Boehm: Right?

Bernstein: Yeah.

Boehm: You may have to use that word someday. I've got to have it in here.

Bernstein: Okay, yeah, because we wouldn't call it a "pixel-enlarging device."

Boehm: Exactly. "...the image may be photographically enlarged from a print film image," okay?

Utley: We said earlier "non-digital image source," in this section, did we not?

Boehm: Yeah. I just want to get the word "photographically" in there.

Armstrong: Okay.

Bernstein: Yeah, and then...

Boehm: "...be photographically enlarged..."

Bernstein: Well, it doesn't have to be photograph. Is it negative of a photograph...?

Boehm: Okay, what's the word then? I think it is.

Utley: Yes, it is.

Bernstein: Yeah, you would say enlarging a negative is a photographic enlargement.

Utley: It's your choice whether you enlarge it as a positive or a negative.

Boehm: What we're really talking is analog enlargement as opposed to digital.

Utley: Right.

Bernstein: Correct.

Utley: Optical and analog.

Boehm: Optical analog, yeah. "Optically enlarged"? No. Yeah. Well, photographically...

Utley: I wouldn't be restrictive...we'll, you don't have to be restrictive in that.

Boehm: Right. And photographically is generic.

Bernstein: Cool.

Armstrong: Page 7, line 19. The question here was just to clarify really more for Brian than anybody is are we able to take our digital image and, and I think we talked about this earlier, but send it right to a set-top box or something else.

Utley: Absolutely.

Armstrong: We don't say set-top box, and I think we said earlier set-top box presupposes that it includes a computer element within a set-top box.

Utley: But Doug, we could externalize that. We could make it explicit that there'd be personal computer, laptop computer, so and so, and set-top box...we could include set-top box in that string of definitions.

Boehm: Right, and technically, this is a little bit goofy. The way we're supposed...and maybe he did it, I don't know, but the first time the number 22 appears in the spec, should be the definition. And the numbers, if you noticed, are in order. The number 10 is the first reference number; 12, 14...that's how you find the reference numbers in a well-drafted patent application.

Bernstein: Well, that confused the shit out of me. Where the 10 came from, why it was there...

Boehm: Well, you start at 10...look at page...and this isn't a big deal for you guys, but look at page 5. You want to go straight 10. System 10, boink! System 10 includes camera 12. We go on up 12, 14, 16, and on up.

Bernstein: Yeah, I followed that.

Boehm: So you never need to know where those reference numbers were defined. That's why you define them up front, and that's where he missed it because 22 hasn't been defined yet but he's using it-computer 22.

Armstrong: I first shows up in line 17?

Boehm: Exactly. So let's genericize that and define it later. <Reading out loud.> "Alternately, a digital image may be provided from camera 12...may be provided directly..."

Armstrong: ..."to the user." In line 17.

Boehm: Um, hm.

Armstrong: "...to the user," and then the first reference is in line 21, where we define computer 22. That's fine.

Utley: That's good.

Armstrong: And then add to that "set-top box."

Boehm: Yeah, down below.

Bernstein: Or TV.

Boehm: Or whatever. We're getting there. Hang on. So it's "...to the user via a communication link..." I'm getting rid of "or cable" because again he hasn't defined 23 yet. 23 will be defined later because he hasn't even introduced 22 yet. That's what happens when you edit a patent application.

Utley: Doug, how would you take care of the situation where the set-top box may be integrated into the display device?

Armstrong: I think that might be covered in the next thing, where we say, "Computer 22 includes the CPU, a ROM, a RAM, and a display device..."

Boehm: Exactly.

Armstrong: ...“or input device. It also may include any hardware device, peripheral device, or software necessary to perform the functions described herein.”

Utley: Right.

Boehm: Yep. I guess we’re there.

Armstrong: That does get us through that.

Boehm: That’s the function of computer 22. Processes the digital image file, correct?

Bernstein: Yeah.

Boehm: We’re talking about figure 1 still, right? You’ve got the figures pulled out to the side like I do, right? Sure.

Bernstein: Sure.

Boehm: Yeah, you’re supposed to because when you’re reading this, you’re supposed to have the...

Bernstein: Mine are so bent up, it’s not that hard to get to.

Boehm: Usually the pages are so out of order, you can’t find the figures anymore. So “System 10...” see the number 10?

Bernstein: Yeah.

Boehm: “...includes computer 22”—that’s his box 22— “...configured to process computer image file created by the above-mentioned devices.” That’s the definite of 22. Now we...so it’s a processing device, right?

Utley: Right.

Boehm: It processes...right, okay. “Computer 22 may be a personal computer, a laptop computer, a mini-computer, a microprocessor, mainframe computer...” He’s going bonkers here...”a network computer...”

Bernstein: That’s good. A set-top box?

Boehm: Yeah, we can throw “a set-top box” in there.

Bernstein: You want these words.

Boehm: A toaster in there if you want!

Bernstein: Yeah, a toaster with a display.

Boehm: Right, and a processor.

Armstrong: The following sentence kind of wraps it all up or anything Doug has.

Boehm: Okay, so where am I putting set-top box?

Bernstein: Under...

Armstrong: After one of those things...after...

Boehm: But we haven’t shown NTD yet.

Bernstein: Yeah, but set-top box should be TV, too. Well, a set-top box plays through a TV...well, no, it doesn’t have to.

Armstrong: Let’s put set-top box after server computer...

Bernstein: And TV...or TV.

Utley: You said set-top box goes between...

Armstrong: The TV.

Bernstein: Or if it does what you said and the TV comes...

Utley: But we have to take care of the case where it's built into the...

Bernstein: Right. TV.

Utley: But then you depend on the CPU, the read-only memory, the RAM.

Armstrong: Does all that need to be in the TV?

Utley: Yeah.

Armstrong: Okay.

Boehm: My question is if you define computer, 22, as the thing...oh, my gosh, 22 isn't the user's...is this...

Bernstein: No, isn't that our computer?

Boehm: This is our computer. 26 is the user's computer and display and set-top box...I mean, 28 and 30, that's what I was thinking about. Where it says later in the next page, and say, if you look at the figure 1, 28 and 30, could be combined to be a set-top box or a TV or you name it.

Utley: Yeah, user computer.

Boehm: Or a toaster with a display.

Utley: Right.

Boehm: The point is, what is computer 22? That's the one that puts it on the Internet. That's your server.

Utley: Right.

Boehm: So you don't put the set-tops...

Utley: That's the one that processes the source image. It creates the file.

Boehm: It's the digital image file.

Utley: And it may be the server.

Boehm: It may be the server, but no matter what, it would be a computer. To put it on a hard drive or to put it on a CD ROM, right?

Utley: Right.

Boehm: That's what we're getting at here. It's the processor. It's the encoder, isn't it?

Utley: Yes.

Bernstein: Yes.

Boehm: So could it be a personal computer? Sure. It could be any of these he's got.

Bernstein: Yep.

Boehm: So, he's correct so far without changing.

Bernstein: Right.

Boehm: "Computer 22 includes a CPU, a ROM, a RAM, a display device, input device..." I would...he's defining it there. I would say, "...typically includes."

Bernstein: Yeah.

Boehm: Because it may be missing one of those.

Bernstein: Yeah, absolutely.

Boehm: "...typically includes..." blah, blah, blah. Good. "... computer. It may also include any other hardware device..."

Bernstein: That covers it all.

Utley: I've got to go back to page 7, because we made a change I don't think we should have.

Boehm: I'm still on 7.

Utley: Okay. Line 17. "Computer" is correct—we shouldn't put "user" there.

Boehm: You're absolutely right, but I can't call it computer 22 yet.

Utley: You're defining the processing unit.

Boehm: But the whole point of the paragraph is to say print film versus digital, and this print film is going to be enlarged and scanned. Alternatively, digital file is provided directly without first creating a print image. It doesn't matter where it's housed.

Utley: Right, just say that.

Bernstein: Let me ask you this. Did you ever create a case where the analog camera takes the pictures according to the right specs and puts them on the film that way, or would you have to use larger film format?

Utley: No, you can't.

Bernstein: We can't go that way?

Utley: Well, but we do that with 4x5s and fill.

Bernstein: But it's still 4x5?

Utley: Right.

Bernstein: When you've shot the picture, it's 4x5. You can't tell the camera to shoot this 10 times bigger?

Utley: No, but what you do is you scan it at different density.

Bernstein: And that gets it the bigger...

Utley: That creates the...

Bernstein: That's where I'm probably getting confused on this digital image thing. Yeah.

Armstrong: What if you just moved...what if you left line 16 and 17 alone and just moved the whole paragraph, beginning with line 21, in front of that, where you defined computer 22 before it's used in that sentence in line 17?

Boehm: Because it doesn't really flow there. What you're trying to do in that paragraph, he's says, "If the images obtained are digital..." he's describing the printing device 20 there, and that has to be described...20 has to go before 22. That's where he's introducing what 20 is.

Armstrong: Yeah, although with line 15, the sentence starting with "alternatively," that actually does not talk about printing.

Boehm: Let me read it again. I think you're right. "...if the image is obtained with a digital camera, a print image may first be obtained..."

Armstrong: What he's saying, you took a digital picture and you want to print it and then enlarge it.

Boehm: Yeah, he sends it to a printer, 20. "In this manner, print image can then be enlarged and scanned."

Bernstein: Right. So even though you don't have to...

<End Side 2, Tape 1; begin Side 1, Tape 2>

Bernstein: Tape 2, Patent Meeting, Docket 57103-120. Let's start on page 12.

Boehm: Wherever you want to.

Armstrong: And I think a lot of this is going to be totally fixed up by this change that Brian's made, or this correction that he's made, but I just want to be certain of it.

Boehm: And I'm a lot colder on that, guys, than Steve was, so just do a dump on me, make me the corrections, and I'll just do it kind of cold without analyzing it; and then when I read it again tonight, I'll see if I can...

Armstrong: Okay, the first thing Brian, I just wanted to make sure what you meant here. You want that to be VWW?

Utley: No, VIH.

Armstrong: Or VWH?

Utley: It can be either one, but I want it to be BIH.

Armstrong: Okay, well then let's talk about it because then what we're doing in the first line of this page, we're saying, "The viewing image height and viewing image width within the viewing window can be determined by comparing the source and the aspect ratio of the viewing window application." So the unknowns are the height and the width of the viewing window.

Bernstein: Viewing image window.

Utley: Why should you add aspect ratio? What it says if you compare the aspect ratios—you know what those are—

Armstrong: For the source and the viewing window.

Utley: Right. If you know what the aspect ratios are, you all you need to know is determine whether you are going to use VWH as the basis or whether it's going to be VWW.

Armstrong: Okay, so let's just say in the first that the source image aspect ratio is greater than the viewing window aspect ratio.

Utley: Right.

Armstrong: Then we're going to set the viewing image height equal to the viewing window height.

Utley: Right.

Armstrong: And then the next line, in order to get the viewing image width, we need to divide the viewing image height, which we don't know.

Utley: We do know.

Armstrong: Okay, tell me.

Utley: That it's equal to VW and VWH.

Armstrong: Oh, okay. So we're really saying the same thing?

Utley: Yeah.

Armstrong: Right, we're saying the same thing.

Utley: Yeah, but this is mathematically correct.

Armstrong: Okay, so we are saying the same thing.

Boehm: How about grammatically, Brian?

Utley: Pardon?

Boehm: But I'm partially kidding on that, but when you use the phrase "target image size," go to...well, you don't have...

Utley: Let's come down...

Armstrong: Let's come down. Let's say if that's false.

Boehm: My question is the language. You say on line 23, 24..."a target image size TIS has a TIW and a TIH." Does that make sense to call the window a TIS or a VWS for size? It's the same concept-width times height equals something. You want to call it area? That's even clearer.

Utley: Yeah, size and area are interchangeable.

Boehm: Well, maybe we should say that the target image area-TIA. "Having a target image width times the height..." That's beautiful.

Utley: They're interchangeable, so it'll work either way.

Boehm: Okay.

Armstrong: Let's just continue.

Utley: Let's say we're defining size as area, size is total number of pixels, which is area.

Boehm: My only question would be can I make the...at the top of page 12 where you said, "...the viewing image height, gauge, and viewing image width (VIW) within the viewing window area..." VWA?

Bernstein: Yes, that would be very clear.

Boehm: Yeah. You're also consistent with the target image area, but am I doing the wrong thing here, Brian, because you used VW earlier. Are you using it consistently?

Utley: Yeah.

Armstrong: Yeah.

Utley: Yeah, it's consistent.

Armstrong: See, just continuing with my thought pattern in the [us?] statement, I would just reverse the order of these and put VIW.

Utley: It's right there.

Armstrong: Okay, okay.

Utley: So if you pick it up off the computer copies that I sent, it's correct.

Boehm: Oh, okay. Is that what he did? Just plugged it in?

Utley: Yeah, this is what I sent him last Thursday.

Boehm: I see.

Utley: I had written it. This is where it was transcribed.

Boehm: Okay, well clue me in where this started, Brian.

Utley: So you go down to...

Boehm: Is this page 11 on your sheet, or not?

Utley: Page 1 on the aging process.

Boehm: We're at page 11 of the text. The formula starts on figure 7.

Bernstein: Yeah, you've got to go back to 11 and start him at figure 7.

Boehm: Yeah, start me off here so I don't blow this.

Bernstein: Right, he wants to get every term.

Utley: Oh, okay. On page 11, we define the aspect ratio.

Boehm: Right, which is on page 1 of your new...

Utley: Right, got it.

Boehm: Okay, that's what I wasn't sure. Brian, you still want me to use his text because it looks like...

Utley: Yeah, his text is fine.

Boehm: Yeah, it looks like he added words to your...

Utley: Yeah, no, he expanded...

Boehm: He expanded to make it readable.

Utley: Right.

Boehm: I see what you're saying. But the formulas, let's go through each one of the formulas and make sure they're correct, right?

Armstrong: That's what I'd like to do now before I run out of time. Brian, down in...you're on 12?

Utley: Yeah, right.

Armstrong: On 12 when we, after line 25, when we start talk about these equations, the statement here I don't see as being expressed right. Now I could be wrong, but the  $TIS = the TIW \times the TIH$ , agreed; but that also equals  $VIS \times the magnification \ factor$ .

Utley: That's correct.

Armstrong: When I re-do this formula, I understand that the magnification factor is  $VIS/TIS$ .

Utley: No. Not true. The magnification factor is  $TIS/VIS$ .

Armstrong: Actually I had it the other way- $VIS/TIS$ .

Utley:  $TIS/VIS$ .

Armstrong: It's the ratio of the viewing image to the target image?

Utley: Right.

Armstrong: So it would be  $VIS/TIS$ .

Utley: What's the ratio?

Armstrong: It's got to be one over the other, so we express it right.

Utley: It's the  $TIS$  divided by the  $VIS$ .

Armstrong: Okay, let's go to line 19. Then this is stated wrong: "The magnification factor is defined as the ratio of the viewing image to the target image." So that needs to be reversed.

Boehm: Right, but that's word for word what you had on top of page...

Armstrong: So it's defined as the ratio of the target image to the viewing image. Okay, so those need to be reversed, in which case we've got  $TIS/VIS = MF$ . If I'm solving for TS, I've got  $TS = VIS * MF$ . Now you're right. So down below is fine.

Boehm: Yeah, because the target is going to generally greater than the viewing image window.

Bernstein: Yeah, I just couldn't reconcile the formulas because of that transposition, that's all.

Boehm: Brian, what are you rationing? The size? The area?

Utley: You're rationing the area.

Boehm: The area.

Armstrong: And I like that clarification because it's...

Boehm: Didn't we way it's the ratio of the areas, or of...you mean the ratio of the viewing image area to the target image area?

Utley: Yeah, because when you magnify, you magnify an area. Magnification [is an aerial?] a function.

Boehm: Excellent.

Armstrong: So height time width is area, which would be good every time we referred to target image or viewing image, we called it viewing image area or target image area.

Utley: Yeah. The only reason why I picked size instead of area is because we talk about aspect ratio, and you begin to use the A...the A shows up in a number of different forms, and therefore I didn't want to confuse you with A in one being A, aspect ration, being the same as A in area. That's the reason why I did that.

Armstrong: Okay.

Utley: But we understand that area and size are synonymous.

Boehm: Let's just get rid of the A in aspects and make it SIR. That solves your problem, and then everything else is also...

Armstrong: That's right.

Boehm: ...three digits, right?

Utley: That's okay because that would define aspect ratio as R.

Utley: Yeah, that's fine.

Armstrong: And it goes on line 4 as well.

Utley: Yeah, all the way through.

Armstrong: Again, Doug, just in the interest of time, I think what I'd like to do is apply the semantic changes to the text after we've made sure that some of my math questions...that Brian and I are on the same page before I have to leave.

Boehm: And I'm not even sure we'll have to do that because I have to go through it when I do the edits here, and I will do the same thing that you are doing and make sure it makes sense.

Armstrong: Okay. On the top of page 13, then, what I was able to determine from this and confirm with Brian is that the source image aspect ratio is equal to the target image aspect ratio. The question is was this intended because, and we started to have this conversation, is that we may not have...we may crop photographs, we may want to stretch a photograph...

Utley: Let me explain how that works. First of all, in the image sizing program, you have the ability to change the size of the source image from a standard image. In other words, if you are cropping, you can specify the crop, and it will give you the right dimensions and it will fit it into the viewing window. So a cropped image...

Armstrong: But it lost data. When you crop, don't you cut away a piece of data?

Utley: It's before you get data. It's while it's still an image.

Armstrong: So it just smushes it in right?

Utley: Yeah. It puts it into the viewing window properly. So you can specify a cropped image source without any problem. But the case that isn't covered yet...there are two cases that aren't covered yet. One is where you digitally crop an image, okay, which you can do. You can get there, but you have to know how to get there. The second is, we have not covered the case of the panorama or stitch images.

Bernstein: But it's all one image in the end.

Utley: I know, but we want to cover the case of the dimensions because it assumes that you always fit the image into the viewing window, but in the case of stitched images, you don't.

Bernstein: Why?

Utley: You let the...

Armstrong: The image flows beyond it.

Utley: The image flows beyond the edges of the viewing window.

Armstrong: It does?

Utley: Yeah.

Armstrong: When you first look at a Hyatt Hotel pool shot, you don't see the whole shot. You see one shot, and then you pan around it. So you're not fitting the whole image into the viewing window.

Utley: Right.

Bernstein: We never were. Prior Art does that.

Boehm: On a photo you are.

Armstrong: And a Prior Art also gave you the ability to do that.

Utley: Yeah.

Bernstein: But on a MAC standpoint, he's not creating that formula for fitting a panoramic image...

Armstrong: Into a viewing window because you don't do that.

Bernstein: Gotcha.

Boehm: What do you do in terms of actually doing the math, Brian?

Utley: When I get that built into the image sizing program, what it will do is it will size the panorama into the viewing window vertically, and then it will allow you to pan horizontally across the image.

Boehm: Or vice-versa.

Utley: Theoretically, yes, although we don't have any examples of that.

Boehm: What happens if you wanted to...well, panning bigger, if you want it bigger...

Bernstein: You could do what you're saying and pan vertically and horizontally, we just don't do it.

Utley: But if you did that, then what I'm saying is you size the image into the viewing window so always see one dimension completely until you start zooming.

Boehm: My suggestion is that we don't...of course, we're not going to worry about that today, we don't have the time to do that. When we get to the end of this, then we'll say, of course, when you stitch images together to do pick your pan, you would first do the small size, and then whatever.

Utley: Right.

Boehm: We'll just handle it because the point of this math is to give us a basis for putting technical definitions into the claims if we run into the problem that we need it during prosecution.

Utley: Not only that, but it's also very helpful when we're talking to...when we're doing due diligence and we're talking to people about how does it work. This is how we sit down with them and say here's how it works. This is not something that's off the seat of the pants. This is something that follows a disciplined structure.

Boehm: Absolutely, and that buys you credibility.

Utley: Right, and then when we license someone, this is part of the documentation.

Boehm: The biggest thing is is it the best mode? Remember, we have to disclose the best mode of making and using your invention.

Utley: Yeah, and this is the best mode.

Bernstein: This better than blowing up images.

Armstrong: Let me just further throw into this source image aspect ratio equaling the target image aspect ratio for a second. I've got just an example written on the side with those people in a box. If we start with the small image here, which is a 6x8, and we blow it up to an 8x10...that doesn't matter, we end up with a source image that's 4x5, and then we just make the target image 4x5, right?

Utley: Right.

Armstrong: So it's not that one is...because the little one is not the source image, it's the bigger one that's the source image after we've done the cropping.

Bernstein: No, that's the target image.

Armstrong: No, that's the source image that goes into the system. Then we create the target image.

Bernstein: No.

Armstrong: Yeah, this is before it goes in.

Utley: If the source image is, say, at 8x10, what the formula does is tell you how to scan it so that you arrive at the right target image. So if you go down further, it says, "And, by the way, if you follow the program, the program says the right scanned density for this is this many pixels per inch," and that will produce you a digital image which has a magnification factor...

Armstrong: That's the next step. I think I know the answer to this, but in this example, which of these two things is considered the source image?

Utley: The source image is the 8x6.

Armstrong: The target is the 8x10?

Boehm: We have to define that, guys.

Armstrong: Okay, hold on because we've got...let me just follow this math. I just want to understand why I'm wrong here. In the source image then, we have an aspect ratio of 3:4 on an 8x6.

Utley: Because it's a portrait.

Armstrong: It's a landscape.

Utley: Okay.

Armstrong: This is a picture of my kids on the beach, but I want to frame it in a portrait frame, so I'm going to go in and I'm going to crop the edges and turn it into an 8x10 and blow it up.

Utley: Where do you crop it?

Armstrong: I'm going to crop it on the scanning program, let's say. I've got a print image, and I'm going to throw it on the scanner. I'm going to throw this on the scanner. I'm going to crop the edges of, blow it up to an 8x10.

Utley: You don't do that on the scanner. You don't blow it up on the scanner.

Armstrong: Okay, well let's say then I blow it up on a...let's say I blow it up before I scan it.

Utley: Right.

Armstrong: And then I crop it. I end up with an 8x10, which is an aspect ratio of 4:5.

Utley: Right. It's not portrait.

Armstrong: It's not portrait?

Utley: Right. 5x4.

Armstrong: Exactly, right, 5x4. I did that backwards. So now I've got...

Utley: An aspect ratio of 1.25.

Armstrong: Right, I've got a three-quarter aspect ratio for what you're calling my source image.

Utley: No, you've got...I don't know anything about that. All I know is that is this.

Armstrong: This is the source image. That's why I asked you which one was the source. This ends up being the source. <Everyone talking at once.> ...the original picture...

Utley: I don't know anything about that.

Bernstein: Why?

Utley: Because what you put in the scanner, the system considers to be the source image.

Armstrong: Although there is a step here...

Bernstein: Well, this is what I was putting in the scanner.

Armstrong: There is a potential step here is not a part then...

Armstrong: Because then the enlarged image is the source image.

Utley: Right.

Armstrong: Because there's a step before digitizing that says we can take an image of any size, create the ultimate source image from that in any dimension you'd like via cropping and enlarging, and then we will end up with what we are calling in these formulas a source image. But we don't talk about this. I don't know if it's important, but it's a step that confused me.

Armstrong: Brian's saying it's not important.

Armstrong: It's not important to this formula; but what I'm wondering if it's important to our process.

Bernstein: Well, certainly it's part of the process.

Utley: Well, no, if you go back through and you understand this, what your controllables are, what your scan density is, what your aspect ratio is, how you fit it into the viewing window, what your target size is, and if you know all of that, you can determine the trade-off between your ultimate source, whatever that be, I know nothing about that, and what you put in your system.

Bernstein: I recognize that. I'm one step before that whole process, and now we're taking ourselves outside of the math, and then we can table this and you guys can talk about it later. You just told me that this lower image is the source image.

Utley: Right.

Bernstein: Yet it's not what the client gave me. The client gave me this picture. Greg Manning gave me a baseball card with a whole bunch of header information and said take the header out, give me just the picture of [Newell] Lowell or whatever his name was...just the picture. So, I don't know if we want to include anywhere, if it's important, the step that is our editing of an original image before it becomes what we are calling a source image. That's all. And let's leave it there for right now.

Boehm: That's the same problem I was confused with, and when I look at Brian's figure to say that the target image is surrounding the viewing image, I get confused as to what he means by the target image.

Utley: Well, the target image is the file...

Boehm: What's the word "target" mean?

Utley: Because what you are doing is you create a virtual image into which you zoom and pan. It is a virtual image.

Boehm: Oh, so you're targeting to the virtual image?

Utley: Yeah.

Bernstein: Or you're targeting that big [ ].

Armstrong: What you're talk about is semantics, and I had the same conceptual problem on my first read, understanding the difference between target, source, and viewing.

Boehm: And viewing, yeah.

Armstrong: And that's something you guys can talk about, and that's just really a global change in semantics if you decide to do that. But I'd like to move onto the next question I have that's formula driven, and it's the scan density.

Utley: Right. It's not in here, it's on the image sizing program.

Armstrong: This?

Utley: No, the other one that I have where you put in your parameters, and it automatically computes.

Boehm: You can use an Exel spreadsheet with macros to do that with code. We have not written an application on that yet.

Bernstein: Well, that should be here.

Armstrong: Yeah, because we reference it. We reference...

Boehm: You reference the program?

Bernstein: We reference the math.

Armstrong: In line 11, we're talking about how we determine a minimum scan density, and we actually have a formula here, which I don't understand.

Utley: The minimum scan density says that you will scan at that DPI or...

Armstrong: That's height, or is it area?

Utley: No, it's scan density.

Armstrong: Okay, let's look at this formula then.

Boehm: Where are you? What page?

Armstrong: I'm on page 13, line 13.

Utley: It's the ratio of the source image height to the target image height.

Armstrong: Just height? There's no width...

Utley: No.

Armstrong: ...in there at all?

Utley: No, because you've got a fixed aspect ratio. The two aspect ratios are the same, therefore it doesn't matter. And if you try to use area, it's a square function, so it doesn't give you the right answer.

Armstrong: And does this end up giving us the dots-per-inch result?

Utley: Yeah.

Armstrong: So if I've got a height, then you're saying we're expressing the height in terms of pixels?

Utley: It can be either in inches or in pixels. Typically it's in inches because when you want a...your scan density is when you're scanning, and you're scanning is in...

Armstrong: Okay, then let's use an example I put here. If we have a source image of an 8x10, and our target image is going to be...let's fix this and call it an 80x100 so we keep the same aspect ratio...

Utley: Right.

Armstrong: We then end up with an MSD of the height...

Utley: Your target's going to be in pixels.

Armstrong: Okay, well this is what I want to clarify, then, because that doesn't say it. So the target...

Utley: The target is always defined in pixels. It says area in there, but it's always pixels.

Armstrong: Okay. But we don't always use the TIH in a formula in a pixel form.

Utley: You always use it in pixel form.

Armstrong: We do?

Utley: Yeah. That's the only way it's ever expressed.

Armstrong: Even up in these formulas and everything?

Utley: Yeah.

Boehm: Does it have to be in pixel? Can it be units?

Utley: No, it has to be pixels.

Armstrong: And the viewing image width is always in pixels?

Utley: Yep.

Boehm: Viewing target but not source?

Utley: Well, the source is whatever medium the source is in. If it's a 4x5 piece of film or an 8x10 enlargement, or whatever.

Armstrong: Well, let's follow this through then. So...

Bernstein: Then that's not a source image. The source image is what you create by forming the 4x5.

Armstrong: That's something we need to clarify.

Boehm: Exactly.

Armstrong: We need to be able to say the target image in these formulas...or to calculate them, target image heights, widths, and sizes are all...

Utley: Viewing window is in pixels, height in pixels. Okay. Source image generally in inches. I mean, I laid that out.

Armstrong: Okay. It wasn't in this one. But let's just look at this for a second. What would the number of pixels be on something like this if I've got 80"x100"? What would 80" be in pixels?

Utley: That's probably around 8,000.

Armstrong: 8,000. So we've got 8,000 pixels divided by the height of the source image is 8, so we have a scan density of 1,000.

Utley: Right.

Armstrong: Okay. That works. Fine. Okay, example 1. Let's go to example 1. Your assumptions, for example, you want to change from this sheet to the next, Brian?

Utley: Right.

Boehm: Are we doing example 1 of the...

Armstrong: On page 13, beginning on line 17.

Boehm: Are there changes, Brian?

Armstrong: Perhaps. We're going to go through it.

Utley: I'll look at it and see.

Boehm: Why don't we just go to the example 1 in your new?

Utley: Okay.

Boehm: Unless it's the furthest.

Armstrong: It's not furthest. Okay. So we've got a source. Everything's the same here. 320x48 is 400 pixels. Viewing image size is equal to 128. Target image size is equal to 2560. Good, we've got the square root in the formula now. The 1789. Target image height is 1431. Minimum scan density, I think is wrong.

Utley: No, it's not.

Armstrong: The minimum scan density is said to be...

Utley: You multiply the minimum scan density...

Armstrong: Right, but let's just do the formula. The minimum scan density is what? Defined as the target image height, which is what? 1431, right?

Utley: Right.

Armstrong: Okay. You have 1789.

Utley: Oh, I'm sorry. The target image height...you start with the target image width...you can do it either way. It's 1431 is the target image height.

Armstrong: Right. That's the formula. So in order to use your formula, it's 1431 divided by what?

Utley: By 4.

Armstrong: Not by 5?

Utley: No.

Armstrong: Okay, so that's just a general correction. You actually end up with a very similar answer, mildly different by only, I think. .75, but it is different. Oh, no, you don't. You get...wait a minute. <reading to himself> ... is the target image height in example 1...it may just be a rounding function...

Utley: It is.

Armstrong: But as we show the math, we should show it consistent with the formula, right?

Utley: Yeah. What does it say?

Armstrong: 357.75.

Utley: Right. Just round it up to 358. There are no such things as fractions of pixel settings.

Armstrong:  $1789/5 = 357.8$ , so it's slightly different, so that's why...

Utley: It's not different. You can't have a fraction of a pixel.

Armstrong: Don't get upset about this. You have an error in the way you show this, and all I'm doing is pointing out that we can't have it in the patent that way. We have a formula that says it's height divided by...it should be 1431 divided by 4. We just went over that on the previous page. That's all I'm saying. Either way, we need to express it as 1431...that's all I'm saying.

Utley: I see what you're saying. I understand.

Armstrong: Do you have that, Doug?

Boehm: No, I'm still trying to figure out...

Armstrong: Okay, look on his new sheet.

Boehm: Yeah.

Armstrong: The only correction to his new sheet on page 1 is the second to the last line. "The minimum scan density equals 1431 divided by 4 equals 358." That's the only change.

Boehm: Okay.

Armstrong: Now, let's see...did I have anything on this one?

Boehm: Good catch, Jim. Thanks.

Bernstein: On 2, I think we have the same file [ ].

Boehm: What?

Bernstein: We're best friends for this very reason. I sucked in math.

Armstrong: This one's just the exact same thing on 2 where we're just using the wrong number. We get the same answer, but we're using the wrong number. The minimum scan density, second to the last line, should be 1431 divided by 4 equals 358.

Boehm: Which is the same...

Utley: It's the same number.

Boehm: The same fixes as...

Armstrong: Exactly. Same number, it's just the equation is expressed incorrectly.

Boehm: It's the same text...the same change we made to example 1.

Armstrong: Exactly, exactly. In the middle of that example 2 on page 4, there's a statement that says, "The target image size equals the viewing image size times twenty." I can't find where that relationship is defined in a previous example where we say that the target image size equals the magnification factor times the viewing image size. And if it's not, we need to just put it in because it's obviously right, it's just not stated.

Boehm: On the top of page 2, when you define magnification factor, and you're saying it's a ratio of the viewing image to the behind-the-scenes target image, so it's going to be a less-than-a-one number. See, we're getting targets and viewing screwed up. The terminology, I think, is screwing us up, right? Because weren't you using magnification factors of twenty? That would have a viewing image of twenty sizes larger than the target image.

Bernstein: That's what we found last night...

Utley: No, the magnification factor is the...the target image size is the viewing image size times the magnification factor.

Boehm: Right, how do you define the magnification factor...oh, that's what...the viewing size...

Armstrong: But in the patent pages, do we have that, Brian, somewhere? Because I looked for it, and I couldn't find it.

Boehm: It's page 12, the middle, it's where he defines magnification factor, and it's not where it should be.

Armstrong: Right, but I don't see it there.

Boehm: "...ratio of the target..." we're going to call it "...the target image area."

Utley: It's down on the bottom. "The target image size is the target image weight times the..." "...which is equal to the..."

Armstrong: There it is. "...viewing image size times magnification factor."

Boehm: Right.

Armstrong: Okay, so that's the one I had a problem with because we inverted those two things, so that explains that. That's fine. Let's move on. Now, did I have anything else on examples? Example 2...example 2...

Boehm: One more point. When you say the magnification factor, it's really the maximum desired, isn't it? Magnification factor, Brian?

Utley: Yeah.

Boehm: Because magnification factor is any zoom. What you're worried about is the maximum, your deepest, right?

Utley: Right.

Boehm: Okay. So I want to make this MMF for Maximum Magnification Factor, okay?

Armstrong: Okay.

Bernstein: Where was that?

Boehm: I'll fix it. Don't worry about it. It's really at...

Utley: The magnification factor is the maximum magnification factor.

Armstrong: Always?

Utley: Yeah.

Armstrong: What about the minimum?

Utley: The minimum is 1.

Armstrong: 1 plus something?

Utley: Right. Now, then, this is what you're designing it to.

Armstrong: Page 5 of Brian's new thing...page 5, example 3. This minimum scanned density, again, I think is wrong. We've got a target image...what is the formula again? I keep forgetting. Target image height of 1610, right?

Utley: Where?

Armstrong: Example 3. 1610 divided by the source image height, which is 5. So 1610 divided by 5 is 322. So it's just the expression is consistently just reversed.

Boehm: And you're on page 5, it's the minimum scan density?

Armstrong: Minimum scan density equals 1610 divided by 5, which equals 322.

Boehm: Okay.

Bernstein: What is that last? "The photos can be any scan density greater than 321"?

Utley: As long as you scan at a higher density than that, you will never pixilate.

Armstrong: Since we get to this answer here, that's his conclusion. You have to be at least 322...321.

Bernstein: For that particular example?

Armstrong: Yes. That's the answer to his equation.

Utley: What this is telling you is that when you scan this image in, you've got to do...you've got to start at least at this density.

Bernstein: To get that result of 20?

Utley: To get that result.

Bernstein: I finally understand.

Armstrong: Okay, let's go to page 20 in the patent file.

Boehm: Okay.

Armstrong: It was...actually, never mind. At the bottom of page 20 where I say, "really?" I already talked to Brian; I understand completely why that is now.

<Difficult to understand; Boehm and Armstrong having a side conversation.>

Boehm: Okay.

Armstrong: And as long as this one has the square root thing in it, which I'm sure it does, then we're fine on that example.

Utley: It does.

Armstrong: Okay.

Bernstein: Doug, you're supposed to be picking up these square root issues...

Boehm: Hey, you guys are supposed to be picking this up. Actually, I was hoping you could work closer with Steve than the timeframe we had; but I'm taking the last pass at it here, so I'm going to try and get another pass at it.

Bernstein: Cool.

Boehm: And I am trying to get another pass at it, and I would have done the same number exercise that you've done for us, Jim.

Utley: <As an aside to Jim and Eliot.> Can you meet me in Philadelphia on Friday morning?

Armstrong: I think so.

Bernstein: This Friday? I don't know.

Armstrong: Well, I need to check my calendar.

Bernstein: Other than just checking?

Armstrong: Yeah. What time?

Utley: Can you pick me up at the airport?

Armstrong: Yeah.

<Continued background conversation between Utley and Armstrong.>

Bernstein: Doug, why don't you make these changes?

Boehm: Yeah, I will.

Bernstein: Start with this because I think we can pick up our changes later, can't we?

Armstrong: Well, let me give you a few more that I wasn't real sure about.

Boehm: Well, what's the...what do you think is the extent? If we go through page by page, you're right, it's going to be forever.

Bernstein: No, I just want to go through my comments real quick. If Brian has any additional, that's fine.

Boehm: Okay, and remember we can change the wording of the claim as long as it's recorded.

Bernstein: No, no, this is the body. These are minor fixes.

<Everyone talking at once. Shuffling as Armstrong leaves the room.>

Boehm: Thanks, Jim, for leaving.

Utley: <Chuckles.> He's going to catch a plane.

Boehm: Hope you had better luck than I did.

Utley: Yeah, really, and the weather here right now is pretty bad.

Boehm: Yeah, that's what it was yesterday.

Utley: Where did you get stranded?

Boehm: It's a long story. Is now a good time?

Utley: How long is it going to take?

Boehm: What happened was I left about 6:00. Everybody said it's no problem to catch the 7:25. There was a terrific traffic jam just north of the airport, bumper to bumper for miles, and it got to be 7:10 before I was at the airport. I was flying around lost, trying to find the Avis. Got to the bus at 7:15.

Yelled at the driver and said, "I've got a 7:25 flight. Can we do it?" He goes, "I don't know!" So we got in and tried it. They dropped me off at the United gate. And I dropped up the Avis car without filling it with gas, you know, just get my butt over there. I get up to the drop-off, and thinking, oh, I gotta run, and so I run like crazy to get to the get and find out different. There's a whole bunch of people standing there, you don't have to run. It's been delayed. So my flight out of Ft. Lauderdale to Chicago was delayed first of all for storms, and then mechanical problems. I got switched all over the place. 7:30, 8:30, 9:30, and you wonder what's going on. Half the people bail out and go to Miami and fly out of there, and they keep saying, oh, we don't know when it's coming. I'm thinking, oh, crap, I'm going to miss my 10:30 connection in Chicago to go to Milwaukee, so I called and found that there was a bus. There was an 11:30 bus, and I thought, hey, I'm gonna make this, no problem. The stupid plane didn't leave until 10:00, got in Chicago at 12:30, missed the bus, missed the only connection out to Milwaukee. I'm thinking the next one's 8:00 in the morning, I'll just go get a hotel, and it should be on the airline, right? Because they made me miss my connection. So I stood in line 45 minutes with other people who had missed their connections to try and get the hotel or the baggage lost or some damn thing. Here it is 1:15, 1:30, and they say...and this guy in line behind me, he's in line for the second time because they sent him in a cab off to a suburban hotel--not the Hotel Hilton, no way--some suburban hotel--sent him out there, he got there and there was no room, so they brought him back, and now he's in line again! Talk about getting doubly screwed. Anyway, I get up to the counter, and she says, well, we can send you out to Arlington Heights--and I know the area, I grew up around there--a hotel, and we've got to get you a cab, and we'll bring you back, and we'll pay for the hotel. And I'm saying, when's my flight? 8:15. I've got to be in there by 7:30. You're going to get me out there, and I would have gotten maybe three hours of sleep. It was just ridiculous. So I said, what are my other options? I'm pissed. So she turns around and grabs a pillow and a blanket and says here's your other option. Everybody is kind of fuming, but we're all taking it with a grain of salt. The guy next to me says, oh, you get the Hotel O'Hare, and you're headed over to Gate B-20? That's Suite B-20!

- Bernstein: And it is. I've done that so many times. Slept there many a night. Slept on my bag.
- Boehm: I got in here this morning, landed at 9:00, and drove to work at 9:30. I haven't been home.
- Utley: And you are feeling the same.
- Boehm: Oh, yeah, really crunchy!
- Bernstein: Okay, let me whip through this real quick. Skip the comment on top of page 9. On the bottom of 9, why can't these images from videos be put back into video format and then zoomed on? Why can't you take the images you captured in video, enhance them, and then put the 29-per-second back in, thereby have zoomable video? And panable? You can because a video is simply 29 images. So if we've captured the ability to do this on an image, we can create video by creating a series of 29 images per second.
- Boehm: Okay.
- Bernstein: It can be easily done. Here's the change. On line 21, just add: "A single or all captured frames from the video camera may be further processed as a digital image, and then reassembled back to video." Take all the frames, do...
- Utley: What are you going to do with it?
- Bernstein: You're going to enlarge them, however you do that once you capture them. If you were just printing them, you could print the images, enlarge them, put them in a viewing window, and run that video through there and let somebody zoom in.
- Utley: How do you run the video through a viewing window?

Bernstein: Doesn't the video have its own viewing window?

Utley: You run it through a player.

Bernstein: And the player has a viewing window.

Utley: And the player has a viewing window.

Bernstein: Now, if the image is bigger than the viewing window, you'll be able to...if the picture is bigger than the set viewing image, you'll still be able to...

Utley: The picture will still be in the standard frame size of 320x240.

Bernstein: They'll be in a frame size, but the picture will be much bigger than 320x240.

Utley: No, the picture can't be bigger than the frame size.

Bernstein: On a video? Why?

Utley: Because that's what you cover.

Bernstein: I see what you're saying. But would you be able to take a 20...no...and play them through...okay, scratch it.

Boehm: All this stuff at the bottom of the page?

Bernstein: No, left side.

Boehm: Just the left side?

Bernstein: And then still make the change on 21: "A single or all captured frames from the video camera may be further processed."

Boehm: But we're only talking a single frame is processed as a digital image.

Bernstein: So it won't matter if you do it multiple?

Boehm: Yeah, but you're doing single, multiple times.

Bernstein: Yes, okay, fine.

Boehm: Maybe we should say...no, single is fine. I think...

Bernstein: Is a scanning a digital enlarger to me? To my thinking?

Utley: Yes.

Bernstein: I just don't understand why?

Utley: Yeah, it's a digital...well, yeah, the way it is is you change the scan density. That will give the effect of the enlargement.

Boehm: Is that said here, Brian?

Utley: Yeah.

Boehm: Does that say that in here? That changing the scan density is effectively enlarging it?

Utley: It's enlarging it because you're increasing the number of files.

Bernstein: What you said, sir, because it confuses me!

Boehm: And not only that, we may need it. If we're practicing that...are we practicing that?

Utley: That was the whole point of going through the magnification factor and creating a scan density because you've got to create a picture large enough to be what you want it to be as a target image.

Boehm: Never mind!

Bernstein: Okay, but you see it now, right?

Boehm: Yeah, absolutely. I just didn't...

Bernstein: And to me, who doesn't understand the math of all that, it seems very strange that you can take a digital image and it's achieved everything by blowing up...

Utley: Optically.

Bernstein: ...optically. And then you're still putting it in the frame and framing it right until it works in a zoom environment. If I could understand the math, I'd understand that. I understand the theory.

Boehm: Brian, I know what I'm talking about.

Utley: I never questioned that! <Laughter>

Boehm: I do, all the time! No, when I'm thinking enlarging, I'm thinking of analog development enlarging.

Utley: Optically.

Boehm: Optically enlarging, not digitally enlarging. Are you digitally enlarging the photo when you up the scan density? No.

Utley: Let me give you the ...

Boehm: You're upping the scan density.

Utley: Yeah. If you enlarge a photograph, you can set it at a lower scan density than if you don't, then you have to scan at the high density to get the same result.

Boehm: Exactly. That's why I don't think that a scanner is technically an enlarger.

Utley: It performs a function. Because it has a variable scan density...

Boehm: Yeah.

Utley: Enlarging is better [in] the size of the file that is produced. And the size of the file is proportional to the size of the image.

Bernstein: Oh, I see. I see it! It has to be. It effectively does the same thing.

Boehm: Yeah, I guess the scanner can do enlarging, yeah.

Utley: It can produce two different-sized files based on the same photograph being scanned at two different densities.

Bernstein: Which is two different sizes. You see, the brain doesn't think that. You just think 600 versus 900 just means more dots or something. Period. It doesn't mean that you have more area.

Utley: That's right.

Bernstein: But is it?

Utley: When you have more area, you scan at a lower density. You scan at 200 DPI versus 600 DPI.

Bernstein: But what if there's no scan, no density...the camera does that?

Utley: Then it's fixed by what the camera does.

Bernstein: Can you set the camera to be the enlarger?

Utley: No, you have very little control over that. When you go through the digital example, that's what happens.

Bernstein: What?

Utley: You say, well, I got this digital picture, and I want to get a 20-times magnification, and you go through the math and it says "stop!" You can't get 20 times; you can only get 11.1 times.

Bernstein: Why?

Utley: Because you can't get more pixels in the target image than you've got in the source.

Bernstein: So how do you achieve 20 times?

Utley: You have to have better digital equipment.

Bernstein: Okay, so you can buy a better digital camera that gives you more [pells?] for the shot?

Utley: Right.

Bernstein: And as that comes due, that's going to give us greater magnification.

Boehm: Brian, if you took a normal enlargement on a photo, you will keep enlarging until you get the grain level of the photo.

Utley: Right.

Boehm: On a scanner, you won't keep enlarging...I mean, you're going to hit the grain level of the photo, but it's going to be limited by the scanner.

Utley: Well, yes, there are some limitations. For instance, ...

Boehm: An optical one is never limited by the optics, right?

Utley: Yes, optics have limitations.

Boehm: Okay, but way far...

Utley: But what happens is the scanner can't put detail into a picture where it isn't in the picture. So you can take a snapshot, for instance, and try to scan it at 1000 DPI, but it won't look any better than if it was scanned at 150 DPI because that's all the information there is on the image that you can resolve. In other words, you have been destroyed by the processes that printed it. But if you take a transparency—the original source transparency, whether it be a positive or a negative—you can scan that at a very high density, and you can get every bit of information that there is to be obtained by increasing the scan density assuming that you have a scanner that is capable of that.

Boehm: Yeah, with no limitations. Yeah, you're right.

Bernstein: So, should we say all of that?

Boehm: The math is saying it, you just have to sit back and think about it.

Bernstein: Okay, that's good.

Boehm: But you're right, it would be a good thing to say. If you could...

Utley: That's why the math is there.

Boehm: But Brian, if you could say that in English, it would be even better. If, after we cut the phone call, if you wanted to jot a note...

Utley: My brain doesn't work very well in English. <Laughter>

Bernstein: Do you want English American or English British? Let's define that. Let's go right here and define that because that is important.

Boehm: Okay, so what we're saying is that by increasing the scan density, it effectively...well, first of all, what is it actually doing? It's more data or pixels per image which lets you magnify deeper or more...

Utley: Let's back it up. What we want is a large enough...our objective is to get a large enough digital image file to permit the zooming and panning at the desired magnification to take place. There are two ways to obtain that size file. One is by enlarging photographically and scanning at a relatively low density, or by that the source image is of sufficient precision to scan at a high density to create the same size file.

Boehm: But, wait, you don't scan, if it's digital. If you have a digital, you're not...

Bernstein: Wow, you see, you've got to clarify two things: scanning and digitally shooting the photograph with the right specs.

Utley: When you scan, you create a digital file. Alternatively, you have a digital camera which gives you a fixed file size.

Bernstein: Although later in the future, you should be able to do inside the digital camera what you're doing with the scanner, and create, when you get a good enough [pell] count, so to speak, right?

Boehm: But it's technically not scanning, it's the digital files coming directly from the camera is what he was trying to get across.

Bernstein: But it's creating a size.

Boehm: What?

Utley: The end result is to have a file which is sufficiently large...the file of an image when expressed in [pells?] has a large enough area to allow you to zoom into the image and obtain the desired level of magnification.

Boehm: Without pixelating.

Utley: Without pixelating.

Boehm: Okay, that makes perfect sense. Now, when we were talking about a scanner being essentially an enlarger, if you...you see, when I think of a scanner, I think of analog to digital. It's taking optical and digitizing it. It's doing the capturing.

Bernstein: Right, but...

Boehm: On a digital camera, the [CCD] is doing the capturing.

Utley: Which is an array.

Boehm: Which is a scanner. I see what you're saying.

Utley: Right. It is a scanner. Now, the...

Boehm: The scan density number you're spitting out for your HP scanner or for to go buy a new proper...

Utley: No, you can control the scan density of a scanner. You can determine what your scan ratio is.

Boehm: Of a scanner?

Utley: Yes.

Boehm: But not of a digital camera yet.

Utley: No.

Bernstein: Sure. You can go from 300 DPI to 600 DPI.

Utley: Not on digital cameras.

Bernstein: Sure. On my digital camera, I can set it to 300 for low resolution, to high of 600.

Utley: Yeah, but when you do that, you're getting a .JPG.

Bernstein: Right. Or bitmap.

Utley: It doesn't give you both bitmaps. I think it only gives you one bitmap, which is your maximum density.

Bernstein: Well, the highest, 600, is a bit map; the other one is...

Utley: Right. The other one is a .JPG. That's right. That's absolutely right. But there's only one bitmap. You can only go to one bitmap size now. Even the new Nikon 990, it only gives you one size bitmap.

Bernstein: It does?...

<End Side 1, Tape 2; begin Side 2, Tape 2.>

Missing huge section

Utley: You said in the compression step, there are a number of options that you have to tailor the compression process. You can give the compressor a target for how much compression you want. You can also specify to the compression program the size of the compressed image, and that's important because what you do with the image sizing program, the image sizing program will tell you what the size of the compressed image should be to create the target image. Therefore, you instruct the compressor to create a compressed image of that size. Remember you had a minimum scan density?

Boehm: Um, hum.

Utley: Typically, you will scan at a higher density than the minimum scan density, maybe 10%, maybe 20%. So now you have to take that digital file and create a file which is equal to the target image, and you do that by telling the compression program that's what you want. If you didn't have a compression program, then you would try to scan as close to the minimum scan density you could so as to not create a bigger target image file than you needed.

Bernstein: Okay, now, I didn't totally understand that. He then says compression serves to preserve image resolution. Is that a true statement?

Utley: Um, hum.

Bernstein: Thereby providing an optimum enhanced digital image. Optimal is no compression.

Utley: Well, it depends on what you mean.

Bernstein: Well, did you see the...17 going to 18?

Utley: You made the optimizing file size.

Bernstein: But then that needs to be defined here. Do you follow that, Doug?

Boehm: Yeah.

Utley: By optimum, we really mean optimum file size here.

Boehm: Yeah, since the number of pixels is not actually reduced.

Bernstein: No, actually if you size it, they are reduced.

Utley: If you specify a small number, yes. What you really try to do is optimize the file size at the appropriate number of pixels.

Boehm: But the number of pixels changes when you .JPG it...I mean, when you compress it or .JPG?

Bernstein: No, when you compress it and resize it.

Utley: It's optical.

Bernstein: If you're compressing by resizing, you've lowered the pixel count. If you're compressing 1:1, you haven't. Do you follow? So Brian's saying you might have a large image and the compressor says, what do you really need here? Let's get rid of some color. Do you need all this extra size and that height and width? And if not, it does all that for you. Lowest makes the smallest picture, thereby reducing pixel count and providing a less-than-optimum enhanced digital image.

Boehm: Help me figure out what that sentence should say.

Bernstein: I'd strike the whole sentence, to be honest with you.

Boehm: That sounds fine with me. Will we ever need the concept that we preserve the number of pixels, at least at the 1:1?

Bernstein: No.

Boehm: Through compression?

Bernstein: No. Compression is optional. Do you know what I mean?

Boehm: Okay, scratch the damn sentence.

Bernstein: Yeah, okay. Good. I see that we can explain all of this. I would just leave it right after "...be set to other compression factors..."

Boehm: Yes, absolutely. That's the end of the sentence, end of the paragraph.

Bernstein: Exactly. That "64 user interface or control data is associated with enhanced digital image file if necessary and may already be on the user computer."

Boehm: You got it.

Bernstein: It's still associated, even if it is on his computer, so that, in this sense, you might be right here, because you still need to associate the control data user interface with the picture. So that's true.

Boehm: So I'll move your comment down to clarify it later.

Bernstein: Okay. And the only other thing is right after you say on line 6: "...graphic user interface on display upon loading..." Forget "downloading" and just put "loading of the image."

Boehm: Okay.

Utley: Doug, I can give you the wording that I used. At the bottom of page 17, in place of that last sentence which spills over it, I said, "The target image dimensions can be set as parameters for compression thus ensuring an optimum enhanced digital image."

Bernstein: One more time?

Utley: "The target image dimensions can be set as parameters for compression, thus ensuring an optimum enhanced digital image."

Boehm: But what are we optimizing?

Utley: File size here.

Boehm: The file size?

Utley: We're getting the maximum image quality and minimum file size.

Bernstein: For what we need to achieve. That's right. That's fine. Because that's here...

Boehm: "...thus ensuring optimum quality and file size"?

Bernstein: You're not ensuring any optimum qualities by compressing. You're actually decreasing quality at that point.

Boehm: That's right. So, "...thus ensuring an optimum compressed file size"?

Bernstein: Yes. "...compressed file to image size," right?

Utley: No, file size.

Bernstein: And that does say it, by the way. Okay. Now, go down to line 8: "Image file [ ]. The user interface program is associated with the enhanced digital image file such that the combined"...take "download" out...

Boehm: Okay.

Bernstein: "...the combined file or files..."

Boehm: Well, it's not combined if it's files.

Bernstein: Well, no, it could be three files, or it could be all packaged into the image file someday. We don't know.

Boehm: Well, I've got to define that better when we hit the claims because I'm thinking about not...we're claiming that we're...that the end product is a file, an enhanced file, and then we get lost in the mucky-muck when we say what we are really providing. We're providing a .JPG and an applet.

Bernstein: Well, we don't have to provide...they just need to combine somehow. We don't need to provide all the elements.

Boehm: Yeah. The ultimate thing that we provide may not be a file--an enhanced digital image file--does it have to be a file?

Bernstein: An enhanced digital signal?

Boehm: Data?

Bernstein: Data?

Boehm: Or signal.

Bernstein: Yeah, okay, so make that global change. That's fine. It doesn't have to be a file necessarily.

Utley: No.

Boehm: Well, it would have to be digital data, though.

Bernstein: Right.

Boehm: It doesn't have to be an analog signal.

Bernstein: Right. That's true.

Boehm: So I don't need the word "signal."

Bernstein: But you might not have to save it as a file at some point in life.

Boehm: Well, data incorporates if it's a signal or not because the data would be on the signal, right?

Bernstein: Perfect.

Boehm: So I don't need signal because I don't want to go analog on people.

Bernstein: No, I understand. "The combined files, like computer [ ], will automatically launch the graphic user interface.." It doesn't have to automatically, but it can.

Boehm: Okay, "can."

Bernstein: Right. "...decompress the digital image data and display a portion of the digital image data within a viewing window having a predetermined viewing size."

Boehm: Okay.

Bernstein: Correct? Putting in a portion of the data.

Utley: Actually, when it comes up, it tries to present the whole image.

Bernstein: But in those virtual tours.

Utley: That's right.

Bernstein: So we want to say "a portion of," or "the entire or a portion thereof."

Boehm: "...at least a portion..."

Utley: "...at least a portion..."

Bernstein: There you go. Okay. Skip now to the next page. You've got my seamless word there, but I don't want it.

Boehm: Don't want seamlessly, huh?

Bernstein: Doug, but you say "...to or from a host computer..." on line 11 "...a Web server, Web site, or a Web page...."

Boehm: Um, hum.

Utley: TV?

Bernstein: I don't know if you want to throw it in there.

Boehm: I'm lost where we are in terms of...

Bernstein: Page 19, 11.

Boehm: We're at figures 3, describing the flowchart of figure 3?

Bernstein: Right.

Boehm: Which is what...oh, great. Is that what that says? Oh, it's not a flowchart, it's an image...figure 3 is an image. <Reading out loud to himself; quickly and maybe not completely.> "Referring to figure 3, an exemplary screen print is this. Once the user interface...the resulting image is ready for uploading to a network server projection..."

Bernstein: Well, that was not my thing. "...the resulting image can be uploaded to a network server..."

Boehm: That whole thing, Eliot, on that, you kind of have to take it with a grain of salt because all of the...this is the description of the preferred embodiment.

Bernstein: Okay, okay.

Boehm: It's like the background.

Bernstein: That's what we did. That's fine, that's fine.

Boehm: This is really preferred.

Bernstein: I know, you see what I'm doing now?

Boehm: Yeah, and that's good because that makes me want to support it more so I can broaden the claims...go somewhere with the claims. So technically, Steve's correct by saying "uploading" because it's his-preferred embodiment.

Bernstein: Right.

Boehm: But I usually say "can be" or "is" or "may be," and he doesn't like to say "preferably," but I do. It's just a semantics.

Bernstein: No problem. Go down to line 19, "...and it should be the result of a download/upload..."

Boehm: What's being...

Bernstein: "...the results of loading the enhanced digital image to a user computer..." would be the right way to say it.

Boehm: Yeah.

Bernstein: So take out the "down" and trim it to "loading."

Boehm: Yeah. The same thing to the network server. If you load it to the computer 22, it's providing it to a network server. I don't like this loading...

Bernstein: Yeah, I don't. It's very tight on us.

Boehm: Yeah, and it infers uploading and downloading.

Bernstein: I agree.

Boehm: But, again, he's right because in the preferred embodiment...

Bernstein: That's fine as long as later we clarify and make sure we're protected on all of these issues.

Boehm: <Reading out loud to himself.> "...but download of the enhanced digital image file to a user computer..."

Bernstein: And that's true in the preferred embodiment...

Boehm: But that's for load over the Internet is what he means.

Bernstein: What?

Boehm: He means download off the Internet.

Bernstein: It could be an intranet. It could be...

Boehm: The network. Off the network is what he means.

Bernstein: Right.

Boehm: But isn't it a download off the network? Because when you put something on a network, you upload through the network and download from the network. So he's right, but...

Bernstein: Yeah, you see the issue.

Boehm: Okay, it doesn't have to be. I agree.

Bernstein: Okay, and I've got that next one covered. Go now to page 20. Okay, we've got a big problem here. "The program loads additional digital image data from the enhanced digital file..." Scratch "image stored in memory, for example hard drives," and just say, "program loads additional digital image data from the enhanced digital file to the display viewing window by providing additional data from the source to the viewing area seamlessly..." or something. Or just make it a period after "...display viewing window." You follow me?

Boehm: Uh, huh.

Bernstein: "...to the user display viewing window."

Boehm: "...viewing window." Period.

Bernstein: Okay, any of that other stuff. Okay.

Boehm: <Reading out loud to himself.> "...the user computer provides the zoom..." Oh, "to provide the zoom to view..."?

Bernstein: Excuse me?

Boehm: Holy smokes. Wow, the paragraph starts out in figure 4, which is figure 4, take a look at, we're about ready to zoom or we have zoomed. He has, "The user has actuated the zoom buttons to zoom in to the digital image data..."

Bernstein: What line are you on?

Boehm: Page 19 at the bottom.

Bernstein: Line what?

Utley: The bottom part.

Boehm: Figure 4. "The user has actuated zoom buttons 88 to zoom into the digital image." Period. I don't want to say "data," right?

Bernstein: Right.

Boehm: "In response, the user interface program, which is the applet, loads additional digital image data..." Eesh, I don't like the "loads" because that says it might be loading it off the network.

Utley: Yeah, I don't either.

Bernstein: "The digital program..."

Boehm: "Provides"?

Bernstein: Yeah, because it's providing it from the enhanced digital file.

Boehm: "From the enhanced digital image file..."

Bernstein: Right. "...to a user's display viewing window."

Boehm: And then, "2. Provide a magnified view of the digital image" or "zoomed visual..." I don't like the word "zoomed."

Bernstein: Yeah.

Boehm: What I would like to say is, "Provided additional image data from the enhanced digital image file, without..." I want to make the clarification there that...

Bernstein: "Without additional ..."

Boehm: "Without another download from the network"?

Bernstein: No.

Boehm: We may not need it here if it's there before, but that's my...I may have to...

Bernstein: Put a question mark there because I see it, too.

Utley: Why can't you say...why can't you relate it to your resolution: "Provides additional image resolution data" because you're improving, increasing the resolution of the image.

Bernstein: As you zoom.

Utley: As you are zooming.

Bernstein: That's actually a great way to start the whole damn thing!

Boehm: Now he tells me!

Bernstein: No, but what we've been looking to describe, he just...

Boehm: I agree. Steve and I have this battle too because you guys weren't...

Bernstein: Struggling.

Boehm: Consistent in the terminology either. No, I agree. If you're talking length times...numbers of pixels, that is resolution.

Utley: So you're providing additional resolution data.

Boehm: That doesn't sound right to me, Brian.

Utley: Well, what you're doing is you're taking a portion of the image and you're expanding it, really, with additional pixels. So that's additional resolution data.

Boehm: Oh, I see.

Bernstein: Right.

Boehm: What you're saying is it's an adjective...it's digital data that has an image encoded with enhanced resolution. What are you providing? You're not providing resolution, you're providing data.

Bernstein: Data evaluation, necessary for the resolution.

Utley: But it's pixel-based data.

Boehm: And since it's pixel-based data, it will...

Bernstein: Or additional data for higher resolutions.

Boehm: Yeah, you're getting warm.

Utley: See, what's happening is that, to put it in discrete terms, you're going from a case where you have many source pixels per viewing window pixel, and you're reducing that ratio as you zoom in.

Boehm: Right, until you hit the pixelation limit.

Utley: Until you hit 1:1.

Boehm: Yeah. Okay, let me see if I can patch that up.

Utley: That's why you are providing additional...

Boehm: We've got a lot of clean talking about to do, so let's move on. Line 15 now, page 20.

Utley: "...greater than two times."

Boehm: "...It is important that the digital camera is configured to acquire a digital image. In this step, the camera is..." I would say, "...preferably set to the highest resolution."

Utley: I think in principal, that's what we would intuitively do; but essentially, should be generalize on that?

Bernstein: Yeah, there'll be variations on that.

Utley: Because as technology evolves...

Boehm: Right. You set the camera to acquire at least enough pixels to magnify...

Bernstein: For the magnification process.

Boehm: But if it's high resolution.

Bernstein: Right, then you get more, even if there's higher resolution available.

Utley: You see, we don't have cameras that give us very much flexibility here today, but tomorrow we'll have more flexibility.

Boehm: "...In this step..." it's possible the camera is set to acquire? "...at least enough pixels..."

Utley: Well, you notice that the camera [ ]. The camera has a storage device. It always takes the same number of pixels; it's what it stores that counts.

Boehm: Does a user have any clue of what that is? in other words, how would I know that my camera would do a magnification of 20 on this file?

Bernstein: You don't.

Utley: What it tells you is you create a high-resolution picture or a low-resolution picture, and if you set it to high, you'll only get a few pictures for whatever your storage medium is.

Bernstein: But I'll be you later, the camera will come out with a dial-in-your-zoom feature. Boom! It'll size it and appropriately....

Utley: In fact, they're already saying if you set it at this setting, it's equal to an 8x10; and if you set it to this setting, it's a 5x7.

Bernstein: Which is doing what we're doing.

Utley: That's already happening.

Bernstein: Right, well catch them, because I doubt it was happening in the past.

Utley: It wasn't.

Bernstein: Right. So it's new camera technology that might be infringing already. Which, you know, I see it going in the scanner...all these things.

Utley: You know, sooner or later, Brian, if what you said yesterday was correct, that this is all new, the ability to do it, we'll probably get every single facet of imaging that you know have a zoom factor. Why wouldn't you apply it to every facet?

Utley: Um, hm.

Bernstein: Okay.

Boehm: We could get tripped up, though, since I'm not an expert in the camera art. It might have been done on purpose; and if our claim reads on it, ...

Bernstein: Okay, but what if it was done for a different purpose, and we have a different purpose?

Boehm: If our claim reads on what was done, and it was...

Bernstein: So it wasn't done because I mean...

Boehm: Our camera will already have the capability of providing this file, and our claim says "providing this file," we're in trouble.

Bernstein: So optionally do it. Make it dependent.

Boehm: My secretary is saying we've got to get the checks today.

Bernstein: Okay, but definitely cover that because that's what's going to happen.

Boehm: In the future to set the camera.

Bernstein: No, it's happening. According to Brian, it's happening right now as we speak, so definitely get it in here.

Boehm: "...set the camera, if possible, to the desired magnification or scanned density."

Bernstein: Correct. "...to create that maximum zoom factor." Okay, claim 1, we dealt with.  
Now "providing" on line 2, we're going to make this a dependent claim now?

Boehm: I'm sorry, I lost you again.

Bernstein: I'm on page 24, claim 1, third paragraph of it, "...providing..."

Boehm: Did he skip some more math, Brian?

Utley: Beg your pardon?

Boehm: Did he skip some more math?

Utley: We just skipped over it. We've already done it.

Bernstein: I've never had to grade Jim and his math. Nor Brian's. I've got to tell you, I'm  
very impressed with Brian's whole grasp of the situation of the math here.

Boehm: Oh, the analysis is great.

Bernstein: It's incredible. It helps me understand it.

Boehm: Are we on 22, Eliot.

Bernstein: We're on 24.

Boehm: On 22, do we not worry about...oh, these aren't your scribbles, okay. I'll play  
with that. 23?

Bernstein: 24.

Boehm: 24. Got it.

Bernstein: Get rid of the "...size at least twice..."

Boehm: Yep, we'll do the "...greater than..."

Bernstein: "Providing" on line 8 becomes a dependent claim.

Boehm: Right.

Bernstein: Why do we have 10 times 100 times?

Boehm: Because if, again, the Prior Art happens to do it at two times but they do it...

Bernstein: Well then you should do 10, 11, 12...

Boehm: Our claim 1 is gone.

Bernstein: But then you should do 10, 11, 12, 13, 14, up to an infinite number.

Boehm: No, and here's the theory, and this is how dependent claims work, and here's the  
analysis that we go through. If claim 1 now says "greater than one," if  
anybody is doing it at greater than one, then claim 1 will fall. It's  
dead.

Bernstein: Okay.

Boehm: If anybody's done it before, your priority date's before you. Now we move to claim  
2. Has anybody done it at least ten times or at least twice will be my  
next claim.

Bernstein: Right. Ah, that's where you get your "at least twice" in here.

Boehm: Exactly. If the guy didn't do it at least twice, was there a good reason? Did he  
really not have the same invention? Well, hell, yes, he didn't have the  
same invention.

Bernstein: That's right.

Boehm: But it just so happened that he did more than one. My claim 1 is dead, and I can now jump to claim 2, which there are at least.

Bernstein: Got ya.

Boehm: That's how dependent claims work. That's why I have dependent claims there because you can't modify claims once they're issued.

Bernstein: Right.

Boehm: The reason why Steve had all those goofy 100s, and 200s and 300s in the spec...

Bernstein: Right?

Boehm: Is because during prosecution, we have them in the claims. And if the Prior Art comes out of the woodwork during prosecution, you might have to go say, oh, well, we didn't mean that, we meant above 100 or above 200.

Bernstein: Gotcha.

Boehm: It's pretty important.

Bernstein: Claim 6, "A single data file to be two files, three files, four files..."

Boehm: Right.

Bernstein: Why?

Boehm: Well, I like that claim.

Bernstein: Well, it could be in the digital image file, I like that, but it could be two, three, or four.

Boehm: But without the claim, ...

Utley: It says you have now to literally [ ] everything into a single file...

Bernstein: One file.

Utley: ...and you hold that patent.

Bernstein: Oh.

Boehm: And you see, claim 6...

Bernstein: <Talking in background to Utley.> He's got it in one file.

Utley: Right.

Bernstein: [ ] an image file with an applet built into each.

Utley: I'm on that path.

Bernstein: Beautiful.

Utley: If I had some time to work on it.

Bernstein: I got it. <Laughter.> Is the method of claim 6—we're in the user interface—a Java applet? Why limit it to Java? There are other forms that do this.

Utley: It's already in there.

Bernstein: Where?

Utley: It says in the first claim.

Bernstein: Okay, "...providing a..." which is now going to be a dependent claim.

Utley: It's "...providing the user interface continues to display..."

Bernstein: Okay, which is dependent on it.

Utley: It then further says, okay, and it may be a Java applet.

Bernstein: Right. Okay.

Boehm: Which sort of narrows it up.

Bernstein: Right. Okay. There are other things we could name there—plug-insurance, acrobats.

Boehm: It's only limited if you enforce that claim and if the guy infringes that claim.  
If it's not a Java applet, this claim won't do you any good. If it is a  
Java applet that the infringer uses, then you get to not only throw two  
claims or three claims at him...

Bernstein: What if it's Active X?

Utley: Yeah, Eliot brings up a good point. There's another technology, which is called  
Active X...

Boehm: Wonderful.

Utley: ...which already works with Windows, but...

Boehm: But the idea about...can you genericize that to say it's a data code segment?  
What's an applet? It's a small applications program, right?

Bernstein: Right.

Boehm: Well, let's say that.

Bernstein: Okay.

Boehm: Or we could just say an applet.

Utley: You could say Active X...

Bernstein: Java applet, Active X applet, or other...

Utley: You want a separate claim. Each one should be a separate claim.

Bernstein: Right.

Boehm: What I have to say is "...when the user interface is one of the following, Java or  
Active X."

Utley: Or "other."

Boehm: No, I can't do "other."

Bernstein: Can you do "other" in a new claim?

Boehm: Nope. The word "other" is invalid in a claim.

Utley: <Inaudible comment.>

Bernstein: In frame 1 because the [ ] user interface.

Boehm: Yeah, other claims have...

Bernstein: Okay, that's perfectly fine. In that "...further comprising, compressing...",  
that's optional, right?

Utley: Yeah.

Boehm: Everything here that's dependent is optional.

Bernstein: Okay. "...to a network server..." how about "to a set-top box"?

Boehm: Is that worth a separate dependent...

Bernstein: Absolutely! It's one of the raging things coming down the pipes.

Boehm: Okay, "...set-top box." Can you give me an example of a today technology set-top box that this will work in, and then tell me on figure 1...

Utley: We just happen to know there's development activities going on in a number of different of companies, and they're heading in this direction.

Boehm: Yeah, but your claims have to be buildable by somebody with ordinary skill in the art. Set-top box...

Bernstein: That's just a display system.

Utley: Web TV in an example of a set-top box.

Boehm: Oh, okay, that's right.

Utley: A set-top box that takes streaming information and then presents it on a TV screen.

Boehm: So what's the cable box sitting on my mom's TV? It's just a cable box that goes to the VCR on your TV. That's not a set-top box?

Utley: That is a set-top box. A very simple one.

Boehm: Yeah, it doesn't have a display on it. It uses your TV.

Utley: It uses your TV, but the newer ones all have computers in them and memory and can convert different formats.

Boehm: Right, but the set-top box itself doesn't have a video display.

Utley: No, it uses the TV as the video.

Boehm: Yeah, which is Web TV.

Bernstein: So to put in a TV claim.

Boehm: I don't have time to go look at claims right now. We're going to be crunched to get this on file tonight.

Bernstein: Okay.

Boehm: Okay. So my question, again, can you give me an example...you did, Web TV. It's a set manufactured by who? Or is it in there already.

Utley: Microsoft has a Web TV. And Dell had a Web TV; they just pulled it off the market. But Web TV is a primitive form of what's coming.

Boehm: I know, but you can't patent what's coming unless you can give an example of what you can build today,.

Utley: Web TV.

Boehm: Good. And I wanted to find out where that was in. Do you remember? I'll find it later.

Bernstein: Okay. Page 26, lines...

Utley: I'm not through with this one.

Bernstein: Okay.

Utley: Back to the mid area again. "The advantage of claim 1 is it applies to enhanced digital files which are not compressed." We have to make a provision as a dependent claim for transmitting over a network because the one that provides for transmitting over a network is tied to a compressed file.

Boehm: True, but what Steve is doing here in claim 8, there's the compression hanging on claim 1. Now if you do a compression, you can throw claim 8 and claim 1

and them. And if you upload it to a network server, now you can throw claim 9 and 8...

Utley: As long as you don't...

Boehm: if it's on a network server, but it would have to be compressed then. Oh, this is the one you talked about before.

Utley: Right.

Boehm: I'm sorry. So you need number 9 dependent on 1.

Utley: Right.

Boehm: Thank you. That's what we talked about yesterday.

Bernstein: That was it? <to Utley> Okay. 26, line 6,

Boehm: Of what claim?

Bernstein: 13.

Boehm: Line 6 of claim 13...oh, the "...least twice...

Bernstein: ...greater than."

Boehm: Okay. I don't remember...do we have a picture claim, meaning an independent claim that's fairly narrow that reads on your preferred embodiment in your product? We should because that's maybe what we have to go with because now that we've...here's my thinking...and this, Steve and I discussed this ad nauseam here. We're going to go with claim 1 in the EPO. The reason is we're filing a PCT application now and a U.S. Claims are cheap and free—not free, but they're cheap—and they take multiple claims in the PCT and in the U.S. But when we split to Europe, they don't like multiple claims. They will give you one apparatus and one method only if they are related. So we basically pick our best independent claim, but not all the time your broadest, believe it or not because they may find something that is...since you can't...how do I explain this? If you have your best claim...our claim 1 now is kind of reaching over our product that we really know we can...that we're comfortable with what we can get, and your product with what you can get right now is too narrow because somebody can modify it. What I usually do in Europe is go somewhere in the middle to get something that's broad enough to cover your product but still in a real-world application and not trying to claim the world because you don't get that much leeway to amend in Europe.

Bernstein: Is this to the "...least twice versus greater than one"?

Boehm: If there's little or no chance that an infringer is not going to do at least two, that will buy you...

Bernstein: There are chances that it might be.

Boehm: But what's the chance that Prior Art is going to come out of the woodwork...

Bernstein: None because...

Boehm: No, there's very good chance that Prior Art's going to come out of the woodwork and blow all of it...

Bernstein: Between 1 and 2?

Boehm: It's possible.

Bernstein: Well, that's what I'm saying, if that's the case and somebody else beat us to the punch, we should have a claim that takes us all the way from "greater than one." You don't want to box me into that statement; just make it as a claim.

Boehm: Okay, so you're saying that we would file the broadest idea in Europe? Well, we'll discuss that later when Europe rolls around.

Bernstein: Okay.

Boehm: That was why I did...the practice is to do different claims of varying scope and different formats.

Bernstein: Okay, on 15-claim 15-"moving"...is that panning?

Boehm: Yes.

Bernstein: Okay. [Plurality] Jim didn't like that because it means at least two.

Boehm: Jim didn't like it?

Bernstein: Yeah, that's his note. Yeah, absolutely, and that's what it means. That's the whole point of claim 16, which is dependent on 14, which is dependent on 13. Are you with me?

Bernstein: Yes.

Boehm: You're down in the mud now, and plurality may be thing that saves your butt.

Bernstein: Okay.

Boehm: Because your product does these, right?

Utley: Yes.

Boehm: Your preferred embodiment product does these.

Bernstein: Okay. Then my only last question was, can you throw something in to cover the game world? That specifically relates to gaming and flight simulation?

Boehm: How would we do this? In figure 1.

Bernstein: You'd be able to now use games differently, and you differently can use flight simulators differently.

Boehm: Okay, look at figure 1, Eliot.

Bernstein: Yep.

Boehm: What changes? Just the definition of what 28 is, right?

Bernstein: Figure 21, the display monitor, the display system is what you're saying?

Boehm: No, no, no. Figure 1. What changes when you go to games and flight simulators?

Bernstein: Because in those, the displays become now dependent of parameters of the game or the flight simulator that drive the display window.

Boehm: That's fine, but there's nothing structurally here that changes other than the user computer. It has now the flight program or the game program on it, right?

Utley: What happens is the user interface actually becomes an application-driven interface.

Bernstein: Right.

Utley: That's probably the key difference. And the question was, can we convert that user-driven interface to an application-driven interface?

Boehm: Meaning like a flight simulator program?

Bernstein: Absolutely.

Utley: So that what is displayed is under control of the program and not under control of the user.

Bernstein: Right. Because, you see, you don't want the pilot maybe to be able to do a nosedive. You might want him to be flying along and have a program that says...shock him, make him dive...

Utley: Well, with all the graphics, that the program knows where he is, and therefore moves the display according to where he is and what he's doing.

Bernstein: Right.

Utley: So it's...

Boehm: But under the control of the computer application of its own as opposed to...

Utley: Right.

Boehm: I see. So basically, it's not a network anymore. It basically doesn't fall into figure 1.

Utley: Well, it...

Bernstein: Figure 1 better not tie me to a network.

Boehm: Figure 1 ties you to a network as your preferred embodiment. This'll be probably what's on your...

Utley: It doesn't matter whether it's on a network or not.

Bernstein: Okay, as long as that's true, that's fine.

Utley: What we want is to make sure that what we call the user interface in here can also be a computer-based application interface.

Boehm: Okay, in order to do that, we've got to stick a claim on it or we have to put support in the spec now to do that. So what would we do? All I see that we'd do is...

Bernstein: You could broaden user interface.

Boehm: Yeah, we'll broaden the definition of user interface in the claim.

Bernstein: And then I'd throw in a quick claim that says those two things as examples of it.

Boehm: Good idea.

Bernstein: And we'll let you get to re-writing.

Boehm: Hang on a second...don't go away. "...broaden the user interface to have a control of either the server competitor or the user computer." Right?

Utley: Right.

Utley: And when we do that, that really then lays right on top of that disclosure that I made that we had talked about because what one of the items that I wanted to accomplish was to be able to control the display from the computer itself, or from an application, rather than from the user. Remember that?

Boehm: Yeah, sure. And in this example, the flight simulator application program would control the zoom and pan of the display?

Bernstein: Yes.

Boehm: That means you still provided a digital...claim 1 would still say that somebody at sometime provided digital image files for viewing on a computer...

Utley: Yes, right.

Boehm: So claim 1 would catch that.

Utley: Claim 1, as long as the user interface can be expanded to include a...

Boehm: Either a downloaded applet.

Utley: A program interface.

Boehm: Any program.

Bernstein: Right.

Utley: Right. And we won't have to say where the program resides.

Boehm: Yeah.

Bernstein: Yeah, because definitely in this world, gaming wouldn't know where to put it because now multiple users can access one central game.

Boehm: Great thought, guys.

Armstrong: Always save some of it for your last-minute work.

Boehm: Yeah, yeah. Well, I've got an hour. That's all. Brian, let's talk about the definition of force target and all that other garbage because I got confused in there, Jim got confused. It's in the specs...Steve did that. Do you know what page it's on because it's all over my desk.

Utley: Yeah, it starts at...

Bernstein: Okay, Doug, I'm done, right?

Utley: Yep.

Bernstein: Can you send me a copy of that? When do you think you'll be sending out a final copy?

Boehm: What is your...it's going to take me hours now.

Bernstein: I know.

Boehm: Worse case, I would say I could send you a draft at 8:00...something like that.

Bernstein: Okay, perfect.

Boehm: Now, are you going to be there today? Mail it or what? I could email it to you if you want. That would be easiest.

Armstrong: Then we're going to need some prints, right? Some signed copies?

Boehm: No, all you have to do...

Bernstein: Is verbally.

Boehm: All you have to do is [ ] that this is your invention; and when you go to read it the second time and sign the declaration, that you won't make any changes to the spec, and that was your invention the date that we filed it.

Utley: You can send one to me at my home.

Bernstein: And send one to Jim.

Boehm: But do you guys want another pass tonight.

Bernstein: Another what?

Boehm: Another pass at it. Do you want to re-read it?

Bernstein: I do. I absolutely will re-read the changes. I'll have Jim re-read them, and by 9:30 hopefully we'll be done reading it and be done.

Boehm: Okay, I'll see what I can do to push this through then.

Bernstein: Cool. Hopefully it'll just be a re-read and we'll say it's right.

Boehm: Yeah.

Bernstein: Because if something jumps at us...

Boehm: How do I get it to you? Do you want me to fax it? I want to email it. That's quicker for me.

Bernstein: Great, email it.

Boehm: To whom? Where? When?

Bernstein: Eliot@iviewit.com, brian@iviewit.com, and jim@iviewit.com.

Utley: No, send it to me at...<end of tape>

Transcription of Patent Meeting  
Conducted August 4, 2000  
Participants:  
Eliot Bernstein, Jim Armstrong,  
Brian Utley, Steven Becker, Simon Bernstein  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Armstrong: Are we aware of all the important dates I know you probably are, but are we +  
+Brian made aware of all of our deadlines and contingencies relative to  
those deadlines + that we that we're not left with...I was a little  
surprised that a final pack that's been in the works for a year, and I  
know you weren't involved for a year, but in the works for a year required  
that Eliot and I spent the entire night and morning reviewing it in order  
to get it done.

Bernstein: What bothered me about that as well is that we'd go through the math, and then  
suddenly you have a document Brian sent you several days earlier regarding  
the math that has a bunch of changes in it, and none of that's in there. I  
mean, I don't understand that.

~~Becker~~Armstrong: ...was changed from that document anyway.

Boehm: Yeah, it was changed from that document anyway. I was working with Brian, who I  
thought was the master of that math, but...

Bernstein: But he had sent you an updated ~~map~~ math three days earlier that didn't appear in  
the final document that we were trying to...

Boehm: Okay, I don't know. Steve was handling that. I don't know whether...you know,  
Steve says he did put it in there, but then I don't...

Bernstein: But then we go through the document that we're filing, and it's not there.

Boehm: Okay, but we were on the third draft when I took it over. You guys had  
opportunities like crazy to...

Bernstein: But that's the thing. Brian had sent it to you earlier, and it still wasn't  
appearing in final drafts.

Boehm: If that's true, then something crossed in the email because Steve said he put it  
in there, and maybe there's a piece of the math missing between the  
crossing the emails. You're right in terms of...

Bernstein: Is Steve there?

Boehm: I don't know. He probably is.

Bernstein: And then my other question is quite a simple question my dad asked about  
electrical engineers being mathematicians and said, "Didn't they sit and  
pencil out the math of all this themselves?"

Boehm: Uh, huh. Here's what happened on that. Steve was filling the application. We  
worked with Brian and you, Eliot, on the application. In some of the  
letters and emails he said that he doesn't understand the math.

Bernstein: I'm not getting any of those.

Boehm: Huh?

Bernstein: I'm not getting any of those emails.

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy?

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~-out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~Armstrong: Don't jump to conclusions.

Bernstein: No, I'm not, but if this is correct, we've got some fundamental things that need to be discussed.

Boehm: If what's correct?

Armstrong: If he's correct about the math being wrong, but let's check it...

Boehm: No, I'll bet we could get a good patent if the math is totally wrong. I think we're barking up a tree here that's not a big wall.

Bernstein: But wait a minute. The question is if it still remains wrong and we gave you the right changes, it should have been filed right. All the sudden I'm left with a patent that...

Boehm: Okay, talk to Brian.

Bernstein: I will.

Boehm: Brian gave me the right changes. I filed what Brian gave me.

Bernstein: Okay.

Armstrong: Okay.

Boehm: And I don't mean to...you know...yell out of that, but that's what happened.

Bernstein: That's no problem. I totally hear that.

Armstrong: Thanks, Doug.

Boehm: Okay. Talk to you Monday.

<Hang up phones.>

Bernstein: 8/4/2000. 8:30 Doug Boehm conference call. Jim Armstrong, Eliot Bernstein. Steve, Jim, everybody, I'm taping the conversation, 8/4/ patent discussion regarding Docket 57103-120 with Brian Utley, Steve Becker, Jim Armstrong, Si Bernstein, and Eliot. Okay, guys.

Becker: [ ], too, if that's all right with everybody.

Bernstein: Yeah, did you get the fax from Jim?

Becker: I haven't received it yet.

Armstrong: It was sent actually to Doug on the "cc" line, but to a machine at 297-4900.

Becker: That's right. It'll go to our central fax department, and I just phoned up there and asked them to deliver that to me when it comes in.

Bernstein: Okay, but you've got the patent in front of you?

Becker: I don't. I don't, but I can get it.

Bernstein: Okay, well, let's do that.

Becker: Okay. I'll need a minute. I've got to go over the Doug's office.

Bernstein: Okay.

Armstrong: The fax is on its way to you now.

~~Becker~~Simon: It's on the way to me? |

Armstrong: Yeah.

~~Becker~~Simon: Okay, then I'm going to put you guys on hold... |

Armstrong: It's not done yet.

Becker: Well, I've got to go upstairs and get it, so hold on.

Armstrong: Never a dull moment.

UtleyBernstein:----- They didn't put...they didn't put in what we corrected them on... |

Bernstein:-----~~Inaudible comment.~~ |

Utley: And I did it again on Wednesday night.

Bernstein: And he said to me all these changes were in when I went through them at 11:15 at night with them. That all the math has been changed. I was looking at him and said these haven't been changed. He said, "No, I'm working on a copy that's been changed. I'm going to send it to Brian, and sign off..." So, well, now, again, we're back at this same thing. How do we change things? What effects does it have on us?

Utley: This has no effect. Mathematically, that's...

S. Bernstein: Were those faxed?

Bernstein: YeahYes. |

~~S. Bernstein~~Armstrong: Okay. Nine pages. |

Utley: But obviously this has an effect.

Bernstein: A huge effect because you have completely altered numbers.

Utley: Well, you could explain it; but the only way you could derive this is by having that be the square root.

Bernstein: But this is wrong that he missed this, and isn't that on your current math? Do you have your sheet that you did...current math...that he said he didn't have, had, whatever? Brian, do you have the patent book?

Utley: Yes.

Bernstein: Okay. I need to borrow that.

Armstrong: I would think that in a patent document being as important to us as it is, there's not an acceptable level of error. It's either got to be all right, or it's not acceptable.

Bernstein: Oh, and that's what we heard from Doug this morning. So, I mean it's hard to fathom this.

S. Bernstein: You know what guys? I don't understand. Why doesn't somebody... take five minutes, and tell me what...because I sat~~u~~ it in a meeting with all the lawyers, and... |

Bernstein: Here, Dad, let me give you an example. Is 2,560,000 times .8 the same as 2,560,000 times 1.25? Yes or no?

S. Bernstein: I doubt it!

Bernstein: Okay, well, that's the fuckin issue. That's how far off these are. |

S. Bernstein: Okay.

Becker: This is Steve. I'm back, and I can't seem to find that file. Doug is out today. You guys may know. So, I don't know how much help I'm going to be.

Bernstein: Okay, well, do you have the fax? Hey, ~~DP~~Man, you've got the file right there. Just email it to him. |

Becker: Here it is. I've got the fax now.

Bernstein: ~~Okay~~Steve, Doug also mentioned that you had emailed some correspondence to us that you didn't think the math was right earlier? I have no records of any of that. |

Becker: No, what I did was I faxed the draft over on Monday night, which incorporated some additional disclosure that Brian had sent. Basically, it was examples. It had the equations set out for both print film and digital examples, and then he had three examples for print film and one example for digital, and I essentially...I exactly basically cut and pasted that into the application.

Bernstein: Well, the application we got from Doug didn't have any of that. cut and paste because what it had was the old stuff and Brian referred to having sent this to you several days earlier and yet it wasn't in there.

MISSING SECTION GO BACK

Becker: I don't really know because at that point Doug was down there with you guys, and I presumed you were reviewing it on like Tuesday and Wednesday. And the Doug said he would take care of just...because we figured there would just be some minor changes after we'd incorporate all of that.

Bernstein: Well, it wasn't incorporated, so there were huge changes.

Becker: Oh.

Bernstein: And it would have been filed completely wrong had it not been for Jim Armstrong reviewing it. Everybody would have nodded off on this and accepted wrong, completely wrong, filings.

Becker: Maybe he should be part of this conversation.

Bernstein: He's on this conversation.

Becker: Oh, good. Hi, Brian.

Utley: Hi, Steve.

Bernstein: Brian's here and Jim Armstrong's here.

Becker: Okay. Well, the only link we're missing here is Doug because Doug took the last few steps of incorporating comments and actually filing the application on Wednesday.

Bernstein: Hey, ~~EB~~...~~EB~~-man, forward him a copy of the final draft, would you?

Armstrong: And that, Steve, I think the most important question to have answered is what are our rights and obligations and opportunities relative to correcting this without any ill effects to us?

Becker: Yeah. There's plenty of opportunity essentially. We can file...if there are substantial errors in the application as it was filed, we can simply file a new application as soon as we get those fixed either on Monday or Tuesday or what have you. The goal of filing on Wednesday was to maintain priority back to the provisional application, which was filed a year ago.

Bernstein: So, did we lose that if they're wrong?

Becker: No, because we can only claim priority back to the extent that the subject matter was originally disclosed in the provisional filing of August 2<sup>nd</sup> of last year, and none of these equations were filed back then.

Bernstein: But the original process was.

Becker: Right. And the original process is ~~the~~ preserved in the application. We're just talking about the details of the math examples that are in here. So we haven't lost anything.

Bernstein: Will we lose claiming back to the priority of the original provisional? So we did lose something, or am I incorrect in what I'm hearing.

Becker: Yeah, No, we didn't lose...the original provisional can only provide priority for what was originally disclosed, and the math was not originally disclosed, right?

Bernstein: Well, no, but the math is a subject of the invention, not vice-versa.

Becker: The reason I'm putting the math in there is essentially to provide concrete examples...

Bernstein: Of the invention.

Becker: Right.

Bernstein: But the invention was in there as of the priority date, and we had already talked with Chris Wheeler and everything regarding this. Were you on that conversation?

Becker: I don't remember.

Bernstein: Well, Brian, you were on that conversation. It's the conversation where we were going back to try to get the soonest date on the filing and correcting the provisional to encompass all of these things.

Utley: Well, you can't correct the provisional, but you can...what it does is it claims back for everything that references back to the original, but then incorporates all the new elements to bring it into...to make it into more of a complete statement.

Bernstein: I'm not sure I understand this. It was my understanding that we were going back to Ray [Joao's] patent and fixing it by inserting what we have here. When I talked to Doug, that was what he was under the impression we were going to do, and now that's all changed as of today.

Becker: You really can't fix a provisional application.

Bernstein: Not the provisional-the ~~regular~~-Ray Joao filing of August whatever-whatever day it was.

Utley: No, in March. March 24<sup>th</sup>.

Becker: Oh, okay. Yeah.

Bernstein: And that way, if that patent gets approved with all this in it, that's what we were doing, and we wanted that one to be approved first correctly because it obviously expedites our life by a long way.

Becker: This is the PCT application file of March 23<sup>rd</sup>. Is that what we're talking about?

Utley: Yeah, but the way that I recall the conversation, the spec cannot be changed...

Becker: Right.

Utley: ...but the claims can be.

Becker: Right, and they can be changed as long as they're supported by teachings that are in that specification.

Utley: Right.

Becker: Which is why you really...

Bernstein: And the specification can't change?

Becker: Right.

Bernstein: Why?

Becker: Because it would be kind of like...

Bernstein: I thought that was based on new matter.

Becker: That's exactly why it can't be changed.

Bernstein: So it can be changed if it's still the same matter?

Becker: The claims can be amended as long as they are still fully supported by the matter that's in the specification that's originally filed. Now, if you want to change your claims and they're not supported by the specification as originally filed, then you have to file a whole new application adding new matter to your specification that will support those claims.

Armstrong: Does the fact that a direct interpretation of what in general amounts to typos and oversights, but a direct interpretation of that affect our ability to change that supporting matter of that matter? Because if we directly interpret the math in the certain circumstances here, it will bring you to a wrong conclusion if it's a direct interpretation without having to reverse ~~such an error but~~ engineer what was meant to occur.

Becker: Well, I see. Then we need to get the math right, but it doesn't affect our priority. Only by a few days essentially.

Bernstein: Well, do we lose the ability to claim priority to what we were trying to claim here...

Becker: No.

Bernstein: ...by that date? So you can go back in and change the matter of this?

Becker: You don't go back and change the matter, you just file a new application which claims priority back to a prior application only for the subject matter that was...

Bernstein: But we missed that application.

Becker: No, we've got it in the form of this continuation, or this PCT, that we filed claiming priority back to that patent application. So we've preserved that chain of priority.

Armstrong: Are you then completely confident that errors that we need to correct right now then are not going to hurt us in any way, shape, or form as being able to claim as part of our invention all of the correct things that we want in there?

S. Bernstein: That's what I heard at that meeting, that we could go back and re-do that at a later date without having any implication.

Bernstein: As long as it wasn't new subject matter.

S. Bernstein: Exactly right. These are just corrections to the...

Bernstein: They're corrections, they're math, whatever.

S. Bernstein: Okay, but we're not saying this is a new way to get to that.

Bernstein: No.

S. Bernstein: Okay, that's what I heard. That's the notes I took. Eliot, you should have that on the tape recorder so that we know that.

Armstrong: Well, we do, and that would also support, I think, another issue, which is that we now have to go through the refiling of something else which was originally corrected several days ago and was somehow ignored so that this whole refiling shouldn't even cost us anything.

Bernstein: Well, and beyond that, Doug <sic>, what I'd like to really get down to is a letter from you, in writing, explaining all of my, you know, both from the Ray [Joa] patent forward, and I think you need to talk to Doug about it, of what our potential pitfalls are here with these filing errors, what our potential pitfalls are, what it caused to happen with that priority, priority equals, and if there's any harm to us. Because we keep just slipping back by these things. This should have been right. I mean, we have well documented, and Brian's well documented, that these changes were sent, and now we've missed a priority claim to that by not being able to go back and change our last filing. I need to know the liability here.

Becker: You know, I was not there on Wednesday night. Brian talked to Doug on this and then made final changes, and then...

Utley: Yeah, Doug sent me a next-to-last copy, which I went through and there were a number of errors—I have my notes on each one of those at home—and then I reviewed each one of those with Doug, agreed on what they were, and then Doug was going to send me the last copy, which apparently he didn't because I never received it. At that point in time, it was, I guess, about 11:30 or 11:45 our time.

Bernstein: And these were also discussed in great length with him for a whole day on the phone.

S. Bernstein: Yes, well, how about in the...

Bernstein: No, no, Dad, this is separate. But at great length this was discussed, every one of these changes.

Becker: The changes you sent me here, is this Brian's handwriting?

Utley: No, some of it isn't. Isn't correct.

Bernstein: Well, let's go through it because I'd like to...

Armstrong: Yeah, let's go through it.

Becker: I don't know if that's going to help that much because it's a question of what actually was filed and whether it incorporated the changes that Brian asked for the last minute.

Bernstein: It didn't.

Armstrong: We know that. This is what was filed.

Becker: Brian, didn't you just say that Doug didn't send you the final draft of what was filed?

Bernstein: He did it the next day.

Becker: Oh, he did the next day?

~~Armstrong~~Bernstein: Yeah, Jim, can you forward that to Steve real quick?

Armstrong: What?

Bernstein: Email it to him...the final draft?

Armstrong: Yeah.

Becker: Well, I'm not going to question...

Bernstein: Okay, but we need to go through and get the changes acknowledged, accepted, have you put it into the next whatever you're going to do to solve this, with a letter explaining what we've lost here.

Becker: All right.

Bernstein: Okay. Any liability, potential liability where we're exposed to from this.

Becker: Oh, I wouldn't worry about it. You guys are making a mountain...

Bernstein: Well, you know, I gotta tell you, I worry a lot about it from what Doug told us. So, you know what I mean? You tell me not to worry, but then you tell me it's very important that we're accurate in this filing; and then we're very inaccurate in the filing, and then we're not supposed to worry. I'll feel much better not worrying with a letter from you explaining why I shouldn't worry.

Armstrong: Steve, what's at your email?

Becker: [Sbecker@foleylaw.com](mailto:Sbecker@foleylaw.com).

Armstrong: Sbecker?

Becker: Yeah, "S" as in Steven, "becker."

Armstrong: Got it.

Bernstein: Okay. Let's just go through this with you, Steve, so we can get the next step done.

Becker: All right.

Bernstein: Which is correcting the issues. Are you with us on page 13?

Becker: Right.

Bernstein: Okay. Jim?

Armstrong: On page 13, line 19, the expression of VWH should follow the way we express it in our definitions, which is VIH. Even though the two are equal, let's just follow the way that we have it expressed in our definitions on page 12.

Becker: Oh, I see. Okay.

Armstrong: Then on line 23, each of those expressions is not congruent with the way we've defined them. Despite the fact that we arrive at the same results, it doesn't apply the formula in exactly the same way. So for a reader, it ought to be the same. So for line 23, it should be the "square root of 2,560,000 times 1.25."

Becker: All right.

Armstrong: Okay. Not "2560 divided by .8."

Becker: Okay.

Armstrong: On line 24, it ought to be "1789 divided by 1.25."

Becker: I see. Okay.

Armstrong: Then on line 25, it ought to be "1441 divided by 4." Again, the results are the same; the expressions are not.

Utley: Now, on that last one, Jim, it's correct. |

Armstrong: It's what?

Utley: The scan density is 1789 divided by 5.

Armstrong: Okay, hold on. Scan density is defined by us as being...where the heck is it...oh, it's right up above..."target image height..." right up above on line 7..."minimum scan density is target image height," which in this case we just defined to be 1431...

Utley: Where are you reading from?

Armstrong: Line 7 of the same page. Line 7, page 13. So target image height is 1431 divided by the source image height, which is 4, so it should be 1431 divided by 4.

Utley: Well, the...yeah I guess that that equation, "MSD equals TIH/SIH," did not come from my documentation. |

~~Becker~~Armstrong: Hold on, let me look at this documentation. I've got it right here, |  
too.

Bernstein: Well, Steve, you have copies of this, too, that were sent to you...

Becker: Right.

Bernstein: ...of what Brian's looking at, several days ago. So how isn't this stuff flowing forward into the patents, especially when we pointed it out two times before filing? I mean, I'm just dumbfounded at this.

Utley: There was a change, Steve, which you were not involved...

Becker: The proper equations, ~~that I~~ wasn't there the last night when the last changes were put in, so I can't really speak to it.

Bernstein: No, but he sent you his changes several days ago.

Utley: Steve, there was a change that we decided on uh on uh Wednesday afternoon, which was to reflect aspect ratio as width divided by height, which uh I uh made, and that was created by the desire to reflect aspect ratio the way that displays are uh uh expressed as opposed to the way photographic images are expressed. Photographic images are expressed the opposite way, and that's the way the documentation uh uh had been originally prepared. But it was thought that it was uh perhaps more consistent with current technology to express it the way that displays are expressed. So I went through and changed...

Becker: You mean from that change in ~~invention? convention?~~ convention?

Utley: Yes. So that caused the equations to be reconstructed to reflect the uh uh inverse of what was there before because the affect ratio now is inverted.

Becker: I see.

Utley: And what happened was Doug apparently did not pick up all of those changes, even though I went through them very methodically the last thing uh Wednesday night when he sent me ~~his~~ uh uh his uh almost-final draft.

Becker: I see.

Utley: Uh And uh, Jim, just for your uh edification, that also affected the MSD shifting from a height to a width orientation. The number is the same, but it changed it from a height to a width.

Armstrong: So what's the correct formula for MSD?

Utley: It's TIW/SIW.

Armstrong: Okay.

Bernstein: So, you made this change with Doug, and it's still wrong in the patent?

Utley: Right

S. Bernstein: I'm a little concerned about the proficiency of the legal aspect of this. We sat there for hours, and then Brian stayed late into the night with this guy, and then he comes back and we don't file it right anyway? It seems like there's something wrong here. I mean, ...

Bernstein: I mean this is, yeah...

S. Bernstein: I mean, I'm just budding in because I have little or no knowledge as to what the numbers mean, I'm just listening to a conversation in which I'm hearing is that after four or five hours in a room locked together with lawyers and everybody else, we reach an agreement that those changes will be made. Now, my understanding is Brian stayed and made those changes, and then the lawyer didn't file the changes? What's the sense of that?

Bernstein: These are good points. Let's move forward, Jim.

S. Bernstein: These are points that have to go back to stockholders with money invested.

Bernstein: That's why I've asked Steve to send us a letter of what's happening, what our exposure is, by Monday or Tuesday, explaining how this didn't occur, get in, and what we're going to do to resolve it, and what that resolve initiates in the chain of events.

S. Bernstein: Well, the other side of it is this. If after all of this precaution has been taken—and Brian, you can correct me if you think different—but after all of this precaution has been taken, it appears that the fallacy of worrying about it ever gets accomplished. Brian stays, everybody works on it, it's still filed wrong. Now what if Jim Armstrong hadn't caught it. Brian was on a plane today...

Bernstein: Then none of Brian's changes even sent several days ago even would have even been in there. Math would have been wrong, equations would have been wrong, verbiage would have been wrong.

S. Bernstein: Am I right, Brian, in having this concern?

Utley: Uh Well, yeah, obviously it's uh clearly uh uh a major concern because there's nothing more disciplined than the uh uh mathematical expressions.

S. Bernstein: And you're comfortable that what you did, even if some of them were wrong, that we could have later corrected...

Bernstein: No, Dad, we sat here with Brian and Jim and Doug, and we went through it, and we all agreed it was right, and those changes do not appear.

Utley: No, we...uh uh

S. Bernstein: That makes me very nervous. Well, it makes me nervous to the extent that are all of the other patents done right?

Bernstein: Well, that's what I'm...I'm going to start having somebody review all of this. I mean, obviously there's...it opens up a whole can of worms.

S. Bernstein: Well, the other thing that I heard was—and not negatively or anything else—but I heard that perhaps Ray [Joac] did this work and he was either concerned about it being a bit sloppy, blah, blah, blah, blah. What is the excuse for this law firm?

Bernstein: Well, let them write us what's happened here. I mean, I definitely need to see on paper, Steve, some kind of report on this. That it describes what occurred, why it's not reflected in the patent filings, and what our exposures are, and that'll tell us what we're dealing with in firm, etc., liabilities. I mean, we don't know that.

Armstrong: We should continue to look at the changes so that he's copy that reflects everything.

S. Bernstein: Well, even if there is no liability, what I'm still concerned about, even if it can be corrected, it's the exact same position—Brian, am I right?—that we found ourselves in with the last lawyer who did it. Okay, thank God we can make changes, but that isn't the answer. Why not just get it right, get it filed...

Bernstein: No, don't just say thank God we can make changes, Dad, because all of that brings additional liability to you. You miss dates, you miss claiming, you miss this and that—words that are very tricky and confusing, and only these guys can understand. So that's why I need it to be put in writing so I can have it analyzed...

S. Bernstein: Absolutely, I want it definitely, because I need to take it...you know, I need to have board member approval...

Bernstein: Oh, I think our board is going to be disastrous with this stuff about several things when we take this to them. And we need to know from the Ray [Joac] level to the Foley-[Lardner] level, how this is going to be cleared up and what the problems were that occurred.

S. Bernstein: Okay, let's get that part in process; and it's unfortunate that Doug's not here because maybe it's something he could explain.

Bernstein: No, I talked to him this morning; and as a matter of fact, he said Steve had the math from Brian days before and by the time he got it, he thought it was all input correctly, and that was his excuse.

S. Bernstein: Well, what was he doing here with Brian?

Bernstein: Well, then we spent a whole day with him correcting it all so that it was right; and then by filing time, none of it was right. So, let's go forward. Let's just stay on track. We'll deal with all of these issues on Monday.

Utley: Uh I just say one thing. Uh Fortunately, uh I don't know The most important part of the math is all of the definitions. The examples are examples; but the most important part of the math is the are the definitions.

~~S. Becker~~Bernstein: Okay, are those right?

Armstrong: No. Well, there's one that's not ~~, we just found out which is [ ]~~. Line 7 of page 13...

Bernstein: Is wrong.

Armstrong: Is wrong. It should read...

Bernstein: ..."[ ] equals TIW/SIW."

Utley: They are mathematically uh uh equal. Both will give the same results. So It's a uh consistency question as opposed to an accuracy question.

S. Bernstein: And for a reader, it would probably be easier to be consistent.

Utley: Absolutely.

S. Bernstein: That's what we want. As long as we're spending all of this money and everybody's devoting their time to it, we want it to right-as right as you can possibly get it at any rate.

Bernstein: Okay, Dad, let's move forward.

Armstrong: That changes one thing on line 25. The expression on line 25 is now correct as it was typed, so scratch out my handwriting. Okay? All the other corrections stand as I explained them earlier. Now, on the last line of this page, that should read: "480 X 320."

Utley: That's correct.

Armstrong: Okay. Then on line 6 of page 14, I think we should consistently state which is width and which number is height because it's such an important distinction in the calculations. We did it on the previous example, but not on this one.

Bernstein: This then is width height

Armstrong: Width is [ ] height is 4

Utley: And that is what we had agreed upon on Wednesday afternoon.

Bernstein: Right. That changes again in a minute

Armstrong: Okay. Line 17, again we're just missing that square root symbol in order to make that equation work. Without the square root, it's millions instead of thousands. Now, in line 19, I had originally indicated this was correct; it's now incorrect because of our change in the formula for the density for the maximum scan density.

Bernstein: Steve, are you getting all of these?

Becker: Yep.

Armstrong: This should now read in line 19: "1789 divided by 5 equals 358."

Becker: "1789 divided by 5 equals 358?"

Armstrong: Yes.

Becker: All right.

S. Bernstein: Steve, I have a question to ask you.

Becker: Yes.

S. Bernstein: When Jim or Brian or anybody gives you these numbers, are they checked out by anybody, or do you just copy what we say and that's it?

Bernstein: No, they definitely don't copy what we say. That's an initial problem here, Dad.

S. Bernstein: Okay, I don't mean to be sarcastic.

Bernstein: No, but they would normally as mathematical people add up the equations.

S. Bernstein: Yeah, because your partner was telling me that most patent lawyers are engineers, which would lead me to believe that somebody would say, "well, I better check the math to make sure that guys who are not engineers know what the hell they're talking about." Is that done by your firm, or is it just accepted as gospel what we give you?

Becker: We don't have engineers or technical people check the math that you provide us.

S. Bernstein: Okay, so what we provide you, then, we live and die by?

Becker: Okay. Your job is to get that right.

Bernstein: Right, but what we did give you, you didn't provide in the patent.

S. Bernstein: Okay, we're trying to say the same thing.

Bernstein: Okay.

Armstrong: Let's just get it right.

S. Bernstein: At this point we're only interested in getting it right.

Armstrong: Line 27, that should be "36@H" for the height.

Bernstein: Which page?

Armstrong: Line 14, third-to-last line of the page.

Bernstein: Okay.

Armstrong: Now we're onto page 15. Again, we just need that square root symbol as indicated there.

Becker: Okay.

Armstrong: Then there is nothing on the next few pages until we get to page 18, this is an important omission for our calculation standpoint, but we need that square root symbol.

Becker: Okay.

Armstrong: Then I'm going to skip for a second this discussion on minimum scan density here because I want to talk to...go with Brian's comments, too, but on line 10, the correct figure is "1.33 equals 1.33."

Becker: Okay.

Utley: Yeah, that wasn't picked up from the other...from above, the aspect ratio.

Armstrong: Line 15, the square root symbol again is missing from that same equation. And then finally, I don't see why, in this example, or any digital example where we have no scanning to do, why we should even include any reference to minimum scan density because the only application of scanning in a digital world is if we were to print a digital photograph and later scan it, in which case we'd follow the print formulas, not the digital formulas. So, my suggestion here is that we change the sentence, beginning on line one, to end after the word "dimensions"...actually, strike the words "and minimum scan density" and also to eliminate line 23. Do you agree, Brian, that there's no reason to have that there?

Utley: It certainly doesn't add anything. Uh It doesn't uh uh subtract anything.

Armstrong: It just added confusion to me as a reader when I thought, "How do I calculate that?" and then realized it's not...we're not scanning anyway. Why ask someone to determine something that is not included as a step of the process? So I think if everyone agrees, we should strike the words "...and minimum scan density" in line 1 and 2...

Utley: No, what I would do, I wouldn't do that. What I would do is simply say, "...image size and dimensions" and then add a new sentence which says, "Minimum scan density is not required since we are dealing with a digital image."

Armstrong: That's fine, too. Then let's strike line 23.

Utley: No, I'd leave that in.

Armstrong: It's redundant, but that's okay. Do you see any other problems with the formulas? Did you review all of this again today, Brian?

Utley: Uh I've just uh uh I have not reviewed anything today. I wasn't aware of the problems until about three minutes ago.

Armstrong: Okay. So that covers my comments on that.

Bernstein: And, Steve, do me a favor. When you guys draft this letter, draft it to Si and Brian. Okay? I'd like to be cc'd on...and by the way, I'd like to be cc'd on any correspondence of anybody to do with the patents.

Becker: Okay.

Bernstein: One last thing. Doug mentioned that you had a file from Brian, a spreadsheet that part of the spreadsheet matter is not incorporated in here. He didn't know why...he couldn't explain why. I was wondering what that matter is, and where is it? Are you aware of that? Because he referred to you.

Becker: Did heTo me?

Bernstein: Yes.

Utley: Uh uh That's probably the image sizing spreadsheet.

Becker: Image sizing?

Utley: Yeah, I sent you two files on Monday.

Becker: Okay. Actually, you sent three all together. Oh, you sent three emails, and then the last one had two of them.

Utley: Right, the last one had two files: both the image sizing and the process.

Becker: Oh, you've got the macro, and then you've also got the description of the math. Now, what did you want included that wasn't?

Bernstein: Well, Doug said it should have been included, but it wasn't...the rest of that sheet.

Becker: What?

Bernstein: I don't know. Whichever half's missing.

Armstrong: Hold on one second...I don't want to confuse Steve. We do not want you to cut and paste out of those documents into these patent filing. Those documents do not reflect the way we want to express the math.

Bernstein: Right, but we might want them in there, B, correctly.

Armstrong: What?

Bernstein: We might want them in their correctly...

Armstrong: ~~They're not in there correctly.~~ We just went through it. It's now correct. If he employs all of the changes we just all agreed to...

Bernstein: No, but there's another sheet that's not reflected here.

Armstrong: Well, yes, I do want to talk about that. The macro, right?

Bernstein: Right. Can you forward that file to us--the Excel sheet--to Jim, me.

Armstrong: Just have Steve forwarded the whole email back to you.

Bernstein: Well, he doesn't have it in front of him, and Brian's got it right here.

Utley: No, I sent it to you. You were copied on it.

Bernstein: Okay. Let's just get the most up to date...any changes.

Becker: Yeah, Brian, remember, we made a decision not to file the claims directed to your macro--we made that decision last...a week before the...

Bernstein: Why?

Becker: Because it was going to involve some additional work, and we didn't have time at that point; and it was all new matter that wasn't going to claim priority to anything, so...

Bernstein: Well, what's new matter? If the math is part of describing the invention, then it's not new matter, according to what Doug's told me four times now.

Becker: Well, Eliot, as you recall, you always have to look at the claims of the application, and that defines the scope of your protection. The claims will also define...also have to be supported by the specifications. We were going to direct claims to the idea of using...of having a macro program, which is useful as a tool, to do these calculations in a rather simple process.

Bernstein: Okay, that's fine if you want to just claim a macro. That does it as a simplified process and add that as an additional patent for us, but the underlying math of it should all be applicable to the invention since it's just derived off the invention.

Becker: Yeah, math...

Bernstein: So it's not new matter, it's just an understanding of the matter. I mean, I swear we went through this four times the other day with that conclusion.

Becker: There are two files that Brian sent me. One of them was an Excel spreadsheet having six pages, and all of that material was included in the application in pretty much cut-and-paste format. His pages 2, 3, 4, and 6 were the examples, which I just cut and pasted as soon as I got them from Brian because they defined it all very particularly.

Bernstein: Okay, now you need to get back your record of that because 2, 3, 4, 5, and 6 that Brian is sitting here showing me, were never in these patents yesterday. So cutting and paste, you must have put them in the wrong document.

Utley: Those are the examples.

Bernstein: But those weren't...that's not what ended up in there.

Utley: They pulled these pictures out and put them as a uh uh uh figure sheet on the back, uh and then uh uh we ~~re-~~entered...

Bernstein: Wrong math.

Utley: ...the formulas in the body of the...

Armstrong: Hey, right. B, are those images...are you looking at the figures? Are all of these figures in the patent application.

Utley: We should be on figure 7.

Bernstein: Steve, figure 7?

Becker: Okay.

Bernstein: Are you looking at it?

Becker: Not in front of me, but I recall writing it.

Bernstein: Jim, figure 7, what do you see?

Armstrong: I don't have a figure 7...because that was part of...that didn't come in the patent application, that I was mailed~~but [ ]~~.

Bernstein: It's not part of that final patent?

Armstrong: I don't know about that, but it didn't come as part of that Word document.

Bernstein: That's what I just sent you, ~~that's~~ supposed to be the final revision of the patent.

Becker: We have to scan the drawings into a Word document; so if you just mailed the Word document, you probably didn't get any figures yet.

~~Armstrong:~~ Probably the figures were left off of that Ei-

Bernstein: Okay, do you have your patent application?

Armstrong: I've got the one we reviewed on Tuesday Wednesday.

Bernstein: And what's in there?

Armstrong: All the figures.

Bernstein: Right or wrong?

Armstrong: You know, I don't know. I didn't...Brian, was figure 7 changed at all with the restatement of our aspect ratio?

Utley: Yeah There were some additions that I made for clarification purposes. Uh If you look at the first page of the imaging process, where it says, uh uh the third box down, it says "viewing image," uh I inserted uh "SIR less than DWR" to tie it to the equation above it. And then in the one, the bottom, uh uh it has the expression "SIR greater than BWR," again, that is to tie it to the equation above it.

Armstrong: Yeah, because those two don't have a distinction, figure 7 as it is now.

Utley: Right. So that simply ties the image to the equation.

Armstrong: So do they have...have you sent them an updated amendment?

Utley: Yeah, that went out uh uh late Wednesday afternoon.

Armstrong: Okay, we've just got to make sure that the corrected figure 7...

Bernstein: Steve, can you fax us the filed patent?

Becker: No, I can't find it. I guess Doug took care of this from...

Bernstein: Does his secretary have a copy?

Becker: ...Monday night on. I spoke with her, and she wasn't clear...she wasn't able to find it.

Bernstein: Do we have a filed patent?

Becker: How certain would you like me to answer that question? I mean, Doug sent me an email saying we filed the patent.

Bernstein: Well, what he sent me that he said he filed is missing the diagrams. So, I have a final patent document missing...

S. Bernstein: When is Doug available?

Bernstein: Yeah, does he got a cell phone or something?

Becker: I don't know. I don't know. Maybe I can help clarify this...I mean, Eliot, you sound like you're really upset at us.

Bernstein: You know, I'm not a person to get upset until I see that I spend a lot hours going through this, Brian spends a lot of hours, we make all of these global changes...

Becker: Eliot, I've heard that a couple times already. Let me try to explain a little bit about patent law and maybe help everyone understand what has or has not happened. Okay, there's a lot of rhetoric being thrown on there, but there's...

Bernstein: Yeah, because we're blind.

Becker: I don't think all of it has a lot of basis in patent law.

S. Bernstein: That's good to hear, so let's hear that.

Becker: Okay, and Si, I thought you in particular might be interested to hear that.

S. Bernstein: Yeah, that's, you know, I'm not sure that adds any comfort because maybe what you're saying is it's not an exact science and then you move along...

Becker: Well, I'm going to go well beyond that.

S. Bernstein: Okay.

Becker: Does anyone have a copy of claim one they can read off of?

Bernstein: Yes.

Utley: Uh uh This is only a piece of it, right? |

Bernstein: Yeah.

Armstrong: It's Page 22. |

Becker: I'm working off what you emailed me, Jim, and I see page 24, lines 1 through 7. I guess they could have repaginated, but...

Armstrong: Oh, but Eliot had mailed you...or faxed you...

Becker: I'm sorry, what you emailed me.

Armstrong: Oh, okay. So it's changed then. I don't know why, though.

Becker: On the top of the page says "What this claim is."

Armstrong: "What this claim is"...

Becker: Do you have that?

Armstrong: Yes, page 22 in my printed on.

Becker: Okay.

Bernstein: Okay, hold on one second because I want to get my notes.

~~Utley~~S. Bernstein: What page is that, Jim?

Armstrong: Page 22 You don't have it, BrianSi.

S. Bernstein: Because I don't have 22.

Armstrong: Want me to fax it... email it to you?

S. Bernstein: No, that's okay, he's going to explain it to me. I want to see if I can't understand this.

Becker: Sure. It's very sort claims, seven lines long. It actually defines the scope of the patent protection that we are trying to obtain in this filing.

Armstrong: Who are we waiting for, Eliot?

Becker: I ~~think~~believe so.

Bernstein: Yeah I'm up front. We're waiting for Brian again.

Becker: Let me know when you're ready.

Bernstein: Okay, Steve, Brian stepped out for a minute, but I still want to address this issue. We invent something. I hire a mathematician. The mathematician solves the X, Y, and Z of the invention. Does he claim a new patent for himself?

Becker: Probably not. [Inventorship] typically follows with the conception of invention. If somebody else figures out how it was done, generally speaking that would.

Bernstein: Well, I want to be very ~~clear~~clear on this because Doug's thinking...I don't even know if then the next statement is correct or incorrect, but if a macro was created using the math that comes from the invention, where does it follow? Brian, I just asked him, if I hired a mathematician to do the math, put all of this into a thing, where does this follow. He says the invention, the inventor, etc. The guy you hired to do math wouldn't claim a new patent or a new invention, which is confusing to me because Doug now, as of this morning, told me that you're planning on filing a separate patent as inventor of a macro that just spawns off the math entitled to this invention. So I'm confused, and I want to be very specific on this of what our strategy is here on all of these peripheral pieces.

<End Side 1; begin Side 2>

Bernstein: Why don't you explain that to me again.

Becker: Can we go ahead with describing the claims?

Bernstein: Well, do you want to just finish that real quick, and then we'll go right back to the claims?

Becker: Okay, now what was the question you posed me, Eliot?

Bernstein: I hired a mathematician to solve for what I did. He comes up with an equation. Where does that equation belong? Does it belong filed as another patent? What's the inventorship, so to speak? And then, I design from that math a macro that solves that math with input formula. How should we be protecting that the whole way through, because I seem to be very confused about what I'm being told each day.

S. Bernstein: Okay, let him answer the question.

Becker: Invention follows whoever conceived the invention as claimed, and that's why the claim is so important because when you set forth in your claim what it exactly is that you're claiming, you have to ask who conceived of that idea—who was the first one to come up with it. So, typically if somebody really reduces your idea to equations that describe why it works or how it works, typically they would not be named as a co-inventor because they really didn't invent the idea. Now if you wanted to claim a macro which has user-input displays for receiving certain data that can be used by, say, a technician to determine the scan density of a print film image that would allow for the desired enlargement ratios and the desired target image size, that kind of is a separate idea, and that's why we thought it would be useful to claim that as a tool as well.

Bernstein: Okay, and I understand that part. I don't mind claiming that all day long.

Becker: Brian really was the one that built that and came up with it. It's based on principles that you learned, you know, a few years ago that maybe you didn't understand the math behind them, but certainly, I would think, be named an inventor on that.

Utley: I think that would probably claim both Eliot and myself as it relates to both aspects.

Becker: Right. But the important thing with the patent office is that it is...the patent office realizes that it is a bit of a grey issue in terms of who conceived what, so the important thing is not to have any deceptive intent.

~~S. Bernstein~~Armstrong: I think the most important thing is the distinction between invention and ownership. As I understand, all of this, every one of the patents that we have filed, all rights, title, and interests are viewit's, regardless of who the author/inventor is; and any revenue stream derived therefrom are viewit's, and that's the important thing. Is that true, despite and in light of the [\_\_]?

S. Bernstein: Well Jim that's ~~my~~ very next question

Armstrong: ~~because~~ because we could put anybody as an inventor; but as long as that doesn't entitle them to a disproportionate share of any revenues derived therefrom, then I don't care.

Becker: Yeah, invention or ownership initially vests in the inventor or inventors who are named in the application; but typically, inventors are under some obligation to assign to a corporate entity, either written or by cause of their employment—and you can get into the issues of shop right...you know, if somebody invented something on the corporate time and then went and...you know, it wasn't really part of his job description, I know this issue's going to be a little more tricky. But I think in this case...what we do typically as a practice to confirm ownership is to have the inventors sign a written assignment document over to whichever corporate entity they want to...

S. Bernstein: But haven't we followed that?

Becker: We've got those documents. I don't think we have them all signed and filed yet.

~~S. Bernstein~~Armstrong: Let's get them.

Utley: Well, Doug was doing that on Tuesday while he was here.

Becker: Okay. Did you do some signing of documents, Jim and Eliot?

Bernstein: Yeah. Right.

Becker: Okay, so that's in process.

Bernstein: Okay, and wasn't really the intent of my question. The intent of my question is to define, for my understanding, what should claim back to Ray [Joao's] patent, and that means that everything other than a macro shell should define back to the original patent and be filed, corrected, amended, however we get it in to the original patent documents since none of it's

new matter, it's just an explanation mathematically on every equation of what happens.

S. Bernstein: That's what I heard at the meeting.

Bernstein: And that is exactly what I've heard, repeated; and then this morning, it was completely opposite, and yesterday it was a little opposite—a little—and, you know, I've become very confused about which strategy we're taking, which road, because we decide something, and then it's changed, and we're doing something else, and I'm completely lost.

Becker: I think I can make this very clear for you if you'll give me an opportunity.

Bernstein: I will.

Becker: Let's take a look at claim one. Claim one states that what you're claiming is a method of providing a digital image file for viewing on a user display in a viewing window that has a predetermined size, and the method includes one step. The step is, very broadly stated—so bear with me here—providing a digital image file having a image size comprising a fixed number of pixels representative of an image wherein that image size is greater than that of the viewing window size. Now the broad concept that we're trying to claim here is being the first ones to provide a digital image file that has more data than is needed for the window size. And why are we trying to claim that? Because that allows you to zoom into the image without pixelation, and it allows you to pan around the image to corners that maybe are not shown in the original viewing window. Does everybody understand that?

Ullery S. Bernstein: I think so.

Armstrong: Yes.

S. Bernstein: I think we're on the same line.

Becker: Okay. So now the question becomes: Did we support that claim with relevant descriptions in the specifications. And what's our standard? Our standard is that we have to provide enough disclosure in the specifications to enable somebody to make and use that invention as claimed. This person needs to be somebody of ordinary skill in the art—in other words, somebody who can read this document and maybe has some technical background in imaging or image processing, for example, and can read what we've put in our document and can perform our methods claimed. Okay? Everyone with me so far?

Bernstein: Um, hm.

Becker: So we look back into the document that was filed on Wednesday and we say to ourselves, "Did we provide enough information in that document to allow somebody to teach somebody how to make and use a digital image file that has an image size greater than the viewing window size?" And one might argue that stating the solution in itself almost provides enough information to one of ordinary skill in the art to actually reduce this to practice and to make and use one. However, we've provided not only a description of several different ways of doing it, but also some examples, including math, that should make it abundantly clear to one of ordinary skill in the art how to do it. The test is whether it would require undue experimentation on the part of this fictitious person of ordinary skill in the art to make and use a digital image file having these characteristics. So the question you need to ask yourself with respect to this application is: "Okay, maybe there was an error or two in how it was expressed in examples or the number of pixels counted or division here or subtraction there, but was there enough in there to enable somebody, based on those teachings alone and, of course, their background, to make and use an image file having those characteristics?"

Ullery S. Bernstein: Okay.

Becker: And I think, based on a reading of it and based on what Jim just walked me through in these corrections that need to be made, that there probably was enough

in there. That there probably is. I mean, we've described in several different ways how to do it with print film images or with digital images. We described in generally, and then we went and described it specifically.

S. Bernstein: Okay. Can I ask you a question?

Bernstein: Wait, Dad, because that still doesn't answer my question. That answers this issue here.

S. Bernstein: Let him finish with it.

Bernstein: Okay. Are you going to take this back to Ray's original filing on our...

Becker: Let me do that next, okay? Now, with respect to Ray's original filing on August 2<sup>nd</sup> of last year, we asked the exact same inquiry when we review the specification that we filed on Wednesday: Did Ray's filing back on August 2<sup>nd</sup> of 1999 provide enough disclosure and enough teaching to enable one of ordinary skill in the art to make this file?

Bernstein: And we have a lot of disputes on that because it doesn't even cover zooming.

Becker: Right, but what it does describe, if I recall correctly, is it does describe that you want to enlarge a print film image to a certain size and then scan it at a high density. Now it doesn't tell what density, it doesn't give a number of pixels, ....

Bernstein: It doesn't talk about zooming in on the image.

Becker: It doesn't tell the number of pixels, but it does show one way of doing it with a print film image. It doesn't talk about digital images...doing it specifically with digital images. It may refer to it generally, I don't know. But that is the inquiry.

~~S. Bernstein~~Armstrong: If I hear you correctly, it is less important in the claim to say anything relative to zooming was in the claim to illustrate or to claim that the target image size is larger than the viewing image window because that is, in itself, your ability to have the zoom capability.

Becker: You're right. You can claim it all different kinds of ways. This was one way that we worked out in conjunction with Eliot and Brian two weeks ago. This is one of the ways we worked out claiming the invention.

~~S. Bernstein~~Armstrong: Because ultimately zooming is simply a feature of the invention.

Bernstein: Okay, hold on one second. Steve?

Becker: Yeah.

Bernstein: When I look at Ray's claim one, "What is claimed: An apparatus for producing a digital image comprising a device for generating a digital signal file from a print film image and a processor for processing said digital signal file and for generating an image file wherein said processor generates a first signal file from said digital signal file, and further wherein said processor processes said first signal file and generates set image file."

Becker: Okay.

Bernstein: Okay, we all agreed that that is completely insane...to describe anything about our invention...whatever.

Becker: I know it's all completely insane; but I think that with the claim that we drafted, ...

Bernstein: Yeah, he missed the point.

Becker: Okay.

Bernstein: Well, then, the claim we drafted, this was my question. It should be right here, in this claim, in the patent he filed to date back as far as I can to protect our dates, should be changed to the claim we just created.

Becker: Oh, no, this application died on Wednesday, and it doesn't proceed to a patent. A provisional application...

Bernstein: No, no, this isn't provisional. This is a filed patent. I'm ~~dealing~~ dealing with ~~one~~

Utley: This is the one that was filed March 24<sup>th</sup>.

Becker: Oh, okay.

Bernstein: By Ray [Joac].

Utley: So this was the PCT filing on March 24<sup>th</sup>.

Becker: Okay, thanks.

Bernstein: And my question is shouldn't the claims in this patent we just filed be exactly, if not identical, to the one...or should they be transposed to Ray [Joac's]? And it was my understanding from Doug that for speed and if the patent gets through, etc., that we would rather have it be based on that first patent filing.

Becker: That could be a recommended course of action.

Bernstein: And this is going to get dejected.

Utley: What we discussed on Tuesday...no, on Monday afternoon, was that uh one of our action items was to go back and review the uh March 24<sup>th</sup> filing and decide exactly how we were going to integrate into that filing the uh the uh claims that are that should be in there vis-á-vis the specification.

Becker: Okay.

Utley: That was one of the action items that we uh uh covered on Monday afternoon.

Bernstein: And now my question further goes to say that once we amend the claims, is there any way to amend the body?

Becker: No.

Bernstein: Even if we're not adding new subject matter?

Becker: You can amend the body if you don't add new subject matter.

Bernstein: Okay, so we can fix Ray's mess.

Becker: You can't add what we added in this application.

Bernstein: Which part? The math is just a description of the old matter, so therefore we should be able to add it.

Becker: It's not supported. It's not suggested in the prior applications.

Bernstein: Oh, it's all suggested because by the nature of the invention it's suggested.

Becker: I think the patent office will never allow us to add all of that matter into the application.

Bernstein: Okay, but we should add as much matter as we feel comfortable with to buff up Ray's original filing.

Becker: Sometimes if you change a word or a sentence in a specification...

Bernstein: Yeah?

Becker: The examiner will outright reject it for new matter.

Bernstein: Well, who cares? He's going to reject this for insanity in the first place. I mean, he's going to reject this for "what did you patent? Nothing?"

S. Bernstein: If I'm hearing Steve right, there's very little we can do to change the language and content of that particular patent...

Bernstein: No, you're not hearing him right because he just said you could change all of the claims whenever you want as long as the examiner hasn't approved them. And right now before the examiner starts approving...looking at this and saying it's nonsense, I'd rather get the right stuff in there. Now, we can get most of this stuff in there, albeit I'm going to need good argumentation as to why we can't get it all in there.

~~S. Bernstein~~ Armstrong: Steve, is that correct?

Becker: We can change the scope of the claims of the prior application...I mean, that's a good action item, a good thing to do. You know, as I mentioned, it's unlikely we'll be able to change the specification substantially; and if we don't quite...

Bernstein: Well, we should throw in the word "zoom" if we can.

Becker: At some point it becomes a question of language and what language you've used. If we come in and start saying, "Well, what we really were talking about is zoom and pan," Yeah, it's possible we could get some of those arguments through the examiner, but...

Bernstein: Well, we sure as shit should try.

~~Uteley~~ Bernstein Well, it looks like Ray took all of this out of here.

Becker: It's not as critical as getting one good filing on like we did on Wednesday.

~~S. Bernstein~~ Armstrong: Yeah, but the date's what's important.

Bernstein: Right.

~~S. Bernstein~~ Armstrong: If this March one...we have one good filing, but it's dated August 2<sup>nd</sup>. That's the difference.

Becker: But it claims priority back to...

Bernstein: The original provisional.

Becker: The original provisional, which is before this date, again to the extent that it's...

Bernstein: Right, and that's the strategy I have been hearing is the correct approach here, is that we should be cleaning up Ray's filed patent as best as we can without adding subject matter--and I don't think we really have any new subject matter other than a macro shell to re-widget our math, which is okay, we'll leave that out. But I definitely want the underlying math, because that's just not new subject matter, that's just old subject matter defined, and try to get as much of this in that examiner's hands as fast as we can because that is our first patent and we'd like it to approve. And then you know what? Leave the macro in this one, and then you've got a reason that you've got new matter in this one that doesn't conflict with your old matter. I mean, the math, I sat through with Doug, went through this with Chris Wheeler, my father, I heard all of those things, and then I'm hearing that that's not our strategy. So I just want to be very specific on this so that we get that completed in time. I know there are issues to timing, etc., that we don't want to wastewait.

Now, I'm also confused of how we particularly predicted our date as well on when this was first exhibited. According to my last notes of when you guys were down here originally, we kind of went through a timeline; and that timeline has now been changed to September, when, in fact, we felt it was more like April or something as the first commercial advantage. Now Doug's talking to me about September dates, and I can list you fifty things that occur before then that will be detrimental. As a matter of fact, the first one really being something like 8/10, which only gives us six days, if my numbers are correct. We signed a license contract with

[Centrec? Centrack?] to use and distribute your product. So that's well before 9/1; and these are some real critical things that depend on that date, if I'm not mistaken.

Utley: What contract?

Bernstein: [Centrec? Centrack?]. The license agreement was signed on 8/10.

Utley: The only thing we signed was a demo.

Bernstein: A demo license, yeah. Well, you were putting it up to commercialize on their site-- on a public site.

Utley: But there was no charge.

Bernstein: But it's not a question of charge, according to Doug. Correct, Steve?

Becker: I need to have some facts.

Bernstein: Okay. We signed a demo to put up on a company's Web site, and we did, our materials for public viewing so that they could identify customer response.

Becker: Oh. When was this?

Bernstein: 8/10.

Becker: Okay.

Bernstein: Now, there were conversations prior to that.

Becker: Well, the upside is that we've got an application on file as of this past Wednesday.

Bernstein: Well, what about changes?

~~S. Bernstein~~Armstrong: We have to deal with that one year of commercialization.

Bernstein: If we're not wrong, and I hate to preach to a lawyer, but that seems to be my understanding. So I'd like to get what is claimed in this one into Ray [Joao's] immediately, if not, somehow sooner.

Armstrong: Well, hold on, let him answer the question about commercialization. Would that be considered the first date of commercialization or a date of commercialization if there's one prior to it?

Bernstein: There's not, but...

Becker: Again, we have to start with the claimed invention...

Armstrong: This was ~~+~~zoom & pan imagery that we did for him.

Becker: Okay. And the inquiry is whether or not...

Bernstein: No, it's video, too, B, that we did.

Armstrong: There was video, too?

Bernstein: Sure.

Becker: The inquiry was whether or not the claimed invention was on sale more than one year before the filing date of the application.

Utley: This was a test program to determine feasibility.

Becker: That actually works in our favor. The laws recognize sort of experimental use as sort of being a mitigating factor in some types of public disclosure. Typically if it's a commercialization use, or to test the commercialization of the invention, they're less likely to find it to be...

Bernstein: Well, then, that's definitely what it was.

Becker: ...commercial use.

Utley: Is there any difference, Steve, between...we signed an agreement to do that.

Becker: Okay.

Utley: There was no public visibility for another month. So which date will be the reference date?

Becker: Would you call that a sale, that agreement?

Utley: No.

Becker: Okay.

Armstrong: Were we ever paid anything by [Centrec? Centrack?]?

Bernstein: No.

Utley: No.

Armstrong: Never.

Becker: Okay, that certainly works in our favor if it wasn't an actual sale of your product. In that case, you look more at the public disclosure date.

Bernstein: Well, that was the public disclosure date.

Utley: No, that was September.

Bernstein: No, it was this date because...well, whenever you put it up on the site publicly.

Becker: When did you put it up on the site publicly?

Utley: It was in September. It took us awhile to get there.

Becker: Okay. No problem, then, right?

Bernstein: If that's...I'm hanging my hat on a lot of things right there.

Utley: If that's the date of reference...

Bernstein: You know, I want to beat the 8/10 day of signing a license agreement because I don't know how that's going to be construed in court, nor do I care, when I can beat it right now.

Becker: Let me ask the question again, Eliot, do you think that the application that we filed on Wednesday does not provide enough information to enable somebody of ordinary skill in the art to practice or to make and use what we claim in claim one?

Armstrong: I could argue it doesn't.

Becker: Go ahead.

Armstrong: I might just simply because the actual deployment of it...or employment of it...does require the correct execution of those formulas; and other than one particular error that is very, very difficult to understand unless you have been part of one of these conversations about the formulas. I mean, that you have to reverse-engineer the formulas to find out that the square root in that definition is missing, otherwise you'll end up with target image areas of an enormous size and be totally lost. You'll end up just having a goofy result. I mean, I think it could be argued, that you need to be able to apply the math to create the image. It could be argued that you can conceptually create what it is that we are conceptually defining, but it's more difficult to do that without a precise understanding of the relationship of targets of subject images and viewing windows.

Becker: Well, let me turn it against you, Jim. That's a good analysis. I think it's interesting, but let me turn it against you and say if that's true, then our August 2, 1999, filing doesn't provide enough disclosure to enable one of ordinary skill in the art to make this claim.

Bernstein: On Ray [Joa's]?

Becker: ~~CONNECT~~Right, what he...

Bernstein: Yeah, that's why we want to change it before August 10<sup>th</sup>.

Armstrong: You said the August 2<sup>nd</sup> filing. This is the one we just did.

Bernstein: No, the March 3<sup>rd</sup> filing you mean.

Utley: March 24<sup>th</sup>.

Bernstein: March 24<sup>th</sup>, whatever.

Becker: Well, I guess I'm going as early as I can, which is why we tried to file on Wednesday...which is why we filed on Wednesday, so we could get the priority on the provisional application which, if I recall, read very much like the March 2000 application.

~~S. Bernstein~~Armstrong: The one you're referring to is the original provisional from August of 1999.

Becker: Yeah.

~~S. Bernstein~~Armstrong: Saying that if my argument holds, we have nothing of solid validity in that particular document.

Becker: No, what I'm telling you is that that document won't provide priority to this claim. In other words, our priority date will be Wednesday of this year, not Wednesday of last year...or not...

S. Bernstein: Because that provisional didn't provide somebody with ordinary skill in the art the ability to replicate what we did?

Becker: That's exactly right.

~~Bernstein~~Utley: March 24<sup>th</sup>

Bernstein...isn't that the one we're looking for?

Utley: March 24<sup>th</sup>?

Bernstein: Oh, no, that's the...

Utley: We're looking for the August one.

Bernstein: No, I'm looking for the provisional this claims to.  
<Two separate conversations going on at once; difficult to hear and follow...>

Becker: Let me ask you this...

S. Bernstein: Then that's to say--and maybe I'll question my own logic now--is it enough to say that somebody understands that in the viewing window that you create zoom and then create [ ] ability?

Becker: As long as we just...

Armstrong: That optimized the particular...

~~S. Bernstein~~Armstrong: And all we did was help to clarify...

Becker: I think that's pretty convincing. You know, you don't have to enable all the ways of doing it; you just have to enable essentially one way of doing it.

Bernstein: Okay. Despite all of this, I still want a firm yes or no.

Becker: I think was actually critically really finally getting to the issue.

Bernstein: No, yeah, we are.

Becker: Away from the rhetoric of accusations and...

Bernstein: Okay, okay, right, but...

Becker: And fear-mongering and calling the investors. I think we've gotten to...

Bernstein: Well, I mean, we've got to deal with things. These are real fears meaning we definitely have real issues. But looking beyond that, which is fine, I've got still an unanswered question: Does Ray [Joao's] set of claims change tomorrow, Monday, whatever, so that we can protect ourselves? Now you've agreed that's a good strategy, Doug's agreed that's a good strategy, but yet I hear no execution strategy, and that's what I want to make 100% sure that I can get as much of what we've discovered into Ray's incompetent work, and I will call it that, as possible. And your work is far more superior. These are some issues, but, you know, there's issues...it's a large thing to grasp, and we'll get through it. But I want to change what Ray [Joao's] done, and that was my understanding that we're going to take the claims that we've discovered in this application you just filed and put them into that one, and that the worst that's going to happen is that the examiner will approve the earlier one of Ray and yours will fall away, the second one.

Armstrong: Did somebody just join this call?

Bernstein: No.

Armstrong: Did you hear that beep, beep, beep?

Becker: I did. I don't know if anyone has joined.

Bernstein: Si? Si?

Armstrong: Maybe he got off.

Bernstein: Yeah.

Armstrong: Okay.

Becker: Well, let's do this, Eliot. Let's say that...I know you are concerned about the August 10<sup>th</sup> date, why don't we say that we will make some amendments to the claims in the prior filings you're referring to, and we'll clean that up as best we can and make sure that we have the claim amendments...

Bernstein: <Aside to Utley> This is the one we filed?

Utley: <To Bernstein> That's the provisional.

Bernstein: <To Utley> That's the provisional?

Utley: <To Bernstein> Right.

Armstrong: What about correcting the math in the one from two days ago?

Becker: Yeah, then again, I don't know what was filed; and again it appears...I really need to consult with Doug on that.

Armstrong: Yeah, but if we're of understanding what we talked about today is what he filed, and I believe that's it, then what do we do to correct that? We should probably correct that by the 10<sup>th</sup> as well.

Becker: Okay. Right. That actually was more important with the 8/10 date because these changes are considered to be better, then we need to get a filing out by that date.

Armstrong: Okay.

Bernstein: And Steve, just to remind you on this point, I still definitely for a comfort level and to keep accusations at bay, just a letter of what's occurred, what my risks are, and what our strategies for execution are on this filing relating to as well fixing this one as well as relating it to Ray [Joao's]. If you could write that clearly to us, that gives us a lot of comfort level.

Becker: All right. Hopefully what I explained today about priority will help.

Bernstein: Well, this gives it the final touch of you can rest assured, I've got it in writing. That's what I need to comfort me that I've got a strategy, that everybody's on the same page, so to speak, so that page doesn't shift, so that we don't get off that strategy and we all stay focused on that one sheet. So that would be critical. And what is our next due date? Is that on the 10<sup>th</sup> or the 8<sup>th</sup> or something, or am I missing...

Utley: Well, the only reason the 10<sup>th</sup> has any potential bearing is because that's when the test license...

Bernstein: I'd like to beat that here, on this claim, because if we can beat the 10<sup>th</sup> here on Ray [Joao's] filing, that's what we need to do there, right?

~~Becker~~Armstrong: That's actually not an important date for Ray [Joao's] filing.

Bernstein: Yes, it is.

~~Becker~~Armstrong: An important date for the filing that we did a few [weeks? days?] ago.

Bernstein: No, no, it's the same date. Commercialization is commercialization, and how it relates is the same here to us.

~~Becker~~Armstrong: Okay.

Bernstein: You know what I mean?

Becker: Yeah, I guess I do.

Armstrong: I'll make just one other general comment, Steve. Everyone else knows this, but you don't. I was just brought into this process Tuesday as the first time I've ever reviewed any patents. I've held them for Eliot in the past but never reviewed them; and was probably surprised with what I found was that it was an extremely important and at least, to my understanding, we had very little time to get it right, and we're now paying the price, of course. To the extent that that can be avoided in the future through careful planning, updates, and contingencies, I suggest we have a plan for that.

Becker: Yep.

Armstrong: So. Just an overall comment.

Becker: That's a good comment. I think it's important to get things done as early as possible, and we certainly have tried to do that throughout the process.

Bernstein: Steve, can you do me one last favor?

Becker: Yes?

Bernstein: Shoot over to Jim the three video patents we filed. He's signed a disclosure on it—the one you gave us—encompassing him for all patents.

Becker: All right. Jim, what's your role?

Armstrong: I'm the Director of Sales and Marketing.

Bernstein: But he's also a shareholder.

Becker: Okay.

Armstrong: I've been with this since before anybody else.

Becker: I see.

Armstrong: It was just basically me and Eliot and Guy before anybody else started, but I've never been involved in the patent review.

Becker: Now you want me to send a copy of the filings...the video filings?

Bernstein: Yeah. Can you just fax them to him?

Becker: Sure. Let me make sure I've got this right. Okay. We've got three...no, five applications, about 100 pages. Is that fine?

Armstrong: Yes.

Bernstein: We have four. Sorry.

Armstrong: Are they emailable, or no?

Becker: Yeah, they are emailable.

Armstrong: Let's do that instead.

Becker: But then you don't have the figures. We can email....

Armstrong: Email those, and then just fax the figures?

Becker: Yeah.

Armstrong: Okay, cool. The fax number is 732-747-5569. Email is [jim@iviewit.com](mailto:jim@iviewit.com).

Bernstein: And there's five video patents now. Correct, Steve?

Becker: I'm looking at my chart here: three US and three corresponding PCT [ ] applications that we wrote, and then there's a PCT video playback—that was the video playback invention—

Bernstein: Right.

Becker: And I think that's all.

Bernstein: Great. Let's get those out to Jim real quick. I'd like him reviewing those by the 8/10 date. Any changes, we're obviously going to try to revert to keep our 8/10 day as our commercialization day, giving us a little buffer if we're wrong.

Becker: All right.

Bernstein: You know what I mean? I mean because we don't know how people will interpret in the end what [Centrec? Centrack?] was, but to beat it would definitely give us a greater argument.

Becker: Yep.

Bernstein: So, all right, we'll pick this up...you're going to make those changes on this patent, correct?

Becker: I'm going to wait until I speak with Doug.

Bernstein: Okay, great.

Becker: To find out what was actually filed, and then we'll decide how best to proceed with amending that.

Armstrong: Steve, one more clarification. Did you say we have or have not had successful closure on the signing over of inventors' patents to the company?

Becker: I can't speak to that; Doug is working on that.

Armstrong: Okay, will you put that in our list of things to do...or your strategy that that gets completed?

Becker: Yeah.

Bernstein: Yeah, and B, I just signed as well as Brian and Jude and everybody. It's a large, thick document, so Doug should have an update, Steve, as to what is exactly signed. I think it was everything, correct? And we've got everybody here.

Armstrong: I've got emails that indicate that that was all done nine months ago.

Bernstein: No, it was, B, but then we filed patents; and then we thought the past was done, and now these new ones had to be done, so he came here, there was notaries here...it was, you know, it was a lot, but let's get an update on it.

Armstrong: I just want to see it in writing

Utley: In addition to that, everyone has individually signed a separate agreement with the company, conveying assigning to the company any intellectual property that's created as a result of their employment.

Armstrong: That I know. The key inventions, I just want to see that they've signed over because that's the value of the company right there. That's what I own stock in.

Bernstein: Correct. Okay. So let's get an update, and I think we're pretty close.

Armstrong: Okay.

Becker: Eliot, why don't we go through the list of things that you've asked me to do so we can be perfectly clear on this?

Bernstein: Okay.

Becker: The first is to amend Ray's PCT application, at least the claims, so that we have a good filing there, at least based on whatever Ray has in his specification. That's task #1.

Bernstein: Claims plus any additional language that's not new matter.

Becker: All right.

Bernstein: Okay.

Becker: You want a letter describing the...what was omitted or what was incorrect in this application filed Wednesday and to what extent that may have any bearing on rights.

Bernstein: Correct.

Becker: And also a course of action we feel is necessary to file new applications to amend these, make these corrections, or if there's something we feel we can do in an amendment that would not introduce new matter.

Bernstein: And our strategy going forward on this. By the way, that would mean our strategy as well on the video, correct? Because if there needs to be changes and the date did stick at 8/10, we need to make any changes we find by 8/10, correct?

Becker: Only if the changes are so substantial that they would jeopardize the ability of one skilled in the art to understand.

Bernstein: Okay, so critical errors. Okay. If we find them.

Becker: And that's why I think, you know...and if you're describing in your specifications how to make one, how to do it, provide most of the details. I mean, we've done a very detailed job of ...

Bernstein: No, I agree. I'm not...I agree. I see all that here.

Becker: Any time whatever we can get out of you guys in terms of describing how it works...that, in there when you describe a claim and there's an error, you know, there's an error in the math, will that dramatically affect and make it so somebody can't practice the invention at all, I don't know.

Bernstein: Right. So if it's critical by 8/10, it should be resolved. Correct?

Becker: With the video application, it doesn't help for us to go back and look at those. You guys go back and look at those and see if there's anything in there that you don't like.

Bernstein: Right. And if we find something in the claim, for example, that we don't like, we need to amend it by 8/10, right?

Becker: No.

Bernstein: Why?

Becker: Because the claims have to be supported by the specification as filed back on those dates, which were sometime in June...

Bernstein: Okay, but let's say all that fits, we also have the commercialization date.

Becker: The commercialization date...

Utley: I though <inaudible comment to Bernstein>

Bernstein: So we can go change the claims.

Becker: Typically [ ] prosecutions, as long as they're still supported by the specifications filed...

Bernstein: Right. So if we find any mistakes, we should change them, correct? In the video patents?

Becker: Yeah, as a general principle, that's a good idea.

Bernstein: Okay, good. All right. I think that sums up what we need. Send the letter to Si, myself, and Brian.

Becker: That's not a complete list of what you asked for me to do.

Bernstein: What else have we got? Sorry?

Becker: You've asked me to email to Jim Armstrong the three video applications and the playback application--the one playback application--

Bernstein: Right.

Becker: Now with respect to the video application, we have both PCT and US filings. Do you want us to send both of those? They've essentially identical--in fact, they are identical except the...

Bernstein: No. Just one.

Utley: Send the US.

Becker: All right, we'll send the US versions of those two. And we'll fax the figures. And element #4...Item #4 is to provide a written letter to Jim Armstrong regarding the assignment status of...

Bernstein: Well, that's to everybody. That's to Brian, Si, myself, Jim.

Becker: Brian, Si, Eliot, and Jim.

Bernstein: Right. Just giving us the update of where we are.

Armstrong: I think it's helpful to communicate to the shareholders.

Bernstein: Well, let's get it first, then we'll communicate at discretion, but I think we're there.

Becker: Okay, then, in terms of general things going forward: Eliot needs to be cc:'d on all correspondence relating to patents. Should we continue our practice of sending things to Brian?

Bernstein: Yeah.

Becker: All right, we'll continue our practice of sending things to Brian and cc:ing Eliot with copies.

Bernstein: Right, and I'd appreciate if all that email comes to iviewit.com. Therefore, I have copied records.

Becker: Are you saying you only want us to correspond with you via email, not letters? Not...

Bernstein: No, but if it is emails, iviewit.com emails because that gives me complete copied records on tape backups.

Armstrong: ~~De~~—don't send anything to any of us at a domain name other than iviewit.com, if you send it in email. |

Becker: That's the instructions?

Bernstein: Right.

Armstrong: Correct.

Becker: Don't send to any other email address besides one of your names at iviewit.com.

Bernstein: Correct.

Becker: Okay. Anything else in addition to those items?

Bernstein: Nope. Steve, I appreciate your taking the blunt end of this, I really do.

Becker: Well, I just wish you would not...

Bernstein: Well, we freaked out a little bit. You can understand that there's a reason to freak...I'm not just making this up. So based on that, let's try to resolve and move forward. |

Becker: Anything else?

Bernstein: Nope. Thanks very much.

05707

IVIEWIT.COM PATENT STATUS REPORT

UNITED STATES PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.  First Office Action received dated 11/10/03.
System and Method for Providing An Enhanced Digital Video File	P011	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for a Digital Video File	P014	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018	Eliot I. Bernstein Brian Utley	United States	Serial No. 09/630,939	Filed 08/02/00	Not assigned.	Pending.  First Office Action received 10/29/03.
Apparatus and Method for Producing Enhanced Digital Images	P017	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Abandoned.  Claims benefit of Provisional Application No. 60/125,824.  Deadline to enter National Phase 9/23/01.

09/587,730  
EIB & ZAK  
IVIEWIT TECHNOLOGIES INC TO IVIEWIT HOLDINGS TO ALPINE  
Date:

09/587,734  
BERNSTEIN + BGU + SHIRAJEE  
IVIEWIT TECHNOLOGIES, INC TO ALPINE  
Date:

09/587,026  
BERNSTEIN + SHIRAJEE  
IVIEWIT TECHNOLOGIES, INC TO ALPINE  
Date:

09/630/939  
BERNSTEIN + UTLEY  
ASSIGNEE IVIEWIT TECHNOLOGIES, INC. TO ALPINE  
DATE

09/522,721  
BERNSTEIN ONLY  
IVIEWIT TECHNOLOGIES INC.  
DATE

PER WIEDER CALL  
3/22/04

**FOREIGN PATENT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010EP	Eliot I. Bernstein Zakirul A. Shirajee	EPO - Europe	Serial No. 00938126.0	Filed 06/02/00	Iviewit.com, Inc.	Pending.  Published: 3/06/02. Publication No.: 1183870  First Office Action received. Request for Extension to respond pending.
System and Method for Streaming an Enhanced Digital Video File	P010JP	Eliot I. Bernstein Zakirul A. Shirajee	Japan	Serial No. 2001-502364	Filed 06/02/00	Iviewit.com, Inc.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P011EP	Eliot I. Bernstein, Zakirul A. Shirajee	EPO - Europe	Serial No. 00944619.6	Filed 6/20/2000	Iviewit.com, Inc.	Pending.  Published: 3/20/02. Publication No.: 1188318  First Office Action received.
System and Method for Streaming an Enhanced Digital Video File	P011JP	Eliot I. Bernstein, Zakirul A. Shirajee	Japan	Serial No. 2001-502362	Filed 6/20/2000	Iviewit.com, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018EP	Eliot I. Bernstein Brian Utley	EPO - Europe	Serial No. 00955352.0	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.  Published: 5/2/2002 Publication No.: 1200935
System and Method for Providing and Enhanced Digital Image File	P018JP	Eliot I. Bernstein Brian Utley	Japan	Serial No. 2001-514379	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.

05707

**IVIEWIT.COM PATENT STATUS REPORT**

**LAPSED PCT APPLICATIONS**

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	APPLICANT	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P009PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07772	Filed 03/23/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/125824 (P001Z).
System and Method for Streaming an Enhanced Digital Video File	P010PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15408	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Providing an Enhanced Digital Video File	P011PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15405	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Playing a Digital Video File	P012PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15406	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Video Playback Over a Network	P016PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15602	Filed 06/07/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,921 (P003Z), 60/141,440 (P004Z) and 60/155,404 (P007Z).
System and Method for Providing an Enhanced Digital Image File	P018PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/21211	Filed 08/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/125824 (P001Z), 60/146,726 (P005Z), 60/149,737 (P006Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P001Z	Elliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Remstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0526	Lapsed  <i>P009PCT and P018PCT filed based on this provisional application.</i>
60/125,824 BERNSTEIN TO IVIEWIT LLC to IVIEWIT HOLDINGS INC.,IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE							
Apparatus and Method for Producing Enhanced Video Images	P002Z	Elliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0494	Lapsed  <i>P010PCT and P011PCT and P012PCT filed based on this provisional application.</i>
60/137,297 BERNSTEIN to IVIEWIT LLC to IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE:							
Apparatus and Method for Playing Video Files Across the Internet	P003Z	Elliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0497	Lapsed  <i>P016PCT filed based on this provisional application.</i>
60/137,921 BERSNTEIN to IVIEWIT LLC to IVIEWIT HOLDINGS INC DATE							
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004Z	Elliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc. Assigned: 01/03/00 Reel/Frame: 010523/0574	Lapsed  <i>P016PCT filed based on this provisional application.</i>
60,141,440 BERNSTEIN to IVIEWIT HOLDINGS INC.to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE:							
Apparatus and Method for Producing Enhanced Digital Images	P005Z	Elliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0509	Lapsed  <i>P018PCT filed based on this provisional application.</i>
60/146,726 BERNSTEIN to IVIEWIT HOLDINGS, INC to IVIEWIT TECHNOLOGIES, INC. to ALPINE DATE							

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN                      TO IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE                      DATE:                 </div>							
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN                      TO IVIEWIT HOLDINGS INC. to IVIEWIT TECHNOLOGIES, INC. to ALPINE                      DATE:                 </div>							
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN + UTLEY                      NO ASSIGNMENT                 </div>							
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BERNSTEIN + UTLEY                      NO ASSIGNMENT                 </div>							
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     CANNOT TALK TO EIB - NOT BERNSTEIN OR IVIEWIT                 </div>							

**EXHIBIT "G"**

Yellow = Meltzer Lippe (From Undated File #196675.1  
 Green = Foley & Lardner (Portfolio Date 102-119 6/13/2000) (Portfolio Date 122,122,123 11/30/2000)  
 Turquoise = Blakely Sokoloff (Portfolio Date 7/17/01)  
 Rose = Greenberg Traurig (Portfolio Date 4/12/02)  
 USPTO &OR PCT

Application Number	MLCS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING		57103/101			Missing	Missing	Missing							
MISSING		57103/112			Missing	Missing	Missing						101 - Here References 112 + 113 claims, no titles 0101 - Here references (0118 but letter attached to fax is 117, whats attached is	
MISSING		118 +117												
MISSING	5865				General File	Letter indicating this is the general file number not 5865-2								This folder disappears from MGLS files, it is referenced as general which then becomes 5865-2
60/125.824	5865-1				Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein + Zakirul Shirajee +	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	3/24/1999			Assigned 8/5/99 to ?		Was this assigned - MGLS/PR - Fail to disclose inventors - Failure to disclose invention process - Files 3 months
60/125.824		57103/102			Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein		3/24/1999		US	IHI Provisional		Fail to correct Inventors, fix missing disclosures & notify USPTO OED of problems
60/125.824			P001		Prov Lapse		Eliot Bernstein					Bernstein to Ivivwit LLC to IHI Assigned 01/06/00 Reel Frame 010523/0 526		Fail to correct Inventors, fix missing disclosures & notify USPTO OED of problems
MISSING	5865-2				Missing	Missing Video Only Patent	LOST FILING	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application	
60/137,297	5865-2				General File	General Correspondence File	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario	6/3/1999		US	Assigned 8/5/99 to who	Strange why he opens a general file 3 months after 1st. What was general prior, in several references it is 5865. The video filing and we review form a client/matter intake it and then it disappears is not normal in the files. Try to get another of general file folder contents	This is supposed to be a video filing and we review it and then it disappears and is replaced with a general file folder contents	
60/137,297	5865-3	57103/103			Prov US	Apparatus & Method for Producing Enhanced Video Images	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario	6/3/1999		US	IHI	Provisional	Video Patent is missing Joao/Rubenstein say this is combo that covers the video + the combo. Filed months late	
60/137,297			P002		Prov Lapse	Apparatus & Method for Playing Video Files Across the Internet	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario (Possible Jeff)	6/7/1999		US	Assigned 8/5/99	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	Operating other equipment to play movies remotely by activating others devices. DVD's, TAPES, MOVIES FROM RAM MLGS/PR - Fail to disclose inventors -	
60/137,921	5865-4	57103/104			Prov US	Apparatus & Method for Playing Video Files Across the Internet	Elliott Bernstein	Elliott Bernstein	6/7/1999		US	IHI	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
60/141,440	5865-4.1		P003		Prov Lapse	Apparatus & Method for Providing and/or transmitting Video Data and/or Information in a Communication Network	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario + Jeff (Eliot + Jeff on remote concept using video from EIB + ZS + JR	6/29/1999			Not Filed		Remote control camera with video and zoom and camera mounts. Goes missing this invention. Joao has similar patents now. Missing inventors
60/141,440		57103/105			Prov US	Apparatus & Method for Providing and/or transmitting Video Data and/or Information in a Communication Network	Eliot Bernstein		6/29/1999		US	IHI IHI Reel Frame 01/0523-0574		Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60/146,726	5865-6		P004		Prov Lapse	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	8/27/1999			Not Filed		Missing inventors, missing proper disclosure
60/146,726		57103/106			Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein		8/27/1999		US	IHI IHI Reel Frame 01/0523-0509		Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
			P005		Prov Lapse		Eliot Bernstein							Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
60/149.737	5865-5					Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot Bernstein	Eliot Bernstein + Zakriul Shirajee + Jude Rosario	8/19/1999			Not Filed		Missing inventors, missing proper disclosure
60/149.737		57103/107		Prov US	Prov US	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot Bernstein		8/19/1999		US	IHI IHI Reel Frame 010523-0506	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
			P006		Prov Lapse									Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60/155.404	5865-7					Apparatus & Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein	Eliot Bernstein + Zakriul Shirajee + Jude Rosario	9/22/1999			Not Filed		Missing inventors, missing proper disclosure
60/155.404		57103/108		Prov US	Prov US	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein		9/22/1999		US	IHI IHI Reel Frame 010523-0183	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
			P007		Prov Lapse									Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60.169.559	5865-8					Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein	Eliot Bernstein + Zakriul Shirajee + Jude Rosario	12/8/1999			IHI		Missing inventors, missing proper disclosure - looks like copy of last one
60/169.559		57103/109		Prov US	Prov US	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein		12/8/1999		US	IHI	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING	5865-9		P008		Prov Lapse		Eliot Bernstein					IHI 01/06/00 Reel Frame 010523-0220		Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
						Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						May be missing filing signed by all three inventors and Joao somehow revoked it. This is supposed to be US filing but Joao does not send it
	5865-10				PCT Pending	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						Joao files this to try and cover up for the US app that Jude Zak and Elliot signed and somehow he files this to say that was filed. Then after we catch him lying he suddenly sends over a US app that
		57103/110			1 PCT Pending	Enhanced Digital Images	Eliot Bernstein		3/23/2000	3/24/1999	PCT	IHI	International	Foley states they assigned but everyone else states it is not assigned
			P009		PCT Pending	LAPSED BY BSZT	Eliot Bernstein					Not Assigned		BSZT states not assigned Should never have been lapsed and wity never assigned
						Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						JOAO NEVER ACCOUNTS FOR OR SENDS FOLEY INFO AT FIRST- THIS CORRESPONDS TO APP SIGNED BY ALL THREE AND SENT BY EIB+WITNESSES. JOAO USES THE SAME ATTRNY DCKT # 5865-1 FOR THIS FILING AS
09/522,721	5865-??				US Pending	Enhanced Digital Images	Eliot Bernstein				US	NOT ASSIGNE D	US FILING	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems. Never assign. Foley in transcripts say they are
		57103-119			US Pending							NOT ASSIGNE D		

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
PCT/US00/108			P017		US Pending									Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems. Never assign. BSZT lets this lapse losing original date, decide with Crossbow and Mondragon
PCT/US00/109		57103/111			4 PCT Pending	System & Method for Streaming an Enhanced Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000		PCT	MISSING International		This becomes limited to streaming and has wrong inventors, even after they meet with inventors
PCT/US00/110			P010		4 PCT Pending		Eliot Bernstein + Zakirul Shirajee					Not Assigned	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	
PCT/US00/111					PCT Natl Phase							Not Assigned		
PCT/US00/112		57103/112			2 PCT Pending	System & Method for Providing an Enhanced Digital Video File	Eliot Bernstein + Jude Rosario + Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000	3/6/1999	PCT	MISSING International		This is really strange, it is a copy of the above app but we lose Zak and get Jude and Brian instead. The title here is the correct
PCT/US00/113			P011		2 PCT Pending		Eliot Bernstein + Zakirul Shirajee + Brian Utley					Applicant IHI	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	
PCT/US00/114					PCT Natl Phase							IHI		
PCT/US00/115		57103/113			3 PCT Pending	System & Method for Playing a Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000	3/6/1999	PCT	MISSING International		Wrong inventors
PCT/US00/116			P012		3 PCT Pending		Eliot Bernstein + Zakirul Shirajee					IHI	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	
PCT/US00/117					ABANDONED							IHI		
PCT/US00/118		57103/114			4 US Pending	System & Method for Streaming an Enhanced Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/5/2000		US	MISSING Pending		Wrong inventors - wrong title and note that it is elb + zak

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
09/587.730			P013		4 US Pending US Pending		Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	Applicant IHI IHI	Not only Foley Spread on Blakey find	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/????		57103/115			3 US Pending	System & Method for Playing a Digital Video File	Eliot Bernstein Shirajee + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	MISSING Applicant IHI IHI	Not only Foley Spread on Blakey find	Wrong inventors Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/587.026			P014		3 US Pending US Pending		Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario						
09/????		57103/116			US Pending	System & Method for Providing an Enhanced Digital Video File	Eliot Bernstein + Brian Utley + Jude Rosario	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	MISSING Applicant IHI IHI	Not only Foley Spread on Blakey find	Here again the title is correct and the inventors get changed to elb+brian+Jude, and another similar app is filed Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/587.734			P015		2 US Pending US Pending		Eliot Bernstein + Zakirul Shirajee + Jeffrey Friedstein (NO UTLEY ON OUR COPY OF THIS	Eliot Bernstein Zakirul Shirajee Jude Rosario + Jeffrey + Brian Utley						
Missing Entirely From Foley Docket		57103/117			5 ?	System & Method for Video Playback Over a Network	Eliot Bernstein Zakirul Shirajee Jude Rosario + Jeffrey + Brian Utley	Eliot Bernstein Zakirul Shirajee Jude Rosario + Jeffrey + Brian Utley						Foley says they skipped 117 yet we have letter and app showing it was prepared for EIB + JF to sign and then it disappears and resurfaces with Utley on new number 118 but whole file vaporizes and they claim it never existed. Bill Dick states in VA Bar that they skipped this number but yet they have
						System & Method for Video Playback Over a Network	Bernstein, EI AL	Bernstein, EI AL	60/137.92 1 & US Prov 60/141/44 0				Is to continue 5665-4 & 4.1 & also 118 is attached instead	Foley states that EIB told them not to file US and this is BS File never sent to BSZT, yet fragments remain of
		57103/117			PCT Internl ?		Missing Eliot Bernstein + Jeffrey Friedstein + Brian Utley							
					<b>Not Filed????</b>									NO file found at USPTO by CPR



Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING FROM FOLEY DOCKET		57103/120			6 MISSING	System & Method for Providing an Enhanced Digital Image File	Missing		Missing	?		MISSING ?	Not on Foley Spreadsheet, Blakely finds this or they then send to BSZT but Company is unaware it	
PCT/US00/21 211			P018		6 PCT Pending PCT Natl	Eliot Bernstein Eliot Bernstein + Brian Utley	Eliot Bernstein Zakirul Shirajee + Jude Rosario	9/2/2000		PCT	IHI	Applicant International		
MISSING FROM FOLEY DOCKET		57103/121			6 MISSING	System & Method for Providing an Enhanced Digital Image File	Missing	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	Missing	?		MISSING ?		Missing oath & declaration when filed. EIB never saw this never invented with Utley - no EOB sig anywhere BSZT - Fails to report to OED or authorities - Fails to correct inventors
09/630.939			P019		6 US Pending	Eliot Bernstein + Brian Utley	Eliot Bernstein + Brian Utley	8/2/2000		US	Not Assigned	Pending	Not only Foley Spread on Blakely find	
					US Pending	Eliot Bernstein + Brian Utley	Eliot Bernstein + Brian Utley				Not Assigned			Foley files without authorization - Utley as sole inventor - no assignment to Company Foley files without authorization - Utley as sole inventor - no assignment to Company. Utley in dep denies knowing about camera BSZT Never corrected the inventors or re-assigned it to Company. Failure to report the matter to OED
MISSING FROM FOLEY DOCKET		57103/122			US Prov	Zoom & Pan Using a Digital Camera	Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	9/18/2000		US	IHI	Provisional	
60/223.344					CANCELLED		Brian Utley					Not Assigned	Not only Foley Spread on Blakely find	
MISSING FROM FOLEY DOCKET		57103/123			US Prov	Zoom & Pan Imaging Design Tool	Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	9/18/2000		US	IHI	Provisional	
60/233.341					CANCELLED		Brian Utley					Not Assigned	Not only Foley Spread on Blakely find	Foley files without authorization - Utley as sole inventor - no assignment to Company BSZT Never corrected the inventors or re-assigned it to Company. Failure to report the matter to OED

Japanese Applications

**EXHIBIT H**  
**US PATENT 60/233,341**

**Eliot I. Bernstein**

**From:** Eliot I. Bernstein [iviewit@adelphia.net]  
**Sent:** Tuesday, March 23, 2004 5:23 PM  
**To:** 'Huizenga Holdings, Inc. - H. Wayne Huizenga Jr.'; 'The Goldman Sachs Group, Inc.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'; 'Huizenga Holdings Incorporated - Cris Branden'; 'Crossbow Ventures™ - Stephen J. Warner'; 'Atlas Entertainment - Allen Shapiro President'; 'Benada Aluminum of Florida - Monte Friedkin, President'; 'Bridge Residential Advisors, LLC - James A. Osterling, President'; 'Cornell Partners - Caroline Prochotska Rogers, Esq.'; 'Crossbow Ventures™ - René P. Eichenberger, Managing Director'; 'Flaster Greenberg P.C. - Marc R. Garber, Esq.'; 'dg\_kane@msn.com'; P. Stephen Lamont (E-mail); 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'; John Bartosek (Business Fax); '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); Mitchell Zamarin (E-mail); Mitchell Zamarin (E-mail 2); Mollie Anne DeKold (E-mail); Robert Roberman (E-mail); Sal Gorge (E-mail); George deBidart (E-mail); Ginger Ekstrand (E-mail)

**Cc:** 'Harry I. Moatz - OED Director of the United States Patent and Trademark Office'

**Importance:** High

**Sensitivity:** Confidential

Tracking:	Recipient	Delivery
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	'The Goldman Sachs Group, Inc.'	
	'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'	
	'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'	
	'Huizenga Holdings Incorporated - Cris Branden'	
	'Crossbow Ventures™ - Stephen J. Warner'	
	'Atlas Entertainment - Allen Shapiro President'	
	'Benada Aluminum of Florida - Monte Friedkin, President'	
	'Bridge Residential Advisors, LLC - James A. Osterling, President'	
	'Cornell Partners - Caroline Prochotska Rogers, Esq.'	
	'Crossbow Ventures™ - René P. Eichenberger, Managing Director'	
	'Flaster Greenberg P.C. - Marc R. Garber, Esq.'	
	'dg_kane@msn.com'	
	P. Stephen Lamont (E-mail)	
	Jude Rosario (E-mail 2)	

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5:23 PM

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'  
 John Bartosek (Business Fax)  
 '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)  
 Mitchell Zamarin (E-mail)  
 Mitchell Zamarin (E-mail 2)  
 Mollie Anne DeKold (E-mail)  
 Robert Roberman (E-mail)  
 Sal Gorge (E-mail)  
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 Ginger Ekstrand (E-mail)  
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 5:23 PM

Dear Shareholders and Friends of Iviewit,

Today Iviewit's worst fears were realized when the United States Patent and Trademark Office (USPTO) contacted me regarding a certain provisional patent application in Mr. Brian Utley's name that we are supposed to have as the possession of Iviewit. I have attached the correspondence from the USPTO, which basically states that since neither Iviewit nor myself are listed on such applications we have no rights, title or interest in the patent application. Therefore, the USPTO cannot disclose any information regarding the application to us. I am astounded that our counsel Foley & Lardner who filed the application for Utley and Blakely Sokoloff Zafman and Taylor have never told us of this issue and never reported this to any authorities. In fact they made it part of the Company portfolio.

More disturbing is that this patent application has been listed on all of our portfolios (I have attached an excerpt from our most recent portfolio) prepared by the law firms Foley and Lardner and distributed to shareholders and investors as property of Iviewit. I am uncertain which application of Utley's this is ("Zoom & Pan Imaging on a Digital Camera" or "Zoom & Pan Imaging Design Tool") but either way it is not our property as represented on the portfolios. There has never been assignment by Utley or any of the law firms to the Company. I am saddened to report this loss to all of you but this is the case. There are several other patents Utley has found his way onto and we are also attempting to correct those. I am not sure what crimes this constitutes but I am checking with counsel as to our remedies.

As I have stated prior, Mr. Utley and Mr. William Dick, Esq. of Foley and Lardner have had similar patent problems in the past, which led to the loss of a business Utley ran for another South Florida businessman. Chris Wheeler our attorney from Proskauer Rose had set a company up for Utley, in which Dick and Utley wrote patents into, patents that related to Mr. Utley's employment as President of a lawnmower company Diamond Turf Equipment. The patent applications were for lawnmower stuff and Utley would not assign them to his employer when he was caught, he was fired with cause (opposite of what the resume submitted to all of you stated) and the company was forced to close, the owner taking a three million dollar loss.

I have been working with the USPTO who is looking into these matters and a team of their agents to attempt to attempt correct everything so that your investment may one day inure benefits to you, not Utley et al. I have found out that several patents we thought were assigned to the Company and its investors by our attorneys also have never been completed despite what we have been told. I will keep everyone posted as we find out more. Finally, I have attached an inventor change form, one of several that we have filed with the USPTO to correct this Utley insertion and deletion of Zakirul and Jude and inventors and it is signed by Stephen Warner of Crossbow Ventures who has recently been very helpful in his efforts to help the Company.

I truly am sorry for any misleading information that was distributed by these firms and it was no fault of the Companies (except in regards to Utley et al.) as we too were misrepresented. My heart nevertheless is truly broken with this news for all concerned.

Thank you,

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](mailto: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."

# CONFIDENTIAL

**Ken,**

**Thank you again for your most valuable information. I was inquiring regarding application number 60/233,341 and if I could get the owner, inventor and assignee information on this application.**

**Thank you,**

**Eliot Bernstein**

**To: Kenneth Weider**

**From :**

**Pages: 1**

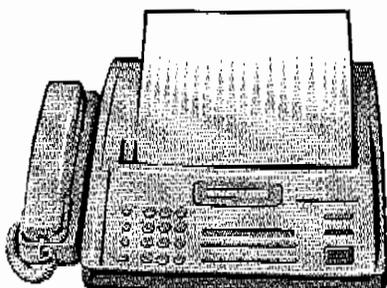
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FROM: K. WIEDER  
(NAME)

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# CONFIDENTIAL

Ken,

Thank you again for your most valuable information. I was inquiring regarding application number 60/233,341 and if I could get the owner, inventor and assignee information on this application.

Thank you,

Eliot Bernstein

REPLY:

I AM UNABLE TO PROVIDE YOU THE  
INFORMATION REQUESTED ABOVE

*Kenneth Wieder*  
KENNETH WIEDER  
SPECIAL PROGRAM EXAMINER  
TECHNOLOGY CENTER 2600

To: Kenneth Weider

From :

Pages: 1

For Information Call:

Fax Number :

# CONFIDENTIAL

**Ken,**

**Can you please state the reason that you cannot provide such information to me or Iviewit.**

**Eliot**

**To: Kenneth Weider**

**From :**

**Pages: 3**

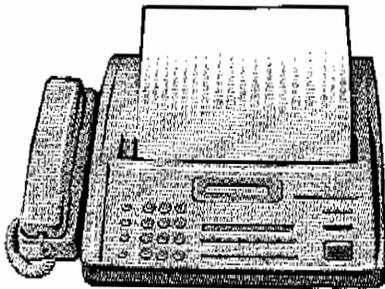
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(NAME)

(COMPANY OR FIRM)

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SAME  
(VOICELINE NO.)

FROM: K. WIEDER  
(NAME)

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From: To: Kenneth Weider

# CONFIDENTIAL

Ken,

Can you please state the reason that you cannot provide such information to me or Ivivwit.

Eliot

SEE 37 CFR 1.14  
 35 U.S.C. 122  
 - ... APPLICATIONS ARE KEPT IN CONFIDENCE ...

Eliot Note:  
 USPTO cannot give information to Ivivwit or Eliot Bernstein because we are not listed on the application and have no rights, title or interest in it. USPTO will not even discuss with Ivivwit any details of this patent which is listed in the name of Brian Utley. All portfolios prepared by our attorneys with this patent as the property of Ivivwit are blatantly false and misleading.

*Kenneth A. Weider*  
 KENNETH WIEDER  
 SPECIAL PROGRAM EXAMINER  
 TECHNOLOGY CENTER 2601

To: Kenneth Weider
From :
Pages: 3
For Information Call:
Fax Number :

VIEWIT.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	6/2/2000	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

Utley patents with arrows

This portfolio was prepared and submitted by William Dick for the Virginia Bar and further corresponds to the one prepared by Foley and Lardner after Utley was found with two sets of patent books. Prior, Utley only patents were not in any records. Further it is wrong to list assets like 341 which are not the property of the Company on a patent portfolio that is distributed to shareholders and investors.

**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

THE WITNESS: There was a

266

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as

FOLEY & LARDNER  
ATTORNEYS AT LAW  
FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEX 26-819  
(FOLEY LARD MIL)  
FACSIMILE (414) 297-4900  
TELEPHONE (414) 271-2400

IVIEWIT.COM  
Attn: Mr. Brian G. Utley, President  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, FL 33431

DATE: October 11, 2000  
INVOICE NO.: 21071917  
ACCOUNT NO.: 057103-0101

SUMMARY OF OUTSTANDING INVOICES

TOTAL DUE FROM ENCLOSED INVOICE           \$       6,158.52

BALANCE FROM PREVIOUS INVOICES RENDERED:	DATE	INV. NO.	INV. BALANCE
	08/22/00	21057519	140,149.37
	09/11/00	21062020	32,617.46

TOTAL AMOUNT DUE           \$       178,925.35  
=====

Please Reference Your Account Number 057103-0101 And Invoice Number(s) With  
Your Remittance Payable To FOLEY & LARDNER.

Foley & Lardner Federal Employer Number: 39-0473800

FOLEY & LARDNER  
ATTORNEYS AT LAW  
FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEX 26-819  
(FOLEY LARD MIL)  
FACSIMILE (414) 297-4900  
TELEPHONE (414) 271-2400

IVIEWIT.COM  
Attn: Mr. Brian G. Utley, President  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, FL 33431

DATE: October 11, 2000  
INVOICE NO.: 21071917  
ACCOUNT NO.: 057103

September 1, 2000  
through  
September 30, 2000

GENERAL FILE 057103-0101	\$	2,590.82
PCT INTERNATIONAL APPL. FOR "APPARATUS AND METHOD FOR PRODUCING ENHANCED DIGITAL IMAGES" (BERNSTEIN, ELIOT) (MLG #5865-10) 057103-0110	\$	627.85
PCT INTERNATIONAL PAT. APPL. FOR "SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE" (BERNSTEIN ET AL.) 057103-0111	\$	108.75
PCT INTERNATIONAL PAT. APPL. FOR "SYSTEM AND METHOD FOR GENERATING AN ENHANCED DIGITAL VIDEO FILE" (BERNSTEIN ET AL.) 057103-0112	\$	180.00
PCT PATENT APPL. FOR "SYSTEM AND METHOD FOR PLAYING A DIGITAL VIDEO FILE" (BERNSTEIN ET AL.) 057103-0113	\$	208.75
U.S. PATENT APPLN. FOR "SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE" (BERNSTEIN ET AL.) (BASED ON 057103-0111) 057103-0114	\$	138.75
U.S. PATENT APPLN. FOR "SYSTEM AND METHOD FOR PLAYING A DIGITAL VIDEO FILE" (BERNSTEIN ET AL.)	\$	138.00

IVIEWIT.COM  
FILE NUMBER: 057103  
INVOICE NO. 21071917

October 11, 2000

PAGE 2

(BASED ON 057103-0113)  
057103-0115

U.S. PATENT APPLN. FOR "SYSTEM AND METHOD FOR  
PROVIDING AN ENHANCED DIGITAL VIDEO FILE"  
(BERNSTEIN ET AL.) (BASED ON 057103-0112)  
057103-0116 \$ (1,684.00)

PCT INTERNATIONAL PATENT APPLN. FOR "SYSTEM AND  
METHOD FOR VIDEO PLAYBACK OVER A NETWORK"  
(BERNSTEIN ET AL.)  
057103-0118 \$ 28.75

PCT INTERNATIONAL PAT. APPL. FOR "SYSTEM AND  
METHOD FOR PROVIDING AN ENHANCED DIGITAL IMAGE"  
(BERNSTEIN)  
057103-0120 \$ 538.95

U.S. PROVISIONAL PATENT APPLICATION FOR "ZOOM  
AND PAN IMAGING USING A DIGITAL CAMERA"  
(UTLEY ET AL.)  
057103-0122 \$ 2,001.90

U.S. PROVISIONAL PATENT APPL. FOR "ZOOM AND PAN  
IMAGING DESIGN TOOL"  
(UTLEY, BRIAN G.)  
057103-0123 \$ 1,380.00

TOTAL DUE \$ 6,158.52  
=====

Total Services Billed: \$ 7,362.00  
Total Disbursements Billed: \$ (1,203.48)

Please Reference Your Account Number 057103-0101 And Your  
Invoice Number 21071917 With Your Remittance Payable To FOLEY & LARDNER.

Foley & Lardner Federal Employer Number: 39-0473800

U.S. PROVISIONAL PATENT APPLICATION FOR "ZOOM  
AND PAN IMAGING USING A DIGITAL CAMERA"  
(UTLEY ET AL.)  
057103-0122

SERVICES

09/14/00	DABO	Conference with Mr. Utley regarding new invention; perform preliminary background search and review results.	1.10
09/18/00	DABO	Conferences with and correspondence with Mr. Utley regarding invention; prepare, revise, and file Provisional Patent Application.	4.00
09/20/00	DABO	Conference with Mr. Utley regarding invention and prior art; review file and prepare notes regarding same.	0.70
			----- 5.80
			----- \$ 2,001.00

ATTORNEY/PARALEGAL	INIT	HOURS	RATE	DOLLARS
----- Douglas A. Boehm	DABO	5.80	345.00	2,001.00
	TOTALS:	5.80	\$	2,001.00

EXPENSES INCURRED

Photocopying Charges	0.90
	----- \$ 0.90

MATTER TOTAL 2,001.90

IVIEWIT.COM  
FILE NUMBER: 057103  
INVOICE NO. 21071917

October 11, 2000

PAGE 14

U.S. PROVISIONAL PATENT APPL. FOR "ZOOM AND PAN  
IMAGING DESIGN TOOL"  
(UTLEY, BRIAN G.)  
057103-0123

SERVICES

09/18/00 DABO Conferences with and correspondence with Mr. Utley  
regarding invention; prepare, revise, and file  
Provisional Patent Application.

4.00

-----  
4.00

-----  
\$ 1,380.00

<u>ATTORNEY/PARALEGAL</u>	<u>INIT</u>	<u>HOURS</u>	<u>RATE</u>	<u>DOLLARS</u>
Douglas A. Boehm	DABO	4.00	345.00	1,380.00
	TOTALS:	4.00	\$	1,380.00

MATTER TOTAL

1,380.00

# BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATIONS

TELEPHONE (310) 207-3800

FACSIMILE (310) 820-5988  
(310) 820-5270

BSTZ\_MAIL@BSTZ.COM  
WWW.BSTZ.COM

INTELLECTUAL PROPERTY LAW

12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1026

OTHER OFFICES

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SUNNYVALE, CA  
COSTA MESA, CA  
SAN DIEGO / LA JOLLA, CA  
PORTLAND / LAKE OSWEGO, OR  
SEATTLE / KIRKLAND, WA  
DENVER / ENGLEWOOD, CO

**Confirmation  
Copy**

August 4, 2001

**CONFIDENTIAL COMMUNICATION  
ATTORNEY-CLIENT PRIVILEGED**

**VIA E-MAIL**  
(And Confirmation By Mail)

Eliot Bernstein  
IVIEWIT.COM, INC.  
505 North Brand Boulevard, Suite 1420  
Glendale, California 91203

Re: Powers of Attorney for Six PCT Applications:

<b>Apparatus and Method for Producing Enhanced Digital Images</b> Serial No. PCT/US00/07772 Our File No. 005707.P009PCT Foley's Reference No. 110	<b>System and Method for Playing a Digital Video File</b> Serial No. PCT/US00/15406 Our File No. 005707.P012PCT Foley's Reference No. 113
<b>System and Method for Streaming an Enhanced Digital Video File</b> Serial No. PCT/US00/15408 Our File No. 005707.P010PCT Foley's Reference No. 111	<b>System and Method for Video Playback Over a Network</b> Serial No. PCT/US00/15602 Our File No. 005707.P016PCT Foley's Reference No. 118
<b>System and Method for Providing an Enhanced Digital Video File</b> Serial No. PCT/US00/15405 Our File No. 005707.P011PCT Foley's Reference No. 112	<b>System and Method for Providing an Enhanced Digital Image File</b> Serial No. PCT/US00/21211 Our File No. 005707.P018PCT Foley's Reference No. 120

Dear Eliot:

Being e-mailed (and enclosed herewith) are six (6) Powers of Attorney for the subject PCT Patent Applications, one Power for each inventor named in any one or more of the PCT patent applications, and one Power for the corporation, Iviewit Holdings, Inc. Three of the Powers require your signature, as follows: (i) one by you in your individual capacity; (ii) a second by you in your capacity as designee of the corporation to sign on behalf of Brian Utley (we hope the PCT Office will recognize Utley's having granted a Power of Attorney to his corporate employer); and (iii) a third by you for the corporation in your capacity as its Secretary. Kindly sign where your

# BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATIONS

Eliot Bernstein  
IVIEWIT.COM, INC.  
August 4, 2001  
Page 2 of 2

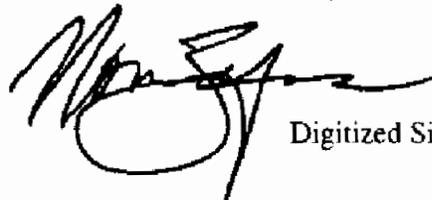
signature is indicated on the three Powers of Attorney and return the original executed Powers to our office via mail (we need to have each Power with an original signature). Also fax each Power to us at (310) 820-5988, to expedite the process.

As we discussed, we request that you also forward each of the three remaining Powers to Jude R. Rosario, Jeffrey S. Friedstein and Zakirul A. Shirajee, respectively, for their signatures. Kindly instruct each of them to execute the Powers and to return the originals to our office by mail. In order to expedite the matter, request each of them to fax a copy to us, if possible.

If you have any questions, please feel free to contact my Assistant, Jan Gass. We appreciate your attention to getting the subject Powers executed and returned to us. We will then attend to their filing with the PCT Office.

Best personal regards,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP



Digitized Signature

Norman Zafman

NZ/jg  
Enclosures

cc: Ross Miller (w/Enclosures via E-Mail) ✓

P.S. to Ross Miller:

Ross, please attend to getting a Board Resolution appointing Eliot as the corporation's designee for signing the subject Power on behalf of Brian Utley. We talked about this in the context of giving Eliot comfort; however, the PCT Office may well request such a Resolution (in addition to a copy of Utley's Employment Agreement, which we already have).

\* \* \* COMMUNICATION RESULT REPORT ( MAY. 2. 2001 3:41PM ) \* \* \*

TTI

MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
3 MEMORY TX		63-F :2030#057103#0101#15619998810#	OK	4/4

REASON FOR ERROR  
 E-1) HANG UP OR LINE FAIL  
 E-3) NO ANSWER

E-2) BUSY  
 E-4) NO FACSIMILE CONNECTION

**FOLEY & LARDNER**  
 ATTORNEYS AT LAW  
 FIRSTAR CENTER  
 777 EAST WISCONSIN AVENUE  
 MILWAUKEE, WISCONSIN 53202-5367  
 TELEPHONE (414) 271-2400  
 FACSIMILE (414) 297-4800

# FACSIMILE TRANSMISSION

Total # of Pages 4 (including this page)

TO:	PHONE:	FAX #:
Brian Utley Iviewit.com, Inc.	561-999-8899	

elicit  
Line  
561-999-8899 3/19/2004 8:06:12 PM

**From:** Barry L. Grossman  
**Sender's Direct Dial:** 414 297 5724  
**Date:** May 2, 2001  
**Client/Matter No:** 057103/0101  
**User ID No:** 2030

This comes after Utley is fired with cause and this file number does not match the patent file number

# FACSIMILE TRANSMISSION

Total # of Pages 4 (including this page)

TO:	PHONE:	FAX #:
Brian Utley Iviewit.com, Inc.	561-999-8899	561-999-8810

From: Barry L. Grossman  
Sender's Direct Dial: 414 297 5724  
Date: May 2, 2001  
Client/Matter No: 057103/0101  
User ID No: 2030

'01 MAY 2 16:45

## MESSAGE:

eliot 3/19/2004 8:07:23 PM  
Line

This comes after Utley is fired with  
cause and this file number does not  
match the patent file number

If there are any problems with this transmission or if you have not  
received all of the pages, please call (414) 297-5444.

Operator:

Time Sent:

Return Original To:

Barry L. Grossman

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# FOLEY & LARDNER

ATTORNEYS AT LAW

BRUSSELS  
CHICAGO  
DENVER  
DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

ORLANDO  
SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5724

EMAIL ADDRESS  
bgrossman@foleylaw.com

CLIENT/MATTER NUMBER  
057103/0101

May 2, 2001

eliot  
Note

Utley is gone  
already from  
Company

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

**BY FACSIMILE**

Re: Provisional Patent Application No. 60/233,341  
(Our File No. 57103/0123)

Dear Mr. Utley:

I sent you an e-mail message concerning the referenced application. As stated in that message, on September 18, 2000 a provisional patent application was filed on your behalf. The title of the application is "Zoom and Pan Imaging Design Tool". The application number is 60/233,341. Our file number is 57103/123. Mr. Boehm informed you of the filing of the provisional application in a letter dated September 22.

The application was filed without paying a filing fee in accordance with Patent Office rules that permit this procedure. In my letter of February 26, 2001, I advised you that the filing fee must be paid in order to maintain the pendency of this application. I received no response to my letter.

The time for paying the filing fee may be extended until June 4 at the latest by paying substantial extension fees to the Patent and Trademark Office. If you choose to send in the fees, I am forwarding to you a copy of the form that must be returned with your reply to the Patent Office, the Notice to File Missing Parts.

FOLEY & LARDNER

Mr. Brian G. Utley

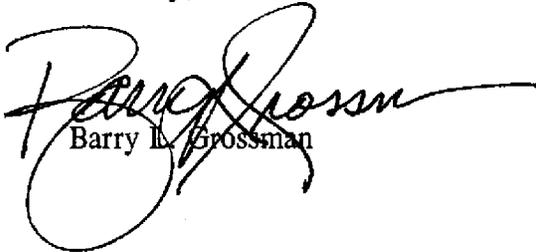
Iviewit.com, Inc.

May 2, 2001

Page 2

We will take no further action in this case. Please let us know if you would like us to return this file to you.

Sincerely,



Barry L. Grossman

eliot	3/19/2004 8:10:37 PM
Note	
There is no carbon copy on this letter as Foley was requested to provide on all patent matters and it comes after Utley is terminated. Prior to this the Company had no records of this application.	


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firststar Center  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
*Filing Date Granted*

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 200.**

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**Grossman, Barry L.**

---

**From:** Grossman, Barry L.  
**Sent:** Wednesday, May 02, 2001 4:11 PM  
**To:** 'Brian G. Utley'  
**Subject:** RE: Provisional Patent Application

On September 18, 2000 a provisional patent application was filed on your behalf. The title of the application is "Zoom and Pan Imaging Design Tool". The application number is 60/233,341. Our file number is 57103/123. Mr. Boehm informed you of the filing of the provisional application in a letter dated September 22. The application was filed without paying a filing fee in accordance with Patent Office rules that permit this procedure. In my letter of February 26, 2001, I advised you that the filing fee must be paid in order to maintain the pendency of this application. I received no response to my letter. The time for paying the filing fee may be extended until June 4 at the latest by paying substantial extension fees to the Patent and Trademark Office.

We will take no further action in this case. Please let us know if you would like us to return this file to you.

Barry Grossman  
Foley & Lardner  
ph.: 414-297-5724  
e-mail: bgrossman@foleylaw.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
191 MEMORY TX		2030#057103#0123#15619998810#	OK	P. 9/9



eliot	3/24/2004 10:49:59 PM
Note	
Supposedly sent to Iviewit fax	

REASON FOR ERROR  
 E-1) HANG UP OR LINE FAIL  
 E-2) BUSY  
 E-3) NO ANSWER  
 E-4) NO FACSIMILE CONNECTION

**FOLEY & LARDNER**  
 ATTORNEYS AT LAW  
 FIRSTAR CENTER  
 777 EAST WISCONSIN AVENUE  
 MILWAUKEE, WISCONSIN 53202-5367  
 TELEPHONE (414) 271-2400  
 FACSIMILE (414) 297-4900

# FACSIMILE TRANSMISSION



Total # of Pages 3 (including this page)

TO:	PHONE:	FAX #:
Mr. Brian G. Utley (Iviewit.com)	(561) 999-8899	(561) 999-8810

From: Barry Grossman
Sender's Direct Dial: (414)297-5571
Date: February 26, 2001
Client/Matter No: 57103/123
User ID No: 2030

FOLEY & LARDNER  
ATTORNEYS AT LAW  
FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

## FACSIMILE TRANSMISSION



**Total # of Pages 3 (including this page)**

TO:	PHONE:	FAX #:
Mr. Brian G. Utley (Iviewit.com)	(561) 999-8899	(561) 999-8810

**From:** Barry Grossman  
**Sender's Direct Dial:** (414)297-5571  
**Date:** February 26, 2001  
**Client/Matter No:** 57103/123  
**User ID No:** 2030

**MESSAGE:**

eliot  
Note  
The Company has no record of this until files are transferred from Foley to BSZT

If there are any problems with this transmission or if you have not received all of the pages, please call (414) 297-5218.

Operator:	Time Sent:	Return Original To:
		JLB

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# FOLEY & LARDNER

ATTORNEYS AT LAW

BRUSSELS  
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SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
bgrossman@foleylaw.com

**VIA FACSIMILE**

WRITER'S DIRECT LINE  
(414) 297-5724

February 26, 2001

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Patent Application No. **60/233,341**  
Filing Date: 8/02/2000  
Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley, Brian G.  
Our Ref.: 57103/123

Dear Mr. Utley:

A payment is due to the Patent Office in order to keep the referenced application pending. In order to expedite filing of the application and to defer payment of the filing fee, the referenced application was filed in the Patent Office without paying the filing fee. Patent Office rules permit this procedure. The filing fee is now due. In order to avoid abandonment of the application, we will need to file the executed Declaration with the necessary fees on or before **April 04, 2001**. If you want to maintain this application, please send us a **certified check** in the amount of **\$420.00** as soon as possible so we can get this taken care of in an orderly fashion.

Because of the long overdue status of your account, we cannot pay the fees on your behalf without advance payment in full. We will require a certified check or if you prefer you may wire transfer the payment. I will send you account information if you want to use a wire transfer.

001.956318.1

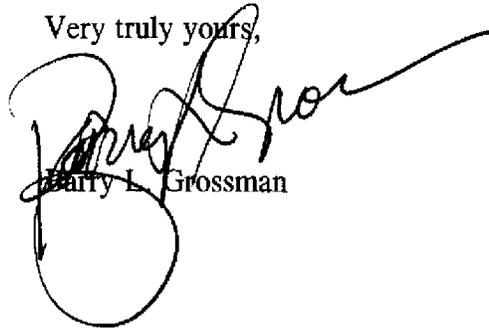
ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
February 26, 2001  
Page 2

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Harry L. Grossman

cc: Raymond Hersh



eliot	3/19/2004 8:26:09 PM
Line	
Raymond Hersh is the CFO and should not have been cc'd ANY patent information.	

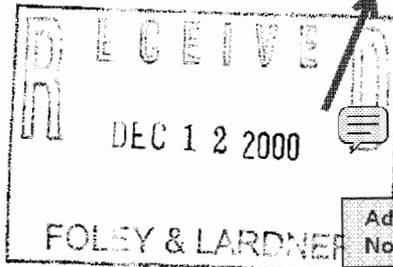


UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



\*OC000000005592300\*

Administrator Note  
Brian Utley is the sole applicant listed on this application

Mailed: 12/04/2000

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

MP  
RESPONSE DUE 04 FEB 2001  
DCL FEE

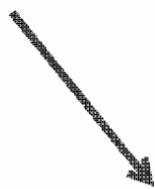
An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 200.

*A copy of this notice MUST be returned with the reply.*

*James Washington*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



12/1/00 12/14/00


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367


**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 200.**

---

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 \_\_\_\_\_  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/233,341	09/18/2000		0	57103/123	7		

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367

eliot Note
Are there supposed to be USPTO stamps on this???

FILING RECEIPT



\*OC00000005592299\*

Date Mailed: 12/04/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

←  
Brian G. Utley, Boca Raton, FL ;

Continuing Data as Claimed by Applicant

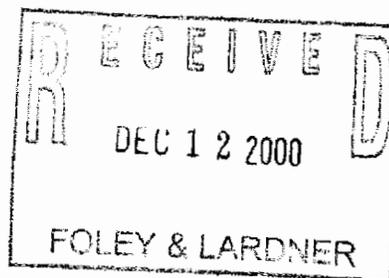
Foreign Applications

If Required, Foreign Filing License Granted 12/01/2000

Title

Zoom and pan imaging design tool

Preliminary Class



Data entry by : WASHINGTON, JAMES

Team : OIPE

Date: 12/04/2000



**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15 (b).

**PLEASE NOTE the following information about the Filing Receipt:**

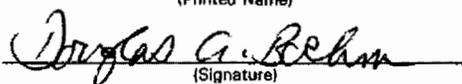
- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, DC 20231

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Brian G. Utley  
 Title: Zoom and Pan Imaging Design Tool  
 Appl. No.: Unknown  
 Filing Date: 9/18/2000  
 Examiner: Unknown  
 Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640465729US <small>(Express Mail Label Number)</small>	9/18/00 <small>(Date of Deposit)</small>
Douglas A. Boehm <small>(Printed Name)</small>	
 <small>(Signature)</small>	

**PROVISIONAL PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PROVISIONAL PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(c) is the provisional patent application of:

—————→ Brian G. Utley  
 1930 S.W. 8th Street  
 Boca Raton, Florida 33486

Enclosed are:

- [ X ] Specification, Claim(s), Abstract, and Figures( <sup>112</sup>~~105~~ pages).
- [ ] Assignment of the invention to lviewit.com, Inc..
- [ ] Small Entity statement.

The filing fee is calculated below:

	Rate	Fee Totals
Basic Fee	\$150.00	\$150.00
[ X ] Small Entity Fees Apply (subtract 1/2 of above):	=	\$75.00
TOTAL FILING FEE: =		\$75.00

- [ ] A check in the amount of \$75.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 9/18/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.); 112
- Patent Application Specification and Figures (105 pgs.);

Assistant Commissioner for Patents:  
Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.); 112
- Patent Application Specification and Figures (105 pgs.);

Assistant Commissioner for Patents:  
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Foley & Lardner

jc541 U.S. PTO  
60/233341  
  
09/18/00

<b>FOREIGN FILING</b>	
<b>FFR 6</b>	<u>18 MR 2001</u>
<b>FFR 9</b>	<u>18 JE 2001</u>
<b>FFR 11</b>	<u>18 AU 2001</u>
<b>FFD</b>	<u>09 SE 2001</u>
<b>INITIALS</b>	<u>K</u> <b>DATE</b> <u>9/20/00</u>

10/5/00





**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

# FOLEY & LARDNER

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ORLANDO

EMAIL ADDRESS  
daboehm@foleylaw.com

eliot  
Line

No carbon copy to ANYONE, despite repeated requests in the transcripts to send cc to others. Company cannot verify this as it was not in the Company files until transfer of files from Foley

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5718

September 22, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Provisional Patent Application  
Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al.  
Our Ref.: 57103/122

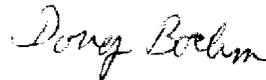
U.S. Provisional Patent Application  
Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley, Brian G.  
Our Ref.: 57103/123

Dear Brian:

Enclosed for your information and files are copies of the above-referenced patent applications that were filed with the U.S. Patent and Trademark Office on September 18, 2000. As soon as we receive the application numbers and confirmed filing dates, we will forward this information to you.

If you have any questions regarding this application, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm



Enclosure(s)

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy?



<b>eliot Note</b>	<b>3/10/2004 2:19:24 AM</b>
Boehm directed to copy company on patents and other matters	

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~-out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~Armstrong: Don't jump to conclusions.

Bernstein: No, I'm not, but if this is correct, we've got some fundamental things that need to be discussed.

~~EXPIRED~~

ALLOWED \_\_\_\_\_ FINAL FEE PAID \_\_\_\_\_

PATENT NO. \_\_\_\_\_ DATE \_\_\_\_\_

 **Kruysman**

32-00 Stulman Avenue Long Island City, NY 11101 (718) 433-3800 (800) 221-3218

No. 8029-3L ©Kruysman

ZOOM AND PAN IMAGING DESIGN TOOL - PROVISIONAL

Iviewit.com, Inc.  
005707.P021Z-

0170311



Title: Zoom and Pan Imaging Design Tool

Inventor(s): Utley

Dkt. No. 57103/123

App. No.: 60/233,341

BLG

- PTO/SB/83 Request For Withdrawal As Attorney Or Agent/in triplicate (2 pgs.)
- Declaration Of Barry L. Grossman In Support Of Notice Of Withdrawal, and Tabs 1-3/in triplicate (8 pgs.)

Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner



5/11/01  
AM

Please type a plus sign (+) inside this box →

PTO/SB/83 (11-96)

Approved for use through 8/30/99. CMB 0681-0035

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Page 1 of 2

<b>REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT</b>	Application Number	60/233,341
	Filing Date	09/18/2000
	First Named Inventor	Utley
	Group Art Unit	Unknown
	Examiner Name	Unknown
	Attorney Docket Number	57103/123

To: Assistant Commissioner for Patents  
Washington, DC 20231

See attached explanation.

1.  The correspondence address is NOT affected by this withdrawal.  
2.  Change the correspondence address and direct all future correspondence to:

<input type="checkbox"/> Customer Number <input type="text"/>		CORRESPONDENCE ADDRESS		<input type="text"/>		Place Customer Number Bar Code Label here	
OR							
<input checked="" type="checkbox"/> Firm or Individual Name	Brian G. Utley, President						
Address	Iviewit.com, Inc.						
Address	One Boca Place, 2255 Glades Road, Suite 337 West						
City	Boca Raton	State	Florida	Zip	33431		
Country	U.S.A.						
Telephone	561 999 8899	Fax	561 999 8810				
This request is enclosed in triplicate.							
Name	Barry L. Grossman, Reg. No. 30,844						
Signature							
Date	5/4/01						
<b>NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.</b>							

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

<b>CERTIFICATE OF MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.	
Date	5/4/01
Name	
	Karen Meier

On behalf of myself and the following attorneys of record who are, or were, with the firm of Foley & Lardner, we hereby apply to withdraw as attorney or agent for the above-identified application.

---

RUSSELL J. BARRON	Reg. No.	29,512
DAVID J. BATES	Reg. No.	39,902
STEVEN C. BECKER	Reg. No.	42,308
DOUGLAS A. BOEHM	Reg. No.	32,014
EDWARD W. BROWN	Reg. No.	22,022
CHARLES G. CARTER	Reg. No.	35,093
ALISTAIR K. CHAN	Reg. No.	44,603
JOHN C. COOPER III	Reg. No.	26,416
JEFFREY N. COSTAKOS	Reg. No.	34,144
WILLIAM J. DICK	Reg. No.	22,205
BARRY L. GROSSMAN	Reg. No.	30,844
PAUL S. HUNTER	Reg. No.	44,787
KATHERINE D. LEE	Reg. No.	44,865
KEITH D. LINDENBAUM	Reg. No.	40,365
DAVID G. LUETTGEN	Reg. No.	39,282
RICHARD J. MC KENNA	Reg. No.	35,610
JAMES G. MORROW	Reg. No.	32,505
TODD A. RATHE	Reg. No.	38,276
MICHAEL D. RECHTIN	Reg. No.	30,128
CHRISTOPHER M. TUROSKI	Reg. No.	44,456
JAMES A. WILKE	Reg. No.	34,279
JOSEPH N. ZIEBERT	Reg. No.	35,421
WALTER E. ZIMMERMAN	Reg. No.	40,883

---

The reasons for this request are: the client has a large and long-standing unpaid bill, and has advised the undersigned that it is unable to pay for past work or for current additional work, as explained in the attached supporting declaration.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Utley  
Title: Zoom and Pan Imaging Design  
Tool  
Appl. No.: 60/233,341  
Filing Date: 09/18/2000  
Examiner: Unknown  
Art Unit: Unknown

<b>CERTIFICATE OF MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.	
<i>Karen Meier</i>	_____
(Printed Name)	
<i>Karen Meier</i>	_____
(Signature)	
May 4, 2001	_____
(Date of Deposit)	

**DECLARATION OF BARRY L. GROSSMAN**  
**In Support Of And As A Part Of**  
**Notice Of Withdrawal Under 37 CFR 1.36**

I, Barry L. Grossman, declare as follows.

1. I am an attorney with the law firm of Foley & Lardner. I am a partner in the Milwaukee office of the firm. I am one of the attorneys of record in the referenced application. Several other attorneys at Foley & Lardner also are named as attorneys of record in the referenced patent application. The attorneys are all individually identified by name and registration number on the accompanying Form PTO/SB/83.
2. I am a member of the Bars of Virginia, the District of Columbia, and Wisconsin.
3. I am registered to practice before the Patent and Trademark Office. My registration number is 30,844.
4. This Declaration is submitted in support of and as part of the accompanying Notice of Withdrawal under 37 CFR 1.36.
5. The Notice of Withdrawal is submitted on behalf of all Foley & Lardner attorneys who would be named in the Power of Attorney to be submitted in the referenced application. In accordance with MPEP 402.06, I am signing the Notice of Withdrawal on behalf of each Foley & Lardner attorney who would be named as an attorney of record. Mr. Douglas A. Boehm, Registration No. 32,014, would also be named as an attorney of record. Mr. Boehm is no longer associated with Foley &

Lardner. However, I have been authorized to act on his behalf (Tab 1).

Accordingly, this request includes a request to withdraw on behalf of Mr. Boehm.

6. The attorneys at Foley & Lardner are seeking to withdraw as counsel in this application because the client responsible for the application, Iviewit.com, Inc. has a large and long-standing unpaid bill for legal services related to this application and other pending applications which it refuses to pay. Iviewit owes Foley & Lardner \$142,531.08. This amount includes \$117,396.16 for legal services, and \$25,134.92 for disbursements that we have paid on their behalf. These fees and disbursements relate to services we have provided on multiple different United States and PCT patent applications. We are seeking to withdraw in all pending applications.
7. On or about March 5, 2001, I was advised in a telephone discussion with Mr. Raymond Hersh, Chief Financial Officer of Iviewit, that Iviewit would not pay its past due bill and would not make any future payments to Foley & Lardner for legal services unless and until it was successful in obtaining additional financing.
8. On March 19, 2001, we advised Iviewit that not being paid for our past work, and not being paid for future work, was not an acceptable arrangement for Foley & Lardner. We offered to discuss a reasonable payment plan with Iviewit. A copy of our letter of March 19 is attached at Tab 2. We have received no response to this letter.
9. On April 3, 2001, having received no response to the March 19 letter, we again wrote to Iviewit to advise them that we were initiating steps to withdraw as their counsel in all pending matters. A copy of the April 3 letter is attached at Tab 3. We have had no response or reaction by Iviewit to our April 3, 2001 letter.
10. We have continued to advise Iviewit of all communications received from the Patent and Trademark Office, so they are aware of all actions in all their pending applications.
11. The status of the referenced application is as follows: As of the date of mailing the Notice To File Missing Parts Of Provisional Application mailed December 4, 2000, remains outstanding with the United States Patent and Trademark Office.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to

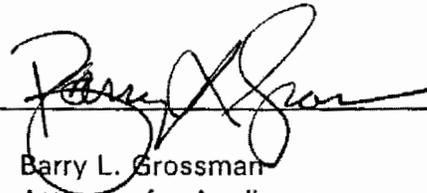
be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date

5/4/01

By



Barry L. Grossman  
Attorney for Applicant  
Registration No. 30,844

FOLEY & LARDNER  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5724  
Facsimile: (414) 297-4900



# FOLEY & LARDNER

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JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE

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WRITER'S DIRECT LINE  
414-297-5724

EMAIL ADDRESS

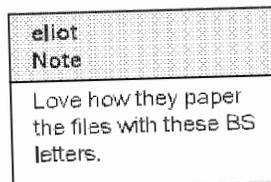
bgrossman@foleylaw.com@foley  
law.com

CLIENT/MATTER NUMBER

999100/0301



April 19, 2001



Doug Boehm, Esq.  
7518 N. Crossway Road  
Fox Point, WI. 53217

Re: Withdrawal as Counsel for Iviewit

Dear Doug:

I am writing to inquire if you want to remain as counsel of record in the pending Iviewit.com patent applications.

Foley is initiating procedures to withdraw as counsel in all the Iviewit pending applications. The Power of Attorney form names individual attorneys, not a law firm, as the attorneys of record. Each attorney of record must withdraw. You are one of the attorneys named as attorney of record, along with other Foley attorneys. We can withdraw as counsel for all the Foley attorneys. However, since you are no longer a Foley attorney, we cannot withdraw on your behalf unless you authorize us to do so. Accordingly, I am asking whether you authorize us to act on your behalf and state to the PTO that you also wish to withdraw as attorney of record. If we do not include you in our withdrawal papers, you will remain as attorney of record. You can then either continue to prosecute the applications on behalf of Iviewit or submit your own withdrawal, as you choose.

If you want us to withdraw on your behalf, please so indicate by signing below and return the original signed letter to us. We plan on submitting our materials no later than April 25. If we do not hear from you by then, we will submit our papers without including you.

FOLEY & LARDNER

Doug Boehm

April 19, 2001

Page 2

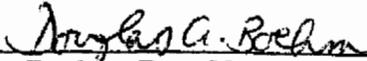
If you have any questions about this matter, please do not hesitate to contact me.  
I hope all is well. Best regards.

Sincerely,



Barry L. Grossman

I authorize Foley & Lardner to act on  
my behalf and withdraw me as an attorney  
of record in all pending patent applications  
in which I am named as an attorney of record  
and which are assigned to Iviewit.com.



Doug Boehm, Reg. No. 32,014

Date: 4/21/01



# FOLEY & LARDNER

ATTORNEYS AT LAW

BRUSSELS  
CHICAGO  
DENVER  
DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

ORLANDO  
SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5724

EMAIL ADDRESS  
bgrossman@foleylaw.com

CLIENT/MATTER NUMBER  
057103/0101

March 19, 2001

Mr. Brian G. Utey  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

**BY FACSIMILE**

Re: Status of Pending Matters and Account

Dear Mr. Utey:

We need to resolve our continued representation of Iviewit in light of the overdue status of your account.

Iviewit owes Foley & Lardner approximately \$140,000. This amount has been outstanding for a significant period of time. I understand that Iviewit has adopted a policy of not paying service providers until it is able to obtain additional financing from investors. This arrangement is not acceptable to Foley & Lardner. We are not willing to remain as counsel to Iviewit or retain responsibility for your pending matters without getting paid for our past or future services. Accordingly, unless we reach a mutually acceptable accommodation about payment, we will timely and properly withdraw as your counsel in all matters in which we are representing Iviewit.

We will be willing to remain as counsel to Iviewit under the following conditions: (1) Iviewit begins immediately to make monthly payments of a minimum of \$20,000 per month, and agrees to pay interest at the prime rate for the unpaid balance, until the past due amount is fully paid; and (2) Iviewit pays in advance, both for professional services and for disbursements on your behalf, for any future work we are asked to perform.

FOLEY & LARDNER

Mr. Brian G. Utley

Iviewit.com, Inc.

March 19, 2001

Page 2

If the foregoing is acceptable to Iviewit, please so indicate by signing below and returning a signed copy of this letter to us, along with your first monthly payment of \$20,000. If we do not hear from you by March 31, we will begin to take all necessary steps to withdraw as your counsel. In withdrawing as counsel, we will not waive any of our rights to recover the money due to us. If you choose not to make a payment by March 31, please provide us with mailing instructions for return of your file materials to you or to substitute counsel.

I regret that we must take this action. However, your stated policy of not paying service providers, like Foley & Lardner, leaves us no choice. We cannot continue to represent Iviewit without payment for our past or future services. If you have any questions about this matter, please do not hesitate to contact me.

Sincerely,



Barry L. Grossman

By signing below and sending the enclosed check for \$20,000 to be applied against its past due account, Iviewit.com agrees to the terms stated in this letter.

By: \_\_\_\_\_  
Brian G. Utley  
President, Iviewit.com

cc: Raymond Hersh



# FOLEY & LARDNER

ATTORNEYS AT LAW

BRUSSELS  
CHICAGO  
DENVER  
DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

ORLANDO  
SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5724

EMAIL ADDRESS  
bgrossman@foleylaw.com

CLIENT/MATTER NUMBER  
057103/0101

April 3, 2001

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

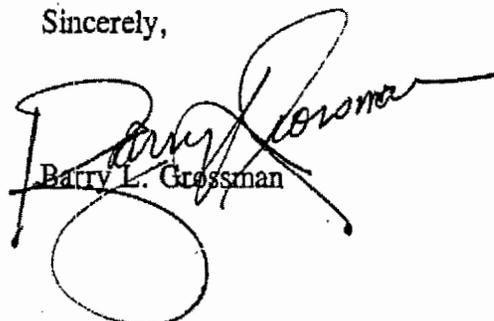
Re: Pending Matters; Withdrawal As Counsel

Dear Mr. Utley:

We have not received any response to our letter of March 19. Accordingly, as stated in that letter, we are initiating steps to advise the U.S. Patent and Trademark Office and all applicable foreign patent offices or international organizations that we are no longer serving as counsel to Iviewit. We will instruct all of these organizations to send future correspondence directly to your attention. If you would prefer to have future correspondence sent to a different address, please provide us with the pertinent mailing information as soon as possible.

Enclosed are copies of Written Opinions received in your PCT International Application No. PCT/US00/15405 and PCT International Application No. PCT/US00/15406.

Sincerely,

  
Barry L. Grossman

Enclosures  
cc: Raymond Hersh (w/enclosures)

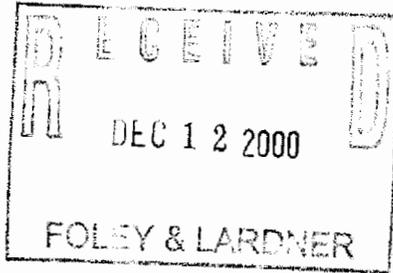


UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
777 East Wisconsin Avenue  
Firstar Center  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



Date Mailed: 12/04/2000

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

MP  
RESPONSE DUE 04 FEB 2001  
DECL FEE

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 200.

*A copy of this notice MUST be returned with the reply.*

*James Washington*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 200.**

---

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 \_\_\_\_\_  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/233,341	09/18/2000		0	57103/123	7		

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367

FILING RECEIPT



Date Mailed: 12/04/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Brian G. Utley, Boca Raton, FL ;

Continuing Data as Claimed by Applicant

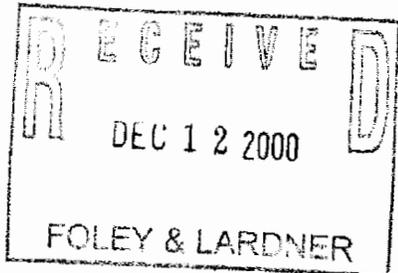
Foreign Applications

If Required, Foreign Filing License Granted 12/01/2000

Title

Zoom and pan imaging design tool

Preliminary Class



Data entry by : WASHINGTON, JAMES      Team : OIPE      Date: 12/04/2000



**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15 (b).

**PLEASE NOTE the following information about the Filing Receipt:**

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, DC 20231

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Brian G. Utley  
 Title: Zoom and Pan Imaging Design Tool  
 Appl. No.: Unknown  
 Filing Date: 9/18/2000  
 Examiner: Unknown  
 Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640465729US <small>(Express Mail Label Number)</small>	9/18/00 <small>(Date of Deposit)</small>
Douglas A. Boehm <small>(Printed Name)</small>	
<i>Douglas A. Boehm</i> <small>(Signature)</small>	

**PROVISIONAL PATENT APPLICATION TRANSMITTAL**

elliot Line	3/24/2004 9:55:11 PM
How do we know this to be true, can't get info from USPTO	

Assistant Commissioner for Patents  
 Box PROVISIONAL PATENT APPLICATION  
 Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(c) is the provisional patent application of:

Brian G. Utley  
 1930 S.W. 8th Street  
 Boca Raton, Florida 33486

Enclosed are:

- Specification, Claim(s), Abstract, and Figures( <sup>112</sup>~~105~~ pages).
- Assignment of the invention to lviewit.com, Inc..
- Small Entity statement.

The filing fee is calculated below:

	Rate	Fee Totals
Basic Fee	\$150.00	\$150.00
[ X ] Small Entity Fees Apply (subtract 1/2 of above):	=	\$75.00
TOTAL FILING FEE: =		\$75.00

- [ ] A check in the amount of \$75.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 9/18/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.); 112
- Patent Application Specification and Figures (105 pgs.);

Assistant Commissioner for Patents:  
Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.); 112
- Patent Application Specification and Figures (105 pgs.);

Assistant Commissioner for Patents:  
Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

jc541 U.S. PTO  
60/233341  
  
09/18/00

<b>FOREIGN FILING</b>	
<b>FFR 6</b>	<u>18 MR 2001</u>
<b>FFR 9</b>	<u>18 JE 2001</u>
<b>FFR 11</b>	<u>18 AU 2001</u>
<b>FFD</b>	<u>09 SE 2001</u>
<b>INITIALS</b>	<u>K</u> <b>DATE</b> <u>9/20/00</u>

10/5/00 ←



**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

**CROSS-REFERENCE TO RELATED APPLICATIONS**

The present application is related to U.S. Patent Application No. 09/630,939, filed August 2, 2000, and U.S. Provisional Patent Application entitled "Zoom and Pan Imaging Using  
5 a Digital Camera" filed on even date herewith, a copy of each is attached hereto and incorporated herein by reference.

**FIELD OF THE INVENTION**

The present invention is directed to a system and a method for producing enhanced digital images and, in particular, to a  
10 design tool for producing enhanced digital images having improved resolution for zooming and/or panning within an image.

**BACKGROUND OF THE INVENTION**

See Background in related applications.

**DESCRIPTION OF THE INVENTION**

15 The object of this invention is to provide a design tool for provide pan and zoom capabilities as described in the related applications.

Note that the relationship between the target image and the viewing image is very important, as described in the related  
20 applications. By panning the viewing window, every portion of the target image may be viewed from each level of zooming. Zoom capability is provided up to a maximum level where the image begins to pixelate.

The preferred embodiment of the present invention is a computer spreadsheet program written in Microsoft Excel and its associated Visual Basic for Applications (VBA) macro language.

Attached hereto and incorporated by reference herein  
5 are the spreadsheets, forms, and VBA program code for the preferred embodiment. Examples are given for different target and source image sizes. The design tool works for both digital and analog source images, but the scan density parameter is not applicable to digital images.

# iviewit Imaging Setup

## Application Overview

The iviewit proprietary imaging system is designed to provide clear, sharp images which can be zoomed into at great depth, and panned around at the discretion of the viewer, or under program control. The resulting experience is one of immersion into the image and an ability to view detail at a level heretofore not thought possible.

The fundamental concept of the imaging system is the creation of a 'Virtual Image' which is designed to be large enough to provide the level of detailed viewing desired. The Virtual Image is viewed through a 'Viewing Window' which is an allocated space on the user display device. The initial presentation of the image in the viewing window is normally a view of the total image. Since this is smaller than the Virtual Image, the Virtual Image must be scaled down to fit the viewing window. This scaling factor is referred to as the 'Maximum Magnification Factor', since, from the viewers perspective, zooming into the image has the appearance of magnifying the image.

## iviewit Imaging Setup

### Viewing Window Size in Pixels

Width	640
Height	480
Pixels	307,200

### Minimun Image Size in Pixels

Width	600
Height	480
Pixels	288,000

### Desired Maximum Magnification

Magnification	5.0
---------------	-----

### Virtual Image Size in Pixels

Width	1,342
Height	1,073
Pixels	1,440,000
Bit Map MB	4,104,000

### Source Image Size in Pixels

Width	1,500
Height	1,200
Pixels	1,800,000
Bit Map MB	5,130,000

### Input Format

Image Format	1500 X 1200
--------------	-------------

### Image Orientation

Orientation	Landscape
-------------	-----------

### Minimum Scan Density in dpi

Scan Density	N/A
--------------	-----

**Start**

1. Press "Start" button to initiate program
2. Follow intructions in order to set virtual image size and scan density where applicable.
3. Virtual Image size provides the necessary settings for the JPEG compression of the image. Compression factor should be 80 (Corel Draw).

Copyright by iviewit.com, Inc.

Usage of this program is restricted to authorized iviewit personnel only

## iviewit Imaging Setup

### Viewing Window Size in Pixels

Width	640
Height	480
Pixels	307,200

### Minimum Image Size in Pixels

Width	343
Height	480
Pixels	164,571

### Desired Maximum Magnification

Magnification	20.0
---------------	------

### Virtual Image Size in Pixels

Width	1,533
Height	2,147
Pixels	3,291,429
Bit Map MB	9,380,571

### Source Image Size in Pixels

Width	1,533
Height	2,147
Pixels	3,291,429
Bit Map MB	9,380,571

### Input Format

Image Format	5" x 7"
--------------	---------

### Image Orientation

Orientation	Portrait
-------------	----------

### Minimum Scan Density in dpi

Scan Density	307
--------------	-----



1. Press "Start" button to initiate program
2. Follow instructions in order to set virtual image size and scan density where applicable.
3. Virtual Image size provides the necessary settings for the JPEG compression of the image. Compression factor should be 80 (Corel Draw).

Copyright by iviewit.com, Inc.

Usage of this program is restricted to authorized iviewit personnel only

## iviewit Imaging Setup

### Viewing Window Size in Pixels

Width	320
Height	240
Pixels	76,800

### Minimum Image Size in Pixels

Width	300
Height	240
Pixels	72,000

### Desired Maximum Magnification

Magnification	10.0
---------------	------

### Virtual Image Size in Pixels

Width	949
Height	759
Pixels	720,000
Bit Map MB	2,052,000

### Source Image Size in Pixels

Width	949
Height	759
Pixels	720,000
Bit Map MB	2,052,000

### Input Format

Image Format	8" x 10"
--------------	----------

### Image Orientation

Orientation	Landscape
-------------	-----------

### Minimum Scan Density in dpi

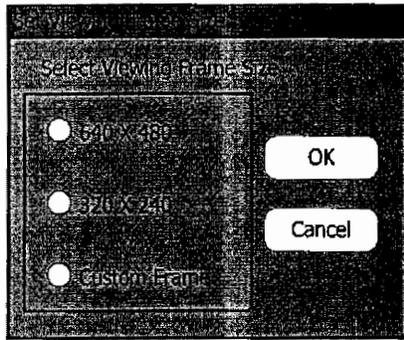
Scan Density	95
--------------	----

**Start**

1. Press "Start" button to initiate program
2. Follow instructions in order to set virtual image size and scan density where applicable.
3. Virtual Image size provides the necessary settings for the JPEG compression of the image. Compression factor should be 80 (Corel Draw).

Copyright by iviewit.com, Inc.

Usage of this program is restricted to authorized iviewit personnel only

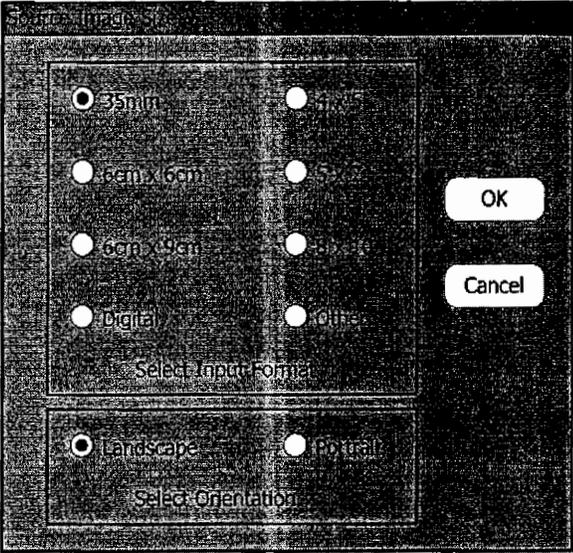


dlgframe1

Custom Frame Size

ENTER CUSTOM FRAME SIZE IN  
PIXELS

WIDTH	HEIGHT	
800	600	OK
		Cancel



dlgsouce1

ENTER SPECIAL IMAGE SIZE IN INCHES

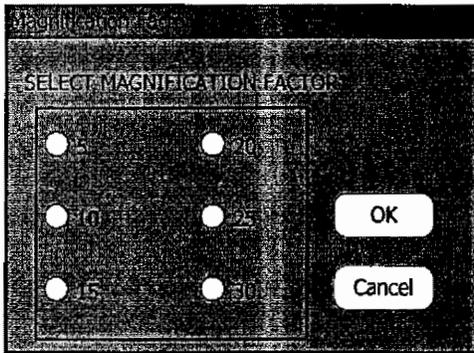
WIDTH	HEIGHT	
10	4	OK
		Cancel

DIGSOURCE2

ENTER DIGITAL IMAGE SIZE  
IN PIXELS

WIDTH	HEIGHT	
1500	1200	OK
		Cancel

dlgmag



Module1 - 1

Dim rtmag As Variant

Copywrite by iviewit.com, Inc.

Button3\_Click Macro

Start button from sheet 1

```
Sub startbutton_Click()  
    icancel = 0 'initialize cancel button state  
    framew = Range("framewidth").Value 'capture current frame size  
    frameh = Range("frameheight").Value  
    'set dlgframe dialog box radio button to 1st button  
    Range("framewidth").Value = 1  
    DialogSheets("dlgframe").Show  
    If icancel = 1 Then 'Test for cancel button  
        Range("framewidth").Value = framew  
        GoTo cancelop  
    End If  
    'check for frame selection and set up framew and frameh  
    framecase = Range("framewidth").Value  
    Select Case framecase 'Determine vewing frame size  
        Case 1 '640 X 480  
            Range("framewidth").Value = 640  
            framew = 640  
            Range("frameheight").Value = 480  
            frameh = 480  
        Case 2 '320 X 240  
            Range("framewidth").Value = 320  
            framew = 320  
            Range("frameheight").Value = 240  
            frameh = 240  
        Case 3 'Custom Frame  
            'set up custom frame dimensions in dialog box from last frame defined  
            DialogSheets("Dlgrframe1").EditBoxes("Edit Box 5").Text = framew  
            DialogSheets("Dlgrframe1").EditBoxes("Edit Box 6").Text = frameh  
            'show custom frame dialog box  
            DialogSheets("dlgrframe1").Show  
            If icancel = 1 Then 'Test for cancel button  
                Range("framewidth").Value = framew  
                GoTo cancelop  
            End If  
            framew = DialogSheets("Dlgrframe1").EditBoxes("Edit Box 5").Text  
            frameh = DialogSheets("Dlgrframe1").EditBoxes("Edit Box 6").Text  
            Range("framewidth").Value = framew  
            Range("frameheight") = frameh  
    End Select  
    'initialize orientation and source format in dialog box  
    Range("orient").Value = 1  
    Range("informat").Value = 1  
    'show source dialog box  
    DialogSheets("dlgsource").Show  
    If icancel = 1 Then 'Test for cancel button  
        GoTo cancelop  
    End If  
    formatno = Range("informat").Value 'formatno specifies the source format radio button  
    Select Case formatno  
        Case 1 '35mm  
            sourcew = 15 / 8  
            sourceh = 15 / 16  
            Range("informat").Value = "35mm"  
        Case 2 '6cm x 6cm  
            sourcew = 6 / 2.54  
            sourceh = 6 / 2.54  
            Range("informat").Value = "6cm x 6cm"  
        Case 3 '6cm x 9cm  
            sourcew = 9 / 2.54  
            sourceh = 6 / 2.54  
            Range("informat").Value = "6cm x 9cm"  
        Case 4 '4 x 5  
            sourcew = 5  
            sourceh = 4
```

```

    Range("informat").Value = "4" x 5""
Case 5      '5 x 7
    sourcew = 7
    sourceh = 5
    Range("informat").Value = "5" x 7""
Case 6      '8 x 10
    sourcew = 10
    sourceh = 8
    Range("informat").Value = "8" x 10""
Case 7      'digital input format
    DialogSheets("dlgsource2").Show
    If icancel = 1 Then      'Test for cancel button
        GoTo cancelop
    End If
    sourcew = DialogSheets("Dlgsources2").EditBoxes("Edit Box 4").Text
    sourceh = DialogSheets("Dlgsources2").EditBoxes("Edit Box 5").Text
    Range("informat").Value = sourcew & " X " & sourceh
Case 8      'Special input source image size
    DialogSheets("dlgsource1").Show
    If icancel = 1 Then      'Test for cancel button
        GoTo cancelop
    End If
    sourcew = DialogSheets("Dlgsources1").EditBoxes("Edit Box 7").Text
    sourceh = DialogSheets("Dlgsources1").EditBoxes("Edit Box 8").Text
    Range("informat").Value = sourcew & "" X " & sourceh & """"
End Select
'check for image orientation
If Range("orient").Value = 1 Then
    Range("orient").Value = "Landscape"
Else
    Range("orient").Value = "Portrait"
    'if orientation is not landscape and "other" input was not selected then swap height and
width
    If formatno < 8 Then
        temp = sourcew
        sourcew = sourceh
        sourceh = temp
    End If
End If
'get ratio of hieght to width for source and target
frameratio = frameh / framew
sourceratio = sourceh / sourcew
'initialize magnification value in dialog box to 10
Range("magfactor").Value = 2
DialogSheets("dlgmag").Show
If icancel = 1 Then      'Test for cancel button
    GoTo cancelop
End If
'multiply the radio button for magnification factor by 5 to obtain real magnification factor
magtgt = Range("magfactor").Value * 5
Range("magfactor").Value = magtgt      'put magnification factor into spread sheet
'determine aspect ratio of source relative to target to determine whethe fit is to height or
width
'determine size of the target image based upon multiplying the used portion of the window ne
glecting
'unused portions of the minimum image size
If frameratio > sourceratio Then
    'image width is equal to frame width and image height is equal to frame with * image rat
io
    tgtw = framew * Sqr(magtgt)
    tgth = tgtw * sourceratio
    Range("minimagew").Value = framew
    Range("minimageh").Value = framew * sourceratio
    minimagesize = framew * framew * sourceratio
Else
    'frame height is maximum
    tgth = frameh * Sqr(magtgt)
    tgtw = tgth * sourcew / sourceh
    Range("minimageh").Value = frameh

```

Module1 - 3

```
Range("minimagew").Value = framew * sourcew / sourceh  
minimagesize = framew * framew * 1 / sourceratio
```

```
End If
```

```
'insert values into spread sheet
```

```
Range("tgtw").Value = tgtw
```

```
Range("tgth").Value = tgth
```

```
'scan ppi is equal to target pels divided by the source image in inches
```

```
scanppi = tgth / (sourceh)
```

```
Range("scantgt").Value = scanppi
```

```
Range("sourceh").Value = sourceh * scanppi
```

```
Range("sourcew").Value = sourcew * scanppi
```

```
If formatno = 7 Then
```

```
    Range("sourceh").Value = sourceh
```

```
    Range("sourcew").Value = sourcew
```

```
    Range("scantgt").Value = "N/A"
```

```
    If tgtw * tgth > sourcew * sourceh Then
```

```
        Range("tgtw").Value = sourcew
```

```
        Range("tgth").Value = sourceh
```

```
        Range("magfactor").Value = sourceh * sourcew / minimagesize
```

```
    End If
```

```
End If
```

```
cancelop:
```

```
End Sub
```

Module2.- 1

Public icancel As Integer

' Button2\_Click Macro  
' OK button

Sub Button2\_Click()  
End Sub

' Button3\_Click Macro

Sub Button3\_Click()  
icancel = 1  
End Sub

*Copy*

**U.S. PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR PROVIDING AN**  
**ENHANCED DIGITAL IMAGE FILE**

U.S. Application No.: 09/630939  
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**U.S. PATENT APPLICATION**

**for**

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**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**

**CROSS-REFERENCE TO RELATED APPLICATIONS**

The present application is a continuation-in-part of U.S. Patent Application No. 09/522,721, filed March 10, 2000, which claims the benefit of priority from U.S. Provisional Application No. 60/125,824, filed March 24, 1999. The present application also  
5 claims the benefit of priority from U.S. Provisional Application Nos. 60/146,726, filed August 2, 1999, 60/149,737, filed August 19, 1999, 60/155,404, filed September 22, 1999, and 60/169,559, filed December 8, 1999.

10 **FIELD OF THE INVENTION**

The present invention is directed to a system and a method for producing enhanced digital images and, in particular, to a system and a method for producing enhanced digital images having improved resolution for zooming and/or panning within a single file.

15 **BACKGROUND OF THE INVENTION**

In the field of digital imaging, the primary design challenge is that the viewer desires ideal image quality delivered to the viewer's display system. In a limited-bandwidth network, such as the Internet, it is important to transfer the image data in a  
20 reasonable amount of time. However, ideal image quality requires an enormous amount of digital data. Today's networks are not capable of transferring an ideal digital image in a reasonable time.

It is known that one can view a digital image on a display screen and "zoom" (i.e., magnify a portion of an image and

appearing to move into the image) and "pan" (i.e., move across or around within the plane of that image). However, prior attempts have failed to produce high-quality, high-resolution digital images having the ability to zoom within the image and pan around the  
5 image without pixelation. "Pixelation" generally refers to the effect a digital image has when magnified, in which the pixels (i.e., picture elements) comprising the image become readily apparent to the human eye. More specifically, pixelation occurs when more than one pixel of the display monitor is used to represent one pixel of  
10 information of the digitized source image. In prior digital image systems, when the image is magnified, pixelation occurs almost immediately and is very noticeable to the user as a substantial degradation in the quality of the image.

As used herein, the term "pixel" refers to the smallest  
15 resolvable element of an image, either on a screen or stored in memory. Each pixel in a monochrome image has its own brightness, from 0 for black to the maximum value (e.g., 255 for an eight-bit pixel) for white. In a color image, each pixel has its own brightness and color, usually represented as a triplet of red, green, and blue  
20 intensities.

The teaching in the art is to generate a digital image file having the same number of pixels, or less, as the number that can be shown in a target viewing window. This results in a small source image file size, thereby speeding the transmission of the image file  
25 across a network. The target viewing window is typically maintained very small, e.g., 160 x 120 pixels, to further limit the number of pixels needed in the digital image file. Thus, the teaching in the art is to reduce the number of pixels in the digital image file to decrease the size of the image file before compression, so that the

compressed image file can be more quickly transmitted over a limited-bandwidth network. However, this teaching has been unsatisfactory in providing high-resolution digital images. It has also been unsatisfactory in providing digital images in large viewing  
5 screens, such as, for example, full-sized VGA display monitor screens of 640 x 480 pixels.

Another example of prior systems is mapping or travel web sites. A user selects a desired location and the mapping web site responds by downloading map data from a map database.  
10 When the user wishes to zoom into or pan around the selected location, the web site retrieves additional source data, e.g., additional new map images, and sends it to the user computer. One drawback of this type of system is that each zoom or pan operation requires the downloading of additional data over the network  
15 connection. This method is slow, and does not allow the user to zoom and pan around a set of data unless the network connection is maintained.

Accordingly, there is a need for a system and a method for providing enhanced digital images. Further, there is a need for a  
20 system and a method for providing enhanced digital images within which a user can zoom or pan without loss of resolution and without pixelation. Further still, there is a need for a system and method for providing enhanced digital images that can be transmitted over a network in a reasonable amount of time. Further yet, there is a need  
25 for a system and a method for producing enhanced digital images suitable for uploading and for downloading to a display. Also, there is a need for a system and method for providing a digital image file suitable for efficient file transfers of high resolution digital images,

thereby dispensing with the need to engage in long and slow, conventional file downloads in order to maintain viewing quality.

#### SUMMARY OF THE INVENTION

According to an exemplary embodiment, a method of providing a digital image file for viewing in a viewing window of a user display, the viewing window having a predetermined size, includes providing a digital image file having an image size comprising a fixed number of pixels representative of an image. The image size to be displayed is greater than that of the predetermined viewing window size. The method further includes the step of associating a user interface with the digital image file. The user interface is configured to display the digital image file in the viewing window and to allow a user to zoom into the image displayed in the viewing window.

According to another exemplary embodiment, a method of providing an enhanced digitized image file to a user includes predefining a viewing window size in which the digitized image file is to be displayed to a user; providing a digitized image file having an image size greater than of the predefined viewing window size; compressing the digitized image file; and providing the compressed image file to a network server.

According to yet another exemplary embodiment, an enhanced digital image file is disclosed. The enhanced digital image file is displayed on a client computer display system having a viewing window, the viewing window having a predetermined frame size. The enhanced digital image file includes digitized image data representative of an image, wherein the digitized image data has a number of pixels sufficient to allow a user to magnify the digitized

image in the viewing window by a magnification factor of greater than one without appreciable pixelation. The enhanced digital image file further includes control data associated therewith for permitting the user to control the magnification factor.

5 BRIEF DESCRIPTION OF THE DRAWINGS

The invention will become more fully understood from the following detailed description, taken in conjunction with the accompanying drawings, wherein like reference numerals refer to like parts, in which:

10 FIG. 1 is a block diagram of a system for providing an enhanced digital image file according to an exemplary embodiment;

FIG. 2 is a flowchart of a method for providing an enhanced digital image file from a print film image according to an exemplary embodiment;

15 FIG. 3 is a screen print of a display screen on a user display illustrating an enhanced digital image file according to an exemplary embodiment;

FIG. 4 is a screen print of a display screen on a user display illustrating a zoomed view of the enhanced digital image of FIG. 3;

20 FIG. 5 is a screen print of a display screen on a user display illustrating a panned and zoomed view of the enhanced digital image of FIG. 3;

FIG. 6 is a flowchart of a method for providing an enhanced digital image file from a digital image according to an exemplary embodiment; and

FIG. 7 is an illustration relating a source image, a viewing image, and a viewing window to one another.

## DETAILED DESCRIPTION OF THE INVENTION

FIG. 1 illustrates a system 10 for providing an enhanced digital image file according to an exemplary embodiment. System 10 includes a camera 12 which may be a conventional print film camera, such as, print film cameras manufactured by Nikon, Canon, Hasselblad, Kodak, or other manufacturers, or may alternatively be a digital camera, a digital video recording device (e.g., including 3CCD technology), an analog recording device such as a reel-to-reel recording device, a live video recording system, etc. In the case where camera 12 is a digital camera, camera 12 may further include a solid state storage medium or memory. Camera 12 may be mountable, such as on a tripod or on a stand, hand-held or fixed, and may include a 24-32 mm lens. Camera 12 is utilized to obtain an image of a scene that is being photographed or video recorded. The image may be a print film image (e.g., a high gloss, photographic print), analog image, digital image, negative, transparency, etc.

As a further alternative, system 10 may be utilized in conjunction with any imaging or video recording system, such as, medical imaging equipment. In this case, camera 12 may be an imaging device, such as a magnetic resonance imaging (MRI) device, an X-ray device, a microscope with a camera attached thereto, etc.

In the case where camera 12 is a print film camera, system 10 also includes a developing device 14, which can be any device or collection of devices, for developing the print film image taken by camera 12. In some cases, such as a POLAROID brand camera, developing device 14 is combined with and integral to camera 12. Developing device 14 is not required in an embodiment in which the image is a digital image.

System 10 also includes an enlarging device 16 for enlarging the image which is developed by developing device 14. The image may be photographically enlarged from a print film image, a negative, or other transparency.

5           The system of FIG. 1 further includes a scanning device 18, for scanning images or photographs in order to obtain a digitized representation of the source image in the form of a digital image file. Any suitable scanning software may be utilized. In an exemplary embodiment, a UMAX Astra scanner is utilized in conjunction with  
10   Microsoft Photo Editor software. Scanning device 18 outputs the digital image file in a bitmapped format (e.g., BMP, TIF, GIF, etc.) The device may include compression software to compress the digital image file into a compressed format (e.g., JPEG). Note that, depending upon the specific type of camera 12 and desired  
15   processing steps, a print film image from camera 12 may be provided directly to enlarging device 16 or directly to scanning device 18.

If the source image is obtained with a digital camera of sufficient resolution, the digitized image file from camera 12 may be  
20   used directly without first creating a print image. On the other hand, a print image may first be obtained from the camera's digitized source image by sending it to a suitable printing device 20. In this manner, the printed image can then be optically enlarged and scanned to provide the enhanced digitized image.

25           System 10 also includes a computer 22 configured to process the digital image file created by the above-mentioned devices. Computer 22 may be a personal computer, a laptop computer, a mini computer, a microprocessor, a mainframe computer, a network computer, a server computer, or any other

suitable computer or computer system. Computer 22 typically includes a central processing unit (CPU), a read only memory (ROM), a random access memory (RAM), a display device such as an SVGA display monitor, an input device and/or an output device. Computer 5 22 may also include any other hardware device, peripheral device, or software necessary to perform the functions described herein. The input device may include a keyboard, a mouse, or other pointing device, or other devices for allowing user input. The output device may include a printer (e.g., a black-and-white or color laser or inkjet 10 printer). Computer 22 also includes an interface circuit for transmitting and/or receiving data over a network or link 24, such as, a local area network (LAN), a wide area network (WAN), an internet protocol network (e.g., the Internet, an intranet), a broadcast network, a satellite or cable television network, a digital 15 video transmission path, etc. Computer 22 may further act as a network server or may be in communication with such a network server. Furthermore, as will be seen below, the function of network 24 may be, in a simple case, performed by other components of the system. In this exemplary embodiment, computer 22 is accessible 20 by the Internet 26 via network 24 (e.g., a local area network).

A user computer 28 is used to access the enhanced digital image file stored in or provided by computer 22 (acting as a network server). Computer 28 may also load the image file to a storage device (e.g., a hard disk drive) to be used for display on a 25 display 30. User computer 28 may operate an Internet browser, such as Netscape Navigator configured to communicate with the Internet 26 or an intranet or other network.

Display 30 may be any type of user display, such as a cathode ray tube (CRT), liquid crystal display (LCD), hand-held

personal digital assistant (PDA) display, mobile phone display, etc. Display 30 normally has a predetermined display resolution (e.g., 1,280 x 1,024 pixels, 640 x 480 pixels, 320 x 240 pixels, etc.). Note that user computer 28 may be combined with display 30 in a single, integrated system, such as would be the case for a WebTV brand system, a high-definition television (HDTV), a PDA, etc. The combined user computer and display system may be referred to herein as the display system.

As will be described in more detail below, the computer display system typically has a viewing window on the display for viewing the image in a particular frame. The viewing window may be all or a portion of the total viewing area of display 30. The viewing window parameters, such as the viewing window area size and aspect ratio (i.e., viewing window width divided by viewing window height) may be under the control of user computer 28. In one embodiment, the viewing window area may be no more than 160 x 120 pixels in size, which is just a portion of the display area of an SVGA display monitor at 800 x 600 pixels.

References herein to frame sizes in pixels (such as, 320 x 240 pixels, 640 x 480 pixels, etc.) are intended to include equivalent frame sizes thereto. As an example, when rectangular pixels are used, the exact pixel count differs from the stated frame size. Thus, one equivalent to a 320 x 240 pixel frame size is 352 x 240. Accordingly, references to frame sizes in pixels are intended to include these and other equivalent frame sizes, and the teachings herein include any and all such insubstantial variations.

Referring now to FIGS. 2 and 6, exemplary methods 50 and 100 of providing an enhanced digital image file will be described. The enhanced digital image file can be generated from a

print film image or a digital image. The enhanced digital image file is a digitized image acquired with a digital camera, scanner, or other device suitable for digitizing an image into pixels. The method of FIG. 2 is suitable for processing a print film image; the method of  
5 FIG. 6 is suitable for processing a digital image.

At step 52 of FIG. 2, an image is photographed or recorded by using camera 12. If camera 12 is a video camera, the video data is captured using a suitable capture device (e.g., an internal or external capture card, a Dazzle LAV-1000S capture device  
10 manufactured by Dazzle, Inc. of Fremont, California, etc.). A single captured frame from the video camera may be further processed as a digital image.

At step 54, the image is developed by developing device 14 in order to produce a photographic print, such as a high  
15 gloss photographic print. As mentioned, the step of developing may not be necessary in all cases (e.g., where the print film image of camera 12 is in a suitable format for subsequent enlarging or scanning).

At step 56, the developed image is enlarged by  
20 enlarging device 16, if needed. In this exemplary embodiment, the developed image can be enlarged to sizes of between 8"x6" and 8"x12", or to any other appropriate size. The developed image is enlarged to provide additional photo information to scanning device 18. The developed image can be enlarged many times before the  
25 granularity of the image is visible to the human eye. A photographic enlargement magnification capability of up to 1700 times or more may be attained for most views or scenes. It is, however, recommended that larger enlargement sizes be obtained for smaller developed images. As mentioned, the step of enlarging may not be

necessary in all cases (e.g., where the size of the print film image or developed image is large enough to provide sufficient data to scanning device 18).

At step 58, the enlarged image is scanned by scanning  
5 device 18 in order to generate a bitmap image file or other digital  
image file, such as, JPEG, GIF, or other files. Scanning should be  
performed at a scan density that will provide the requisite number of  
pixels in the resulting digital image file (e.g., 100 dpi, 200 dpi, 600  
dpi, 1400 dpi, etc.) Contrary to the teachings of the prior art, a  
10 large number of pixels are provided in the digital image file such as  
would be within the particular file size and loading time constraints.  
According to one example, a sufficient number of pixels are provided  
in the enhanced digital image file to allow a user to magnify the  
digitized image in the viewing window of display 30 by a  
15 magnification factor of greater than one without pixelation.  
Alternatively, a sufficient number of pixels are provided to allow the  
user to magnify the digitized image by a magnification factor of 1.5,  
5, 10, 20, 100, or more.

According to one exemplary embodiment, the number  
20 of pixels provided in the enhanced digital image file is based on a  
viewing window size and the desired magnification ratio. By  
providing more pixels in the enhanced digital image file than is  
required for a full-window view in the viewing window, the user is  
able to zoom and pan within the digital image during viewing without  
25 pixelation.

FIG. 7 illustrates the parametric details and relationships  
between the different images and viewing window sizes. These  
parameters and description are for the purpose of creating large, clear,  
zoomable and pannable images from a variety of photographic,

source images. First, a "source image" (si) provides the original source of the graphical image information before it is digitally processed, as opposed to a "target image" (ti) that is the destination image to be transferred to the computer display system. In the analog case, the source image is not yet digitized. In other words, it has not been converted to a bitmapped format. A source image could be a photograph, a handwritten sketch, a computer-generated graphic, etc. In this case, source image is what is fed to the scanning device 18. In the digital case, the source image has already been digitized, such as the digital output of a CCD camera taking a photograph.

The source image (si) has a source image height (sih) and a source image width (siw). The source image aspect ratio (sir) is the width of the image divided by the height of the image, generally in inches:

$$\text{sir} = \text{siw}/\text{sih}$$

The viewing window (vw) is the window, defined in pixels, within which the target image, when scaled to fit, is to be displayed as the viewing image (vi). The viewing window (vw) has a viewing window width (vww) and a viewing window height (vwh), both defined in pixels. Thus, the viewing window aspect ratio (vwr) can be determined as:

$$\text{vwr} = \text{vww}/\text{vwh}$$

Note that the source image (si) may have a different aspect ratio than the viewing window (vw). To place the viewing image (vi) in the viewing window (vw), a subset of pixels from the source image (si) must be selected and scaled. The viewing image height (vih) and viewing image width (viw) within the viewing window (vw) can be determined by comparing the source image

aspect ratio (sir) to the viewing window aspect ratio (vwr), as shown:

if  $sir < vwr$  then:

$$vih = vwh$$

5  $viw = vih * sir$

but if  $sir \geq vwr$  then:

$$viw = vww$$

$$vih = viw / sir$$

This relationship is illustrated in FIG. 7.

10 Note that the target image (ti) is created from the source image (si), by scaling the image (si) down to fit within the viewing window (vw). When the target image (ti) is scaled down by the desired maximum magnification factor (mmf) to fit within the viewing window (vw), the scaled target image is called the viewing  
15 image (vi).

The maximum magnification factor (mmf) is defined as the ratio of the target image area (tia) to the viewing image area (via). This ratio will determine the amount of zoom available without causing the image to distort due to pixelation, i.e., when fewer  
20 pixels are in the viewing image being displayed than available in the viewing window. So:

$$\text{target image area (tia) = tiw x tih}$$

and since

$$via = viw x vih$$

25 then

$$tia = via x mmf$$

To obtain the target image width and height:

$$tiw = \sqrt{tia * sir}$$

$$tih = tiw / sir$$

The relationship between the target image and the viewing image is shown in FIG. 7. The relationship between the target image and the viewing window is also shown. A zoom to the maximum level will be shown in the viewing window as illustrated at representation 120 of FIG. 7. By panning the viewing window, every portion of the target image may be viewed from each level of zooming.

To determine the minimum scan density (msd) to avoid pixelation at the desired maximum magnification factor (mmf):

$$msd = tih/sih. = t_{iw}/s_{iw}$$

#### EXAMPLE 1

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

Source Image = 5" wide x 4" high

Desired Magnification Factor = 20

Source Image Aspect Ratio = 5 / 4 = 1.25

Define the Viewing Window: assume 480w x 320h pixels

Viewing Window Aspect Ratio = 480 / 320 = 1.5

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

1.25 < 1.5 therefore:

$$vih = vwh = 320 \text{ pixels}$$

$$viw = \cancel{vih} * 1.25 = 320 * 1.25 = 400 \text{ pixels}$$

The Viewing Image Area = vis = 320 x 400 = 128,000 pixels

The Target Image Area = vis x 20 = 128,000 x 20 = 2,560,000

pixels

$$\text{The Target Image width} = \sqrt{2,560,000 / 0.8} = 1789 \text{ pixels}$$

$$\text{The Target Image height} = 1789 \times 0.8 = 1431 \text{ pixels}$$

The Minimum Scan Density =  $1789 / 5 = 358$  pixels per inch

The photo scan can be any scan density  $> 357$  pixels per inch

Thus, a 5 x 4" print film image should be scanned at  
 5 greater than 357 pixels per inch to allow magnification/zoom up to  
 20 times in a viewing window of  $480 \times 320$  pixels. An enhanced  
 digital image file having 2,560,000 pixels provides a sufficient  
 number of pixels for this example.

### EXAMPLE 2

10 Determine the Target Image Area and dimensions, and minimum scan  
 density for the following case:

Source Image = 5" x 4" *wide high*

Desired Maximum Magnification Factor = 20

Source Image Aspect Ratio =  $5 / 4 = 1.25$

15 Define the Viewing Window: assume 400w x 360h pixels

Viewing Window Aspect Ratio =  $400 / 360 = 1.11$

The Source Image Aspect Ratio is  $>$  the Viewing Window Aspect Ratio:

$1.25 > 1.11$  therefore:

$v_{iw} = v_{ww} = 400$  pixels

20  $v_{ih} = v_{iw} / 1.25 = 400 / 1.25 = 320$  pixels

The Viewing Image Area =  $v_{ia} = 400 \times 320 = 128,000$  pixels

The Target Image Area =  $v_{ia} \times 20 = 128,000 \times 20 = 2,560,000$  pixels

The Target Image width =  $\sqrt{2,560,000 * 1.25} = 1789$  pixels

The Target Image height =  $1789 / 1.25 = 1431$  pixels

25 The Minimum Scan Density =  $1431 / 4 = 358$  pixels per inch

The photo scan can be any scan density  $> 357$  pixels per inch

### EXAMPLE 3

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

Source Image = 4" wide x 5" high (portrait orientation)

Desired Magnification Factor = 20

5 Source Image Aspect Ratio =  $4 / 5 = 0.8$

Define the Viewing Window: assume 400w x 360w pixels

Viewing Window Aspect Ratio =  $400 / 360 = 1.11$

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

$0.8 < 1.11$  therefore:

10  $v_{ih} = v_{wh} = 360$  pixels

$v_{iw} = v_{ih} * 0.8 = 360 * 0.8 = 288$  pixels

The Viewing Image area =  $v_{ia} = 360 * 288 = 103,680$  pixels

The Target Image area =  $v_{ia} * 20 = 103,680 * 20 = 2,073,600$  pixels

The Target Image width =  $\sqrt{2,073,600 * 0.8} = 1288$  pixels

15 The Target Image height =  $1288 / 0.8 = 1610$  pixels

The Minimum Scan Density =  $1610 / 5 = 322$  pixels per inch

The photo scan can be any scan density > 321 pixels per inch

Returning now to FIG. 2, at step 60, the enhanced digital image file is provided to computer 22 in a digitized format, i.e., pixel-based, bitmapped, etc. (as opposed to vector graphics based format), such as in either in a bitmap BMP format or a compressed JPEG format. Computer 22 performs a touch-up operation on the scanned image in order to make refinements or enhancements thereto. This touch-up operation is accomplished by utilizing imaging software. Touch-up steps may include cleaning the edges of the image, adjusting lighting, adjusting colors, etc. Adobe PhotoShop software, manufactured by Adobe Systems Inc., San Jose, California, can be used as the imaging software for touching up the images.

20

25

According to one example, multiple images can be stitched together after scanning, and before or after compression, thereby creating a panoramic scene or image, or simply a scene requiring a plurality of photographs. This stitching operation can be performed by utilizing photo stitching software such as, for example, Photo Vista software by Live Picture, Live Picture Reality Studio or Live Picture Object Modeler. Stitching may comprise sufficient photos for a 360 degree panoramic image of a scene. If images are stitched, they may be touched-up at step 60.

At step 62, if desired, and if the enhanced digital image file has not yet been compressed (e.g., by scanning device 18 or the touch-up software), the image is then converted from a bitmap file format (e.g., BMP) to a compressed file format (e.g., JPEG). Other compression algorithms are contemplated. Adobe Image Ready software is utilized to perform the BMP-to-JPEG file conversion in this exemplary embodiment. The compression is set to a very high compression factor, such as, 70% to 90%, but may alternatively be set to other compression factors. The target image area be set as one of the parameters for compression, thus ensuring an optimum compressed file size.

At step 64, user interface or control data is associated with the enhanced digital image file. The user interface data is a program or code segment (e.g., a Java applet) that provides a graphic user interface on display 30 upon loading of the image. The user interface program is associated with the enhanced digital image file such that the combined file or files can automatically launch the graphic user interface, decompress the digital image data, and display at least a portion of the digital image data within a viewing window having a predetermined viewing size on display 30.

The user interface data may alternatively be a plug-in, applet, or other software program, such as, Photo Vista, Reality Studio, or Object Modeler manufactured by Live Picture Inc., San Francisco, California, or an IPIX plug-in manufactured by Internet Pictures Corporation of Oak Ridge, Tennessee. The user interface data may be either associated with the enhanced digital image file such that it is downloaded with the enhanced digital image data, or it may be launched independently from the enhanced digital image data as, for example, an applet or plug-in on user computer 28. If the user interface data is launched independently of the image data, it may either be first opened by the user before downloading the enhanced digital image file, or it may be automatically opened by the enhanced digital image file, such as, via a script or other code segment within the enhanced digital image file.

Referring to FIG. 3, an exemplary screen print 80 from display 30 is shown illustrating the graphical user interface 82 generated by the user interface program. User interface 82 includes a viewing window or frame 84 for displaying the digital image data 86. User interface 82 further includes zoom buttons 88 for allowing the user to zoom into and out of digital image data 86. By actuating one of zoom buttons 88, user interface program resizes digital image data 86 within viewing frame 84. User interface 82 further includes panning buttons 90 to allow the user to pan up, down, left, and right within image data 86.

Once the user interface program is associated with the enhanced digital image data, the resulting image is ready for providing to a network server, projection from a projector, display system, posting, or playback, to or from a host computer, a Web server, a Web site, or a Web page. At step 66, the enhanced digital

image is uploaded to a network server. In the instance where the enhanced digital image is posted to an Internet Web server, the upload from computer 22 to the respective server can be performed by utilizing file uploading software, such as, Web FTP (file transfer protocol) Pro software, manufactured by Ipswitch, Inc., Lexington, Massachusetts.

Referring now to FIGS. 3, 4, and 5, exemplary print screens are shown illustrating the result of an upload or download of the enhanced digital image file to user computer 28 for display on display 30. In FIG. 3, digital image data 86 of a collectible stamp image is shown within a viewing window 84. Although viewing window 84 is slightly smaller than the full-screen size of display 30 (e.g., 640 x 480 pixels in this example), viewing window 84 can alternatively be configured for full-screen display, or display in other sizes or resolutions. As shown, digital image data 86 shows no sign of pixelation.

In FIG. 4, a user has actuated zoom buttons 88 to zoom-in to the digital image. In response, the user interface program provides additional digital image data from the enhanced digital image file stored in a memory (e.g., a hard drive) of user computer 28, to provide a zoomed view of the digital image. Thus, the view of FIG. 4 also shows little sign of pixelation even though the image has been magnified many times.

In FIG. 5, a user has actuated pan buttons 90 to display the lower left-hand corner of the digital image data within viewing window 84. The user has also actuated zoom buttons 88 to zoom-in to the digital image data. Again, little pixelation is visible.

As mentioned, the principles described herein are also operable with a digital image taken by a digital camera. Referring

now to FIG. 6, a method 100 of providing an enhanced digital image file utilizing a digital camera is shown. At step 102, the digital camera is configured to acquire a digital image. In this step, the camera is set with a high resolution to acquire at least enough pixels  
 5 for a magnification of two times the size of the viewing window provided on display 30, though higher numbers of pixel data may also be acquired.

Again referring to FIG. 7 and the corresponding description hereinabove, with a digital source image, the maximum magnification  
 10 factor (mmf) should not produce a target image larger than the source image in pixels because of the pixel distortion or pixelation effect, i.e., distortion due to fewer pixels in the image being displayed than available in the viewing window. Since:

$$\text{target image area (tia)} = \text{tiw} \times \text{tih} = \text{via} \times \text{mmf}$$

15 then to obtain the target image width and height:

$$\text{tiw} = \text{tia} \times \text{sir}$$

$$\text{tih} = \text{tiw} / \text{sir}$$

If  $\text{tih} > \text{sih}$  then set  $\text{tih} = \text{sih}$  and  $\text{tiw} = \text{siw}$

#### EXAMPLE 4

20 Determine the Target Image size and dimensions, and minimum scan density for the following case:

Source Image = 1600 x 1200 pixels

Desired Magnification Factor = 20

Source Image Aspect Ratio =  $1600 / 1200 = 1.33$

25 Define the Viewing Window: assume 480w x 360h pixels

Viewing Window Aspect Ratio =  $480 / 360 = 1.33$

The Source Image Aspect Ratio is = the Viewing Window Aspect Ratio:

$$\frac{1.33}{1.33} = \frac{1.33}{1.33} \text{ therefore:}$$

$$\text{vih} = \text{vwh} = 360 \text{ pixels}$$

$$v_{iw} = v_{ih} * 1.33 = 360 * 1.33 = 480 \text{ pixels}$$

The Viewing Image area =  $v_{ia} = 480 \times 360 = 172,800$  pixels

The Target Image area =  $v_{ia} \times 20 = 172,800 \times 20 = 3,456,000$  pixels

The Target Image width =  $\sqrt{3,456,000 * 1.33} = 2147$  pixels

5 The Target Image height =  $2147 / 1.33 = 1610$  pixels

But  $t_{ih}$  of 1610 pixels is  $> 1200$  pixels therefore:

$$t_{ih} = 1200 \text{ pixels}$$

$$t_{iw} = 1600 \text{ pixels}$$

$$t_{ia} = 1200 \times 1600 = 1,920,000 \text{ pixels}$$

10 Effective Maximum Magnification Factor =  $t_{ia} / v_{ia}$

$$= 1,920,000 / 172,800 = 11.1$$

The Minimum Scan Density = N/A

Steps 104 (touch-up image), 106 (compress file), 108  
 (associate user interface data), and 110 (upload file) may proceed as  
 15 described with reference to FIG. 2 in the print film image exemplary  
 method.

The above method can be repeated using different  
 depth images or digital photographs for the images in order to create  
 areas of higher resolution or "hot spots" within an image for detailed  
 20 close-up inspection or viewing. These depth images can be linked to  
 the respective image or image segment. The above method can be  
 utilized in order to create higher zoom capabilities with each new  
 depth layer of an image.

The above method can be utilized for applications  
 25 including single images, single panoramic images, stitched images,  
 non-stitched images or any other suitable image type.

The system and method of the present invention can  
 also be utilized in conjunction with three-dimensional images in order  
 to produce high resolution, three-dimensional digital images and 3-D  
 30 texturings.

The resulting images which are obtained via the exemplary system and method are characterized by a high definition resolution and are suitable for high definition television, Web television, and large, panoramic or object models, Internet applications, which preserve resolution upon image magnification or reduction. The exemplary embodiment also dispenses with the need for plug-in software during download or file transfer operations.

#### EXAMPLE 5

A variety of photographs were taken using several different types of cameras. A digital camera was used to take several digital images. A Hasselblad camera was used to take several print film images, some of which were 2 ¼" square and others of which were 4 x 5" square. The print film images were taken to a film developing center to be enlarged to 8 x 12" pictures.

The enlarged pictures were scanned with UMAX Astra scanner using Adobe Photo Editor. Some bitmap files were created and some JPEG files were created. In spite of conventional teaching to the contrary, the scanner was set for a high resolution: 600 dpi. For the JPEG files, compression was set to 30:1.

Some of the images were stitched together using Photo Vista. The stitched images were then compressed at a high ratio of compression to generate JPEG files. The compressed files were touched up using Adobe Photo Editor and then uploaded to an Internet server. The uploaded files were then downloaded from the Internet server. The download took only a short time. The images were observed to have exceptionally high quality.

In review, a method is disclosed of providing a digital image file for viewing in a viewing window of a user display, the

viewing window having a predetermined size. The method includes providing a digital image having an image size comprising a fixed number of pixels representative of an image, the image size being greater than the predetermined viewing window size. The digital  
5 image file is associated with a user interface that is configured to display the digital image in the viewing window and to allow a user to zoom into and pan around in the image displayed in the viewing window while maintaining high image quality.

While the exemplary embodiments illustrated in the  
10 FIGS. and described above are presently preferred, it should be understood that these embodiments are offered by way of example only. For example, the specific pixel counts and display sizes disclosed herein are merely exemplary and are used to illustrate the pertinent principles. Also, not all of the steps of the exemplary  
15 embodiments need be performed in all embodiments, nor need they be performed in the specific order recited. Accordingly, the present invention is not limited to a particular embodiment, but extends to various modifications that nevertheless fall within the scope of the appended claims.

20

**WHAT IS CLAIMED IS:**

1           1.     A method of providing a digital image file for viewing on  
2 a user display in a viewing window having a predetermined size, the  
3 method comprising:

4                     providing a digital image file having an image size  
5 comprising a fixed number of pixels representative of an image,  
6 wherein the image size is greater than that of the predetermined  
7 viewing window size.

8           2.     The method of claim 1, further comprising providing a  
9 user interface for the digital image file, the user interface configured  
10 to display the digital image file in the viewing window and to allow a  
11 user to zoom into the image displayed in the viewing window,

12           3.     The method of claim 1, wherein the image size is at  
13 least ten times that of the predetermined viewing window size.

1           4.     The method of claim 1, wherein the user interface is  
2 configured to allow the user to pan across the image.

1           5.     The method of claim 1, wherein the user interface  
2 prevents the user from zooming into the image to the point of  
3 pixelation.

1           6.     The method of claim 1, wherein the digital image file  
2 includes the user interface in a single data file.

1           7.     The method of claim 1, wherein the user interface is an  
2 application program applet.

1           8.     The method of claim 1, wherein the user interface is an  
2 application program controlled by the user's computer.

1           9.     The method of claim 1, further comprising compressing  
2 the digital image file.

1           10.    The method of claim 1, further comprising uploading  
2 the digital image file to a network server.

1           11.    The method of claim 1, wherein the digital image file is  
2 generated from a print film image.

1           12.    The method of claim 1, wherein the digital image file is  
2 acquired with a digital camera.

1           13.    The method of claim 1, wherein the predetermined size  
2 represents a full-screen size of the user display.

1           14. A method of providing an enhanced digitized image file  
2 to a user, comprising:  
3           providing a viewing window size in which the digitized  
4 image file is to be displayed to a user;  
5           providing a digitized image file having an image size  
6 greater than that of the predefined viewing window size;  
7           compressing the digitized image file; and  
8           providing the compressed image file to a network  
9 server.

1           15. The method of claim 13, further comprising:  
2           under user control, transmitting the compressed image  
3 file over the network;  
4           displaying the transmitted image file to the user in a  
5 viewing window having the predefined viewing window size; and  
6           under user control, magnifying the displayed image  
7 within the viewing window.

1           16. The method of claim 14, further comprising, under user  
2 control, moving the displayed image in the predefined viewing  
3 window size.

1           17. The method of claim 14, further comprising providing  
2 the user with a plurality of selectable magnification levels to view  
3 the displayed image within the viewing window.

1           18. The method of claim 14, wherein the resolution of the  
2 digitized image is greater than that of the image displayed to the  
3 user in the predefined viewing window size without image  
4 magnification.

1            19. The method of claim 16, wherein the selectable  
2 magnification levels are limited such that no more than one pixel of  
3 the user display can display one pixel of the digitized image.

1            20. The method of claim 13, wherein the digitized image  
2 file is compressed to a JPEG format.

1            21. The method of claim 13, wherein the step of generating  
2 includes enlarging and scanning a print film image to provide the  
3 digitized image file.

1            22. The method of claim 19, wherein the print film image is  
2 scanned with a density of at least 100 dots per inch.

1            23. The method of claim 13, wherein the step of generating  
2 includes acquiring the digitized image file with a digital camera.

1            24. The method of claim 13, wherein the compressed  
2 image file is accessible via the Internet.

1            25. The method of claim 14, wherein magnifying the  
2 displayed image does not degrade the image quality.

1           26. An enhanced digital image file downloadable to a client  
2 computer having a viewing window on a display, the viewing  
3 window having a predetermined frame size, the digital image file  
4 comprising:

5                   digitized image data representative of an image,  
6 wherein the digitized image data has a number of pixels sufficient to  
7 allow a user to magnify the digitized image in the viewing window  
8 by a magnification factor of at least two without pixelation; and  
9                   control data to allow the user to control the  
10 magnification factor.

11           27. The enhanced digital image file of claim 25, wherein the  
12 digitized image data is compressed.

1           28. The enhanced digital image file of claim 25, wherein the  
2 control data is configured to provide zoom buttons and pan buttons  
3 to a user.

1           29. The enhanced digital image file of claim 27, wherein the  
2 control data includes a Java applet.

1           30. The enhanced digital image file of claim 25, wherein the  
2 digitized image data has a number of pixels sufficient to allow a user  
3 to magnify the digitized image in the viewing window by a  
4 magnification factor of at least ten without pixelation.

1           31. The enhanced digital image file of claim 25, wherein the  
2 digitized image data has a number of pixels sufficient to allow a user  
3 to magnify the digitized image in the viewing window by a  
4 magnification factor of at least one hundred without pixelation.

1           32. The enhanced digital image file of claim 25, wherein the  
2 control data is configured to prevent the user from magnifying the  
3 digitized image to the point of pixelation.

**ABSTRACT OF THE DISCLOSURE**

A method of providing a digital image file for viewing in a viewing window of a user display, the viewing window having a predetermined size. The method includes providing a digital image having an image size comprising a fixed number of pixels representative of an image, the image size being greater than the predetermined viewing window size. The digital image file is associated with a user interface that is configured to display the digital image in the viewing window and to allow a user to zoom into and pan around in the image displayed in the viewing window while maintaining high image quality.

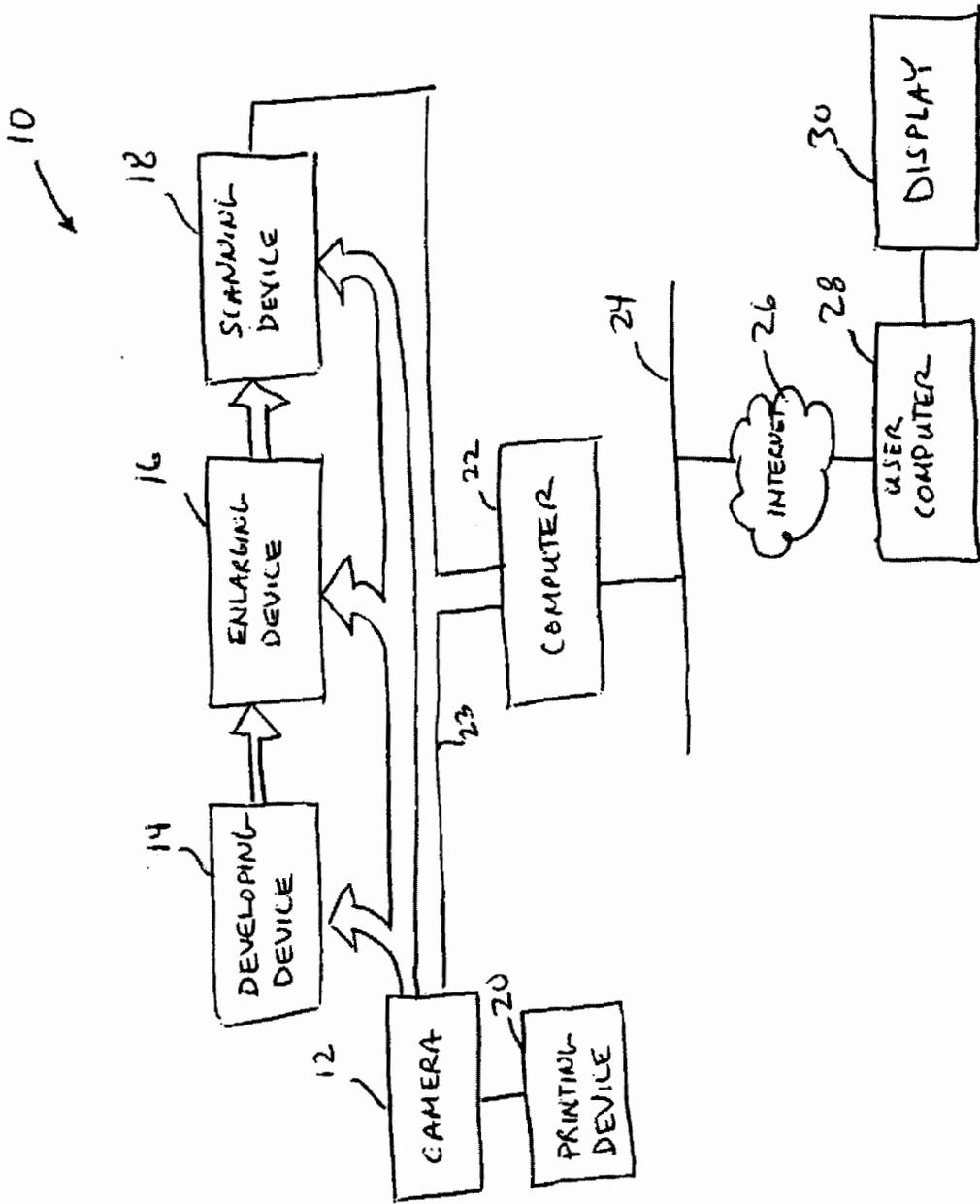


FIG. 1

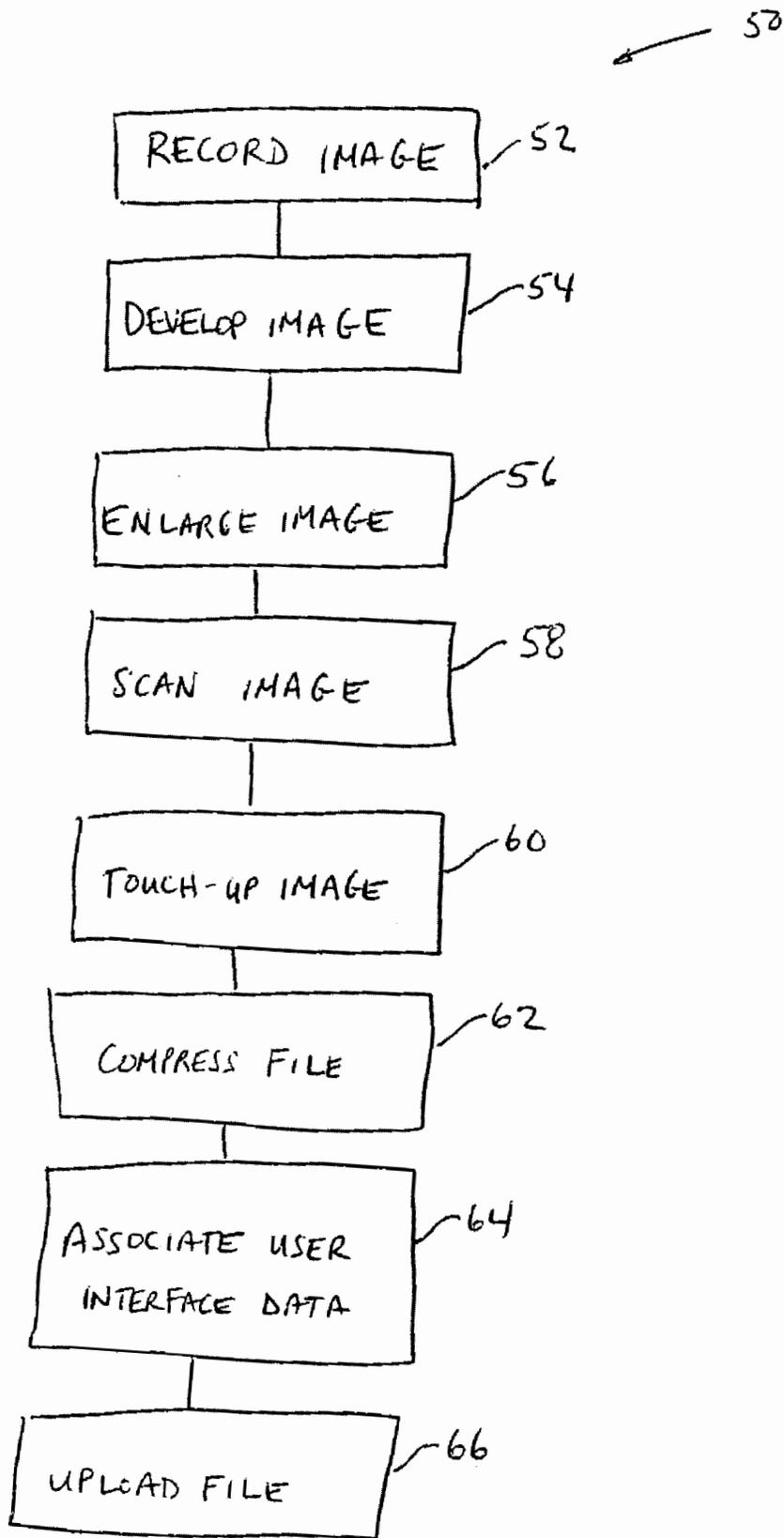


FIG. 2

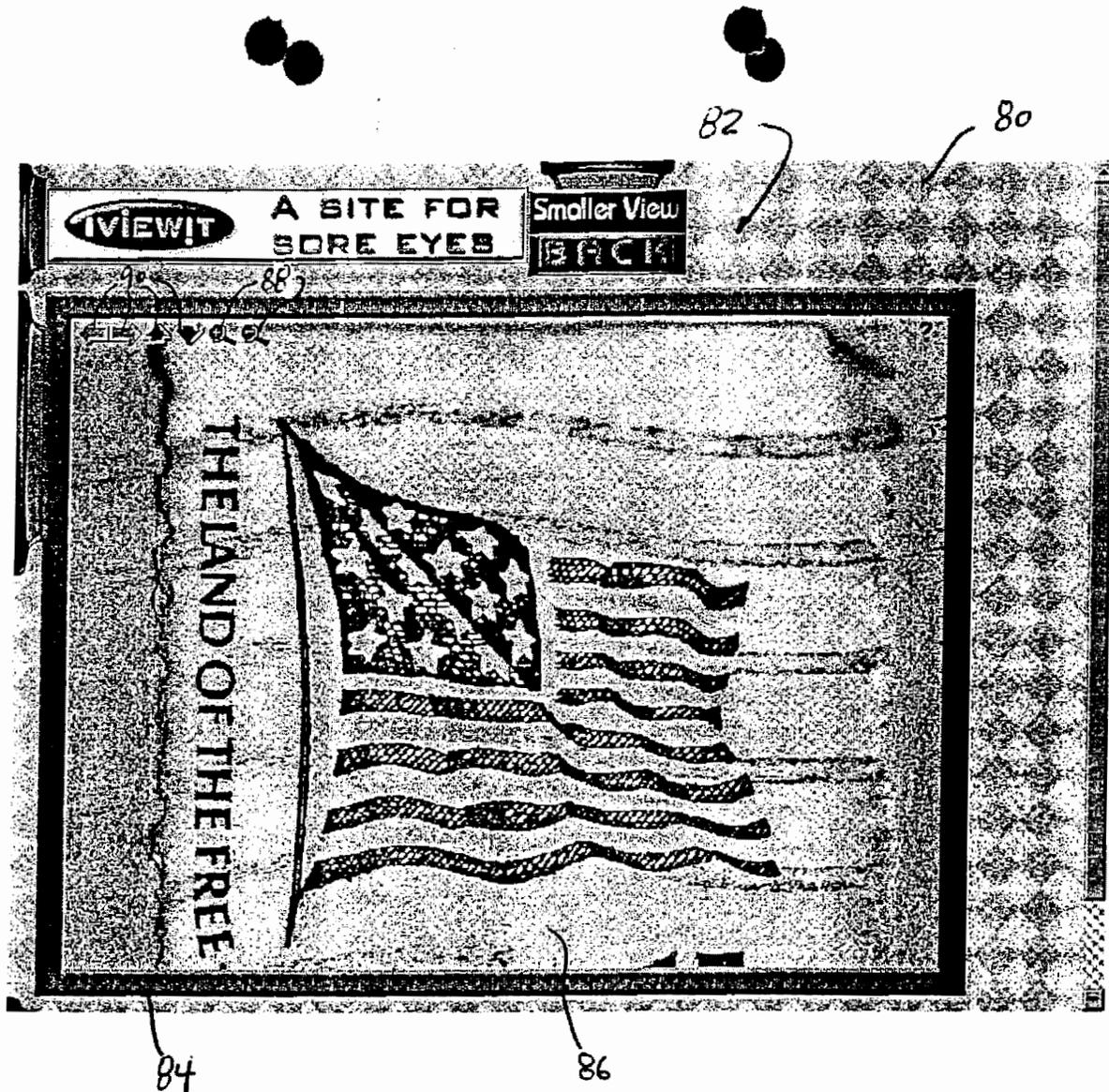


FIG. 3

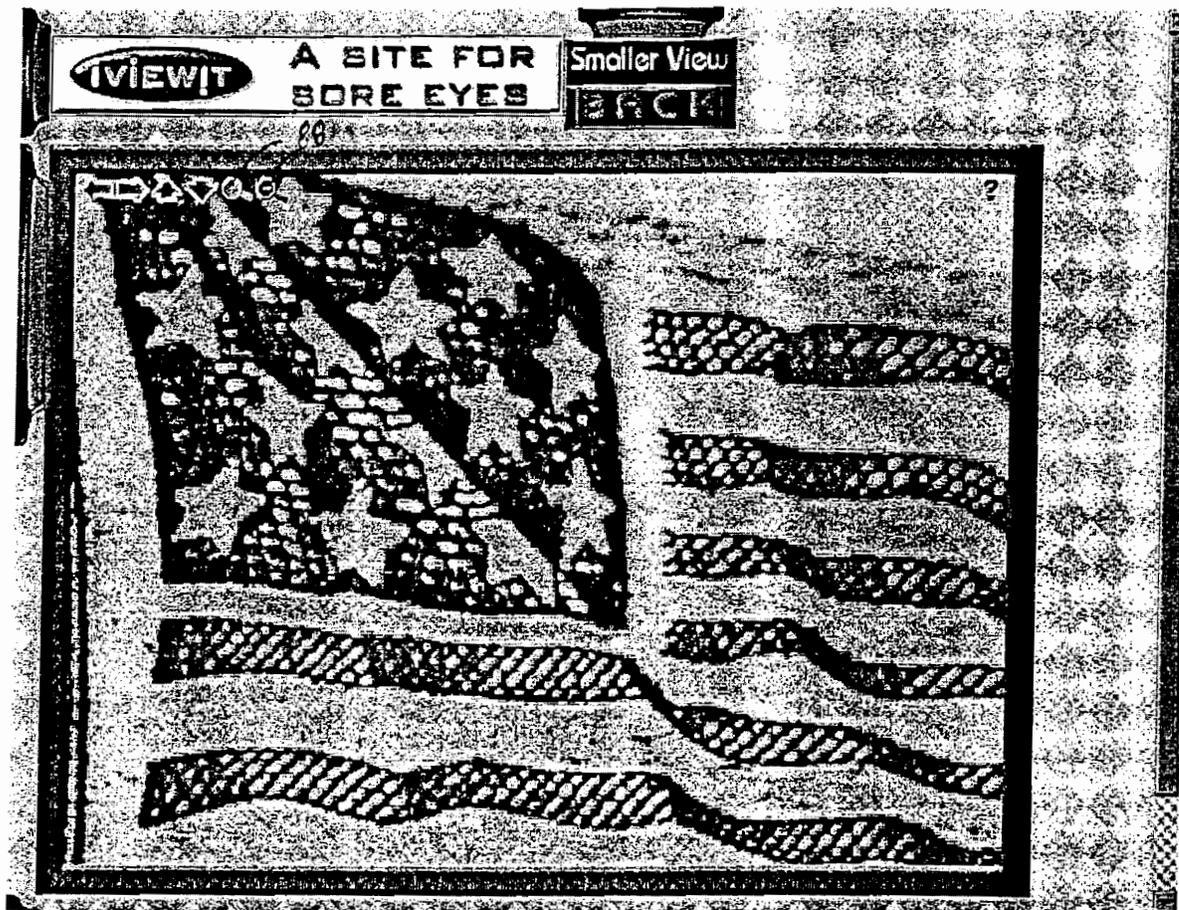


FIG. 4

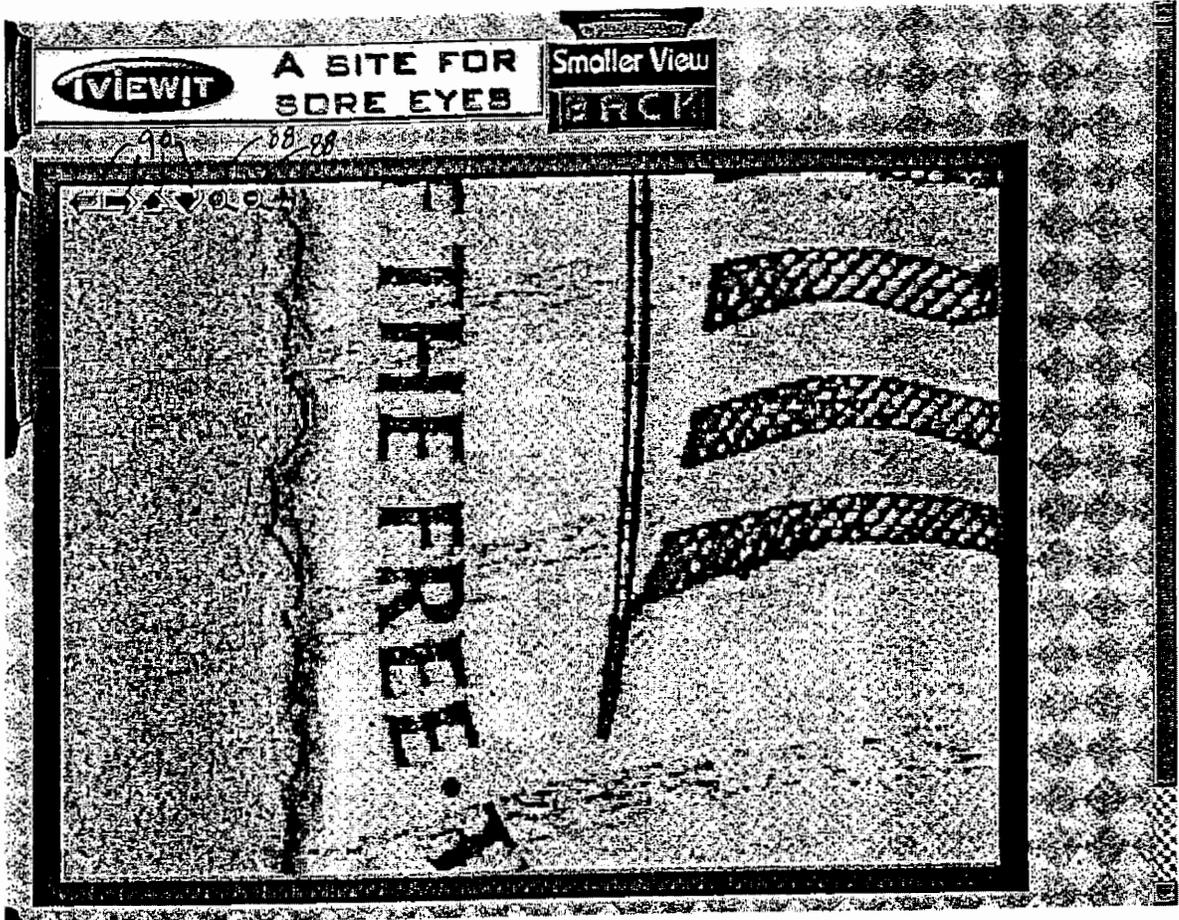


FIG. 5

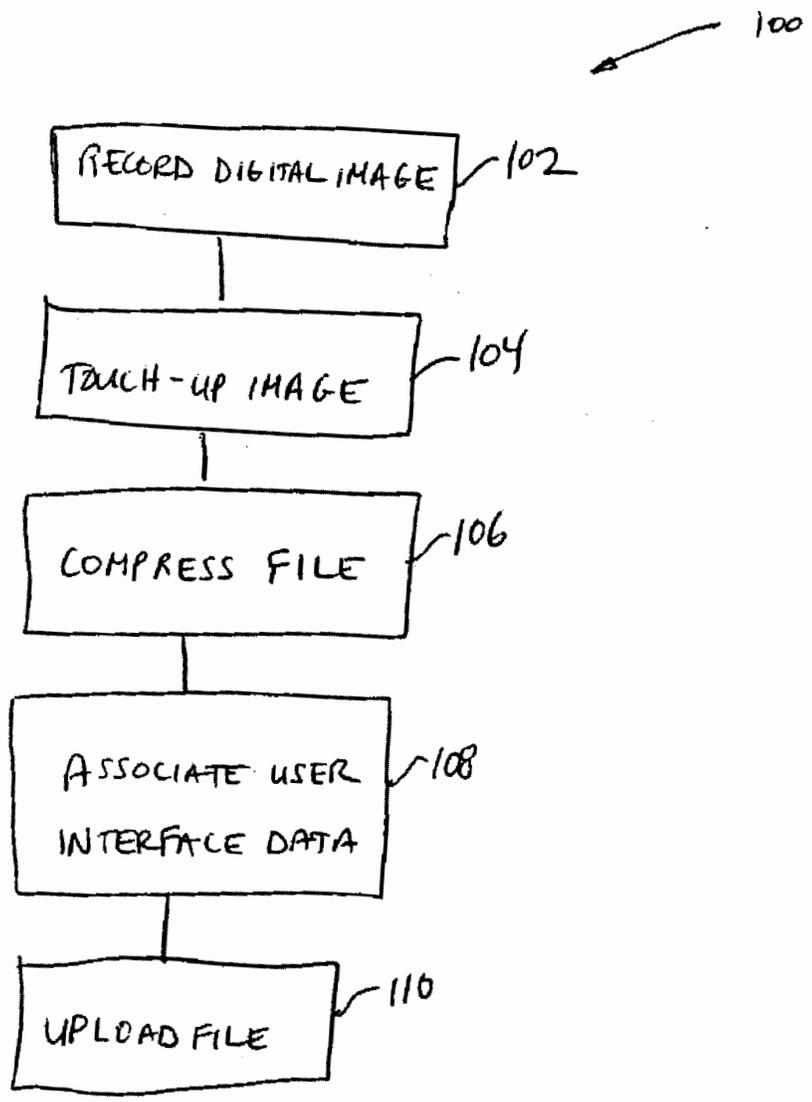


FIG. 6

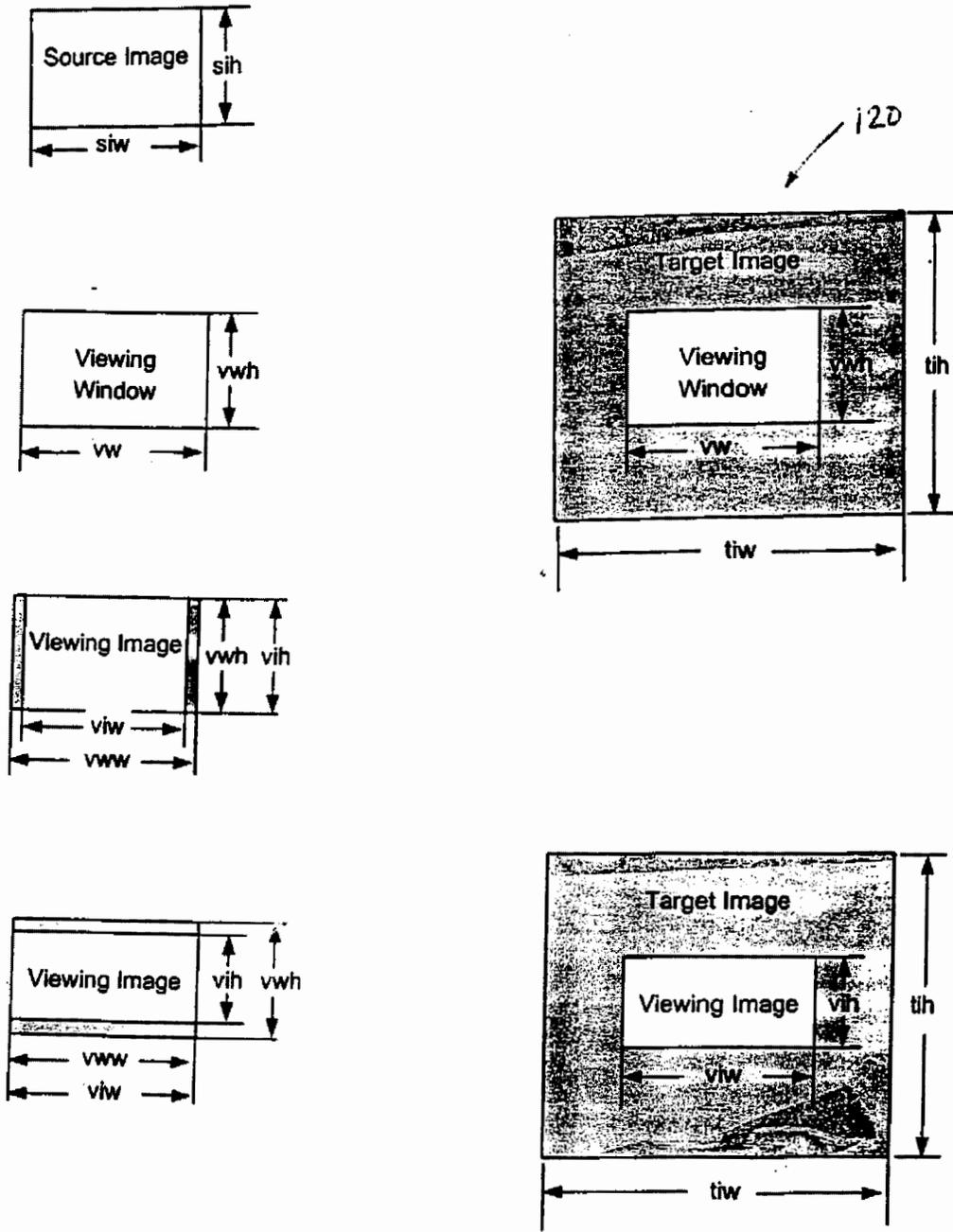


FIG.7

*COPY*

**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
USING A DIGITAL CAMERA**

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**ZOOM AND PAN IMAGING  
USING A DIGITAL CAMERA**

**CROSS-REFERENCE TO RELATED APPLICATIONS**

The present application is related to U.S. Patent Application No. 09/630,939, filed August 2, 2000, a copy of which is attached hereto and incorporated herein by reference.

5 **FIELD OF THE INVENTION**

The present invention is directed to a system and a method for producing enhanced digital images and, in particular, to a system and a method for producing enhanced digital images having improved resolution for zooming and/or panning within an image  
10 downloaded from a digital camera to an external display system such as to a computer display or directly to a monitor.

**BACKGROUND OF THE INVENTION**

See attached information regarding digital cameras which is incorporated herein by reference.

15 See Background in related application.

**DESCRIPTION OF THE INVENTION**

The object of this invention is to enable a digital camera to provide pan and zoom capabilities to the digital pictures taken by the camera. The pictures may be viewed, either on the camera  
20 through the viewing screen usually provided, or through a display attached to a computer which has received a file comprising the digital images taken by the digital camera, or through any other display system such as a television or monitor.

See attached Figure A1.

There are several embodiments:

In one embodiment, the software for viewing the images in pan and zoom mode is contained within the camera #1.

5 The photographer selects the image to be displayed on the viewing screen #2 and then selects the pan and zoom mode by use of control buttons which may be existing buttons multiplexed for this purpose. The necessary controls are: pan left, right, up, down, zoom in, zoom out. Including the pan and zoom facility in the  
10 camera enables the close inspection of particular features of the image thereby ensuring that the image is meeting the objectives of the photographer.

In another embodiment, the digital file containing the images is transferred to the computer #10 through a cable  
15 connection connecting the USB port #3 to USB port #11 or equivalent ports such as a serial port. Alternatively the digital file may be transferred by means of a media device such as a floppy disc or flash card. In this latter case, the file is written onto the media device using data media port #4 and read into the computer using  
20 data media port #12. The computer #10 should have already been loaded with user interface software which provides the controls for displaying the digital images on computer display #20 and also for providing the pan and zoom feature controls.

An alternative embodiment is to include into the digital  
25 file transferred from the camera #1 to the computer #10 the user interface software necessary to control the display and zoom and pan of the digital images in the computer. In this way no software is necessary to be pre-loaded into the computer #10.

Another alternative embodiment is to pre-load some software into computer #10 and load the remainder from the camera #1 through the digital file containing the images being transferred.

Note that the relationship between the target image and the viewing image is very important, as described in the related application. By panning the viewing window, every portion of the target image may be viewed from each level of zooming. Zoom capability is provided up to a maximum level where the image begins to pixelate.

In the related application, user interface or control data is associated with the enhanced digital image file. The user interface data is a program or code segment (e.g., a Java applet) that provides a graphic user interface on the display upon loading of the image.

In one embodiment of the present invention, the user interface program is associated with the digital image file in the camera and downloaded with the file or files so the computer or other display system can automatically launch the graphic user interface, decompress the digital image data if necessary, and display at least a portion of the digital image data within a viewing window having a predetermined viewing size. The user interface program can be written in C+ or C++ or other common languages. The user interface data may alternatively be a plug-in, applet, or other software program.

The user interface data may be either associated with the enhanced digital image file such that it is downloaded with the enhanced digital image data, or it may be launched independently from the enhanced digital image data as, for example, an applet or plug-in on computer #10. If the user interface data is launched independently of the image data, it may either be first opened by the

user before downloading the enhanced digital image file, or it may be automatically opened by the enhanced digital image file, such as, via a script or other code segment within the enhanced digital image file.

The user interface includes a viewing window or frame  
5 for displaying the digital image data, and further includes zoom and pan functions as described in the related application.

Note that the amount of zoom capability provided by the user interface will vary depending upon the display size and resolution. Nevertheless, the zoom capability should reach a  
10 maximum when the image begins to pixelate as defined in the related application.

For example, if the original image is 1500 (width) x 1200 (height) pixels, and the camera viewfinder display has a 256 x 180 screen size, then the image can be magnified to 39 times,  
15 whereas the same image can only be magnified to 3.75 times in an 800 x 600 computer monitor. In either case, at the maximum zoom, the zoomed portion of the original image will be fully detailed pixel-for-pixel.

If the digital image file, including the user interface  
20 program, is provided directly to a television or monitor that does not have zoom or pan controls or buttons, the controls or buttons on the camera will be used.

As mentioned in the related application, the digital camera is typically set with a high resolution to acquire at least  
25 enough pixels for a magnification of two times the size of the viewing window provided on the display, though higher numbers of pixel data may also be acquired. The same or related mathematical formulas for determining the maximum magnification factor (mmf) in the related application apply in the preferred embodiment.

Note in the preferred embodiment that the display is viewing all or a portion of the entire image that was downloaded to the computer #10, and not downloading portions "on the fly" as they are needed.

5 In the preferred embodiment, the image can be panned while zoomed in to the maximum.

# PAN AND ZOOM IMAGING USING A DIGITAL CAMERA

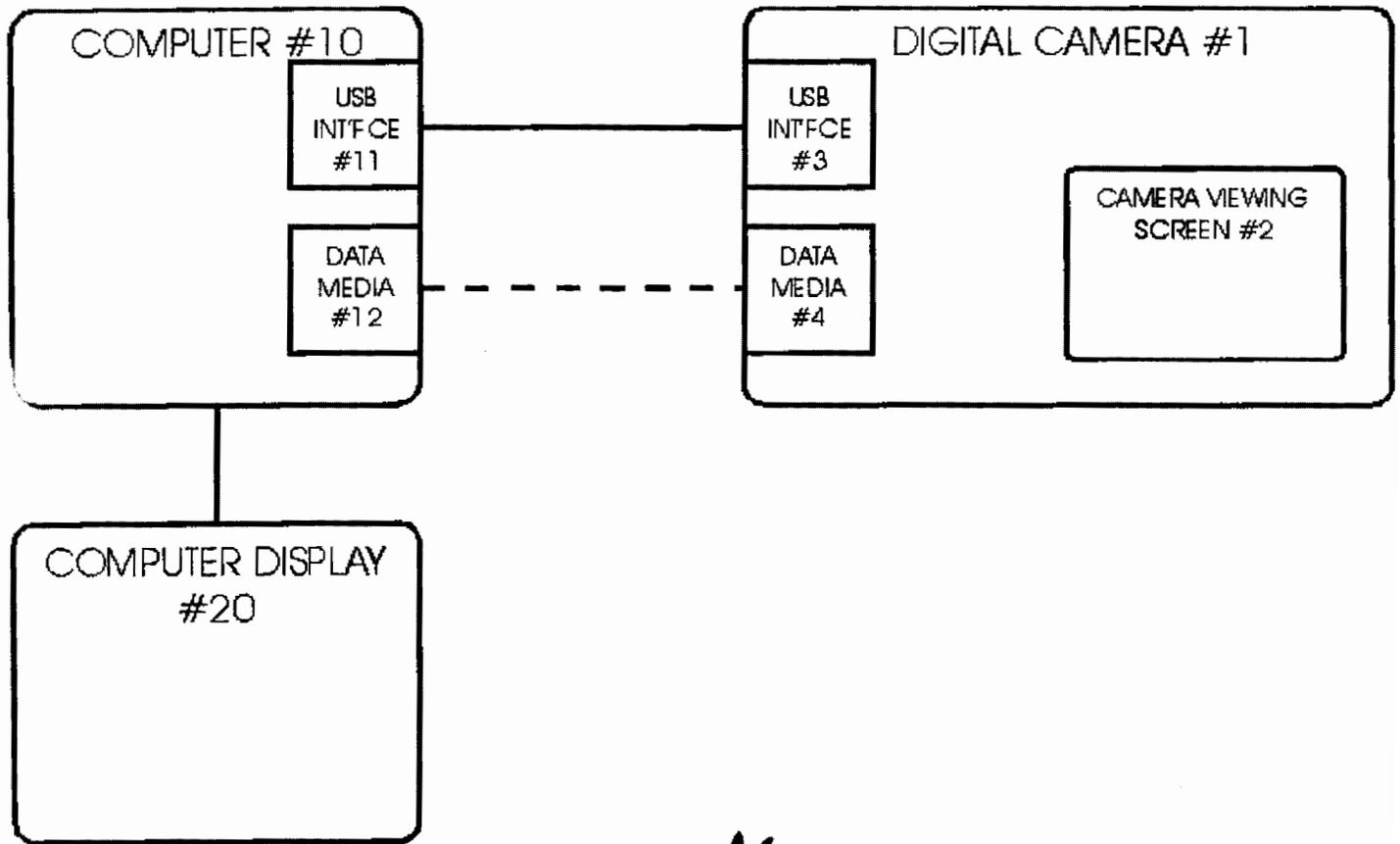


FIGURE **A1**



**This page has been formatted to facilitate printout of the review.**

Use your browser's "Back" button to return to the previous page, or the links at the top and bottom of this page to navigate to related information. If you have difficulty fitting the text on this page onto your printer output, simply resize your browser window to a narrower width and print again.



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[Go to Olympus C-3030 Pictures Page](#)  
[Up to Imaging Resource Cameras Page](#)

# OLYMPUS

## Olympus C-3030

*Olympus extends their popular high-end compact to 3.3 megapixels, adds sound to its movies!*

*(Review first posted 5/10/2000)*



- \*3.14 megapixel resolution (3.34 megapixel CCD) for 2048 x 1536 images
- \*Multiple exposure modes, including full manual
- \*Total of 5 resolution modes, with uncompressed TIFF format available in all
- \*Optional manual focus with distance readout on LCD screen
- \*Sync connection for external flash unit
- \*Movie recording with sound, up to 300 seconds in SQ (160x120) mode

## Manufacturer Overview

With one of the broadest digicam lineups in the industry, Olympus is a traditional camera manufacturer who's successfully making the transition to the digital era. A little over a year ago (this is being written in May, 2000) they introduced one of the first 2 megapixel digicams on the market, the C-2000 Zoom. It proved to be extremely popular, offering a compelling combination of features and excellent picture quality. They subsequently upgrade it with the C-2020 Zoom, a model offering improved functionality and user interface design. Now, they've extended the same basic (and successful) design to the three megapixel arena, with the C-3030 Zoom. The new model is again evolutionary, rather than revolutionary, but once again, Olympus appears to have listened to customer input and incorporated many of the most-requested features. Overall, the new camera is a very strong entry in the three megapixel arena, and should compete well in that market.

## Highlights

- 3.34 megapixel (3.14 effective), 1/2 inch CCD delivering up to 2048 x 1536 pixel images.
- 1.8 inch, TFT color LCD display.

- 3x, 6.5 to 19.5mm lens (equivalent to a 32 to 96mm lens on a 35mm camera) with auto and manual focus.
- 2.5x digital telephoto.
- Apertures from F/2.8 to F/11.
- Shutter speed from 1 to 1/800 seconds in Auto exposure mode (16 to 1/800 in Manual).
- Variable ISO settings of Auto, 100, 200 or 400.
- Exposure compensation from -2 to +2 in 1/3 EV increments.
- Adjustable white balance with Auto, Clear, Cloudy, Tungsten and Fluorescent settings.
- Digital ESP (matrix) and Spot metering options.
- Program AE, Aperture Priority, Shutter Priority and Manual exposure modes.
- Movie recording mode with sound and shutter speeds from 1/30 to 1/10,000 seconds.
- Continuous Shooting, Auto-Bracketing, Black & White, Sepia and other special exposure modes.
- Built-in flash with Auto, Red-Eye Reduction, Fill-In, Off and Slow-Sync modes.
- External flash PC sync.
- 12 second self-timer with remote control.
- JPEG, uncompressed TIFF, Wave and QuickTime Motion JPEG file formats.
- Image capture on SmartMedia.
- USB and serial computer connections.
- Direct print capabilities with optional Olympus printer.

## Executive Overview

A few months ago (early 2000), Olympus introduced the C2020 as a welcome upgrade to their previous C-2000 Zoom digicam: Olympus obviously listened closely to users, and implemented many of the most-requested features in the new model. Now, they've taken the same basic (successful) design and created the C-3030, giving it a larger, 3.3 megapixel CCD, sound recording capabilities and several other feature additions and user-interface improvements. The net result is very pleasing, certain to appeal to fans of the former models, or to anyone looking for a high-performance "prosumer" digicam. Design-wise, the C-3030 looks much like its predecessor, with the exception of its monotone black body (the C-2020 featured a silver and black design). The C-3030 retains the lightweight portability of its predecessor, easily slipping into a large coat pocket or purse. The only design complaint we have is the lens cap, which doesn't tether to anything and can be easily lost. It's a minor issue, but one we're compelled to harp on just the same: We've lost too many lens caps in our lives, and a tether strap is just too easy to add for manufacturers to have an excuse not to. On the plus side, we were glad to see that Olympus redesigned the previously awkward battery compartment cover. Now, you just slide a lock and then slide the cover open, without needing superhuman hand strength or more fingers than nature gave us.

The C-3030 offers a 3x, 6.5 to 19.5mm lens (equivalent to a 32 to 96mm lens on a 35mm camera) with both auto and manual focus options. This looks like it's physically the same lens as on the C-2020 Zoom, with the difference in focal length resulting from the slightly larger physical dimensions of the CCD. We were very happy to see the continuance of the distance scale that appears on the LCD when using manual focus, as it greatly helps in hard to focus situations. There's now also a handy focus-assist feature, whereby the LCD display zooms to a larger scale whenever you actuate the manual focus adjustment. Apart from the temporary "zoom" while focusing, the 2.5x digital telephoto is activated through the Record menu, preventing you from accidentally sliding into the digital zoom range, a feature we like to see. The C-3030 sports both optical and LCD viewfinders for composing images. As with its

predecessors, power consumption is exceptionally low when the LCD is off, meaning you can leave the camera on all day without worrying about draining your batteries.

Exposure-wise, we appreciate the degree of control the C-3030 provides. Although many of the camera's settings rely on the LCD menu system, you can still set the flash, macro and metering options without resorting to the LCD. Unfortunately, changing the exposure compensation or altering other exposure settings requires accessing the LCD menu system. (In general, we prefer to see digicams that permit significant control via the top-panel data readout, rather than the LCD panel. This really helps to conserve battery power!) However, in Playback mode, functions like Delete, Write Protect and Print can now be controlled by pressing a single button (previously requiring use of the menu system). You get as much or as little exposure control as you want with the C-3030, via Program AE, Aperture Priority, Shutter Priority and Manual exposure modes. In all modes except for manual, you have an aperture range from F/2.8 to F/11 and shutter speeds from one to 1/800 seconds. In Manual mode, the shutter speed range extends to 16 to 1/800 seconds, giving you much longer exposure times. We liked the fact that, in all modes except Program AE, the camera indicates whether an exposure is going to be too dark or too light, giving you a chance to alter the exposure settings before snapping the picture. We also really like the on-screen display of the aperture and shutter speeds the camera has chosen.

White balance and exposure compensation offer the traditional settings and you have a choice between Spot and Digital ESP (matrix) exposure metering. Thus far, Olympus digicams haven't offered a "manual" white balance mode, and the C-3030 doesn't either. We really like to see manual white-balance options (also called "preset" or "one-push" white balance by some manufacturers), especially on cameras as advanced as the C-3030 Zoom. The built-in flash provides the standard Auto, Red-Eye Reduction, Fill-In and Off modes, but can be also combined with slow shutter speeds to achieve various low light exposures through the Slow-Sync setting. In slow sync mode, the flash may be synchronized with either the opening or closing of the shutter. There's also a sync socket for an external flash, which can be used either with or without the built-in flash. You can control flash exposure independently of that for ambient light, via the flash intensity setting, which is adjustable from -2 to +2 in 1/3 EV increments. Combine this with the variable ISO option (100, 200 or 400) and you get an excellent range of exposure control options, especially in low-light situations.

The Sequence, Auto Bracketing and Panorama shooting modes provide a nice range of exposure options and cater to a number of shooting situations. We also like the Picture Effects menu, which offers Black and White, Sepia, White Board or Black Board shooting modes, helpful in a variety of scenarios. A nice bonus on the C-3030 is the ability to record sound, both with movies and still images. This makes movies a little more interesting and can be really helpful in labeling still images. (The lack of sound recording in its movies was a frequent complaint we heard from owners of the earlier C-2020.) Do note though, that the C-3030 Zoom has no internal speaker, so you'll have to download your movies to a computer to hear the audio track.

The C-3030 offers a range of image resolution sizes, from 2048 x 1536 to 640 x 480 (five sizes in all) with a variety of quality settings. Files are saved as JPEGs with an option for uncompressed TIFF at all image sizes. Images are stored on SmartMedia cards and an 16mb card is packaged with the camera. The C-3030 supports both USB and the standard serial interface, accommodating both PC and Mac users. Additionally, an NTSC video cable means that you can play back movies and captured images on your television set, or even use the TV as an expanded LCD monitor for image composition. (European models come equipped for the PAL video standard.)

Overall, the C-3030 Zoom is a very worthy extension to the previous C-2020 Zoom: Combining lightweight portability, a 3.3 megapixel CCD, wide array of resolution choices, and excellent exposure controls, it's flexible, user-friendly, and high performance. We own a C-2020 Zoom and use it for all our product shots that appear on the web site: We have to confess to being sorely tempted by the new 3 megapixel C-3030 Zoom, even though our C-2020 is less than six months old. (This is an occupational hazard in the digicam world, where there's **always** something coming out better than the product you acquired just months before...) Whether you're entering the market for the first time, or upgrading from an earlier model though, the C-3030 Zoom presents a wealth of features and capabilities, and excellent

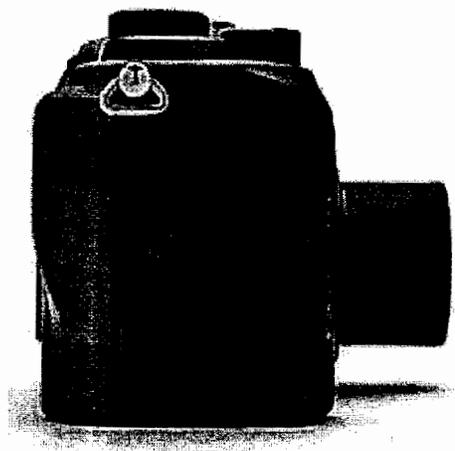
image quality in the bargain.

### Design

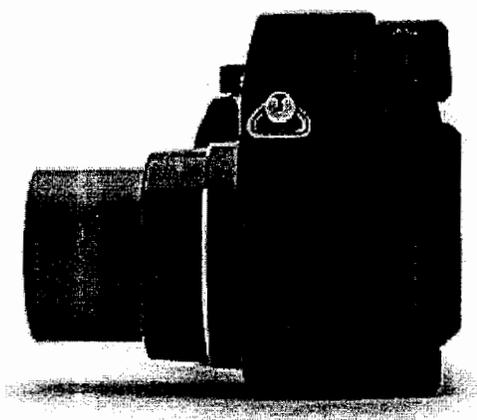
With the C-3030 Zoom, Olympus has kept the familiar lightweight, compact styling of earlier models in the line, but this time with an all black facade. In fact, it incorporates all the features of the C-2020 Zoom, but now with a 3.3 megapixel CCD and sound recording capability (not to mention a wider array of image resolution sizes). The very rugged plastic body gives the camera a low weight of 10.6 ounces (300.5g). Dimension-wise, the camera measures 4.3 x 3.0 x 2.6 inches (107.5 x 76.4 x 66.4mm), so it's easily stashed in a coat pocket or purse. Overall, the design is almost identical to the C-2020 Zoom, with the sole exceptions of a larger handgrip area and a much easier to operate battery compartment lid.



Aside from the monotone body, the C-3030 doesn't look too different from the previous C-2020. The front of the camera is relatively clean, featuring the telescoping lens, built-in flash, optical viewfinder front and the remote control infrared sensor. When fully retracted, the lens only adds about a quarter of an inch protrusion beyond the handgrip to the front of the camera. When the camera is turned on, the lens comes out of hiding and likewise retracts when the camera is switched off. A minor gripe here is that the lens is protected by a removable lens cap that doesn't have a tether or any place to attach one. While this isn't a big deal, lens caps have a habit of disappearing, so we like to see designs that either omit them, or provide some sort of tether.



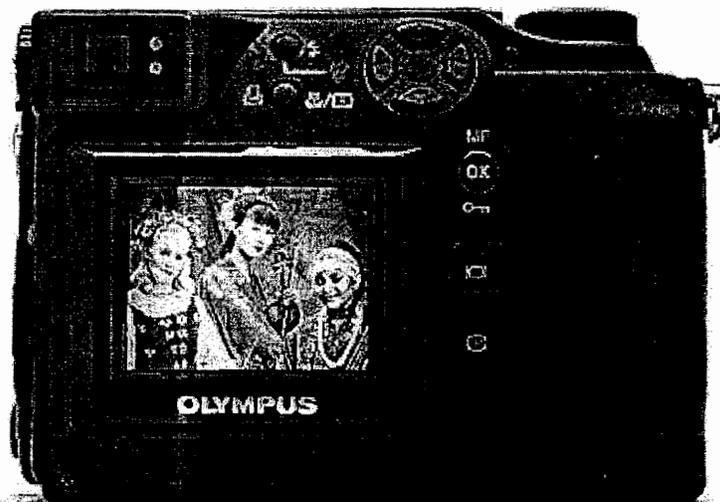
We're glad to see the continuance of the hefty handgrip on the side of the camera which holds the SmartMedia slot (beneath a snug plastic cover that snaps tightly into place). As noted above, the handgrip on the C-3030 Zoom is a little larger than that on the earlier 2020, making for a bit more secure grip.



On the opposite side of the camera are the digital, AC and video input jacks, also protected by a snug plastic cover. The dioptic adjustment dial for the optical viewfinder and the external flash sync connector (notably, not a standard "PC" sync connector) are also on this side of the camera. Users will want to be careful with the flash sync cover, as it's tiny and can be easily lost.



Up top is a small information display panel, the mode dial, shutter release button and zoom control. The small information display reports many of the camera's exposure settings, but you still need to rely on the LCD for exposure compensation adjustments, aperture, and shutter settings. (Note to Olympus: Black & White readouts are cheap, both in terms of materials cost and battery power: We'd really like to see you make more use of them for routine operating controls!)

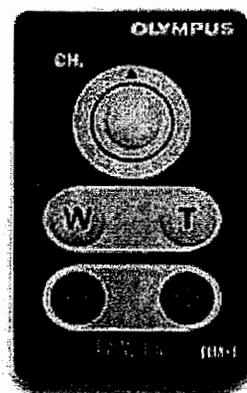


Most of the controls are on the back panel of the camera with the LCD monitor in the center. The flash and macro controls, arrow keys, manual focus, display and menu buttons live back here. There's also a small, red LED on the side closest to the SmartMedia slot that lets you know when the card is in use (and therefore not to open the slot).



Both the locking battery compartment and plastic tripod mount are located on the bottom of the camera. Unfortunately, they are too close to each other to allow quick battery changes when the camera is mounted on a tripod. Frankly though, we don't know how Olympus could have gotten around that problem on this model, as the bottom of the camera body isn't wide enough to allow any leeway in this area and at the same time keep the tripod mount centrally located. We are glad to report that the battery compartment is now **much** easier to open than the previous design, as you just slide the lock and push the compartment door outwards as it flips open. (The previous model really required both hands to get it open without dropping the camera). A minor quibble on this part of the camera: The C-3030 Zoom uses a plastic tripod socket, albeit a replaceable one. Metal tripod sockets are the exception rather than the rule, but we really like the added durability that metal provides. Accordingly, we try to mention the tripod socket material in our reviews, as an encouragement to digicam makers to use metal more frequently.

We're also glad to see the return of the small infrared remote control which lets you trip the shutter, operate the zoom lens and scroll through recorded images in Playback mode. We really enjoyed this feature and the amount of freedom it gives. (We make continual use of the IR remote on our C-2020 Zoom in all our studio shooting: It's incredibly handy!)



The tiny IR remote provides an amazing level of control without a "tether" connection.

### Viewfinder

The C-3030 features both a "real image" optical viewfinder and an LCD monitor for image composition. The optical viewfinder has central autofocus crosshairs to help you line up shots and two small external LEDs that report whether or not the focus and/or flash is ready. There's also a small dioptic adjustment dial on the left side of the optical viewfinder, to assist eyeglass wearers, but the eyepoint is a bit lower than we'd like to see for use with glasses. The viewfinder zooms along with the lens, but



naturally doesn't respond to the 2.5x digital telephoto, which is dependent on the LCD monitor.

A 1.8 inch, TFT, color LCD monitor provides detailed feedback about the current exposure settings, showing the currently selected f-stop, shutter speed and exposure compensation in a row of numbers across the top. In Aperture and Shutter Priority modes, the aperture or shutter value appears continuously, along with the exposure compensation setting, while the second, automatically determined exposure value (either shutter speed or f-stop) appears whenever the shutter button is half pressed, triggering the autofocus and autoexposure systems. The same goes for Manual mode, except both values are displayed together. When the LCD monitor is turned on in record mode, some of the camera's exposure settings are listed as well, such as flash, exposure, etc.



When using the LCD monitor to review captured images, you can actually zoom in on displayed images up to 3x, as shown in the screen shot at right. This is very handy for checking focus, small details or precise framing. When you're zoomed in, the jog dial buttons let you scroll around within the larger image. There's also the index display option, which displays either four, nine or 16 images at a time.



We found the C-3030's optical viewfinder to be a little tight, showing approximately 82 percent frame coverage at wide angle and about 81 percent at telephoto. (Note that we've changed our nomenclature on this to better reflect what you see looking into the viewfinder: We previously would have referred to the C-3030's viewfinder as "loose"...). These numbers are from the 2048 x 1536 resolution size but the smaller 640 x 480 resolution size numbers are similar at 83 percent accuracy for both wide angle and telephoto. We also noticed that the framing here slants just a little to the left vertically, possibly the CCD on our test unit was shifted a little. The LCD monitor proved to be much more accurate, showing about 97 percent frame coverage at wide angle and slightly over 100 percent at the telephoto setting. (The covered area at the telephoto end is just barely inside the darker lines we use to frame the viewfinder accuracy target). As with the optical viewfinder, the smaller, 640 x 480 image sizes weren't too far off from the larger ones (about 96 percent coverage at wide angle and just over 100 percent accuracy at telephoto). We generally like to see the LCD monitor as close to 100 percent accuracy as possible, so the C-3030 does a very good job in that respect. We also shot at the 2x digital telephoto setting (our studio isn't long enough to accommodate the full 2.5x), which probably would have produced close to 100 percent accuracy if framed properly. One problem with the digital telephoto is that framing is difficult because of the softer, slightly distorted image on the LCD. Additionally, the resulting image is somewhat soft, which is a usual side effect of the digital zoom.

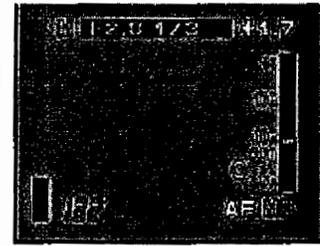
## Optics

The C-3030 Zoom comes with a 3x, 6.5 to 19.5mm, all glass aspheric lens (equivalent to a 32 to 96mm lens on a 35mm camera) with eight elements in six groups. This appears to be physically the same lens as in the C-2020 Zoom, with the wider-angle coverage being due to the larger size of the 3030's CCD sensor. Further evidence of the tight fit between lens and CCD is the set of small notches cut into the bezel around the lens' front element, to avoid vignetting in the corners of the final images. Despite the cutouts in the lens bezel though, we did notice a slight vignetting (darkness in the corners of the images) when the lens was set to its widest angle. This disappeared fairly quickly as we zoomed toward telephoto settings, but was noticeable in shots of flat-tinted subjects at full wide angle zoom settings. (We confess to being puzzled though, by the smaller f/2.8 maximum aperture of the 3030's lens, compared to the f/2.0 of the 2020.) Apertures can be manually adjusted in both Manual and Aperture Priority mode from F/2.8 to F/11, in 1/3 f-stop increments. The contrast-detect TTL autofocus system covers a range from 31 inches (0.8 m) to infinity in normal mode and from eight to 31 inches (0.2 to 0.8 m) in macro. The green LED next to the optical viewfinder lights solid when the autofocus system achieves a lock on the subject. Low light focusing performance is fairly good, with the camera able to achieve focus down to about 1 footcandle (11 lux, or about the brightness level of a well-lit nighttime



street scene). Below that level, you'll need to resort to manual focusing.

A manual focus option is available by simply pressing the MF button on the back panel which displays a small distance readout to help you gauge distance (in meters or feet). The screen shot at right shows the focusing scale in manual focus mode. The up and down arrow buttons adjust the focus along the scale and pressing the MF (or OK) button again cancels the mode. We liked the fact that the distance scale displayed is split into two segments, one ranging from 2.6 feet to infinity, the other from 8 to 31 inches. This provides the necessary resolution to focus accurately, without forcing you to squint and guess at single scale ranging from 8 inches to infinity. One nice feature of the 3030's manual focus operation is that the LCD viewfinder display enlarges by about 2x whenever the manual focus setting is changed. This is very helpful in deciding whether you've achieved good focus or not. (Although it's still difficult to judge critical focus from an LCD panel.) Here's a trick though, for further improving your focus accuracy using the LCD screen: Activate the digital zoom function, to get an additional 2.5x magnification of the subject. Once you're focused, you can back the lens off to frame the picture accordingly. (Actually, we're not certain that the C-3030 Zoom's lens doesn't change focus as you zoom it, but this technique seemed to work fairly well for us.)



As with other Olympus cameras in this series (the C-2000 Zoom and C-2020 Zoom), the C-3030 Zoom has body-mounted threads that accept an accessory lens adapter, the CLA-1. This adapter is a small cylinder that gives you a set of 43mm filter threads just flush with the furthest forward extent of the lens when it telescopes out. NOTE though, that we said "just flush" - If you by chance were able to obtain an accessory lens or filter with 43mm threads on it, it wouldn't fit: You need a millimeter or so ahead of the adapter before the glass starts. This usually isn't a problem, since you'd almost always have a thread adapter tacked on the front of the CLA-1 anyway, the 43mm being such an odd size. Still, you can find 43mm accessories out there, so we thought we should at least mention this...

While the C-3030's lens provides up to 3x optical zoom, an additional 2.5x digital zoom can be activated through the Record menu, albeit with noticeable quality degradation in the resulting images at the larger image sizes. (The "digital zoom" options on all digicams simply crop into the CCD array to reduce the angle of view. They thus directly trade resolution for "magnification.") Note that the digital zoom cannot be used with the uncompressed TIFF mode and is only accessible with the LCD monitor on.

With a measured visual resolution of 850-900 lines per picture height in our resolution tests, the C-3030 Zoom is just a hair off the highest we've seen to date (May, 2000). Olympus deserves credit though, for not trying for a snappier-looking picture by over-sharpening the image in the camera. Our philosophy on image sharpening is that the capture device (camera, scanner, whatever) should do the bare minimum, compensating only for the blurring tendencies of its sensor. Once an image has been over-sharpened, detail is irrevocably lost and objectionable artifacts appear. To our eye, the C-3030 Zoom gets it about right, applying some sharpening, but not too much. Even at that, it offers a "soft" image-sharpening option that provides images without any in-camera sharpening, for those times when you need to perform critical manipulations on the image in Photoshop(tm) or other editing program post-capture.

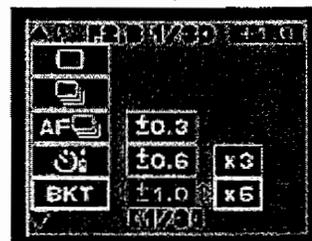
The lens appears to be of good albeit not unusual quality, turning in fairly typical distortion and aberration numbers for lenses at the higher end of the consumer digicam spectrum: Geometric distortion on the C-3030 was moderate at the wide angle end, as we measured a 0.76 percent barrel distortion. The telephoto end showed a smaller, 0.29 percent pincushion distortion. Both numbers are about typical among digicams we've tested, but we do prefer to see lower distortion at the wide angle end. (Just to be clear, roughly 0.8 percent is pretty typical among digicams we've tested, we'd just like to see *\*all\** digicams have lower barrel distortion.) Do note though, that there's an excellent, easy solution to barrel or pincushion distortion available, in the form of the optional "dewarp" plugin for our favorite image tweaker, PhotoGenetics. Read our [review of PhotoGenetics](#) for more details. Chromatic aberration was fairly pronounced at wide angle settings, with several pixels of color showing at the edges of elements in the corners of our resolution test target. At the telephoto end of the lens' range though, chromatic

aberration was essentially invisible. (This distortion is visible as a very slight colored fringe around objects at the edges of the field of view on the resolution target). The chromatic aberration was more severe at the wide angle end than the average for cameras we've tested, while it was much better than average at the telephoto end. We also noticed some slight vignetting of the image in the very corners, at the widest-angle lens setting. This last disappeared pretty quickly though, as we moved the lens out of the wide angle position.

## Exposure

Exposure control is similar to the setup of the C-2020 Zoom, with an LCD menu system that controls most of the camera's settings. Four exposure modes are accessible through the mode dial: Program AE, Aperture Priority, Shutter Priority and Manual. Shutter speeds in all modes except Manual range from one to 1/800 seconds. The range broadens under the Manual setting to 16 to 1/800 seconds. A useful added feature relative to the previous model is that as you scroll through the various aperture/shutter settings in manual mode, the camera's exposure system remains "live". The camera tells you how it judges the exposure setting you've chosen, showing not only whether it thinks you're high or low, but by how much. It does this by displaying what it believes the over- or under-exposure to be using the digits on the LCD screen that normally indicate exposure compensation in automatic exposure modes. If you're more than plus or minus 3 EV units away from the correct exposure, the digits light up red, showing just +/- 3EV. This is really very helpful as it gives you a good idea of what the exposure will be like before snapping the shutter. (Other manufacturers take note: This is a nice feature, and shouldn't be too hard to add, if a camera already has a manual exposure mode.)

Exposure compensation is adjustable in 1/3 EV increments from -2 to +2, in all exposure modes except for Manual, by pressing the right and left arrow buttons. Additionally, the auto exposure bracketing function ensures you'll get a correct exposure by automatically bracketing up to +/- 2 EV in steps ranging from 1/3 to 1 EV unit. This feature lets you select either 3 or 5 shots in the series, and steps of 0.3, 0.6, or 1.0 EV units. Thus, the bracketing range could be as small as +/- 0.3EV, or as great as +/- 2EV. Once set, you just hold down the shutter button until all 3 or 5 exposures are captured. Very slick!



ISO is also adjustable, with available settings of Auto, 100, 200 and 400. The more sensitive settings do produce noisier images, but they provide welcome exposure flexibility. The default setting in Program exposure mode is Auto, whereas Aperture, Shutter, or Manual exposure modes force you to choose one of the explicit ISO settings. In Auto ISO mode, the camera will normally shoot at ISO 100, but will gradually increment the ISO setting in very dim conditions, trying to achieve the best tradeoff between shutter speed and image noise. We're not sure what the thresholds are for increasing the ISO rating in Auto mode, but it does seem to be pretty conservative about it: In some brief experimentation, it arrived at a shutter speed of 1/2 second (pretty slow) in a dimly-lit interior scene, yet still only bumped the ISO up to 200. "Automatic" systems like this are always a compromise, but we felt the C-3030 Zoom was doing about what we would have most of the time. It's also interesting to note that the Auto ISO settings aren't restricted to the 100/200/400 available manually - At least one of our experimental shots showed an ISO setting of 180 in the playback picture-info display.

The C-3030 Zoom provides two choices for exposure metering, Spot or the default Digital ESP metering system. Digital ESP is Olympus' name for matrix metering, but we don't know the specifics of it, how many segments it uses, etc. - For those of you unfamiliar with the term "matrix metering", it refers to a sophisticated exposure-metering technique that samples the brightness from multiple points across the image, and then applies some intelligence to set the exposure so as to not blow out highlights, plug shadows, etc.

The C-3030 offers a 12 second self-timer. You can also use the infrared remote to trigger the camera from a distance, which decreases the time delay to only three seconds. (This is one of our few quibbles with the otherwise excellent IR remote unit: Why are we forced to wait three seconds when using the remote? We'd greatly prefer relatively instantaneous triggering of the camera!) White balance can be set to Auto, Clear, Cloudy, Tungsten or Fluorescent to accommodate a variety of lighting situations. White

balance is another area where we have a request to make of Olympus: So-called "manual" white balance options are becoming more and more common on high-end digicams, and (properly implemented) they're very useful. Manual white balance options generally let you set the camera's white balance by pointing it at a white card and clicking the shutter (after appropriate menu setup, etc.) This usually provides a more accurate white balance than the automatic or preset options. The C-3030 Zoom is a sufficiently advanced camera that we'd expect to see a feature like this on it. Not a crippling omission by any means, but one that we think would be appreciated by the 3030's targeted audience of enthusiast-photographers.

The C-3030 Zoom incorporates a few entertaining options on the Picture Effect menu, enabling you to capture images in black and white or sepia tone. There are also White and Black Board settings for capturing text on light or dark backgrounds. These could be useful if you needed to grab meeting or lecture notes in a hurry. Oddly though, the resulting images, while purely black and white, are stored as RGB JPEGs, taking about the same amount of memory space as normal full-color images. This is rather odd: Overall, we'd strongly suggest just leaving the camera in color mode, and using a program like Pixid's White Board Photo to clean up the images later. (See our [review of White Board Photo](#) for more info on this unique program.)

### Flash

The built-in flash on the C-3030 Zoom offers four main modes: Auto, Red-Eye Reduction, Fill-In and Off. According to Olympus' specs, the flash is effective out to 18.4 feet (5.6m) in wide angle and to about 12.5 feet (3.8 m) in telephoto. The internal flash provides good coverage in all but the widest-angle lens position: It's angle of coverage appears to correspond to a lens focal length more on the order of 35mm than the 32mm equivalent of the 3030. (Another holdover from the C-2020 Zoom?) You can adjust the flash intensity setting from -2 to +2 in 1/3 EV increments. Any of the flash modes can be combined with the Slow Sync setting, which allows the ambient lighting to make a greater contribution to the final exposure of the image. You can also produce shots which combine a motion blur on the subject (from the long ambient light exposure) with a sharp initial or final image (caught by the flash exposure). The C-3030 supports both "front curtain" and "rear curtain" triggering in Slow Sync mode, firing the flash at either the beginning of the exposure or at the end. So-called rear curtain sync is necessary to produce motion blurs on moving objects that trail the sharp, flash-exposed image, rather than precede it. A plus with the design of the C-3030 is the inclusion of an external flash sync socket, giving you even more exposure flexibility. It's important to note though, that the sync socket on the C-3030 is a proprietary design, set up for use with Olympus' FL-40 flash unit. Olympus apparently offers an accessory grip/cable combination that serves as an adapter for third-party flashes, but we don't know the model number or details on its availability.

To use an external FL-40 flash unit, the camera should be set to Aperture Priority or Manual exposure mode to control the amount of flash illumination reaching the CCD via the lens aperture setting (standard operating procedure for film cameras as well). The camera will attempt to produce a good exposure with its automatic settings, whether involving its own flash or not. Thus, if you've disabled its internal flash, you'll get a rather long exposure time in Aperture Priority mode, rather like the Slow Sync mode, whether you want that or not. Use Manual exposure mode with faster shutter speeds selected to avoid this problem. The C-3030 Zoom is unusual in that when you couple it to the FL-40 external flash, you have the option of using the internal and external flashes together. - This could be a bit of a help when you're really reaching for a distant subject, or for interesting bounce/direct flash lighting. The FL-40 also cooperates with the camera by allowing its power level to be controlled by the camera's flash exposure adjustment, mentioned above.



The manual is a bit unclear on using the 3030 with flash units other than the FL-40. To use any external flash (FL-40 or other unit), you do apparently need both the optional flash holder and flash cable. Info in the manual about third-party flashes is confusing and contradictory: In one place, it says the external flash must be used with the internal all the time. In another place, though, it says the external flash will

always fire, regardless of whether flash is enabled in the camera or not. We'll seek clarification from Olympus, but here's what we think the case is: 1) The external flash will always fire, as the sync contacts are linked to the shutter, and not affected by the internal flash status. 2) Third-party flashes won't accept flash-metering information from the camera, meaning that you'll have to regulate the light either by running the flash in Auto mode and making whatever adjustments it provides onboard, or by essentially operating the flash in "manual" mode, controlling the exposure via the camera's lens aperture.

A few caveats about external flashes with the C-3030 Zoom, or digicams in general for that matter: 1) Some external strobes have the polarity reversed on their sync connectors, and won't fire. (Cameras these days use SCRs to trigger strobes, rather than mechanical contacts, and SCRs are polarity sensitive.) 2) Some flashes put their full voltage on the sync connector, which is virtually guaranteed to blow the inner circuitry of the camera. (!) Always check the voltage on your sync connector before plugging a non-manufacturer flash into your digicam! - If you find more than a few volts there, save yourself an expensive repair, and buy a flash with a lower trigger voltage. (Studio strobe packs are particularly prone to this: Use extreme caution before attaching one to your digicam!) 3) If you're going to be shooting at wide angle, make sure your flash will cover a field of view equivalent to a 32mm lens on a 35mm camera. (Most will, some won't.) 4) If you get unexpectedly dim shots when operating at full flash power (distant subjects or small apertures), it may be that your flash is producing a light pulse longer than 1/200 of a second (Olympus' spec), so not all the light from the flash may be contributing to the exposure.

We didn't test the FL-40 with the C-3030 Zoom, but did have an opportunity to use one earlier, when we reviewed the Olympus C-2500L SLR camera. You can read our [review of the C-2500L](#) for more info on how it worked with the flash: We suspect the story with the C-3030 would be much the same. (To save you clicking the link, the short of it was that we liked the FL-40 very much indeed, and found it worked exceptionally well with the C-2500L's internal flash.)

### Sequence Shooting Mode

The C-3030 offers a Sequence mode that mimics a motor drive, letting you capture between six and 12 separate pictures (depending on the complexity of the image, selected image size/quality, and the available SmartMedia space) at approximately 1.4 frames per second. In our own measurements, we indeed measured a frame rate of 1.39 frames per second at all resolutions, in autofocus mode. We discovered though, that the non-autofocus mode increased the frame rate to 3.17 frames per second (!), since the camera didn't have to wait for the lens to focus each time. The manual states that the maximum shutter speed in sequence shooting mode is 1/30 of a second, to avoid blurring. (Seems odd, we suspect it has more to do with managing the timing of the shots, rather than a concern over camera shake.) It also notes that the mode is available with all compression levels except for uncompressed TIFF. One obvious limitation of sequence mode is that the camera's internal flash may not be used with it. (The flash can't cycle at nearly 1.4 frames per second.) However, if you have an external flash capable of cycling at the 1.4 frame per second rate and shoot in aperture priority mode, you can use a flash with this mode.

### Movies and Sound

The C-3030 continues the ability to record short movies, now extended to include sound. Movie mode is entered as a separate option on the main command dial. Movies may be recorded in either HQ (320 x 240) or SQ (160 x 120) resolution modes. Thanks to the C-3030 Zoom's huge buffer memory, the maximum recording time is limited only by memory card capacity, apparently up to a 32 megabyte limit. (The manual lists maximum seconds of recording time as a function of card size, but just lists "Larger than 32 megabytes" as the highest category, implying that large cards convey no additional recording time. - This makes sense, given that 32 megabytes is the size of the RAM buffer memory the C-3030 Zoom carries on board.) Here's a copy of the recording-time table from the manual:

Recording Mode	Resolution	Memory Card Capacity				
		2MB	4MB	8MB	16MB	Over 32MB
HQ	320x240 (15 frames/sec)	5	11	23	46	75
SQ	160x120 (15 frames/sec)	22	45	92	186	300

The available seconds of recording time appear in the status display panel (and in the LCD monitor if activated), based on the quality mode selected and space remaining on the card. You can use the zoom control while recording movies, but the motion of the zoom is somewhat slower than in still recording, and the zoom is apparently only a digital zoom. (Not an issue though, given the large difference between the CCD resolution and movi recording resolutions - This means that digital zoom in movie mode has the same effect as optical zoom in normal still photography, in that no image degradation should be visible as a result of using the zoom.) Manual focus, exposure compensation, focus lock, the self-timer, ISO setting, white balance and picture effects are also available while in Movie mode.

A first among cameras we've tested (May, 2000), the C-3030 even offers in-camera "editing" of movies in Playback mode. This capability is accessed via the Function->Movie Edit option on the playback menu. In this mode (see screen shot above), you can scroll forward and backward in the movie, and set cut points at the beginning and end of the sequence. Movie content between the two cut points will be preserved, the rest discarded. In a nice touch though, Olympus allows you to choose whether to modify the original movie file, or just save a new copy of it, reflecting the effect of the edit you've made. A very nice feature that we're surprised we haven't seen before. (Kudos to Olympus for thinking of it first.)



You can also record small "sound bites" to accompany images (both in Record and Playback modes). You get approximately eight seconds of record time for each image, assuming of course that there's enough space left on the memory card. This is a handy feature for "labeling" photos.

The only quibble we have with Olympus' implementation of Movie mode on the C-3030 Zoom (and it's a significant one) is that you don't get to hear the movies you've recorded when playing them back on the camera. Adding sound recording is a big feature improvement relative to the C-2020 Zoom, but it sure would be nice to at least be able to hear what you've recorded during playback. (The camera can output both video and sound to a TV or VCR via the included A/V cable, making that an effective playback mode if you have a TV handy. Still, it would be preferable to have some ability to hear a movie's soundtrack without resorting to external equipment.)

### Panorama Mode

As with most Olympus digicams, the C-3030 offers a Panorama exposure mode when operating with Olympus' own panorama-enabling SmartMedia memory cards. In this mode, the exposure and white balance for a series of shots are determined by the first one taken. Images are saved individually and can then be assembled on a computer after they've been downloaded. While Panorama mode provides a useful function, it's less of an issue on cameras like the C-3030, which offer full manual exposure control. True, the panorama mode does lock the white balance in addition to the exposure, and does provide outline guides on the LCD screen to help align successive images, but doesn't offer the "ghost" images provided by some cameras to further assist image alignment. (Cameras with this feature retain a small portion of the previous image each time, moved to the other side of the LCD display, to help you line up objects in the scene with those in the frame you just captured.) The C-3030's Panorama mode also limits you to 10 exposures in the series before resetting the white balance and exposure values. Ten pictures is plenty for most situations, but almost certainly not enough if you're interested in stitching full 360 degree panoramas. For those, use Manual exposure mode, and a fixed white balance preset, such as "daylight." Overall, Panorama mode on the C-3030 Zoom is handy, but less useful than it could be, and

in our mind largely obviated by the camera's manual mode.

### Shutter Lag/Cycle Times

When you press the shutter release on a camera, there's usually a lag time before the shutter actually fires. This time is to allow the autofocus and autoexposure mechanisms time to do their work, and can amount to a fairly long delay in some situations. Since this number is almost never reported on, and can significantly affect the picture taking experience, we now routinely measure it.

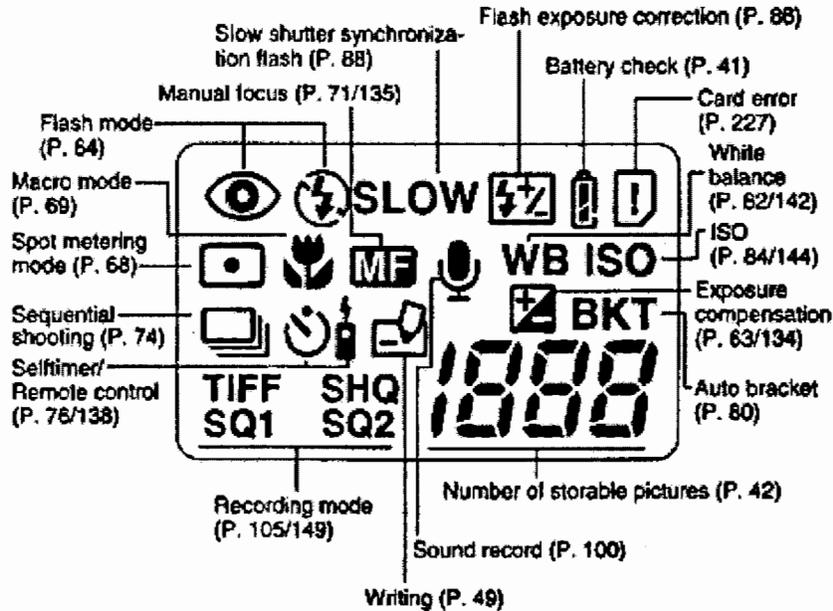
While the C-3030 Zoom is a very fast camera in other respects (see below), it's shutter lag in full autofocus mode is at the slower end of the range: We measured shutter delay at 1.40 seconds using full autofocus. The manual focus option brought the delay down to 0.48 seconds, and prefocusing by half-pressing the shutter button before the exposure dropped the delay to only 0.15 seconds. The camera does have a continuous autofocus mode, which we expected to decrease the shutter delay considerably, since the lens should more or less always be in focus at the time of the exposure. Unfortunately, this turned out not to be the case, with shutter delays in continuous autofocus mode being on the order of 1.15 seconds (varying from 0.9 to as high as 1.3 seconds: 1.15 seconds seemed to be typical of most shots.) The C-3030 Zoom's autofocus delay is longer than most cameras we've tested, manual focus delay is about average (among camera that offer a manual focus option), and the prefocus delay is shorter than average. (Do note though, that for sports shooting, the impact of the long autofocus delay may be considerably offset by the availability of a very fast continuous-shooting mode - see below.)

Thanks to an enormous 32 megabyte RAM buffer memory, the C-3030 Zoom is an unusually fast camera from shot to shot. We've heard claims that it can capture a shot every second, but our own evaluations fell a little short of that mark. The fastest single-shot (that is, non-continuous mode) shot to shot time we measured was with manual focus selected. In that mode, the C3030 Zoom could capture an image every 1.75 seconds in its lowest resolution mode, and every 2.2 seconds in high resolution (non-TIFF) mode. It's possible there may be some additional delay if you ever managed to fill up the buffer, but we never encountered this while using the 16 MB SmartMedia card supplied with our test unit. (We filled up the memory card in a about 16.3 seconds, capturing a total of 8 shots at maximum resolution.) In autofocus mode, the lens-focusing delay increased the cycle time by about 0.9 seconds, to 2.65 and 3.1 seconds, for the low and high resolution images respectively.

We mentioned the C-3030's high speed in continuous or "sequence" mode earlier. Sequence mode has two options, normal and autofocus. In normal sequence mode, the camera focuses and calculates exposure and white balance once, as soon as the shutter button is pressed. These settings are then held for the entire series of five rapid-fire shots. In our tests, that series of five shots happened very quickly indeed, clocked at a frame rate of 3.17 frames per second. This is seriously fast for full-resolution images! In autofocus sequence mode, the camera focuses and calculates exposure and white balance for each shot in the series. This doesn't slow it down as much as you might expect though, as the camera apparently only has to make minor adjustments to the focus from one shot to the next. The end result is a frame rate of 1.74 frames per second, a very respectable performance.

### Operation and User Interface

The user interface on the C-3030 Zoom relies heavily on the LCD monitor for menu selections and feedback on current settings during use. The resulting interface will be pretty clear to most users, but we do wish there were an "advanced" mode that would make greater use of the top-panel LCD data readout. The camera's non-LCD power consumption is so low that it's a shame to spoil it by requiring the LCD to be used for all but the simplest option selections. The top-panel data readout does display status information for a wide range of camera functions (see the scan below, taken from the manual), but changing most of them requires returning to the rear-panel LCD display. Here's an illustration showing the various elements of the top-panel LCD readout, courtesy of Olympus:

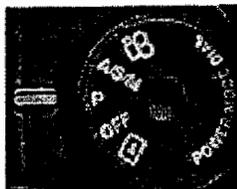


As with the C-2000 and C-2020, we liked the user interface of the C-3030 a great deal. We generally prefer mode dial interfaces like the C-3030's, as they greatly simplify the menu structure and allow faster operation. One of our favorite user interface features is that the camera tells you what aperture and shutter speed it's selected whenever the shutter button is half pressed. For photographers accustomed to knowing what their camera is doing, this sort of feedback is invaluable, and present on very few digicams we've tested. We also especially like the distance display employed in the manual focus option: Too many digicams with manual focus options give you no feedback as to the actual distance the focus is set to. In situations where there's too little light to see the subject well (or when the subject perhaps isn't in position yet), an actual distance readout is invaluable. We also liked the way the manual focus indicator has two ranges, one running from 2.6 feet to infinity, the other from 8 to 31 inches. This makes it much easier to set the focal distance accurately.



As mentioned earlier, we really like the tiny infrared remote control provided with the C-3030 Zoom, as it greatly reduces any disturbance of the camera when taking long exposures on a tripod. (This IR remote has been a feature in the Olympus line since the original C-2000 Zoom, and we've used it heavily in our own studio work, taking product shots for use on our web site.) The remote also allows you to change the exposure compensation setting or zoom the lens in and out. In Playback mode, you can scroll between pictures and move in or out of thumbnail and zoom playback modes (also helpful when viewing images on a television screen). Olympus states the range of the remote as five meters (16.4 feet) when aimed at the camera from straight ahead, and three meters (9.8 feet) when aimed from an angle of 15 degrees to either side of center. These range numbers may be correct in outdoor conditions, with lots of stray IR from the sun bouncing around: In practice, under studio conditions, we've had great luck at what seem to be greater distances, even bouncing the IR signal from the remote off the subject. A very, very handy gadget in the studio, perhaps even more so for those photographers working with children or other subjects requiring a lot of hands-on interaction. (You could connect the camera to a video monitor as a "remote viewfinder", and control most of the picture-taking from the remote.)

## Control Enumeration



### Power / Mode Dial

Located on the top of the camera, this dial selects the various camera operating modes (Playback, Off, Program, Aperture/Shutter Speed/Manual and Movie). As on the C-2020 Zoom, this dial also controls power, eliminating the frequent confusion between the power button and shutter release that plagued owners of the original C-2000 Zoom camera.



### Shutter Button

Located in the center of the optical zoom control lever, the shutter button sets focus and exposure settings when halfway pressed and triggers the shutter button when fully pressed. In Playback mode, the shutter button works in conjunction with the printing function to select the number of prints to make.

### Zoom Lever

Located on top of the camera, surrounding the shutter button (see photo above), the zoom lever controls the optical zoom in all exposure modes. In Playback mode, the lever switches back and forth between index view, normal image display and playback zoom.



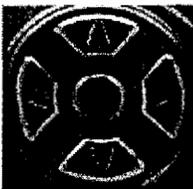
### Flash / Erase Button

Located at the top of the back panel, this button controls the flash mode in all exposure modes. Pressed sequentially, it cycles through Auto, Red-Eye Reduction, Fill-In and Off modes. In Playback mode, this button pulls up the Erase menu which allows you to erase the current image displayed or all images.



### Macro / Spot Metering / Print Button

Directly beneath the Flash / Erase button on the back panel is the Macro / Spot Metering / Print button. In all exposure modes, this button cycles between Macro, Spot and Digital ESP metering modes. In Playback mode, it accesses the Print screen, which allows you to set up the individual images for printing. (While we haven't reported on it, the print-setup function on the C-3030 Zoom is **much** more powerful than we've seen in other cameras to date (May, 2000), even allowing you to specify cropping for each picture!)



### Four Way Jog Dial

Not really a "dial", but rather a set of four pushbuttons, arranged in a circular layout. Olympus moved to the four buttons on the C-2020 Zoom, from the rocker-button design of the C-2000 Zoom. The four buttons are **much** more sure-footed to navigate than the earlier toggle design, in that you never have

problems of inadvertently actuating more than one direction control at a time. Also located on the top of the back panel, a lot of the camera's operation revolves around this control. In all capture modes except Manual, a left/right actuation increases or decreases the exposure compensation setting (provided the LCD view screen is active). In Aperture or Shutter priority exposure modes, up/down actuation of the jog dial adjusts the setting of the lens aperture or shutter speed, depending on the mode you're in. In Manual mode, the up and down arrows control shutter speed while the left and right control aperture. In Playback mode, left/right actuation moves forward or back among the pictures in memory, or scrolls around the expanded image in zoomed playback mode. In the LCD menu system, the jog control steps between menus and selects settings.



#### **OK/MF Button**

Located on the back panel, on the right side of the LCD monitor, this button confirms selected menu settings when in the LCD menu screen. If pressed when not in the menu, it activates the manual focus option, which pulls up a distance scale on the LCD to assist in focusing. In Playback mode, this button write protects individual images from being accidentally erased. (Note though, that "protected" images aren't preserved if the memory card is formatted!)



#### **Display Button**

Located beneath the OK button, this turns the LCD monitor on or off.



#### **Menu Button**

Located directly beneath the Display button, this activates the menu system on the rear panel LCD monitor (it also activates the LCD monitor if it was disabled).



**Dioptic Adjustment Dial:** Located on the left side of the optical viewfinder, this dial alters the optical viewfinder to accommodate eyeglass wearers.

### **Camera Modes and Menus**



#### **Movie Mode**

Accessed by turning the mode dial to the movie camera symbol, this mode allows you to capture up to 60 second SQ movies and up to 15 second HQ movies with sound. Shutter speed is automatically set anywhere from 1/30 to 1/10,000 seconds.



**Aperture Priority:** Accessed by turning the mode dial to the A/S/M symbol, and then selecting the "A" option from the A/S/M Mode setup submenu, this mode allows the user to select the desired lens aperture as the camera adjusts the shutter speed to achieve the correct exposure. If the required shutter speed is beyond the camera's capabilities, the aperture status number in the LCD will flash and an arrow

will indicate if under or over exposed.

### **A/S/M**

**Shutter Priority:** Accessed by turning the mode dial to the A/S/M symbol, and then selecting the "S" option from the A/S/M Mode setup submenu, this mode allows the user to select the desired shutter speed while the camera adjusts the aperture to achieve the correct exposure. If the required aperture is beyond the camera's capabilities, the shutter speed status number in the LCD will flash and an arrow will indicate whether it's over or under exposed.

### **A/S/M**

**Manual Mode:** Also accessed via the A/S/M setting on the mode dial, and then selecting the "M" option from the A/S/M Mode setup submenu, Manual mode allows the user to select both the desired aperture (F/2.8 to F/11) and shutter speed (16 to 1/800 seconds, depending on the ISO setting). As noted earlier, the camera tells you what it thinks of the exposure setting you've chosen, showing not only whether it thinks you're high or low, but by how much. It does this by displaying what it believes the over- or under-exposure to be using the digits on the LCD screen that normally indicate exposure compensation in automatic exposure modes. If you're more than plus or minus 3 EV units away from the correct exposure, the digits light up red, showing just +/- 3EV.

### **P**

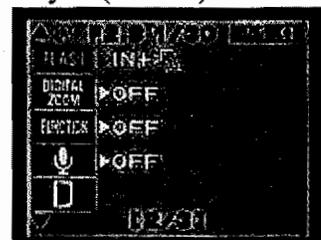
**Programmed Exposure:** Accessed by turning the mode dial to the P, this mode lets the camera select both shutter speed and lens aperture, but does so in a fairly intelligent manner, opting for faster shutter speeds when the lens is in the telephoto position than when it's working in wide angle mode.

### **▶**

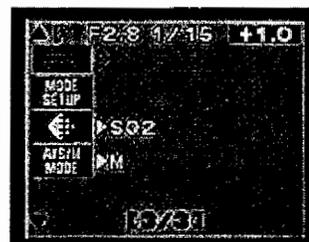
**Playback Mode:** Accessed by turning the mode dial to the playback symbol, this mode allows the user to view previously captured images. Here, the jog dial advances between successive frames stored in memory. The zoom toggle switches the display to an index mode when moved in the wide angle direction and zooms in on the currently displayed image by 3x when moved in the telephoto direction. When zoomed in on an image, the jog control can be used to move the enlarged view around the full image area, letting you inspect all parts of it.

## Capture Mode Menu

- **Drive:** selects between One-Shot, Sequence, AF Sequence (exposure metered with each frame), Self-Timer/Remote and Auto Bracketing.
- **White Balance:** selects between Auto, Clear, Cloudy, Tungsten and Fluorescent white balance options.
- **ISO:** sets the ISO at Auto, 100, 200 or 400.
- **Flash +/-:** adjusts the flash intensity from -2 to +2 in 1/3 EV increments.
- **Slow:** accesses the camera's slow-sync mode with options for front-curtain sync (Slow 1) or rear curtain sync (Slow 2)
- **External Flash:** sets the camera either to use both the internal and external flashes or just the external.
- **Digital Zoom:** turns the 2.5x digital telephoto feature on or off.
- **Function (Picture Effect):** allows the user to shoot in Black & White, Sepia, White Board or Black Board modes.
- **Sound:** activates the sound recording function.
- **Panorama:** activates the panorama mode (only enabled with Olympus SmartMedia cards).

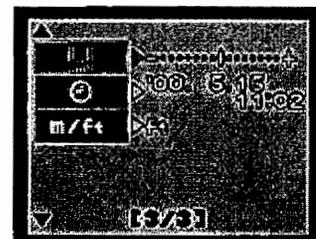


- **Card Setup:** formats the SmartMedia card.
- **Mode Setup:** pulls up the mode submenu (shown below)
- **Quality:** sets image quality at TIFF, SHQ, HQ, SQ1 or SQ2.
- **A/S/M:** sets the exposure mode at Aperture Priority, Shutter Priority or Manual.



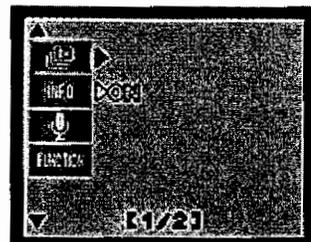
### Mode Setup sub-menu (Capture Modes)

- **All Reset:** turns the all reset function on or off (on resets all settings to factory default whenever the camera is turned on). A new option on the C-3030 is the "Custom" selection here. This takes you to a five screen (!) sub-menu, letting you select default settings that will be selected whenever the camera is powered up. Settable options include flash mode, macro/spot combinations, lens zoom setting (conveniently expressed in 35mm-equivalent terms), f-stop, shutter speed, exposure compensation, manual/auto focus, LCD on/off, "drive" (single, continuous, remote/self-timer, or bracket modes), white balance, ISO, flash exposure compensation, slow sync flash mode, internal/external flash enable, digital zoom, image functions (black/white, sepia, etc), sound recording, still-mode resolution, A/S/M mode, movie-mode resolution, and info display enable. (Whew! - Basically any function of the camera can be programmed to be automatically set up when the camera powers-on. Note though, that some settings will depend on others: If the camera is set to default to aperture-priority mode, the shutter speed will adjust as required, based on the preprogrammed aperture value. Only if manual mode is preselected will the preprogrammed values for both the shutter speed *and* aperture be used.)
- **Sharpness:** sets image sharpness to Hard, Normal or Soft.
- **TIFF:** sets the TIFF resolution size to 2048 x 1536, 1600 x 1200, 1280 x 960, 1024 x 768 or 640 x 480.
- **SQ1:** sets the SQ resolution to 1600 x 1200 or 1280 x 960, High or Normal.
- **SQ2:** sets the SQ resolution size to 1024 x 768 or 640 x 480, High or Normal.
- **Volume:** sets camera volume to Off, Low or High.
- **Fulltime AF:** turns continuous autofocus on or off. Use in situations requiring slightly faster shutter response. Don't use if battery life is critical. In fast-action situations (sports, etc), use Sequence mode to rapidly shoot multiple frames, then discard unneeded shots.
- **Record View:** turns the instant image review function on or off.
- **File Name:** resets file numbers with each new card or continues in sequential order.
- **LCD Brightness:** adjusts the brightness of the LCD.
- **Date/Time:** sets the camera date and time.
- **M/Ft:** sets manual focus distance display to meters or feet.

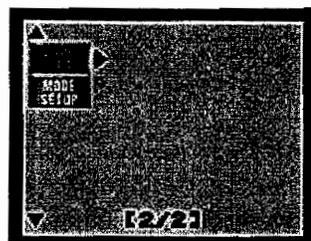


### Playback Menu

- **Play:** activates a slide show display for still images or plays back movies.
- **Info:** turns the image information display on and off.
- **Sound:** activates the sound recording function.
- **Function:** for use with Olympus special function cards.



- **Card Setup:** formats the SmartMedia card.
- **Mode Setup:** brings up the following submenu:
  - **All Reset:** turns the all reset function on or off (on resets all settings to factory default on power-up), or select a preset group of Custom settings (as described above under the capture-mode setup menu).
  - **Volume:** sets annunciator beep volume to Off, Low or High.
  - **Index Display Adjustment:** sets index display to four, nine or 16 images.
  - **Brightness:** adjusts the LCD brightness.
  - **Date/Time:** adjusts the camera's date and time setting.



## Image Storage and Interface

The C-3030 uses SmartMedia memory cards and comes packaged with a 16 megabyte card. You can upgrade to sizes as large as 64 megabytes. (From third parties, anyway: As of this writing in May, 2000, the largest card sold by Olympus themselves was a 32 meg unit. SmartMedia cards as large as 128 megabytes are planned by the end of 2000.) We like the C-3030's file naming protocol, which optionally numbers each image shot with the camera progressively, also including the month and day at the beginning of the file name. (This last is really handy for those of us who are organizationally-challenged: You can immediately tell when your photos were taken, even if you never took time to organize them by date or event.)



Entire SmartMedia cards can be write protected by placing a write protection sticker over a specific spot on the card. Stickers can only be used once and must be clean to be effective. (We're not wildly enthusiastic about the write-protect capabilities of SmartMedia cards.) Additionally, the C-3030 allows you to write protect individual images by pressing the MF/OK button on the back panel while in Playback mode. It's important to note that write-protecting individual images does not prevent them from being deleted when the card is reformatted, though.

The C-3030 comes with interface software and cables for both Mac and Windows computers, namely, a cable for the super-speedy USB interface, as well as a standard serial cable.

Following are the approximate resolution/quality and compression ratios for an 8mb card (compression numbers based on our own computations):

Resolution/Quality vs Image Capacity	2048 x 1536		1600 x 1200		1280 x 960		1024 x 768		640 x 480	
	Images	Approx. Compression	Images	Approx. Compression	Images	Approx. Compression	Images	Approx. Compression	Images	Approx. Compression
Uncompressed Quality	0	0:0	1	1:1	2	1:1	3	1:1	8	1:1
SHQ	3	4:1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Fine Quality	10	12:1	5	4:1	8	4:1	13	4:1	32	4:1
Normal Quality	N/A	N/A	16	12:1	24	11:1	38	11:1	82	9:1

And here's a more comprehensive list, showing capacities of different-sized cards. (Extracted from the C-3030 Zoom's manual.

### Number of Still Pictures that can be Taken (without sound)

Recording Mode	Number of Pixels	File	Memory Capacity						
			2MB	4MB	8MB	16MB	32MB	64MB	
TIFF	2048 X 1536	TIFF	0	0	0	1	3	6	
	1600 X 1200		0	0	1	2	5	11	
	1280 x 960		0	1	2	4	8	17	
	1024 x 768		0	1	3	6	13	27	
	640 x 480		2	4	8	17	34	68	
SHQ	2048 X 1536	JPEG	0	1	3	6	13	27	
HQ	2048 X 1536		2	4	10	20	40	81	
SQ1	HIGH (quality)		1600 X 1200	1	2	5	11	22	45
	NORMAL		1600 X 1200	3	7	16	31	64	128
SQ1	HIGH (quality)		1280 X 960	2	4	8	17	34	70
	NORMAL		1280 X 960	5	12	24	49	99	199
SQ2	HIGH (quality)		1024 X 768	3	6	13	26	53	107
	NORMAL		1024 X 768	9	18	37	76	153	306
	HIGH (quality)		640 X 480	7	16	32	66	132	266
	NORMAL		640 X 480	20	40	82	165	331	665

### Video Out

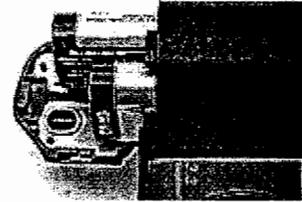
The C-3030 has a video-out port which supports the NTSC timing format on US and Japanese models (we assume that the PAL standard is supported on European models). The video output can be used for reviewing previously shot images or running slide shows from the camera, but also shows all the LCD menu screens as well as the preview display from the LCD viewfinder. Combined with the very flexible infrared remote control we mentioned earlier, the availability of a live viewfinder display via the video signal opens interesting possibilities for portrait photography, using a video monitor as a remote

viewfinder.

Actually, the output cable is a true A/V cable, as it fans out into two RCA jacks, one for video, and one for audio. As noted above, this is the only way to hear the sounds you've recorded directly from the camera, since there's no internal speaker. Plugged into any video monitor (or TV with direct video and audio inputs), the audio capabilities of the C-3030 Zoom make for an unusually effective portable presentation device.

## Power

The C-3030 is powered by four internal AA Ni-Mh, Ni-Cd, alkaline or lithium batteries or two CR-V3 (Olympus LB-01) batteries. The camera ships with two of the new CR-V3 batteries in the box, but no rechargeable batteries. Do yourself a favor, and don't even use the CR-V3s in the camera, but instead put them immediately into your camera bag as a backup power source for such time as your rechargeable batteries (inevitably) are dead when just when you need them the most. Go out and buy a couple of sets of high-capacity NiMH rechargeable AA cells and a good-quality charger, and plan to use these for the main power source of the camera. The CR-3V lithium cells provide great battery life, and more or less indefinite shelf life (something like 5 years or so) in your camera bag. They thus make an absolutely excellent backup power source that'll always be ready when you need it. For routine use though, they're just too expensive, at something like \$10 apiece. (A pair? - no matter, still way too pricey, IOHO.)



Earlier cameras in this series from Olympus (the C-2000 Zoom and C-2020 Zoom) were surprisingly efficient in their battery usage, particularly if you kept the LCD display screen turned off. The C-3030 Zoom continues this happy tradition: It's "idling" power in capture mode with the display off is almost nil, meaning you can comfortably leave the camera on all day, so it'll always be ready whenever you want to take a picture. This is a very nice feature, and really increases its usefulness. Despite this thrifty battery usage, we still strongly recommend that you pick up a couple extra sets of high-capacity rechargeable batteries and a decent charger. Here's a table showing the C-3030's power consumption in a variety of operating modes. (Overall, it has very good power efficiency for a three megapixel camera: A good set of NiMH AA cells should easily last for a full day's shooting, if you can just avoid the temptation to ogle your pictures on the LCD monitor.)

Operating Mode	Power Drain
Capture Mode, w/LCD	610 mA
Capture Mode, no LCD	< 10 mA
Half-pressed shutter w/LCD	620 mA
Half-pressed w/o LCD	340 mA
Memory Write (transient)	590 mA
Flash Recharge (transient)	(not measured)
Image Playback	460 mA

## Memory Retention

We don't normally comment about memory retention in digicams (clock/calendar, settings, etc), but at least one other internet reviewer has knocked the C-3030 Zoom for losing its memory if the batteries are removed for more than an hour or so. So much has been made of this in various discussion forums and newsgroups that we felt compelled to comment. While it is certainly convenient for cameras to have a separate lithium battery to provide backup power to the clock/calendar chip and settings memory, the C-3030 is by no means unique in lacking that feature. The earlier C-2000 had a backup battery, but the

C-2020 did not. More to the point, the Nikon Coolpix 990 (with which the C-3030 directly competes) does not either, meaning that it will lose its date/time setting at least as fast as the C-3030 Zoom will. True, the Canon Powershot S-20 does have a clock backup battery, but we don't feel it's fair to single out the C-3030 Zoom on the basis of this one deficiency. For our part, we invariably leave one set of our NiMH batteries in our digicams all the time anyway. It's true that NiMH cells have a relatively short shelf life, but not nearly to the extent that other authors have represented: Some have claimed that NiMH cells lose 5% of their charge per day: While some cells may show this level of self-discharge, we've more often heard quoted a figure of 1% per day, and this matches our own (non-quantitative) experience more closely. Thus, while we would clearly like to see a lithium clock-backup battery in the C-3030 Zoom, we don't feel it deserves any special condemnation for its lack thereof.

## Included Software

The C-3030 comes with a very nice complement of software on an included CD. Direct camera control and image downloading are provided by an updated version of Olympus' own Camedia software package (version 2.0) which allows you to download and save images to your hard drive, and provides rudimentary organization capabilities. We confess to slightly mixed feelings on the other half of the package though: On the downside, we were chagrined to see that the excellent panorama-making program QuickStitch (from Enroute Software) is no longer included in the software bundle. On the upside though, the even more useful (at least to the majority of users) Photoshop LE version 5.0 is included. (Even better, all software packages provided are fully functional on both Mac and PC.) While there are many other image-processing programs out there, Photoshop is consistently our favorite, thanks to the level of control and features it provides. The "LE" version of Photoshop lacks only a few of the features of the full-retail version (notably color management tools and support for non-RGB color spaces), and is entirely suitable for use by the serious digicam owner. Adobe recently began selling Photoshop LE on the open market (previously, it was only available in software bundles like this), and its \$99 retail price is a very valid representation of its value. Thus, if you don't already own Photoshop, buying a C-3030 Zoom could end up saving you a very real \$99 relative to where you'd likely end up anyways. So, while we miss the incredible QuickStitch panorama-maker, including Photoshop LE is a huge plus.

## Test Results

In keeping with our standard policy, our comments here are rather condensed, summarizing our key findings: For a full commentary on each of the test images, see the [C-3030 Zoom's "pictures" page](#).

As with all Imaging Resource camera tests, we encourage you to let your own eyes be the judge of how well the devices performed: Explore the images on the [pictures page](#), to see how well the C-3030 performed, and how its images compare to other cameras you may be considering buying.

Overall, the C-3030 Zoom produced exceptional images, befitting its status as a top-of-the-line 3.3 megapixel digicam. Color accuracy was good, although our shots of the MacBeth(tm) chart showed a somewhat warm cast with all white balance settings, and the bright yellow patch had slightly lower color saturation. (A common digicam problem.) Overall, we felt the color was quite good, however.

The Olympus C-3030 performed toward the top of the current range of 3.3 megapixel digicams in the resolution department, with a resolution that we "called" as between 850 and 900 lines per picture height in both the horizontal and vertical directions. While just a hair off from the sharpest performance we've seen to date, the 3030 deserves credit for not applying heavy-handed in-camera sharpening in an attempt to boost the apparent resolution.

As did the 2 megapixel C-2020 Zoom before it, the C-3030 Zoom offers excellent exposure control, with choices of matrix or spot metering, full aperture and shutter control, including an optional manual mode, and ISO speeds ranging from 100 to 400. The C3030 Zoom performed very well in our low light tests, producing very usable images down to light levels of 1/8 of a foot-candle. (We're chiding ourselves for not having gone down to 1/16 of a foot-candle, since it's our guess that we would have obtained usable if not somewhat dim pictures at that level as well.) At these low light levels, with exposure times of 2 to 10 seconds, there is a moderate amount of noise present in the images. (We direct readers to Mike Chaney's

excellent Qimage Pro program, for a tool with an amazing ability to remove image noise without significantly affecting detail.) To put the C3030's low light performance in perspective, an average city night scene under modern street lighting corresponds to a light level of about 1 foot-candle.

We found the C-3030's optical viewfinder to be a little tight, showing approximately 82 percent accuracy at wide angle and about 81 percent at telephoto. (Note that we've changed our nomenclature on this to better reflect what you see looking into the viewfinder: We previously would have referred to the C-3030's viewfinder as "loose"...). These numbers are from the 2048 x 1536 resolution size but the smaller, 640 x 480 resolution size numbers are similar at 83 percent accuracy for both wide angle and telephoto. We also noticed that the framing here slants just a little to the left vertically, possibly the CCD on our test model was shifted a little. The LCD monitor proved to be quite accurate, showing about 97 percent frame coverage at wide angle and slightly over 100 percent accuracy at the telephoto setting. (The covered area is just barely inside the darker lines we use to frame the viewfinder accuracy target). As with the optical viewfinder, the smaller, 640 x 480 image sizes weren't too far off from the larger ones (about 96 percent accuracy at wide angle and over 100 percent accuracy at telephoto). We generally like to see the LCD monitor as close to 100 percent accuracy as possible, so the C-3030 does a pretty good job in that respect.

The C-3030 does pretty good job in the macro category, capturing a minimum area of 3.35 x 2.52 inches (85.21 x 63.91 mm). This is about an average minimum coverage area among digicams we've tested, but the body threads of the C-3030 in conjunction with Olympus' CLA-1 filter adapter permit the addition of external macro lenses for much tighter focusing.

Overall, we found the C-3030 Zoom to be a very worthy contender at the upper end of the current (May 2000) digicam spectrum. Image quality, resolution, and sharpness are all very good, and the camera provides excellent exposure control as well as very good low light capability: An impressive performance!

## Conclusion

Well, from our previous review of it, it's probably pretty clear that we really liked the previous Olympus C-2020 Zoom. (We like it well enough in fact that it's the camera we use to do all our studio photography with.) The C-3030 Zoom is a very worthy upgrade, bringing not only increased resolution but numerous feature and user-interface enhancements as well. It's probably safe to say that if you liked the C-2020 Zoom, you'll love the C-3030 Zoom. All in all, another great digicam from Olympus, and one that we think competes very strongly at the upper end of the current "prosumer" digicam spectrum.

## Reader Comments!

See what other Imaging Resource readers have had to say about the C-3030, or add comments of your own. (*Read what's here, then add your own!*)

For even more feedback, read the [User Reviews from PCPhotoREVIEW](#)

## Reader Sample Images!

Do you have a Olympus C-3030 camera? If you'll post an album of your samples that we can point to with a single URL (not all services permit this, some require you visit the main site and type a name and password) and email us at [web@imaging-resource.com](mailto:web@imaging-resource.com), we'll list the album here for others to see!

- [Sample pictures from PCPhotoREVIEW readers](#)

## For More Info:

View the [C-3030 Sample Pictures Page](#)

**[View the Imaging Resource Data Sheet for the C-3030](#)**

**Visit the [Comparometer<sup>tm</sup>](#) to compare with other cameras.**

**Visit the [Olympus home page for the C-3030](#)**

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[Back to Full Nikon Coolpix 990 Review](#)  
[Go to Nikon Coolpix 990 Data Sheet](#)  
[Go to Nikon Coolpix 990 Pictures Page](#)  
[Up to Imaging Resource Cameras Page](#)



## Nikon Coolpix 990

*Nikon updates the hugely successful Coolpix 950, with 3.34 megapixels and numerous enhancements*

*(Review first posted 3/1/2000)*



- \*Full 3.34 megapixel sensor delivers 2048x1536 images
- \*Exceptionally well-designed user interface and controls
- \*32 Megabyte SDRAM buffer for 2 second cycle time
- \*Enormous creative control and flexibility
- \*Excellent color and tonality

## Manufacturer Overview

By carefully applying their camera-building expertise honed in the professional and advanced-amateur segments of the film-camera market, Nikon has developed a commanding position in the digicam world, even though their consumer digital camera lineup has consisted of only two models. The key has been the exceptional image quality and picture-taking feature set embodied in their cameras, which have obviously struck a responsive chord with digicam enthusiasts. When the 1.3 megapixel Coolpix 900 first burst on the digicam scene almost two years ago, it was an immediate hit. The 2.1 megapixel Coolpix 950 a year later extended the winning streak, and now the 3.34 megapixel Coolpix 990 appears poised to do the same again. (Meanwhile, the Coolpix 800 has been a popular choice for an inexpensive 2 megapixel digicam with a slightly less robust feature set.)

Besides increasing the 990's resolution to a full 3.34 million pixels, Nikon has also upgraded several camera functions, added numerous features, and improved the camera's physical design.

## Highlights

- 3.34 megapixel, 1.13 inch, high-density CCD delivering image sizes up to 2048 x 1536 pixels (including a 3:2 aspect ratio 2048 x 1360 pixel size).
- 1.8 inch, 110,000 dot, low temperature, polysilicon TFT LCD display.
- 3x optical zoom, 8 to 24mm lens (equivalent to a 38 to 115mm lens on a 35mm camera).
- User activated digital telephoto in incremental steps from 1.1x to 4.0x.
- Continuous and Single autofocus modes with multiple focus areas and manual focus with peaking and distance readouts.
- Infinity and Macro focus modes.
- Variable ISO at Auto, 100, 200 or dEF.
- Full Automatic and Manual exposure modes with several manual options (Program, Flexible Program, Aperture Priority, Shutter Priority and full Manual).
- Single, Continuous, Ultra High Speed Continuous, VGA Sequence, Multi-Shot 16 and Movie shutter modes.
- White balance with Auto, Manual, Fine (Outdoors), Incandescent, Fluorescent, Cloudy and Speedlight options.
- Shutter speeds from eight to 1/1000 seconds as well as a Bulb setting for longer exposures.
- 10 or three second self-timer.
- Built-in flash with Auto, On, Off, Slow Sync and Red-Eye Reduction modes.
- External flash sync terminal.
- USB and Serial interfaces.
- Image capture in compressed JPEG or uncompressed TIFF.

### What's New

Since many people reading this review will be familiar with the previous Coolpix 950, it makes sense to begin with a list of the new features Nikon has included on the 990. As you can see, engineering the 990 was more than a matter of just slapping a larger sensor into an existing design. Here's a (doubtless partial) list of what's new:

- 3.34 million pixel sensor, up from 2.11 on the 950.
- 5-zone autofocus system, for greater AF accuracy (inherited from Nikon's pro film and digital SLR cameras).
- 50-step manual focus, with "peaking" indicator.
- 7-blade iris diaphragm, providing true 1/3-stop aperture control.
- 256-element Matrix white balance for improved auto white balance accuracy.
- Optional user "fine tuning" of white balance settings.
- Both full-manual and auto-bracketing exposure options.
- A rugged, side-opening CompactFlash memory slot. (BIG kudos for that!)
- "Stepless" digital zoom, from 1.1 to 4.0x magnification
- USB interface option for high-speed file downloads
- Easier menu navigation via a rear-panel jog control
- Spot metering optionally linked to area autofocus system
- Variable image sharpness settings

- Ability to use self-timer function while in macro focusing mode. (A top request!)
- User-selectable NTSC or PAL video output
- Histogram-based exposure confirmation option
- Smaller, but higher-resolution LCD panel
- "Memory" for last-used zoom lens setting
- Optional fixed-aperture zoom mode

## Executive Overview

We're pleased to report that the Coolpix 990 takes all the best features of the previous 900 and 950 models and combines them with a host of new ones that make this camera really shine. The swivel-lens design is one of our favorite design elements, as it greatly enhances the camera's optical flexibility. Additionally, the control layout stayed relatively the same but with a few additional features, such as the programmable Function buttons. (These programmable buttons make one handed operation of the camera much more feasible under varying conditions.) The camera provides both a real-image optical viewfinder and an LCD monitor display for image composition. A nice feature on the LCD is the very extensive information display that reports a variety of exposure information, including aperture and shutter speed settings. In Play mode, the LCD gives an equally informative readout on captured images and also offers an index display of thumbnails and a playback zoom option.

Optically, the Coolpix 990 is equipped with a 8 to 24mm, 3x zoom lens (equivalent to a 38 to 115mm lens on a 35mm camera), made up of nine elements in eight groups (all made from environmentally friendly glass, we might add). New to the 990 is the seven blade iris diaphragm design, which greatly extends aperture control over the earlier 950. Zoom is easily controlled via the W and T buttons on the back panel and the settings menu even allows you to select the Fixed Aperture feature, which keeps the aperture constant while the lens zooms. A 4x digital zoom can be turned on and off through the settings menu and offers an "stepless" incremental zoom range from 1.1x to 4.0x. We should also mention here, that the 990 has a nice variety of focusing options, including Continuous and Single autofocus as well as a manual control. Under the autofocus setting, you can set the desired focus area, or let the camera decide on its own (which displays a complex target series on the LCD panel and bases focus on the object closest to the lens). With manual focus, you can select a peaking feature that shows what part of the image is in focus, as well as a distance scale to help in difficult situations.

Exposure-wise, we greatly enjoyed the flexible options under the Manual Record setting. When you turn the camera on, you have the option of a completely Automatic or Manual Record mode, in addition to the Play mode. Under the Automatic Record mode, the camera handles everything, from the shutter speed to the white balance, but when you switch to Manual Record, your options multiply greatly. Within the Manual Record mode, you can select either Program, Flexible Program, Aperture Priority, Shutter Priority or Manual exposure modes. Program does exactly as it sounds and selects the aperture and shutter speed, but you now have absolute control over white balance, exposure compensation, etc. Flexible Program does the same but instead lets the user select from a variety of aperture and shutter speed combinations. Aperture Priority and Shutter Speed Priority are also pretty self-explanatory, letting the user select one value while the camera selects the other. Finally, Manual gives you total control over everything, a feature we really like. Shutter speeds are adjustable from eight to 1/1000 seconds (with a bulb setting for longer exposures) and apertures range from F/3.5 to F/9.8.

The Coolpix 950 already offered outstanding features like Best Shot Select and a variety of continuous shooting modes. These are all repeated on the 990 and accompanied by a few new ones. In addition to the Continuous and Multi-Shot 16 shooting modes, the 990 also offers an Ultra High-Speed Continuous (approximately 30 frames per second with a total of 80 QVGA shots) and a Movie mode (up to 40 seconds of QVGA sized images at 15 frames per second). There's also an Auto Bracketing feature that brackets as much as two stops up and two stops below the set exposure, producing a total of five images. We really enjoyed these features and the amount of creativity and flexibility they allow. We were also

pleased with the return of the extensive white balance menu from the 950 (Auto, Preset, Fine, Cloudy, Incandescent, Fluorescent and Speedlight) and the variety of metering options (the famous 256-element Matrix mode, Center-Weighted and Spot). Also, under the settings menu, we enjoyed the ability to alter the in-camera sharpening as well as increase or decrease the contrast or turn the image into monochrome black and white. Not to mention the ability to connect an external flash and use with or without the built-in flash. This camera is so feature laden, it's hard to find lack to complain of.

The Coolpix 990 uses CompactFlash for image storage and runs on four AA batteries. We found the camera a little power hungry (partly because of our reliance on the LCD monitor during the studio shots), so we highly recommend keeping a couple sets of spares around or working with the AC adapter when possible. The camera supports both USB and standard serial connections (using a dual purpose port), for quick connection to a PC or Mac. (The availability of a USB connection is decidedly good news on a high-resolution camera, especially one that can make nearly 10 megabyte uncompressed TIFF files like the '990!) There's also an NTSC video cable (European models ship with PAL) for connecting to a television set.

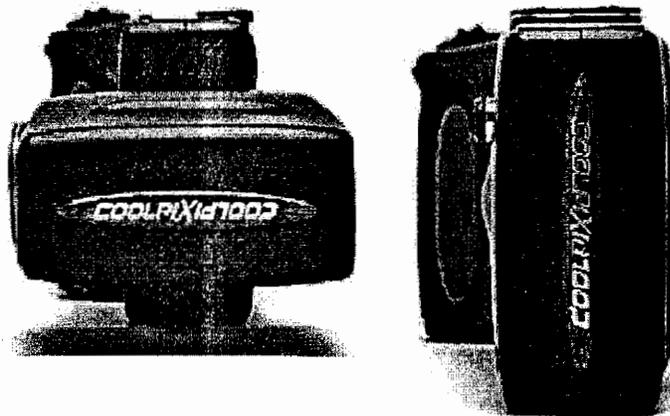
What a camera! We really love the almost excessive amount of control and think that you will too. The Coolpix 990 gives you as much control as you want, but also offers the luxury of sitting back and letting the camera do all the work as well. With its bevy of exposure options, compact portability, and high image quality we think this camera will be very popular.

### Design

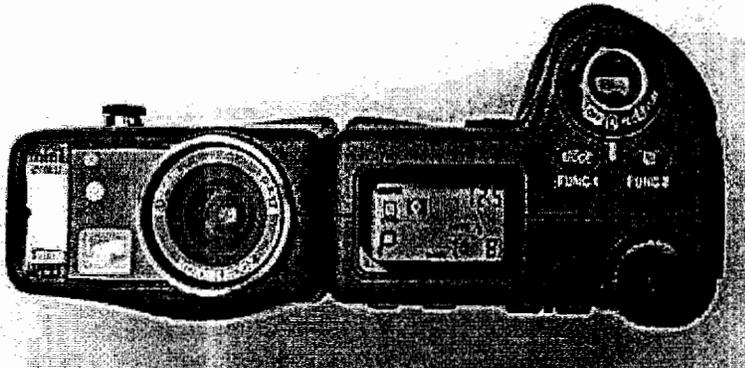
Nikon continues the swivel-lens design of the Coolpix 900 and 950 models with the Coolpix 990. With its ability to swivel just shy of 360 degrees, the lens can be pointed back towards the user, straight ahead or straight down to the ground, while keeping the LCD screen oriented for easy viewing. The camera body is compact and light weight, measuring approximately 5.9 x 3.1 x 1.5 inches (15 x 7.87 x 3.81 cm) with the lens stowed in its upright position and weighing about 13.1 oz (371.4 g) without the batteries.



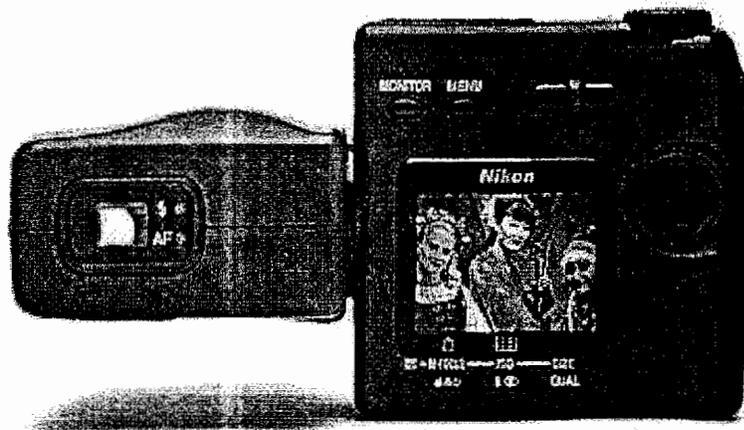
With the lens facing forward in its normal "stowed" position, the design of the front of the camera remains quite minimal. The lens itself doesn't protrude much from its barrel and the built-in flash and front side of the optical viewfinder fit snugly beside it. Beneath the lens barrel are the external flash sync socket and the diopter adjustment dial for the optical viewfinder. On the very inside of the hand grip is the DC power input jack, covered by a soft rubber flap. Interestingly enough, Nikon swayed from their usual black and red design features to an updated combination of black and purple, and a rainbow reflective logo on the front.



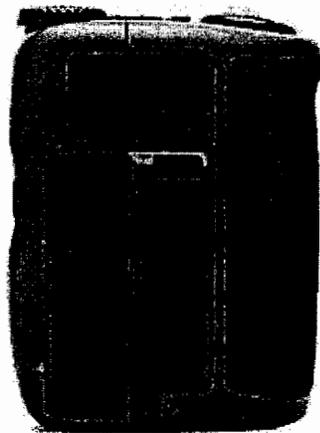
This shot shows the camera with the lens unit rotated to the position most people will use it in. This orientation orients the LCD panel vertically, while the lens, flash, and optical viewfinder face forward.



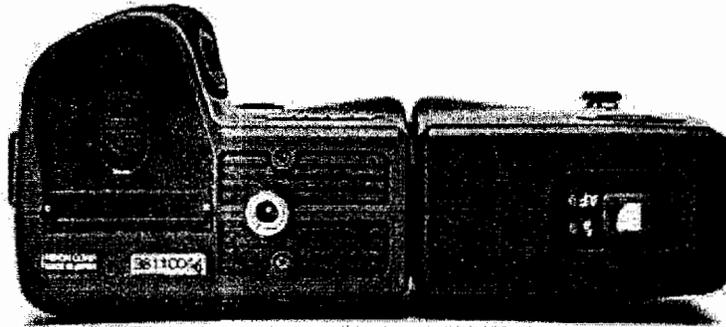
Looking at the top of the camera body, there's a small status display panel (helpful for conserving batteries by not using the LCD monitor), the Power/Mode dial, shutter button, a couple of function buttons and a small command dial that's used to change certain camera settings. An exceptional feature on the 990 is that the Mode and +/- buttons on the top panel also double as Function buttons, programmable through the Setup menu in Manual exposure mode to access various exposure options. This was designed specifically to allow one handed operation, as you can hold down one of the buttons with your index finger and scroll through the chosen options with the command dial. This is a nice design change from the earlier Coolpix models, which were decidedly two-handed cameras.



The majority of the controls are located on the back panel of the camera, along with the LCD monitor. The layout of the controls is, again, very similar to the preceding Coolpix models. The Monitor and Menu buttons live at the top of the LCD panel, with the zoom controls and rocker toggle button off to the right side. Beneath the LCD are several controls for macro, manual focus, flash, quality, size and a few others. When the lens is pointed frontwards, the optical viewfinder is visible from the back panel. Two LEDs located directly beside the viewfinder report the status of the autofocus and flash.



We like the bulky hand grip on the right side of the camera which enables a firm, secure hold on the camera. (We noted that this feature is somewhat larger on the 990 than the earlier 950, making for a more secure grip.) The soft rubber surface fits directly under your fingers, providing additional friction for a good grip. Located inside the hand grip are the serial and USB I/O jack (a dual interface), the video output jack, the CompactFlash compartment and an attachment for the carrying strap. The digital and video inputs live beneath a soft, flexible rubber flap that quickly and securely snaps into place. The placement of the CompactFlash slot makes it easy to change cards when mounted to a tripod and the plastic door simply flips open and snaps shut. (The sturdy design of the CompactFlash door addresses the single most frequent complaint of 950 owners: The flimsy plastic flap used to cover the memory slot on that model. There is no access light to let you know when the camera is accessing the card, so you'll have to pay attention to the LCD monitor or the small status display to know when it's OK to change cards. (It's important to never remove a memory card while the camera is writing to it, lest you corrupt your images or even damage the card.)



Finally, the flat bottom of the camera holds the battery compartment and a metal tripod mount that are unfortunately too close together to allow battery changes while on a tripod. The battery compartment has a sliding lock that keeps the door tightly shut.

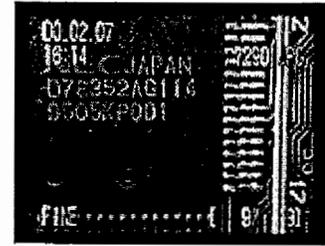
### Viewfinder

The Coolpix 990 offers both an optical viewfinder and an LCD monitor display. The real-image zoom viewfinder, located on the backside of the lens barrel, provides about 85 percent frame coverage according to Nikon. In our own tests, it ranged from 86 percent coverage at wide angle to 91 percent at telephoto. A center focus target helps line up shots while two LEDs beside the viewfinder indicate the status of the flash and autofocus systems. Additionally, a diopter adjustment dial lies on the underside of the lens barrel to accommodate eyeglass wearers.

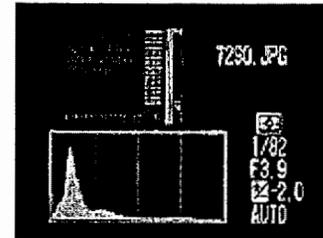
The 1.8 inch, 110,000 dot, low temperature, polysilicon TFT LCD monitor on the back panel operates both as a viewfinder and information display while in any capture mode. The LCD on the 990 is smaller than that on the earlier 950, but is higher resolution. It also sports a very high refresh rate, so images of moving objects are sharp and clear. Nikon estimates its frame coverage at 97 percent, a good deal more accurate than the optical viewfinder, which is usually the case. Our own tests showed it 97 percent accurate at wide angle, and nearly 100 percent at telephoto. When the camera is in autofocus mode, a series of targets can be continually displayed on the LCD. This shows you all the areas that the camera looks at to determine focus (in this autofocus mode, the part of the subject closest to the camera determines the focus). The LCD monitor display can be quickly called up and canceled by hitting the Monitor button just above it and we applaud the amount of exposure information that's displayed. Nearly all the settings are reported, including aperture and shutter speed (when in Manual exposure mode).

We felt the LCD screen was a minor weakness in earlier Coolpix cameras, as the unit used by Nikon was very difficult to read in sunlight. (This is true of all LCD screens, but seemed more so of the displays on the Coolpix 900 and 950.) We felt the viewscreen on the 990 was much better in this respect: It seemed to trade off a narrower usable viewing angle (you need to look at it pretty much straight on, for the best view) in favor of less tendency to wash out in very bright ambient light. The 990's LCD is also the first we've seen (February, 2000) that had an adjustment in the setup menu to control the screen's color balance, in addition to the common brightness setting. (!) We found this very interesting, perhaps useful as a way to adapt the camera's behavior to surroundings with strong tints in the ambient lighting.

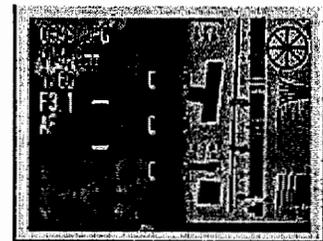
As was the case with the Coolpix 950, an exceptional level of exposure information can also be displayed in Play mode. The screens at right show the three successive information screens that are accessed by rotating the command dial in playback mode. (The image in the screen shots here was deliberately underexposed using Manual capture mode, to make the information display more visible.)



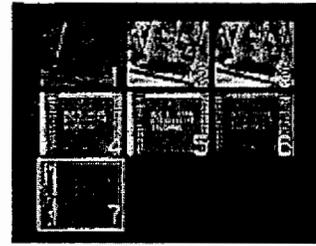
Completely new in the Coolpix 990 (and very welcome!) is the histogram display shown at right. This is a feature that has been common in professional digicams for some time now, but that has seldom been seen in "prosumer" models. The graph shows the distribution of brightness values in the image, with the left edge corresponding to pure black, and the right edge to pure white. Once you learn how to read it, a histogram is phenomenally useful in determining whether you've managed a good exposure or not. There's hardly room or time here to go into histograms in full detail, but we thought it would be useful to show you two examples: In the screen shot at top, the image was deliberately underexposed. Note how the peaks in the histogram are all bunched toward the left-hand side of the graph, and how little there is going on at the right side. By contrast, the lower image was overexposed. Note how the graph is bunched against the right edge. Ideally, a well-exposed image would produce a histogram curve that just filled the graph from left to right, indicating that it contained a full range of tonal values. We really like the histogram feature, and hope other digicam makers will be motivated to include it in their cameras as well.



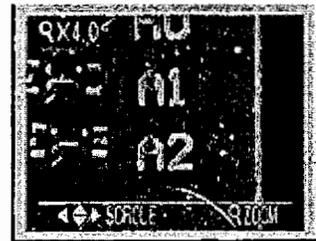
A final Play-mode information display is also new to the 990, showing lens, shutter and focus settings, and indicating (by the green brackets) what the autofocus system had locked onto when the picture was taken. -Another very handy way to check that you actually got the shot you were looking for!



In Play mode, the LCD can also display a thumbnail index page, showing either four or nine images to a page depending on the setting. You can cycle between single-image, four or nine image views by pressing the flash/thumbnaill button under the LCD display. You can also mark images for deletion in this mode.



There's also a playback zoom feature, which enlarges captured images up to 3x, letting you get a reasonably good idea of how well-focused the image is, check the framing, and examine details to see if you got the shot you wanted. (Did anyone blink?)



### Optics

A Nikkor 3x zoom, 8 to 24mm lens comes with the camera (the equivalent of a 38 to 115 mm lens on a 35mm camera), with nine elements in eight groups (all made up of environmentally friendly glass). Aperture ranges from F/3.5 to F/9.8. New to the 990 model is the seven blade iris diaphragm, which gives very fine-grained aperture control, useful for controlling depth of field, but more so for working with external flash and precisely controlling the balance between flash and ambient exposure. The contrast-detect TTL autofocus features a 4,896 step autofocus mechanism with a working range from 0.8 inches (2.0 cm) to infinity (this includes the macro range). When shooting in the Auto exposure mode, the autofocus remains in the Continuous setting while using the LCD monitor but reverts to the Single autofocus mode when the LCD is off (which means you must halfway press the shutter button to set focus). However, the Manual capture mode gives you the freedom to choose between Continuous or Single autofocus, regardless of LCD status.

The Continuous focus mode results in the lens continually "hunting" for the best focus as you move the camera around, settling down when the camera and/or subject stops moving. Autofocus tracking speed isn't terribly high (mentioned in case you were expecting AF tracking as on Nikon's F5 pro film camera), but the continuous option would definitely be a benefit with moving subjects. The downside is that it burns more battery power.

The manual focus option is controlled through the settings menu and offers choices between a peaking scale or a distance readout (extremely beneficial in hard to focus situations). Once enabled, just press the Manual Focus button (lower left of the LCD monitor) and simultaneously turn the command dial to adjust the focus in 50 steps.

As a focus aid in manual focus mode (it can also be enabled in autofocus modes as well), the Coolpix 990 has a clever "peaking" display. This appears to be some sort of on-screen sharpening function that tends to exaggerate the current state of focus of the camera: In-focus objects look extra-sharp on the LCD when "peaking" is enabled. With textured objects, the peaking display mode produces a glimmering, moire-type effect on the display screen. We didn't test manual-focus accuracy extensively, so can't comment on just how well this works, but it is clearly a step ahead of most digicams, in which

between the Auto and Manual exposure options on the Power/Mode dial is the availability of certain functions. For example, in Auto exposure mode, the camera completely controls the exposure, from shutter speed to white balance. The Manual setting provides the full range of options mentioned above, giving you as much or as little control as you need. We'll explain the various modes here.

Program mode gives the camera control over shutter speed and aperture but lets you set the white balance, exposure compensation, etc. The Flexible Program option goes a step further by letting you select from a range of shutter speed and aperture combinations. (The camera determines the required exposure, but you can choose whether it achieves that exposure with a shorter shutter speed and wider aperture, or a longer shutter speed and smaller aperture. This strikes us as a very nice option, achieving much of what people want from Shutter or Aperture priority modes, but without limiting the camera's ability to respond to widely varying light conditions.) Shutter Priority lets you select from eight to 1/750 second shutter speeds while the camera selects the appropriate corresponding aperture. Likewise, under Aperture Priority, you can select apertures from F/3.5 to F/9.8 while the camera selects the best shutter speed. However, in Full Manual mode, the camera increases the shutter options to include a bulb setting for long exposures and a quick shutter of 1/1000 seconds, with the same aperture range as in Aperture Priority. In any mode, if the camera disagrees with your exposure choices, the shutter and aperture values will flash in the display to indicate that this may not be the best exposure option.

Exposure compensation is adjustable from -2 to +2 in 1/3 EV increments by pressing the +/- button and turning the command dial. Additionally, under the Image Adjustment option on the settings menu, you can increase or decrease contrast, lighten or darken the entire image or switch into black and white mode, giving you a few more exposure adjustment options. These tonal compensation adjustments are quite a bit more sophisticated than simple exposure compensation found in most digital cameras. Conventional exposure compensation adjustments simply allow you to adjust overall exposure up or down relative to that selected by the camera's exposure system. By contrast (no pun intended), the "lighten" and "darken" adjustments on the Coolpix 990 preferentially adjust the midtone values of the image, without affecting the white and black values of the image. (That is, "lighten" will brighten the middle brightness values in the image, without blowing-out white areas, or lightening black ones.) There are also options to adjust contrast, and capture images in black and white.

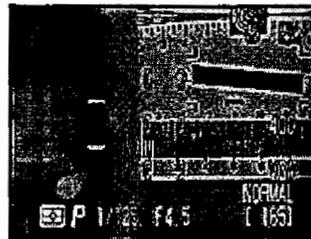
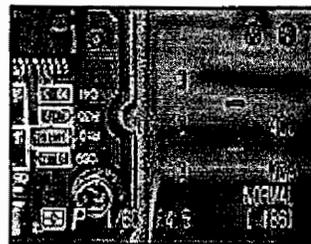
The Coolpix 990's default ISO rating is 80 but is variable when shooting in Manual exposure mode. ISO values of DEF(default), 100, 200, and Auto are available by pressing the ISO button and rotating the command dial. When shooting in the Auto exposure mode, the ISO value is left at its default setting of 80. In addition to the exposure value settings, you can adjust the in-camera sharpening to Auto, High, Normal, Low or Off under the Sharpening option of the settings menu. This is a useful feature, especially in situations where digicams tend to oversharpen such as high contrast boundaries within images. Also, we generally find that post-exposure sharpening in Photoshop(tm) or other image-manipulation program generally gives better results than the in-camera sharpening functions provided by most cameras. Thus, you may find it best to leave the in-camera image sharpening in the Coolpix 990 off for critical images, and apply unsharp masking in the computer later.

### **Histogram-based exposure confirmation.**

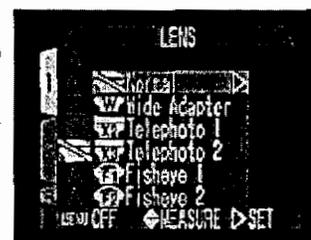
We showed examples of the Coolpix 990's histogram display earlier, under our discussion of the viewfinder functions. Given that prior coverage, we'll make only brief mention here, but do want to underscore the significance of this feature. Shooters moving from the color-negative world will be accustomed to routinely favoring overexposure in their pictures, to insure optimum shadow detail. Digital cameras are quite different though, and need to be exposed more like slide film, with an eye to retaining detail in the highlights: Once the sensor hits an exposure value of 255 (in a system with 8-bit brightness values), any additional illumination has no effect, and all highlight detail is lost. It's thus very important to be able to recognize when parts of the image are being "blown out", as opposed to merely being very bright. LCD viewscreens aren't accurate enough to be trusted for this evaluation, so an explicit graph of brightness values (the histogram display) is exceptionally useful. We don't expect most casual users to routinely use the histogram exposure confirmation display on the 990, but for pros or others working with critical exposure requirements, it's indispensable.

the LCD screen has far too little resolution to be of practical use in evaluating focus.

We should note here that the 990's autofocus mechanism is quite sophisticated, with several operating modes. It has five possible focus zones (center, top, bottom, left, right), which can be very useful for achieving accurate focus on off-center subjects. The screenshots above right show the camera preferentially focusing on two objects at very different distances, based on the focus area selected. It could also take some getting used to if you're accustomed to lesser cameras with only a single focus zone. The Focus option under the settings menu does allow you to choose modes in which the camera chooses the focus zone, or in which you can explicitly set the location of the focus area (a nice feature that works well when combined with the spot metering mode, which can likewise be directed to determine exposure from the same 5 zones). In the "Auto" option for focus-area selection, the camera chooses the area corresponding to the object closest to the camera. When the area focus option is set to Off, the camera bases focus on the central area. (One playback mode displays a focus-area overlay, and shows which focus area was chosen for each image, by highlighting the appropriate set of marks in green. - This last function wasn't yet operational on our test unit.) Overall, the 990's focusing system is by far the most sophisticated we've seen on any digicam to date



The lens itself has the same filter threads as the preceding Coolpix models, which accommodate Nikkor accessory lenses for wide-angle, telephoto, macro and fisheye focal lengths. Once a lens is attached, you'll need to select the corresponding lens type in the lens settings menu, shown at right. (The camera adjusts its operation for different lens types by restricting the zoom range to avoid vignetting, switching to center-weighted metering for the fisheye adapter, etc.) A digital telephoto feature can be turned off and on through the Zoom option under the Settings menu, enlarging images up to 4x. The 990's digital zoom is different from most in that it provides a smoothly-varying range of magnifications. An indicator on the LCD monitor displays the range of digital zoom at each step (from 1.1x to 4.0x). Like this feature on most digicams, digital telephoto on the Coolpix 990 enlarges the center of the image, resulting in reduced resolution and more artifacts as more digital zoom is used. The camera automatically switches to center-weighted metering and a center autofocus target when digital zoom is active. Also under the Zoom option, you can set the startup position of the lens (either wide or telephoto) and activate the Fixed Aperture function, which keeps the aperture fixed as the lens zooms. The startup position option was another highly-requested feature among '950 users, and can really save precious seconds in fast shooting situations. Likewise, the fixed-aperture zoom option is very useful when working with external flash units, to avoid varying the exposure as a function of lens focal length.



## Exposure

Sophisticated, accurate exposure control has been a hallmark of Nikon cameras, both in the film-based and digital realms. The Coolpix 990's exposure system incorporates several enhancements over that of previous models, through the addition of a 7-blade lens aperture, and a 256-element matrix white balance system. Losing no ground in the process, the 256-element matrix exposure metering system of the Coolpix 950 has been retained.

The 990 offers very flexible exposure control, with Program, Flexible Program, Aperture Priority, Shutter Priority and full Manual modes to choose from when set to the Manual exposure mode on the Power/Mode dial. Although it took a little figuring out at first (due in part to the fact that our evaluation model was a prototype and without a manual), we eventually discovered that changing modes and exposure features could be done quickly and painlessly without having to rely on the LCD monitor. The combination of the command dial and the control buttons gave complete access to most of the normal exposure functions. We also enjoyed the variety of Manual exposure mode settings. The main difference

### White Balance

The Coolpix 990 offers a lot of flexibility in its white balance settings, with a matrix-based Auto setting as well as Fine (Outdoors), Incandescent, Fluorescent, Cloudy, Speedlight (flash balanced) and Preset (or Manual). We were able to get reliable results with the Auto and Fine settings, although we attempted Preset and had varying results (it's highly possible that this feature was not yet functional on our prototype test unit). Particularly interesting is the ability to "fine tune" the white balance setting in all modes except Auto or Preset. We've frequently found the various white balance options on digital cameras to produce images with an overall warm or cool color cast, depending on the manufacturer's biases, the current lighting conditions, etc. On the 990, Nikon gives you the option of tweaking the white balance to your own preferences. When you access the white balance sub-menu and select a white balance option, rotating the command dial will adjust the white balance up or down over a range of +/- 3 arbitrary units. Positive adjustments shift the color toward bluish hues, while negative adjustments move it toward warmer tones. (In the screen shot above, we've adjusted the incandescent white balance up by 2 units.)

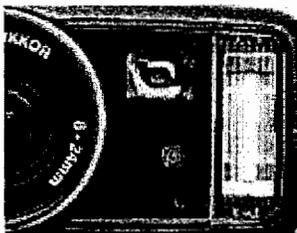


### Metering Options

The Coolpix 990 also offers several metering options, with 256 segment Matrix metering (intelligently examining 256 segments across the entire image), Center-Weighted, Spot and Spot AF Area. This last is another option that's entirely unique to the Coolpix 990 (February 2000). Taking advantage of the multi-spot autofocus capability, Spot AF Area exposure setting determines exposure based on a spot reading centered on the location designated as the autofocus target under the Focus Options menu.

### Other Features

We liked the fact that you can save up to three sets of user settings for focus, exposure, and other camera options, which can be a real time saver in rapidly switching between widely different sets of options. We also greatly appreciated the programmable Function buttons, which were designed to allow one handed operation of the camera. (These normally control exposure mode and exposure compensation, but can be reprogrammed to control macro/manual focus, flash settings, white balance, or metering options.) An Auto Bracketing feature brackets five steps (two above and two below) the set exposure value while the (amazing) Best Shot Select (BSS) takes several images and allows the camera to choose only the sharpest (least blurred) to be saved. Best Shot Select makes it feasible to hand-hold the camera for surprisingly long exposures. You can also check your own work immediately as the camera gives you a quick preview of the captured image (when shooting with the LCD monitor) and gives you an option to delete or save the image (this function can be turned off through the Setup menu, under Monitor Options).



### Flash Exposure

The Coolpix 990's built-in five mode flash (Auto, On, Off, Red-Eye Reduction and Slow-Sync settings) gives you a lot of flexibility: Through the settings menu, you can adjust the flash power from -2 to +2 EV units (!), as well as completely deactivate it. The Slow-Sync option is useful when shooting subjects with dark backgrounds (such as night scenes) because the camera actually leaves the shutter open longer and then fires the flash before the shutter closes. This lets a good amount of ambient light in and can be used to get a nice motion-blur effect. The "Red-Eye Reduction" mode fires a pre-flash before the main exposure, to try to get people's eyes to "stop down", reducing the internal reflection from the back of their eyeballs. Unfortunately, this is one of the real weaknesses of the 990's flash system (and the 950 too): The flash tube is so close to the lens (as seen in the photo above) that there's essentially no way you aren't going to end up getting red-eye, regardless of how much you get people's pupils to constrict. While an external flash will avoid this, it's a shame to need one to achieve good results on basic

people-pictures. Keep in mind that the flash is automatically switched off when shooting in the Infinity focus mode; the Continuous, 16 Shots or VGA Sequence modes; when using the Best Shot Selector; using a lens converter; or when the AE Lock option is on. An external sync socket means you can connect a more powerful external flash, and the camera allows both external and internal flashes to work together. (The socket connects to Nikon Speedlight models SB-28, 28DX, 26, 25, 24 and 22.) If the 990's internal flash is anything like that of its predecessors', we should be extremely pleased with its performance. One puzzling note: The preliminary documentation we received from Nikon was self-contradictory, in it stated the flash's range as 2 meters (6.6 feet) in telephoto mode, but also gave it a guide number rating of 9/30 (m/ft). In our own tests, the flash worked fine out to a distance of 14 feet, the limit imposed by the dimensions of our test studio.

### Continuous Shooting Mode

The Coolpix 990 offers several "motor drive" rapid-exposure modes for capturing quick sequences of images. Our information here is a little sketchy, as the modes on the prototype unit we tested didn't match those in the (equally prototype) documentation we received. Production cameras may behave quite differently than our prototype unit did. Our understanding of the production features is listed in the table at the end of this review section. The documentation showed five modes (Continuous, Multi-Shot 16, Ultra High-Speed Continuous, VGA Sequence and Movie), all selectable under the Continuous option of the settings menu. Our test unit didn't have the Ultra High-Speed setting, but had instead an option named "9 Shot Frame". (We're told that the 9 Shot Frame function may not be on the production cameras.) Several of the Continuous-mode options on our test unit appeared to be mis-labeled, so we'll just describe them using the names from the documentation, ignoring the spurious "9 Shot Frame" label.



The Continuous mode captures frames very quickly, at whatever resolution and image quality the user has selected. We measured continuous-mode frame rates at approximately 1.0 frames per second at full resolution (3 frames maximum in a sequence), 1.62 frames per second for a maximum of 8 frames at XGA resolution, and 1.72 frames per second for a maximum of 21 frames in VGA mode. We're not sure where the 9 Shot Frame mode's name came from: Probably due to a firmware bug, it actually did what we expected the Multi-Shot 16 mode to do: It subdivided the image area into 16 sections and captured a "mini-movie" of small images (400 x 300 resolution), which filled-in a 4x4 array within a single high-resolution image as the shooting progressed, at a rate of 2.0 frames per second on our prototype unit. The mode labeled "Multi-Shot 16" on our test unit actually captured a **long** series of VGA-resolution images at 1.76 frames per second. Depending on the subject characteristics (e.g., how well it would JPEG-compress), it captured 40-50 pictures at a time. (We imagine this will be the production "VGA Sequence" mode.)

The VGA Sequence captures a sequence of VGA-resolution frames, stored as separate files on the CF card, also at a very quick rate. (Maximum sequence length and capture speed are dependent on image information and available CF card space.) New to the 990 is the Ultra High-Speed Continuous mode, which captures approximately 30 frames per second, totaling about 80 QVGA-sized images (320x240 pixels). Finally, the Movie mode is another new feature for the 990 model. Movie mode captures up to 40 seconds of moving images without sound at approximately 15 frames per second (QVGA size). Movie mode worked quite well on our prototype model, especially when combined with the swiveling lens design (we could run the camera and swivel the lens back on ourselves to get into the picture).

### Shutter Lag/Cycle Times

When you press the shutter release on a camera, there's usually a lag time before the shutter actually fires. This time is to allow the autofocus and autoexposure mechanisms time to do their work, and can amount to a fairly long delay in some situations. Since this number is almost never reported on, and can significantly affect the picture taking experience, we now routinely measure it, using an electronic test system accurate to 0.01 seconds.

The Coolpix 990 autofocus speed is about average, compared to other digicams we've tested (January, 2000), with a shutter lag of 1.13 seconds in full autofocus mode, 0.18 seconds when the lens is

prefocused by half-pressing the shutter button, and 0.49 seconds in manual-focus mode. NOTE: Reader Bryan Biggers wrote in to report that a number of 990 owners have consistently measured shutter lag times of under 0.1 seconds in manual-focus mode. Unfortunately, we had already sent our test unit back to Nikon by the time we heard this, so couldn't repeat the test. We're pretty confident of our result though, since we (a) use an electronic test system that really couldn't produce an error of that magnitude, and (b) repeated this particular test several times, since we ourselves were surprised that the manual-focus delay was so long. We stand behind the number we measured, but given Bryan and others' experience, it's entirely possible that a modification was made in later production units. We tested a production model, but obviously one of the first off the line. A firmware change could easily account for this discrepancy. Thanks for the note, Bryan!

Shot to shot cycle time is very good though, at only 1.7 seconds for the first two shots in highest-quality JPEG mode, at which point the buffer memory is full and you have to wait something on the order of 7 seconds or so for it to empty. Lower resolutions increase the number of shots you can take in quick succession, and reduce the amount of time you need to wait for the buffer to clear again. At XGA resolution, you can shoot 7 frames at 1.62 second intervals, after which the next two frames will require 3 seconds each. If you continue shooting at maximum speed, the cycle time will alternate between 1.65 and 3.0 seconds indefinitely. We never found a maximum number of frames that filled the buffer in VGA mode, but it's something over 20. Cycle time in VGA mode was 1.65 seconds. (Note that all these cycle times were measured in manual focus mode: Autofocus mode would add about 0.6 seconds to the cycle times, to allow for focus-system operation.

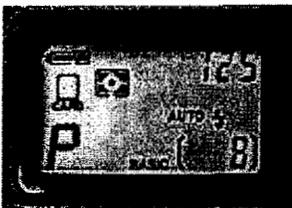
Frame rates in continuous mode also varied as a function of resolution (albeit only slightly), as did the number of exposures we could capture before waiting for the buffer to empty. In high resolution mode, we could capture 3 frames at roughly 1 frame per second. At XGA resolution, we captured 8 frames at 1.62 frames per second. At VGA resolution, we captured 21 frames at 1.72 frames per second. The "VGA Sequence" option captured 40 frames at a rate of 1.76 frames per second. The 16-shot mode captured 16 quarter-resolution frames at a frame rate of 2.0 fps. Ultra high speed mode captured 80 320 x 240 frames at 30 fps (saving the results as individual image files in memory), while the Movie mode also captured 320x240 frames at 30 fps, with the resulting motion sequence saved in a single MOV file. The table below summarizes our cycle-time measurements:

Capture Mode	Interval/ fps	No. of frames
Single-shot, 2048x1536	1.76 sec	2
Single-shot, 1024x768	1.62 sec	7
Single-shot, 640x480	1.65 sec	>20
Continuous Mode, 2048x1536	1.0 fps	3
Continuous Mode, 1024x768	1.62 fps	8
Continuous Mode, 640x480	1.72 fps	21
VGA Sequence	1.76 fps	40
16-Shot Mode (512x328)	2.0 fps	16
Ultra High-Speed Mode (320x240)	30 fps	80
Movie Mode	30 fps	40 secs (w/incl 16MB card)

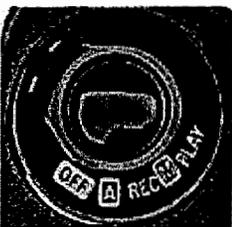
## Operation and User Interface

As with the previous 950 model, we greatly appreciated the ease of the user interface on the Coolpix 990. The 950's interface was great, but the 990 goes quite a bit beyond it, making for what we feel is the best user experience in the industry. The LCD menu system is available for novices, or for less commonly-used controls, but experienced users will find they can make virtually all the most necessary adjustments without resorting to the LCD screen. Once you learn where the functions are, operation is quick and intuitive, thanks to the multiple control buttons and the excellent use Nikon makes of the black/white LCD readout. The inclusion of programmable Function keys simplifies operation even more, letting you assign common combinations of settings to a single key. Exposure compensation, exposure mode, ISO value, image quality and size, as well as focus controls (manual focus setting, macro, and infinity focus) and flash mode, can all be adjusted without the LCD. The small topside status display panel provides feedback for all these settings in a very clear fashion. When you do have to delve into the (very extensive) LCD menu system, navigation via the rocker toggle is easy, intuitive, and very rapid. In Record mode, the menu system is split into 3 pages of options(!), and a nice touch is the tabbed interface, by which you can jump between pages with only a few clicks of the rocker toggle, rather than having to scroll through every option to get to one buried on the second or third screen. Most of the camera's functions are controlled by a combination of hitting a button and turning the command dial. Functions that are accessed in this manner are delineated on the camera body with a very light purple lettering. This system makes it extremely fast and efficient to change settings without eating up too much battery power by using the LCD menu system. Control layout is also very logical, allowing one-handed operation for commonly-changed functions, requiring a two-handed approach only for manual focus setting, ISO, flash mode, and size/quality adjustment.

### Control Enumeration



**LCD Data Readout:** Located on top of the camera, this readout displays status of a wide range of camera functions. More importantly, as noted above, you can manipulate and set most of these functions by using the camera controls and readout display together, letting you avoid the LCD menu system. This both saves power, and makes the camera functions much faster to navigate.



**Shutter Button:** Located on top of the camera and encircled by the Power/Mode dial, this button sets focus and exposure when halfway pressed and fires the shutter when fully pressed.

**Power/Mode Dial:** Also located on the top panel of the camera, surrounding the shutter button, this dial selects between Off, Auto Record, Manual Record and Play modes.



**Mode/Func.1 Button:** Located on the top panel, this button selects the exposure system mode (Program,

Flexible Program, Shutter Priority, Aperture Priority and Manual) when held down while turning the command dial with the camera in Manual record mode. This button can also be programmed through the Setup menu to access various exposure functions with a single button actuation.



**+/- Func.2 Button:** Located directly to the right of the Mode button, this adjusts the amount of exposure compensation (from -2 to +2 EV in 1/3 EV steps) when held down while turning the command dial. This button can also be programmed through the Setup menu to access various exposure functions.



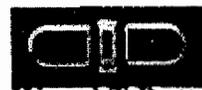
**Command Dial:** Located on the top right of the camera, this dial is used in conjunction with various controls in Record mode to adjust exposure options. In Play mode, the dial cycles through the five information pages associated with each captured image, giving the user an unparalleled amount of information about the exposure (image information page, camera firmware page, image adjustment page, exposure histogram and focus confirmation).



**Monitor Button:** Located on the top of the rear panel of the camera, this button recalls or cancels the color LCD screen information display and viewfinder.



**Menu Button:** Located directly to the right of the Monitor button, this button pulls up the settings menu in all capture modes as well as in Play mode. Pressing it again cancels the menu.



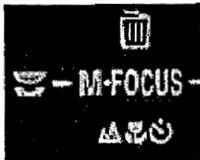
**W and T Buttons:** Located further to the right from the Menu button, these buttons control the optical zoom in all capture modes. Likewise, when the digital telephoto option is enabled, these buttons control the amount of digital zoom (from 1.1x to 4.0x). In single-image playback mode, pressing the "T" button repeatedly zooms in on the image (you can scroll around in the zoomed image by using the rocker toggle control). Pressing the "W" button cancels zoomed playback.



**Rocker Toggle Control:** Located on the right side of the LCD monitor, this button features four arrows that allow the user to navigate through the LCD menu system and make selections in Record and Play modes. We found menu navigation on the Coolpix 990 particularly straightforward, in that all menu actions are taken via the rocker toggle: There's no need to confirm a selection by pressing a different

button. Different menu items are selected via the up/down arrows on the toggle control. Pressing the right arrow selects that item, generally taking you into a sub-menu. Pressing the left arrow takes you back out again. Once in a sub-menu, the up/down arrows again step between items, while a right-arrow selects. This process continues until you arrive at the final point of selection, upon which another right-arrow actuation makes that selection and returns you to the main menu. We were also pleased to see that we could left-arrow from the initial screen, to go to a set of tabs that let you quickly jump from menu screen one to two, or to the setup screen very quickly, without scrolling through all the menu entries first. All this takes much longer to describe than do: The 990's menu design and use of the rocker toggle made it by far the quickest system to navigate we've seen yet.

In Play mode, the right and left buttons scroll through captured images one at a time. As noted above, in zoomed playback mode, this control lets you scroll around within the enlarged image.



**Manual Focus/Macro Button:** Located directly beneath the LCD display, on the left side, this button has several functions. When held down while turning the command dial, this button controls the manual focus option in Record mode. Also in Record mode, this button (when pressed on its own) cycles through Infinity focus, Macro and Self-Timer modes. In Play mode, this button acts as the Delete command for the currently displayed image (designated by the trash can symbol). In a welcome addition, Macro and Self-Timer modes can be used at the same time, even though they're controlled by the same button. (As you cycle through the modes accessible with this button, one mode has both macro and the self-timer enabled simultaneously.)



**Flash/ISO Button:** Centered under the LCD panel, this button cycles through the flash modes (Auto, On, Off, Red-Eye Reduction and Slow-Sync). In Manual Record mode, this button cycles through the variable ISO settings (Auto, 100, 200 and dEF). In Play mode, this button pulls up a four or nine image index display of all captured images.



**Quality/Size Button:** Located directly to the right of the Flash button, this button cycles between image quality options (Basic, Normal, Fine and Hi) in all record modes. In any record mode, this button also cycles through the image size settings (3:2 2048 x 1360, VGA 640 x 480, XGA 1024 x 768 and 2048 x 1536) when held down while turning the command dial. In playback mode, if the currently-selected picture is a movie sequence, this button initiates playback of it.



**Dioptic Adjustment Dial:** Located directly beneath the optical viewfinder (on the underside of the lens half of the case), this small, black dial adjusts the viewfinder to accommodate eyeglass wearers.

## Camera Modes and Menus

**Automatic Record Mode:** Accessed by turning the Power/Mode dial to the "A" setting, this mode puts the camera in charge of exposure and focus, but still leaves settings like flash, exposure compensation, size, quality and the self-timer under the user's control. Pressing the Menu button in this mode pulls up the following Setup menu:

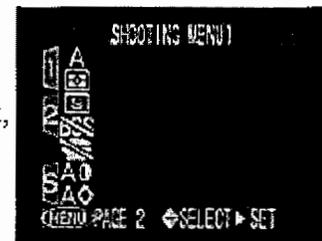


- **Folders:** pulls up a sub-menu that allows users to create, delete and rename image storage folders in separate groups (much like the 950). This also allows users to select which folder images will be saved to.
- **Monitor Options:** pulls up a sub-menu that allows users to adjust the brightness and hue of the LCD monitor display.
- **Shutter Sound:** turns the shutter sound on or off.
- **Auto Off:** allows users to set the auto-off delay to 30 seconds, one minute, five minutes or 30 minutes.
- **Seq. Numbers:** turns the file numbering sequence on or off as well as resets the current sequence.
- **Card Format:** Formats the CompactFlash card and erases all folders and images.
- **Date:** sets the camera's internal date and time.

**Manual Record Mode:** Accessed by turning the Power/Mode dial to the "M" setting, this mode offers several options for manually controlling exposure (Program, Flexible Program, Aperture Priority, Shutter Priority and Manual). Program puts the camera in charge of aperture and shutter speed, while the user can control things like white balance, motor drive, etc. Flexible does the same, but allows the user to select between various combinations of shutter speed and aperture settings. Aperture and Shutter Priority put the user in charge of either the aperture or shutter speed while the camera controls the other value. And finally, Manual lets the user control both aperture and shutter speed, independent of the camera's exposure system. All of these capture modes are accessible by pressing the Mode button and turning the command dial until the desired mode appears on the status display. Pressing the Menu button in this mode pulls up the following settings menus:

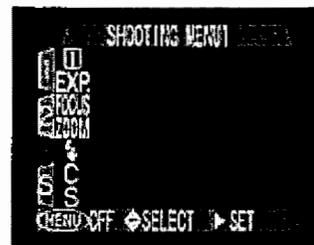
### Screen One

- **White Balance:** pulls up a sub-menu with seven white balance options: Auto, White Balance Preset, Fine (Outdoors), Incandescent, Fluorescent, Cloudy and Speedlight (flash balanced).
- **Metering:** offers 256 Segment Matrix, Center-Weighted, Spot and Spot AF Area metering options.
- **Continuous:** offers six "motor-drive" options: Single exposure, Continuous Shooting, Multi-Shot 16, VGA Sequence, Ultra-High Speed, and Movie.
- **BSS:** turns the Best Shot Selector function on or off.
- **Lens:** lets the user select between Normal (built-in lens), Wide Adapter, Telephoto 1 (a 2x adapter), Telephoto 2 (a 3x adapter), Fisheye 1 and Fisheye 2 options to accommodate the specified accessory lens. As noted in the main review, the different options adjust various exposure and zoom setting options to best accommodate the chosen lens.
- **Image Adjust:** allows the user to further alter the image with options of Auto, Normal, More Contrast, Less Contrast, Lighten Image, Darken Image and Black & White. (See discussion under Exposure section of the review, above.)
- **Image Sharpening:** adjusts the in-camera sharpening to Auto, High, Normal, Low or Off.)



## Screen Two

- **User Setting:** allows the user to save up to three different sets of user settings to be recalled at any given time (useful for quickly switching between groups of settings for different shooting scenarios).
- **Exposure Options:** allows the user to turn the AE Lock and Auto Bracketing on or off as well as adjust the exposure compensation. (While exposure compensation can be set from this menu entry, you would more commonly do so via the top-panel +/- button and function wheel.)
- **Focus Options:** selects between AF Area Modes (Auto, tracking/manual/center, or off), Autofocus Modes (Continuous or Single AF), Peaking (On, Off, Manual Focus only), and Distance Units (feet/meters) focusing modes.
- **Zoom Options:** allows the user to activate the digital telephoto, designate the startup position (wide, telephoto, or the last-used position, a feature we found particularly welcome). Also lets you select the Fixed Aperture option, which keeps the aperture fixed as the lens zooms. (This last useful for flash photography, with external strobe units.)
- **Speedlight Option:** allows the user to adjust the flash intensity (+/- 2EV unit range in 1/3 EV steps) and set up the internal and/or external speedlight options (both active or internal flash off).
- **Reset All:** resets all the menu options to factory defaults (it thankfully does give you an option to back out if you decide you want to).



## Setup Screen

- **Folders:** pulls up a sub-menu that lets users create, delete and rename image storage folders in separate groups (much like the 950). This also lets users select which folder images will be saved to.
- **Monitor Options:** pulls up a sub-menu that allows users to adjust the brightness and hue of the LCD monitor display.
- **Shutter Sound:** turns the shutter sound on or off.
- **Controls:** allows the user to program the Function 1 and 2 buttons (Mode and +/- buttons) to set up specific exposure functions. (VERY handy!)
- **Auto Off:** allows users to set the auto-off delay to 30 seconds, one minute, five minutes or 30 minutes.
- **Seq. Numbers:** turns the file numbering sequence option on or off as well as resets the current sequence.
- **Card Format:** Formats the CompactFlash card and erases all folders and images.
- **LED Shot Confirm:** turns the shot confirmation light on and off. (This is a small orange LED on the front of the lens housing that illuminates briefly after the shutter trips, as an indication that the shot has been taken. Useful for self-timer shots taken without flash.)
- **Date:** sets the camera's internal date and time.
- **Video Mode:** sets the video format to NTSC or PAL.
- **Language:** sets the camera language to German, English, French or Japanese.



**Play Mode:** Accessed by turning the Power/Mode dial to the Play position, this mode allows users to view captured images and movies. The right and left arrow buttons scroll through images while the Delete and Index Display buttons (beneath the LCD panel) offer quick image deletion and display. Pressing the Menu button in this mode pulls up the Play settings menu:

## Screen One

- **Delete:** lets the user delete a Selected Image, All Images, Erase Folder or Print Set. (A "Print Set" refers to the set of images currently marked for printing, using the DPOF (Digital Print Order Format))
- **Folders:** allows the user to create, delete or rename folders as well as select the playback folder from a list.
- **Slide Show:** starts a slide show playback of all images in a folder and allows the user to set the frame interval.
- **Protect:** allows the user to select individual images for write protection.
- **Hide Image:** allows users to hide selected images from view.
- **Print Set:** allows users to select individual images and mark them on the memory card for subsequent printing by a standalone printer. (This uses the standard Digital Print Order Format (DPOF) protocol.)



## Setup Screen

- **Monitor Options:** pulls up a sub-menu that allows users to adjust the brightness and hue of the LCD monitor display.
- **Shutter Sound:** turns the shutter sound on or off.
- **Auto Off:** allows users to set the auto-off delay to 30 seconds, one minute, five minutes or 30 minutes.
- **Seq. Numbers:** turns the file numbering sequence option on or off as well as resets the current sequence.
- **CF Card Format:** Formats the CompactFlash card and erases all folders and images.
- **LED Shot Confirm:** turns the shot confirmation function on and off.
- **Date:** sets the camera's internal date and time.
- **Video Out:** sets the video format to NTSC or PAL.
- **Language:** sets the camera language to German, English, French or Japanese.



## Image Storage and Interface

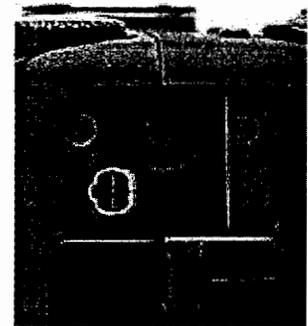
Like the 950 and the 900 before it, the Coolpix 990 uses CompactFlash memory cards for image storage, shipping with a 16 MB card. We suspect that most users will almost immediately want to purchase a larger card though, as 64 MB cards have become quite reasonable in price, and cards as large as 128 MB are currently available (February, 2000). We were glad to find the new location of the CompactFlash slot in the hand grip (the 950 model's slot was on the bottom of the camera, making it difficult to change cards while mounted to a tripod). The 990 also has a very nice, functional cover door for the CF card slot, a huge improvement over the 950's less-substantial arrangement.) The 990 includes several subtle niceties that make life a little easier, including a folder arrangement that allows users to organize images in the camera, a sequential frame counter option to avoid problems with overwriting files when copying them to your computer, some powerful in-camera tonal adjustment controls and the much appreciated Best Shot Selector option that automatically chooses the least blurry image, when shooting under difficult conditions.

Captured images can be individually write protected through the Play mode settings menu. Write protected files are only immune to accidental deletion, not card reformatting. File formats include several levels of compressed JPEG files as well as an uncompressed TIFF mode (Hi quality setting).

<i>Resolution/Quality vs Image Capacity</i> (Included 16MB card)	Full Resolution		XGA Resolution		VGA Resolution	
	Images	Approx. Compression	Images	Approx. Compression	Images	Approx. Compression
<b>Uncompressed</b>	1	1:1	-	-	-	-
<b>Fine Quality</b>	10	6:1	40	6:1	100	6:1
<b>Normal Quality</b>	20	12:1	79	12:1	187	12:1
<b>Basic Quality</b>	40	20:1	150	20:1	332	20:1

## Video Out

One significant difference between the Coolpix 990 and its predecessors is that there now appears to be only a single international version of the camera, supporting either NTSC or PAL standards. The US version of the Coolpix 990 includes a video out jack and connection cable, defaulting NTSC-formatted video output. European models will doubtless support PAL timing and connections. You can switch between NTSC or PAL timing through a setting in the Setup menu. Connecting the video output provides a signal to an external device, without disabling the internal LCD display screen. All images that would normally appear on the LCD are also routed to the external video display so that the television screen becomes an enlarged version of the LCD monitor and can be used both for image playback and composition.



## Power

The Coolpix 990 runs on four AA batteries, housed inside the hand grip, or an external AC adapter which plugs into the front of the camera. Nikon estimates about 1.5 hours of operating time when using the LCD monitor and four 1.5V LR6 (alkaline AA L40) batteries at a normal temperature of 68 degrees Fahrenheit. (We find this a trifle optimistic.) In our own tests, the Coolpix 990 prototype consumed about as much power as typical 2 megapixel digicams, despite the larger sensor and large SDRAM buffer memory. As always, we highly recommend keeping a couple sets of freshly charged rechargeable NiMH cells nearby. We should note here that the ability to switch the autofocus mode from Continuous to Single saves significant battery power. Enormous power savings are possible if you leave the LCD monitor off, and rely on the small top-panel readout when adjusting camera settings. Power consumption with the LCD screen turned off was very low indeed: You could easily run all day on a single set of batteries in this mode.



Operating Mode	Power Drain
Capture Mode, w/LCD	580 mA
Capture Mode, no LCD	< 10 mA
Half-pressed shutter w/LCD	570 mA
Half-pressed w/o LCD	340 mA
Capture Mode, Continuous AF	640 mA
Memory Write (transient)	580 mA
Flash Recharge (transient)	1000 mA
Image Playback	370 mA

### Included Software

As of this writing, Nikon had not yet finalized the software bundle for the 990. We'll update accordingly as the information becomes available.

### Test Results

In keeping with our standard policy, our comments here are rather condensed, summarizing our key findings: For a full commentary on each of the test images, see the [Coolpix 990's "pictures" page](#).

As with all Imaging Resource camera tests, we encourage you to let your own eyes be the judge of how well the devices performed: Explore the images on the [pictures page](#), to see how well the Coolpix 990 performed, and how its images compare to other cameras you may be considering buying.

The first thing that struck us about the Coolpix 990 was how **sharp** its pictures were! The earlier Coolpix 950 showed excellent sharpness and detail, but the 990 clearly raises this performance to a new level. Resolution was the best we've seen out of the digicams we've tested to date (early March, 2000), although in fairness, we have a number of 3 megapixel models yet to go. We "called" the 990's resolution at 800-850 lines per picture height in both horizontal and vertical directions, with significant detail visible all the way out to 900-1000 lines. By comparison, the 950 tested out at about 800 lines horizontally (and a bit of a stretch at that), and 650-700 vertically. Overall, a significant step up in resolution, much more than we saw in digicams when going from the 1.5 to 2.1 megapixel level. (These numbers were obtained with the lens at its wide angle setting: Telephoto numbers were slightly lower, as is usually the case.)

Color was very good as well, with excellent saturation across the spectrum. The only weaknesses we could find were a slight tendency to undersaturation in bright yellow hues, and the (very common) problem with the tricky blues in the model's pants and flowers in the outdoor shots. (For whatever reason, many digicams tend to produce rather purplish hues in these colors, and the 990 fell prey to that tendency somewhat as well.) Overall color was very good though.

True to its heritage from Nikon's high-end film cameras, exposure accuracy and control were excellent in the 990. Nikon's apparently added a matrix-evaluating white balance function to the 990, making its auto white balance algorithm a bit more sure-footed. For really tough lighting situations though, we still found ourselves using the manual preset white balance option, a feature we **really** like to see in digicams we test. (Note to other high-end digicam manufacturers: This is a "must-have" feature for high-end prosumer cameras!) The addition of a true iris-based aperture in the 990 was a significant improvement over the 950's three-aperture system, and very welcome.

In our low-light tests, the Coolpix 990 did exceptionally well, producing usable but dark images in light levels as low as 1/16 of a foot-candle, and very usable ones at levels of 1/8 of a foot-candle. Noise was

also quite low (camera was stabilized at a temperature of 70 degrees F (~21C) for these shots). For comparison, a well-lit city scene under typical modern street lighting corresponds to a level of about 1 foot-candle. The Coolpix 990 is a great low-light shooter!

As is the case with most digicams, the Coolpix 990's optical viewfinder shows less of the subject than the final image does, displaying a fairly typical 86% of the final area in wide angle and 88% in telephoto mode. The LCD viewfinder was almost 100% accurate though, a very welcome feature for shots involving critical framing (as so many of our test shots do).

Like the '950 before it, the Coolpix 990 is a spectacular macro performer, with a minimum area coverage of only 0.78 x 0.58 inches (19.69 x 14.77 mm). Combined with the 990's 3 megapixel resolution, the detail it can record is literally microscopic!

At the bottom line, the Coolpix 990 delivers a solid upgrade in image quality and resolution relative to the already-excellent Coolpix 950, with some of the best detail and sharpness we've seen yet in a digicam. (At least, as of early March, 2000.)

## Conclusion

The Coolpix 990 is an exceptional follow-on to the already excellent Coolpix 950. The list of added features, options, and capabilities is too long to include in a brief conclusion, but suffice to say they're both extensive and eminently useful. Virtually every aspect of the camera's performance has been enhanced or extended, and the result is a true 3 megapixel powerhouse. Despite its incredible array of features though, its fully-automatic Auto record mode makes it easy enough for even the rankest amateur to use. (Set it in "Auto" mode, and hand it to your spouse with no worries or explanations.) For power users, the 990 sports one of the best-designed user interfaces we've had the pleasure to work with. Nikon clearly listened to users of the Coolpix 900 and 950 in developing the 990, and the results show: We're confident in predicting that this will be a very popular digicam, among both amateurs and professionals!

## Reader Comments!

See what other Imaging Resource readers have had to say about the Coolpix 990, or add comments of your own. (*Read what's here, then add your own!*)

For even more feedback, read the [User Reviews from PCPhotoREVIEW](#)

## Reader Sample Images!

Do you have a Nikon Coolpix 990 camera? If you'll post an album of your samples that we can point to with a single URL (not all services permit this, some require you visit the main site and type a name and password) and email us at [web@imaging-resource.com](mailto:web@imaging-resource.com), we'll list the album here for others to see!

- [Sample pictures from PCPhotoREVIEW readers](#)
- [Chris Arellano's CoolPix 990 album](#) (Here's Chris's...where's yours?)
- [Steve Schnoor's Sample Images](#)
- [Rex Steyskal's Sample Images](#) - Very nice pictures taken at the Detroit Zoo! Also, if you go to his main album page, you can find tons of pictures for the CoolPix 950 album. Not what you were interested in, if you're visiting this page, but definitely worth taking a look!

## For More Info:

View the [Coolpix 990 Sample Pictures Page](#)

**[View the Imaging Resource Data Sheet for the Coolpix 990](#)**

**Visit the [Comparometer\(tm\)](#) to compare with other cameras.**

**Visit the [Nikon home page for the Coolpix 990](#)**

**[Back to the Imaging Resource Digital Cameras Page](#)**

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ASSIGNMENT

III

UNITED STATES PATENT APPLICATIONS

NOT IN VIEW OF DECISION OF EXAM UTILITY APPLICATIONS BASED ON PRIOR PROVISIONAL CASES.

WHEREAS, Brian Utley, an individual, having a place of business at One Boca Place, 2255 Glades Road Suite 337 West Boca Raton, FL 33431-7360 ("ASSIGNOR"), is the owner of the pending United States patent applications identified in Exhibit A attached hereto and by this reference incorporated herein ("Applications"); and

WHEREAS, Iviewit.com, Inc. ("Assignee") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 505 North Brand Boulevard, Suite 1420, Glendale, California 91201 ("ASSIGNEE") desires to acquire from ASSIGNOR his entire right, title and interest in and to the Applications; and

09/13/01

WHEREAS, ASSIGNOR is willing to assign to ASSIGNEE his entire rights, title and interests in and to the Applications;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by ASSIGNOR by these presents does hereby sell, assign, convey and transfer unto ASSIGNEE, its successors, assigns and legal representatives, his full and entire right, title and interests in and to the Applications, and the invention disclosed and claimed therein, and any continuations, continuations-in-part and divisional applications thereof (said applications to be included within the meaning of the term "Applications" as used herein), and any patents which may be granted on the Applications (or any of them, "Future Patents"), and any reissue applications pertaining to any of the Future Patents, and any reissued Future Patents granted on such reissue applications, and any continuations of any of the Future Patents or reissues thereof, the same to be held used, enjoyed by ASSIGNEE for its own use and enjoyment and for the use and enjoyment of its successors, assigns, and legal representatives, to the end of the term for which the Future Patents are or may be granted or reissued. The foregoing assignment is to be for any and all causes of actions and claims for damages by reason of infringement of the Applications, or any of them, which causes of action and claims arose prior to the date of execution hereof, together with the right to sue for and collect the same for ASSIGNEE's own use, benefit and enjoyment, and for the use, benefit and enjoyment of its successors, assigns and legal representatives.

ASSIGNOR hereby represents and warrants that, except as it may have otherwise disclosed to ASSIGNEE, (i) he is the sole owner of the Applications and the inventions disclosed and claimed therein; (ii) the Applications were not filed fraudulently or contrary to any provision of the patent laws of the United States; (iii) he has granted no licenses to any other party to use the inventions claimed in the Applications identified in Exhibit A hereto; (iv) he is not aware of any third party who has asserted a claim of any ownership right, title or interest in the Applications, or the inventions disclosed and claimed therein, or any other rights or interests therein which are adverse to those of ASSIGNOR; and (v) he is not a party to any prior agreement, nor has he made any informal commitment or reached any understanding, with any

other person or legal entity relating to the Applications which would be breached or otherwise violated by the foregoing assignment of the Applications to ASSIGNEE. In this connection, ASSIGNOR states that he makes no other representations or warranties of any kind whatsoever, expressed or implied, other than specifically set forth hereinabove.

ASSIGNOR hereby agrees that ASSIGNEE shall have the right to record this instrument of assignment in the United States Patent and Trademark Office, so as to establish ASSIGNEE as owner of record of the Applications, and the inventions disclosed and claimed therein, as the owner thereof in the United States.

ASSIGNOR further agrees, at the request of ASSIGNEE and without charge or cost to ASSIGNEE, to (i) execute and by electronic filing and all other documents of any kind whatsoever, and to provide whatever information may be required, to carry out the terms and intent of this Assignment and (ii) fully cooperate with ASSIGNEE, as reasonably required, to enable ASSIGNEE to file and record this instrument of assignment with the United States Patent and Trademark Office, so that ASSIGNEE's ownership of the Applications, and the inventions disclosed and claimed therein, is duly made of record in the United States.

IN WITNESS WHEREOF, ASSIGNOR has caused this instrument to be executed on the date indicated below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed by Eliot Bernstein,  
Warranted to be true



PENDING PATENT APPLICATIONS

TITLE	COUNTRY	SERIAL NO.	FILING DATE
Zoom and Pan Imaging Using a Digital Camera	United States	60/223,344	09/18/00
Zoom and Pan Imaging Design Tool	United States	60/233,341	09/18/00

Docket No 57103/12  
 Country United States  
 Case Type PROVISIONAL FILING  
 Relation Typ ORIGINAL OF PARENT APP  
 Filing Type NATIONAL PASH  
 Filing No  
 Ag Ref No

DOUGLAS A. BOEHM  
 IVIEWIT.COM  
 Owne

Status FILED  
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 Parent No  
 Total Claims

Filing 18SE2000  
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Application N/A  
 Patent No  
 Publication  
 Assigned  
 Conv Type FIRST FILING CASE

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Customer FLPP  
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Create Dt 20SE2000  
 Update Dt 20SE2000

User KAS  
 Dt 2:37 PM

Action FOREIGN FILING REMINDER  
 Act Due Date 18MR2001  
 Taken Dt  
 Resp Atty #1  
 #2

Action REVIEW FOR FOREIGN FILING  
 Act Due Date 18JE2001\*  
 Taken Dt  
 Resp Atty #1  
 #2

Action REVIEW FOR USA FILING  
 Act Due Date 18JE2001\*  
 Taken Dt  
 Resp Atty #1  
 #2

Action FOREIGN FILING REMINDER  
 Act Due Date 18JE2001  
 Taken Dt  
 Resp Atty #1  
 #2

Action FOREIGN FILING REMINDER  
 Act Due Date 18AU2001  
 Taken Dt  
 Resp Atty #1  
 #2

Please verify all information and return to Docketing ASAP with any changes. This completed document MUST BE PLACED IN THE FILE.

Initials \_\_\_\_\_ Date \_\_\_\_\_



**EXHIBIT H**  
**US PATENT 60/233,344**

1 training that you've had or maybe you -- you did 113  
2 indicate that you had any degree in mathematics.  
3 Is that something that you have some experience  
4 from from some other portion of your employment  
5 or background?  
6 A. I have training and experience in  
7 mathematics.  
8 Q. I'm sorry.  
9 A. I say I have training and experience  
10 in mathematics.  
11 Q. How about in the scaling video  
12 invention; is that part of what you've already  
13 described?  
14 A. That is readily derived from a  
15 mathematical background.  
16 Q. How about the remote control video  
17 applications?  
18 A. That's different.  
19 Q. Okay. Now going back to --  
20 A. What --  
21 Q. -- the patent dealing specifically  
22 with remote control applications.  
23 A. What I did there was I established  
24 the fact that the design point that Eliot had  
25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed



X = not here  
 ✓ = Patent  
 ! = Response  
 !! = Response w/ ref.

✓ = here (qtr 1)  
 ✓ = here (response)  
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Page 1 of 2

CONFIDENTIAL

VIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Priority
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Ellot I. Bernstein	Iviewit Holdings, Inc.	15/4	N/A
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/3/1999	Apparatus and Method for Producing Enhanced Video Images	Ellot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/7/1999	Apparatus and Method for Playing Video Files Across the Internet	Ellot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
4	57103/106	5865-4.1	U.S. (Provisional)	60/141,440	6/28/1999	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	Ellot I. Bernstein	Iviewit Holdings, Inc.	25/2	N/A
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/2/1999	Apparatus and Method for Producing Enhanced Digital Images	Ellot I. Bernstein	Iviewit Holdings, Inc.	10/4	N/A
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/18/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Ellot I. Bernstein	Iviewit Holdings, Inc.	21/4	N/A
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Ellot I. Bernstein	Iviewit Holdings, Inc.	29/4	N/A
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/6/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Ellot I. Bernstein	Iviewit Holdings, Inc.	47/5	N/A
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images	Ellot I. Bernstein	Iviewit Holdings, Inc.	14/4	60/125,824

✓  
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 ✓

57103/110  
 int PCT-US000-0772

CONFIDENTIAL

VIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/SHs	Priority
10	57103/111	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
11	57103/112	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Lilley, Rosario		33/3	60/137,297 60/155,404 60/169,559
12	57103/113	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
13	57103/114	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/111PCT
14	57103/115	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
15	57103/116	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Lilley, Rosario		33/3	60/137,297 60/155,404 60/169,559 57103/112PCT
16	57103/118	N/A	PCT (International)	PCT/US00/	6/7/2000	System and Method for Video Playback Over a Network	Bernstein, Friedstein, Lilley		24/2	60/137,921 60/141,440
17	57103/119	5865-1	U.S.	08/522,721	3/10/2000	Apparatus and Method for Producing Enhanced Digital Images	Bernstein		15/4	60/152,824

*[Handwritten scribbles and marks at the bottom of the page]*





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, DC 20503  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,344	09/18/2000	Brian G. Utley	57103/122

Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



\*OC000000005649704\*

Date Mailed: 01/03/2001

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

MP  
RESPONSE DUE 03 ME 2001  
DECL FEE

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- Small Entity Statement is missing.
- The balance due by applicant is \$ 200.

*A copy of this notice **MUST** be returned with the reply.*

*OSmall*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,344	09/18/2000	Brian G. Utley	57103/122

Foley & Lardner  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5367

FORMALITIES LETTER



\*OC00000005649704\*

Date Mailed: 01/03/2001

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(c)**

***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- Small Entity Statement is missing.
  
- The balance due by applicant is \$ 200.

*A copy of this notice **MUST** be returned with the reply.*

*ASmalls*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al. Dkt. No. 57103/122  
Appl. No.: Unknown DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.);
- Patent Application Specification and Figures ( 95 pgs.);

Assistant Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

efiot 3/19/2004 10:36:26 PM  
Note

No filing stamps are on this at all as with other applications??

Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al. Dkt. No. 57103/122  
Appl. No.: Unknown DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.);
- Patent Application Specification and Figures ( 95 pgs.);

Assistant Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Utley et al. ←

Title: Zoom and Pan Imaging Using a Digital Camera

Appl. No.: Unknown

Filing Date: 9/18/2000

Examiner: Unknown

Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640465732US	9/18/00
(Express Mail Label Number)	(Date of Deposit)
Douglas A. Boehm	
(Printed Name)	
	
(Signature)	

**PROVISIONAL PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PROVISIONAL PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(c) is the provisional patent application of:

Brian G. Utley  
1930 S.W. 8th Street  
Boca Raton, Florida 33486

Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, Florida 33432-6080

eliot	3/19/2004 10:39:02 PM
Note	No signature for Eliot is in the files and BSZT states in portfolio that it is only Utley. There is no stamps from patent office or other proof this is legit. Was not in the Company files until Foley to BSZT transfer.

Enclosed are:

- [ X ] Specification, Claim(s), Abstract, and Figures ( 95 pages).
-   [ ] Assignment of the invention to lviewit.com, Inc.
-   [ ] Small Entity statement.

eliot	3/19/2004 10:40:42 PM
Line	Assignment never filed and small entity never filed.

The filing fee is calculated below:

	Rate	Fee Totals
Basic Fee	\$150.00	\$150.00
[ X ] Small Entity Fees Apply (subtract 1/2 of above):	=	\$75.00
<b>TOTAL FILING FEE:</b>		<b>= \$75.00</b>

- [ ] A check in the amount of \$75.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 9/18/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

eliot	3/19/2004 10:46:27 PM
Note	
Company has no original files on this patent or signatures or filing receipts from patent office.	

*Copy*



**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
USING A DIGITAL CAMERA**

Inventors:

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.



	eliot Note
No signature in files for Eliot and BS2T and patent office state Eliot is not listed???	

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**EXHIBIT H**  
**US PATENT 09/522,721**

# FOLEY & LARDNER

Attorneys at Law

Sender's Direct Line:  
(414) 297-5718

Atty. User ID:  
0128  
Client/Matter Code:  
57103/101

Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

## FACSIMILE TRANSMISSION COVER SHEET

TO: **Mr. Brian G. Utley**

COMPANY NAME: **lviewit.com, Inc.**

COMPANY LOCATION: **Boca Raton, Florida**

COMPANY PHONE NUMBER: **TEL: (561) 999-8899**

COMPANY FAX NUMBER: **FAX: (561) 999-8810**

FROM: **Douglas A. Boehm**

DATE: **June 6, 2000**

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 8

IF THERE ARE ANY PROBLEMS WITH THIS FACSIMILE TRANSMISSION, OR IF YOU HAVE NOT RECEIVED ALL OF THE PAGES, PLEASE CALL 414/297-5444.

**CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS MESSAGE IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.**

\*\*\*\*\*

Brian, Here is your copy of what was just faxed to Mr. Lewis S. Meltzer.

\*\*\*\*\*

Fax Operator: \_\_\_\_\_

Time Sent: \_\_\_\_\_

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5397  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5718

June 6, 2000

Mr. Lewis S. Meltzer  
Meltzer, Lippe, Goldstein & Schlissel, P.C.  
190 Willis Avenue  
Mineola, New York 11501

Re: Transfer of IP files for IVIEWIT.COM

Dear Mr. Meltzer:

As you may recall, I am the patent attorney at Foley & Lardner that is currently handling the Iviewit.com IP matters that were previously handled by Ray Joao of your firm.

I recently received the following correspondence from your firm: (1) the original Assignment recorded in the United States Patent and Trademark Office (USPTO) for your Docket No. 5865-8 (U.S. Provisional Patent Application No. 60/169,559); and (2) the USPTO Filing Receipt (copy attached) for your Docket No. 5865-1 for Application No. 09/522,721. Although I sincerely appreciate your firm's diligence in continuing to forward Iviewit materials to me, this latest correspondence raises some very serious issues with respect to the Iviewit.com IP matters that were supposed to have been transferred to Foley & Lardner.

I was not previously told about this U.S. Non-Provisional Application being filed (item 2 above). It does not appear in any of the correspondence previously sent to Foley & Lardner. This raises the question of exactly what was filed in the U.S. Patent and Trademark Office, since I do not have a copy of any filing papers for this application. Was a U.S. Declaration filed? What specification and claims were filed? Was an Assignment filed for this application? I must have this information in order to take over prosecution of this application.

More importantly, however, this raises the question of whether any other provisional or non-provisional applications have been filed in the United States or any other country. Both the client, Brian Utley, President of Iviewit.com, and myself have previously asked your firm to transfer all of the Iviewit.com Intellectual Property files to me. (See attached letter to you dated April 28, 2000.) When the files that were sent to me were incomplete, I sent an e-mail (copy attached) to Dawn Laffin of your firm, asking her to look for other Iviewit matters. I subsequently requested that Nicole, Ray's former secretary,

## FOLEY &amp; LARDNER

Mr. Lewis S. Meltzer  
June 6, 2000  
Page 2

double-check that there were no other miscellaneous files that were not on the list of applications (also attached). Now I find out that, after three or four separate requests, all of the Iviewit patent matters were not transferred to us.

I formally request that you have your firm's Docket Administration Department review all of Ray Joao's files to ensure that all of the Iviewit.com materials have been transferred to me. Please forward all letters, memorandums, faxes, e-mails, notes, CD's, disks, and other correspondence between Iviewit.com and your firm, and between any third parties and your firm on behalf of Iviewit.com. It is particularly important that I know which patent applications were filed and what correspondence was submitted to the U.S. Patent & Trademark Office before the expiration of a critical date. Otherwise, the client could possibly lose patent rights. Please confirm that the attached "Iviewit.com Patent Portfolio" table, which lists the patent applications filed for Iviewit.com by your firm, is accurate and complete.

I also request that you contact Ray Joao to confirm which applications were filed in what countries and whether or not Ray has any additional Iviewit correspondence or materials that were not transferred to Foley & Lardner.

Furthermore, the client requests that I obtain a written confirmation from both you and Ray that all files, materials, and correspondence have been transferred to Foley & Lardner.

Please confirm receipt of this facsimile and let me know that these matters will be handled promptly and appropriately.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

cc: Mr. Brian Utley, Iviewit.com



# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4800

SACRAMENTO  
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SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
DABOEHM@FOLEYLAW.COM

VIA FACSIMILE

WRITER'S DIRECT LINE  
(414) 297-5718

April 28, 2000

Mr. Lewis S. Meltzer  
Meltzer, Lippe, Goldstein & Schlissel, P.C.  
190 Willis Avenue  
Mineola, New York 11501

Re: Transfer of IP files for IVIEWIT.COM

Dear Mr. Meltzer:

As you are aware, Mr. Brian Utley, President of IVIEWIT.COM, LLC, has requested in a previous letter that all Intellectual Property files for IVIEWIT.COM be transferred from Meltzer, Lippe to Foley & Lardner. Please have the files forwarded to me at the above address as soon as possible. Upon receipt of the IVIEWIT.COM files, Foley & Lardner will be responsible for taking action in these matters.

These Intellectual Property files include the eight provisional patent application matters listed on the attached sheet, as well as any other Intellectual Property matters that may be missing from this list. Furthermore, I would sincerely appreciate it if you could include copies on disk of the electronic word processing files for these matters, so the eight patent applications won't have to be retyped. Any electronic word processor format will suffice.

Of course, if any questions or problems arise, please do not hesitate to contact me. I thank you in advance for your cooperation.

Very truly yours,



Douglas A. Boehm

Attachment

cc: Ms. Nicole Pinou, Meltzer, Lippe  
Mr. Brian Utley, IVIEWIT.COM

## EXHIBIT A

## Patent Applications

Docket No.	Serial No.	Title	Date Filed	Date Assigned
5865-1	60/125,824	Apparatus and method for producing enhanced digital images	March 24, 1999	August 5, 1999
✓ 5865-3	60/137,297	Apparatus and method for producing enhanced video images	June 3, 1999	August 5, 1999
✓ 5865-4	60/137,291	Apparatus and method for playing video files across the Internet	June 7, 1999	August 5, 1999
✓ 5865-4.1	60/141,440	Apparatus and method for providing and/or for transmitting video data and/or information in a communication network	June 29, 1999	Not Filed
✓ 5865-5	60/149,737	Apparatus and method for producing enhanced digital images and/or digital video files	August 19, 1999	Not Filed
✓ 5865-6	60,146,726	Apparatus and method for producing enhanced digital images	August 2, 1999	Not Filed
✓ 5865-7	60/155,404	Apparatus and method for producing enhanced video images and/or video files	September 22, 1999	Not Filed
✓ 5865-8	60/169,559	Apparatus and method for producing enhanced video images and/or video files	December 8, 1999	Not Filed

**Boehm, Douglas A.**

---

**From:** Boehm, Douglas A.  
**Sent:** Tuesday, May 09, 2000 5:28 PM  
**To:** 'dlaffin@mig.com'  
**Subject:** lviewit.com Files

Dawn --

As I mentioned on the telephone this afternoon, I received your Federal Express package this morning containing the Meltzer, Lippe files for lviewit.com. The package contained 7 folders corresponding to your docket numbers 5865-1,3,4,4.1,5,6, and 7. However, the file folder for your docket no. 5865-8 is missing. Furthermore, not all of the paperwork for the PCT application (your docket no. 5865-10) was included in the first file 5865-1 (which is the PCT's parent case). Is there a 5865-10 file also?

During our phone conversation, you agreed to review your docket and files for 5865-8, 5865-10, and any other 5865 matters for lviewit.com tomorrow, and forward these files to me right away.

Thanks for your assistance.

--Doug

*Douglas A. Boehm  
Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Tel: (414)297-5718  
Fax: (414)297-4900  
Email: daboehm@foleylaw.com*

NOTE: The information transmitted in and/or attached to this message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this information in error, please contact the sender and delete the material from any computer.

**VIEWIT.COM PATENT PORTFOLIO**

**CONFIDENTIAL**

Ref. No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Comments
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	15/4	
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/03/1999	Apparatus and Method for Producing Enhanced Video Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/07/1999	Apparatus and Method for Playing Video Files Across the Internet	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	
4	57103/105	5865-4.1	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	Eliot I. Bernstein	Iviewit Holdings, Inc.	25/2	
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/02/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	18/4	
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	21/4	
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	29/4	
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/08/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	47/5	
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital images	Eliot I. Bernstein		14/4	Claims Priority to 60/125,824 3/24/99 (102)

516.747.0653

3/9/2000

Guidance  
BIN 1 2 F101

Ray Joao

Ray, there are major missing items in docket's 1+6:

1. Claims do not reference stitching
2. Process is amended as shown on the diagram
3. The relationship between the enhanced digital image and the zoom and pan function together with controls is not clear
4. The description and claims stop at the production and loading of the image.

5. Object model Brian

**Becker, Steven C.**

**From:** Becker, Steven C.  
**Sent:** Monday, July 24, 2000 4:44 PM  
**To:** Eliot I. Bernstein (E-mail); Brian G. Utley (E-mail)  
**Cc:** Boehm, Douglas A.  
**Subject:** PCT Patent Application for "Zoom and Pan" Imaging

*Never saw this till all these books*

**Re:** PCT Patent Application for System and Method for Providing an Enhanced Digital Image File  
Inventor: Bernstein  
Our Ref. No.: 57103/120

Brian:

During our brief telephone conversation today, you provided a few comments in response to my letter to you dated July 21, 2000. These comments were based on your review of the prior provisional applications, and are summarized below.

1. The step of "enlarging" is not essential for all embodiments of the invention.
2. The aspects of zooming and panning, and the function of the applet must be described in greater detail. ←
3. The disclosure relating to acquiring a photograph of a film video should be removed. However, the disclosure relating to processing one frame of a video according to the process steps of the invention should be retained.
4. In the provisional patent application having our reference number 57103/108, the flowchart in FIG. 2A does not match the corresponding description in the specification. Correction is needed.

5. Again, in the application for 57103/108, the claims in their current form may not be of the proper scope and should be revised.
6. You commented that the prior-filed PCT applications relating to enhanced video files did not specifically mention potential applications in radiographic images, X-rays, MRIs, etc. Regardless of whether these specific applications are supported, additional subject matter cannot be introduced to the prior-filed PCT applications unless additional patent applications are filed. Please advise if you would like us to file patent applications directed to these specific applications.

*IMAGE / and a video but we will process*

*opposite of what Blankley says*

We discussed the possibility that the provisional applications currently on file may not provide sufficient disclosure to support all of the claims we may eventually want to file in the PCT patent application we are currently preparing, and, therefore, the sale of images using this process in September, 1999 may bar patentability in some foreign countries. You instructed us to proceed with the PCT filing to preserve whichever foreign filing rights are available. ←

Accordingly, comments 1-5 will be incorporated in the above-referenced PCT patent application. If you have any further questions or comments, please do not hesitate to contact me.

Steve Becker  
Foley & Lardner  
(414)297-5571

*they being oppos on tape*

NOTE: The information transmitted in this correspondence is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you receive this correspondence in error, please contact the sender and delete the material from any computer.

CORRECTED VERSION - CORRECTED ON 5/14/2003  
Transcription of Telephone Conference  
Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

57103/115

**UNITED STATES PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

eliot  
Note

Missing inventor  
Rosario

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PLAYING  
A DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,297, filed June 3, 1999, U.S. Provisional Application No. 60/155,404, filed September 22, 1999, U.S. Provisional Application No. 60/169,559, filed December 8, 1999 and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video imaging. More specifically, the present invention relates to a system and method for providing high quality digital video files for streaming across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file first. A video player decompresses and plays the data as it is transferred to a user computer over the World-Wide Web. Streaming video avoids the delay entailed in downloading an entire file and then playing it with a plug-in application. Streaming video requires a communications connection (e.g., a network, Internet, etc.) and a computer powerful enough to execute the decompression algorithm in real time.

**EXHIBIT H**  
**US PATENT 09/587,026**



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov



Bib Data Sheet

<b>SERIAL NUMBER</b> 09/587,026	<b>FILING DATE</b> 06/05/2000 <b>RULE</b> -	<b>CLASS</b> 707	<b>GROUP ART UNIT</b> 2771	<b>ATTORNEY DOCKET NO.</b> 57103/115
------------------------------------	--	---------------------	-------------------------------	---

**APPLICANTS**

Eliot I. Bernstein, Boca Raton, FL ;  
 Zakirul A. Shirajee, Baco Raton, FL ;

**\*\* CONTINUING DATA \*\*\*\*\***

THIS APPLN CLAIMS BENEFIT OF 60/137,297 06/03/1999  
 WHICH CLAIMS BENEFIT OF 60/155,404 09/22/1999  
 WHICH CLAIMS BENEFIT OF 60/169,559 12/08/1999

**\*\* FOREIGN APPLICATIONS \*\*\*\*\***

**IF REQUIRED, FOREIGN FILING LICENSE GRANTED \*\* 08/04/2000**

**\*\* SMALL ENTITY \*\***

Foreign Priority claimed <input type="checkbox"/> yes <input type="checkbox"/> no	<b>STATE OR COUNTRY</b> FL	<b>SHEETS DRAWING</b> 3	<b>TOTAL CLAIMS</b> 26	<b>INDEPENDENT CLAIMS</b> 3
35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after Allowance				
Verified and Acknowledged	Examiner's Signature	Initials		

**ADDRESS**

Steven C Becker  
 Foley & Lardner  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee , WI 53202-5367

**TITLE**

System and method for playing a digital video file

<b>FILING FEE RECEIVED</b> 474	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees
		<input type="checkbox"/> 1.16 Fees ( Filing )
		<input type="checkbox"/> 1.17 Fees ( Processing Ext. of time )
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		<input type="checkbox"/> Other _____
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Serial No.: \_\_\_\_\_  
 Applicant: Bernstein et al.  
 Filing Date: \_\_\_\_\_  
 Title: System and Method for  
 Playing a Digital Video File

- Patent Application
- Drawing(s) 3 sheets (F) \_\_\_\_\_ (Inf.)
- Check \$ \_\_\_\_\_ No.: \_\_\_\_\_
- Declaration & Power of Attorney (Unexecuted)
- Extension of Time (duplicate)
- Preliminary Amendment
- Amendment
- Amendment After FINAL Rejection
- Issue Fee (Base and/or Balance)
- Letter to Official Draftsman
- Small Entity Statement
- Assignment/Fee & Form PTO No. 1585
- Trademark Application
- Form PTO No. 1449 & cited references
- Application Transmittal

3089  
 05/05/00  
 587026  
 U.S. PTO

DOCKET NO.: 57103/115 ATTY: SCB  
 DUE DATE: \_\_\_\_\_ 6/2/00

**FOREIGN FILING**  
**FFR 6** 05 DE 2000  
**FFR 9** 05 MR 2001  
**FFR 11** 05 MY 2001  
**FFD** 05 JE 2001  
**INITIALS** R **DATE** 6/9/00

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FOLEY & LARDNER  
777 E WISCONSIN AVE STE 3000  
MILWAUKEE WI 53202-5367  
Steven C. Becker  
57403/115

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System And Method For Playing  
 A Digital Video File  
 Appl. No.: Unknown  
 Filing Date: Unknown  
 Examiner: Unknown  
 Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231	
EL640468331US (Express Mail Label Number)	June 5, 2000 (Date of Deposit)
Shirley Miksa (Printed Name)	
<i>Shirley Miksa</i> (Signature)	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

**Eliot I. Bernstein**  
**Zakirul A. Shirajee**

eliot Note
Jude Rosario is missing

Enclosed are:

- [ X ] Specification, Claim(s), and Abstract (29 pages).
- [ X ] Informal drawings (3 sheets, Figures 1-3).
- [ X ] Unexecuted Declaration and Power of Attorney (4 pages).
- [ ] Assignment of the invention to lviewit.com, Inc..
- [ ] Assignment Recordation Cover Sheet.
- [ ] Check in the amount of \$40.00 for Assignment recordation.
- [ ] Small Entity statement.
- [ ] Information Disclosure Statement.
- [ ] Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

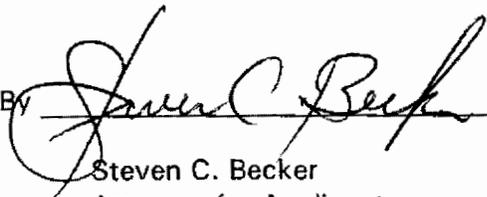
	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	26	- 20	= 6	x \$18.00	= \$108.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$798.00
[ ]	Small Entity Fees Apply (subtract 1/2 of above):				= \$0.00
	TOTAL FILING FEE:				= \$798.00

- [ ] A check in the amount of \$798.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/5/00

By   
 Steven C. Becker  
 Attorney for Applicant  
 Registration No. 42,308

FOLEY & LARDNER  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Playing A Digital Video File

---

(Attorney Docket No. 57103/115)

---

the specification of which (check one)

X  is attached hereto.

\_\_\_ was filed on \_\_\_\_\_ as United States Application Number or PCT International Application Number \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
FOLEY & LARDNER  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot J. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	
→ Date	

Name of second inventor

Zakirul A. Shirajee

Residence

Boca Raton, Florida

Citizenship

Bangladesh

Post Office Address

9485 Boca Cove Circle, #708, Boca Raton, Florida  
33428

→ Inventor's signature

→ Date

57103/115

**UNITED STATES PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PLAYING  
A DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,297, filed June 3, 1999, U.S. Provisional Application No. 60/155,404, filed September 22, 1999, U.S. Provisional Application No. 60/169,559, filed December 8, 1999 and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video imaging. More specifically, the present invention relates to a system and method for providing high quality digital video files for streaming across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file first. A video player decompresses and plays the data as it is transferred to a user computer over the World-Wide Web. Streaming video avoids the delay entailed in downloading an entire file and then playing it with a plug-in application. Streaming video requires a communications connection (e.g., a network, Internet, etc.) and a computer powerful enough to execute the decompression algorithm in real time.

# FOLEY & LARDNER

ATTORNEYS AT LAW

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JACKSONVILLE  
LOS ANGELES  
MADISON  
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ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5387  
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sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000



Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Patent Application  
Title: System And  
Inventor(s): Bernste  
Our Ref.: 57103/11

eliot Note
This sent months after filing for review by inventors of first draft? Dicks VA Bar response said all inventors had time to review and sign.

Review of Drafting a Digital Video File

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000 as Application No. 09/587,026. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their duty to disclose to the U.S. Patent and Trademark Office any information of which they are

ESTABLISHED 1842

A MEMBER OF GLOBALLEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
July 27, 2000  
Page 2

aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Iviewit Holdings, Inc. by assigning all their rights in the invention to the company.

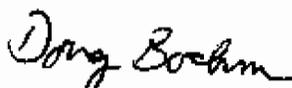
After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

eliot Note
No copies to anyone at Company or inventors

Very truly yours,

  
Douglas A. Boehm

Enclosure(s)

## FORMALITIES LETTER

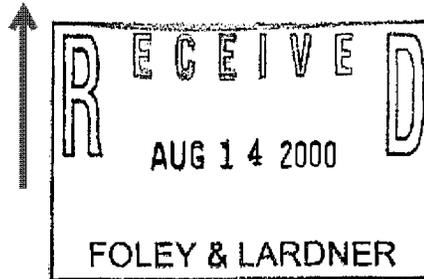


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Patent and Trademark OfficeAddress: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,026	06/05/2000	Eliot I. Bernstein	57103/115

Steven C Becker  
Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367



Date Mailed: 08/04/2000

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$108.  
  - \$108 for 6 total claims over 20.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 928.

*A copy of this notice MUST be returned with the reply.*

*D. Bell FY*

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Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**NOTICE  
MISSING PARTS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System and Method for Playing a Digital Video File  
 Appl. No.: 09/587,026  
 Filing Date: 6/05/2000  
 Examiner: N/A  
 Art Unit: 2771

<p><b>CERTIFICATE OF MAILING</b>          I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.</p> <p style="text-align: center;"><u>Karen Meier</u> (Printed Name)</p> <p style="text-align: center;"><i>Karen Meier</i> (Signature)</p> <p style="text-align: center;"><u>October 3, 2000</u> (Date of Deposit)</p>
---

**TRANSMITTAL OF MISSING PARTS OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

eliot Note
These are signed on July 31 and sent on 10/3/00???

Sir:

In response to the Notice to File Missing Parts of Application mailed on August 4, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- ➔  Declaration and Power of Attorney (4 pages) enclosed
- Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533)
- Applicant is entitled to Small Entity status
- Check in the amount of \$474.00 in payment of \$355.00 Basic filing fee, \$54.00 additional total claims fee, \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Playing A Digital Video File

(Attorney Docket No. 57103/115)

the specification of which (check one)

     is attached hereto.

  x   was filed on June 5, 2000 as United States Application Number 09/587,026.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15406	June 2, 2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

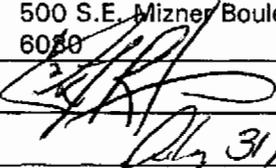
and I request that all correspondence be directed to:

Steven C. Becker  
**FOLEY & LARDNER**  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

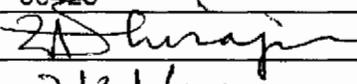
I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
Inventor's signature	
Date	July 31, 2000

→

eliot 3/21/2004 7:41:37 PM  
 Note  
 Two months after filing.

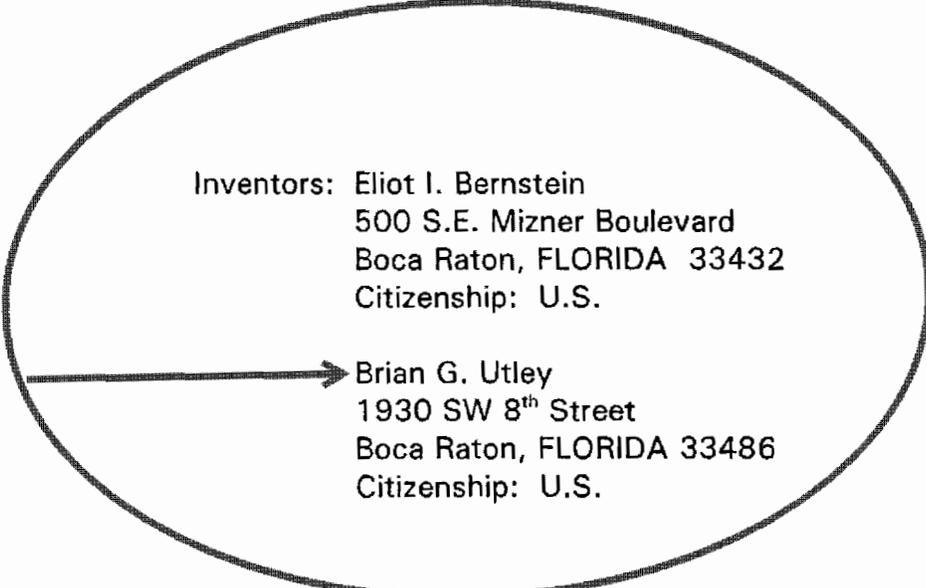
Name of second inventor	Zakirul A. Shirajee
Residence	Boca Raton, Florida
Citizenship	Bangladesh
Post Office Address	9485 Boca Cove Circle, #708, Boca Raton, Florida 33428
Inventor's signature	
Date	7/31/00



**U.S. PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**



Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.

→ Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

## SYSTEM AND METHOD FOR PROVIDING AN ENHANCED DIGITAL IMAGE FILE

### CROSS-REFERENCE TO RELATED APPLICATIONS

The present application is a continuation-in-part of U.S. Patent Application No. 09/522,721, filed March 10, 2000, which claims the benefit of priority from U.S. Provisional Application No. 60/125,824, filed March 24, 1999. The present application also  
5 claims the benefit of priority from U.S. Provisional Application Nos. 60/146,726, filed August 2, 1999, 60/149,737, filed August 19, 1999, 60/155,404, filed September 22, 1999, and 60/169,559, filed December 8, 1999.

### 10 FIELD OF THE INVENTION

The present invention is directed to a system and a method for producing enhanced digital images and, in particular, to a system and a method for producing enhanced digital images having improved resolution for zooming and/or panning within a single file.

### 15 BACKGROUND OF THE INVENTION

In the field of digital imaging, the primary design challenge is that the viewer desires ideal image quality delivered to the viewer's display system. In a limited-bandwidth network, such as the Internet, it is important to transfer the image data in a  
20 reasonable amount of time. However, ideal image quality requires an enormous amount of digital data. Today's networks are not capable of transferring an ideal digital image in a reasonable time.

It is known that one can view a digital image on a display screen and "zoom" (i.e., magnify a portion of an image and

**EXHIBIT H**  
**US PATENT 09/630,939**



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Bernstein	57103/121

Douglas A Boehm  
Foley & Lardner  
Firstar Cneter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

eliot Note
No signature for Bernstein exists. Bernstein never invented anything with Utley.

↑  
**FORMALITIES LETTER**



Date Mailed: 09/29/2000

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

*Filing Date Granted*

MP  
RESPONSE DUE 29 NOV 2000  
DECL FEE

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- • The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice MUST be returned with the reply.*

*Kim Duncan*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

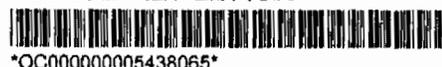
PART 1 - ATTORNEY/APPLICANT COPY


**UNITED STATES PATENT AND TRADEMARK OFFICE**

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 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Bernstein	57103/121

Douglas A Boehm  
 Foley & Lardner  
 Firststar Cneter  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**


\*OC000000005438065\*

Date Mailed: 09/29/2000

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(b)**
*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- • The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 130.**

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

**PART 2 - COPY TO BE RETURNED WITH RESPONSE**



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/630,939	08/02/2000	2722	906	57103/121	7	32	3

Douglas A Boehm  
Foley & Lardner  
Firststar Cnter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

5889

FILING RECEIPT



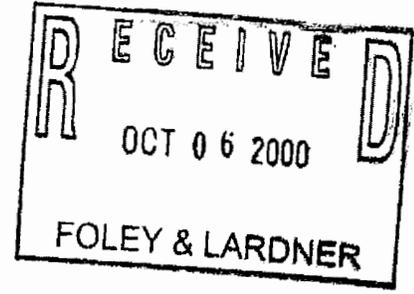
\*OC000000005438064\*

Date Mailed: 09/29/2000

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Eliot I. Bernstein, Boca Roton, FL ;  
Brian G. Utley, Boca Roton, FL ;



Continuing Data as Claimed by Applicant

Foreign Applications

If Required, Foreign Filing License Granted 09/28/2000

Title

System and method for providing an enhanced digital image file

Preliminary Class

358

Data entry by : DUNCAN, KIMBERELY      Team : OIPE      Date: 09/29/2000



**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

**PLEASE NOTE the following information about the Filing Receipt:**

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, DC 20231



Title: System and Method for Providing an Enhanced Digital Image File

Inventor(s): Bernstein et al.

Appl. No.: Unknown

Dkt. No. 57103/121

DABO (8/2/00)

- Transmittal of Patent Application (2 pgs.);
- Patent Application Specification (26 pgs.); 30
- Informal Drawings (7 sheets; Figures 1-7);
- Check Number #511344 for \$888.00.

Assistant Commissioner for Patents:  
Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

<b>FOREIGN FILING</b>	
<b>FFR 6</b>	<u>02FE 2001</u>
<b>FFR 9</b>	<u>02MY 2001</u>
<b>FFR 11</b>	<u>02JL 2001</u>
<b>FFD</b>	<u>02AU 2001</u>
<b>INITIALS</b>	<u>DATE</u> 8/16/00

IDS DUE 02NO2000

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TO ADDRESSEE**



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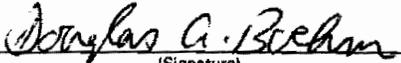
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**FROM: (PLEASE PRINT)**  
Douglas A. Boehm  
FOLEY & LARDNER  
777 S WISCONSIN AVE STE 3000  
MILWAUKEE WI 53204-5367  
57103/121

**TO: (PLEASE PRINT)**  
Assistant Commissioner of Patents  
Box Patent Application  
Washington, D.C. 20231

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System and Method for Providing  
 an Enhanced Digital Image File  
 Appl. No.: Unknown  
 Filing Date: Unknown  
 Examiner: Unknown  
 Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL470736521US <small>(Express Mail Label Number)</small>	8/2/00 <small>(Date of Deposit)</small>
Douglas A. Boehm <small>(Printed Name)</small>	
 <small>(Signature)</small>	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Brian G. Utley

Enclosed are:

- Specification, Claim(s), and Abstract (30 pages).
- Informal drawings (7 sheets, Figures 1-7).
- Unexecuted Declaration and Power of Attorney ( 4 pages).
- Assignment of the invention to lviewit.com, Inc..
- Assignment Recordation Cover Sheet.
- Check in the amount of \$40.00 for Assignment recordation.
- Small Entity statement.
- Information Disclosure Statement.
- Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	31	- 20	= 11	x \$18.00	= \$198.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$0.00	= \$0.00
				SUBTOTAL:	= \$888.00
[ ]				Small Entity Fees Apply (subtract 1/2 of above):	= \$0.00
				TOTAL FILING FEE:	= \$888.00

- A check in the amount of \$888.00 to cover the filing fee is enclosed.
- The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 8/2/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

**U.S. PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System and Method for Providing an Enhanced Digital Image File

(Attorney Docket No. 57103/121)

the specification of which (check one)

  X   is attached hereto.

       was filed on        as United States Application Number or PCT International Application Number        and was amended on        (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/125,824	3/24/1999
60/146,726	8/2/1999
60/149,737	8/19/1999
60/155,404	9/22/1999
60/169,559	12/8/1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
09/522,721		3/10/2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014



Name of second inventor	Brian G. Utley
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	1930 S.W. 8th Street, Boca Raton, Florida 33486
Inventor's signature	
Date	





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Berstein	57103/121

Douglas A Boehm  
Foley & Lardner  
Firststar Cneter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

FORMALITIES LETTER



\*OC000000005438065\*

Date Mailed: 09/29/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

MP  
filed 09/29/2000  
DCL/ite

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

- The balance due by applicant is \$ 130.

A copy of this notice **MUST** be returned with the reply.

*Kim Duncan*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

Atty. Dkt. No. 57103/121

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System and Method for Providing an Enhanced Digital Image File

(Attorney Docket No. 57103/121)

the specification of which (check one)

is attached hereto.

was filed on 8/2/2000 as United States Application Number or PCT International Application Number 09/630,939 and was amended on \_\_\_\_\_ (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

Atty. Dkt. No. 57103/121

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/125,824	3/24/1999
60/146,726	8/2/1999
60/149,737	8/19/1999
60/165,404	9/22/1999
60/169,659	12/8/1999

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
09/522,721		3/10/2000	

Atty. Dkt. No. 57103/121

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
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ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Douglas A. Boehm  
 FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

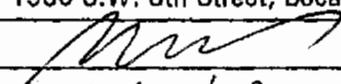
Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Atty. Dkt. No. 57103/121

Name of first inventor Eliot I. Bernstein  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_

Name of second inventor Brian G. Utley  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 1930 S.W. 8th Street, Boca Raton, Florida 33486  
Inventor's signature   
Date  12/29/00

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System and Method for Providing an Enhanced Digital Image File

(Attorney Docket No. 57103/121)

the specification of which (check one)

     is attached hereto.

  X   was filed on 8/2/2000 as United States Application Number or PCT International Application Number 09/630,939 and was amended on          (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

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THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

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60/169,569	12/8/1999

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U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
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ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,866
KEITH D. LINDENBAUM	Reg. No. 40,366
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 36,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Douglas A. Boehm  
FOLEY & LARDNER  
Firestar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

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I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Atty. Dkt. No. 57103/121

Name of first inventor Eliot I. Bernstein  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432  
 Inventor's signature *[Signature]*  
 Date 12/29/00

Name of second inventor Brian G. Utley  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 1930 S.W. 8th Street, Boca Raton, Florida 33486  
 Inventor's signature *[Signature]*  
 Date 12/29/00



eliot	3/20/2004 1:45:47 AM
Note	
This signature could have been taken from an any application that I saw and then switched.	

Our Ref.: 005707.P019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: )  
 )  
 Eliot I. Bernstein and Brian Utley )  
 )  
 Serial No.: 09/630,939 )  
 )  
 Filed: 08/02/00 )  
 )  
 For: SYSTEM AND METHOD FOR PROVIDING AN )  
 ENHANCED DIGITAL IMAGE FILE )  
 )  
 )

Art Unit:  
Examiner:

REVOCATION AND POWER OF ATTORNEY

The Hon. Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

The Applicant of the above-identified Application, hereby revokes all previous powers of attorney given in this Application, and appoints the firm of:

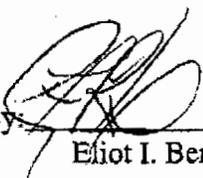
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, a firm including: William E. Alford, Reg. No. 37,764; Farzad E. Amini, Reg. No. 42,261; William Thomas Babbitt, Reg. No. 39,591; Carol F. Barry, Reg. No. 41,600; Jordan Michael Becker, Reg. No. 39,602; Lisa N. Benado, Reg. No. 39,995; Bradley J. Berezna, Reg. No. 33,474; Michael A. Bernadicou, Reg. No. 35,934; Roger W. Blakely, Jr., Reg. No. 25,831; R. Alan Burnett, Reg. No. 46,149; Gregory D. Caldwell, Reg. No. 39,926; Andrew C. Chen, Reg. No. 43,544; Jae-Hee Choi, Reg. No. 45,288; Thomas M. Coester, Reg. No. 39,637; Robert P. Cogan, Reg. No. 25,049; Donna Jo Coningsby, Reg. No. 41,684; Florin A. Corie, Reg. No. 46,244; Dennis M. deGuzman, Reg. No. 41,702; Stephen M. De Klerk, Reg. No. P46,503; Michael Anthony DeSanctis, Reg. No. 39,957; Daniel M. De Vos, Reg. No. 37,813; Justin M. Dillon, Reg. No. 42,486; Sanjeet Dutta, Reg. No. P46,145; Matthew C. Fagan, Reg. No. 37,542; Tarek N. Fahmi, Reg. No. 41,402; Mark C. Farrell, Reg. No. 45,988; George Fountain, Reg. No. 36,374; James Y. Go, Reg. No. 40,621; James A. Henry, Reg. No. 41,064; Willmore F. Holbrow III, Reg. No. 41,845; Sheryl Sue Holloway, Reg. No. 37,850; George W Hoover II, Reg. No. 32,992; Eric S. Hyman, Reg. No. 30,139; William W. Kidd, Reg. No. 31,772; Sang Hui Kim, Reg. No. 40,450; Walter T. Kim, Reg. No. 42,731; Eric T. King,

Reg. No. 44,188; Steven Laut, Reg. No. 47,736; George Brian Leavell, Reg. No. 45,436; Samuel S. Lee, Reg. No. 42,791; Gordon R. Lindeen III, Reg. No. 33,192; Jan Carol Little, Reg. No. 41,181; Robert G. Litts, Reg. No. 46,876; Julio Loza, Reg. No. 47,758; Joseph Lutz, Reg. No. 43,765; Lawrence Lycke, Reg. No. 38,540; Michael J. Mallie, Reg. No. 36,591; Andre L. Marais, under 37 C.F.R. § 10.9(b); Raul D. Martinez, Reg. No. 46,904; Paul A. Mendonsa, Reg. No. 42,879; Clive D. Menezes, Reg. No. 45,493; Chun M. Ng, Reg. No. 36,878; Thien T. Nguyen, Reg. No. 43,835; Thinh V. Nguyen, Reg. No. 42,034; Daniel E. Ovanezian, Reg. No. 41,236; Kenneth B. Paley, Reg. No. 38,989; Gregg A. Peacock, Reg. No. 45,001; Marina Portnova, Reg. No. P45,750; Michael A. Proksch, Reg. No. 43,021; Randol W. Read, Reg. No. 43,876; William F. Ryann, Reg. 44,313; James H. Salter, Reg. No. 35,668; William W. Schaal, Reg. No. 39,018; James C. Scheller, Reg. No. 31,195; Jeffrey S. Schubert, Reg. No. 43,098; George Simion, Reg. No. P47,089; Maria McCormack Sobrino, Reg. No. 31,639; Stanley W. Sokoloff, Reg. No. 25,128; Edwin H. Taylor, Reg. No. 25,129; Lance A. Termes, Reg. No. 43,184; John F. Travis, Reg. No. 43,203; Joseph A. Twarowski, Reg. No. 42,191; Kerry D. Tweet, Reg. No. 45,959; Mark C. Van Ness, Reg. No. 39,865; Thomas A. Van Zandt, Reg. No. 43,219; Lester J. Vincent, Reg. No. 31,460; Glenn E. Von Tersch, Reg. No. 41,364; John Patrick Ward, Reg. No. 40,216; Mark L. Watson, Reg. No. P46,322; Thomas C. Webster, Reg. No. P46,154; and Norman Zafman, Reg. No. 26,250; my patent attorneys, and Firasat Ali, Reg. No. 45,715; and Richard A. Nakashima, Reg. No. 42,023; my patent agents, of BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, with offices located at 12400 Wilshire Boulevard, 7th Floor, Los Angeles, California 90025, telephone (310) 207-3800, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Please direct all communications concerning this Application to:

Thomas M. Coester, Esq.  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 12400 Wilshire Boulevard, Seventh Floor  
 Los Angeles, CA 90025  
 (310) 207-3800

Date: July 27, 2001

By:   
 Eliot I. Bernstein

Date: \_\_\_\_\_

By: \_\_\_\_\_



*[Handwritten Signature]*  
Brian Utley, by Eliot Bernstein, his attorney-in-fact

*[Handwritten Signature]*  
Attorney  
in fact

eliot	3/20/2004 2:03:31 AM
Note	
Bernstein signs to remove Utley from patent with counsel BSZT	

57103/116

**UNITED STATES PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR PROVIDING**  
**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486  
Citizenship: U.S.

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

FOLEY & LARDNER

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999,  
and PCT International Application No. \_\_\_\_\_, filed June 2,  
2000.

FIELD OF THE INVENTION

The present invention relates generally to video  
10 imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
15 in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A video player decompresses and plays  
the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
20 video requires a communications connection (e.g., a network,  
Internet, etc.) and a computer powerful enough to execute the  
decompression algorithm in real time.

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5387  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D. C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot 3/21/2004 9:19:24 AM  
Oval

Sent two months after filing for inventor review, this contradicts statements to VA Bar that inventors had time to review and change applications.

Re: U.S. Patent Application  
Title: System And Method For Providing An Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/116

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000 as Application No. 09/587,734. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their

ESTABLISHED 1842

A MEMBER OF GLOBALVIA WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley

July 27, 2000

Page 2

duty to disclose to the U.S. Patent and Trademark Office any information of which they are aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

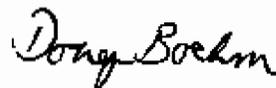
Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Ivivewit Holdings, Inc. by assigning all their rights in the invention to the company.

After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm

Enclosure(s)



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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Berstein	57103/121

CONFIRMATION NO. 8688

FORMALITIES LETTER



\*OC00000005438065\*

Thomas M. Coester, Esq.  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 Seventh Floor  
 12400 Wilshire Boulevard  
 Los Angeles, CA 90025

Date Mailed: 08/30/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

eliot Oval 3/20/2004 2:24:44 AM

1 year after filing and 5 months after supposedly signing an oath for Foley, the Oath is still missing???

An application number and filing date have been accorded to this application, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice MUST be returned with the reply.*

Thank You

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Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**EXHIBIT H**  
**PCT US 00 15602**

1 training that you've had or maybe you -- you did 113

2 indicate that you had any degree in mathematics.

3 Is that something that you have some experience

4 from from some other portion of your employment

5 or background?

6 A. I have training and experience in

7 mathematics.

8 Q. I'm sorry.

9 A. I say I have training and experience

10 in mathematics.

11 Q. How about in the scaling video

12 invention; is that part of what you've already

13 described?

14 A. That is readily derived from a

15 mathematical background.

16 Q. How about the remote control video

17 applications?

18 A. That's different.

19 Q. Okay. Now going back to --

20 A. What --

21 Q. -- the patent dealing specifically

22 with remote control applications.

23 A. What I did there was I established

24 the fact that the design point that Elicot had

25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Elliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

\* \* \* COMMUNICATION RESULT REPORT ( JUN. 6.2000 3:51PM ) \* \* \*

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FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
923 MEMORY TX		1963#057103#0101#15619998810#	OK	P. 32/32

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## FACSIMILE TRANSMISSION



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TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
Sender's Direct Dial: (414)297-5571  
Date: June 6, 2000  
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# FOLEY & LARDNER

eliot 3/20/2004 5:21:27 PM  
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eliot  
 Note  
 Day before filing and we are getting 1st draft? Dick's VA Bar response says inventors had time to review. There are several apps claimed to be done this way.

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*Via Facsimile*  
 June 6, 2000

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Mr. Brian G. Utley  
 President  
 Iviewit.com, Inc.  
 One Boca Place  
 2255 Glades Road, Suite 337 West  
 Boca Raton, Florida 33431

Re: PCT International Patent Application  
 Title: System and Method for Video Playback Over a Network  
 Inventor(s): Bernstein et al.  
 Our Ref.: 57103/117

Dear Brian:

Enclosed please find the first draft of the above-referenced patent application (last page marked 001.793381.1), which has been prepared in accordance with the previously filed U.S. provisional patent applications (MLG Docket Nos. 5865-4 and 5865-4.1). As you know, a careful and critical review of this draft application by you and the inventors is imperative to ensure that the you are all satisfied with the content of the application and the proposed claim scope.

I note that Jeff Friedstein is named as a co-inventor on this application pursuant to Eliot Bernstein's instructions. Accordingly, Jeff must review a draft of the application before filing.

I also note that the deadline for filing this application in order to claim priority to all related provisional applications is Wednesday, June 7, 2000. Therefore, we must receive your comments as soon as possible.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

Mr. Brian G. Utley  
June 6, 2000  
Page 2

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application No. 60/137,921, filed June 7, 1999 (MLG Docket No. 5865-4) and U.S. Provisional Patent Application No. 60/141,440, filed June 29, 1999 (MLG Docket No. 5865-4.1).

You and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the two above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

During the review, please keep in mind that independent claims 1, 12, 19, 24, 31, and 38 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

Please have the inventors mark the appropriate changes on this copy of the application, make a copy of the changes, and return the hand-corrected copy to me via facsimile. A revised application incorporating the changes will then be submitted to you for your approval. We will handle execution of the formal papers at a later date.

Pursuant to your instructions, to preserve foreign filing options, I plan to designate all of the countries for filing under the PCT (see attached list of PCT Contracting States). Note, however, that not all foreign countries are members of the PCT (e.g., Taiwan), so to maintain the benefit of priority to the U.S. applications, we would have to file foreign national applications immediately in those non-PCT countries. This would require up-front translation costs and sufficient time for our foreign associates to prepare and file the applications before June 7, 2000. It is my understanding that you DO NOT want us to file in any countries other than those that are members of the PCT. Please let me know IMMEDIATELY if this understanding is not correct.

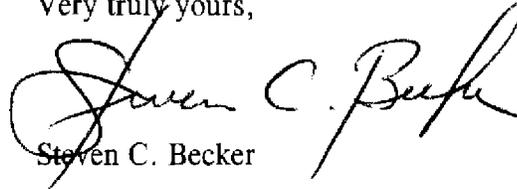
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Line

The Company is not in possession of these records or hand corrected copies and Foley claims to have retained no records of the files in the VA Bar Response.

Mr. Brian G. Utley  
June 6, 2000  
Page 3

If you or the inventors have any questions, please do not hesitate to contact me.  
I look forward to receiving at least your preliminary comments on the application by  
tomorrow.

Very truly yours,



Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

eibt Note	3/20/2004 5:18:41 PM
No carbon copies to anyone.	

Strange that Foley starts suddenly putting all these disclaimers regarding inventors.

PC 11 Application Form Application Control

Screen and Method for Video Playback Over a Network

Inventor(s): Bernstein, et al.

## INVENTOR INFORMATION SHEET

### Sections of a Utility Patent Application

- Background of the Invention

The Background of the Invention describes the technology that existed before your invention, i.e., the “prior art”. This section typically discusses how the need for your invention arose, describes how others attempted to satisfy that need prior to the time of your invention, and points out the deficiencies of the prior art in meeting that need. If you aware of any other prior art that should be mentioned in this background section, please supplement this section and forward any literature that you might have to me.

- Summary of the Invention

The Summary of the Invention section is merely a brief paraphrasing of the basic claims, along with a statement of the objectives and advantages of the present invention.

- Brief Description of the Drawings

The Brief Description of the Drawings is merely a listing of the figures, and should be self-explanatory.

- Detailed Description of the Preferred Embodiments

The Detailed Description of the Preferred Embodiments section should provide a full, clear, and concise description of your invention so that any person skilled in the art could make or use the invention. Furthermore, the application must describe the “best mode” contemplated by the inventor(s) for carrying out the invention. In order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret.

- Claims

The claims are the most important part of the patent application. They precisely define the invention and determine the scope of legal protection granted by the patent. The claims must particularly point out and distinctly claim the invention. The claimed subject matter must be distinguishable over that which the prior art suggests to those skilled in this field. Accordingly, the claims should be scrutinized with a view toward protecting your precise

invention and those concepts which could be considered an outgrowth of it, yet not encompassing knowledge from the prior art or obvious extensions thereof. In other words, the scope of the claims must be broad enough to provide that patent protection to which you are entitled, yet narrow enough to be distinguishable over the prior art. The terminology of the claims must be adequately supported by the description contained in the specification. Please keep in mind that all dependent claims, which are identifiable by the phrase "according to claim x" or "of claim x", are interpreted as containing all of the limitations of the other claims which are referred to by that dependent claim. Thus, the independent claims are the broadest statement of your invention, and the dependent claims provide additional limitations to narrow the scope of your invention. Although the inventive concepts of each set of independent claims are interrelated, please keep in mind that they must be critically distinguished from each other. Each set of claims must stand on its own merit.

- **Abstract of the Disclosure**

The Abstract of the Disclosure section is a very brief description of what the application generally discloses.

- **Drawings**

The Drawings section should be self-explanatory.

### Duty of Disclosure

All individuals associated with the filing or prosecution of a patent application are under a duty of candor and good faith to the U.S. Patent and Trademark Office. This duty specifically includes a duty to disclose any information known to be material to the patentability of any claim of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Pursuant to this duty of disclosure, we will file an Information Disclosure Statement with the U.S. application listing the patent documents found in any prior art searches, as well as any technical articles mentioned in the disclosure materials. Accordingly, if any additional information relevant to your invention should come to your attention at any time before issuance of the patent, please immediately let us know so we can either include it in the Information Disclosure Statement or submit a Supplemental Information Disclosure Statement.

### Inventorship

The proper inventors would be those people who contributed to the subject matter of the invention as defined in the claims of the application. There may be joint

inventors even though they did not physically work together or at the same time, did not make the same type or amount of contribution, or did not make a contribution to the subject matter of every claim in the patent. It is our understanding that the above-identified persons are to be named as co-inventors of this application. If this is not accurate, please call us to discuss the conception and development of each of the different embodiments of the invention, so that we will be able to confirm your determination of proper inventorship before filing the application.

Foley & Lardner

## PCT CONTRACTING STATES AND TWO-LETTER CODES

(108 on 1 May 2000)

AE United Arab Emirates	GD Grenada	MR Mauritania (OA)
AG Antigua and Barbuda	GE Georgia	MW Malawi (AP)
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FR France (EP)	ML Mali (OA)	ZW Zimbabwe (AP)
GA Gabon (OA)	MN Mongolia	
GB United Kingdom (EP)		

57103/117



PCT INTERNATIONAL <sup>AL</sup> PATENT APPLICATION

for

**SYSTEM AND METHOD FOR VIDEO PLAYBACK  
OVER A NETWORK**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

## TITLE OF THE INVENTION

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

## CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

## 5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

## 10 BACKGROUND OF THE INVENTION

The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of  
15 video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

20 The Internet marketplace is demanding enhanced resolution and high definition streaming video and precise representations of video images, objects, and events. Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file

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# FOLEY & LARDNER

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sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
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June 6, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Video Playback Over a Network  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/117

Dear Brian:

Enclosed please find a first draft of the claims of the above-referenced patent application, which have been prepared in accordance with oral disclosure provided to us by Eliot Bernstein yesterday and further in accordance with two former provisional applications (i.e., old docket numbers 5865-4 and 5865-4.1). As you know, a careful and critical review of these claims by you and the inventors is imperative to ensure that the you are all satisfied with the proposed claim scope.

Eliot has informed us that Jeff Friedstein is to be named as a co-inventor of this invention. Accordingly, please provide a copy of these claims and these instructions to Jeff at your earliest opportunity.

During the review, please keep in mind that independent claims 1, 12, 19, 24, 31, and 38 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

If you need any assistance in reviewing the claims, please feel free to contact me.

ESTABLISHED 184

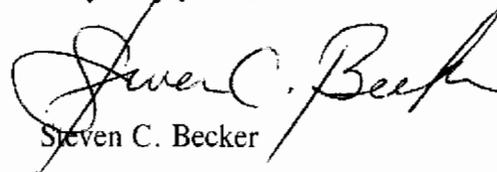
A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

FOLEY & LARDNER

Mr. Brian G. Utley  
June 6, 2000  
Page 2

We are currently drafting the corresponding specification for this application and will forward this to you for your review as soon as possible.

Very truly yours,



Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

Missing cover page with inventors listed on it

WHAT IS CLAIMED IS:

- 1           1.     A system for video playback over a network,  
2 comprising:  
3                 a video playback device configured to transmit a video  
4 signal from a non-volatile storage medium; and  
5                 a computer coupled to the video playback device  
6 configured to receive the video signal and to transmit the video  
7 signal over a network.
- 1           2.     The system of claim 1, further comprising a capture  
2 device coupled between the video playback device and the  
3 computer, the capture device configured to receive the video signal  
4 and to generate a digital video signal based on the video signal.
- 1           3.     The system of claim 2, wherein the computer utilizes  
2 video conferencing software to receive the digital video signal, to  
3 perform at least one processing step thereon, and to provide the  
4 digital video signal over the network.
- 1           4.     The system of claim 3, wherein the processing step  
2 includes configuring the digital video signal for full screen display on  
3 a user computer.
- 1           5.     The system of claim 4, wherein the capture device is  
2 configured to capture the video signal at a full screen size.
- 1           6.     The system of claim 1, wherein the network includes  
2 the Internet.

\* \* \* COMMUNICATION RESULT REPORT ( JUN. 7. 2000 9:39AM ) \* \* \*

TTI FOLEY LARDNER X7191

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
5630 MEMORY TX		G3-F : 1963#057103#0101#14152910288#	OK	32/32

117,118

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<b>From:</b> Steve Becker
<b>Sender's Direct Dial:</b> (414) 297-5571
<b>Date:</b> June 7, 2000
<b>Client/Matter No:</b> 057103/0101 (0118)
<b>User ID No:</b> 1963

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*Via Facsimile*

WRITER'S DIRECT LINE  
(414) 297-5571

June 6, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Video Playback Over a Network  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/117

Dear Brian:

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Mr. Brian G. Utley  
June 6, 2000  
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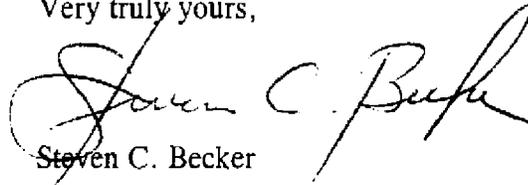
Mr. Brian G. Utley

June 6, 2000

Page 3

If you or the inventors have any questions, please do not hesitate to contact me. I look forward to receiving at least your preliminary comments on the application by tomorrow.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven C. Becker". The signature is fluid and cursive, with the first name "Steven" being the most prominent.

Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

PCT International Patent Application entitled  
**System and Method for Video Playback Over a Network**  
Inventor(s): Bernstein, et al.

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GB United Kingdom (EP)		

57103/118



**PCT INTERNATIONAL PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR VIDEO PLAYBACK**

**OVER A NETWORK**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/117



TITLE OF THE INVENTION

eliot	3/22/2004 3:03:34 AM
Note	
The first page now states 118 and the rest is 117.	

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

10 BACKGROUND OF THE INVENTION

The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

20 The Internet marketplace is demanding enhanced resolution and high definition streaming video and precise representations of video images, objects, and events. Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file

eliot  
Note

No fax header like the other ones!!

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MILWAUKEE, WISCONSIN 53202-5367  
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117,  
~~117~~ 118

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Jeff Friedstein	(847) 831-1360	(877) 852-0690

**From:** Steve Becker  
**Sender's Direct Dial:** (414) 297-5571  
**Date:** June 7, 2000  
**Client/Matter No:** 057103/0101 (0118)  
**User ID No:** 1963

**MESSAGE:**

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sbecker@foleylaw.com

*Via Facsimile*

WRITER'S DIRECT LINE  
(414) 297-5571

June 6, 2000

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Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

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ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
June 6, 2000  
Page 2

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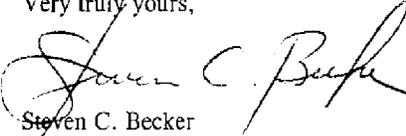
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CN China	LK Sri Lanka	TJ Tajikistan (EA)
CR Costa Rica	LR Liberia	TM Turkmenistan (EA)
CU Cuba	LS Lesotho (AP)	TR Turkey
CY Cyprus (EP)	LT Lithuania 1	TT Trinidad and Tobago
CZ Czech Republic	LU Luxembourg (EP)	TZ United Republic of
DE Germany (EP)	LV Latvia 1	Tanzania (AP)
DK Denmark (EP)	MA Morocco	UA Ukraine
DM Dominica	MC Monaco (EP)	UG Uganda (AP)
DZ Algeria	MD Republic of Moldova	US United States of
EE Estonia	(EA)	America
ES Spain (EP)	MG Madagascar	UZ Uzbekistan
FI Finland (EP)	MK The former Yugoslav	VN Viet Nam
FR France (EP)	Republic of Macedonia	YU Yugoslavia
GA Gabon (OA)	ML Mali (OA)	ZA South Africa
GB United Kingdom (EP)	MN Mongolia	ZW Zimbabwe (AP)

57103/118



**PCT INTERNATIONAL PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR VIDEO PLAYBACK**  
**OVER A NETWORK**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

↑  
TITLE OF THE INVENTION

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

10 BACKGROUND OF THE INVENTION

The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

20 The Internet marketplace is demanding enhanced resolution and high definition streaming video and precise representations of video images, objects, and events. Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file

**PCT INTERNATIONAL PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR**  
**VIDEO PLAYBACK OVER A NETWORK**

International Application No.: PCT/US00/\_\_\_\_\_  
International Filing Date: June 2, 2000

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

→ Brian G. Uitley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TRANSMITTED LETTER TO THE UNITED STATES  
RECEIVING OFFICE

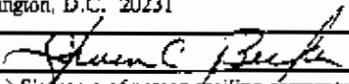
Date	07 June 2000
International Application No.	Not yet available
Attorney Docket No.	57103/118 ←

I. Certification under 37 CFR 1.10 (if applicable)

EL 640468305 US
Express Mail mailing number

07 June 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231


Signature of person mailing correspondence

Steven C. Becker
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
-------	---

Earliest priority date (Day/Month/Year)
07 June 1999

**SCREENING DISCLOSURE INFORMATION:** In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.	60/137,921	application no.	60/141,440
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Comments on the Amendments to the Abstract by the ISA/US under Rule 38. The following document(s) is(are) enclosed:

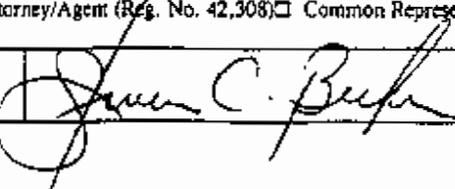
- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  A Power of Attorney (General or Regular)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages		of the figures
pages		of the description	pages		of the abstract
pages		of the claims			

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette
- V.  Other (please identify): PCT-EASY Diskette; Fee Calculation Sheet; and Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 42,308)  Common Representative

Typed name of signer	Steven C. Becker	Signature	
----------------------	------------------	-----------	--

## PCT REQUEST

57103/118

Original (for SUBMISSION) - printed on 07.05.2000 07:16:34 PM

0	For receiving Office use only	
0-1	International Application No.	
0-2	International Filing Date	
0-3	Name of receiving Office and "PCT International Application"	
0-4	Form - PCT/RO/101 PCT Request Prepared using	PCT-EASY Version 2.90 (updated 10.05.2000)
0-5	Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty	
0-6	Receiving Office (specified by the applicant)	United States Patent and Trademark Office (USPTO) (RO/US)
0-7	Applicant's or agent's file reference	57103/118
I	Title of Invention	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
II	Applicant	
II-1	This person is:	applicant only
II-2	Applicant for	all designated States except US
II-4	Name	IVIEWIT HOLDINGS, INC.
II-5	Address:	One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America
II-6	State of nationality	US
II-7	State of residence	US
II-8	Telephone No.	561 999 8899
II-9	Facsimile No.	561 999 8810
III-1	Applicant and/or inventor	
III-1-1	This person is:	applicant and inventor
III-1-2	Applicant for	US only
III-1-4	Name (LAST, First)	BERNSTEIN, Eliot, I.
III-1-5	Address:	500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 United States of America
III-1-6	State of nationality	US
III-1-7	State of residence	US

## PCT REQUEST

571031118

Original (for SUBMISSION) - printed on 07.06.2000 07:16:34 PM

III-2	<b>Applicant and/or inventor</b>	
III-2-1	This person is:	applicant and inventor
III-2-2	Applicant for	US only
III-2-4	Name (LAST, First)	FRIEDSTEIN, Jeffrey, S.
III-2-5	Address:	2142 Churchill Lane
		Highland Park, IL 60035
		United States of America
III-2-6	State of nationality	US
III-2-7	State of residence	US
III-3	<b>Applicant and/or inventor</b>	
III-3-1	This person is:	applicant and inventor
III-3-2	Applicant for	US only
III-3-4	Name (LAST, First)	UTLEY, Brian, G.
III-3-5	Address:	1930 SW 8th Street
		Boca Raton, FL 33486
		United States of America
III-3-6	State of nationality	US
III-3-7	State of residence	US
IV-1	<b>Agent or common representative; or address for correspondence</b>	
	The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:	agent
IV-1-1	Name	FOLEY & LARDNER
IV-1-2	Address:	777 East Wisconsin Avenue
		33rd Floor
		Milwaukee, WI 53202-5367
		United States of America
IV-1-3	Telephone No.	414 271-2400
IV-1-4	Facsimile No.	414 297-4900
IV-1-5	e-mail	sbecker@foleylaw.com
V	<b>Designation of States</b>	
V-1	Regional Patent	AP: GH GM KE LS MW MZ SD SL SZ TZ UG ZW
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	and any other State which is a Contracting State of the Harare Protocol and of the PCT
		EA: AM AZ BY KG KZ MD RU TJ TM and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT
		EP: AT BE CH&LI CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE and any other State which is a Contracting State of the European Patent Convention and of the PCT
		OA: BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT

eliot  
Note

How does Utley  
get on this????

## PCT REQUEST

57103/118

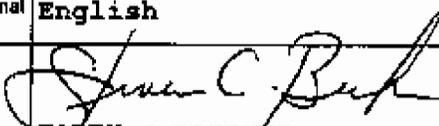
Original (for SUBMISSION) - printed on 07.06.2000 07:16:34 PM

V-2	National Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	AE AG AL AM AT AU AZ BA BB BG BR BY CA CH&LI CN CR CU CZ DE DK DM DZ EE ES FI GB GD GE GH GM HR HU ID IL IN IS JP KE KG KP KR KZ LC LK LR LS LT LU LV MA MD MG MK MN MW MX MZ NO NZ PL PT RO RU SD SE SG SI SK SL TJ TM TR TT TZ UA UG US UZ VN YU ZA ZW	
V-5	Precautionary Designation Statement In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.		
V-6	Exclusion(s) from precautionary designations	NONE	
VI-1	Priority claim of earlier national application		
VI-1-1	Filing date	07 June 1999 (07.06.1999)	
VI-1-2	Number	60/137,921	
VI-1-3	Country	US	
VI-2	Priority claim of earlier national application		
VI-2-1	Filing date	29 June 1999 (29.06.1999)	
VI-2-2	Number	60/141,440	
VI-2-3	Country	US	
VI-3	Priority document request The receiving Office is requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s).	VI-1, VI-2	
VII-1	International Searching Authority Chosen	European Patent Office (EPO) (ISA/EP)	
VIII	Check list	number of sheets	electronic file(s) attached
VIII-1	Request	4	-
VIII-2	Description	14	-
VIII-3	Claims	9	-
VIII-4	Abstract	1	abstract57103_118.txt
VIII-5	Drawings	2	-
VIII-7	TOTAL	30	
VIII-8	Accompanying items	paper document(s) attached	electronic file(s) attached
VIII-8	Fee calculation sheet	✓	-
VIII-16	PCT-EASY diskette	-	diskette
VIII-17	Other (specified):	Postcard	-
VIII-17	Other (specified):	Transmittal Sheet	-
VIII-18	Figure of the drawings which should accompany the abstract	1	

## PCT REQUEST

57103/119

Original (for SUBMISSION) - printed on 07.06.2000 07:16:34 PM

VIII-19	Language of filing of the international application	English
IX-1	Signature of applicant or agent	
IX-1-1	Name	FOLEY & LARDNER
IX-1-2	Name of signatory	Steven C. BECKER
IX-1-3	Capacity	Agent

## FOR RECEIVING OFFICE USE ONLY

10-1	Date of actual receipt of the purported international application	
10-2	Drawings:	
10-2-1	Received	
10-2-2	Not received	
10-3	Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application	
10-4	Date of timely receipt of the required corrections under PCT Article 11(2)	
10-5	International Searching Authority	ISA/EP
10-6	Transmittal of search copy delayed until search fee is paid	

## FOR INTERNATIONAL BUREAU USE ONLY

11-1	Date of receipt of the record copy by the International Bureau	
------	--	--

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

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777 EAST WISCONSIN AVENUE  
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TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5718

August 23, 2000

eliot	3/20/2004 10:57:18 AM
Note	
No carbon copy although they were demanded to in transcripts	

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

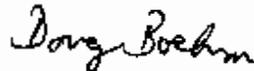
Re: PCT International Patent  
Application No.: PCT/US00/15602  
Filing Date: 6/07/2000  
Title: System and Method for Video Playback Over a Network  
Applicant: Iviewit Holdings, Inc.  
Our Ref.: 57103/118

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 18, 2000, in connection with the above-identified application.

We will keep you informed of all future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)



TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	18 August 2000
International Application No.	PCT/US00/15602
Attorney Docket No.	57103/118 ←

I. Certification under 37 CFR 1.10 (if applicable)

EE 163291378 US
Express Mail mailing number

18 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
-------	---

Earliest priority date (Day/Month/Year)
--

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Four Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages	1-2	of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15602  
International  
Filing Date : 07 June 2000 (07.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR VIDEO PLAYBACK  
OVER A NETWORK

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

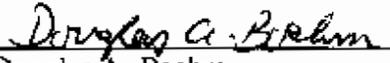
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 24 July 2000, Applicant respectfully submits four (4) duly-executed PCT General Appointments of Agent, and two (2) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 18 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

eliot  
Note

Utley signature after the  
filing

FOR: VIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID I. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
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JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firststar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
[Signature], in U.S.A.

BY:



Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States



**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

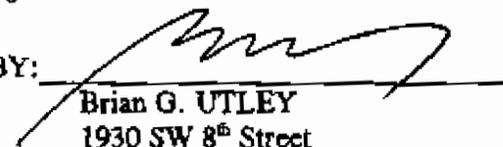
**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
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JAMES G. MORROW	Reg. No. 32,505
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WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000 at Boca Raton, FL in U.S.A.

BY: 

Brian G. UTLEY  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486  
United States of America

International application No.	International filing date	Priority Date Claimed
PCT/US00/15602	07 JUN 00	07 JUN 99

- C.  In order that U.S. National processing may begin, certain items must be received by the DO/EO/US by the expiration of applicable time limit under
- PCT Article 22 or
  - PCT Article 39.
- Specifically:
- 1. U.S. National Fee
  - 2. Oath or Declaration ←
  - 3. Copy of Application
  - 4. Translation of application
  - 5. Amendments under PCT Article 19, if any
  - 6. Translation of PCT Article 19 Amendments, if applicable
  - 7. Search Report or PCT Article 17(2) declaration
  - 8. International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), if applicable
  - 9. Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b), if applicable

**THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.**  
 [35 U.S.C. 371(d)]

D. Further information for the applicant:

**This is only a reminder.**

UNITED STATES DESIGNATED/ELECTED OFFICE

Address Only:  
 Assistant Commissioner for Patent  
 Box PCT  
 Washington, D.C. 20231 Attn:RO/US

Authorized Office  
 Catherine B. Williams



Original (for **SUBMISSION**) - printed on 07.06.2000 07:16:34 PM**PCT-EASY INFORMATION SHEET**(For applicant use only. **DO NOT** submit this sheet with the international application)**VALIDATION LOG**

	Contents
Yellow!	The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.

**Before submitting the International Application, please carefully verify that:**

- the information contained on printed Request form is correct;
- Box IX of the Request form has been signed;
- all elements of the international application as indicated in Box VIII of the Request form have been attached; and,
- the diskette containing the PCT-EASY zip file of the International Application has been enclosed and has been clearly labeled "PCT-EASY", with the applicant's or agent's file reference, and the first applicant's name.

**ATTENTION**

DO NOT modify any indications on the Request form printout. The attached PCT-EASY application has been locked. If an error or an omission is discovered at this time, you must copy the submitted application as a template and make the change or correction in a new application (using the submitted application as a template). You may create such a template by copying the submitted application from the "Stored Forms" folder to the "New PCT Forms" folder. Open the new (.OWO) file created in the "New PCT Forms" folder, correct the errors and proceed with the submission process again.

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRST STAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5571

EMAIL ADDRESS  
sbecker@foleylaw.com

CLIENT/MATTER NUMBER  
57103/118

August 1, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: International Application No. PCT/US00/15602  
Corresponding to U.S. Application Nos. 60/137,921 & 60/141,440  
Title: System and Method for Video Playback Over a Network  
Our Ref.: 57103/118

Dear Brian:

We are pleased to confirm that the above-identified application was filed with the U.S. Receiving Office on June 7, 2000, and accorded Application Number PCT/US00/15602. In accordance with your instructions, all PCT member countries were designated, and the European Patent Office was appointed as the International Searching Authority for this matter. Enclosed for your records is a copy of the application as filed, and related notifications from the United States Receiving Office.

Please note that the deadline for entering the national phase of this application is February 7, 2001. National phase may be deferred for another ten months, until December 7, 2001, by filing a Chapter II Demand for International Preliminary Examination. This Demand must be filed by January 7, 2001. For any country in which we do not meet the national phase deadline or, alternatively, the International Preliminary Examination deadline, the PCT application will be considered withdrawn.

eliot	3/22/2004 8:28:28 AM
Note	
Page two is missing from attorney files	

001.828744.1

ESTABLISHED 1842

A MEMBER OF G.OBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

*file*

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

July 21, 2000



Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Patent filing corresponding to  
PCT International Patent Application No. PCT/US00/15602  
Title: System and Method for Video Playback Over a Network  
Inventor(s): Bernstein et al.  
Filed: June 7, 2000  
Our Ref.: 57103/118

Dear Brian:

The above-referenced PCT patent application relates to video playback over a network (e.g., the Internet). As indicated, the PCT application was filed on June 7, 2000.

As you may know, a U.S. patent application may be filed at any time during the pendency of the corresponding PCT patent application in order to claim priority to the PCT patent application. However, pursuant to instructions from Eliot Bernstein on June 7, 2000, the corresponding U.S. patent application (i.e., our docket number 57103/117) has not yet been filed.

One advantage of waiting to file the U.S. patent application until the corresponding PCT patent application process is complete is that the cost of the U.S. application can be delayed until after a search report is received from the PCT search authority. The search report can provide an indication of the patentability of the invention, and a decision can then be made whether or not to continue with the U.S. application. One disadvantage is that it will take longer to bring the U.S. application to issuance if it is not filed until later.

ESTABLISHED 1842

A MEMBER OF GLOSALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

eliot	3/22/2004 8:36:38 AM
Note	
Missing page two, this is from patent attorney file upon transfer	

PATENT COOPERATION TREATY

**RECEIVED**

From the INTERNATIONAL BUREAU

PCT DEC 28 2001 To:

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN**  
**NOTIFICATION OF THE RECORDING OF A CHANGE**  
 LOS ANGELES

(PCT Rule 92bis.1 and Administrative Instructions, Section 422)

COESTER, Thomas, M.  
 Blakely, Sokoloff, Taylor & Zafman  
 12400 Wilshire Boulevard, 7th Floor  
 Los Angeles, CA 90025  
 ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 17 December 2001 (17.12.01) ←	
Applicant's or agent's file reference 57103/118 05702. Polb	<b>IMPORTANT NOTIFICATION</b>
International application No. PCT/US00/15602	International filing date (day/month/year) 07 June 2000 (07.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

**NO DOCKETING REQUIRED**  
**Docketing Mgr.**

Name and Address IVIEWIT HOLDINGS, INC. One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address IVIEWIT HOLDINGS, INC. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

3. Further observations, if necessary:  
**Please also note change of agent, as in the addressee box above.**

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No.: (41-22) 740.14.35	Authorized officer Jean-Marie MCADAMS <i>JM</i>  Telephone No.: (41-22) 338.83.38
---	--

PATENT COOPERATION TREATY

**RECEIVED**  
 DEC 26 2001

PCT From the INTERNATIONAL BUREAU

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN**  
**NOTIFICATION OF THE RECORDING**  
**OF A CHANGE**

(PCT Rule 92bis.1 and  
 Administrative Instructions, Section 422)

To:  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 COESTER, Thomas, M.  
 Blakely, Sokoloff, Taylor & Zafman  
 12400 Wilshire Boulevard, 7th Floor  
 Los Angeles, CA 90025  
 ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 17 December 2001 (17.12.01)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/118 <i>05707. P016</i>	
International application No. PCT/US00/15602	International filing date (day/month/year) 07 June 2000 (07.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address UTLEY, Brian, G. 1930 SW 8th Street Boca Raton, FL 33486 United States of America Boca Raton, FL 33431 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

**NO DOCKETING REQUIRED**  
Docketing Mgr

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address UTLEY, Brian, G. Iviewit Holdings, Inc. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

3. Further observations, if necessary:  
**Please also note change of agent, as in the addressee box above.**

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Jean-Marie MCADAMS <i>JM</i>
Facsimile No.: (41-22) 740.14.35	Telephone No.: (41-22) 338.83.38

PATENT COOPERATION TREATY

**RECEIVED**  
 PCT DEC 26 2001

eliot  
 Note  
 NO suite  
 BERNSTEIN

of the INTERNATIONAL BUREAU

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN**  
**NOTIFICATION OF THE RECORDING IN LOS ANGELES**  
**OF A CHANGE**

(PCT Rule 92bis.1 and  
 Administrative Instructions, Section 422)

To: **ZAFMAN**  
 COESTER, Thomas, M.  
 Blakely, Sokoloff, Taylor & Zafman  
 12400 Wilshire Boulevard, 7th Floor  
 Los Angeles, CA 90025  
 ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 17 December 2001 (17.12.01)	<b>NO DOCKETING REQUIRED</b> Docketing Dept.	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/118 <i>05707, A16</i>		
International application No. PCT/US00/15602	International filing date (day/month/year) 07 June 2000 (07.06.00)	

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address BERNSTEIN, Eliot, I. 500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 United States of America Boca Raton, FL 33431 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address BERNSTEIN, Eliot, I. Suite 1420 Indings, Inc. 505 North Brand Boulevard Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

3. Further observations, if necessary:  
**Please also note change of agent, as in the addressee box above.**

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No.: (41-22) 740.14.35	Authorized officer  Jean-Marie MCADAMS   Telephone No.: (41-22) 338.83.38
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\*\*\*\*\* P. 01 \*\*\*\*\*  
 \* TRANSACTION REPORT \*  
 \* NOV-21-2001 WED 12:55 PM \*  
 \* DATE START RECEIVER TX TIME PAGES TYPE NOTE M# DP \*  
 \* NOV-21 12:50 PM 01141227401435 4'59" 14 SEND OK 746 \*  
 \* TOTAL : 4M 59S PAGES: 14 \*  
 \*\*\*\*\*

**BLAKELY SOKOLOFF TAYLOR & ZAFMAN**  
 A LIMITED LIABILITY PARTNERSHIP INCLUDING LAW CORPORATIONS

TELEPHONE (310) 207-3600  
 FACSIMILE (310) 820-5988  
 (310) 890-5270  
 BSTZ.MAIL@BSTZ.COM  
 WWW.BSTZ.COM

INTELLECTUAL PROPERTY LAW  
 12400 WILSHIRE BOULEVARD  
 SEVENTH FLOOR  
 LOS ANGELES, CALIFORNIA 90025-1030

Other Offices  
 AUSTIN, TX  
 SILICON VALLEY/SUNNYVALE, CA  
 ORANGE COUNTY/COSTA MESA, CA  
 SAN DIEGO/LA JOLLA, CA  
 PORTLAND/TACOMA, OR  
 SEATTLE/KIRKLAND, WA  
 DENVER/ENGLEWOOD, CO

November 21, 2001

VIA FAX ONLY (14 Pages)  
 011 41 22 740 14 35

INTERNATIONAL BUREAU OF WIPO  
 Attn: International Bureau  
 34, Chemin des Colombettes  
 1211 Geneva 20  
 Switzerland

Re: **RECORDING CHANGE OF AGENT and CHANGE OF ADDRESSES OF APPLICANTS/INVENTORS UNDER PCT RULE 92 BIS**  
 International Application No.: PCT/US00/15602  
 Applicant: **IVIEWIT HOLDINGS, INC.**, et al  
 For all designated States but the US and **BERSTEIN, Eliot, J., FRIEDSTEIN, Jeffrey J. and UTLEY, Brian, G.** for the US  
 Our File No. 005707.P016PCT (New) 57103/118 (Old)

Gentlemen:

The Agent hereby...

# BLAKELY SOKOLOFF TAYLOR & ZAFMAN

A LIMITED LIABILITY PARTNERSHIP INCLUDING LAW CORPORATIONS

TELEPHONE (310) 207-3800

INTELLECTUAL PROPERTY LAW

OTHER OFFICES

FACSIMILE (310) 820-5986  
(310) 820-5270

12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CALIFORNIA 90025-1030

AUSTIN, TX  
SILICON VALLEY/SUNNYVALE, CA  
ORANGE COUNTY/COSTA MESA, CA  
SAN DIEGO/LA JOLLA, CA  
PORTLAND/LAKE OSWEGO, OR  
SEATTLE/KIRKLAND, WA  
DENVER/ENGLEWOOD, CO

BSTZ\_MAIL@BSTZ.COM  
WWW.BSTZ.COM

November 21, 2001

VIA FAX ONLY (14 Pages)  
011 41 22 740 14 35

INTERNATIONAL BUREAU OF WIPO  
Attn: International Bureau  
34, Chemin des Colombettes  
1211 Geneva 20  
Switzerland

Re: **RECORDING CHANGE OF AGENT and CHANGE OF  
ADDRESSES OF APPLICANTS/INVENTORS  
UNDER PCT RULE 92 BIS**  
International Application No.: PCT/US00/15602  
Applicant: IVIEWIT HOLDINGS, INC. et al  
For all designated States but the US and BERSTEIN, Eliot, I.,  
FRIEDSTEIN, Jeffrey J. and UTLEY, Brian, G. for the US  
Our File No. 005707.P016PCT (New) 57103/118 (Old)

Gentlemen:

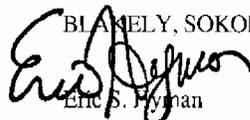
The Agent appointed to act on behalf of the above-captioned international application has changed as follows:

Thomas M. Coester  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
12400 Wilshire Boulevard, 7th Floor  
Los Angeles, California 90025

Attached are four General Power of Attorney forms in order for you to proceed with this request. Please note that also included is the Executive Employment Agreement authorizing Eliot I. Bernstein to sign documents on behalf of Brian G. Utley (see page 7, 8[e] Attorney-in-Fact). Furthermore, the addresses of the applicants and/or inventors, IVIEWIT HOLDINGS, INC., Eliot I. Bernstein, Jeffrey J. Friedstein and Brian G. Utley, have also changed.

Kindly acknowledge receipt of this fax.

Very truly yours,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
  
Eric S. Hyman

Attachments

cc: Assistant Commissioner for Patents (RO/US)/with Attachment  
Via Fax (1 703 305 3230)

**PCT**  
**GENERAL POWER OF ATTORNEY**  
(for several international applications filed under the Patent Cooperation Treaty)  
(PCT Rule 90.5)

The undersigned person(s): (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

IVIEWIT HOLDINGS, INC.  
BERNSTEIN, Eliot I., Secretary  
505 North Brand Boulevard  
Suite 1420  
Glendale, California 91203  
United States of America

hereby appoint(s) the following person as  agent  common representative

Name and address

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

ZAFMAN, Norman  
COESTER, Thomas M.  
AMINI, Farzad E.  
HYMAN, Eric S.  
HOOVER, George W.  
BLAKELY, Roger W.  
SOKOLOFF, Stanley W.  
TAYLOR, Edwin H.

Blakely, Sokoloff, Taylor & Zafman  
12400 Wilshire Boulevard, 7<sup>th</sup> Floor  
Los Angeles, California 90025-1026  
United States of America

To represent the undersigned before  all the competent International Authorities  
 the International Searching Authority only  
 the International Preliminary Examining Authority only in

connection with any and all international applications filed by the undersigned with the following Office  
(US) United States \_\_\_\_\_ as receiving Office and to make or receive payments on behalf of the undersigned.

Signature(s) (where there are several persons, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading this power):



Eliot I. Bernstein, Secretary

Date: September 18, 2001  
~~August 2001~~



**PCT**  
**GENERAL POWER OF ATTORNEY**  
(for several international applications filed under the Patent Cooperation Treaty)  
(PCT Rule 90.5)

The undersigned person(s): (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

FRIEDSTEIN, Jeffrey S.  
2142 Churchill Lane  
Highland Park, IL 60035  
United States of America

hereby appoint(s) the following person as  agent  common representative

Name and address

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

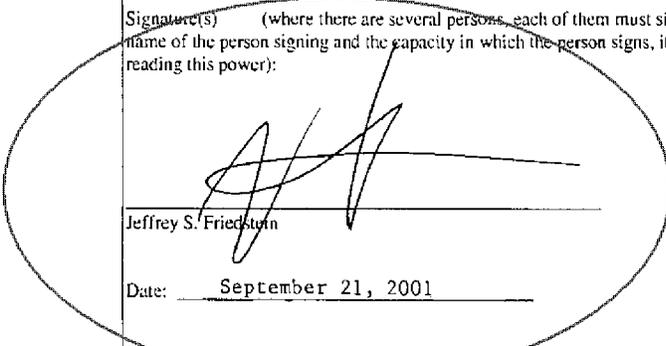
ZAFMAN, Norman  
COESTER, Thomas M.  
AMINI, Farzad E.  
HYMAN, Eric S.  
HOOVER, George W.  
BLAKELY, Roger W.  
SOKOLOFF, Stanley W.  
TAYLOR, Edwin H.

Blakely, Sokoloff, Taylor & Zafman  
12400 Wilshire Boulevard, 7<sup>th</sup> Floor  
Los Angeles, California 90025-1026  
United States of America

To represent the undersigned before  all the competent International Authorities  
 the International Searching Authority only  
 the International Preliminary Examining Authority only in

connection with any and all international applications filed by the undersigned with the following Office  
(US) United States as receiving Office and to make or receive payments on behalf of the undersigned.

Signature(s) (where there are several persons, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading this power):

  
\_\_\_\_\_  
Jeffrey S. Friedstein

Date: September 21, 2001

**PCT**  
**GENERAL POWER OF ATTORNEY**  
(for several international applications filed under the Patent Cooperation Treaty)  
(PCT Rule 90.5)

The undersigned person(s): (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

UTLEY, BRIAN G.  
by BERNSTEIN, Eliot L., Attorney in Fact  
VIEWIT HOLDINGS, INC.  
505 North Brand Boulevard  
Suite 1420  
Glendale, California 91203  
United States of America

hereby appoint(s) the following person as  agent  common representative

Name and address  
(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

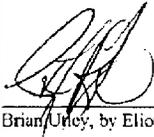
ZAFMAN, Norman  
COESTER, Thomas M.  
AMINI, Farzad E.  
HYMAN, Eric S.  
HOOVER, George W.  
BLAKELY, Roger W.  
SOKOLOFF, Stanley W.  
TAYLOR, Edwin H.

Blakely, Sokoloff, Taylor & Zaiman  
12400 Wilshire Boulevard, 7<sup>th</sup> Floor  
Los Angeles, California 90025-1026  
United States of America

To represent the undersigned before  all the competent International Authorities  
 the International Searching Authority only  
 the International Preliminary Examining Authority only in

connection with any and all international applications filed by the undersigned with the following Office  
(US) United States as receiving Office and to make or receive payments on behalf of the undersigned.

Signature(s) (where there are several persons, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading this power):

  
\_\_\_\_\_  
Brian Utley, by Eliot Bernstein, his attorney-in-fact

Date: September 18, 2001  
~~August~~ 2001

**EXECUTIVE EMPLOYMENT AGREEMENT**

EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") made as of the 3rd day of August, 1999, by and between iviewit.com LLC, a Delaware limited liability company with an address at 2255 Glades Road, Suite 337 West, Boca Raton, Florida 33431 (the "Company"), and BRIAN G. UTLEY with an address at 1930 Southwest 8<sup>th</sup> Street, Boca Raton, Florida 33486 (the "Executive").

WHEREAS, the Company desires to employ Executive and to ensure the continued availability to the Company of the Executive's services, and the Executive is willing to accept such employment and render such services, all upon and subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, the Company and the Executive hereby agree as follows with respect to the Executive's employment with the Company:

1. **Employment.** The Company shall employ the Executive and the Executive shall be employed with the Company, on the terms and conditions hereinafter set forth, for a period commencing as of the date hereof (the "Effective Date") and ending three (3) years after the date hereof, unless sooner terminated pursuant to the provisions of this Agreement. Such period of employment shall be automatically extended for successive one-year terms of employment, unless either the Company or the Executive notifies the other in writing at least ninety (90) days prior to the end of the then current term that it or he does not intend to renew such employment, in which case such employment will expire at the end of the then current term. All references herein to the "Employment Period" shall refer to both the initial term and any such successive renewal terms. During his employment hereunder, the Executive shall be the President and Chief Operating Officer of each of the Company, uview.com, Inc., a Delaware corporation ("uview") and iviewit LLC, a Delaware limited liability company ("iviewit") (uview and iviewit are collectively referred to herein as the "Affiliates").

2. **Exclusive Efforts.** The Executive shall devote his full time, best efforts, skills and attention to the business and affairs of the Company and the Affiliates, shall serve the Company and the Affiliates faithfully and competently and shall at all times act in the Company's and the Affiliates' best interests. The services to be rendered by Executive during the Employment Period shall be the normal duties of a person employed as a President and Chief Operating Officer by a corporation in the Company's business, subject at all times to the direction and control of the Company's Board of Directors (the "Board").

3. **Compensation and Benefits.** The Company shall pay to the Executive, and the Executive agrees to accept, compensation as follows:

(a) Subject to the provisions of Section 3(b) below, the Company shall pay to the Executive, and the Executive agrees to accept, an initial base compensation of Fifty Thousand Dollars (\$50,000) per year (the "Initial Salary"). All compensation payable to Executive hereunder shall be payable in accordance with the normal payroll policies of the Company and shall be subject to all usual and customary payroll deductions, including all applicable withholding taxes.

(b) The Initial Salary shall be increased by: (i) Fifty Thousand Dollars (\$50,000) to One Hundred Thousand Dollars (\$100,000) per year on September 3, 1999 (the "Salary Increase Date"), (ii) an additional Fifty Thousand Dollars (\$50,000) to One Hundred Fifty Thousand Dollars (\$150,000) per year beginning six (6) months following the Salary Increase Date, and (iii) an additional One Hundred Thousand Dollars (\$100,000) to Two Hundred Fifty Thousand Dollars (\$250,000) per year beginning twelve (12) months following the Salary Increase Date.

(c) In addition to the compensation provided for in Sections 3(a) and 3(b), on the Effective Date, the Company shall cause to be issued in the Executive's name seventeen thousand one hundred thirty-eight (17,138) shares of the Company's Class B Common Stock (the "Initial Shares"), for the consideration of \$.05 per share. The Executive shall be entitled to receive up to seventeen thousand one hundred thirty-eight (17,138) additional shares of the Company's Class B Common Stock at future dates during the Employment Period as determined in the Board's sole discretion, subject to Executive's fulfillment of certain performance standards established, from time to time, by the Board.

(d) The compensation provided for in Sections 3(a) and 3(b) shall be in addition to any pension or retirement benefits, hospital and medical, disability, and other benefits, if any, made generally available by the Company, in its sole discretion, to its executive officers.

(e) Executive acknowledges that it is the Company's intent to purchase a "key-man" life insurance policy on the life of Executive for the benefit of the Company (the "Insurance Policy"). Executive agrees to cooperate fully in the acquisition, modification, amendment or supplement of the Insurance Policy, including submitting to any physical examination and providing any medical information as may be required by the insurer. In the event Executive dies within the Employment Period, the Personal Representative(s) (the "Personal Representatives") of Executive's estate (the "Estate") shall, at the Personal Representatives' sole discretion, elect to surrender to the Company all right, title and interest in and to the Initial Shares and obtain payment from the Company of the proceeds (the "Proceeds") of the Insurance Policy (the "Election"). The Election shall be in writing and delivered to and received by the Company at its then corporate headquarters within four (4) months from the date of Executive's death. Within seven (7) business days after the Company's dated receipt of the Election, if the Personal Representatives elect to receive the Proceeds, the Personal Representatives shall deliver the Initial Shares (along with executed stock powers) to the Company at its then corporate headquarters at which time the Company shall issue a certified or cashier's check payable to the Estate for the full amount of the Proceeds; provided, however, that if at the time of the Election the Company has not received the Proceeds, and if the Personal Representatives elect to receive the Proceeds, the

Company shall notify the Personal Representatives at such time as it receives the Proceeds, and, upon receipt of such notification, the Personal Representatives shall then be required to tender the Initial Shares to the Company at its corporate headquarters within seven (7) days of said notification, upon which the Company shall comply with the provisions of this Section regarding remittance of the Proceeds. If the Personal Representatives fail to comply with the provisions of the preceding sentence, the Company shall, at its sole discretion, notify the Personal Representatives as to whether it will demand the surrender of the Initial Shares (and make the corresponding payment of the insurance proceeds) no later than nine (9) months from the date of Executive's death or the deadline for filing Executive's Federal estate tax return, whichever occurs later.

(f) The Executive shall be entitled to four (4) weeks paid vacation per year. Such vacation time allowance shall not cumulatively accrue, and any unused vacation time for each year of the Employment Period shall be forfeited by Executive if not used during each year.

4. **Business Expenses.** The Executive shall be reimbursed for all usual and reasonable expenses incurred on behalf of the Company and the Affiliates, as applicable, as approved by the Board, in accordance with Company practices and procedures, provided that:

(a) Each such expenditure is of a nature qualifying it as a proper deduction on the federal and state income tax returns of the Company and any of the Affiliates, as applicable, as a business expense and not as deductible compensation to Executive; and

(b) Executive furnishes the Company with adequate documentary evidence required by federal and state statutes and regulations for the substantiation of such expenditures as deductible business expenses of the Company and of any of the Affiliates, as applicable, and not as deductible compensation to Executive.

Executive agrees that, if at any time, any payment made to Executive by the Company as a business expense reimbursement shall be disallowed in whole or in part as a deductible expense to the Company or any of the Affiliates, as applicable, by the appropriate taxing authorities, Executive shall reimburse the Company or any of the Affiliates, as applicable, to the full extent of such disallowance.

5. **Termination.**

(a) This Agreement may be immediately terminated by the Company at any time during the Employment Period for cause. In such an event of termination, the Company shall be obligated only to continue to pay to Executive his compensation, if any, earned up to the effective date of termination. "Cause" for purposes hereof shall mean (i) a breach of any of the provisions of this Agreement by Executive, (ii) conviction for any criminal offense involving a felony or (iii) willful misconduct, gross negligence or malfeasance.

(b) Except as otherwise provided herein, this Agreement and the obligations of the Company hereunder will terminate upon the death or at the Company's option, the disability

of the Executive. For purposes of this Section 5(b), "disability" shall mean that for a period of four consecutive months or six months in any 12-month period the Executive is incapable of substantially fulfilling the duties set forth in Section 2 or hereafter assigned to him because of physical, mental or emotional incapacity resulting from injury, sickness or disease as determined by an independent physician selected by the Company. Upon any such termination upon death or disability, the Company will pay the Executive or his legal representative, as the case may be, his compensation (including the Initial Shares issuable to Executive pursuant to Section 3(c) above), if any, earned through the date of such termination of employment.

6. Restrictive Covenants.

(a) Executive acknowledges that his services and responsibilities are unique in character and are of particular significance to the Company and to the Affiliates, that the Company and its Affiliates are competitive businesses and Executive's continued and exclusive service to the Company and the Affiliates under this Agreement is of a high degree of importance to the Company and the Affiliates. Therefore, during the Employment Period and for a period of two (2) years thereafter (the "Noncompete Period"), Executive shall not, directly or indirectly, as owner, partner, joint venturer, employee, broker, agent, corporate officer, principal, licensor, shareholder (unless as owner of no more than one percent (1%) of the issued and outstanding capital stock of such entity if such stock is traded on a major securities exchange) or in any other capacity whatsoever, engage in or have any connection with any business which is "competitive" with the Company or any of its Affiliates, and which operates anywhere in the "Restricted Territory" (as hereinafter defined). For purposes of this Agreement, a business will be deemed to be "competitive" with the Company and its Affiliates if it is engaged in the same business that the Company or any of its Affiliates are engaged in, or contemplates engaging in, including, but not limited to, any business engaged in whole or in part in developing, marketing, and implementing technology that allows products and services to be advertised and marketed via the internet. In recognition of the world wide access afforded by the internet, the parties agree that for purposes of this Agreement, "Restricted Territory" shall mean worldwide.

(b) During the Noncompete Period, the Executive shall not:

(i) directly or indirectly, by initiating contact or otherwise, induce, influence, combine or conspire with, or attempt to induce, influence, combine or conspire with, any of the officers, employees or agents of the Company to terminate his, her or its employment or relationship with or to compete against the Company or any of the Affiliates;

(ii) directly or indirectly, by initiating contact or otherwise, divert or attempt to divert any or all of any customers' or suppliers' business with the Company or any of the Affiliates.

(c) If, in any judicial proceedings, a court shall refuse to enforce any of the covenants included in this Section 6, then such unenforceable covenant shall be amended to relate to such lesser scope, period or geographical area as shall be enforceable. In the event the

Company or any of its Affiliates should bring any legal action or other proceeding against Executive for enforcement of this Agreement, the calculation of the Noncompete Period shall not include the period of time commencing with the filing of legal action or other proceeding to enforce this Agreement through the date of final judgment or final resolution, including all appeals, if any, of such legal action or other proceeding unless the Company and the Affiliates are receiving the practical benefits of this Section 6 during such time. The existence of any claim or cause of action by Executive against the Company or any of the Affiliates predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Company or any of the Affiliates of these covenants.

(d) Executive hereby acknowledges that the restrictions on his activity as contained in this Agreement are required for the Company's reasonable protection and are a material inducement to the Company to enter into this Agreement. Executive hereby agrees that in the event of the violation by him of any of the provisions of this Agreement, the Company and its Affiliates and its or their permitted assigns (which are intended third-party beneficiaries of these covenants) will be entitled to institute and prosecute proceedings at law or in equity to obtain damages with respect to such violation, to enforce the specific performance of this Agreement by Executive, to enjoin Executive from engaging in any activity in violation hereof, or any combination of the foregoing remedies together with any other remedies available at law or in equity.

**7. Treatment and Ownership of Confidential Information.**

(a) The parties hereto acknowledge that Executive shall or may be making use of, acquiring and adding to Confidential Information (as that term is defined in subparagraph (b) below). Executive covenants and agrees that during the Employment Period and at all times thereafter he shall not, except with the prior written consent of the Company, or except if he is acting during the Employment Period solely for the benefit of the Company or any of the Affiliates in connection with the Company's or any of the Affiliates' business and in accordance with the Company's business practices and policies, at any time, disclose, divulge, report, transfer or use, for any purposes whatsoever, any of such Confidential Information, including Confidential Information obtained, used, acquired or added by, or disclosed to, Executive prior to the date of this Agreement.

(b) For purposes of this Agreement, the term "Confidential Information" shall mean all of the following materials and information which Executive receives, conceives or develops or has received, conceived or developed, in whole or in part, in connection with Executive's employment with the Company:

The Company's and the Affiliates' materials and information (regardless of the form of such information, including without limitation, in writing, electronic, computerized or other recorded form, oral or visual) concerning, or related in any way to, the Company and the Affiliates' or its or their businesses, including without limitation: (i) the contents of any Business Plan, projections or financial or credit information or data relating to the Company or any of its Affiliates; (ii) the contents of any manuals or written materials of the Company or any of its Affiliates; (iii) the

names and records of actual or prospective clients, customers, suppliers, lenders, financing sources, or related persons; (iv) the terms of various agreements between the Company or the Affiliates and third parties; (v) any data or database, or other information compiled or developed by the Company or its Affiliates; (vi) any computer programs and listings, source codes and/or object codes, file structures, trademarks, trade secrets, patents, patent designs, patent applications, copyrights, forms, procedures, processes, training methods, developments, technical information, marketing activities and procedures and methods of operation, together with any other information, data, know-how or knowledge of a confidential or proprietary nature; and (vii) any information of a type described above derived or obtained from the internet or any website of the Company or its Affiliates, including without limitation, the file structure relating to such website or the content of such website.

(c) Executive covenants and agrees that all right, title and interest in any Confidential Information shall be and shall remain the exclusive property of the Company and the Affiliates, as applicable. Executive agrees to promptly disclose to the Company all Confidential Information developed in whole or in part by Executive within the scope of this Agreement and to assign to the Company or any of the Affiliates, as the Company determines in its sole discretion, any right, title or interest Executive may have in such Confidential Information. Executive agrees to turn over to the Company all physical manifestations of the Confidential Information in his possession or under his control at the request of the Company.

8. Inventions.

(a) Executive agrees to promptly inform and to disclose to the Company, in writing, all inventions, developments, procedures, ideas, innovations, systems, programs, techniques, processes, information, discoveries, improvements and modifications which Executive creates (collectively the "Inventions"), either alone or with others, while in the Company's employ, or while performing services for the Affiliates, whether or not during working hours, and at all times thereafter if the Inventions:

- (i) relate to the present or anticipated business of the Company or any of the Affiliates;
- (ii) relate to any actual or demonstrably anticipated research or development work of the Company or any of the Affiliates;
- (iii) result from any work performed by the Executive for the Company or any of the Affiliates or customers of either; or
- (iv) were invented utilizing the Company's or any of the Affiliates equipment, supplies, facilities, time or any information (whether or not considered Confidential Information) obtained from or useful to the Company or any of the Affiliates.

(b) Assignment. All of the above-described Inventions, and all rights relating thereto, shall be assigned by virtue of this Agreement and without further action by Executive to the Company and shall be and shall remain the exclusive property of the Company.

(c) Ownership. With respect to each Invention assigned to the Company, Executive hereby grants, transfers and assigns to the Company all of his rights, title and interest, if any, in any and all written materials (including but not limited to programmed instructional material), pictorial reproductions, drawings and other graphic representations and works of similar nature upon which he may be engaged in, including rights to translation and reproductions in all forms or formats and the copyrights thereto, if any, and Executive agrees that the Company may copyright said materials in the Company's name and secure renewal, reissues and extensions of such copyrights for such periods of time as the law may permit.

(d) Executive Assistance. During the Employment Period and at all times thereafter, the Executive agrees to assist the Company and the Affiliates in obtaining patents or copyrights on any Inventions assigned to the Company that the Company or any or all of the Affiliates, in the Company's sole discretion, seeks to patent or copyright. Executive also agrees to sign all documents, and do all things necessary to obtain such patents or copyrights, to further assign them to the Company or any of the Affiliates, as applicable, and to protect the Company and the Affiliates against infringement by other parties. Executive agrees that such actions will be without compensation, but at no expense to the Executive.

(e) Attorney-in-Fact. Executive irrevocably appoints any Company-selected designee to act as his agent and attorney-in-fact to perform all acts necessary to obtain patents and/or copyrights as required by this Agreement if Executive (i) refuses to perform those acts or (ii) is unavailable, within the meaning of the United States Patent and Copyright Laws. It is expressly intended by Executive that the foregoing power of attorney is coupled with an interest.

(f) Records. Executive shall keep complete, accurate and authentic information and records on all Inventions in the manner and form reasonably requested by the Company. Such information and records, and all copies thereof, shall be the property of the Company as to any Inventions within the meaning of this Agreement. In addition, Executive agrees to promptly surrender all such original and copies of such information and records at the request of the Company.

9. Executive Representations and Warranties. The Executive represents and warrants to the Company that he is free of known physical and mental disabilities that would, with or without reasonable accommodations that would not create an undue hardship for the Company, impair his performance hereunder and he is fully empowered to enter and perform his obligations under this Agreement. Without limiting the generality of the foregoing, Executive represents and warrants that he is under no restrictive covenants to any person or entity that will be violated by his entering into and performing this Agreement. The Executive shall indemnify the Company on demand for and against any and all judgments, losses, claims, damages, expenses and costs (including without limitation all legal fees and costs, even if incident to appeals) incurred or

suffered by the Company as a result of any breach by Executive of this representation and warranty.

10. **Binding Effect.** Except as herein otherwise provided, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their personal representatives, successors, heirs and assigns.

11. **Severability.** Invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions.

12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

13. **Entire Agreement.** This Agreement and the Confidentiality Agreement dated July 9, 1999 by and between iViewit, Inc. (together with its direct and indirect subsidiaries and affiliates) and Executive contains the entire understanding between the parties and this Agreement may not be changed or modified except by an Agreement in writing signed by all the parties hereto.

14. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when either hand delivered or deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses first stated herein, or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as provided herein.

15. **Prevailing Parties.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

16. **Survival.** Notwithstanding any termination of this Agreement, the provisions of Sections 6 through 16 shall survive such termination.

IN WITNESS WHEREOF, this Agreement has been duly signed by the Executive and on behalf of the Company as of the day and year first above written.

iviewit.com LLC

By:   
Eliot I. Bernstein, Vice President

  
BRIAN G. UTLEY



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CLIENT/MATTER NUMBER  
57103-101

October 9, 2001

Norman Zafman, Esq.  
Blakely, Sokoloff, Taylor & Zafman LLP  
12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025-1026

**RECEIVED**  
OCT 12 2001

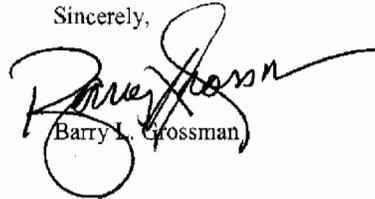
**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN**  
LOS ANGELES

Re: Transferred Iviewit.com, Inc. Files

Dear Mr. Zafman:

Enclosed please find correspondence recently received relative to the PCT/US00/15602, PCT/US00/15405, and PCT/US00/21211 patent applications which were transferred to you on July 2, 2001.

Sincerely,

  
Barry L. Grossman

Enclosure

cc: Ross Miller (w/o encl.)  
Eliot Bernstein (w/o encl.)

PATENT COOPERATION TREATY

05707.2016

From the RECEIVING OFFICE

PCT

To:		<b>RECEIVED</b> OCT 12 2001 COMMUNICATION IN CASES FOR WHICH OTHER FORM IS APPLICABLE BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LOS ANGELES
STEVEN C. BECKER FOLEY & LARDNER 777 EAST WISCONSIN AVENUE 33RD FLOOR MILWAUKEE, WI 53202 5367		
Applicant's or agent's file reference		Date of mailing (day/month/year)
57103/118		15 AUG 2001
International application No.		International filing date (day/month/year)
PCT/US00/15602		07 JUN 2001
Applicant		
VIEWIT HOLDINGS, INC.		

NO DOCKETING REQ. Docketing Mgr.

1.  REPLY DUE within \_\_\_\_\_ months / days from the above date of mailing

NO REPLY DUE, however, see below \_\_\_\_\_

IMPORTANT COMMUNICATION

INFORMATION ONLY

2. COMMUNICATION:

This is in response to the "NOTIFICATION OF RENOUNCEMENT OF POWER OF ATTORNEY" filed 16 April 2001 in the above-identified PCT application. Applicants are hereby notified that Barry L. Grossman, the attorney who requested withdrawal, is considered to be withdrawn. All the other 22 attorneys listed in the Power of Attorney filed 18 August 2000 still remain as attorneys of record and correspondence will be mailed to them at the address listed in Box No. IV of the REQUEST filed 07 June 2000.

**RECEIVED**

AUG 20 2001

FOLEY & LARDNER

Name and mailing address of the receiving Office Assistant Commissioner for Patent Box PCT Washington, D.C. 20231 Attn:RO/US Facsimile No. 703-305-3230	Authorized officer Leonard E. Smith <i>Leonard E. Smith</i> Telephone No. 703-308-6461
---	--

**EXHIBIT H**  
**PCT US 00 21211**

developed image can be enlarged to sizes of between 8"x8" and 8"x12", or to any other appropriate size. The developed image is enlarged to provide additional photo information to scanning device 18. The developed image can be enlarged many times before the granularity of the image is visible to the human eye. An enlargement magnification capability of up to 1700 times or more may be attained for most views or scenes. It is, however, recommended that larger enlargement sizes be obtained for smaller developed images. As mentioned, the step of enlarging may not be necessary in all cases (e.g., where the size of the print film image or developed image is large enough to provide sufficient data to scanning device 18).

*and over target frame*

At step 58, the enlarged image is scanned by scanning device 18 in order to generate a bitmap image file or other digital image file, such as, JPEG, GIF, or other files. Scanning occurs at a high scan density (e.g., 100 dpi or more, greater than 200 dpi, or about 600 dpi) to provide a large number of pixels in the resulting digital image file. Contrary to the teachings of the prior art, a large number of pixels are provided in the digital image file. According to one example, a sufficient number of pixels are provided in the enhanced digital image file to allow a user to magnify the digitized image in the viewing window of display 30 by a magnification factor of ~~two~~ <sup>2x</sup> without pixelation. Alternatively, a sufficient number of pixels are provided to allow the user to magnify the digitized image by a magnification factor of five, ten, twenty, one-hundred, or more.

*Additional frame also require handling properly in the existing open image file*

*which is it*

*for the cut frame size*

*what's*

*additional pixels*

*no. 1*

*1.5 2x*

According to one exemplary embodiment, the number of pixels provided in the enhanced digital image file is based on a viewing window size and the desired magnification ratio. By

*5000 dpi 1 bit  
600 - 1400 dpi*

*check file size instantly time/file size*

providing more pixels in the enhanced digital image file than is required for a full-window view in the viewing window, the user is able to zoom and pan within the digital image during viewing without pixelation.

5 FIG. 7 illustrates relationships between a source image (e.g., a scanned print film image), a viewing window (e.g., a portion of display 30), a viewing image (e.g., a subset of pixels from the source image to be displayed in the viewing window), and a target image (e.g., the enhanced digital image file). The following  
10 parameters and description are for the purpose of creating large, clear, zoomable and panable images from a variety of photographic, non-digital source images.

The source image (si) has a source image height (sih) and a source image width (siw). Thus, the source image aspect ratio (siar) can be determined as:

15 (siar) can be determined as:

$siar = sih/siw$

*1/5 a viewing window a display not made of pixels, i.e. TV.*

20 The viewing window (vw) is the window defined in pixels, within which is to be displayed the source image. The viewing window (vw) has a viewing window height (vwh) and a viewing window width (vww), both defined in pixels. Thus, the viewing window aspect ratio can be determined as:

$vwar = vwh/vww$

*this could be striken*

*or etc...*

It is noted that the source image (si) may have a different aspect ratio than the viewing window (vw). To place the source image (si) in the viewing window (vw), a subset of pixels



$$TIW^2 = \frac{TIH}{SIAR}$$

$$SIAR \times TIW^2 = TIH$$

$$SIAR = \frac{TIH}{TIW^2}$$

$$SIAR = \frac{TIH}{TIW}$$

$$SIAR = TIAR$$

$$tiw = \sqrt{\frac{tis}{siar}}$$

and

$$\frac{TIH}{TIW} = SIAR$$

$$tis = tiw \times siar$$

SIAR = TIAR - IS THIS INTENDED?

$$TIW^2 = \frac{TIH}{SIAR}$$

$$\frac{TIW^2}{SIAR} = \frac{TIH}{SIAR^2} (TIH \times TIW)$$

$$\frac{1}{SIAR} = \frac{TIH}{1}$$

what about cropping  
letterbox formats  
stretching  
what about a SI that is 8x6 and you enlarge it to 8x10.

The relationship between the target image and the viewing image is shown in FIG. 7. The relationship between the target image and the viewing window is also shown. A zoom to the maximum level will be shown in the viewing window as illustrated at drawing 120. By panning the viewing window, every portion of the target image may be viewed from each level of zooming.

To determine the minimum scan density (msd) to avoid pixelation at the desired magnification factor (mf):

$$msd = \frac{tis}{mf}$$

$$msd = \frac{100}{8} = 12.5$$

why isn't mf part of this equation?  
Explain where's dpi?

EXAMPLE 1

Determine the target image size and dimensions, and minimum scan density for the following case:

Source Image = 4" x 6"

Desired Magnification Factor = 20

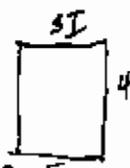
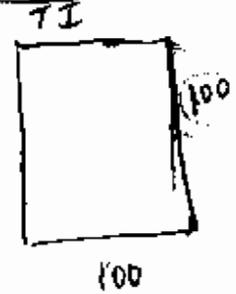
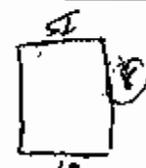
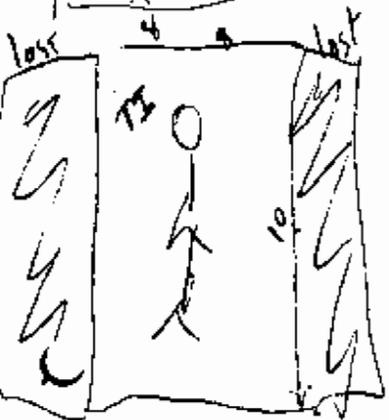
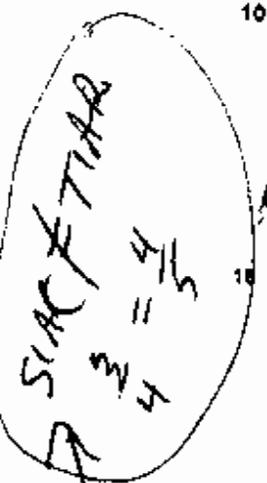
Source Image Aspect Ratio = 4/6 = 0.8

Define the Viewing Window: assume 320h x 480w pixels

Viewing Window Aspect Ratio = 320 / 480 = 0.75

The Source Image Aspect Ratio is > the Viewing

$$\frac{4}{6} (SIAR)$$



Atty. Dkt. No. 57103/120

Window Aspect Ratio:

0.8 > 0.75 therefore:

$v_{ih} = v_{wh} = 320$  pixels

$v_{iw} = v_{wh} / 0.8 = 320 / 0.8 = 400$  pixels

*should be v<sub>wh</sub> on p. 19*

The Viewing Image size =  $v_{is} = 320 \times 400 = 128,000$

pixels - *how does this equate to other, non-pixel, display mediums*

The Target Image size =  $v_{is} \times 20 = 128,000 \times 20 = 2,560,000$  pixels  $TIS = \frac{v_{is}}{MF}$

$TIS = \frac{128,000}{.20}$

*need to reconcile this w/ formula on p. 14*

The Target Image width =  $\sqrt{2,560,000 / 0.8} = 1789$  pixels

The Target Image height =  $1789 \times 0.8 = 1431$  pixels

$TIW = \sqrt{\frac{TIS}{SIAR}} = \sqrt{\frac{2,560,000}{.8}} = \sqrt{3,200,000} = 1789$

*is the formula on p. 13 is right?*

The Minimum Scan Density =  $1789 / 5 = 358$  pixels per inch  
 $1789 / 4 = 447.25$

The photo scan can be any scan density > ~~357~~ pixels per inch  
 $447.25$

*447.25*  
Thus, a 4" x 5" print film image should be scanned at greater than ~~357~~ pixels per inch to allow magnification/zoom up to 20 times in a viewing window of 320 x 240 pixels. An enhanced digital image file having 2,560,000 pixels provides a sufficient number of pixels for this example.

EXAMPLE 2

Determine the Target Image size and dimensions, and minimum scan density for the following case:

Atty. Dkt. No. 57103/120

Source Image =  $4'' \times 5''$

Desired Magnification Factor = 20

Source Image Aspect Ratio =  $4 / 5 = 0.8$

Define the Viewing Window: assume 360h x 400w pixels

Viewing Window Aspect Ratio =  $360 / 400 = 0.9$

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

$0.8 < 0.9$  therefore:

$v_{1w} = v_{ww} = 400$  pixels

$v_{1h} = \frac{v_{1w}}{V_{WW}} \times 0.8 = 400 \times 0.8 = 320$  pixels

The Viewing Image size =  $v_{1s} = 320 \times 400 = 128,000$  pixels

The Target Image size =  $v_{1s} \times 20 = 128,000 \times 20 = 2,560,000$  pixels

*Where is this relationship defined*

The Target Image width =  $\sqrt{2,560,000 / 0.8} = 1789$  pixels

The Target Image height =  $1789 \times 0.8 = 1431$  pixels

The Minimum Scan Density =  $1789 / 5 = 358$  pixels per inch

*p. 15 MSF =  $T_{1h} / S_{1H} = 1431 / 4 = 357.75$*

The photo scan can be any scan density > ~~358~~ pixels per inch  
*357.75*

Atty. Dkt. No. 57103/120

**EXAMPLE 3**

Determine the Target Image size and dimensions, and minimum scan density for the following case:

Source Image =  $5'' \times 4''$  (portrait orientation)  
 Desired Magnification Factor = 20  
 Source Image Aspect Ratio =  $5 / 4 = 1.25$

~~5 = H~~  
~~4 = W~~  
 5 = H  
 4 = W

Define the Viewing Window: assume 360h x 400w pixels  
 Viewing Window Aspect Ratio =  $360 / 400 = 0.9$

The Source Image Aspect Ratio is  $>$  the Viewing Window Aspect Ratio:

$1.25 > 0.9$  therefore:

$v_{ih} = v_{wh} = 360$  pixels

$v_{iw} = \frac{v_{ih}}{1.25} = 360 / 1.25 = 288$  pixels

The Viewing Image size =  $v_{is} = 360 \times 288 = 103,680$  pixels

The Target Image size =  $v_{is} \times 20 = 103,680 \times 20 = 2,073,600$  pixels

The Target Image width =  $2,073,600 / 1.25 = 1288$  pixels

The Target Image height =  $1288 \times 1.25 = 1610$  pixels

The Minimum Scan Density =  $1288 / 4 = 322$  pixels per inch

$MSD = t_{ih}/s_{ih} = 1288/5 = 257.6$

The photo scan can be any scan density  $>$  ~~322~~ pixels per inch

257.6



Atty. Dkt. No. 57103/120

determined by comparing the source image aspect ratio (sir) to the viewing window aspect ratio (vwr), as shown:

if  $sir < vwr$  then:

$$vih = vwh$$

5  $viw = vih * sir$

but if  $sir \geq vwr$  then:

$$viw = vww$$

$$vih = viw / sir$$

This relationship is illustrated in FIG. 7.

10 Note that the target image (ti) is created from the source image (si), by scaling the image (si) down to fit within the viewing window (vw). When the target image (ti) is scaled down by the desired maximum magnification factor (mmf) to fit within the viewing window (vw), the scaled target image is called the viewing image (vi).

15 The maximum magnification factor (mmf) is defined as the ratio of the target image area (tia) to the viewing image area (via). This ratio will determine the amount of zoom available without causing the image to distort due to pixelation, i.e., when fewer pixels are in the viewing image being displayed than available in the viewing window.

20 So:

$$\text{target image area (tia)} = tiw \times tih$$

and since

$$via = viw \times vih$$

then

25  $tia = via \times mmf$

To obtain the target image width and height:

$$tiw = \text{squareroot}(tia * sir)$$

$$tih = tiw / sir$$

30 The relationship between the target image and the viewing image is shown in FIG. 7. The relationship between the target image

Atty. Dkt. No. 57103/120

and the viewing window is also shown. A zoom to the maximum level will be shown in the viewing window as illustrated at representation 120 of FIG. 7. By panning the viewing window, every portion of the target image may be viewed from each level of zooming.

5 To determine the minimum scan density (msd) to avoid pixelation at the desired maximum magnification factor (mmf):

$msd = th/sih. = t/w/siw$

EXAMPLE 1

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

Source Image = 5" wide x 4" high

Desired Magnification Factor = 20

Source Image Aspect Ratio = 5 / 4 = 1.25

Define the Viewing Window: assume 480w x 320h pixels

15 Viewing Window Aspect Ratio = 480 / 320 = 1.5

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

1.25 < 1.5 therefore:  $v/h$

$vih = vwh = 320 \text{ pixels}$

$viv = vwh * 1.25 = 320 * 1.25 = 400 \text{ pixels}$

20 The Viewing Image Area =  $vis = 320 \times 400 = 128,000 \text{ pixels}$

The Target Image Area =  $vis \times 20 = 128,000 \times 20 = 2,560,000$

pixels

$TIM = \sqrt{2560000 * 1.25} = 1789$

The Target Image width =  $2,560,000 / 0.8 = 1789 \text{ pixels}$

The Target Image height =  $1789 \times 0.8 = 1431 \text{ pixels}$   $TIH = \frac{1789}{1.25} = 1431$

25 The Minimum Scan Density =  $1789 / 5 = 358 \text{ pixels per inch}$

The photo scan can be any scan density > 357 pixels per inch

Thus, a 5 x 4" print film image should be scanned at

greater than 357 pixels per inch to allow magnification/zoom up to 20 times in a viewing window of 320 x 240 pixels. An enhanced digital

480 x 320

WRONG EXPRESSIONS USED

OK

Atty. Dkt. No. 57103/120

image file having 2,560,000 pixels provides a sufficient number of pixels for this example.

**EXAMPLE 2**

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

5 density for the following case:

Source image = 5" x 4"  $\rightarrow$  state which is height & which is width.

Desired Maximum Magnification Factor = 20

Source Image Aspect Ratio = 5 / 4 = 1.25

Define the Viewing Window: assume 400w x 360h pixels

10 Viewing Window Aspect Ratio = 400 / 360 = 1.11

The Source Image Aspect Ratio is > the Viewing Window Aspect Ratio:

1.25 > 1.11 therefore:

$v_{iw} = v_{ww} = 400$  pixels

$v_{ih} = v_{iw} / 1.25 = 400 / 1.25 = 320$  pixels

15 The Viewing Image Area =  $v_{ia} = 400 \times 320 = 128,000$  pixels

The Target Image Area =  $v_{ia} \times 20 = 128,000 \times 20 = 2,560,000$  pixels

*wrong expression used*  $\rightarrow$  The Target Image width =  $2,560,000 \div 1.25 = 1789$  pixels  $TIW = \sqrt{2,560,000 \div 1.25} = 1789$

The Target Image height =  $1789 / 1.25 = 1431$  pixels

The Minimum Scan Density =  $1431 / 4 = 358$  pixels per inch  $\rightarrow$  correct

20 The photo scan can be any scan density > 357 pixels per inch

**EXAMPLE 3**

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

Source Image = 4" wide x 5" high (portrait orientation)

25 Desired Magnification Factor = 20

Source Image Aspect Ratio = 4 / 5 = 0.8

Define the Viewing Window: assume 400w x 360h pixels

Viewing Window Aspect Ratio = 400 / 360 = 1.11

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

Atty. Dkt. No. 57103/120

0.8 < 1.11 therefore:

$$v_{ih} = v_{wh} = 360 \text{ pixels}$$

$$v_{iw} = v_{ih} * 0.8 = 360 * 0.8 = 288 \text{ pixels}$$

The Viewing Image area =  $v_{ia} = 360 \times 288 = 103,680$  pixels

5 The Target Image area =  $v_{ia} \times 20 = 103,680 \times 20 = 2,073,600$  pixels

Wrong Expression USED → The Target Image width =  $2,073,600 * 0.8 = 1288$  pixels  $T_{iw} = \sqrt{2,073,600 * 0.8} = 1298$

The Target Image height =  $1288 / 0.8 = 1610$  pixels

The Minimum Scan Density =  $1610 / 5 = 322$  pixels per inch

The photo scan can be any scan density > 321 pixels per inch

10           Returning now to FIG. 2, at step 60, the enhanced digital image file is provided to computer 22 in a digitized format, i.e., pixel-based, bitmapped, etc. (as opposed to vector graphics based format), such as in either in a bitmap BMP format or a compressed JPEG format. Computer 22 performs a touch-up operation on the scanned image in  
15 order to make refinements or enhancements thereto. This touch-up operation is accomplished by utilizing imaging software. Touch-up steps may include cleaning the edges of the image, adjusting lighting, adjusting colors, etc. Adobe PhotoShop software, manufactured by Adobe Systems Inc., San Jose, California, can be used as the imaging  
20 software for touching up the images.

          According to one example, multiple images can be stitched together after scanning, and before or after compression, thereby creating a panoramic scene or image, or simply a scene requiring a plurality of photographs. This stitching operation can be performed by  
25 utilizing photo stitching software such as, for example, Photo Vista software by Live Picture, Live Picture Reality Studio or Live Picture Object Modeler. Stitching may comprise sufficient photos for a 360 degree panoramic image of a scene. If images are stitched, they may be touched-up at step 60.

Atty. Dkt. No. 57103/120

At step 62, if desired, and if the enhanced digital image file has not yet been compressed (e.g., by scanning device 18 or the touch-up software), the image is then converted from a bitmap file format (e.g., BMP) to a compressed file format (e.g., JPEG). Other compression algorithms are contemplated. Adobe Image Ready software is utilized to perform the BMP-to-JPEG file conversion in this exemplary embodiment. The compression is set to a very high compression factor, such as, 70% to 90%, but may alternatively be set to other compression factors. The target image area be set as one of the parameters for compression, thus ensuring an optimum compressed file size.

At step 64, user interface or control data is associated with the enhanced digital image file. The user interface data is a program or code segment (e.g., a Java applet) that provides a graphic user interface on display 30 upon loading of the image. The user interface program is associated with the enhanced digital image file such that the combined file or files can automatically launch the graphic user interface, decompress the digital image data, and display at least a portion of the digital image data within a viewing window having a predetermined viewing size on display 30.

The user interface data may alternatively be a plug-in, applet, or other software program, such as, Photo Vista, Reality Studio, or Object Modeler manufactured by Live Picture Inc., San Francisco, California, or an Ipix plug-in manufactured by Internet Pictures Corporation of Oak Ridge, Tennessee. The user interface data may be either associated with the enhanced digital image file such that it is downloaded with the enhanced digital image data, or it may be launched independently from the enhanced digital image data as, for example, an applet or plug-in on user computer 28. If the user interface data is launched independently of the image data, it may either be first opened by the user before downloading the enhanced digital image file, or it may

Atty. Dkt. No. 57103/120

be automatically opened by the enhanced digital image file, such as, via a script or other code segment within the enhanced digital image file.

Referring to FIG. 3, an exemplary screen print 80 from display 30 is shown illustrating the graphical user interface 82 generated by the user interface program. User interface 82 includes a viewing window or frame 84 for displaying the digital image data 86. User interface 82 further includes zoom buttons 88 for allowing the user to zoom into and out of digital image data 86. By actuating one of zoom buttons 88, user interface program resizes digital image data 86 within viewing frame 84. User interface 82 further includes panning buttons 90 to allow the user to pan up, down, left, and right within image data 86.

Once the user interface program is associated with the enhanced digital image data, the resulting image is ready for providing to a network server, projection from a projector, display system, posting, or playback, to or from a host computer, a Web server, a Web site, or a Web page. At step 66, the enhanced digital image is uploaded to a network server. In the instance where the enhanced digital image is posted to an Internet Web server, the upload from computer 22 to the respective server can be performed by utilizing file uploading software, such as, Web FTP (file transfer protocol) Pro software, manufactured by Ipswitch, Inc., Lexington, Massachusetts.

Referring now to FIGS. 3, 4, and 5, exemplary print screens are shown illustrating the result of an upload or download of the enhanced digital image file to user computer 28 for display on display 30. In FIG. 3, digital image data 86 of a collectible stamp image is shown within a viewing window 84. Although viewing window 84 is slightly smaller than the full-screen size of display 30 (e.g., 640 x 480 pixels in this example), viewing window 84 can alternatively be configured for full-screen display, or display in other sizes or resolutions. As shown, digital image data 86 shows no sign of pixelation.

Atty. Dkt. No. 57103/120

In FIG. 4, a user has actuated zoom buttons 88 to zoom-in to the digital image. In response, the user interface program provides additional digital image data from the enhanced digital image file stored in a memory (e.g., a hard drive) of user computer 28, to provide a zoomed view of the digital image. Thus, the view of FIG. 4 also shows little sign of pixelation even though the image has been magnified many times.

In FIG. 5, a user has actuated pan buttons 90 to display the lower left-hand corner of the digital image data within viewing window 84. The user has also actuated zoom buttons 88 to zoom-in to the digital image data. Again, little pixelation is visible.

As mentioned, the principles described herein are also operable with a digital image taken by a digital camera. Referring now to FIG. 6, a method 100 of providing an enhanced digital image file utilizing a digital camera is shown. At step 102, the digital camera is configured to acquire a digital image. In this step, the camera is set with a high resolution to acquire at least enough pixels for a magnification of two times the size of the viewing window provided on display 30, though higher numbers of pixel data may also be acquired.

Again referring to FIG. 7 and the corresponding description hereinabove, with a digital source image, the maximum magnification factor (mmf) should not produce a target image larger than the source image in pixels because of the pixel distortion or pixelation effect, i.e., distortion due to fewer pixels in the image being displayed than available in the viewing window. Since:

$$\text{target image area (tia)} = \text{tiw} \times \text{tih} = \text{via} \times \text{mmf}$$

then to obtain the target image width and height:

$$\text{tiw} = \sqrt{\text{tia} \times \text{sir}}$$

$$\text{tih} = \text{tiw} / \text{sir}$$

If  $\text{tih} > \text{sih}$  then set  $\text{tih} = \text{sih}$  and  $\text{tiw} = \text{siw}$

*need the square root*

Atty. Dkt. No. 57103/120

EXAMPLE 4

Determine the Target Image size and dimensions, and minimum scan density for the following case:

Source Image =  $1600^w \times 1200^h$  pixels

Desired Magnification Factor = 20

Source Image Aspect Ratio =  $1600 / 1200 = 1.33$

Define the Viewing Window: assume 480w x 360h pixels

Viewing Window Aspect Ratio =  $480 / 360 = 1.33$

The Source Image Aspect Ratio is = the Viewing Window Aspect Ratio:

0.75 = 0.75 therefore:  $> 1.33 = 1.33$

$v_{ih} = v_{wh} = 360$  pixels

$v_{iw} = v_{ih} * 1.33 = 360 * 1.33 = 480$  pixels

The Viewing Image area =  $v_{ia} = 480 \times 360 = 172,800$  pixels

The Target Image area =  $v_{ia} \times 20 = 172,800 \times 20 = 3,456,000$  pixels

The Target Image width =  $\sqrt{3,456,000 * 1.33} = 2147$  pixels

The Target Image height =  $2147 / 1.33 = 1610$  pixels

But  $t_{ih}$  of 1610 pixels is  $> 1200$  pixels therefore:

$t_{ih} = 1200$  pixels

$t_{iw} = 1600$  pixels

$t_{ia} = 1200 \times 1600 = 1,920,000$  pixels

Effective Maximum Magnification Factor =  $t_{ia} / v_{ia}$   
 $= 1,920,000 / 172,800 = 11.1$

The Minimum Scan Density = N/A

Steps 104 (touch-up image), 106 (compress file), 108

(associate user interface data), and 110 (upload file) may proceed as described with reference to FIG. 2 in the print film image exemplary method.

The above method can be repeated using different depth images or digital photographs for the images in order to create areas of higher resolution or "hot spots" within an image for detailed close-up

*Why discuss ASD at all? It's not applicable. If a digital image is printed and later scanned, then you will follow the math steps for print, not the steps for DIGITAL*

*wrong expression*

1 camera with you at any of those meetings? 199

2 A. I didn't take a camera with me.

3 Q. Now, going back to the Iviewit  
4 technologies, the heart of the company's  
5 property, intellectual property, was there ever  
6 any concern expressed to you, as COO and  
7 president of the company, concerning the math,  
8 the poor math that was submitted to the patent  
9 office with errors? Is there anyone who  
10 expressed any concern to you about that?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: There was a dispute as  
13 to the consistency of the mathematical  
14 representation, not to accuracy.

15 By MR. SELZ:

16 Q. Okay. So it wasn't dealing with the  
17 accuracy of the math or computational errors; it  
18 was dealing with whether or not the math properly  
19 applied the processes involved?

20 A. No. It was, I said, consistency.

21 Q. Consistency, okay. Well, explain to  
22 me what you mean by consistency, then, sir, so I  
23 can understand.

24 A. Well, there may be several different  
25 ways of deriving the same number, and it could be

1 derived using one form in one place and another 200

2 form in another place. The result is always the  
3 same and both forms are accurate.

4 Q. But they're not consistent?

5 A. They are not -- they don't show the  
6 same format, but the values and the value derived  
7 is always the same. It is mathematically  
8 correct.

9 Q. Okay. So did anyone ever express to  
10 you a concern about those particular issues?

11 A. There was a concern expressed, yes.

12 Q. By who?

13 A. By Eliot Bernstein.

14 Q. How about Murice Buchsbaum, did he  
15 ever express any concern to you about the math  
16 submitted?

17 A. Murice Buchsbaum didn't understand  
18 the math.

19 Q. Okay. So he never, he never  
20 expressed any concern to you then?

21 A. Not on that score.

22 Q. Did the board of directors ever  
23 question you about the patent materials submitted  
24 or any problems with the patent submitted to  
25 these intellectual property rights?

1 A. No.

2 MR. PRUSASKI: Object to the form.

3 By MR. SELZ:

4 Q. Did you ever discuss with the board  
5 of directors any of the problems with Foley &  
6 Lardner or Meltzer Lippy's work with regard to  
7 the patent?

8 A. I don't recall discussing any  
9 problem with respect to Foley & Lardner's work  
10 because I don't recall any problem with Foley &  
11 Lardner's work.

12 Q. Okay. How about Meltzer Lippy, I  
13 think you described yesterday, there were some  
14 concerns; were those discussed with the board of  
15 directors?

16 A. The work done with Meltzer Lipper,  
17 was done mostly before my time.

18 Q. What about the part that was done  
19 during your time, were you concerned about any of  
20 the quality of the work that was performed or any  
21 problems you felt might arise from that work?

22 A. I did not, during that time,  
23 discover any problems.

24 If I may ask the question, I'm  
25 puzzling here to understand why this form of

1 questioning is relevant to the Proskauer  
2 litigation?

202

3 Q. Well, actually, sir, and I don't  
4 mean to be impolite in any manner whatsoever, but  
5 the role here for you is not really to ask these  
6 questions, but rather to answer the questions  
7 that are posed. So, although I appreciate your  
8 concerns, that's not something really for you to  
9 determine, but rather for posing counsel to bring  
10 before the court, if these matters should ever be  
11 submitted.

12 So, again, I'm not attempting to be  
13 rude or impolite in any manner, but these are the  
14 questions we can pose to you and you are duty  
15 bound to answer them.

16 MR. PRUSASKI: I would just say to  
17 some extent, because he's not represented here, I  
18 think he's got the right to --

19 MR. SELZ: He doesn't have any right  
20 to object. And you know, Chris, you and I both  
21 know, that even if you object to the form of a  
22 question or relevancy, the witness still has to  
23 answer it.

24 MR. PRUSASKI: I agree, and I think  
25 Mr. Utley knows that he needs to answer the

1 questions, but I think because he's not 203

2 represented, to some extent, he does have the  
3 right to question the relevancy.

4 MR. SELZ: Well, I mean, he can  
5 object based on the relevancy or you can object  
6 based on the relevancy, but he cannot question  
7 the validity of what I'm asking based on a  
8 relevancy objection.

9 MR. PRUSASKI: Okay. I just think  
10 that his last comment was basically just a lay  
11 person's objection to the relevance.

12 MR. SELZ: That's fine. I mean, you  
13 know --

14 MR. PRUSASKI: And I'd like to  
15 state --

16 MR. SELZ: I don't even know if he  
17 has standing to interpose an objection because  
18 he's not a party to the case. So, well, I guess  
19 whatever, but the bottom line is we'll proceed so  
20 we can hopefully get through this as quickly as  
21 possible and release Mr. Utley from his  
22 obligations here.

23 MR. PRUSASKI: Okay. And I'd like  
24 to join Mr. Utley with objecting to the relevance  
25 of the question too. Go ahead.

1 MR. SELZ: (No response.) 204  
2 MR. PRUSASKI: Steve?  
3 MR. SELZ: Yeah, I'm still here.  
4 MR. PRUSASKI: Okay. Go ahead when  
5 you're ready. I guess we're done.  
6 MR. SELZ: You're done with your  
7 objections. Okay, fine.  
8 MR. BERNSTEIN: Could somebody  
9 repeat the last question for me, please.  
10 MR. SELZ: The last question was are  
11 you, are, were you aware of any situations  
12 according to -- Madam Court Reporter, actually if  
13 you could do me a favor, if you read back that  
14 last question, I would appreciate it.  
15 (Whereupon, the requested portion  
16 was read back.)  
17 MR. SELZ: That's fine, thank you.  
18 By MR. SELZ:  
19 Q. Did Foley & Lardner ever discuss  
20 with you any potential errors in the patents and  
21 any potential liabilities that would arise from  
22 those errors?  
23 MR. PRUSASKI: Object to the form.  
24 Assumes facts not in evidence.  
25 MR. SELZ: Well, let me start off

1 with the basic question then.

205

2 By MR. SELZ:

3 Q. Did Foley & Lardner ever advise you  
4 that there were any errors in the patents?

5 A. No.

6 Q. So, then, they never advised you of  
7 any liabilities or any errors that might arise  
8 from any errors because there weren't any; is  
9 that your testimony is today?

10 A. They never advised me that there  
11 were any errors in the patents.

12 Q. Okay. Now, with regard to the  
13 Proskauer Rose billing, you had indicated that  
14 you had authorized certain payments to be made  
15 and Mr. Prusaski had showed you a series of  
16 letters sent to you by Chris Wheeler and your  
17 responses on a couple of those.

18 Were those payments ever authorized  
19 by the board of directors of Iviewit?

20 A. The board of directors normally does  
21 not become involved in the administration of  
22 accounts receivable and accounts payable.

23 Q. Okay. Well, you, in your own  
24 testimony, sir, indicated that the company was in  
25 a cash poor position; is that true?

**Eliot I. Bernstein**

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**From:** Eliot I. Bernstein [alps1@bellsouth.net]**Sent:** Wednesday, August 09, 2000 11:10 AM**To:** Douglas Boehm (E-mail); James F Armstrong (E-mail); Simon L. Bernstein (E-mail); brian@iviewit.com[www.iviewit.com](http://www.iviewit.com)

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

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

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

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

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

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

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

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

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

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

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

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

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

Best regards,

Eliot

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

From: Boehm, Douglas A.

To: Eliot Bernstein (Iviewit)

Sent: 8/9/00 2:46 AM

Subject: PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED

Eliot--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third, I doubt if you have ever checked to see if your competitors have patents covering your technology. You may find out, rather abruptly I'm afraid, that the people you're going to attempt to license may have a better patent portfolio than you do. All of a sudden you'll end up being the licensee. Or what's worse, you may have to shut down and re-engineer your business to avoid a multimillion dollar patent infringement lawsuit. This is a real risk -- much more of a risk than losing a priority date because a square root sign was missing from a math formula of an example in one of your patent applications. You should keep things in perspective.

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

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

Please let me know what you decide.

--Doug

>Douglas A. Boehm

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>

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>Best regards,

*Eliot*

Eliot I. Bernstein  
Founder & Chief Technology Officer

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**Becker, Steven C.**

---

**From:** Becker, Steven C.  
**Sent:** Monday, July 24, 2000 4:44 PM  
**To:** Eliot I. Bernstein (E-mail); Brian G. Utley (E-mail)  
**Cc:** Boehm, Douglas A.  
**Subject:** PCT Patent Application for "Zoom and Pan" Imaging

**Re:** PCT Patent Application for System and Method for Providing an Enhanced Digital Image File  
Inventor: Bernstein  
Our Ref. No.: 57103/120

Brian:

During our brief telephone conversation today, you provided a few comments in response to my letter to you dated July 21, 2000. These comments were based on your review of the prior provisional applications, and are summarized below.

1. The step of "enlarging" is not essential for all embodiments of the invention.
2. The aspects of zooming and panning, and the function of the applet must be described in greater detail.
3. The disclosure relating to acquiring a photograph of a film video should be removed. However, the disclosure relating to processing one frame of a video according to the process steps of the invention should be retained.
4. In the provisional patent application having our reference number 57103/108, the flowchart in FIG. 2A does not match the corresponding description in the specification. Correction is needed.
5. Again, in the application for 57103/108, the claims in their current form may not be of the proper scope and should be revised.
6. You commented that the prior-filed PCT applications relating to enhanced video files did not specifically mention potential applications in radiographic images, X-rays, MRIs, etc. Regardless of whether these specific applications are supported, additional subject matter cannot be introduced to the prior-filed PCT applications unless additional patent applications are filed. Please advise if you would like us to file patent applications directed to these specific applications.

We discussed the possibility that the provisional applications currently on file may not provide sufficient disclosure to support all of the claims we may eventually want to file in the PCT patent application we are currently preparing, and, therefore, the sale of images using this process in September, 1999 may bar patentability in some foreign countries. You instructed us to proceed with the PCT filing to preserve whichever foreign filing rights are available.

Accordingly, comments 1-5 will be incorporated in the above-referenced PCT patent application. If you have any further questions or comments, please do not hesitate to contact me.

Steve Becker  
Foley & Lardner  
(414)297-5571

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August 9, 2000

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**CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED**

Re: Correspondence and Issues regarding  
PCT International Patent Application entitled  
"System and Method for Providing an Enhanced Digital Image File"  
Filed: August 2, 2000  
Inventors: Bernstein, et al.  
Our Reference: 57103/120

Dear Eliot:

Pursuant to your e-mail instructions sent Friday, August 4, 2000, I forwarded a notebook to you containing a copy of all correspondence relating to the above-referenced patent filing. Furthermore, pursuant to your request during the telephone conference of Friday morning with Steve Becker, the following describes what occurred during the preparation of this application, any errors made in the application, how they were made, what risks are involved, and how the errors can be corrected.

### Overview

Before discussing the details, I would like to put things into perspective and comment on the magnitude of the errors and the extent of their repercussions. I believe that the errors in the filed specification are of a very minor, technical nature, which can be readily corrected in the various patent offices in due course, and which will have no negative impact whatsoever. The errors in the math will not affect our priority claim back to the August 2, 1999, provisional application, because the math examples were not originally in there. As Steve explained during the Friday teleconference, the worst thing that could happen is that we could lose the benefit of priority for the mathematical examples for a short period of time, i.e., from the August 2<sup>nd</sup> filing date to the filing date of a continuation-in-part application which could be prepared and filed this month, if we decide to do so. In my opinion, the entire

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 2

situation surrounding these errors has been overstated, and your concerns expressed during the Friday teleconference are unwarranted.

### Correspondence

In order to explain exactly what happened, the following paragraphs set forth a brief description of the enclosed correspondence surrounding the preparation and filing of the PCT application, and points out where and why the errors occurred. The numbers below correspond to the tabs in the correspondence notebook.

1. July 21, 2000, Letter from Steve Becker to Brian Utley

This letter encloses the "Zoom and Pan" invention materials on which the above-referenced PCT application is based.

2. July 24, 2000, 4:44 p.m., E-mail from Steve to You and Brian

This e-mail summarizes the recent conversation regarding the zoom and pan invention, and sets forth our strategy for preparing and filing the application.

3. July 24, 2000, 5:02 p.m., E-mail from Steve to You

This E-mail attached a copy of the previous letter Steve sent to Brian on July 21, and asked you for any additional comments you may have.

4. July 25, 2000, 7:35 p.m., E-mail from Steve to You and Me

This e-mail just confirms the time for the next teleconference for discussing the patent application.

5. July 26, 2000, 3:01 p.m. and 3:06 p.m., Letter from Steve to You and Brian

This letter encloses the first draft of the PCT patent application and the inventor information sheet. The letter says that Steve will call both you and Brian at 5:00 p.m. Eastern Time that day.

Note that this first draft includes several blank spaces, question marks, and comments indicating where Steve thought that additional support was needed.

6. July 27, 2000, 11:43 a.m., Fax from Brian to Steve

This fax, sent from Kinko's in Ogden, Utah, when Brian was on vacation, encloses the first examples of the mathematical formulas and a single Example that will be added to the first draft of the application. Note that Brian originally defined the source image aspect ratio (siar) as the height over the width.

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 3

7. July 27, 2000, 2:07-3:45 p.m., Fax from Steve to You and Brian

This fax includes only the nine pages of the application that were revised, including the background section and claims.

8. July 28, 2000, 4:56 p.m., Letter from Steve to You

This letter encloses the second draft of the patent application, which includes additional disclosure received from Brian. Since Brian was still on vacation, Steve asked you to make a copy of this letter and draft for Brian's review.

Note that in this second draft, that Steve's comment on page 13 points to an inconsistency between the math formulas and examples provided in this draft versus Brian's macro Excel spreadsheet output.

9. July 31, 2000, 8:43 a.m., 9:27 a.m., and 1:45 p.m., E-mails from Brian to Steve

Here, Brian sent Steve three different versions of the imaging math formulas and examples. Note that the aspect ratio is still being defined as height over width.

10. July 31, 2000, 3:58 p.m., E-mail from Steve to Brian and You

This e-mail acknowledges receipt of Brian's three versions of the imaging math formulas and asks whether the latest e-mail is inclusive of all prior changes. Steve states that he will now amend the specification of the PCT application based on this latest mathematical formulas and examples.

11. July 31, 2000, 7:09 p.m., Fax from Steve to You and Brian

Steve faxed you the third draft of the patent application. Steve asked for comments as soon as possible, but in no event later than 10:00 a.m., Wednesday, August 2, which is the day that the application had to be filed.

12. August 1, 2000, 7:38 a.m., E-mail from Brian to Steve

This e-mail confirms that the last e-mail included all the changes to the imaging mathematics.

13. August 1, 2000, 7:42 a.m., E-mail from Brian to Doug

In this e-mail, Brian forwarded the July 31 e-mail to me, including the latest imaging mathematics.

## Foley & Lardner

Mr. Eliot I. Bernstein

August 9, 2000

Page 4

14. August 1, 2000, 8:30 a.m., Copy of Brian's Comments

This document shows Brian's comments on the second draft of the application. Brian gave this marked-up version to me when I was at your offices that morning.

15. August 2, 2000, 9:06 a.m., Fax from You to Steve and Me

This document sets forth the changes made to the third draft of the application by the Iviewit reviewing team, which now included Jim Armstrong. This document was the basis of our telephone conference from 10:00 a.m. to 3:30 p.m. that day. Note that this is the first time Jim provided his comments to us. Also note the extent of the comments, which, at this late stage in the process when the application had to be filed that same day, caused me some concern. During our teleconference, it became clear that we were revisiting old topics and decisions we previously made with you and Brian in the previous drafts of the application. Particularly note the extent of the mark-ups on the imaging mathematics beginning at page 11. A significant amount of time was spent discussing the particulars of the math formulas between Brian and Jim, and we all agreed that Brian would modify the math and examples and send them to me. Note that when the call ended, the source image aspect ratio was still being defined as height over width (see page 11).

16. August 2, 2000, 5:49 p.m., E-mail from Brian to Me

This e-mail attached the latest modifications to the mathematics and examples that Brian said he would send me. Note that this is the first time the aspect ratio is defined as width over height, since, in response to my pointing out the inconsistency between photography versus computer display aspect ratio conventions, Brian determined that it would be more consistent to express the math in the patent application in accordance with the computer display convention. This version of the imaging mathematics is what I used as the basis for the final draft of the patent application that was filed that night.

17. August 2, 2000, 9:39 p.m., E-mail from Me to Brian (at home) and You

This e-mail contained two versions of the same document, which represent where I was in the editing process at that time. The first document was in Word version 6.0/95 for Brian to be able to read at home. The second version was in Word 97 as usual. Note that my e-mail told you and Brian that you could send a copy to Jim if you want.

As you can see, I was fighting the clock since the application had to be on file before midnight that night, and I had to allow sufficient time to drive to the airport post office to obtain the filing date. Note that, beginning on page 13 (of the second version), and through to page 18, the imaging process mathematics and examples are set forth substantially in accordance with Brian's latest revisions. However, the digital example, beginning on page 22, had not yet been edited to pick up the change in aspect ratio convention. Also note in this

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 5

draft that independent claim 1 has not yet been changed to make the user interface element a dependent claim.

After additional discussions with both you and Brian that night, you both gave me the verbal "okay" to file the application. We obviously did not have time to let all three of you review it again before it was filed. At that time, it was all I could do to finish making the changes you requested throughout the day. I did that. I then briefly checked over the final documents, worked with my foreign filing coordinator to prepare the formal filing papers, and drove to the airport post office. The PCT and corresponding U.S. patent applications were properly filed that night.

18. August 3, 2000, 11:55 a.m., E-mail from Me to Brian, You, and Steve

This e-mail simply confirms that the applications were filed last night, and that copies would be forthcoming.

19. August 3, 2000, 1:35 p.m., E-mail from Brian to Me

This e-mail from Brian, thanking me for the "supreme effort to get the job done," was appreciated.

20. August 3, 2000, 2:47 p.m., E-mail from Me to You and Brian

After being informed that you wanted a copy of the application right away, I sent this e-mail attaching the Word document for the PCT application as filed. The e-mail clearly says that the drawings didn't change, which meant that you already had copies of the drawings from the previous drafts. I could not e-mail the drawings, and I thought since you already had a fax copy, this would suffice. I also said I would send full copies next week. This Word document does exactly represent what was filed in the PCT that night.

21. August 4, 2000, 11:34 a.m., Fax from Jim Armstrong to Me, copying You and Steve

This facsimile contains eight pages from the filed PCT application, which have been marked up to show what Jim believes are either typographical errors or improper formula expression. This fax was apparently the basis of the telephone call between you, Brian, Sy, Jim, and Steve on Friday. Each one of these purported "errors" will be discussed in detail below.

### Friday Teleconference

In your extended teleconference with Steve Becker on Friday, of which I was not a participant, you made several inaccurate statements, accusations, and remarks regarding the errors in the application and, in general, the proficiency of Foley & Lardner's services.

## Foley & Lardner

Mr. Eliot I. Bernstein

August 9, 2000

Page 6

Now that I have had the opportunity to review the tapes of the Friday teleconference, the patent application, and the application correspondence set forth above, I would like to explain exactly what errors were made, how they were made, why they were not caught, and what issues they raise. Although Steve did a masterful job of trying to educate you on the fundamentals of patent law in an attempt to put the errors in perspective, Steve was not involved in the preparation of the final draft of the application and so could not be expected to know how these errors arose.

### Discussion of Changes

Please refer to the August 4, 2000, 11:34 a.m., facsimile from Jim Armstrong, which can be found at tab 21 of the correspondence notebook.

#### (1) Page 12, line 27

Although this is not an error, and Jim did not mark it as such, I want to point out that the formula " $tiw = \text{square root}(tia * sir)$ " uses the word "square root" instead of the square root symbol. Either way, this formula is correct, and provides sufficient basis, in my opinion, to correct subsequent errors in this formula, particularly where they don't make sense.

I do recall Brian mentioning, late Wednesday night, that a square root symbol was missing. I understood his comment to mean that I used the word "square root" instead of the square root symbol in this line of the application. I might have told Brian I would fix this in the final draft, but I probably ran out of time. Nevertheless, this is not an error. In fact, I am thankful that I did not remove the word "square root" intending to insert a square root symbol which may have been forgotten in the rush.

#### (2) Page 13, line 7

The minimum scan density (msd) is defined here as " $msd = tih/sih$ " (target image height over source image height). This is mathematically equivalent to " $tiw/siw$ " (target image width over source image width), which is apparently what Jim and Brian want it to be for consistency with the last-minute change in aspect ratio convention. I agree. This formula can easily be changed to read " $msd = tiw/siw = tih/sih$ ," particularly because of the equivalency. It is my opinion that this is a very minor technical change, it should not be considered an error in any sense of the word, and I don't believe we will encounter any problems changing it in both the United States Patent and Trademark Office (USPTO) and the World Intellectual Property Office (WIPO) where the PCT (Patent Cooperation Treaty) International applications are filed, searched, and, optionally, examined. Recall that the same patent application was filed as both a PCT and US application Wednesday.

Note that this is the first time anybody pointed out a problem with this equation. The same equation appears in the previous drafts which you reviewed, and no reference to

Foley & Lardner

Mr. Eliot I. Bernstein

August 9, 2000

Page 7

correcting this equation appears in Brian's latest imaging process mathematical spreadsheet. Therefore, your accusation that Brian made this change with me, and it's still wrong in the patent, is, itself, wrong.

The best-case scenario, which I predict will occur, is that the USPTO and WIPO will permit me to make a preliminary amendment to the specification to make this change. In the worst-case scenario, the USPTO or WIPO will consider the change to be impermissible new matter, and the equation will have to remain as it was filed. In that case, there is an extremely remote chance that someone, someday, could argue that the inconsistency could cause the patent to be invalid for lack of enablement, i.e., that the specification does not "contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention." (35 U.S.C. § 112, ¶ 1.) However, I highly doubt that such a minor inconsistency could warrant such a drastic effect, especially since the mathematics itself isn't claimed.

(3) Page 13, line 19

For consistency's sake, " $viw = vwh * 1.25$ " should be changed to " $viw = vih * 1.25$ ", even though the previous line states that " $vih$ " and " $vwh$ " are equal to each other. Again, I would consider this a minor technical modification to a mathematical example that is not necessary for validity of the patent. Nevertheless, I think that we will be able to make this minor correction in both the USPTO and WIPO without any problem or repercussions. Not only is it simply a more preferred way of stating the same mathematical value, it is supported in the terminology of Examples 2 and 3. It is also an obvious inconsistency which would be known to those skilled in the art.

Note that this inconsistency appears in the latest version of Brian's mathematical formula spreadsheet under Example 1, which was essentially cut and pasted from his spreadsheet into the patent application shortly before it was filed. I did not have time that night to double-check all of the mathematical formulas.

(4) Page 13, line 23

The square root symbol is missing over the expression " $2,560,000/0.8$ ". This is an oversight on my part. The square root symbol does appear in Brian's Excel spreadsheet. I simply cut and pasted the text from Brian's Excel spreadsheet into a Microsoft Word document. Apparently, when this occurs, the square root symbol disappears. I simply did not have sufficient time to double-check all of the math.

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 8

As mentioned above, I do recall Brian mentioning, late Wednesday night, that a square root symbol was missing. However, I thought he was referring to the word "squareroot" on Page 12, line 27, and not here.

I now see that Jim also discovered this error on page 14 of his marked-up third draft. I did not see it at the time, because I did not go through, line-by-line, all of Jim's changes to the math since Brian was going to revise it anyway. Furthermore, I could not rely on all of Jim's mark-ups as the basis of the changes, since they appeared to me to essentially be the mathematical scratchpad he used in trying to understand the invention. It would have made no sense to follow all of his changes. Furthermore, Jim missed other changes that Brian and I caught later that night.

Once again, I do not believe that this "missing square root symbol" error is of a major concern. I believe that it would be considered a typographical error in the math, which can easily be corrected in the USPTO and WIPO by a preliminary amendment. Support for such a preliminary amendment is found at page 12, line 27, where the same formula appears correctly stated using the word "squareroot." Furthermore, any person skilled in the art would realize that 2,560,000 divided by 0.8 does not equal 1789 as set forth in the description, but that the square root of such a quantity would make the equation correct.

Again, let me discuss a worst-case scenario. If, on the remote chance that the USPTO or WIPO determines that the addition of a square root symbol is not a simple typographical error but instead constitutes new subject matter that cannot be added to the specification, we would have to determine at that time the proper course of action. First, such a determination can be appealed if we believe it is warranted. Second, the entire Example 1 can be stricken from the application if we feel that the remainder of the specification provides sufficient enablement for the claimed invention, and that leaving Example 1 in the specification without the square root symbol somehow takes away from enablement. Third, we can file another patent application in both the USPTO and WIPO, with the corrected formula. This would ensure that we would only lose priority from August 2 to the date of the filing of the corrected application. Since this mathematical example isn't in the original priority documents, it cannot be said that we would lose any benefit of priority from the original provisional applications.

I do not agree with Jim's argument that the missing square root symbol makes the entire patent application so difficult to understand that correction would be needed to apply the math to create the image. Steve's counter-argument is directly on point: if correct math was required to create the image, then the August 2, 1999, provisional filing would be essentially worthless for lack of enablement, because it has no math. I simply do not believe that perfectly correct math is required for enablement.

It is my opinion that there is no need to file a corrected application as a continuation-in-part to remedy the situation. I plan to file a preliminary amendment in the

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 9

USPTO and WIPO to correct the formula, which I believe will be accepted without an argument. I have successfully made changes of similar scope by preliminary amendment in both the USPTO and WIPO without encountering any problems. If I am proved wrong, and we decide not to appeal, I still think there is little downside risk in leaving the application as it is. In fact, I believe that there is more risk involved in filing a continuation-in-part application to correct such minor errors, since it could be argued that such a new filing constitutes an admission against us that the addition of the square root symbol is new subject matter.

(5) Page 13, lines 23-25

Since the aspect ratio convention was changed at the last minute, these three formulas should have been changed to precisely correspond to that convention. However, with the addition of the square root symbol in the formula in line 23, the three lines are actually correct as set forth in the patent application, but somewhat inconsistent with the new convention. Moreover, the final number result is identical to that which would be obtained by reversing the formulas as now requested. Once again, I believe that both the USPTO and WIPO will permit us to change these formulas to make them consistent and easier to read.

Note that, with the exception of the square root symbol disappearing as discussed above, these formulas were cut and pasted from Brian's latest Excel spreadsheet, and appeared as set forth here in the 9:39 p.m. application draft sent to you and Brian.

(6) Page 13, line 29

The viewing window stated as "320 x 240 pixels" should read "480 x 320 pixels" as set forth on line 14 of the same page. This was simply an oversight by all of us. Neither you nor Brian caught the mistake in the second draft sent July 28th (at page 13) or the third draft sent July 31st (at page 14), and Jim also missed it in his August 2nd mark-up. I missed it also during my final edits.

Once again, I believe that this would be considered a minor typographical or technical error, which can readily be corrected in both patent offices with a preliminary amendment. It is clearly supported at lines 14 and 15 on the same page of the patent application. The reader would know that this is an obvious typographical error, and correcting it does not constitute new matter. On the other hand, if somehow it does not get corrected, I do not believe that this error would render the patent invalid for lack of enablement.

(7) Page 14, line 6

I agree with Jim's suggestion that the width and height be stated here, as was done in Examples 1 and 3. Again, I do not believe this is a major concern, and I think we will be able to add the width and height labels with a preliminary amendment. It is clearly supported elsewhere in the specification. Note that this oversight could have been caught by

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 10

you or Brian before filing, since it appears the same way on page 16 of the 9:39 p.m. draft. Nevertheless, this is a very minor point, which will have no affect whatsoever.

(8) Page 14, line 17

Again, the square root symbol is missing, but this time the formula itself does not need to be changed other than adding the square root symbol. See my previous comments regarding addition of the square root symbol.

(9) Page 14, line 27

Here, "400w by 360w" should read "400w by 360h". This is an extremely minor typographical error, which can readily be corrected by preliminary amendment. This particular error should have been caught by all of us a long time before the filing date, since it also appears in the third draft.

(10) Page 15, line 6

Once again, the square root symbol is missing, but the underlying equation is otherwise correct. Refer to my previous comments regarding addition of the square root symbol.

(11) Page 18, line 28

Again, the square root symbol is missing. This example provides even a stronger argument that omission of the square root symbol is a typographical error, since the exact same formula is stated correctly on page 12 at line 27 using the word "squareroot". Again, refer to my previous comments regarding the omission of the square root symbol.

(12) Page 19, lines 2, 3, and 23

According to the Friday discussion between Jim and Brian, the question arose whether the minimum scan density should be stricken from these lines (since it doesn't add anything and could possibly confuse the reader), or whether it should be left in there, but with the addition of a new sentence that states that minimum scan density is not required since we are dealing with a digital image. Brian and Jim agreed on the latter.

This time, however, I don't agree and I recommend that we do not make such a change by adding a sentence. There is much higher likelihood that the addition of such a sentence would trigger a new matter rejection. Furthermore, it may contravene any argument we have that all of the changes to the specification are simply typographical errors in very technical formulas and do not constitute new matter. The addition of such a sentence in this example could be a red flag. The only way I would recommend adding such a statement would be if you could show me that it was clearly supported elsewhere in the specification.

## Foley & Lardner

Mr. Eliot I. Bernstein

August 9, 2000

Page 11

Otherwise, I think that the statement "minimum scan density equals N/A" on line 23 says the same thing, and is actually an important part of the teaching of this example to instruct the reader that scan density is not a concern with a digital image.

If you don't agree that leaving the language in is the appropriate thing to do, then I would be willing to try to amend the specification by striking the minimum scan density language in this example. At least there is a harder argument that the patent offices would have to make if they were to hold that removal of this text represents new matter or renders the specification non-enabling.

No matter what we decide to do on this point, it is also a minor concern.

(13) Page 19, line 10

Changing " $0.75=0.75$ " to " $1.33=1.33$ " should not be a problem, since it is fully supported in the previous lines of that example. The mistake is obvious, and we would not be adding new matter to make the change. I believe that this can also be done by a preliminary amendment in the USPTO and WIPO.

(14) Page 19, line 15

Again, the square root symbol is missing, but the equation is otherwise correct. Refer to my previous comments regarding the square root symbol.

Summary

As you can now appreciate, the application as filed was not "completely wrong" as you first thought. True, Brian and I changed the math at the last moment to improve the readability, which I believe was successfully accomplished. Even if I had time, I could not have entered all of Jim's last-minute comments and corrections myself, because they were also wrong. We mutually agreed to let Brian take another pass and correct the math. He did. I took his work and pasted it into the specification. Unfortunately, the computer "ate" the square root symbol, and I didn't catch it. You had an opportunity to review it, and you didn't catch it. Brian had an opportunity to review it, and, if he did catch it and mention it to me, then I must have misunderstood him. Both you and Brian gave me the verbal OK to file it. Looking back, I think Brian did an outstanding job of changing the aspect ratio conventions at the last minute. I think we ended up with a much-improved patent application than we had with the third draft.

No matter how these "errors" arose, I believe that they are all of a minor technical and typographical nature, and that corrections can readily be made by preliminary amendment in both the USPTO and WIPO. Regarding the timing for making the preliminary amendments, I do not believe there is any rush. Even if there was, we would have a problem

## Foley & Lardner

Mr. Eliot I. Bernstein  
August 9, 2000  
Page 12

in making such amendments now without filing an entirely new patent application in both the USPTO and WIPO.

In the USPTO, for example, it is not standard practice to file any amendments before we have received the filing receipt and application number. Otherwise, there is a very good chance the amendment will be lost in the Patent Office. Furthermore, there is essentially no rush to file the amendment, so long as it does not include new matter. We can also wait until after the first office action. Furthermore, we will not know whether our preliminary amendment will be accepted until the Examiner reviews the amendment during examination, which may not occur until a year from now.

Similarly, in WIPO, the PCT rules do not even allow us to file a preliminary amendment to amend the specification until the PCT Chapter 2 demand is filed at the 19-month point (seven months from now). Again, even then, we won't know whether the PCT Examiner accepts the amendment until months after that.

### Conclusion

As I stated above, I believe that the "errors" are of a very minor, technical nature, that they can be readily corrected in the various patent offices in due course, and that they will have no negative repercussions whatsoever. I think there is very little risk in waiting a few weeks to file a preliminary amendment, and very little advantage in filing all new applications to make these corrections. Since the math was not in the original provisional patent applications filed by Ray Joao, there can be no loss of priority claim for that subject matter.

I hope you can now appreciate why I think that your fears about these "errors" are exaggerated, your accusations that we didn't follow your directions are unfounded, and your criticism of Foley & Lardner work product is unwarranted.

Of course, if you have any questions or comments on any of the above, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm

cc: Brian G. Utley  
Simon L. Bernstein  
James F. Armstrong  
→ William J. Dick  
Steven C. Becker

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

**From:** iviewit, inc. (E-mail) [mailto:viewmaster@iviewit.com]

**Sent:** Thursday, August 05, 1999 9:03 PM

**To:** Alan Epstein (E-mail); Michele M. Mulrooney (E-mail); James F. Armstrong (E-mail); Simon L. Bernstein (E-mail); Patti & Lester Daniels (E-mail); Andrew R. Dietz (E-mail); Donna Dietz (E-mail); Gerald R. Lewin (E-mail); Guy Iantoni (E-mail); James R. Jackoway (E-mail); James A. Osterling (E-mail); Albert W. Gortz (E-mail); Christopher C. Wheeler (E-mail); Jude Rosario (E-mail); Jude Rosario (E-mail 2); Zakirul Shirajee (E-mail); Friedstein, Jeff; Donald G. Kane II (E-mail); Brian G. Utley (E-mail 2)

**Subject:** iviewit.com Welcomes Brian Utley.

Dear Shareholders,

As of August 3rd, 1999 the Board of Directors of iviewit.com has approved and confirmed Brian Utley as President and COO. Mr. Utley will assume leadership of the company and the responsibility for organizing our strategic initiatives and licensing opportunities. Brian brings over thirty years of management experience from IBM and is highly respected within the computer industry. We are fortunate to bring Brian to iviewit.com and look forward to his valuable contribution to the success of the company.

Brian can be reached at [utley\\_b@bellsouth.net](mailto:utley_b@bellsouth.net)  
[mailto:utley\\_b@bellsouth.net](mailto:utley_b@bellsouth.net) or soon at [utley@iviewit.com](mailto:utley@iviewit.com)  
<<mailto:utley@iviewit.com>>.

By phone at work through Goldstein & Lewin at 561-994-5050 or cell at 561-289-8145.

Brian's Personal Resume

Professional History:

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.

In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250,000. Since that time the company has been transformed into a manufacturer of new machines that compete favorably with the best of the market leaders and expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

President, Premier Connections Inc., November, 1991 to Present.  
Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, 1955 to 1991.

Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton.

Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small Systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and Systems manager for many major IBM computer Systems that earned IBM billions of dollars in revenue. The most notable of these was the 5E3E and AS400, one of IBM's most technology aggressive development programs ever and still one off IBM's most popular systems.

Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. Because of this, he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.

From his start in October 1955 to the time he entered the laboratories Brian was a customer engineer responsible for maintaining IBM equipment on customer premises. During this time he self-taught computer technology and transistor theory and developed the first IBM field course in transistors. This is the accomplishment, which led to his assignment in the laboratories.

**Hobbies:**

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.

**Other Activities:**

Brian has been a director of the Florida Atlantic University Foundation Board of Trustees since

1992 and has served as Treasurer, head of the Investment Committee, and is currently Chairman of the Board.

In addition, he is a director of the Soaring Society of America and Chairman of the Soaring Society of America Foundation. In the past, he has served on the Boca Raton Chamber of Commerce Board, the Florida Philharmonic Board of Directors, and the Florida Governor's Council of One Hundred and is past president of the Soaring Society of America.

**Family:**

Brian is married to Sharon, is the father to 5 children and has lived in Boca Raton since 1988.

Sincerely,

Board of Directors

iviewit.com

EXHIBIT "A" - BRIAN UTLEY RESUME SUBMITTED TO BOARD BY CHRISTOPHER WHEELER

1416 SW 8th Street  
Dania Beach, FL 33435

*Personal History*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1993 to July 1999.  
In 1993 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

President, Premier Connections, Inc., November, 1991 to present.  
Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.  
Brian retired from IBM as Vice President and General Manager, IBM Boca Raton. Prior to his assignment in Boca Raton Brian spent 3 years in Europe as Group Director for PC's and small systems. His responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported back to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/36 and AS/400, one of IBM's most technology aggressive development programs ever and still one of IBM's most popular systems.

Brian entered the IBM engineer on his first job. The German IBM lab awarded a number of Fred. His start in Oct engineer responsible

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Note	
Here Utley is not a graduate from college but in the Wachovia Private Placement he states he is, in deposition he states he is not.	

self-taught computer technology and transistor factory and developed the first IBM field course in transistors. This is the accomplishment which led to his assignment in the laboratories.

*Education:*

Having been born in England, he attended Beverley Grammar School and graduated in 1948 at 16. In 1949 he emigrated to the United States and completed his senior year at Ogden High School, Ogden, Utah.

He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

*Hobbies:*

Brian is a jogger and for 45 years has been an avid glider pilot with many competitive successes.

Q. Okay. You just failed to mention 102

that in your previous --

A. I'm sorry, yes.

Q. Okay. And what did you do at

Diamond Turf Lawn Mower?

A. I was president.

Q. You were president. For the full

four years?

A. Yes.

Q. Okay.

A. My recollection is a little hazy.

It could have been 95, 96 when I started.

Q. Okay. So you were president of this

company for approximately three to four years?

A. Yes.

Q. And what was your role at Diamond

Turf Lawn Mower as president; what did you do?

A. I ran the company.

Q. Did you take on the position not

only of president but also as CFO or anything of

that nature, or you just did strictly like a

chief operating officer; what was your role

exactly?

A. I suppose you could consider it to

be a cross between a chief operating officer and

the chief engineer.

103

Q. And what did Diamond Turf Law Mower do; what sort of company is that?

A. It produced maintenance equipment for golf courses.

Q. Okay. And were you working also doing engineering for the company as well?

A. Yes.

Q. And that engineering capabilities that you have, was that something you garnered through your employment with IBM or is that something that you had specific knowledge of outside of your employment with IBM?

A. Both.

Q. This was not engineering of electrical components; this was engineering of mechanical systems; is that what this was?

A. Every, virtually every mechanical system has an electrical component.

Q. Okay.

A. And a hydraulic component in this particular case.

Q. And when did you -- when you ceased worked with Diamond Turf Lawn Mower, was that an amicable leaving or was there some problem or did

everything work out okay with that?

104

A. Well, there was a, there was a  
dispute over intellectual property. There was no  
intellectual property agreement in my employment  
agreement and there were certain inventions that  
I made that we were unable to resolve ownership  
of.

Q. Okay. So these were inventions that  
you developed while you were employed by Diamond  
Turf Lawn Mower?

A. Yes.

Q. Okay. Can you describe those  
inventions to me.

A. They related to hydro-mechanical  
equipment.

Q. Okay. What exactly with hydraulic  
mechanical equipment?

A. How much detail you want me to go in  
to?

Q. Well, were they related somehow to  
the operations of the hydraulics of the equipment  
or were they strictly mechanical?

A. They related to a hydro-mechanical  
system, which means that it involves the  
integration of hydraulics into a mechanically

operating piece of equipment.

105

Q. Okay. And that's what all these patents, or were all these patents or were all these inventions, rather, the subject of?

A. Yes. Almost all the equipment that Diamond Turf produced or was involved with was hydro-mechanical.

Q. Are there any current patents or patents pending or applications for patents on these things that you hold?

A. No.

Q. Who holds the patent rights or if there are any patent rights, who has applied for those?

A. I'm not aware of any one.

Q. So you're not aware of any one making claim to these intellectual properties at this point?

A. No.

Q. When were you first introduced to Iviewit or its products by Mr. Wheeler? I'm assuming that Mr. Wheeler was the one who introduced you to the company.

A. Yes.

Q. And when was the first time that you

we're talking about them because you said billing statements, which could be something totally different, I don't know.

MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?

A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.

THE WITNESS: There was a

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of

Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

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Note

Monte Friedkin his last employer has stated that he did not tell him and that when he found out he fired him

president and COO of Iviewit to Wachovia?

243

A. We shared nondisclosure agreements and communicated as required in order to construct the business plan.

Q. And did they require or request that you provide them with a CV as part of the business plan to evidence your expertise.

A. I believe so.

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll restate the question.

By MR. SELZ:

Q. Did Wachovia Bank request that you provide personal information to them as part of that business plan?

A. Yes.

Q. And did you provide that personal information in the form of a curriculum vitae or CV?

A. It was integrated in prior editions of the business plan and flowed into the one that was developed with Wachovia.

Q. Now, when Chris Wheeler first introduced you to Iviewit, was he aware of the situation at Diamond Turf and yourself and

Mr. Monte Freedkin or what was Mr. Wheeler's

244

knowledge of your position at Diamond Turf, to the best of your knowledge?

MR. PRUSASKI: Objection to form.

MR. SELZ: Okay. I'll restate the question. I'm sorry. Getting a little tired.

MR. PRUSASKI: I'm just objecting to the extent that you're asking him what Chris Wheeler's personal knowledge was.

MR. SELZ: Okay.

By MR. SELZ:

Q. To the extent that you know, what was Chris Wheeler's personal knowledge of that situation?

MR. PRUSASKI: Objection to form.

THE WITNESS: I believe Chris, Mr. Wheeler was fully cognizant of my relationship to Diamond Turf Equipment and to Mr. Freedkin.

By MR. SELZ:

Q. And he was aware about your departure from that company and that situation?

A. Yes.

Q. Involving your employed and your change of employment when you left Diamond Turf?

A. Yes.

Q. Other than your retirement at IBM, was there any other reason why you left IBM's employ?

A. No.

Q. Do you have any ongoing dispute with either IBM or Diamond Turf?

A. No.

Q. Going back to the employment of an attorney when you were at Diamond Turf, was there a retainer agreement that you recall signing on behalf of Diamond Turf to employ an attorney there? Or I'll take that back. I think you said that you never employed an attorney there; is that correct?

A. That is correct.

Q. When you hired an attorney personally, did you have a retainer agreement that you signed?

A. No.

Q. Do you have any letter or any other document evidencing the rates to be charged and the services to provided by that attorney?

A. I would have to research that question.

1 training that you've had or maybe you -- you did 113  
2 indicate that you had any degree in mathematics.  
3 Is that something that you have some experience  
4 from from some other portion of your employment  
5 or background?  
6 A. I have training and experience in  
7 mathematics.  
8 Q. I'm sorry.  
9 A. I say I have training and experience  
10 in mathematics.  
11 Q. How about in the scaling video  
12 invention; is that part of what you've already  
13 described?  
14 A. That is readily derived from a  
15 mathematical background.  
16 Q. How about the remote control video  
17 applications?  
18 A. That's different.  
19 Q. Okay. Now going back to --  
20 A. What --  
21 Q. -- the patent dealing specifically  
22 with remote control applications.  
23 A. What I did there was I established  
24 the fact that the design point that Elicot had  
25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Elliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?  
4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.  
7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?  
11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.  
16 Q. Okay.  
17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.  
22 Q. Okay. And are those documents that  
23 you have in your possession someplace?  
24 A. No.  
25 Q. You don't have any of the paperwork

THE WITNESS: There was a

266

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as

**U.S. PROVISIONAL PATENT APPLICATION**

**for**

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

**Inventors:**

**Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.**

**FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400**

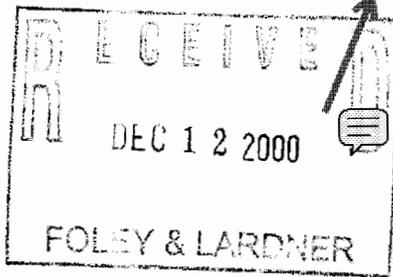


UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
777 East Wisconsin Avenue  
Firstar Center  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



\*OC000000005592300\*

Date Mailed: 12/04/2000

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

MP  
RESPONSE DUE 04 FEB 2001  
DECL FEE

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 200.

*A copy of this notice MUST be returned with the reply.*

*James Washington*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
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 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367


**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 200.**

---

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 \_\_\_\_\_  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/233,341	09/18/2000		0	57103/123	7		

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367

FILING RECEIPT



\*OC00000005592299\*

Date Mailed: 12/04/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

←  
Brian G. Utley, Boca Raton, FL ;

Continuing Data as Claimed by Applicant

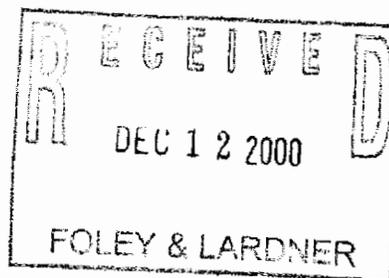
Foreign Applications

If Required, Foreign Filing License Granted 12/01/2000

Title

Zoom and pan imaging design tool

Preliminary Class



Data entry by : WASHINGTON, JAMES

Team : OIPE

Date: 12/04/2000



1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed

**Management**

Whereas the Company has retained Korn / Ferry to assist in the identification and recruitment of a high impact Chief Executive Officer (preferably from the media or entertainment industry) and Chief Technical Officer, iviewit has assembled a complementary and seasoned, management team with Fortune 100 and early-stage, entrepreneurial experience. This team consists of the following personnel:

**Brian G. Utley, President (67)** — For over 30 years, Mr. Utley was responsible for the development and world-wide management of many of IBM's most successful products such as the AS400 and the PC. His career with IBM culminated with his responsibility as Vice President and General Manager of IBM Boca Raton with a work force of over 6,000 professionals. He is a graduate of San Francisco City College.

**Eliot I. Bernstein, Founder and Vice Chairman (37)** — Prior to founding iviewit, Mr. Bernstein spent 15 years with SB Lexington where he was President of the West Coast Division creating and developing many innovative, computer-based multi-media marketing tools which remain in use supporting multi-billion dollar service industries. Mr. Bernstein is a graduate of the University of Wisconsin.

**Michael A. Reale, Vice President of Operations (60)** — Mr. Reale has over 20 years of operations experience, including P&L, quality, and delivery performance accountability. Most recently, Mr. Reale was the Chief Operating Officer for Boca Research (Nasdaq:BOCI), a manufacturer of personal computer enhancement and Internet thin client products. Mr. Reale received his BA and MBA from Pace University.

**Raymond T. Hersh, Vice President of Finance (58)** — Mr. Hersh has over 35 years of successful business and operating experience involving financial services, telecommunications, manufacturing, and corporate strategic planning. For over 20 years, Mr. Hersh has operated and grown companies in Florida, and most recently, he was co-founder and President/CEO of New Medical Concepts, Inc., a telecom company specializing in providing healthcare information. Earlier, he spent five years as an Enforcement Attorney with the U. S. Securities and Exchange Commission in New York City where he exited as a Branch Chief. He is a member of the New Jersey and New York Bars. Mr. Hersh received his BA from Lafayette College and his LLB/JD from the University of Pennsylvania.

**Kevin J. Lockwood, Vice President of Sales and Business Development (40)** — Mr. Lockwood joins iviewit from Cylex Systems where he held the position of Executive Vice President of Sales and assisted in securing three rounds of funding exceeding \$20 million. He also held the position of Head of Sales for Acer America, Inc. where he increased sales from a run rate of \$150 million annually to over \$1.5 billion annually in only a 17-month time. In addition, Mr. Lockwood successfully launched the Fujitsu P.C. into the U.S. and in the first year amassed revenues of over \$200 million. He is a graduate of the University of Maryland with a Bachelor of Science degree in Business Administration.

**Guy Iantoni, Vice President of Sales (35)** — Prior to joining iviewit in 1999, Mr. Iantoni was Senior Financial Representative with Fidelity Investments. From 1995 to 1997, he served as an Investment Management Consultant to the private client group of Morgan Stanley Dean Witter & Company, Inc. Mr. Iantoni has developed computer databases and systems to effectively market and target segments in both the financial markets and the healthcare industries. Mr. Iantoni is a graduate of the University of Wisconsin with an advanced degree in Pharmacy.



**eliot Note**  
 Utley claims he is a graduate and contradicts in his deposition

**Strategic Alliances**

iviewit is creating a stable of strategic partners in the areas of technology, R&D, applications development, and video hosting and delivery. The Company has partnered with key industry leaders to develop precedence in the market. Partners include Greg Manning Auctions, Atlas Entertainment, Medical Online, Digital Island, Burst.com, and Versifi.

or where the site of that lawsuit was?

94

A. No.

Q. Was it in the federal court or state court?

A. I don't know.

Q. Was your deposition taken in the State of Florida --

A. No.

Q. -- or taken elsewhere?

A. It was taken in New York.

Q. In New York. Okay. Now, going back to something that Mr. Prusaski started but I don't think he completed with was some of your background information about your education. If you can just tell me from undergraduate onward what your educational background is, Sir, schools you attended, years of attendance and degree.

A. I don't have a degree.

Q. Okay.

A. I attended Weaver State University, which was then Weaver College, 1950.

Q. Okay.

A. San Fransisco City College, 1957, 1958.

Q. Okay. And you graduated from San

Francisco College or did not?

95

A. I don't have a degree.

Q. Okay. So you never completed your course at San Fransisco then?

A. Right.

Q. With regard to your employment experience, you had stated your employment with IBM. What years was that from, Sir?

A. 1955 through 1992.

Q. 92. And your first employment with IBM in 1955, what position was that in if you can recall?

A. I was employed as a customer engineer.

Q. All right. And after that, you were promoted to what position?

A. In 1960 I was promoted to development engineer, electrical engineer.

Q. At that point, were you supervising a staff or working with other engineers below you at that point?

A. I was involved in design of a computer.

Q. Were you the leader of any design team or were you just an individual engineer



## EXHIBIT "B"

### Patent Filing Process

- (i) a patent attorney's first contact with a *bona fide* inventor is where that attorney receives a "disclosure" from that inventor, or a series of disclosures, to begin the framework of a provisional<sup>25</sup> patent application or a non-provisional<sup>26</sup> patent application, and where said inventor certainly was not Utley, Utley was not there at the time of the inventions, as the first disclosures were made to Rubenstein and, upon information and belief, the patent evaluator of, among others, the multimedia patent pools commonly known as Motion Picture Experts Group ("MPEG") 2 and MPEG 4; and
- (ii) from the framework of the first disclosures, a patent counsel then forms "claims" to that invention where the claims are meant to precisely identify to which areas of protection an inventor gleans from the exact description of his or her invention according to the disclosures, and where the drafting of such claims are the exclusive affair of patent counsel subject to review by the inventor, and where said inventor certainly was not Utley; and
- (iii) once the framework of the invention and the claims are approved by an inventor, and in all cases herein, said inventor was not Utley, patent counsel then puts forth to a *bona fide* inventor what is known as the Declaration and Power of Attorney document that contains strict requirements according to the law for inventors and where said inventor was not Utley as he took no part in the formulation of the invention, took no part in the first disclosures of the inventions, took no part, or rather, should have taken only a limited role supporting the inventor in reviewing the claims, and, consequently, signing an Oath of the Applicant according to the evidence presented below, falls outside the requirements of the law in this disingenuous ploy by Respondent and Utley; and
- (iv) once patent counsel has completed all steps in (i) to (iii), and only then, patent counsel actually files a patent application with the United States Patent and Trademark Office ("USPTO"), and where the damage by Respondent had already occurred in (iii); and
- (v) once patent counsel has actually filed an application with the USPTO, from time to time, he or she may be called upon to respond to challenges to the inventions from the USPTO (commonly referred to as office actions) and where the damage by Respondent had already occurred in (iii); and

---

<sup>25</sup> Define provisional

<sup>26</sup> Define non-provisional



(vi) and once favorably responded to and having such responses accepted by USPTO to office actions, patent counsel will receive what is known as a Notice of Issuance of the patent for the inventions disclosed and where the damage by Respondent had already occurred in (iii); and

(vii) some three months or so after receiving a Notice of Issuance, the USPTO will afford the applicant (*bona fide* inventor or his assignee as the case may be) a granted patent, and where the damage by Respondent had already occurred in (iii).

VIEWIT.COM PATENT STATUS REPORT

FILE NO.	TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED DATE	ASSIGNEE	REMARKS
05707	Apparatus and Method for Producing Enhanced Digital Images	P001 (Ka 102)	Eliot I. Bernstein	United States	Serial No. 60125824	Filed 03/24/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Video Images	P002 (Ka 103)	Eliot I. Bernstein	United States	Serial No. 60137297	Filed 06/03/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/24	
	Apparatus and Method for Playing Video Files Across the Internet	P003 (Ka 104)	Eliot I. Bernstein	United States	Serial No. 60137321	Filed 06/07/99	Remain in Viewit LLC Abandoned to Viewit Holdings, Inc. (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/27	
	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004 (Ka 105)	Eliot I. Bernstein	United States	Serial No. 60141440	Filed 06/29/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/24	
	Apparatus and Method for Producing Enhanced Digital Images	P005 (Ka 106)	Eliot I. Bernstein	United States	Serial No. 60146746	Filed 08/02/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/29	
	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006 (Ka 107)	Eliot I. Bernstein	United States	Serial No. 60149737	Filed 08/19/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/26	
	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007 (Ka 108)	Eliot I. Bernstein	United States	Serial No. 60155404	Filed 09/22/99	Viewit Holdings, Inc. Abandoned (Provisional Application) Assigned: 01/06/00 Rec'd/Frame: 01/05/2005/24	

VIEWIT/COMPATIENT STATUS REPORT

05707	TITLE	MATTER	INVENTOR/PATENTEE	COUNTRY	SERIAL NO./PATENT NO.	FILE/ISSUE DATE	ASSIGNEE	REMARKS
	System and Method for Producing Enhanced Video Images and/or Video Files	P008 (Re 169)	Ellot L. Bernstein	United States	Serial No. 69169259	Filed 12/08/99	Ivewill Holdings, Inc. Assigned: 01/06/00 Re-assigned: 01/02/02/20	Abandoned (Provisional Application)
	Application and Method for Streaming an Enhanced Digital Image	P009PCT (Re 110)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/0772	Filed 03/22/99	Not assigned.	Pending
	System and Method for Streaming an Enhanced Digital Video File	P010PCT (Re 111)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/0415	Filed 06/02/00	Not assigned.	Pending
	System and Method for Providing an Enhanced Digital Video File	P011PCT (Re 112)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/0415	Filed 06/02/00	Applicant Ivewill Holdings, Inc. Priority 03/06/99	Pending Written opinion due 06/23/01.
	System and Method for Playing a Digital Video File	P012PCT (Re 113)	Ellot L. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/0415	Filed 06/02/00	Applicant Ivewill Holdings, Inc. Priority 03/06/99	Pending Written opinion due 06/23/01.
	System and Method for Streaming an Enhanced Digital Video File	P013 (Re 114)	Ellot L. Bernstein Zakirul A. Shajee	United States	Serial No. 69957730	Filed 06/06/00	Applicant Ivewill Holdings, Inc.	Pending
	System and Method for Playing a Digital Video File	P014 (Re 115)	Ellot L. Bernstein Zakirul A. Shajee	United States	Serial No. 69957730	Filed 06/06/00	Applicant Ivewill Holdings, Inc.	Pending

## IVIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Fgs/Shts	Priority
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	15/4	N/A
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/3/1999	Apparatus and Method for Producing Enhanced Video Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/7/1999	Apparatus and Method for Playing Video Files Across the Internet	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
4	57103/105	5865-4.1	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	Eliot I. Bernstein	Iviewit Holdings, Inc.	25/2	N/A
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/2/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	18/4	N/A
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	21/4	N/A
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	29/4	N/A
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/8/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	47/5	N/A
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	14/4	60/125,824

## VIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Priority
10	57103/111	N/A	PCT (International)	PCT/US00/15408	6/2/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
11	57103/112	N/A	PCT (International)	PCT/US00/15405	6/2/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Utley, Rosario		33/3	60/137,297 60/155,404 60/169,559
12	57103/113	N/A	PCT (International)	PCT/US00/15406	6/2/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
13	57103/114	N/A	U.S. (Non-Provisional)	09/587,730	6/5/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
14	57103/115	N/A	U.S. (Non-Provisional)	09/587,026	6/5/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
15	57103/116	N/A	U.S. (Non-Provisional)	09/587,734	6/5/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Utley, Rosario		33/3	60/137,297 60/155,404 60/169,559 57103/112PCT
16	57103/118	N/A	PCT (International)	PCT/US00/15602	6/7/2000	System and Method for Video Playback Over a Network	Bernstein, Friedstein, Utley		24/2	60/137,921 60/141,440
17	57103/119	5865-1	U.S.	09/522,721	3/10/2000	Apparatus and Method for Producing Enhanced Digital Images	Bernstein		15/4	60/125,824

05707

IVIEWIT.COM PATENT STATUS REPORT

UNITED STATES PATENT APPLICATIONS

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.  First Office Action received dated 11/10/03.
System and Method for Providing An Enhanced Digital Video File	P011	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for a Digital Video File	P014	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Iviewit Holdings, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018	Eliot I. Bernstein Brian Utley	United States	Serial No. 09/630,939	Filed 08/02/00	Not assigned.	Pending.  First Office Action received 10/29/03.
Apparatus and Method for Producing Enhanced Digital Images	P017	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Abandoned.  Claims benefit of Provisional Application No. 60/125,824.  Deadline to enter National Phase 9/23/01.

**FOREIGN PATENT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Streaming an Enhanced Digital Video File	P010EP	Eliot I. Bernstein Zakirul A. Shirajee	EPO - Europe	Serial No. 00938126.0	Filed 06/02/00	Iviewit.com, Inc.	Pending.  Published: 3/06/02. Publication No.: 1183870  First Office Action received. Request for Extension to respond pending.
System and Method for Streaming an Enhanced Digital Video File	P010JP	Eliot I. Bernstein Zakirul A. Shirajee	Japan	Serial No. 2001-502364	Filed 06/02/00	Iviewit.com, Inc.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P011EP	Eliot I. Bernstein, Zakirul A. Shirajee	EPO - Europe	Serial No. 00944619.6	Filed 6/20/2000	Iviewit.com, Inc.	Pending.  Published: 3/20/02. Publication No.: 1188318  First Office Action received.
System and Method for Streaming an Enhanced Digital Video File	P011JP	Eliot I. Bernstein, Zakirul A. Shirajee	Japan	Serial No. 2001-502362	Filed 6/20/2000	Iviewit.com, Inc.	Pending.
System and Method for Providing and Enhanced Digital Image File	P018EP	Eliot I. Bernstein Brian Utley	EPO - Europe	Serial No. 00955352.0	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.  Published: 5/2/2002 Publication No.: 1200935
System and Method for Providing and Enhanced Digital Image File	P018JP	Eliot I. Bernstein Brian Utley	Japan	Serial No. 2001-514379	Filed 08/02/00	Iviewit Holdings, Inc.	Pending.

**LAPSED PCT APPLICATIONS**

**IVIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	APPLICANT	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P009PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07772	Filed 03/23/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application No. 60/125824 (P001Z).
System and Method for Streaming an Enhanced Digital Video File	P010PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15408	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Providing an Enhanced Digital Video File	P011PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15405	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Playing a Digital Video File	P012PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15406	Filed 06/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,297 (P002Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).
System and Method for Video Playback Over a Network	P016PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15602	Filed 06/07/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/137,921 (P003Z), 60/141,440 (P004Z) and 60/155,404 (P007Z).
System and Method for Providing an Enhanced Digital Image File	P018PCT	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/21211	Filed 08/02/00	Iviewit Holdings, Inc.	Lapsed.  Filed based on Provisional Application Nos. 60/125824 (P001Z), 60/146,726 (P005Z), 60/149,737 (P006Z), 60/155,404 (P007Z) and 60/169,559 (P008Z).

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images	P001Z	Elliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Remstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0526	Lapsed  <i>P009PCT and P018PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images	P002Z	Elliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0494	Lapsed  <i>P010PCT and P011PCT and P012PCT filed based on this provisional application.</i>
Apparatus and Method for Playing Video Files Across the Internet	P003Z	Elliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0497	Lapsed  <i>P016PCT filed based on this provisional application.</i>
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004Z	Elliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc. Assigned: 01/03/00 Reel/Frame: 010523/0574	Lapsed  <i>P016PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Digital Images	P005Z	Elliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame: 010523/0509	Lapsed  <i>P018PCT filed based on this provisional application.</i>

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  <i>P018PCT filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  <i>P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.</i>
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Ivewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  <i>P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.</i>
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed

VIEWIT.COM PATENT STATUS REPORT

TITLE	MATTER	INVENTOR/ PATENTER	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
05707 Apparatus and Method for Producing Enhanced Digital Images	P001 (fka 102)	Eliot I. Bernstein	United States	Serial No. 60/125824	Filed 03/24/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0526	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Video Images	P002 (fka 103)	Eliot I. Bernstein	United States	Serial No. 60/137,297	Filed 06/03/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0494	Abandoned (Provisional Application)
Apparatus and Method for Playing Video Files Across the Internet	P003 (fka 104)	Eliot I. Bernstein	United States	Serial No. 60/137,921	Filed 06/07/99	Bernstein to Iviewit LLC to Iviewit Holdings, Inc. (Provisional Application)  Assigned: 01/06/00 Reel/Frame: 010523/0497	Abandoned (Provisional Application)
Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	P004 (fka 105)	Eliot I. Bernstein	United States	Serial No. 60/141,440	Filed 06/29/99	Iviewit Holdings, Inc.  Assigned: 01/03/00 Reel/Frame: 010523/0574	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images	P005 (fka 106)	Eliot I. Bernstein	United States	Serial No. 60/146,726	Filed 08/02/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0509	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006 (fka 107)	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0506	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007 (fka 108)	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc.  Assigned: 01/06/00 Reel/Frame: 010523/0183	Abandoned (Provisional Application)

VIEWIT.COM PATENT STATUS REPORT

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008 (fka 109)	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Abandoned (Provisional Application)
Apparatus and Method for Producing Enhanced Digital Images	P009PCT (fka 110)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/07 772	Filed 03/23/00	Not assigned.	Pending.
System and Method for Streaming an Enhanced Digital Video File	P010PCT (fka 111)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 408	Filed 06/02/00	Not assigned.	Pending.
System and Method for Providing an Enhanced Digital Video File	P011PCT (fka 112)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 405	Filed 06/02/00	Applicant Iviewit Holdings, Inc.	Pending. Written opinion due 06/20/01.
System and Method for Playing a Digital Video File	P012PCT (fka 113)	Eliot I. Bernstein	Patent Cooperation Treaty	Serial No. PCT/US00/15 406	Filed 06/02/00	Applicant Iviewit Holdings, Inc.	Pending. Written opinion due 06/20/01.
System and Method for Streaming an Enhanced Digital Video File	P013 (fka 114)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,730	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.
System and Method for Playing a Digital Video File	P014 (fka 115)	Eliot I. Bernstein Zakirul A. Shirajee	United States	Serial No. 09/587,026	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.

**VIEWIT.COM PATENT STATUS REPORT**

05707

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
System and Method for Providing An Enhanced Digital Video File	P015 (fka 116)	Eliot I. Bernstein Brian G. Utley Jude R. Rosario	United States	Serial No. 09/587,734	Filed 06/05/00	Applicant Iviewit Holdings, Inc.	Pending.
System and Method for Video Playback Over a Network	P016PCT (fka 118)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/15 602	Filed 06/07/00	Applicant Iviewit Holdings, Inc.	Pending Response due 6/29/01.
Apparatus and Method for Producing Enhanced Digital Images	P017 (fka 119)	Eliot I. Bernstein	United States	Serial No. 09/522,721	Filed 03/10/00	Not assigned	Pending Claims benefit of 60/125,824
System and Method for Providing an Enhanced Digital Image File	P018PCT (fka 120)	Eliot I. Bernstein	PCT	Serial No. PCT/US00/21 211	Filed 08/02/00	Applicant Iviewit Holdings, Inc.	Pending. Deadline for entering into National Phase 04/02/01.
System and Method for Providing and Enhanced Digital Image File	P019 (fka 121)	Eliot I. Bernstein Brian Utley	United States	Serial No. 09630,939	Filed 08/02/00	Not assigned.	Pending. Deadline to file missing parts 11/29/00.
Zoom and Pan Imaging Using a Digital Camera	P020 (fka 122)	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Pending (Provisional Application expires 09/18/01)
Zoom and Pan Imaging Design Tool	P021 (fka 123)	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Pending (Provisional Application expires 09/18/01)

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

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

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

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RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

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

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

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

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

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

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

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 26<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By:   
STEVEN M. SELZ  
FBN: 777420

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

PROSKAUER ROSE, LLP, a New York  
limited partnership,

CASE NO.: CA 01-04671 AB

Plaintiff,

vs.

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

Defendants,

COUNTERCLAIM FOR DAMAGES

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

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

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

of interest, taxable costs and attorneys fees.

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

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

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

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

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

Boca Raton, Palm Beach County, Florida.

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

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

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

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

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

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

and,

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

and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e) By knowingly representing and agreeing to accept representation of

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

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

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

#### **COUNT II- CIVIL CONSPIRACY**

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

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

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

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

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

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

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

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

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

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

**COUNT III- BREACH OF CONTRACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

damage and detriment of Counter Plaintiffs.

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 10<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By:   
STEVEN M. SELZ  
FBN: 777420



May 19, 2000

**VIA MESSENGER**

Mr. Gregg W. Ritchie  
Pacific Capital Group, Inc.  
360 N. Crescent Drive  
Beverly Hills, CA 90210

Re: [iviewit.com](http://iviewit.com)

Dear Gregg:

I very much enjoyed meeting you for lunch earlier this week. As promised, enclosed is a copy of the Business Plan for our client, [iviewit.com](http://iviewit.com).

Iviewit has developed two proprietary and complimentary technologies to enhance video and images delivered on the internet. The first is a state-of-the-art technology which enables full-screen, full-frame rate (i.e., 30 frames per second) streaming video to be viewed by any internet video player at bandwidths as low as 150 kbps, with increased quality and reduced file size. The second digital imaging technology creates an opportunity for full screen still images and 360° panoramic views that can be magnified with minimal image distortion.

Iviewit has protected its technologies by filing and securing eight patent pending applications, and is currently buffering and expanding those patents through a significant supplemental filing. Iviewit is represented by several of the most prominent patent law firms and attorneys in the world. Bill Dick, who is the head of the intellectual property department of Foley & Lardner in Milwaukee, Wisconsin, was formerly in charge of IBM's foreign patent division. Mr. Dick and his patent team of attorneys are preparing all of iviewit's supplemental patent filings and are drafting all of iviewit's license agreements. Iviewit's potential patent litigation (if any) will be handled by Ken Rubenstein, who is the head of intellectual property litigation group at the law firm of Proskauer Rose in New York City. Mr. Rubenstein is in charge of all patent litigation on behalf of the MPEG patent pool, in addition to a number of other high-profile technology litigation matters.

Mr. Gregg W. Ritchie

May 19, 2000

Page 2

Iviewit has licensed its technology and providing services to a number of substantial clients, such as hollywood.com, broadway.com, Hyatt Hotels and Resorts, and Great Expectations Dating Service. Iviewit also is in final negotiations to license its technology to playboy.com, medicalonline.com (x-rays, MRI's CT-scans, etc.) americanenterprise.com (multi-hour surgical and educational videos), gregmanningauctions.com (one of the largest auction houses) and many other clients in the entertainment, health care, automotive and other industries.

Iviewit initially raised \$500,000 of seed capital from Wayne Huizenga's venture group (at a \$10 million post-money value). Within the last few months, Iviewit raised \$1.5 million in a Series A round at a \$25 million post-money valuation from an investment group led by several individuals who previously ran Merrill Lynch's venture division. Iviewit is currently seeking an additional \$1-\$2 million in the Series A round, with a Series B round (\$10 million minimum) to follow later this year. The proceeds will be used to provide working capital (including the leasing/purchase of equipment and facilities) which will enable iviewit to fulfill its substantial backlog of orders and to expand its licensing operations. Iviewit is currently in discussions with several of the nation's leading investment banks to lead the Series B fundraising efforts.

The iviewit technology is most easily explained through a demonstration. If Pacific Capital or its Venture Group are interested in learning more about the company, please let me know and I will arrange to have the principals fly to Los Angeles for a meeting. Although you can see some of the company's technology and applications on the website ([www.iviewit.com](http://www.iviewit.com)), the highest-quality work is not available for public viewing and is best seen through a private demonstration.

I look forward to hearing from you.

Best regards.

Very truly yours,

Alan J. Epstein

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

A PROFESSIONAL CORPORATION

KARL R. AUSTEN  
JOSEPH D. ONOFRIO  
ALAN J. EPSTEIN  
HOWARD A. FISHMAN  
ANDREW L. GALKER  
ROBERT S. GETMAN  
GEORGE T. HAYUM\*  
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JAMES R. JACKOWAY\*  
JONATHAN D. KAUFELT\*  
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MARCY S. MORRIS  
MICHELE M. MULROONEY  
GEOFFREY W. OBLATH  
RANDY M. SCHIENBERG  
SCOTT A. STEIN  
ROBERT L. STULBERG  
BARRY W. TYERMAN  
ROBERT S. WALLERSTEIN  
ERIC C. WEISSLER\*  
ALAN S. WERTHEIMER

1888 CENTURY PARK EAST, 18<sup>TH</sup> FLOOR  
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OF COUNSEL  
ALLAN L. ALEXANDER  
ARTHUR O. ARMSTRONG  
RONALD J. BASS  
GERALDINE S. HEMMERLING  
OUR FILE

May 30, 2000

\*ALSO ADMITTED IN NEW YORK

iviewit  
-sun'l  
mmm

**VIA MESSENGER**

Ms. Kimberly Chu  
WaterView Advisors, LLC  
2425 Olympic Boulevard  
Suite 4050  
Los Angeles, CA 90404

Re: [iviewit.com](http://iviewit.com)

Dear Kimberly:

Following up on our telephone conversation last week, enclosed is a copy of the Business Plan for our client, [iviewit.com](http://iviewit.com).

Iviewit has developed two proprietary and complimentary technologies to enhance video and images delivered on the internet. The first is a state-of-the-art technology which enables full-screen, full-frame rate (i.e., 30 frames per second) streaming video to be viewed by any internet video player at bandwidths as low as 150 kbps, with increased quality and reduced file size. The second digital imaging technology creates an opportunity for full screen still images and 360° panoramic views that can be magnified to the optical limit with minimal image distortion.

Iviewit has protected its technologies by filing and securing eight patent pending applications, and is currently buffering and expanding those patents through a significant supplemental filing. Iviewit is represented by several of the most prominent patent law firms and attorneys in the world. Bill Dick, who is the most senior member of the intellectual property department of Foley & Lardner in Milwaukee, Wisconsin, was formerly in charge of IBM's patent and licensing operations in the Far East and in other territories. Mr. Dick and his patent team of attorneys are preparing all of iviewit's supplemental patent filings and are drafting all of iviewit's license agreements. Iviewit's potential patent litigation (if any) will be handled by Ken Rubenstein, who is the head of intellectual property litigation group at the law firm of Proskauer Rose in New York City. Mr. Rubenstein is in charge of all patent litigation on behalf of the MPEG patent pool, in addition to a number of other high-profile technology litigation matters.

Ms. Kimberly Chu

May 30, 2000

Page 2

Iviewit has licensed its technology and providing services to a number of substantial clients, such as Hollywood.com, Broadway.com, Hyatt Hotels and Resorts, and Great Expectations Dating Service. Iviewit also is in final negotiations to license its technology to Playboy.com, MedicalOnline.com (x-rays, MRI's CT-scans, etc.) AmericanEnterprise.com (multi-hour surgical and educational videos), GregManningAuctions.com (one of the largest auction houses) and many other clients in the entertainment, health care, automotive and other industries.

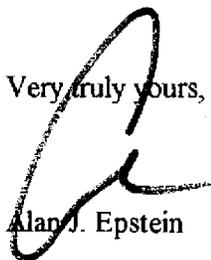
Iviewit initially raised \$500,000 of seed capital from Wayne Huizenga's venture group (at a \$10 million post-money value). Within the last few months, Iviewit raised \$1.5 million in a Series A round at a \$25 million post-money valuation from an investment group led by several individuals who previously ran Merrill Lynch's venture division. Iviewit is currently negotiating with an investment group for an additional \$2 million in the Series A round, with a Series B round (\$10 million minimum) to follow later this year. The proceeds will be used to provide working capital (including the leasing/purchase of equipment and facilities) which will enable iviewit to fulfill its backlog of orders and to expand its licensing operations. Iviewit is currently in discussions with several of the nation's leading investment banks to lead the Series B fundraising efforts.

The iviewit technology is most easily explained through a demonstration. If you or your colleagues at WaterView are interested in learning more about the company in the context of a Series A and/or Series B round investment or a licensing or other strategic relationship, please let me know and I will arrange to have the principals fly to Los Angeles (or New York, if you prefer) for a meeting. Although you can see some of the company's technology and applications on the website ([www.iviewit.com](http://www.iviewit.com)), the highest-quality work is not available for public viewing and is best seen through a private demonstration.

I look forward to hearing from you.

Best regards.

Very truly yours,



Alan J. Epstein

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

Ms. Kimberly Chu

May 30, 2000

Page 3

AJE/rdq

GAWPAJELETTERS@RITCHIE.COM

cc: Mr. Eliot Bernstein

Mr. Brian Utley

Mr. Maurice Buchsbaum

(w/o encls.)

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

Ms. Kimberly Chu

May 30, 2000

Page 4

bcc: Michele M. Mulrooney, Esq.  
James R. Jackoway, Esq.

M M M  
Newt, Inc

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

A PROFESSIONAL CORPORATION

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RONALD J. BASS  
GERALDINE S. HEMMERLING  
OUR FILE

June 9, 1999

9999

Via Facsimile 561-241-7145

Christopher C. Wheeler, Esq.  
Proskauer Rose LLP  
2255 Glades Road  
Suite 340 West  
Boca Raton, Florida 33431-7360

Re: iviewit

Dear Christopher:

I would very much appreciate your sending two Confidentiality Agreements to Mr. Gemal Seede, one addressed individually and one to Netcubator, the company which employs him at address below:

Mr. Gemal Seede  
Netcubator  
30 W. Green Street  
Pasadena, California 91105  
Facsimile: 626-449-4395

Please send the Confidentiality Agreements directly to Mr. Seede, with a copy to my attention. Also please include in your cover letter a statement, similar to the one set forth in the Confidentiality Agreement you sent to Richard Rossman on April 26th, regarding Proskauer's general views on the novel and protectible nature of the patents and technology.

Very truly yours,

  
Alan J. Epstein

AJE:jbn  
AE\LETTERS\WHEELER\LTR

Christopher C. Wheeler, Esq.  
June 9, 1999  
Page 2

cc: Mr. Eliot Bernstein  
Mr. Jeff Freedstein  
Michele M. Mulrooney, Esq.  
James R. Jackoway, Esq.

**PROSKAUER ROSE LLP**

2255 Las Road  
Suite West  
Boca Raton, FL 33431-7360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.432.7746  
Fax 561.241.7145

NEW YORK  
LOS ANGELES  
WASHINGTON  
NEWARK  
PARIS

**Christopher C. Wheeler**  
Member of the Firm

Direct Dial 561.995.4702  
cwheeler@proskauer.com

June 8, 1999

Via Fax

Mr. Amre Youness  
Mr. Ahmed Alfi  
Mr. Frank Khulusi  
301 North Lake Avenue, Suite 910  
Pasadena, CA 91101

Gentlemen:

At the request of Alan Epstein, I am forwarding the enclosed Confidentiality Agreements to you. I would appreciate your signing and returning your Agreement to me.

We have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far too early to make any final pronouncements. We do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Sincerely,



Christopher C. Wheeler

CCW/gb

cc: Alan J. Epstein - Via Fax

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world. Founded in 1875 in New York City, the firm employs 475 attorneys and has wide experience in all areas of practice important to businesses, including corporate finance, mergers and acquisitions, real estate transactions, bankruptcy and reorganizations, taxation, litigation and dispute resolution, intellectual property, and labor and employment law.

**Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.**

One of the nation's leading entertainment law firms. Based in Los Angeles, California, it represents many of the most prominent actors, writers, directors and producers of feature films, television programming and other entertainment content. The firm also represents various content and technology companies in the Internet industry, including prominent web sites, entertainment-oriented portals, aggregated celebrity sites and various e-commerce companies. The firm is assisting in developing the business structure and strategic relationships for iviewit.

**Foley & Lardner**

One of the oldest and largest law firms in America. Founded in 1842, the firm now has more than 750 attorneys in 14 offices, following the February 1996 merger with Weissburg and Aronson, Inc. Foley & Lardner's over 100 highly skilled intellectual property attorneys constitute one of the largest and most sophisticated technology groups in a general-practice law firm in the United States. As one of the few large national law firms with a global intellectual property law group, it is uniquely positioned to help iviewit capitalize on its foreign filings. The firm's broad-based representations in litigation, regulatory affairs and general business counseling is complemented by one of the world's most highly trained staffs, which includes 65 engineering and advanced technical degrees, including 12 Ph.D.'s. The list of clients using Foley & Lardner to fill their intellectual property legal needs ranges from small entrepreneurial start-up companies to large international and multinational corporations. Foley & Lardner attorneys provide solutions and successfully serve the needs of clients around the world, including those situated in the United States, Canada, Latin America, the European Union, Eastern Europe, the Middle East, and the Pacific Rim.

- 
- **William J. Dick** - Special Counsel to the West Palm Beach office of Foley & Lardner. A member of the firm's Intellectual Property Department (Electronics Practice Group), Mr. Dick currently focuses on mentoring other members of the Electronics and Consumer Products Practice Groups in various IP related matters. He also conducts weekly classes in patent related matters for new associates. Mr. Dick joined Foley & Lardner after 26 years with IBM. He began as a patent attorney, and has handled all phases of patent, trademark and copyright duties, including litigation. Mr. Dick's most recent position with IBM was as Assistant General Counsel to IBM Asia Pacific. Mr. Dick is a graduate of the University of Virginia (B.M.E., 1956; L.L.B., 1962 changed to J.D., 1970)
  - **Douglas Boehm** - a partner in the Milwaukee office of Foley & Lardner and a member of the firm's Intellectual Property Department (Consumer & Industrial Products Practice Group and Health Information Technology Practice Group), Mr. Boehm practices in the areas of patent, trademark, copyright, and trade secret counseling; U.S. and foreign patent prosecution; and computer software and intellectual property licensing and technology transfers. Mr. Boehm's technical focus encompasses electrical and electronic engineering, including analog/digital/RF circuitry, radio telecommunications, lasers and fiber optics, and computer hardware and software. He has extensive experience in private industry, having worked as a development engineer and patent agent for Motorola, and as patent counsel for a subsidiary of Amoco Technology Company.

reason that you can recall whatsoever why these  
two computers were given the names Nitro and  
Bomber?

155

A. Well, at their inception, they were  
reasonably current in the state of the art.

Q. Okay. So they were basically quick  
and they were high-capacity machines and they  
were desirable; is that what they were?

A. Well, let me position that.

Q. Okay.

A. At the time of their inception, they  
would be considered to be reasonably current in  
the state of the art. But we all know at what  
rate the technology moves.

Q. Okay. So about three months after  
they were created, they were no longer state of  
the art?

A. That's very often the case.

Q. Okay. With regard to William Dick  
and Foley & Lardner, do you have any relationship  
or continue a relationship with either Foley &  
Lardner or Mr. Dick?

A. No.

Q. Have you known Mr. Dick in any other  
setting other than related to Iviewit?

A. He worked for me at IBM as manager of the intellectual property department. 156

Q. And is that why -- or strike that. Did you recommend that Mr. Dick be retained for the intellectual property work for Iviewit?

A. Actually, I used Mr. Dick as a reference or a consultant to determine who Iviewit should consider retaining for its intellectual property work.

Q. And Mr. Dick was subsequently, Foley & Lardner and Mr. Dick was subsequently employed for that purpose?

A. Mr. Dick was never employed by Iviewit, but Mr. Dick was retained by Foley & Lardner as a senior staff member because of his broad experience both before the bench and worldwide in intellectual property matters and, and he endorsed Foley & Lardner as a competent intellectual property company that would handle our affairs. I trusted his judgment.

Q. Now, are you aware of any relationship between Iviewit and Real 3D?

A. Real 3D were brought into the picture by Mr. Wheeler. They were a resource by

## WILLIAM DICK BILLING ENTRIES FOR FOLEY AND LARDNER

Date	Firm	Partner	Partner	Partner	Notes	
4/3/2000	FL	Dick	Utley		Call to arrange meeting for 4/7/00	57103
4/7/2000	FL	Dick	Utley		Conf Utley re meeting cancellation	57103
4/10/2000	FL	Boehm	Dick		Conf re IP matters	57103
4/10/2000	FL	Dick	Utley	Bernstein	Meeting with Utley & Bernstein	57103
4/10/2000 cont	FL	Dick	Becker		Re conflicts check	57103
4/10/2000	FL	Dick			Draft Engagement Letter	57103
4/10/2000 cont	FL	Dick	Boehm	Becker	Discussion with????	57103
4/10/2000 cont	FL	Dick	Utley	Teth	Note re sending firm materials	57103
4/13/2000	FL	Dick	Boehm		Re: engagement letter to Utley conf	57103
4/21/2000	FL	Boehm	Dick	Becker	Office conf regarding patent matters????	57103
4/21/2000	FL	Becker	Dick		Phone Dick??	57103
4/21/2000 cont	FL	Becker	Boehm		Office conf??	57103
4/21/2000	FL	Dick	Utley		Meeting??	57103
4/21/2000 cont	FL	Dick	Bernstein		Discussion?	57103
4/21/2000 cont	FL	Dick	Bernstein		Briefly review 8 patent apps in attempt to understand scope of work needed, request copies of materials	57103
4/24/2000	FL	Boehm	Dick		Re patent matters?????	57103

4/24/2000	FL	Becker	Dick		Conf???	57103
4/24/2000	FL	Dick	Utley		Conf??	57103
4/24/2000 cont	FL	Dick	Becker	Boehm	Conf re copying material, pick up material, sort and send to Boehm.	57103
4/25/2000	FL	Dick	Mantecon		Conf re copying of material, pick up, sort and send to Boehm	57103
4/25/2000	FL	Dick	Various People???		Meeting w various people (WHO??) during visit to pick up material	57103
4/26/2000	FL	Dick	Boehm	Becker	Note re files	57103
4/27/2000	FL	Boehm	Dick		Re IP file status	57103
4/28/2000	FL	Dick	Boehm	Becker	Meeting with?	57103
5/1/2000	FL	Boehm	Dick	Becker	Conf re IP portfolio and Iviewit tech	57103-0101
5/1/2000 cont	FL	Becker	Boehm	Dick	Office conf??	57103-0101
5/1/2000 cont	FL				Search for patents and background art	57103-0101
5/1/2000	FL	Dick	Utley		Communications with Mr. Utley. Vague	57103-0101
5/1/2000	FL	Dick	Becker	Boehm	<b>Conf call (MAYBE THIS CALL IS RELATED TO WHEELER / JOAO ANONYMOUS BILLING IN PR BILL)</b>	57103-0101
5/2/2000 cont	FL	Boehm	Dick		<b>Re schedule meeting</b>	57103-0101
5/2/2000	FL	Becker	Dick		Conf???	57103-0101
5/2/2000	FL	Dick	Boehm		<b>Discussion re schedule and meeting with Utley</b>	57103-0101
5/3/2000	FL	Boehm	Utley	Dick/Becker	<b>Travel to Boca and discuss various ip matters</b>	57103-0101
5/3/2000	FL	Becker	Utley	Dick/Becker	<b>Travel to Boca and discuss various ip matters</b>	57103-0101
5/5/2000	FL	Boehm	Dick		Conf re meeting results	57103-0101
5/16/2000 cont	FL	Boehm	Becker	Dick	Re iviewit inventions	57103-0101
5/16/2000	FL	Dick	Boehm		Regarding IP matters	57103-0101
5/30/2000	FL	Boehm	Dick/Becker	Joao	Re iviewit Technology and prov apps	57103-0101
5/30/2000	FL	Becker	Dick	Boehm	Office conf	57103-0101
5/30/2000	FL	Dick	Boehm/Becker	Utley/Bernstein	<b>Conf. Forgets Joao</b>	57103-0101
6/9/2000	FL	Boehm	Dick		Conf with Dick re iviewit matters. Vagueness	57103-0101

6/12/2000	FL	Boehm	Dick	Buchsbaum	Conf re upcoming investor (WHO??) meeting and materials required, prepare notes re same	57103-0101
6/12/2000	FL	Becker	Dick		Office conf???	57103-0101
6/12/2000	FL	Dick	Buchsbaum		Discussion with Buchsbaum	57103-0101
6/12/2000 cont	FL	Dick	Boehm	Becker	Later discussion regarding session with investors	57103-0101
6/20/2000	FL	Boehm	Dick		Conf w Dick regarding NDA	57103-0101
6/20/2000 cont	FL	Boehm	Dick	Utley	Revise NDA and send to Utley	57103-0101
6/20/2000	FL	Dick	Boehm		Re NDA and disclosure of patent app for eval purposes	57103-0101
7/11/2000	FL	Boehm	Dick		Conf w Dick (WHO DOES NOT BILL FOR THIS) re technology lics agreements	57103-0101
8/7/2000	FL	Boehm	Dick/Wachovia Securities	Utley/Bernstein in	Conf Bernstein Utley Dick Wachovia reps re IP licensing matters	057103-0101 General File
8/7/2000 cont	FL	Boehm	Bernstein		Attend to misc correspondence regarding copies of Video Imaging Apps	057103-0101 General File
8/7/2000	FL	Dick	Wachovia		Tele conf with Wachovia reps (WHO??) and client (WHO???) re technology licensing strategy	057103-0101 General File
8/7/2000 cont	FL	Dick	Boehm		Tele conf with Boehm re Tele conf with Wachovia reps (WHO??) and client (WHO???) re technology licensing strategy	057103-0101 General File

CORRECTED VERSION - CORRECTED ON 5/14/2003

Transcription of Telephone Conference

Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table

Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of the firms' files.

<Inaudible comment.>

Utley: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

Simon Bernstein: You have no notes, no data on...?

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

Wheeler: The work product is yours. He may maintain copies of his files and everything; or his confidential notes to himself are not necessarily yours. But the work "product" is...

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here—this was before Brian came—I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did - now going to that same nature, that's the provisional I think we're talking about...

Wheeler: Right.

Bernstein: But he flew out here again with me and Brian and went through this as he went to file this--this is a 3/23/2000 file--that also fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't see them...

Bernstein: Well, you saw because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep maintaining it as...

Bernstein: Okay, but you have every record...

Wheeler: Everything you gave me we maintain. We don't...

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

Simon Bernstein: I know you don't you're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we had it in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?

Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.

Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, correct?

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.

Bernstein: But then when I look through this...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's described in this document, and without "undue" experimentation, without inventing it himself.

Simon Bernstein: Right.

Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

Simon Bernstein: Is that what we've done so far?

Bernstein: No.

Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

Wheeler: That's what we're aiming to do, that's what we're hoping to do.

Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

Wheeler: He was trying to do it in a broad...

Wheeler: He did say conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

Simon Bernstein: In the provisional.

Boehm: Uhhuh To that text, or you lose your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean...

E. Bernstein: It's not even in there.

Wheeler: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional? You can't add subject matter to the provisional?

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

E. Bernstein: It's not in the filing either.

Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.

Bernstein: It didn't pixelate. Not in here at all.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, explain to him where it's missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have without it being construed as an addition.

Boehm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another

lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average designer of this type of software—can he read this document and make and use of your invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't mater as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

Simon Bernstein:           What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm:                   Does that support our...Sure...

Simon Bernstein:           I mean, if we were to litigate against another person that infringes on our...

Boehm:                   An infringer.

Simon Bernstein:         Supportable for the sake of argument?

Boehm:                   Right. Yes. That is a fair argument

Simon Bernstein:           OK so then I don't know that, at least from first blush

Bernstein:               That's the provisional you're reading though, right?

Boehm:                   Aren't they the same? I think they're identical, aren't they?

Boehm:                   You can check in his notebook.

Boehm:                   Are there differences?

Bernstein:               Where did you find that piece that you just read?

Wheeler:                 Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that Joao. I thought that we had agreements for doing everything, but apparently Joao filed...

Boehm:                   For that one, yes.

Wheeler:                 But he didn't bother telling anybody.

Boehm:                   That's the one that we didn't find out until way late.

Wheeler: Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least resistance, and he thought he could go back...is there an amendment procedure?

Boehm: Yeah, there's an amendment procedure.

Wheeler: That he could do it a few months later or something like that?

Utley: We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.

Wheeler: Okay.

Bernstein: And you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. How did a guy to file a patent without any of us--obviously, not me, but Eliot, Brian.?

Boehm: Jim wasn't around yet.

Simon Bernstein: Okay, but Chris was and so on and so forth--how did they get through the crack that he did this?

Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do--his time factor--he was going to...he didn't think he would get this in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and file it.

Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

Utley: he knew at the time that he probably would be leaving?

Utley: Right.

Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.

Boehm: Just speculating.

Eliot Bernstein: What day did you give him those notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: That could be too. One other reason is...

Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the feature..."

Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? it has caused iviewit. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about...

Eliot Bernstein: Well 1<sup>st</sup>- lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

Simon Bernstein: Someone comes after you the second day after...

Boehm: Who's the first inventor, that's what you're after.

Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One-year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file that, but you need to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

Simon: Which might have short-circuited us because of all of the lack of funds.

Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: Yeah two things happened during the year. One, the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

Simon: Here's what we did. We hired Ray Joao on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been made.

Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray Joao...just an observation.

Boehm: Hmm...is it all patent attorneys? <Laughter>

Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit personally, I haven't heard of a patent attorney in my life telling me that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now

why is that going to hurt you? Two main reasons. One is if you put it on sale—offered it for sale— or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had publicly disclosed it, that would protect...getting the application on file will protect you from losing your date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone—you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new matter

Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: whose judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side would, say that's baloney that's too broad you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.

Boehm: So the offers for sale won't normally kick off a foreign...

Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year grace period.

Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes-yes we are within that grace period

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our knowledge, we have swept up all this in this filing, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original formal filing to strengthen the claims - broaden the claims ... to the maximum extent that we can.

Boehm: if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into the application.

Utley: What we're trying to do is protect the date day of March 24

Boehm: The original...

Utley: The original date as March the 24<sup>th</sup>, but filing should remain an objective.

Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

Buchsbaum: You mean the examiner of the commission

Bernstein: We're not going to be able to say it was in the claim.

Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.

Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file an continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but as far as, doing it broadly, if you're saying to claim it broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.

Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: Foley & Lardner. It identifies what you're trying to do. [not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.

Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your forum of law there's always going back and refining and refining and refining that was wrong.  
<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7<sup>th</sup>, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.

Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. Correct?

Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted a feature which

typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

Wheeler: I mean, he's describing I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see, this is different.

Boehm: But it doesn't matter right now

Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of having described this

Boehm: This is the background that's...problem. He's got...

Boehm: That kind of invention, right, it's got to state...

Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...

Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you

want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

Boehm: March 24<sup>th</sup>, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.

Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention actually. What we do understand a little bit about is the theory in business; and now that we know that Ray Joao was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

Simon Bernstein: Who owns them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]

Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

Boehm: So I've so I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of this? Sure.

Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that has an obligation to sign is on the list of names in these patents right, because the company was part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because you may due corporate due diligence for financial reasons or if...and they will say has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

Buchsbaum: Has everybody signed off on these? Brian?

Boehm: See these tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over but you're real clean on it because these are all based on the original filing , which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: So all of the other inventors would have a helluva problem trying to say they owned anything.

Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were it went into bankruptcy, what would happen to those patents? How would those patents [ ]?

Wheeler: It depends on which at iviewit you're talking about.

Simon Bernstein: The one that they are held in.

Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

Wheeler: There is a possibility, but that's one of the main reasons... But the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors getting a piece back?

Wheeler: No, no, no. On the \$800,000 loan, those people, it's secured by the patent.

Simon Bernstein: What about the \$600,000...or the other \$800,000 loan?

Wheeler: The others weren't loans. The others were equity, as I recall.

Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where note holders

Wheeler: No, because there was no quid pro quo at that time. The note holders I mean you can't go back and do it, we had that talk Si

Wheeler: I mean, you can't go back...

Bernstein: The note? I believe they're not final, even though we told people they would be by this time.

Wheeler: The note holders took their money in without taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't ... back to a failure to the corporation

Simon Bernstein: ...Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem

Buchsbaum: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because ...posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga lose his?

Bernstein: Would Huizenga lose his stake in it to Crossbow?

Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of...??

Simon: We all could have put in another \$10. I mean, at the time we did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

Wheeler: There would have had to have been some material consideration, not just \$10. It would have been...

Simon: So it would have been \$10,000...

Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new

considerations that you could demand as a condition to be collateral.

Simon:                   What we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley:                   That's new subject matter.

Simon:                   Well, I only brought it up because it had to do with the patents.

Utley:                   I know but can we finish the patent discussions before we bring up new subject matter.

Simon:                   You can, but I want to make sure that we do finish.

Utley:                   No, I agree with you Si.

Si:                       The problem is that I made claims to certain people like Don Kane, who put up \$100,000, who thinks...

Bernstein:               Let's get back to that. No, let's get back to it. It's a definite point. There are people.

Buchsbaum:               This is a business issue for later.

Bernstein:               No, we're asked by these very people these questions.

Boehm:                   Did you get your question answered on the...

Buchsbaum:               Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

Boehm:                   Yeah, but after...I find everybody, we can get guys to sign.

Buchsbaum:               We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum:               There aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm:                   No, there's not.

Boehm:                   So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum:               You just have to get people around and sign.

Boehm:                   No, that should not be and issue.

Buchsbaum: That might be questions brought up when people do do due diligence. Is everybody else on these?

Bernstein: That's why we're closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

Utley: The other piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined process—the mathematical representations of what's in and how it works and stuff like that.

Wheeler: (...???)

Buchsbaum: That will also be included in there, right?

Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form my opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps we would have liked to have tidied up some things better, like to have had Mr. Joao tidy them up. The good news is considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24<sup>th</sup> last year. Second, we will look at the March 24<sup>th</sup> year 2000 filing and determine how we should amend that to include additional claims and broaden that filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back...

Boehm: as long as you don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.

Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

Boehm: The question never even gets answered half the time in the real world. I will claim priority back on the document, and then if the examiner doesn't care, nobody cares

Bernstein: It gets through.

Boehm: It gets through.

Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

Wheeler: So I'm not adding flesh in defense...

Simon: New flesh.

Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray Joao numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

Utley: No Crossbow notes would be converted to equity when someone else comes in.

Si? Of course, and that's gone. And those issues are gone.

Wheeler: Well, Yeah, so that it was the ...it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of your collateral.

Simon: Yes, of course. As soon as it converts to equity, it's gone.

Wheeler: But I mean, what if you didn't convert yours to equity[ ]?

Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for

distribution. But of that amount[ ] unless there's nothing to distribute.

Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

Buchsbaum: You're talking about the small amount of money, that have any value, it should be reasonable value, and those would be taken out anyway.

Simon: Except that we seem to feel that we have an obligation to those, to protect the other stockholders who...had all good...I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?].

Utley: Will you look it up and see what it's going to take to do it?

Wheeler: I'll coordinate that

Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

Simon: I don't know. Can you handle the old money the same way? I don't think so.

Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on subsequent money.

Simon: Well, but to ask Don Kane to put up \$10,000 when he's got \$160,000 in the...\$135,000 in the company, and then he only gets 10%...\$10,000 worth of consideration...I'd like to protect his whole \$165,000, which is what he has.

Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$400,000 that's on the books. Then there's another \$100,000 besides what he put in originally. Sal has a loan on the books of \$25,000. Your guy should have had a loan on the books for \$250,000.

Utley: No, that's equity. Okay.

Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me \$10,000 to pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and Mitch.

Simon: You haven't sold any of your stock?

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.

Buchsbaum: That's the way to do that?

Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

Simon: Sure, I just wanted to make sure that it was done. I didn't even know ...???that bank account

Bernstein: Not that I didn't.

Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop to the US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

Simon: Let me ask you. You're not a lawyer, what do you recommend?

Boehm: Well, it's more money up front.

Simon: How much money? A great sum of money?

Boehm: No, it's another grand to file.

Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.

Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those earlier filings?

Boehm: Those other two.

Buchsbaum: That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: Plus you're gonna get an office action back from the patent office on him...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

Boehm Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?

Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to...???

Utley: Because he's claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorders off, right? <Recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?

Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess \$5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, well get Rays to another indiscriminate level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products--or whatever it is--per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..

Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That the patent will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.

Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be approved. The investors are going to say...

Buchsbaum: The first one that we're going to be issued will be issued in May.

Bernstein: And the investors are going to say what happened to patent one.

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in. 18 months to two years

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and wasn't able to and got clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah. Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

Boehm: But what, the test - I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say

Utley Doug come back, close it out again.  
<Inaudible comment.>

Boehm: There were two points. One was the PCT and I got that in correct.

Buchsbaum: Right.

Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it issues. You never do it before. I don't even like to do it then. I like to do it after all the...

Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.

Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.

Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.

Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.

Boehm: Now it's intentional!

Utley: But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?

Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly—if that's the goal, which sounds like it's a good goal—then, no, I think we should amend the claims with a preliminary amendment before the examination.

Utley: A preliminary amendment?

Boehm: A preliminary amendment.

Bernstein: Encompassing everything we can throw in there?

Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...

Bernstein: So we're going back to the original

Boehm: So I'll fix the 119 case yeah

Bernstein: March 3, 2000, to encompass what we've embraced.

Utley:               When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm:               Yeah, that's...

Bernstein: That's my guess.

Utley:               When will you be in a position to...

Boehm:               I'd have to...a few days...

Utley:               About a week or so?

Boehm:               Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>

Transcription of Telephone Conference  
Conducted August 2, 2000  
Participants:  
Eliot Participant, Jim Armstrong,  
Brian Utley, Doug Boehm  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Bernstein: Patent meeting.

Utley: ...all [it?] is is a set-top box doing that same function. It acts as a scan converter so that you can display on a raster display device as a pixel-based image.

Bernstein Armstrong: Okay. I wanted to start out by just making that comment because I think as we go through this, we just need to be sensitive to how it's stated so that in certain areas we make sure that it's stated in the way that Brian just indicated.

Boehm: Let's talk about that a little bit more up front here. Brian, can you give me...when you say a display is displayed as a raster, not pixels, a TV display versus a monitor? Or both?

Utley: Both. They operate at different frequencies, they have different scanned characteristics; but basically, they are quite similar. In fact, the very early monitors were TV screens.

Boehm: The reason we focused on pixels is because we needed to draw a line in the sand where we said something went [eeky].

Utley: The technology is pixel based. There isn't any question about that.

Boehm: He's right. I mean, pixels, schmixels. Is there any other way to draw that line in the sand and just use pixels as one embodiment; and is there a way to define the way you would pre-pack an image when it's going to be displayed on a display in terms of raster? Or anything else that you can think of. What we're doing is pre-packing sufficient information so that no two picture elements, whatever the heck they are, are displaying the same piece of information. Right?

Utley: Right. Of course, the trap is as soon as you get into the digital world, you are basically in a bit image format unless you use a more complex method which basically is you describe...

Boehm: Which is vector based, you mean?

Utley: Which is vector based where you describe line segments as vectors, but that's very, very, very much more complex and it does not lend itself at all to this kind of imagery that we're dealing with here. It just doesn't work.

Boehm: And it wouldn't pixelate, obviously, when you magnify it.

Utley: We'd have other problems.

Boehm: But you'd have other problems, right. But we're not worried about covering vector-based systems in this invention right now.

Bernstein: But should we limit ourselves...but we don't limit ourselves, either, do we?

Boehm: I'm thinking that a court could hold that you are, yeah, because we're talking pixels all over the place. We've defined some of the claims in terms of how to draw that line in the sand in terms of number of pixels versus

what's displayed versus what's pre-packed in; and maybe the whole string of claims wouldn't make sense unless you were talking in terms of pixels or picture elements. Maybe we don't have the word "pixel" in every claim, but my point is that...

Armstrong Bernstein: Is there any way to do it vector based?

Boehm: Yeah, there are generic ways...we'll, I'm not sure you want to do it vector based because now we can't draw the line in the sand.

Bernstein: Okay. I was thinking a separate filing if there was a way.

Boehm: Yeah, but I'm thinking of...you brought up a good point. We're thinking pixels or a digitized image. Technically, a photograph is grains.

Utley: Right.

Boehm: Is there a grain-based quality factor that we can tap onto?

Utley: No, not really. I think the closest...the part of that that [varies] is when you do the enlargement of the source photo image.

Boehm: Maybe we should talk data elements. Is there a...

Bernstein: That's the word I liked versus this...value data, additional data.

Boehm: But this is not...in the product, there is a big difference.

Utley: But because there's a big [batch] of formulas, you can't...<unclear; everyone talking at once.>

Bernstein: I understand that, I understand that.

Armstrong: But we could use data elements with pixels being an exemplary method for using data elements...here's one example of a data element, it's a pixel.

Boehm: The problem with that, though, is somebody could find a piece of Prior Art that uses the data for vector based.

Bernstein: Oh, [then we are beat] on vector base?

Boehm: No, if it's Prior Art...if it's done ten years ago...vector based...and you're saying in your spec that your claim language data elements cover is broad enough to cover pixel, vector based, and everything. Your claim now reads on the Prior Art, and your patent would be invalid. It could be interpreted that way.

Bernstein: Brian, were we ever able to do it vector based?

Utley: Well, there are certain things which you can do vector based.

Bernstein: That you can't do pixel based?

Utley: That you can do pixel based as well as vector based.

Bernstein: So we've got to be careful that they can't cross that same line.

Utley: Certain kind of graphics are done in vector based. For instance, AUTOCAD works on a vector-based system. CAD programs are typically vector based.

Boehm: Does the concept of your invention, of pre-packing the number of picture elements so you can zoom it and pan it, does that have anything to do with vector-based systems?

Armstrong Utley: No.

Utley: I think, Doug, it really doesn't. Vector-based systems don't play here, and I don't think the data elements buy you a thing.

Boehm: I think it could buy you trouble.

Bernstein: Okay.

Boehm: A good point in trying to broaden it, and we'll keep that in mind...

Bernstein: My question is, so does this cover if you could do it on a TV for a set-top box?

Boehm: I thought it did until...

Bernstein: That's what I was after. I didn't know if a pixel was involved in a TV.

Utley: Not in a direct sense.

Bernstein: In the display sense, though?

Utley: No.

Bernstein: Because we make a distinction between...

Armstrong: <Inaudible comment.>

Utley: But I told you that. But you do

Bernstein: Then were covered

Utley: Yeah...everything is carried up to a scan convertor which is simply a translation medium to translate from pixels into a raster.

Bernstein: Gotcha. Okay.

Utley: So you can display all of that on a laptop, and then it's direct mapping, pixel to pixel.

Bernstein: Or you can convert it to whatever you want.

Utley: Right. That's right. You can convert it to a NTSC or [PAL] or C-CAM or...HDTV

Bernstein: Or any display.

Bernstein: What about a game? What about a game are we set up to cover a game.

Utley: Yeah

Armstrong: I think if we look through this, You said that it need's to be...

Utley: Any kind of display device...

Armstrong: In it's invention, it's a calculation based on pixels, and we just need to be careful that the way this is worded doesn't preclude us from displaying it on a non-pixel-based system.

Bernstein: And that's what he just said. He said that...

Armstrong: He said we're converting the wordage here because we ran into it a number of times. As we all look at it together, let's just be cognizant of that.

Boehm: Absolutely. When we go through, we'll all keep an eye out for it. But when you say a non-pixel-based system is a raster system, I really don't agree with that. A raster is derived from the picture elements, right?

Bernstein: From the pixels. That's what Brian just said.

Boehm: Yeah.

Bernstein: So we can convert the pixels to any display medium we want.

Boehm: Yeah, but even if you look at the...when we get to some of the claims, when you look at the resolution of the monitors, they talk about pixels.

Bernstein: Well, that's what I'm concerned about a little bit.

Utley: Because what they're referencing when they talk about pixels on the monitor, they're really referencing the scan buffer that scans it out to the monitor, and it's not a representation inherently within the monitor itself.

Boehm: Oh, okay.

Utley: The monitor has no pixels. But the monitor has a [shatter vast] which, depending on the monitor technology, whether it's a Sony or a non-Sony—a Sony has an aperture grill—but they have a three-color dot matrix which has no direct connection with a bitmap.

Boehm: Oh, really? No association to the pixel elements coming in?

Utley: No, none whatsoever. A standard TV tube...a 17" TV tube has a dot-spacing at a [4.?] [4.?] inches, and a good display tube has got a lot of the diodes at .26, .27, .28 at the higher resolution, but it's where it's visually higher resolution, not necessarily what your scan buffer has.

Boehm: You don't turn the screen...the gun on and off for each pixel.

Utley: Right. It's a continuous beam scan, and you're modulating the beam.

Boehm: So I think the best we can do is keep that in mind when we talk about the language to converting this over to television display stuff[ ].

Utley: Yeah, on this page I did have an additional comment. On line 18 and 19, where it talks about ideal image quality requiring a minimum bandwidth for transmission. All I was saying here is instead of a limited bandwidth, it works regardless of the bandwidth, but it has less demand on bandwidth.

Boehm: Okay.

Bernstein: Let me ask you this. Let's say [Take bandwidth out of the equation and just say you play our image off your hard drive. It's still cool, so it has all the features we're patenting. Why do I even care about a limited bandwidth? Why do I care that that statement be there at all?

Boehm: Do you have any knowledge...I mean, ...

Bernstein: No, I have no knowledge that in Prior Art you can pull off your hard drive any differently. People did not say to me, "oh, what you did is cool because you can play it over a network." They said, "it's cool, so I'm gonna play it off my hard drive." And by the way, in the end, the file is on your hard drive. Even if you had a 2400-baud modem, the only difference is you have to wait 11 minutes to get the cool image. The coolness did not decrease by the time it took to download the image.

Boehm: Okay, again, we'll keep that in mind. I believe it's covered when we claim the digital image file because I don't think the digital image file claims pertain to a network. Let me...

Bernstein: None of it should pertain to a network really. It's an added benefit that we're able to transmit these rich pictures over a limited bandwidth network, but it is nothing even close to dependent or part of the coolness of the invention.

Boehm: Can I take a counter-position, Eliot?

Bernstein: Sure.

Boehm: The reason that you'd want...first of all, you have to describe the best mode of your invention. There's no question we have to leave network in there.

Bernstein: That's fine. Okay.

Boehm: And the more stuff you leave in there, the better it is for us.

Bernstein: As long as we're not limited to it.

Boehm: The claims are what defines what's limited, but again, if we are so broad brush in...the claims are interpreted in the language in this...

Bernstein: Well, don't be broad here. If you want to be broad, it can be your hard drive or it could be over a network, it doesn't matter.

Boehm: Right. The problem would be if the digital file that we're claiming in some claim #29 or whatever, if the wording of that claim says "uploading"...no, it says "transferring data," and that would mean over an Internet, and in the spec we come back and say that means over the Internet or...

Bernstein: ..or your hard drive, yes, I agree. That's why I put in some places upload, download. I don't care what you call it, don't limit as to download what I see in some places.

Boehm: Okay, that patent issue is three years down the road you sue your closest competitor. They had a guy that just came out of the print industry, and they have been downloading images in print off of hard drives for photo-processing applications for the past twenty years. He comes out with one article. Your claim directly reads on it because it's off the hard drive now because you have interpreted that claim to mean off a network. Your claim is dead.

Bernstein: No, but that's not...

Boehm: Then you run to claim two, which is dependent on one, which is going to say, by the way, it's over a network.

Bernstein: But it doesn't have to be.

Boehm: Claim two will have to say that, yeah, because otherwise your patent will fall, Eliot.

Bernstein: Why?

Boehm: What?

Bernstein: What my question is...

Boehm: Why will it fall?

Bernstein: Let's stick to the invention.

Utley: What he's saying is...let me see if I can...claim one is as broad as possible. Now, if something happens to lay[ ] on claim one in the Prior Art, you bypass that by going to claim two, which reads on claim one, which further defines claim one, which takes you out of the concept situation and into [cleaner].

Boehm: Right. You've narrowed the scope of your part of this technology world—the part that's protected—but you want to make sure that part is over what your business is.

Bernstein: Well, my business is...you see, my business doesn't need to involve a network. I could send somebody a CD of their hotel properties, like Hyatt, and say, "Here, you still have all the cool effects of my digital imaging products..."

Utley: But claim one doesn't say anything about networks.

Bernstein: Okay. That's all I'm saying, Brian. As long as you're not limiting me to a network.

Utley: Claim one doesn't. We used that deliberately.

Bernstein: Okay.

Utley: I'm going to talk about that again when we get to the claims.

Boehm: Let's talk about that when we get there, but again, my point is is you've got to be careful about what you say in the spec because the way claims are

interpreted is by referring to the spec. When you say "providing a digital image file," that doesn't mean much in the claim. The guy's going to go read the spec, see how you did it, look at your figures, and that's how this language is going to be interpreted. There's no broad brush back there. And you say, "oh, well it means everything," now claim one means everything, it reads on all the old prior art.

Bernstein: But it does, Doug, mean the hard drive, the CD...

Armstrong: Let me suggest something else. Let me suggest that what we're really saying, whether it's over a network or off the hard drive, is that the unique nature of our process results in high-quality images at low-file size, and so whether that low-file size...

Utley: <Inaudible comment.>

Boehm: Well, it's not file size.

Armstrong: Right. It could be huge files.

Bernstein: It could be huge files...

Armstrong: Hold on. Isn't it true that it is a low-file size given the amount of information that you're able to draw from it?

Bernstein: No, it's the large-file size. It's the opposite. You gave them more data. The file size is not relevant, nor is the bandwidth. That is a must-understand. This idea is cool whether it's played off your hard drive, played off the CD, played off the tape back-up, whatever you want to call it, over a network...whether you Fed-ex, this, Doug, because its the same effect whether you send it over the Internet, and that effect is the same as if it is a 2400-baud modem receiving it or a super-high-speed, as if the only difference between Fed-ex and the Pony Express is three days' wait, but you still are going to have this same package.

Utley: Right. But what you want to do in your claim is make sure that you're not...

Bernstein: Limited.

Utley: No, make sure that you haven't stated your claim so broadly that what is over here excludes your ability to claim over here. So you parse the claims, one very broadly, and then you keep narrowing it down so that if something happened over here, you've got...the network delivers it to you.

Bernstein: Okay. And if you're saying that limited bandwidth isn't in claim one, then we don't care.

Utley: Right.

Bernstein: But I just wonder why it needs to be here other than to describe what we did. You don't, by the way, need a network to describe what we did.

Utley: So we can strike network. We don't have to.

Boehm: Well, we're not striking it. We can take it from the claims when we get there, but I've got to leave it in as your preferred embodiment. That's important.

Utley: Right. We're on page one.

Bernstein: Why? Let me ask you why.

Boehm: Okay, there's something called the best mode...

Bernstein: Okay, let me explain that to you because I do understand that. The best mode of this invention stops as soon as you have the image, whether you ever sent it or not, or played it on your computer for that matter.

Boehm: Okay, Eliot, I don't think you would want to stick to that statement. You're saying right now that your invention is so bloody broad that if somebody had done this before on CDs but never done it on the Internet, and we can go sue them because they're now doing it on the Internet and your claim is valid, and when you interpret your claim to read "on the Internet," and

that's all you ever care about, but now we're going to get you up on the...

Bernstein: That's not all I ever care about.

Boehm: You care about stopping your competitors.

Bernstein: No, but I care about putting it on CDs and all those kind of things or using it for any other application. That's the key here, Doug...the file creation--the concept, the invention--stops before it ever hits the network.

Armstrong: What Eliot's really saying is that our invention does not include a delivery system.

Boehm: Right. So in one embodiment, it would. If you wanted to put a picture claim on your business, it's going to be one of our claims that includes a network, that includes pixels, that includes...I want a pixel claim...

Bernstein: That can include.

Boehm: Pardon?

Bernstein: That can include as one of the methods of delivery, but the delivery method could be a network, a hard drive, a CD-ROM, etc. As long as you cover all that, I'm fine.

Boehm: Okay, what I think we're arguing about is the mine field. You want a claim that's broad enough that if it gets blown away, okay it gets blown away; but I want a claim that's narrow enough that there's a less chance of it being blown away by Prior Art sneaking out of the woodwork because we're not experts in this field like Chris Taylor or something that could say, "Oh, you can't do that...here's a reference." That's why I'm a little...

Bernstein: Can't we say that that's an added benefit of what we've done? I mean, I don't want to be confined to a network, that's for certain.

Utley: You're not.

Boehm: Okay. In one claim, you're not; in another claim, I want you to be.

Bernstein: Okay, that's great. That's what I'm saying. AS long as you've got me covered on CDs or DVDs--somewhere in the future--that's fine.

Boehm: Okay.

Bernstein: Um, page 1.

Utley: In fact...I just want to cap this conversation. When you go through the methodology of the creation of the image and the display of the image and the formulas, there's nothing about a network.

Bernstein: Nothing.

Utley: Okay. So all of that gives you total freedom to claim wherever you want to place that...whatever environment you want to place that. I did have a thought, Doug, on the display and a way to kind of be a little bit more embracing.

Boehm: Than pixel based you mean?

Utley: Yeah, instead of saying display monitor, we just say display system, and display system can be defined as anything with a visual user interface, be it a TV or...

Boehm: That sounds...where is that?

Utley: Page 2, line 6, is the first one. It says "display monitor." If we just say "display system" wherever we have "display monitor"...

Boehm: Okay, not everywhere. This is the background. We're not really talking about our invention yet. The first time we talk about display is describing figure

1, which is element 3, is the display, so that's where we'll stick in it's the display...just the word "display."

Utley: Okay.

Bernstein: Yeah, system. Right.

Boehm: So, let's hold that in abeyance.

Bernstein: I had a comment on line 15: "Improved resolution for zooming and/or panning within a single image."

Boehm: This is the field of the invention. That's fine if you want to say that. All this paragraph does is points the examiner in the right art for the search.

Bernstein: Okay, and I would just clarify, too, on that, it's a single image, not a bunch image—the zooming and everything. This is one file that has all these attributes.

Boehm: Right. So it's "and..."

Bernstein: It can be additional files added into it, but those files retain the single image.

Utley: As long as it's understood that a single image embraces fixed images.

Boehm: How about a single window?

Bernstein: How about a single file?

Armstrong: That's probably good.

Bernstein: That's the right terminology.

Armstrong: Line 22 seems to me to be an incomplete sentence.

Utley: It is.

Armstrong: It should say, "It is known that one can view a digital image on a display."

Utley: That's what we talked about yesterday, Doug.

Boehm: Yeah.

Utley: And you had terminology for that.

Boehm: Yeah, let me find that. I know I do, but apparently it's not that handy where did it go. Yeah, here. We're talking about in the Prior Art it is known.

Utley: Right.

Boehm: And that's the concept. I can fix that sentence by saying...

Bernstein: That "one can" instead of "two."

Boehm: <Speaking as he writes.> "It is known that one can view a digital image on the display screen..."

Bernstein: In other words, it is known in Prior Art or whatever.

Boehm: How about "It is previously known that..."?

Bernstein: Yeah.

Boehm: Okay. "It is known."

Armstrong: "It is known." Period. Previously or now. "It is known that one can view..."

Boehm: "...one can view a digital image..." and get rid of two..."and zoom and pan within that image." Right?

Utley: Uh, huh.

Boehm: Boy, at this rate this is going to be a long conversation.

Bernstein: Yeah, it is because we go now to the next page, too, thank God, and where it's circled pixels, let's just be clear.

Boehm: I'm sorry, I've got to back up. "The limited bandwidth network," how are we changing that?

Utley: We're going to remove that.

Boehm: We're going to get rid of what?

Bernstein: Well, you don't need it.

Armstrong: Delivered through its display system. "The viewer desires ideal image quality delivered to his display system."

Boehm: Okay.

Utley: And then you can go on. "In a network environment..."

Bernstein: This is even more...

Utley: Right. And then you say, "In the network environment, it's important to transfer an [idea or image] in a reasonable amount of time."

Bernstein: There you go. That covers everything. Okay, so we go to pixels and pixelization terms, and my question is, and Brian will help me here, when you're looking at the screen and you zoom, are you seeing pixels?

Utley: You are seeing pixels.

Bernstein: But the screen has no pixels.

Utley: No, but pixels are mapped into a raster-based generation; but yes, there are pixels.

Bernstein: Okay.

Utley: You see pixels.

Bernstein: Okay. You do?

Bernstein: Yes. There's no pixels but yet you see them?

Utley: It's not a pixel-based medium, but the raster presents pixels.

Bernstein: And it presents them distorted?

Utley: It will present them distorted.

Bernstein: Once you magnify them?

Bernstein: Okay.

Utley: It may take more than one raster to represent a pixel. In other words, a pixel is a composite. If it's a very large pixel, it'll take several raster scans to create a pixel.

Bernstein: But you will still see...

Utley: To see a pixel.

Bernstein: And then when you blow it up, you'll still see a distorted...

Utley: Right.

Bernstein: Okay.

Armstrong: This is the first opportunity where if we wanted to, we could say, in line 3,  
 "...in which the pixels comma (data elements) comprising the image"...

Bernstein: We can't.

Utley: We don't want data elements, we don't want data elements.

Bernstein: Because do you see what's happening? You still are drawing off a pixel base.

Boehm: Pixel, and then this is goofy because in the next paragraph, we define what a  
 pixel is. We're defining pixelation first, and then next we're defining  
 pixel. Why don't we not define pixel up above...oh, yeah, I have to. "In  
 which the pixels, i.e. picture elements..." How's that?

Bernstein: Yeah.

Boehm: In other words, everybody knows what a pixel is, but we're just throwing it...

Utley: It's a picture element.

Bernstein: Okay, that's fine.

Boehm: "Pixels, i.e., picture elements."

Bernstein: Right. That might even cover us in other space that we don't even know yet. Okay.  
 Go to page 3...

Utley: On line 6, this is an opportunity to introduce the notion of a display system  
 instead of a display monitor.

Boehm: It is...

Utley: Is that a problem to you?

Boehm: It depends on where we have to go with it, Brian. Where do you see us going? Do we  
 need the differences defined later?

Bernstein: You could be very accurate here, Doug, because when this was invented, I ran my  
 computer slash my TV at times. So it was through both displays. Remember,  
 Brian? I brought you over. So I've always been running through a scan  
 converter, my TV.

Boehm: So where do you want to go with this, Brian?

Utley: I just want to say "display system," and the reason I say that is because if you  
 say display system, you integrate into the description the scan converter.  
 If you say "display monitor" itself, a display monitor does not contain  
 the scan converter. That's generally housed outside in a set-top box or in  
 the computer hardware itself.

Boehm: Okay, I agree with you that you want to make that distinction; but do we want to  
 make that distinction? We're still in the [background]. We're describing  
 somebody else's, not ours yet.

Utley: Yeah, you tell us where you think the best place is to put it, Doug.

Boehm: Well, I definitely want to put it when we first represent what display 30 is.

Utley: Okay.

Boehm: What I don't know if...

Bernstein: Okay. By the way, here it's true, too, [what he says]. Brian's saying...

Boehm: It really is.

Bernstein: Yeah. In Prior Art, if you play that on your TV, it's still pixelated. It didn't  
 matter if it's a monitor or TV. So Prior Art, no matter how you played it,  
 did that, and that's good to say.

Boehm: In the background here, it's not important. What we do in the background is try and set up that the strawman of the Prior Art had these problems, and then you knock them down with your invention. So whether you set him up with the display or display system and you knock him down, he'll fall just as hard. I don't think that's going to make a big.

Utley: That's not a big deal here.

Bernstein: But it has to come somewhere in here.

Boehm: What if we're making some stupid statement here. Let me read those paragraphs to you real slow here, and then let's make a call on it because; or if this is a good opportunity where we have to figure out the difference between a raster and pixel-based system or scanning lines or anything, if we have to make that...if we have to educate the people in order to interpret the claims later, then now is as good a time to educate them as far as what's the background. I don't think we need to do that.

Armstrong: I personally feel that if we're going to be later using display system to define more broadly how we display things, we might as well refer to Prior Art in the same way since it does include it.

Bernstein: It doesn't hurt. It can't hurt because all it's saying is that Prior Art, no matter what system you played on. Here what you're saying is Prior Art, when you play it on a monitor.

Boehm: I guess just from experience, there's really no right or wrong answer on this, guys; but just from experience, I would tend to disagree with you. Whenever I define a term that I care about, I always define it in the spec, especially if it's not a normal, common, everyday-type term that you want to talk about in the background because when you're saying that it's the same in the Prior Art as it is in your invention, you say that today and you may want to argue that today, but maybe you want to change your mind tomorrow; and when the litigators litigate this, they're going to wish like hell you never said that it was the same in the Prior Art.

Bernstein: Okay.

Boehm: You can point to your spec and say, "voila!"...

Bernstein: And say we were working on our TV...

Boehm: ...our display system, and it's defined as such.

Bernstein: That's fair.

Boehm: And you can't go back to the Prior Art to define it.

Bernstein: Okay.

Boehm: So there's legal ways of doing it.

Bernstein: Okay, so let's see where we insert that correctly.

Boehm: Yeah, I think it'll be later when we're talking about element 30 when he defines the blocks of the system. Let's see...

Utley: On line 14, where you say "represented as a triple..."

Boehm: Yeah?

Utley: I think the correct word is "triplet."

Boehm: Okay, Steve pulled this from something on the Internet, so if you say "triplet," that is right, yeah. Triplet. Good catch. It took five of us to catch that! <Reading out loud to himself...> Here's the bandwidth.

Bernstein: Yeah, "...thereby speeding the transmission." Now that is true, but it's not necessary.

Boehm: "...decrease the file size..." No, he's got it right here, right?

Bernstein: Well, "...this results in a small source image file size," period.

Boehm: No. The whole sentence says "plus the teaching in the art..."

Bernstein: Okay, okay, yeah. That's right.

Boehm: No background. We're still setting up the strawman to knock him down.

Bernstein: Gotcha, but we don't need a network or Internet.

Utley: We're not talking about us—we're talking about the other guys.

Boehm: Yeah, Prior Art, and they were compressing the hell out of it and moving information because they knew they had to go through this limited...

Bernstein: No, but let me ask you this. Let's say you just set it up on your computer—you never put it on a network, I'll just give you the same argument—you wanted to display your family photos on your own display system. You built a frame, you put a picture, matched the size to the frame; and voila! It's on your system, you can't do anything with it. You can't zoom. You haven't communicated it over a network; you haven't sent it to anybody...but you still can't zoom on it.

Boehm: But you still can zoom and pan, you mean?

Bernstein: You still can't.

Boehm: Oh, you still cannot?

Bernstein: No, because you built the frame wrong.

Boehm: Oh! Okay, okay.

Bernstein: So I mean you built the image to target wrong.

Boehm: Oh, I see what you're saying.

Bernstein: Yeah. So it didn't matter if you transmitted over any network.

Boehm: Now this will get really hairy...how did you build it wrong?

Bernstein: Well, because you only gave the frame the appropriate size as was necessary to fill the frame.

Utley: You designed the frame to the image.

Boehm: Yeah, so it doesn't magnify at all?

Utley: Right.

Bernstein: Right, whether you had a network involved or not.

Boehm: Okay, and if it's a little bit bigger than the frame, you can still pan but not magnify—but not zoom.

Bernstein: Right, but the teaching in the Prior Art would be to match the frame to the image.

Boehm: Okay.

Bernstein: That's how the world's been working for a long time.

Boehm: I totally agree. Maybe we should throw that...does that say that here?

Bernstein: Well, I guess there are a lot of places where we're going to add it.

Boehm: Well, that's a great line what you just said..."match the frame to the image."

Bernstein: You see, that's going to become critical when you say that "two times magnification at least" because the truth is nobody built a picture

saying, "I'm going to give it a little more edge so I get a little more zoom." That's the difference. You built the picture...you had a frame size...you popped in their image to be that frame size...you created the image for that size. You didn't say, "I'm going to give them an extra pixel so they can zoom a little," or an extra pixel or two, or two times. So one drop, one pixel more than is required, is the new out.

Utley: Well, the only thing we have to be careful about is that there are applications that allow you to create an image which is larger than your viewing window and operate on an image which is larger than your viewing window. What's different is that that image, when you see it in the viewing window, what you're looking at is the image as it is intended, you're not looking at a compressed form of the image--by compressed, I mean a scaled form of the image--so that...

Boehm: Or it sits in the frame.

Utley: Right. So it's not sized to the window, it's sized to the system frame, whatever the application is, but it doesn't allow you to zoom into the image which will allow you to avoid pixelation.

Boehm: Right, and I [ ] when we had Chris Taylor say he had done years ago on his website...you can look at his website, by the way--[msoe.edu](http://msoe.edu)--and Dr. Chris Taylor has his own link to his own personal web page, and he...

Bernstein: Where is it?

Armstrong: [msoe.edu](http://msoe.edu).

Boehm: [msoe.edu](http://msoe.edu), and Dr. Chris Taylor is his name, and it'll have a subdirectory for him. Then on his subdirectory, it'll say, "Go see images from my own website," and then he has his own personal thing; and in that, he has pictures of stuff. And he says those pictures, which were done way before you guys--when he first got here to Milwaukee, I guess is what he said--but he said that there are more pixels there than are needed, and that's just the way it just happened to come out. There was no intent to do it one way or the other way--he didn't intentionally match the frame size to the image--that's what happened when he did it. But he's not providing scanning and zooming, and...

Bernstein: Well, that's the difference.

Boehm: And, but he is not providing more than two times the pixels.

Bernstein: Well, that doesn't matter [ ] because really we're just saying that our art is based on the fact that we're providing extra data that allows, whether it's one pixel or not. One pixel might give you a zoom factor of .00004...

Boehm: I see what you're saying...

Bernstein: So why should be ever limit...the object of the invention is to create zoom by giving more data.

Boehm: Right. Can you zoom, Brian, without going twice the number of pixels?

Utley: Sure. Well, you can zoom to...what you're saying is you have a target image which is 2x the window, or 2x the viewing image, and, yes, it can be anything over and above the size of the viewing image. It's just a practical question of does it have any value...

Boehm: Right.

Utley: ...when they have such a limited...

Boehm: Magnification factor.

Bernstein: But we don't know into the future if it will. Somebody could get around us by getting it somehow under a 2, or, as a matter of fact, what if you only need 1.5? Why should we limit ourselves because that's not what was created?

Boehm: Okay.

Bernstein: You know what I mean? We didn't pencil it out and say two times is what we need to do this.

Boehm: That's a good...we got that...Steve and I must have come up with that two times.

Bernstein: We all came up with it just because the first button on your magnifying glass is two times.

Boehm: Okay.

Bernstein: And we were thinking...here was our thinking...that you were able to click that button on a regular image, and you were still okay—a little fuzzy—but you hadn't blown apart. So we were thinking anything beyond that. But actually as I re-thought that, I said that's not the issue here. If you're designing screen size to match frame size, it doesn't matter if you give it one drop more. That adds to the zoom capability by some factor...that extra data. But one and half times. What if you only wanted...what if your client says "I've got a picture of my wife, and she's ugly, so I only want a one and a half times magnification on her face."

Utley: Okay, we all agree.

Armstrong: Anything more than one times is the definition.

Boehm: And I think he's got it in claim 1. He scratched out "at least twice" and put in "is greater than."

Bernstein: Right.

Utley: So the right way to say that is that the target image is larger than the viewing image, and you've said it.

Boehm: But just claiming that concept.

Bernstein: Right.

Boehm: No...and providing zooming capability?

Bernstein: Absolutely.

Boehm: Right.

Utley: Which is the way you have it worded in claim 1.

Bernstein: I don't care if you built the picture and your frame size was "x", but that wouldn't achieve anything that we thought was cool. That would just mean you have an oversize picture in a frame and you could move around by grabbing the picture. By the way, that brings me to what made us start thinking about this was your Adobe example. You are grabbing a larger image, but you're moving it around kind of clumsily and it's not achieving what we achieve. Do you follow? Because you're just grabbing and kind of moving. As a matter of fact, there's a technology that's out...

Boehm: Yeah, but you can zoom, zoom, zoom in there.

Bernstein: Yes, straight in, and then you've got to grab it.

Boehm: Yes.

Bernstein: And move the larger image from that portion around. There's a technology called [Zif X] out today that allows for something similar to that, but yet it's very annoying that once you're in, you're in and have to grab and move around. It's a much different effect and feel than what you get when you look at our images and grab and move around. You know what I mean? In our image, the whole thing is there pretty much.

Armstrong: And this is a distinction that we begin to make on page three where the ability...our art allows you to, on a single image, once that image is

received by the system or displayed on the display system, it is complete. You're able to zoom in and pan around on it, and there isn't a requirement for the system to re-draw the image or any section of the image.

Utley: No, no, no, you can't say that.

Armstrong: Why? Let me first say what I'm saying, then we'll take out the parts that are wrong. Then the difference between some of our competitors is that they require if you are to zoom into an image and look at that zoomed portion of the picture and then pan at that zoom level to another section of that image, that image needs to re-draw the new information in order for you to see it.

Utley: And that's the trap because. In fact, the display system only buffers what is on the screen; and when you pan, you refresh the display buffer.

Armstrong: Even in ours?

Utley: Yes. You have no control over that.

Armstrong: But you have to because that's how you get a new image.

Utley: That's just the way the system works.

Armstrong: Right, right. You can't really do without what you're seeing on the screen. You've got to redraw.

Armstrong: Well, maybe this is the distinction for..

Boehm: But you're not grabbing a new file...you're not grabbing more files.

Armstrong: Right, and that's what I was about to say. The distinction perhaps is for the delivery over a network, and that when it is delivered over a network, they require the transmission of additional data, whereas our data has already been received in its totality.

Boehm: Well, that's the exact thing that the Yahoo! Map will do, right? You want to zoom into a map...

Armstrong: Precisely.

Boehm: ...it grabs a new image, and there is the network. But what Eliot was saying earlier was well why not make the network the link to your hard drive.

Bernstein: Right, it is.

Boehm: So then do you have to go get more information off the hard drive? That's the question.

Bernstein: Yeah.

Utley: No, be careful because in this day and age of virtual memory systems, there's a big grey area between the RAM and hard drive. The system may put part of that image on the hard drive.

Bernstein: It might put part in RAM; it might put half of it in the network.

Utley: That system can reside in several different places, and you don't know it. The system is managing the resources.

Boehm: I agree. So we have to figure out how to define in broader terms, just put it in memory or, I don't know, put it in sourced image storage. In other words, if a file comes over and gets lumped in Memory Means A, then it gets displayed to the display using however you want to do it, the question is, when you're zooming, do you have to go back to Memory Means A, whether that Memory Means A is across a network or on your hard drive or in a different PIM.

Bernstein: Or B, that's right. And that's a big difference, Brian.

Boehm: Because now you're getting real technical, and I don't know that you're not doing that.

Utley: The problem is that as you try to increase the precision of what you're saying, you have to be very careful.

Bernstein: Well, then we've got to take back "...one drawback of this type of system is that each zoom or pan operation requires the downloading..."—downloading is definitely the wrong word—"...of additional data over the network..."

Armstrong: Line 8?  
Bernstein: Yeah. That's all wrong.

Boehm: What page are we on?

Bernstein: We're on page 3, line 8: "One drawback of this type of system is that each zoom or pan operation requires the downloading of additional data over the network connection." Well, that's not exactly what we're...

Utley: We're talking about the art...the state-of-the-art now. We're not talking about...

Bernstein: Or mapping the travel?

Utley: We're not talking about our system.

Bernstein: Okay. Then that's fine.

Boehm: That's exactly what the advantage of this system is, isn't it?

Utley: Yeah, exactly. It's not designed to work that way. It's designed to be an integral component of the displaying system.

Boehm: And also we're talking about the Yahoo! Map.

Bernstein: Once again, however, it's not limited...Let me ask you this question because I don't see networks at all, right? Let's just look at the Yahoo! Map program.

Armstrong: I've got it on CD ROM.

Bernstein: No, no, that's okay. I know what we're doing. When you move, whether you move on a network or off the network, it grabs that image, and it's different than what we look like. There's a definite difference of how those two things work. Do you follow me, Doug? So it doesn't matter whether it's on your hard drive drawing the data, over a network drawing the data, what matters is that you perceive a difference between the way that the Yahoo! Map goes and grabs another closer section of the map and you're stuck there. Now you can't move back without going backwards to that other image or to the left to that other image or to the right to that other image. All these things are broken down into "other image" basically.

Boehm: Right, you're getting another what you called the hotspot. These are all hotspots.

Bernstein: Right. Which is that technically a new file?

Boehm: That's a new file.

Bernstein: Then maybe that's our differentiation.

Utley: We have to be careful.

Bernstein: Well, we don't go from another file.

Utley: No, but they're going to go...

Bernstein: They may say that's all in one file. Right.

Utley: So that would be...

Boehm: I think that they are going for another file because whenever you click on another map...

Bernstein: So Brian's right. So what? Even if they were and there were 8 million files, we could combine it into one and call it one. But then if you just made what we do...

Utley: You really have to be very careful because you don't know how they organized and structured that whole mapping system.

Bernstein: You know what you do, Doug? You describe the optic. You say this is what you see with their system, and this is what you see with ours.

Boehm: That's what we're trying to do here.

Bernstein: And let's not let that get too complicated. Let's what we're trying to get explained out over time.

Boehm: You can't.

Bernstein: If somebody wants....

Boehm: That's the key. That's what our frustration is as patent attorneys. We have to define your invention in the legal technical words. You can't wave your hands at it. If you do, you won't get a clean street of passage.

Bernstein: You can't say it looks prettier?

Boehm: It won't be upheld in court.

Bernstein: You can't say it looks prettier, huh?

Boehm: No, you can't. And that's what I'm saying. I agree with you...I'd love to say, "When it looks like idea technology..."

Bernstein: Well, explain to me what's happening in my brain, then, on an electrical signal impulse, because there's a definite perception definite between what I see, why I see it differently, and how it relates to what I do, which gives you a completely different spatial representation within an image because of the way that I'm manipulating data. See, I always looked at our technology--and maybe this stupidity might define something here--I always looked that when you take that big image of ours versus one technology where you could...let's say we both have big pictures, okay? Let's just say we both go with the big picture in a small viewing frame. One says you can move the frame or the picture and get a new image of that image, or you can go deeper on it by drawing another whole separate image, okay? Mine, I always looked at it is that it puts the frame in the center; and as you hit zoom, you're sucking in data towards you that's coming from the outside peripheral, not in separate little chunks and new images, but as one image, and it's pulling it into like a vortex, so to speak, and giving you that new data to let you zoom or move. Follow me?

Armstrong: Let me ask a clarifying question of Brian. When we transmit a file to a user, he gets the entire file into a .TMP file?

Bernstein: No, it's just hard drive.

Armstrong: Right onto a hard drive. Now, as he manipulates the image on his screen...as I zoom to level one and then to level two or level three, or I pan within it, what sort of access to that file is made inside the computer, let's say?

Utley: It varies.

Armstrong: Okay, but there is regular access back and forth to data points within the file?

Utley: Yeah. Part of the picture may be residing on the file; part of it may be in active RAM.

Bernstein: Doug?

Boehm: Um, hum?

<Utley and Armstrong continue their conversation in the background as Bernstein continues with Boehm.>

Bernstein: Let me ask you to try and help me define something. Take a frame...take a small piece of paper and make a frame, okay? You ready? You got a square piece of paper?

Boehm: You want me to cut it? Yeah, I've got a sticky yellow pad here.

Bernstein: Perfect. Use that on top of your patent application and put it in the center. In my thinking where I don't understand that, when we do the Prior Art, when we take that frame and we want to see the upper-left corner--now remember, our piece of sticky is in the center--we now want to go to the upper-left corner, we've got to move the frame over the upper-left corner and now we're seeing that part of the paper.

Boehm: Which means you're moving the viewing window over a huge image.

Bernstein: Right. Or, you're moving the image to fit in the frame.

Boehm: Right.

Bernstein: Okay. Now with mine, put that viewing window in the center again; and let's say you want to zoom in or go to the...zoom in, what you're really doing is sucking in this data, aren't you? You'd be almost pulling through the paper through that frame. That's why you have that attached.

Boehm: No, what you're doing is you're scaling the...

Utley: You're scaling the total image.

Boehm: Yeah, the total image specifically or to fit a reduced frame.

Utley: But they're leaving the image as it is.

Bernstein: Ah, then there is a defining difference.

Utley: I know, that's why you call it zooming. That's why the invention is described the way it is. That's why when I do all the pictures and show all those relationships, that's why it's designed...it's laid out that way.

Boehm: Can we define our zooming in...

Utley: In fact, there's a scaling...

Boehm: ...as a scaling mechanism?

Utley: ...viewing window.

Bernstein: That's the question...can you...

Boehm: Can we define our zooming as the scaling of the image to a different window, which is the normal way, I think, of zooming and scaling. I don't think of...

Utley: The effect of zooming is to rescale the target image into the viewing window, or some portion of the target image. What you're doing when you zoom in, you're now scaling the complete target image to a portion of the target image, and then what you're able to do is take that scaled portion and move it around to the entire image, but it's at its given scale level. You don't have to re-compute the for every portion of the image.

Boehm: Right. I think we're fine with what we're doing. I just think we've got to...there's this topic 14, to be cognizant of as we go through this, to make sure that we distinguish our zooming from hotspot zooming by zooming by grabbing another file.

Bernstein: Right.

Boehm: Our zooming is scaling.

Bernstein: It's also by grabbing another file because it would be our view that that set of hotspots could be combined into a single file, and it definitely could be designed that way. I mean, I could write the file to be that.

Utley: But it would be another file?

Bernstein: No. I could take all five hotspots and write them into one file.

Utley: So the [ ] will be in one file?

Bernstein: Right. Exactly.

Bernstein: So you've got to be very careful here of what the difference is. It's such a minute, yet it's such a profound difference what we do...

Utley: But it is another image.

Bernstein: It is another...right. Not another file. That's the difference, right.

Boehm: It's another image?

Utley: Yes.

Bernstein: Of course. A hotspot would be second shot of that image at a closer scale...at a closer view...but it could be combined in one file in the end, even though it's two separate images. And the hotspot could drive right through it in that single file source.

Boehm: I'm thinking that if the mechanism for our zoom is to do the scaling kind of on the fly as you're walking around, we never go grab for another file...

Bernstein: Or we never...

Boehm: Hotspot or not—I don't know how many you put in there—you see, what I'm worried about is, guys, don't you have hotspotting on your website?

Utley: No, here's what...

Boehm: Yeah, we've had them.

Boehm: You've had them, right.

Bernstein: Yeah.

Boehm: And that concept of zooming is grabbing another image file.

Bernstein: Well, but it has the same attributes as our current file, so it's just grabbing another enhanced digital image.

Utley: It's grabbing another image, and you don't have to define it as a separate file. Just grabbing another image. Let me tell you what I think differentiates between one of these systems and what we have. We have, if you think of the target image as the user interface, we have an encapsulated image. It is an encapsulated image that is [ ] into a file that is transported as a an encapsulated object, and it is manipulated as an object, and you zoom into that object. It is an object whereas in a mapping system, your object is really the whole map system, whatever that is, and...

Boehm: It's the system application for that.

Utley: Right. What happens with the mapping system is the application will create mapped objects according to what you...

<End Side 1, Tape 1; begin Side 2, Tape 1.>

Utley: ...which are then handled individually as you need them or as you request them. What we're talking about is an encapsulated image which has all these attributes contained within that encapsulation.

Boehm: And that would be true whether or not it's on a hard drive?

Utley: Right.

Boehm: I guess that's right...yeah.

Bernstein: And then, so we are striking downloading and additional data over the network connection.

Utley: Prior Art doesn't need that either.

Bernstein: Prior Art doesn't need that. To do Yahoo!'s Map, you don't need a network and you don't need more data over that network. You see, you'd never beat this argument. A network is just a hard drive because really in the end all you've done is like added a cable to your hard drive, and all you're talking about is the length of that cable, really. So networks are not applicable really to what we do. They are an added-value benefit that we can get through that cable quicker or whatever, but they are not the key. The network could be considered the cable between your hard drive and the display. You know what I mean, Brian? We don't need any...

Utley: No, but what you want to do is you want to make sure that you specifically address a network environment.

Bernstein: I wholly agree.

Utley: In addition. You absolutely want to make sure that the...

Bernstein: That's huge, as an additional wire, meaning it's got different...

Utley: Then that's the way to approach it.

Bernstein: Okay. You follow that, Doug?

Boehm: No. Slow it down.

Bernstein: Okay, it's all based on this. You can do our invention off a hard drive, and it's still cool. The fact that you can transmit it over a fat pipe or a small pipe or FedEx it has no bearing. It does what Brian says: it is more valuable in a network environment because it now has the attributes to give greater, richer data that you didn't think was possible in the shorter time. In the end, you see the network and the limited bandwidth, that never mattered because no matter, let's say your pipe was a toothpick, it would get there by tomorrow. Let's say your pipe is a direct line to the hard drive that's able to suck it up at 10,000 RPM or whatever...what's the term?

Boehm: RPM, yeah.

Bernstein: What's the term? Not RPM.

Boehm: Bits per second or...

Utley: BPMs.

Bernstein: Is that what you talk about a hard drive?

Utley: Well, RPMs.

Bernstein: Is it?

Utley: Well, yeah. Technically.

Boehm: The data transfer rate...

Bernstein: Yeah, I'm talking about how fast you can access your hard drive as a number that you buy hard drives based on 7200...

Utley: Oh, no, you buy millisecond access time.

Bernstein: Okay. So we're now 20 years into the future, and Brian invented a pipe that can suck down that speed he just said--hard drive speed. Well, there's no difference now, is there?

Boehm: Sell me on the concept that there's no difference between one hard drive and a network, and you're going to put the whole network industry out of business if you go there.

Bernstein: No, no, because it's a cabling system.

Boehm: I know, but...

Bernstein: It's just an accessed tour drive.

Boehm: And I think your point, and I think we've been there, that we're going to try and claim the broadest embodiment of your invention to be independent of any network or any hard drive or any...

Bernstein: And Prior Art also doesn't need any downloads or any networks. Prior Art, you can do Yahoo! zoom and pan, and Jim Armstrong just said it a minute ago, "I have it on my hard drive." And the program still operates by moving and grabbing this additional data. It has no network attached to it. He's doing it off his hard drive on a CD.

Utley: I thought we already covered that.

Bernstein: Well, I'm just saying one drawback of this type of system is that...and what it should say, if you want, is one drawback of this type of system in a network environment...

Boehm: I'd be happy to say that, but that says that over the network connection. The whole paragraph is to describe another example of prior systems.

Bernstein: But those prior systems don't require networks.

Armstrong: Let me suggest that...

Utley: Wait a minute, wait a minute. Come on. The first sentence says, "...over websites."

Bernstein: But all I'm saying is it doesn't have to.

Utley: Well, it's describing Prior Art, and this particular example is over Web sites.

Bernstein: Ah, versus Web CDs?

Utley: Yeah.

Bernstein: Or Jim's Yahoo! CD.

Bernstein: Okay, then I understand one example.

Boehm: And that's where we're going with the background. We're spinning our wheels here. Now if you want to add that to clarify, that's fine; but I don't want you to take away the distinguishing features that you have over networks because you may have to go run there some day.

Bernstein: Then do what Brian said: add it as an additional factor.

Boehm: Absolutely, but I guarantee you're going to have to argue this when we go to the foreign countries, like at the European office examiner, they're going to be really mean and nasty. I will bet you that they will find some very, very close art, and we will have to be throwing in all kinds...and my guess is that we're going to have to be throwing in all kinds of words that will have to be supported in the spec now to come up with something to survive a European examination if they find anything close, if we're not right that this is totally a broad concept. I'm just trying to...

Bernstein: Okay.

Boehm: We have to have a direction to run, and I need the ammo to do that; and I can't run to the network argument if you've either taken it out...

Bernstein: No, we're not taking it out, we're just...

Boehm: Or just minimized it.

Bernstein: We're not minimizing it. We're just saying you don't need it, but in that environment, it is also added value.

Utley: Let me point out one other thing why it's important...even more so. If you take the implementation like a Zif X, if it's local on your local system on your hard drive, you wouldn't care whether when you pan you reconstruct the piece that you're moving to.

Bernstein: Sure, that's different from what we do.

Utley: Because it moves very quickly.

Bernstein: But it still looks different from what we do.

Utley: But I'm not talking about that. I'm talking about when you move the magnifier, you reconstruct the piece that's coming into the window, but you would never see that. But over the network where you have elements which extend the response time of the system, it becomes a big deal, and therefore what you've got becomes more valuable...even more valuable over a network.

Bernstein: That's what I'm saying. Okay, I agree with that. So we're all hip on that.

Boehm: I think so.

Bernstein: Okay.

Bernstein: All right, let's move on.

Boehm: Where were we?

Bernstein: We're on page...

Boehm: Three, right?

Bernstein: We're through page 3. We're onto page 4.

Armstrong: Oh, and by the way, we also had a change on 21, if you noticed.

Boehm: Okay, let me run over the changes on page 3. <Reading out loud> "...additional map data" should read just "additional new images and sends it over..." that would be fine with me. Oh, how about "additional data as additional new images"?

Bernstein: "Additional source material"?

Boehm: That would be...

Bernstein: "Additional source data..."

Boehm: "...as additional map images"?

Bernstein: Yeah.

Armstrong: I don't think you need "new images." I think just "source data."

Boehm: But it's really getting a new image. It's getting a new map. You're looking to the file. You're going back every time.

Bernstein: Okay, "additional source data." Well, ours goes back and grabs more source data, too.

Boehm: Exactly. But we've got to be careful. But we're not going getting additional new images. I may have to argue that, so you've got to have that in there.

Bernstein: Yeah, okay.

Boehm: "...retrieves additional source data..." how about ", e.g., additional new map images"?

Bernstein: Right. That's fine.

Boehm: Okay, "...and sends it to the user computer." Wonderful. Okay. Next change.  
<Reading out loud.>

Bernstein: We already dealt with that.

Boehm: So what do I do? Scratch it? Do I leave it in there, or what do I do?

Bernstein: Well, that's just saying our stuff, so you're still talking about the prior stuff.

Boehm: We're talking prior art.

Bernstein: Okay, so that's scratched.

Boehm: Okay. Next comment...

Bernstein: And that, again, scratch that one.

Boehm: Okay.

Bernstein: Because we're talking Prior Art here.

Boehm: I'm setting up the strawman, but now we're starting to knock him down.

Bernstein: Okay. Also, "there's a need for a system and method for providing a digital image suitable for sufficient file transfers." I don't care if it's hi, low, medium.

Utley: On 21.

Bernstein: 21.

Boehm: It says...I just think that "high-speed file transfers" is a pretty good term of art.

Bernstein: Well, but then somebody will say, "Is that high-speed cable or modem?"

Boehm: Oh, I see what you're saying.

Bernstein: Efficient.

Boehm: Higher speed?

Bernstein: No, we don't care about speed. You could do it at 2400 baud.

Boehm: We don't care. Whether...

Bernstein: The other system didn't care either.

Boehm: Okay, that's fine. I'll leave it, then get rid of high...

Bernstein: You're just stuck with whatever speed the guy's got.

Boehm: <Reading out loud.>..."to engage in long and slow conventional continuous file downloads..."

Armstrong: And that's fine.

Boehm: What's a continuous file versus a regular file?

Armstrong: Get rid of continuous. You don't need it.

Bernstein: Yeah, you don't. What we were trying to say is that additional data there, but we've already got that.

Boehm: As long as...yeah. And that's why I need that language up top to say, "...additional data," "additional new images..." Somewhere where I can go argue that this is what we meant, and that's what the Prior Art does. Okay. Whew! What's on the bottom?

Armstrong: What we've been talking about. It's all we just discussed.

Bernstein: Forget the top comment.

Boehm: I can't really...it's cut off at the top.

Bernstein: That's fine. It's not relevant here.

Boehm: Okay.

Bernstein: "At least twice greater than..."

Boehm: "At least greater than..." that's good.

Armstrong: Not "at least," just "an image size greater than..."

Bernstein: Right.

Boehm: Yeah, duh! Okay. <Laughter> I'll tell you why I'm kind of groggy here now, later.

Bernstein: We were groggy, too. We were doing pans 'til 4:00.

Boehm: Til 4:00?

Bernstein: Yes.

Boehm: And then...so how many hours sleep did you get?

Bernstein: None.

Armstrong: Four.

Bernstein: Well, Jim got four. I got none.

Boehm: Okay, I got ya beat. You got none?

Bernstein: No.

Boehm: I spent the night at O'Hare.

Bernstein: Oh! That's my favorite place to sleep on a bench.

Boehm: On the bench. You got it!

Bernstein: I've been there a bunch of times!

Boehm: Yep, I hear you. I think Doug's black cloud follows him when he travels. Every plane I got on was delayed or broken!

Bernstein: It just follows the travel industry.

Utley: You should have rented a car and driven home.

Bernstein: I almost...I was thinking about that, but I was worried about falling asleep too.

Armstrong: So we're into line 15, 16.

Boehm: Okay, and that's the one that's scratched.

Bernstein: No, and 15 I would say, "The enhanced digital image file replayed on a client viewing device..."

Armstrong: "...displayed on a client's display system."

Bernstein: Yeah. The viewing window having a pre-determined franchise.

Boehm: Do that again. On line 15...

Armstrong: "The enhanced digital image file is displayed on a client's displaying system..."

Boehm: Instead of just...

Bernstein: "...downloadable..."

Boehm: Oh, I see. "...is displayed." I'm sorry, the same sentence is up above. "...is displayed..."

Armstrong: "...on a client's display system, the viewing window..." and then the rest is fine. And then line 22, get rid of "at least two" and create "greater than."

Bernstein: Where?

Armstrong: Line 22: "...a magnification factor greater than..." Wait, what does it say. Hold on. <Reading out loud.> "...a magnification factor..."

Boehm: Oh, "...a magnification factor of at least two..."

Bernstein: No, "...greater than one."

Boehm: Okay.

Armstrong: "...greater than one without pixilization."

Bernstein: We don't mean without pixilization. No...

Armstrong: Yeah, that's right. It should be, "...a magnification factor greater than one." We haven't yet, I don't believe, defined a magnification factor yet, though.

Boehm: No.

Armstrong: It comes later.

Utley: It comes later, yes.

Bernstein: And you can use, where I was telling you, Doug, where it was built onto a frame size, so therefore there's not additional data to draw from, therefore your zoom is zoomed to expanding the fixed pixel set.

Armstrong: And the next sentence, "The enhanced digital file further includes control data to allow the user to control the magnification factor." The question we had here was it seems as though we might be talking about the applet here.

Boehm: Yes, we're talking about the applet.

Bernstein: Then it's two different files.

Utley: Yeah, but...

Boehm: Yeah, but the file...oh, I see, we're calling the enhanced digital image file the encapsulated [sloping? full thing?].

Bernstein: Yeah, and there are two separate files that go to the user.

Utley: But it's encapsulated. It's actually [copied]. They always travel together.

Bernstein: They travel together, separately.

Utley: Right. Then we shift.

Armstrong: They travel together, but they are two separate files.

Bernstein: Virtually, it's one, but really it's two.

Utley: And associated with each other.

Armstrong: But we're calling it "the enhanced digital image file," but that's not necessarily true, Brian?

Bernstein: No, he's saying...here's what the story is, Doug. You got one file above an image, and there's not a single drop of other data in that file. It's called a .JPG...we use it. There's also a file...there's two or three files actually that get downloaded to the computer--or he has it on his system already, it doesn't matter to us--that allow him to zoom and pan.

Armstrong: And those are transmitted simultaneously.

Utley: There is additional data that is required, whether you have a plug-in or not.

Armstrong: Really?

Utley: A plug-in by itself has no information relative to the size of the image, to the number of steps you're going to take to drive into it.

Armstrong: But that's all built in...

Utley: There's another file, like an index file.

Bernstein: Oh, there is. Okay.

Utley: That's what I'm saying.

Bernstein: Okay. I gotcha. The person could have pieces of the file, like the applet, already on his system. But what Brian's saying is there's control data that goes with the image that was based on the image specs that then tells that interface to operate according to a set of assumptions. Right, Brian?

Boehm: Okay. I agree with you. I think what we're...

Bernstein: No, not within the .JPG file. You've got to be very careful. So we're not talking the same thing. Those are additional files.

Bernstein: Okay. Look at page 24, claim 1. "A method of dividing a digital image file comprising two elements, a digital image file...having an image file..." and "2. A user interface for the digital image file."

Bernstein: But we don't have to provide that. That could already be on his system.

Boehm: Oh, my gosh.

Bernstein: He has to have one to view the image; we don't have to provide it.

Utley: But he has to have the control data.

Bernstein: He has to have the control data to tell him how to view the picture, and that could one day be part of the .JPG file, I don't know. But today how we do it is as three separate pieces: an applet, a control file that tells him certain things about the .JPG, and a .JPG. Those things come packaged together. Now, a guy might already have the applet on his machine; therefore, I don't need to send him that packet--the user interface.

Armstrong: If that's true, don't we send it anyway?

Bernstein: No.

Armstrong: We don't?

Utley: We do.

Bernstein: We don't have to, but like...

Utley: We always do.

Boehm: But that doesn't matter with your infringer. That's how you have to think when we're talking about the claims.

Bernstein: What do you mean?

Boehm: Would the infringer on your patent send it?

Bernstein: No.

Boehm: No, he'd send it to you once on the hard drive...

Bernstein: He'd Fed-ex it to you, and then not...

Boehm: He'd start sending you images, and each time he wouldn't be sending...but each time you would be sending some kind of control data?

Armstrong: Yeah.

Boehm: That's what I'm thinking, and that could be interpreted as the second element of the claim here.

Utley: And that control data really controls the motion of the zooming and panning.

Boehm: Right.

Bernstein: But that could even lie technically on his computer.

Boehm: Right.

Utley: The only case where that would actually work is if you knew that the...

Bernstein: The size of the .JPG.

Utley: The size of the .JPG and the size of the window.

Bernstein: And that could be for medical imaging where they give you the specs and say send me every image of this size, you don't have to send every single little thing.

Utley: If that was the only kind of image that everyone wanted.

Bernstein: Okay, we're doing x-rays. There's an X, Y, and Z size; here's our frame size; we never need to get that control data from you because it's built in.

Utley: <Inaudible comment.>

Bernstein: Okay, but let's say we're dealing with a bone doctor who takes strictly legs, and it's always the same. I'm just giving you the case.

Utley: I know, I'd <Inaudible comment.>

Bernstein: Right, and I don't want to get around that.

Utley: The fact that there's radiography is a little bit more than one image size. Theoretically, you're right. You could find an application where there's one and only one image size, then you could put everything in the system.

Bernstein: A size.

Armstrong: MRI always have the same size, don't they?

Bernstein: Right-2'x2'.

Boehm: We thought we had this one nailed down.

Armstrong: In MRIs you also...

Bernstein: You did have it nailed. We're missing...you just want to say "optionally provided."

Boehm: You can't use the word "optionally" in the claim.

Bernstein: We'll change that rule.

Boehm: No you won't. What we'll do is isn't the user interface provided from somewhere...we don't say where it's provided.

Bernstein: It could be any of four hundred of them.

Boehm: It could be provided from his hard drive.

Bernstein: Absolutely. It could be provided from somebody else's hard drive through a network.

Boehm: Exactly. That's why this covers it because the word "providing" is so broad it doesn't mean that we're sending it. See, we're providing a file...the digital image..we're fine.

Bernstein: Okay, I see exactly what you just said.

Boehm: We're providing a file for viewing.

Bernstein: Totally. I totally understand. Well, now we might not be providing the user interface...

Armstrong: Yeah, this still reads that it is "...a method comprising the providing of..."

Boehm: Yeah, you might be doing only step A at a time.

Bernstein: Yeah.

Boehm: Oh, damn. Okay.

Bernstein: Oh, yeah.

Boehm: Okay, that's a good...let's...boy. Let me think about that. What I want to do is make the element A that you're providing a digital image file having this and that, and you're also having control data to work with the user interface for the digital image.

Bernstein: But you might not need the control data. That's what I just said to Brian. What if a client says to you every one of my images is going to be a 2'x 2',and I want 50 time magnification. You never have to give him control data, you just have to...

Boehm: If we make the second part, B, a dependent claim. We can try it.

Bernstein: Do you see what we're saying?

Boehm: Yeah, absolutely. We don't...

Bernstein: And we don't want somebody to get around this.

Boehm: Absolutely. Great broadening work here. We've been through this claim, I thought we had it, everybody agreed to it! And that's where I'm going to run into a problem. I can't re-write this from scratch and get it on file today from working at half-speed here, you know what I mean?

Bernstein: Yeah, we've got to change that, though.

Boehm: These claims are not final.

Bernstein: No, I know, I know.

Boehm: We can file the claims as-is without one word. What we need to do is correct and amplify the specification because we can never add to the specification and keep the same priority date. I can go change the wording of the claims as long as that wording and explanation and interpretation is in the spec.

Bernstein: Okay.

Boehm: So I agree with you. This should be a dependent claim for the bottom half of claim one.

Bernstein: He's going to make that dependent because we don't have to do it but we do.

Boehm: Right. That's how you do optional.

Bernstein: Yeah. I like that. And then claim 1.

Boehm: Now does that read on the Prior Art? You provide a digital image file, having an image...

Bernstein: No, that's the invention right there.

Boehm: Right.

Bernstein: That if you ever looked at what I did back there, it was create a bigger picture for a small frame.

Armstrong: Now if we circle back to where this started on page 4, in the last sentence, that refers to "a digital image file, including control data," which is not correct.

Bernstein: Where?

Armstrong: The last sentence of page 4. It's not "the enhanced digital image file" that provides that, it's an additional option file...

Bernstein: Element.

Armstrong: Right...that would provide that.

Boehm: Okay. This is the summary. I can throw the word "optional" in here. So the "enhanced digital image file A..."

Armstrong: "...may be accompanied by..."

Boehm: I think just "...may further include..." most of the time, right?

Armstrong: Well, no, the file itself won't. It may be accompanied by additional files.

Bernstein: It could be in the file. We don't know. One day you could write [ ] that has a header inside it that says, "Here's your information." all bundled into...

Armstrong: But this is an exemplary embodiment, which means that today the enhanced digital image file may be accompanied by an additional file which...

Boehm: How about "associated with"?

Armstrong: That's fine, I think. Brian? "Associated with an additional file containing control data."

Utley: I think you should have a very general statement which will always be true, and then you could say, "The enhanced digital image file is associated with control data which allows the user to control the magnification factor."

Armstrong: And the control data...

Bernstein: That absolutely always has to be there, Brian.

Utley: Yeah, okay.

Armstrong: Otherwise you don't have our invention, so that's the right answer. Did you hear that, Doug? "The enhanced digital image file is associated with control data," and that's the only change right there. Strike "further includes" and replace it with...

Boehm: But I thought you said that once you've associated the first one, you never have to associate the rest of them.

Armstrong: When we said the associated was something that was on the hard drive, so we don't necessarily send it, but it will continue to be associated.

Boehm: Okay, okay.

Utley: Yeah, it's always associated. The data always has to be there to prevent zooming and panning.

Bernstein: Right, whether it's in the file, out of the file, with three files, nine files, however the hell you want.

Armstrong: So it will finally read, "The enhanced digital image file is associated with control data."

Bernstein: Hold it. "The enhanced digital image file is associated with control data to allow the user to..."

Armstrong: So "is associated with" replaces the two words "further includes".

Bernstein: Beautiful.

<Inaudible comments.>

Boehm: The rest of this is just comments?

Armstrong: Just on this page, and actually we struck this...5, we struck that. You have to put digital later.

Boehm: I'm still on page 4, guys. With the comments on the bottom, can I scratch them?

Armstrong: No, we took care of that.

Boehm: Yes, I think we've discussed this.

Bernstein: No, that seamless zoom, I love that word because everybody else isn't a seamless zoom, we are. We seamlessly zoom around an image. Everybody else has to grab and give you another frame and stop you and you have to remove to a different image in the picture. We're seamless. You can just go around and move and go, and it's in a virtual environment really.

Boehm: Now is not the place.

Bernstein: No, I know. I just want you to know.

Boehm: We can if you want.

Bernstein: No.

Boehm: "Seamless..." I like that. Let's...

Utley: Seamless may mean continuous motion and zooming is a step procedure. There's steps.

Bernstein: That's true.

Armstrong: It's not seamless.

Utley: The panning is seamless, but the zooming is not.

Bernstein: Right.

Boehm: But, in fact, what I'm trying to get at is Eliot is trying to claim and describe the invention in terms of what the user sees, which is great. As long as you can come up with good words and descriptions, we'll throw that in because we may have to run there if our technical description, which is what I've been trying to do to define the boundaries, fall because some bozo did this before and didn't really make it very public because he didn't know what the hell he was doing. We may have to say, "Oh, yeah, but try putting it on his. It doesn't do what ours does even though we couldn't figure out technically distinguish it in our..."

Bernstein: Right. It was a brand new phenomenon that was hard to...

Boehm: But in order to argue that, I have to have your concept of seamless zooming.

Bernstein: Well, let's use Brian's. It's seamless pan and...what kind of zoom? Continual? Flowing zoom?

Boehm: It appears to be seamlessly zooming...what do you mean "seamlessly zooming"? Do you mean panning?

Armstrong: Both. Both happen seamlessly in ours. When you increase your Adobe picture, you move in and grab a new frame of reference basically at that stage. You're kind of stuck there. In ours, you're not. You can seamlessly...you know what I mean? You can drive further and further and still have the rest of the peripheral view. When you do Adobe, the magnification...is that true, Brian? No? Because when you pull in the painting and you've got the signature... you see, it's not describing what I want to say, the seamless for zoom. It is for pan.

Boehm: The seamless zoom, right. The seamless panning, I like that.

Bernstein: But the zoom is different in look.

Boehm: I agree. Now how do we describe your zoom versus Adobe or...?

Armstrong: Why do you feel different when you zoom in our picture than when you put some magnification in Adobe?

Bernstein: It's not seamless, is it? It's fluid.

Boehm: I don't feel any different. Sorry, Eliot! <Laughter> The only difference that I feel is that I know I'm going to end up pixelating yours and all bitmapped images, whereas I know I'm not going to end up pixelating, I'm going to hit a brick wall, but it's going to be a clean brick wall, for Adobe, and that is...

Bernstein: No, it feels different. You're 100% wrong because you will be the only guy I've shown this to that's said that. Everybody found it unique and everybody who I showed it to said Adobe.

Boehm: For viewing an Adobe vector-based file?

Bernstein: Or a Corel pixel-based file.

Boehm: No, pixel based I'll give you, but yours is different. But when you're talking vector based, I think you can zoom vectors until the cows come home without pixelating.

Bernstein: But you can't...the perspective is different. When you take Adobe and zoom in on the image, you drive straight down to one point and then have to somehow have to move differently to get to other points than you do in ours.

Boehm: Yeah, generally you have to back up.

Bernstein: Right, or something.

Boehm: Zoom and then to go find out where the hell you are. But that's not always the case either, right Brian? Like Adobe PhotoShop or other...

Bernstein: No, I've been using all of these, and it's always been different. Our technique is different than all those. I've been using graphics programs.

Boehm: Yeah, I know, and haven't you seen a graphics program that shows you where you're zooming? I know what it is! On Adobe IV, when you zoom, the left window when you have it there with the bookmarks, it'll show you where you're zooming.

Armstrong: It has the box around that area? Kind of a miniaturized photo of it?

Boehm: Exactly.

Armstrong: Yeah, I've seen that too.

Bernstein: But that's just trying to give you what we give you in a pre-pack...ours encompasses that without having to need that. See, there's a difference that every engineer in graphics that's ever seen that has said "cool," not "oh, I can go over in Adobe and move around images."

Boehm: That's why I wish I were an expert in this graphics area. I would have figured this out...the difference.

Bernstein: Well, now that you say you're not, I need somebody to step in who can because I think that we should file with what we have here, but this area needs to be absolute, not less kind of vague. Because there is a critical difference. It is something that can be optically seen, so therefore it can be electrically defined.

Boehm: And we're trying to do that in the video side with Chris Taylor.

Bernstein: Maybe we do that with him on this. You want to ask him?

Boehm: I don't...he's going to have a kid this summer, and I think he's not even going to be around much in August.

Bernstein: Well, maybe he's got somebody.

Boehm: Yeah, maybe he knows of somebody.

Bernstein: Or go over to my old alumni at Madison, their graphics engineer.

Boehm: This is a...in order to protect our butts, we have to do that by September 1, and that's a big thing to do.

Bernstein: Why? I thought we could always go in and amend our claims on this stuff.

Boehm: You can amend the claims as long as it's supported in the spec. Now if we have to get down to the nitty-gritty of the definition of the technical excuse to amend your claims to distinguish over what has been done before...in other words, if we have to limit our claim to the histogram between a range of X frames per second and Y frames per second, that is our invention. If you incurred less than—I don't know what the histogram shows...17.6 frames per second—that is not our invention, and we may have to go there, to be that narrow to survive if somebody else has done it at 17.

Bernstein: Wow, wait a minute! I hope that's not correct because at lower bandwidth you might have only 17 frames, but you have greater data. But let's get to video later, right?

Boehm: But my point is that you want support in specification, including technical excuse language, because I made need that to put that in the claim to make your patent survive.

Bernstein: Well, let's put something in here that defines this.

Boehm: Yeah.

Bernstein: Something that defines the...

Boehm: But the point is that we can't hire a technical expert to get the...

Bernstein: Then let's get someone in then we'll get a technical expert to define later.

Boehm: If it's to be considered new subject matter...

Bernstein: No, it's never a new subject matter because the first image that did this, did this.

Boehm: No, no, no...new subject matter for the document on the day you file it. They don't care about what you did in your basement. The patent office doesn't care. They care about the words and figures that you put on this paper

when you file it. That's all the patent office cares about. You can't go back...

Bernstein: That's not what you told Chris the other day. Chris said, "What happens with the Mom-and-Pop inventor who later discovers the equation to what they did?"

Boehm: Finding who was the first inventor, that's in an interference. The question isn't whether the patent's valid or not in the scope of your claims, the question then is was Mom and Pop doing it a year before the other guy? But if Mom and Pop didn't describe their invention in the spec, they will never get to an interference or the interference will be blown away because it didn't meet the rule that you have to clearly and distinctly and accurately describe the invention.

Bernstein: Well, we clearly describe it, but we might not know the technical underpinnings, and I've got to go recheck my notes, but I think that's exactly what Chris Wheeler asked you.

Boehm: Absolutely, and I agree with you. We don't need to know the reason why.

Bernstein: But later we can put it in?

Boehm: If it does not add new subject matter.

Bernstein: But this wouldn't be new subject matter, this would just be an explanation of why.

Boehm: Yeah, but if we're up in the fog right now and we are using words that are so broad...let's say our claim said, "Our zoom and pan works really neat." That's our claim. There's no way we're going to be able to go back and say it really means having a frame rate between 30 and...

Bernstein: Then you know what? Put in the word "seamlessly" because I'll be able to argue that until the cows come home that there's a difference between what we do and what they do, and somebody will argue out what seamless meant.

Boehm: You won't get the chance to argue. If we put the word "seamlessly" in the claim and it's not supported in the spec, the court will determine by itself without ever talking to you what it thinks "seamlessly" is.

Armstrong: Do we have to then, in order to cover this particular issue, do we have to get into a description of Prior Art and the standard by which zooming and panning is occurring in Prior Art, and then distinguish as clearly as possible in words, how ours is differentiated from it?

Boehm: That's the ideal way to do it, Jim. That's why I'm saying, and if all of us knew that technical underpinnings, this would be a much more [ ] written document...

Armstrong: Is it necessary, Doug, to describe it in terms of technical underpinnings, or can we describe it in terms of a user's observation?

Boehm: You're halfway there. "User's observations" would probably give us sufficient...

Utley: "...allows you to seamlessly pan..." and all the <inaudible comment>

Boehm: The claim will be interpreted by the spec.

Bernstein: That's true. <Responding to Utley above.>

Utley: Now the only differentiation is the zoom without pixelating.

Bernstein: Okay. I'll agree with that.

Boehm: And then you saw that I went to umpteen degrees to define what the hell pixelation was because that's a word in my claim. Do you see that?

Bernstein: Yeah, that's fine, and I'm going to concede on that because Brian just made a good point.

<Everyone talking at once.>

Boehm: Because [ ] will know the reason why in terms of [ ], but you do have to know enough about what you're doing in order to convey to the average person skilled in the art so he can make and use it and he understands just what the hell it is.

Bernstein: You see, Brian, that's my question now. That comes back to what's different between our zoom without pixelating versus theirs, but we've already described it in the way we built the frame.

Utley: Right.

Bernstein: That's the difference.

Armstrong: Okay, let's stick with that.

Utley: No, we bounded how you prevent pixelation.

Bernstein: Okay, then that's the key.

Utley: We totally bounded it.

Boehm: Okay, I'm lost now.

Bernstein: We're fine.

Boehm: ..."Seamlessly..."

Bernstein: Forget "seamlessly."

Boehm: Okay.

Armstrong: Page 6...we're off of 6.

Bernstein: No, on page 5, I only had one more question. Figure 2, just print film is what it's showing...it can be digital, and we talk about that later, correct?

Utley: We separate it now.

Bernstein: That's where I'm confused.

Armstrong: Page 6, "24 to 32-mm lenses.."

Bernstein: Why? We can use any lens.

Boehm: It's a "such as"...it's an example.

Armstrong: Okay.

Bernstein: As long as it includes every lens.

Boehm: Oh, sure.

Bernstein: Okay.

Boehm: And it says, "may include," but then if we ever needed...you see the reason we get so specific on this, Eliot, is because if somebody else just happens to be doing it out there in the world with a 2mm lens and it doesn't haven anything to do...it doesn't come out looking like yours at all, but it just so happens our claim reads on what the hell he was doing, we can come back and say, "Oh, no, that's not really what we were doing. We really meant this; and if this is important enough, we'll put the words '24 to 32 mm' as a dependent claim."

Bernstein: But it's any lens, isn't it?

Boehm: Yeah. My point is if this 24-32 means anything...

Bernstein: But we can still say any? We are saying "any," but we've defined something.

Boehm: If that was your preferred embodiment, that's the other reason.

Bernstein: Okay, that's fine.

Boehm: It's not limiting.

Armstrong: As long as it's not limiting.

Bernstein: And then "the image of a scene..."

Armstrong: On 10.

Bernstein: Just strike it...."of a scene."

Boehm: Okay.

Bernstein: "...has utilized an image which is being photographed."

Boehm: Okay.

Bernstein: And then you see "The image may be a print film image, analog image, digital image, negative, TV signals..." Can that be, Brian?

Utley: No,

Bernstein: No? "The camera captures shoot..."

Utley: Well, yes, you can use TV signals to create an image, but you can't enlarge TV signals.

Bernstein: Okay.

Utley: But you can use TV signals to get an image.

Bernstein: Okay.

Boehm: Isn't an image just broader than that? It's what the eye perceives; and once it's digitized, then it's a signal...or it's analogized, once it's captured in some format. So an image isn't really captured. It's a captured image when it's analog or digital or negative or film or something, right?

Bernstein: Um, hum.

Boehm: So a TV signal is already captured.

Bernstein: Gotcha. Okay.

Boehm: So what I'm saying here is the image...that the camera is utilized to do the capture.

Bernstein: I've got you. I'm set with that point, actually. Okay?

Boehm: And again, this isn't really...as long as you're best-moded in there, we're fine. And we shouldn't use the wishy-washy language "may be." That's not restrictive.

Armstrong: In line 20, we inserted the word "may" only because it also may not include a developing device.

Boehm: That's fine. The next sentence says that, though.

Armstrong: Oh, it does?

Bernstein: Jim, I noticed that after the "may" came in. And we definitely talked about a digital file, although...

Boehm: Then should we leave the "may" out? Because it will include some...you've got to develop print. I think he was right.

Bernstein: Well, what if it did it all on one system?

Utley: Well, it doesn't matter. It's still developed. Like a Polaroid.

Bernstein: That's what I was thinking was Polaroid.

Utley: That's what I thought, but it does have a developing device.

Bernstein: Yeah, actual images developing device.

Utley: Well, it's self contained.

Bernstein: Right, but it's still...

Utley: Part of the film.

Bernstein: And it's still developing it.

Boehm: I think you better leave the word "may" out.

Bernstein: Yeah, that's what we're talking about. Now my bottom comment is wrong here, but it definitely comes in when we describe a digital image because I'm completely confused by some of the logic there.

Boehm: Where? At the bottom of the page?

Bernstein: Yeah. On a digital image, when we size it, we say we don't make a bigger target frame than we have sourcing for.

Utley: Because as soon as you do, you introduce pixelation.

Boehm: You don't want to enlarge anything unless it's not been digitized yet.

<Everyone talking at once.>

Armstrong: It's part of the shooting.

Utley: A digital image is a digital image. It has pixels, and it has a height and a width.

Bernstein: And it's just placing them all in the frame.

Utley: You see, you place it into...

Bernstein: We've gone over all the developing and scanning and art frame, Brian. Right, by picking "I want my limiting size to be four football fields.

Boehm: Exactly! Now you've got the...[ ] source image. <Everyone talking at once.> But you don't...usually you don't enlarge that because if you do...

Bernstein: You start pixelating...

Boehm: ...pixelating, and that's...

Utley: Because you're enlarging pixels.

Armstrong: We just create it large, we don't create it small and enlarge it.

Bernstein: But we don't create it to fit the frame, we create it to blow away the frame.

Boehm: Am I understanding correct, though, that you never enlarge a digital image before you process it? That's not a step for a digital image. You only enlarge a print-film image, correct?

Utley: Right.

Bernstein: But what you do do is set...

Armstrong: Set your...the image that you're taking, your target image, add a size so that when it is taken, it is already at a size that exceeds the view window.

Boehm: I see what you're saying, but I don't call that enlarging, I guess.

Bernstein: Okay.

Boehm: Good, good.

Armstrong: Okay.

Bernstein: But let's make this clear because I don't understand it still within the verbiage that's here.

Boehm: Okay, what line?

Bernstein: Well, we'll get to it. That's why I said it's there because I started to get confused, and then later we'll get into it...into the mathematics of it. Just wanted you to be aware of that.

Utley: Okay, page 7.

Armstrong: Page 7...

Boehm: I'm sorry, I want to back up. Did he get into the enlarger? The only enlarging is on page 6, line 24. "System can also include [ ] 16 for enlarging the image which is developed by developing ..."

Bernstein: Yeah, that's fine.

Boehm: 99.9% of the time, this is going to be a photographic enlarging device.

Armstrong: Right.

Boehm: Right?

Bernstein: Yeah.

Boehm: You may have to use that word someday. I've got to have it in here.

Bernstein: Okay, yeah, because we wouldn't call it a "pixel-enlarging device."

Boehm: Exactly. "...the image may be photographically enlarged from a print film image," okay?

Utley: We said earlier "non-digital image source," in this section, did we not?

Boehm: Yeah. I just want to get the word "photographically" in there.

Armstrong: Okay.

Bernstein: Yeah, and then...

Boehm: "...be photographically enlarged..."

Bernstein: Well, it doesn't have to be photograph. Is it negative of a photograph...?

Boehm: Okay, what's the word then? I think it is.

Utley: Yes, it is.

Bernstein: Yeah, you would say enlarging a negative is a photographic enlargement.

Utley: It's your choice whether you enlarge it as a positive or a negative.

Boehm: What we're really talking is analog enlargement as opposed to digital.

Utley: Right.

Bernstein: Correct.

Utley: Optical and analog.

Boehm: Optical analog, yeah. "Optically enlarged"? No. Yeah. Well, photographically...

Utley: I wouldn't be restrictive...we'll, you don't have to be restrictive in that.

Boehm: Right. And photographically is generic.

Bernstein: Cool.

Armstrong: Page 7, line 19. The question here was just to clarify really more for Brian than anybody is are we able to take our digital image and, and I think we talked about this earlier, but send it right to a set-top box or something else.

Utley: Absolutely.

Armstrong: We don't say set-top box, and I think we said earlier set-top box presupposes that it includes a computer element within a set-top box.

Utley: But Doug, we could externalize that. We could make it explicit that there'd be personal computer, laptop computer, so and so, and set-top box...we could include set-top box in that string of definitions.

Boehm: Right, and technically, this is a little bit goofy. The way we're supposed...and maybe he did it, I don't know, but the first time the number 22 appears in the spec, should be the definition. And the numbers, if you noticed, are in order. The number 10 is the first reference number; 12, 14...that's how you find the reference numbers in a well-drafted patent application.

Bernstein: Well, that confused the shit out of me. Where the 10 came from, why it was there...

Boehm: Well, you start at 10...look at page...and this isn't a big deal for you guys, but look at page 5. You want to go straight 10. System 10, boink! System 10 includes camera 12. We go on up 12, 14, 16, and on up.

Bernstein: Yeah, I followed that.

Boehm: So you never need to know where those reference numbers were defined. That's why you define them up front, and that's where he missed it because 22 hasn't been defined yet but he's using it-computer 22.

Armstrong: I first shows up in line 17?

Boehm: Exactly. So let's genericize that and define it later. <Reading out loud.> "Alternately, a digital image may be provided from camera 12...may be provided directly..."

Armstrong: ..."to the user." In line 17.

Boehm: Um, hm.

Armstrong: "...to the user," and then the first reference is in line 21, where we define computer 22. That's fine.

Utley: That's good.

Armstrong: And then add to that "set-top box."

Boehm: Yeah, down below.

Bernstein: Or TV.

Boehm: Or whatever. We're getting there. Hang on. So it's "...to the user via a communication link..." I'm getting rid of "or cable" because again he hasn't defined 23 yet. 23 will be defined later because he hasn't even introduced 22 yet. That's what happens when you edit a patent application.

Utley: Doug, how would you take care of the situation where the set-top box may be integrated into the display device?

Armstrong: I think that might be covered in the next thing, where we say, "Computer 22 includes the CPU, a ROM, a RAM, and a display device..."

Boehm: Exactly.

Armstrong: ...“or input device. It also may include any hardware device, peripheral device, or software necessary to perform the functions described herein.”

Utley: Right.

Boehm: Yep. I guess we’re there.

Armstrong: That does get us through that.

Boehm: That’s the function of computer 22. Processes the digital image file, correct?

Bernstein: Yeah.

Boehm: We’re talking about figure 1 still, right? You’ve got the figures pulled out to the side like I do, right? Sure.

Bernstein: Sure.

Boehm: Yeah, you’re supposed to because when you’re reading this, you’re supposed to have the...

Bernstein: Mine are so bent up, it’s not that hard to get to.

Boehm: Usually the pages are so out of order, you can’t find the figures anymore. So “System 10...” see the number 10?

Bernstein: Yeah.

Boehm: “...includes computer 22”—that’s his box 22— “...configured to process computer image file created by the above-mentioned devices.” That’s the definite of 22. Now we...so it’s a processing device, right?

Utley: Right.

Boehm: It processes...right, okay. “Computer 22 may be a personal computer, a laptop computer, a mini-computer, a microprocessor, mainframe computer...” He’s going bonkers here...”a network computer...”

Bernstein: That’s good. A set-top box?

Boehm: Yeah, we can throw “a set-top box” in there.

Bernstein: You want these words.

Boehm: A toaster in there if you want!

Bernstein: Yeah, a toaster with a display.

Boehm: Right, and a processor.

Armstrong: The following sentence kind of wraps it all up or anything Doug has.

Boehm: Okay, so where am I putting set-top box?

Bernstein: Under...

Armstrong: After one of those things...after...

Boehm: But we haven’t shown NTD yet.

Bernstein: Yeah, but set-top box should be TV, too. Well, a set-top box plays through a TV...well, no, it doesn’t have to.

Armstrong: Let’s put set-top box after server computer...

Bernstein: And TV...or TV.

Utley: You said set-top box goes between...

Armstrong: The TV.

Bernstein: Or if it does what you said and the TV comes...

Utley: But we have to take care of the case where it's built into the...

Bernstein: Right. TV.

Utley: But then you depend on the CPU, the read-only memory, the RAM.

Armstrong: Does all that need to be in the TV?

Utley: Yeah.

Armstrong: Okay.

Boehm: My question is if you define computer, 22, as the thing...oh, my gosh, 22 isn't the user's...is this...

Bernstein: No, isn't that our computer?

Boehm: This is our computer. 26 is the user's computer and display and set-top box...I mean, 28 and 30, that's what I was thinking about. Where it says later in the next page, and say, if you look at the figure 1, 28 and 30, could be combined to be a set-top box or a TV or you name it.

Utley: Yeah, user computer.

Boehm: Or a toaster with a display.

Utley: Right.

Boehm: The point is, what is computer 22? That's the one that puts it on the Internet. That's your server.

Utley: Right.

Boehm: So you don't put the set-tops...

Utley: That's the one that processes the source image. It creates the file.

Boehm: It's the digital image file.

Utley: And it may be the server.

Boehm: It may be the server, but no matter what, it would be a computer. To put it on a hard drive or to put it on a CD ROM, right?

Utley: Right.

Boehm: That's what we're getting at here. It's the processor. It's the encoder, isn't it?

Utley: Yes.

Bernstein: Yes.

Boehm: So could it be a personal computer? Sure. It could be any of these he's got.

Bernstein: Yep.

Boehm: So, he's correct so far without changing.

Bernstein: Right.

Boehm: "Computer 22 includes a CPU, a ROM, a RAM, a display device, input device..." I would...he's defining it there. I would say, "...typically includes."

Bernstein: Yeah.

Boehm: Because it may be missing one of those.

Bernstein: Yeah, absolutely.

Boehm: "...typically includes..." blah, blah, blah. Good. "... computer. It may also include any other hardware device..."

Bernstein: That covers it all.

Utley: I've got to go back to page 7, because we made a change I don't think we should have.

Boehm: I'm still on 7.

Utley: Okay. Line 17. "Computer" is correct—we shouldn't put "user" there.

Boehm: You're absolutely right, but I can't call it computer 22 yet.

Utley: You're defining the processing unit.

Boehm: But the whole point of the paragraph is to say print film versus digital, and this print film is going to be enlarged and scanned. Alternatively, digital file is provided directly without first creating a print image. It doesn't matter where it's housed.

Utley: Right, just say that.

Bernstein: Let me ask you this. Did you ever create a case where the analog camera takes the pictures according to the right specs and puts them on the film that way, or would you have to use larger film format?

Utley: No, you can't.

Bernstein: We can't go that way?

Utley: Well, but we do that with 4x5s and fill.

Bernstein: But it's still 4x5?

Utley: Right.

Bernstein: When you've shot the picture, it's 4x5. You can't tell the camera to shoot this 10 times bigger?

Utley: No, but what you do is you scan it at different density.

Bernstein: And that gets it the bigger...

Utley: That creates the...

Bernstein: That's where I'm probably getting confused on this digital image thing. Yeah.

Armstrong: What if you just moved...what if you left line 16 and 17 alone and just moved the whole paragraph, beginning with line 21, in front of that, where you defined computer 22 before it's used in that sentence in line 17?

Boehm: Because it doesn't really flow there. What you're trying to do in that paragraph, he's says, "If the images obtained are digital..." he's describing the printing device 20 there, and that has to be described...20 has to go before 22. That's where he's introducing what 20 is.

Armstrong: Yeah, although with line 15, the sentence starting with "alternatively," that actually does not talk about printing.

Boehm: Let me read it again. I think you're right. "...if the image is obtained with a digital camera, a print image may first be obtained..."

Armstrong: What he's saying, you took a digital picture and you want to print it and then enlarge it.

Boehm: Yeah, he sends it to a printer, 20. "In this manner, print image can then be enlarged and scanned."

Bernstein: Right. So even though you don't have to...

<End Side 2, Tape 1; begin Side 1, Tape 2>

Bernstein: Tape 2, Patent Meeting, Docket 57103-120. Let's start on page 12.

Boehm: Wherever you want to.

Armstrong: And I think a lot of this is going to be totally fixed up by this change that Brian's made, or this correction that he's made, but I just want to be certain of it.

Boehm: And I'm a lot colder on that, guys, than Steve was, so just do a dump on me, make me the corrections, and I'll just do it kind of cold without analyzing it; and then when I read it again tonight, I'll see if I can...

Armstrong: Okay, the first thing Brian, I just wanted to make sure what you meant here. You want that to be VWW?

Utley: No, VIH.

Armstrong: Or VWH?

Utley: It can be either one, but I want it to be BIH.

Armstrong: Okay, well then let's talk about it because then what we're doing in the first line of this page, we're saying, "The viewing image height and viewing image width within the viewing window can be determined by comparing the source and the aspect ratio of the viewing window application." So the unknowns are the height and the width of the viewing window.

Bernstein: Viewing image window.

Utley: Why should you add aspect ratio? What it says if you compare the aspect ratios—you know what those are—

Armstrong: For the source and the viewing window.

Utley: Right. If you know what the aspect ratios are, you all you need to know is determine whether you are going to use VWH as the basis or whether it's going to be VWW.

Armstrong: Okay, so let's just say in the first that the source image aspect ratio is greater than the viewing window aspect ratio.

Utley: Right.

Armstrong: Then we're going to set the viewing image height equal to the viewing window height.

Utley: Right.

Armstrong: And then the next line, in order to get the viewing image width, we need to divide the viewing image height, which we don't know.

Utley: We do know.

Armstrong: Okay, tell me.

Utley: That it's equal to VW and VWH.

Armstrong: Oh, okay. So we're really saying the same thing?

Utley: Yeah.

Armstrong: Right, we're saying the same thing.

Utley: Yeah, but this is mathematically correct.

Armstrong: Okay, so we are saying the same thing.

Boehm: How about grammatically, Brian?

Utley: Pardon?

Boehm: But I'm partially kidding on that, but when you use the phrase "target image size," go to...well, you don't have...

Utley: Let's come down...

Armstrong: Let's come down. Let's say if that's false.

Boehm: My question is the language. You say on line 23, 24..."a target image size TIS has a TIW and a TIH." Does that make sense to call the window a TIS or a VWS for size? It's the same concept-width times height equals something. You want to call it area? That's even clearer.

Utley: Yeah, size and area are interchangeable.

Boehm: Well, maybe we should say that the target image area-TIA. "Having a target image width times the height..." That's beautiful.

Utley: They're interchangeable, so it'll work either way.

Boehm: Okay.

Armstrong: Let's just continue.

Utley: Let's say we're defining size as area, size is total number of pixels, which is area.

Boehm: My only question would be can I make the...at the top of page 12 where you said, "...the viewing image height, gauge, and viewing image width (VIW) within the viewing window area..." VWA?

Bernstein: Yes, that would be very clear.

Boehm: Yeah. You're also consistent with the target image area, but am I doing the wrong thing here, Brian, because you used VW earlier. Are you using it consistently?

Utley: Yeah.

Armstrong: Yeah.

Utley: Yeah, it's consistent.

Armstrong: See, just continuing with my thought pattern in the [us?] statement, I would just reverse the order of these and put VIW.

Utley: It's right there.

Armstrong: Okay, okay.

Utley: So if you pick it up off the computer copies that I sent, it's correct.

Boehm: Oh, okay. Is that what he did? Just plugged it in?

Utley: Yeah, this is what I sent him last Thursday.

Boehm: I see.

Utley: I had written it. This is where it was transcribed.

Boehm: Okay, well clue me in where this started, Brian.

Utley: So you go down to...

Boehm: Is this page 11 on your sheet, or not?

Utley: Page 1 on the aging process.

Boehm: We're at page 11 of the text. The formula starts on figure 7.

Bernstein: Yeah, you've got to go back to 11 and start him at figure 7.

Boehm: Yeah, start me off here so I don't blow this.

Bernstein: Right, he wants to get every term.

Utley: Oh, okay. On page 11, we define the aspect ratio.

Boehm: Right, which is on page 1 of your new...

Utley: Right, got it.

Boehm: Okay, that's what I wasn't sure. Brian, you still want me to use his text because it looks like...

Utley: Yeah, his text is fine.

Boehm: Yeah, it looks like he added words to your...

Utley: Yeah, no, he expanded...

Boehm: He expanded to make it readable.

Utley: Right.

Boehm: I see what you're saying. But the formulas, let's go through each one of the formulas and make sure they're correct, right?

Armstrong: That's what I'd like to do now before I run out of time. Brian, down in...you're on 12?

Utley: Yeah, right.

Armstrong: On 12 when we, after line 25, when we start talk about these equations, the statement here I don't see as being expressed right. Now I could be wrong, but the  $TIS = the TIW \times the TIH$ , agreed; but that also equals  $VIS \times the magnification \text{ factor}$ .

Utley: That's correct.

Armstrong: When I re-do this formula, I understand that the magnification factor is  $VIS/TIS$ .

Utley: No. Not true. The magnification factor is  $TIS/VIS$ .

Armstrong: Actually I had it the other way- $VIS/TIS$ .

Utley:  $TIS/VIS$ .

Armstrong: It's the ratio of the viewing image to the target image?

Utley: Right.

Armstrong: So it would be  $VIS/TIS$ .

Utley: What's the ratio?

Armstrong: It's got to be one over the other, so we express it right.

Utley: It's the  $TIS$  divided by the  $VIS$ .

Armstrong: Okay, let's go to line 19. Then this is stated wrong: "The magnification factor is defined as the ratio of the viewing image to the target image." So that needs to be reversed.

Boehm: Right, but that's word for word what you had on top of page...

Armstrong: So it's defined as the ratio of the target image to the viewing image. Okay, so those need to be reversed, in which case we've got  $TIS/VIS = MF$ . If I'm solving for TS, I've got  $TS = VIS * MF$ . Now you're right. So down below is fine.

Boehm: Yeah, because the target is going to generally greater than the viewing image window.

Bernstein: Yeah, I just couldn't reconcile the formulas because of that transposition, that's all.

Boehm: Brian, what are you rationing? The size? The area?

Utley: You're rationing the area.

Boehm: The area.

Armstrong: And I like that clarification because it's...

Boehm: Didn't we way it's the ratio of the areas, or of...you mean the ratio of the viewing image area to the target image area?

Utley: Yeah, because when you magnify, you magnify an area. Magnification [is an aerial?] a function.

Boehm: Excellent.

Armstrong: So height time width is area, which would be good every time we referred to target image or viewing image, we called it viewing image area or target image area.

Utley: Yeah. The only reason why I picked size instead of area is because we talk about aspect ratio, and you begin to use the A...the A shows up in a number of different forms, and therefore I didn't want to confuse you with A in one being A, aspect ration, being the same as A in area. That's the reason why I did that.

Armstrong: Okay.

Utley: But we understand that area and size are synonymous.

Boehm: Let's just get rid of the A in aspects and make it SIR. That solves your problem, and then everything else is also...

Armstrong: That's right.

Boehm: ...three digits, right?

Utley: That's okay because that would define aspect ratio as R.

Utley: Yeah, that's fine.

Armstrong: And it goes on line 4 as well.

Utley: Yeah, all the way through.

Armstrong: Again, Doug, just in the interest of time, I think what I'd like to do is apply the semantic changes to the text after we've made sure that some of my math questions...that Brian and I are on the same page before I have to leave.

Boehm: And I'm not even sure we'll have to do that because I have to go through it when I do the edits here, and I will do the same thing that you are doing and make sure it makes sense.

Armstrong: Okay. On the top of page 13, then, what I was able to determine from this and confirm with Brian is that the source image aspect ratio is equal to the target image aspect ratio. The question is was this intended because, and we started to have this conversation, is that we may not have...we may crop photographs, we may want to stretch a photograph...

Utley: Let me explain how that works. First of all, in the image sizing program, you have the ability to change the size of the source image from a standard image. In other words, if you are cropping, you can specify the crop, and it will give you the right dimensions and it will fit it into the viewing window. So a cropped image...

Armstrong: But it lost data. When you crop, don't you cut away a piece of data?

Utley: It's before you get data. It's while it's still an image.

Armstrong: So it just smushes it in right?

Utley: Yeah. It puts it into the viewing window properly. So you can specify a cropped image source without any problem. But the case that isn't covered yet...there are two cases that aren't covered yet. One is where you digitally crop an image, okay, which you can do. You can get there, but you have to know how to get there. The second is, we have not covered the case of the panorama or stitch images.

Bernstein: But it's all one image in the end.

Utley: I know, but we want to cover the case of the dimensions because it assumes that you always fit the image into the viewing window, but in the case of stitched images, you don't.

Bernstein: Why?

Utley: You let the...

Armstrong: The image flows beyond it.

Utley: The image flows beyond the edges of the viewing window.

Armstrong: It does?

Utley: Yeah.

Armstrong: When you first look at a Hyatt Hotel pool shot, you don't see the whole shot. You see one shot, and then you pan around it. So you're not fitting the whole image into the viewing window.

Utley: Right.

Bernstein: We never were. Prior Art does that.

Boehm: On a photo you are.

Armstrong: And a Prior Art also gave you the ability to do that.

Utley: Yeah.

Bernstein: But on a MAC standpoint, he's not creating that formula for fitting a panoramic image...

Armstrong: Into a viewing window because you don't do that.

Bernstein: Gotcha.

Boehm: What do you do in terms of actually doing the math, Brian?

Utley: When I get that built into the image sizing program, what it will do is it will size the panorama into the viewing window vertically, and then it will allow you to pan horizontally across the image.

Boehm: Or vice-versa.

Utley: Theoretically, yes, although we don't have any examples of that.

Boehm: What happens if you wanted to...well, panning bigger, if you want it bigger...

Bernstein: You could do what you're saying and pan vertically and horizontally, we just don't do it.

Utley: But if you did that, then what I'm saying is you size the image into the viewing window so always see one dimension completely until you start zooming.

Boehm: My suggestion is that we don't...of course, we're not going to worry about that today, we don't have the time to do that. When we get to the end of this, then we'll say, of course, when you stitch images together to do pick your pan, you would first do the small size, and then whatever.

Utley: Right.

Boehm: We'll just handle it because the point of this math is to give us a basis for putting technical definitions into the claims if we run into the problem that we need it during prosecution.

Utley: Not only that, but it's also very helpful when we're talking to...when we're doing due diligence and we're talking to people about how does it work. This is how we sit down with them and say here's how it works. This is not something that's off the seat of the pants. This is something that follows a disciplined structure.

Boehm: Absolutely, and that buys you credibility.

Utley: Right, and then when we license someone, this is part of the documentation.

Boehm: The biggest thing is is it the best mode? Remember, we have to disclose the best mode of making and using your invention.

Utley: Yeah, and this is the best mode.

Bernstein: This better than blowing up images.

Armstrong: Let me just further throw into this source image aspect ratio equaling the target image aspect ratio for a second. I've got just an example written on the side with those people in a box. If we start with the small image here, which is a 6x8, and we blow it up to an 8x10...that doesn't matter, we end up with a source image that's 4x5, and then we just make the target image 4x5, right?

Utley: Right.

Armstrong: So it's not that one is...because the little one is not the source image, it's the bigger one that's the source image after we've done the cropping.

Bernstein: No, that's the target image.

Armstrong: No, that's the source image that goes into the system. Then we create the target image.

Bernstein: No.

Armstrong: Yeah, this is before it goes in.

Utley: If the source image is, say, at 8x10, what the formula does is tell you how to scan it so that you arrive at the right target image. So if you go down further, it says, "And, by the way, if you follow the program, the program says the right scanned density for this is this many pixels per inch," and that will produce you a digital image which has a magnification factor...

Armstrong: That's the next step. I think I know the answer to this, but in this example, which of these two things is considered the source image?

Utley: The source image is the 8x6.

Armstrong: The target is the 8x10?

Boehm: We have to define that, guys.

Armstrong: Okay, hold on because we've got...let me just follow this math. I just want to understand why I'm wrong here. In the source image then, we have an aspect ratio of 3:4 on an 8x6.

Utley: Because it's a portrait.

Armstrong: It's a landscape.

Utley: Okay.

Armstrong: This is a picture of my kids on the beach, but I want to frame it in a portrait frame, so I'm going to go in and I'm going to crop the edges and turn it into an 8x10 and blow it up.

Utley: Where do you crop it?

Armstrong: I'm going to crop it on the scanning program, let's say. I've got a print image, and I'm going to throw it on the scanner. I'm going to throw this on the scanner. I'm going to crop the edges of, blow it up to an 8x10.

Utley: You don't do that on the scanner. You don't blow it up on the scanner.

Armstrong: Okay, well let's say then I blow it up on a...let's say I blow it up before I scan it.

Utley: Right.

Armstrong: And then I crop it. I end up with an 8x10, which is an aspect ratio of 4:5.

Utley: Right. It's not portrait.

Armstrong: It's not portrait?

Utley: Right. 5x4.

Armstrong: Exactly, right, 5x4. I did that backwards. So now I've got...

Utley: An aspect ratio of 1.25.

Armstrong: Right, I've got a three-quarter aspect ratio for what you're calling my source image.

Utley: No, you've got...I don't know anything about that. All I know is that is this.

Armstrong: This is the source image. That's why I asked you which one was the source. This ends up being the source. <Everyone talking at once.> ...the original picture...

Utley: I don't know anything about that.

Bernstein: Why?

Utley: Because what you put in the scanner, the system considers to be the source image.

Armstrong: Although there is a step here...

Bernstein: Well, this is what I was putting in the scanner.

Armstrong: There is a potential step here is not a part then...

Armstrong: Because then the enlarged image is the source image.

Utley: Right.

Armstrong: Because there's a step before digitizing that says we can take an image of any size, create the ultimate source image from that in any dimension you'd like via cropping and enlarging, and then we will end up with what we are calling in these formulas a source image. But we don't talk about this. I don't know if it's important, but it's a step that confused me.

Armstrong: Brian's saying it's not important.

Armstrong: It's not important to this formula; but what I'm wondering if it's important to our process.

Bernstein: Well, certainly it's part of the process.

Utley: Well, no, if you go back through and you understand this, what your controllables are, what your scan density is, what your aspect ratio is, how you fit it into the viewing window, what your target size is, and if you know all of that, you can determine the trade-off between your ultimate source, whatever that be, I know nothing about that, and what you put in your system.

Bernstein: I recognize that. I'm one step before that whole process, and now we're taking ourselves outside of the math, and then we can table this and you guys can talk about it later. You just told me that this lower image is the source image.

Utley: Right.

Bernstein: Yet it's not what the client gave me. The client gave me this picture. Greg Manning gave me a baseball card with a whole bunch of header information and said take the header out, give me just the picture of [Newell] Lowell or whatever his name was...just the picture. So, I don't know if we want to include anywhere, if it's important, the step that is our editing of an original image before it becomes what we are calling a source image. That's all. And let's leave it there for right now.

Boehm: That's the same problem I was confused with, and when I look at Brian's figure to say that the target image is surrounding the viewing image, I get confused as to what he means by the target image.

Utley: Well, the target image is the file...

Boehm: What's the word "target" mean?

Utley: Because what you are doing is you create a virtual image into which you zoom and pan. It is a virtual image.

Boehm: Oh, so you're targeting to the virtual image?

Utley: Yeah.

Bernstein: Or you're targeting that big [ ].

Armstrong: What you're talk about is semantics, and I had the same conceptual problem on my first read, understanding the difference between target, source, and viewing.

Boehm: And viewing, yeah.

Armstrong: And that's something you guys can talk about, and that's just really a global change in semantics if you decide to do that. But I'd like to move onto the next question I have that's formula driven, and it's the scan density.

Utley: Right. It's not in here, it's on the image sizing program.

Armstrong: This?

Utley: No, the other one that I have where you put in your parameters, and it automatically computes.

Boehm: You can use an Exel spreadsheet with macros to do that with code. We have not written an application on that yet.

Bernstein: Well, that should be here.

Armstrong: Yeah, because we reference it. We reference...

Boehm: You reference the program?

Bernstein: We reference the math.

Armstrong: In line 11, we're talking about how we determine a minimum scan density, and we actually have a formula here, which I don't understand.

Utley: The minimum scan density says that you will scan at that DPI or...

Armstrong: That's height, or is it area?

Utley: No, it's scan density.

Armstrong: Okay, let's look at this formula then.

Boehm: Where are you? What page?

Armstrong: I'm on page 13, line 13.

Utley: It's the ratio of the source image height to the target image height.

Armstrong: Just height? There's no width...

Utley: No.

Armstrong: ...in there at all?

Utley: No, because you've got a fixed aspect ratio. The two aspect ratios are the same, therefore it doesn't matter. And if you try to use area, it's a square function, so it doesn't give you the right answer.

Armstrong: And does this end up giving us the dots-per-inch result?

Utley: Yeah.

Armstrong: So if I've got a height, then you're saying we're expressing the height in terms of pixels?

Utley: It can be either in inches or in pixels. Typically it's in inches because when you want a...your scan density is when you're scanning, and you're scanning is in...

Armstrong: Okay, then let's use an example I put here. If we have a source image of an 8x10, and our target image is going to be...let's fix this and call it an 80x100 so we keep the same aspect ratio...

Utley: Right.

Armstrong: We then end up with an MSD of the height...

Utley: Your target's going to be in pixels.

Armstrong: Okay, well this is what I want to clarify, then, because that doesn't say it. So the target...

Utley: The target is always defined in pixels. It says area in there, but it's always pixels.

Armstrong: Okay. But we don't always use the TIH in a formula in a pixel form.

Utley: You always use it in pixel form.

Armstrong: We do?

Utley: Yeah. That's the only way it's ever expressed.

Armstrong: Even up in these formulas and everything?

Utley: Yeah.

Boehm: Does it have to be in pixel? Can it be units?

Utley: No, it has to be pixels.

Armstrong: And the viewing image width is always in pixels?

Utley: Yep.

Boehm: Viewing target but not source?

Utley: Well, the source is whatever medium the source is in. If it's a 4x5 piece of film or an 8x10 enlargement, or whatever.

Armstrong: Well, let's follow this through then. So...

Bernstein: Then that's not a source image. The source image is what you create by forming the 4x5.

Armstrong: That's something we need to clarify.

Boehm: Exactly.

Armstrong: We need to be able to say the target image in these formulas...or to calculate them, target image heights, widths, and sizes are all...

Utley: Viewing window is in pixels, height in pixels. Okay. Source image generally in inches. I mean, I laid that out.

Armstrong: Okay. It wasn't in this one. But let's just look at this for a second. What would the number of pixels be on something like this if I've got 80"x100"? What would 80" be in pixels?

Utley: That's probably around 8,000.

Armstrong: 8,000. So we've got 8,000 pixels divided by the height of the source image is 8, so we have a scan density of 1,000.

Utley: Right.

Armstrong: Okay. That works. Fine. Okay, example 1. Let's go to example 1. Your assumptions, for example, you want to change from this sheet to the next, Brian?

Utley: Right.

Boehm: Are we doing example 1 of the...

Armstrong: On page 13, beginning on line 17.

Boehm: Are there changes, Brian?

Armstrong: Perhaps. We're going to go through it.

Utley: I'll look at it and see.

Boehm: Why don't we just go to the example 1 in your new?

Utley: Okay.

Boehm: Unless it's the furthest.

Armstrong: It's not furthest. Okay. So we've got a source. Everything's the same here. 320x48 is 400 pixels. Viewing image size is equal to 128. Target image size is equal to 2560. Good, we've got the square root in the formula now. The 1789. Target image height is 1431. Minimum scan density, I think is wrong.

Utley: No, it's not.

Armstrong: The minimum scan density is said to be...

Utley: You multiply the minimum scan density...

Armstrong: Right, but let's just do the formula. The minimum scan density is what? Defined as the target image height, which is what? 1431, right?

Utley: Right.

Armstrong: Okay. You have 1789.

Utley: Oh, I'm sorry. The target image height...you start with the target image width...you can do it either way. It's 1431 is the target image height.

Armstrong: Right. That's the formula. So in order to use your formula, it's 1431 divided by what?

Utley: By 4.

Armstrong: Not by 5?

Utley: No.

Armstrong: Okay, so that's just a general correction. You actually end up with a very similar answer, mildly different by only, I think. .75, but it is different. Oh, no, you don't. You get...wait a minute. <reading to himself> ... is the target image height in example 1...it may just be a rounding function...

Utley: It is.

Armstrong: But as we show the math, we should show it consistent with the formula, right?

Utley: Yeah. What does it say?

Armstrong: 357.75.

Utley: Right. Just round it up to 358. There are no such things as fractions of pixel settings.

Armstrong:  $1789/5 = 357.8$ , so it's slightly different, so that's why...

Utley: It's not different. You can't have a fraction of a pixel.

Armstrong: Don't get upset about this. You have an error in the way you show this, and all I'm doing is pointing out that we can't have it in the patent that way. We have a formula that says it's height divided by...it should be 1431 divided by 4. We just went over that on the previous page. That's all I'm saying. Either way, we need to express it as 1431...that's all I'm saying.

Utley: I see what you're saying. I understand.

Armstrong: Do you have that, Doug?

Boehm: No, I'm still trying to figure out...

Armstrong: Okay, look on his new sheet.

Boehm: Yeah.

Armstrong: The only correction to his new sheet on page 1 is the second to the last line. "The minimum scan density equals 1431 divided by 4 equals 358." That's the only change.

Boehm: Okay.

Armstrong: Now, let's see...did I have anything on this one?

Boehm: Good catch, Jim. Thanks.

Bernstein: On 2, I think we have the same file [ ].

Boehm: What?

Bernstein: We're best friends for this very reason. I sucked in math.

Armstrong: This one's just the exact same thing on 2 where we're just using the wrong number. We get the same answer, but we're using the wrong number. The minimum scan density, second to the last line, should be 1431 divided by 4 equals 358.

Boehm: Which is the same...

Utley: It's the same number.

Boehm: The same fixes as...

Armstrong: Exactly. Same number, it's just the equation is expressed incorrectly.

Boehm: It's the same text...the same change we made to example 1.

Armstrong: Exactly, exactly. In the middle of that example 2 on page 4, there's a statement that says, "The target image size equals the viewing image size times twenty." I can't find where that relationship is defined in a previous example where we say that the target image size equals the magnification factor times the viewing image size. And if it's not, we need to just put it in because it's obviously right, it's just not stated.

Boehm: On the top of page 2, when you define magnification factor, and you're saying it's a ratio of the viewing image to the behind-the-scenes target image, so it's going to be a less-than-a-one number. See, we're getting targets and viewing screwed up. The terminology, I think, is screwing us up, right? Because weren't you using magnification factors of twenty? That would have a viewing image of twenty sizes larger than the target image.

Bernstein: That's what we found last night...

Utley: No, the magnification factor is the...the target image size is the viewing image size times the magnification factor.

Boehm: Right, how do you define the magnification factor...oh, that's what...the viewing size...

Armstrong: But in the patent pages, do we have that, Brian, somewhere? Because I looked for it, and I couldn't find it.

Boehm: It's page 12, the middle, it's where he defines magnification factor, and it's not where it should be.

Armstrong: Right, but I don't see it there.

Boehm: "...ratio of the target..." we're going to call it "...the target image area."

Utley: It's down on the bottom. "The target image size is the target image weight times the..." "...which is equal to the..."

Armstrong: There it is. "...viewing image size times magnification factor."

Boehm: Right.

Armstrong: Okay, so that's the one I had a problem with because we inverted those two things, so that explains that. That's fine. Let's move on. Now, did I have anything else on examples? Example 2...example 2...

Boehm: One more point. When you say the magnification factor, it's really the maximum desired, isn't it? Magnification factor, Brian?

Utley: Yeah.

Boehm: Because magnification factor is any zoom. What you're worried about is the maximum, your deepest, right?

Utley: Right.

Boehm: Okay. So I want to make this MMF for Maximum Magnification Factor, okay?

Armstrong: Okay.

Bernstein: Where was that?

Boehm: I'll fix it. Don't worry about it. It's really at...

Utley: The magnification factor is the maximum magnification factor.

Armstrong: Always?

Utley: Yeah.

Armstrong: What about the minimum?

Utley: The minimum is 1.

Armstrong: 1 plus something?

Utley: Right. Now, then, this is what you're designing it to.

Armstrong: Page 5 of Brian's new thing...page 5, example 3. This minimum scanned density, again, I think is wrong. We've got a target image...what is the formula again? I keep forgetting. Target image height of 1610, right?

Utley: Where?

Armstrong: Example 3. 1610 divided by the source image height, which is 5. So 1610 divided by 5 is 322. So it's just the expression is consistently just reversed.

Boehm: And you're on page 5, it's the minimum scan density?

Armstrong: Minimum scan density equals 1610 divided by 5, which equals 322.

Boehm: Okay.

Bernstein: What is that last? "The photos can be any scan density greater than 321"?

Utley: As long as you scan at a higher density than that, you will never pixilate.

Armstrong: Since we get to this answer here, that's his conclusion. You have to be at least 322...321.

Bernstein: For that particular example?

Armstrong: Yes. That's the answer to his equation.

Utley: What this is telling you is that when you scan this image in, you've got to do...you've got to start at least at this density.

Bernstein: To get that result of 20?

Utley: To get that result.

Bernstein: I finally understand.

Armstrong: Okay, let's go to page 20 in the patent file.

Boehm: Okay.

Armstrong: It was...actually, never mind. At the bottom of page 20 where I say, "really?" I already talked to Brian; I understand completely why that is now.

<Difficult to understand; Boehm and Armstrong having a side conversation.>

Boehm: Okay.

Armstrong: And as long as this one has the square root thing in it, which I'm sure it does, then we're fine on that example.

Utley: It does.

Armstrong: Okay.

Bernstein: Doug, you're supposed to be picking up these square root issues...

Boehm: Hey, you guys are supposed to be picking this up. Actually, I was hoping you could work closer with Steve than the timeframe we had; but I'm taking the last pass at it here, so I'm going to try and get another pass at it.

Bernstein: Cool.

Boehm: And I am trying to get another pass at it, and I would have done the same number exercise that you've done for us, Jim.

Utley: <As an aside to Jim and Eliot.> Can you meet me in Philadelphia on Friday morning?

Armstrong: I think so.

Bernstein: This Friday? I don't know.

Armstrong: Well, I need to check my calendar.

Bernstein: Other than just checking?

Armstrong: Yeah. What time?

Utley: Can you pick me up at the airport?

Armstrong: Yeah.

<Continued background conversation between Utley and Armstrong.>

Bernstein: Doug, why don't you make these changes?

Boehm: Yeah, I will.

Bernstein: Start with this because I think we can pick up our changes later, can't we?

Armstrong: Well, let me give you a few more that I wasn't real sure about.

Boehm: Well, what's the...what do you think is the extent? If we go through page by page, you're right, it's going to be forever.

Bernstein: No, I just want to go through my comments real quick. If Brian has any additional, that's fine.

Boehm: Okay, and remember we can change the wording of the claim as long as it's recorded.

Bernstein: No, no, this is the body. These are minor fixes.

<Everyone talking at once. Shuffling as Armstrong leaves the room.>

Boehm: Thanks, Jim, for leaving.

Utley: <Chuckles.> He's going to catch a plane.

Boehm: Hope you had better luck than I did.

Utley: Yeah, really, and the weather here right now is pretty bad.

Boehm: Yeah, that's what it was yesterday.

Utley: Where did you get stranded?

Boehm: It's a long story. Is now a good time?

Utley: How long is it going to take?

Boehm: What happened was I left about 6:00. Everybody said it's no problem to catch the 7:25. There was a terrific traffic jam just north of the airport, bumper to bumper for miles, and it got to be 7:10 before I was at the airport. I was flying around lost, trying to find the Avis. Got to the bus at 7:15.

Yelled at the driver and said, "I've got a 7:25 flight. Can we do it?" He goes, "I don't know!" So we got in and tried it. They dropped me off at the United gate. And I dropped up the Avis car without filling it with gas, you know, just get my butt over there. I get up to the drop-off, and thinking, oh, I gotta run, and so I run like crazy to get to the get and find out different. There's a whole bunch of people standing there, you don't have to run. It's been delayed. So my flight out of Ft. Lauderdale to Chicago was delayed first of all for storms, and then mechanical problems. I got switched all over the place. 7:30, 8:30, 9:30, and you wonder what's going on. Half the people bail out and go to Miami and fly out of there, and they keep saying, oh, we don't know when it's coming. I'm thinking, oh, crap, I'm going to miss my 10:30 connection in Chicago to go to Milwaukee, so I called and found that there was a bus. There was an 11:30 bus, and I thought, hey, I'm gonna make this, no problem. The stupid plane didn't leave until 10:00, got in Chicago at 12:30, missed the bus, missed the only connection out to Milwaukee. I'm thinking the next one's 8:00 in the morning, I'll just go get a hotel, and it should be on the airline, right? Because they made me miss my connection. So I stood in line 45 minutes with other people who had missed their connections to try and get the hotel or the baggage lost or some damn thing. Here it is 1:15, 1:30, and they say...and this guy in line behind me, he's in line for the second time because they sent him in a cab off to a suburban hotel--not the Hotel Hilton, no way--some suburban hotel--sent him out there, he got there and there was no room, so they brought him back, and now he's in line again! Talk about getting doubly screwed. Anyway, I get up to the counter, and she says, well, we can send you out to Arlington Heights--and I know the area, I grew up around there--a hotel, and we've got to get you a cab, and we'll bring you back, and we'll pay for the hotel. And I'm saying, when's my flight? 8:15. I've got to be in there by 7:30. You're going to get me out there, and I would have gotten maybe three hours of sleep. It was just ridiculous. So I said, what are my other options? I'm pissed. So she turns around and grabs a pillow and a blanket and says here's your other option. Everybody is kind of fuming, but we're all taking it with a grain of salt. The guy next to me says, oh, you get the Hotel O'Hare, and you're headed over to Gate B-20? That's Suite B-20!

- Bernstein: And it is. I've done that so many times. Slept there many a night. Slept on my bag.
- Boehm: I got in here this morning, landed at 9:00, and drove to work at 9:30. I haven't been home.
- Utley: And you are feeling the same.
- Boehm: Oh, yeah, really crunchy!
- Bernstein: Okay, let me whip through this real quick. Skip the comment on top of page 9. On the bottom of 9, why can't these images from videos be put back into video format and then zoomed on? Why can't you take the images you captured in video, enhance them, and then put the 29-per-second back in, thereby have zoomable video? And panable? You can because a video is simply 29 images. So if we've captured the ability to do this on an image, we can create video by creating a series of 29 images per second.
- Boehm: Okay.
- Bernstein: It can be easily done. Here's the change. On line 21, just add: "A single or all captured frames from the video camera may be further processed as a digital image, and then reassembled back to video." Take all the frames, do...
- Utley: What are you going to do with it?
- Bernstein: You're going to enlarge them, however you do that once you capture them. If you were just printing them, you could print the images, enlarge them, put them in a viewing window, and run that video through there and let somebody zoom in.
- Utley: How do you run the video through a viewing window?

Bernstein: Doesn't the video have its own viewing window?

Utley: You run it through a player.

Bernstein: And the player has a viewing window.

Utley: And the player has a viewing window.

Bernstein: Now, if the image is bigger than the viewing window, you'll be able to...if the picture is bigger than the set viewing image, you'll still be able to...

Utley: The picture will still be in the standard frame size of 320x240.

Bernstein: They'll be in a frame size, but the picture will be much bigger than 320x240.

Utley: No, the picture can't be bigger than the frame size.

Bernstein: On a video? Why?

Utley: Because that's what you cover.

Bernstein: I see what you're saying. But would you be able to take a 20...no...and play them through...okay, scratch it.

Boehm: All this stuff at the bottom of the page?

Bernstein: No, left side.

Boehm: Just the left side?

Bernstein: And then still make the change on 21: "A single or all captured frames from the video camera may be further processed."

Boehm: But we're only talking a single frame is processed as a digital image.

Bernstein: So it won't matter if you do it multiple?

Boehm: Yeah, but you're doing single, multiple times.

Bernstein: Yes, okay, fine.

Boehm: Maybe we should say...no, single is fine. I think...

Bernstein: Is a scanning a digital enlarger to me? To my thinking?

Utley: Yes.

Bernstein: I just don't understand why?

Utley: Yeah, it's a digital...well, yeah, the way it is is you change the scan density. That will give the effect of the enlargement.

Boehm: Is that said here, Brian?

Utley: Yeah.

Boehm: Does that say that in here? That changing the scan density is effectively enlarging it?

Utley: It's enlarging it because you're increasing the number of files.

Bernstein: What you said, sir, because it confuses me!

Boehm: And not only that, we may need it. If we're practicing that...are we practicing that?

Utley: That was the whole point of going through the magnification factor and creating a scan density because you've got to create a picture large enough to be what you want it to be as a target image.

Boehm: Never mind!

Bernstein: Okay, but you see it now, right?

Boehm: Yeah, absolutely. I just didn't...

Bernstein: And to me, who doesn't understand the math of all that, it seems very strange that you can take a digital image and it's achieved everything by blowing up...

Utley: Optically.

Bernstein: ...optically. And then you're still putting it in the frame and framing it right until it works in a zoom environment. If I could understand the math, I'd understand that. I understand the theory.

Boehm: Brian, I know what I'm talking about.

Utley: I never questioned that! <Laughter>

Boehm: I do, all the time! No, when I'm thinking enlarging, I'm thinking of analog development enlarging.

Utley: Optically.

Boehm: Optically enlarging, not digitally enlarging. Are you digitally enlarging the photo when you up the scan density? No.

Utley: Let me give you the ...

Boehm: You're upping the scan density.

Utley: Yeah. If you enlarge a photograph, you can set it at a lower scan density than if you don't, then you have to scan at the high density to get the same result.

Boehm: Exactly. That's why I don't think that a scanner is technically an enlarger.

Utley: It performs a function. Because it has a variable scan density...

Boehm: Yeah.

Utley: Enlarging is better [in] the size of the file that is produced. And the size of the file is proportional to the size of the image.

Bernstein: Oh, I see. I see it! It has to be. It effectively does the same thing.

Boehm: Yeah, I guess the scanner can do enlarging, yeah.

Utley: It can produce two different-sized files based on the same photograph being scanned at two different densities.

Bernstein: Which is two different sizes. You see, the brain doesn't think that. You just think 600 versus 900 just means more dots or something. Period. It doesn't mean that you have more area.

Utley: That's right.

Bernstein: But is it?

Utley: When you have more area, you scan at a lower density. You scan at 200 DPI versus 600 DPI.

Bernstein: But what if there's no scan, no density...the camera does that?

Utley: Then it's fixed by what the camera does.

Bernstein: Can you set the camera to be the enlarger?

Utley: No, you have very little control over that. When you go through the digital example, that's what happens.

Bernstein: What?

Utley: You say, well, I got this digital picture, and I want to get a 20-times magnification, and you go through the math and it says "stop!" You can't get 20 times; you can only get 11.1 times.

Bernstein: Why?

Utley: Because you can't get more pixels in the target image than you've got in the source.

Bernstein: So how do you achieve 20 times?

Utley: You have to have better digital equipment.

Bernstein: Okay, so you can buy a better digital camera that gives you more [pells?] for the shot?

Utley: Right.

Bernstein: And as that comes due, that's going to give us greater magnification.

Boehm: Brian, if you took a normal enlargement on a photo, you will keep enlarging until you get the grain level of the photo.

Utley: Right.

Boehm: On a scanner, you won't keep enlarging...I mean, you're going to hit the grain level of the photo, but it's going to be limited by the scanner.

Utley: Well, yes, there are some limitations. For instance, ...

Boehm: An optical one is never limited by the optics, right?

Utley: Yes, optics have limitations.

Boehm: Okay, but way far...

Utley: But what happens is the scanner can't put detail into a picture where it isn't in the picture. So you can take a snapshot, for instance, and try to scan it at 1000 DPI, but it won't look any better than if it was scanned at 150 DPI because that's all the information there is on the image that you can resolve. In other words, you have been destroyed by the processes that printed it. But if you take a transparency—the original source transparency, whether it be a positive or a negative—you can scan that at a very high density, and you can get every bit of information that there is to be obtained by increasing the scan density assuming that you have a scanner that is capable of that.

Boehm: Yeah, with no limitations. Yeah, you're right.

Bernstein: So, should we say all of that?

Boehm: The math is saying it, you just have to sit back and think about it.

Bernstein: Okay, that's good.

Boehm: But you're right, it would be a good thing to say. If you could...

Utley: That's why the math is there.

Boehm: But Brian, if you could say that in English, it would be even better. If, after we cut the phone call, if you wanted to jot a note...

Utley: My brain doesn't work very well in English. <Laughter>

Bernstein: Do you want English American or English British? Let's define that. Let's go right here and define that because that is important.

Boehm: Okay, so what we're saying is that by increasing the scan density, it effectively...well, first of all, what is it actually doing? It's more data or pixels per image which lets you magnify deeper or more...

Utley: Let's back it up. What we want is a large enough...our objective is to get a large enough digital image file to permit the zooming and panning at the desired magnification to take place. There are two ways to obtain that size file. One is by enlarging photographically and scanning at a relatively low density, or by that the source image is of sufficient precision to scan at a high density to create the same size file.

Boehm: But, wait, you don't scan, if it's digital. If you have a digital, you're not...

Bernstein: Wow, you see, you've got to clarify two things: scanning and digitally shooting the photograph with the right specs.

Utley: When you scan, you create a digital file. Alternatively, you have a digital camera which gives you a fixed file size.

Bernstein: Although later in the future, you should be able to do inside the digital camera what you're doing with the scanner, and create, when you get a good enough [pell] count, so to speak, right?

Boehm: But it's technically not scanning, it's the digital files coming directly from the camera is what he was trying to get across.

Bernstein: But it's creating a size.

Boehm: What?

Utley: The end result is to have a file which is sufficiently large...the file of an image when expressed in [pells?] has a large enough area to allow you to zoom into the image and obtain the desired level of magnification.

Boehm: Without pixelating.

Utley: Without pixelating.

Boehm: Okay, that makes perfect sense. Now, when we were talking about a scanner being essentially an enlarger, if you...you see, when I think of a scanner, I think of analog to digital. It's taking optical and digitizing it. It's doing the capturing.

Bernstein: Right, but...

Boehm: On a digital camera, the [CCD] is doing the capturing.

Utley: Which is an array.

Boehm: Which is a scanner. I see what you're saying.

Utley: Right. It is a scanner. Now, the...

Boehm: The scan density number you're spitting out for your HP scanner or for to go buy a new proper...

Utley: No, you can control the scan density of a scanner. You can determine what your scan ratio is.

Boehm: Of a scanner?

Utley: Yes.

Boehm: But not of a digital camera yet.

Utley: No.

Bernstein: Sure. You can go from 300 DPI to 600 DPI.

Utley: Not on digital cameras.

Bernstein: Sure. On my digital camera, I can set it to 300 for low resolution, to high of 600.

Utley: Yeah, but when you do that, you're getting a .JPG.

Bernstein: Right. Or bitmap.

Utley: It doesn't give you both bitmaps. I think it only gives you one bitmap, which is your maximum density.

Bernstein: Well, the highest, 600, is a bit map; the other one is...

Utley: Right. The other one is a .JPG. That's right. That's absolutely right. But there's only one bitmap. You can only go to one bitmap size now. Even the new Nikon 990, it only gives you one size bitmap.

Bernstein: It does?...

<End Side 1, Tape 2; begin Side 2, Tape 2.>

Missing huge section

Utley: You said in the compression step, there are a number of options that you have to tailor the compression process. You can give the compressor a target for how much compression you want. You can also specify to the compression program the size of the compressed image, and that's important because what you do with the image sizing program, the image sizing program will tell you what the size of the compressed image should be to create the target image. Therefore, you instruct the compressor to create a compressed image of that size. Remember you had a minimum scan density?

Boehm: Um, hum.

Utley: Typically, you will scan at a higher density than the minimum scan density, maybe 10%, maybe 20%. So now you have to take that digital file and create a file which is equal to the target image, and you do that by telling the compression program that's what you want. If you didn't have a compression program, then you would try to scan as close to the minimum scan density you could so as to not create a bigger target image file than you needed.

Bernstein: Okay, now, I didn't totally understand that. He then says compression serves to preserve image resolution. Is that a true statement?

Utley: Um, hum.

Bernstein: Thereby providing an optimum enhanced digital image. Optimal is no compression.

Utley: Well, it depends on what you mean.

Bernstein: Well, did you see the...17 going to 18?

Utley: You made the optimizing file size.

Bernstein: But then that needs to be defined here. Do you follow that, Doug?

Boehm: Yeah.

Utley: By optimum, we really mean optimum file size here.

Boehm: Yeah, since the number of pixels is not actually reduced.

Bernstein: No, actually if you size it, they are reduced.

Utley: If you specify a small number, yes. What you really try to do is optimize the file size at the appropriate number of pixels.

Boehm: But the number of pixels changes when you .JPG it...I mean, when you compress it or .JPG?

Bernstein: No, when you compress it and resize it.

Utley: It's optical.

Bernstein: If you're compressing by resizing, you've lowered the pixel count. If you're compressing 1:1, you haven't. Do you follow? So Brian's saying you might have a large image and the compressor says, what do you really need here? Let's get rid of some color. Do you need all this extra size and that height and width? And if not, it does all that for you. Lowest makes the smallest picture, thereby reducing pixel count and providing a less-than-optimum enhanced digital image.

Boehm: Help me figure out what that sentence should say.

Bernstein: I'd strike the whole sentence, to be honest with you.

Boehm: That sounds fine with me. Will we ever need the concept that we preserve the number of pixels, at least at the 1:1?

Bernstein: No.

Boehm: Through compression?

Bernstein: No. Compression is optional. Do you know what I mean?

Boehm: Okay, scratch the damn sentence.

Bernstein: Yeah, okay. Good. I see that we can explain all of this. I would just leave it right after "...be set to other compression factors..."

Boehm: Yes, absolutely. That's the end of the sentence, end of the paragraph.

Bernstein: Exactly. That "64 user interface or control data is associated with enhanced digital image file if necessary and may already be on the user computer."

Boehm: You got it.

Bernstein: It's still associated, even if it is on his computer, so that, in this sense, you might be right here, because you still need to associate the control data user interface with the picture. So that's true.

Boehm: So I'll move your comment down to clarify it later.

Bernstein: Okay. And the only other thing is right after you say on line 6: "...graphic user interface on display upon loading..." Forget "downloading" and just put "loading of the image."

Boehm: Okay.

Utley: Doug, I can give you the wording that I used. At the bottom of page 17, in place of that last sentence which spills over it, I said, "The target image dimensions can be set as parameters for compression thus ensuring an optimum enhanced digital image."

Bernstein: One more time?

Utley: "The target image dimensions can be set as parameters for compression, thus ensuring an optimum enhanced digital image."

Boehm: But what are we optimizing?

Utley: File size here.

Boehm: The file size?

Utley: We're getting the maximum image quality and minimum file size.

Bernstein: For what we need to achieve. That's right. That's fine. Because that's here...

Boehm: "...thus ensuring optimum quality and file size"?

Bernstein: You're not ensuring any optimum qualities by compressing. You're actually decreasing quality at that point.

Boehm: That's right. So, "...thus ensuring an optimum compressed file size"?

Bernstein: Yes. "...compressed file to image size," right?

Utley: No, file size.

Bernstein: And that does say it, by the way. Okay. Now, go down to line 8: "Image file [ ]. The user interface program is associated with the enhanced digital image file such that the combined"...take "download" out...

Boehm: Okay.

Bernstein: "...the combined file or files..."

Boehm: Well, it's not combined if it's files.

Bernstein: Well, no, it could be three files, or it could be all packaged into the image file someday. We don't know.

Boehm: Well, I've got to define that better when we hit the claims because I'm thinking about not...we're claiming that we're...that the end product is a file, an enhanced file, and then we get lost in the mucky-muck when we say what we are really providing. We're providing a .JPG and an applet.

Bernstein: Well, we don't have to provide...they just need to combine somehow. We don't need to provide all the elements.

Boehm: Yeah. The ultimate thing that we provide may not be a file—an enhanced digital image file—does it have to be a file?

Bernstein: An enhanced digital signal?

Boehm: Data?

Bernstein: Data?

Boehm: Or signal.

Bernstein: Yeah, okay, so make that global change. That's fine. It doesn't have to be a file necessarily.

Utley: No.

Boehm: Well, it would have to be digital data, though.

Bernstein: Right.

Boehm: It doesn't have to be an analog signal.

Bernstein: Right. That's true.

Boehm: So I don't need the word "signal."

Bernstein: But you might not have to save it as a file at some point in life.

Boehm: Well, data incorporates if it's a signal or not because the data would be on the signal, right?

Bernstein: Perfect.

Boehm: So I don't need signal because I don't want to go analog on people.

Bernstein: No, I understand. "The combined files, like computer [ ], will automatically launch the graphic user interface.." It doesn't have to automatically, but it can.

Boehm: Okay, "can."

Bernstein: Right. "...decompress the digital image data and display a portion of the digital image data within a viewing window having a predetermined viewing size."

Boehm: Okay.

Bernstein: Correct? Putting in a portion of the data.

Utley: Actually, when it comes up, it tries to present the whole image.

Bernstein: But in those virtual tours.

Utley: That's right.

Bernstein: So we want to say "a portion of," or "the entire or a portion thereof."

Boehm: "...at least a portion..."

Utley: "...at least a portion..."

Bernstein: There you go. Okay. Skip now to the next page. You've got my seamless word there, but I don't want it.

Boehm: Don't want seamlessly, huh?

Bernstein: Doug, but you say "...to or from a host computer..." on line 11 "...a Web server, Web site, or a Web page...."

Boehm: Um, hum.

Utley: TV?

Bernstein: I don't know if you want to throw it in there.

Boehm: I'm lost where we are in terms of...

Bernstein: Page 19, 11.

Boehm: We're at figures 3, describing the flowchart of figure 3?

Bernstein: Right.

Boehm: Which is what...oh, great. Is that what that says? Oh, it's not a flowchart, it's an image...figure 3 is an image. <Reading out loud to himself; quickly and maybe not completely.> "Referring to figure 3, an exemplary screen print is this. Once the user interface...the resulting image is ready for uploading to a network server projection..."

Bernstein: Well, that was not my thing. "...the resulting image can be uploaded to a network server..."

Boehm: That whole thing, Eliot, on that, you kind of have to take it with a grain of salt because all of the...this is the description of the preferred embodiment.

Bernstein: Okay, okay.

Boehm: It's like the background.

Bernstein: That's what we did. That's fine, that's fine.

Boehm: This is really preferred.

Bernstein: I know, you see what I'm doing now?

Boehm: Yeah, and that's good because that makes me want to support it more so I can broaden the claims...go somewhere with the claims. So technically, Steve's correct by saying "uploading" because it's his-preferred embodiment.

Bernstein: Right.

Boehm: But I usually say "can be" or "is" or "may be," and he doesn't like to say "preferably," but I do. It's just a semantics.

Bernstein: No problem. Go down to line 19, "...and it should be the result of a download/upload..."

Boehm: What's being...

Bernstein: "...the results of loading the enhanced digital image to a user computer..." would be the right way to say it.

Boehm: Yeah.

Bernstein: So take out the "down" and trim it to "loading."

Boehm: Yeah. The same thing to the network server. If you load it to the computer 22, it's providing it to a network server. I don't like this loading...

Bernstein: Yeah, I don't. It's very tight on us.

Boehm: Yeah, and it infers uploading and downloading.

Bernstein: I agree.

Boehm: But, again, he's right because in the preferred embodiment...

Bernstein: That's fine as long as later we clarify and make sure we're protected on all of these issues.

Boehm: <Reading out loud to himself.> "...but download of the enhanced digital image file to a user computer..."

Bernstein: And that's true in the preferred embodiment...

Boehm: But that's for load over the Internet is what he means.

Bernstein: What?

Boehm: He means download off the Internet.

Bernstein: It could be an intranet. It could be...

Boehm: The network. Off the network is what he means.

Bernstein: Right.

Boehm: But isn't it a download off the network? Because when you put something on a network, you upload through the network and download from the network. So he's right, but...

Bernstein: Yeah, you see the issue.

Boehm: Okay, it doesn't have to be. I agree.

Bernstein: Okay, and I've got that next one covered. Go now to page 20. Okay, we've got a big problem here. "The program loads additional digital image data from the enhanced digital file..." Scratch "image stored in memory, for example hard drives," and just say, "program loads additional digital image data from the enhanced digital file to the display viewing window by providing additional data from the source to the viewing area seamlessly..." or something. Or just make it a period after "...display viewing window." You follow me?

Boehm: Uh, huh.

Bernstein: "...to the user display viewing window."

Boehm: "...viewing window." Period.

Bernstein: Okay, any of that other stuff. Okay.

Boehm: <Reading out loud to himself.> "...the user computer provides the zoom..." Oh, "to provide the zoom to view..."?

Bernstein: Excuse me?

Boehm: Holy smokes. Wow, the paragraph starts out in figure 4, which is figure 4, take a look at, we're about ready to zoom or we have zoomed. He has, "The user has actuated the zoom buttons to zoom in to the digital image data..."

Bernstein: What line are you on?

Boehm: Page 19 at the bottom.

Bernstein: Line what?

Utley: The bottom part.

Boehm: Figure 4. "The user has actuated zoom buttons 88 to zoom into the digital image." Period. I don't want to say "data," right?

Bernstein: Right.

Boehm: "In response, the user interface program, which is the applet, loads additional digital image data..." Eesh, I don't like the "loads" because that says it might be loading it off the network.

Utley: Yeah, I don't either.

Bernstein: "The digital program..."

Boehm: "Provides"?

Bernstein: Yeah, because it's providing it from the enhanced digital file.

Boehm: "From the enhanced digital image file..."

Bernstein: Right. "...to a user's display viewing window."

Boehm: And then, "2. Provide a magnified view of the digital image" or "zoomed visual..." I don't like the word "zoomed."

Bernstein: Yeah.

Boehm: What I would like to say is, "Provided additional image data from the enhanced digital image file, without..." I want to make the clarification there that...

Bernstein: "Without additional ..."

Boehm: "Without another download from the network"?

Bernstein: No.

Boehm: We may not need it here if it's there before, but that's my...I may have to...

Bernstein: Put a question mark there because I see it, too.

Utley: Why can't you say...why can't you relate it to your resolution: "Provides additional image resolution data" because you're improving, increasing the resolution of the image.

Bernstein: As you zoom.

Utley: As you are zooming.

Bernstein: That's actually a great way to start the whole damn thing!

Boehm: Now he tells me!

Bernstein: No, but what we've been looking to describe, he just...

Boehm: I agree. Steve and I have this battle too because you guys weren't...

Bernstein: Struggling.

Boehm: Consistent in the terminology either. No, I agree. If you're talking length times...numbers of pixels, that is resolution.

Utley: So you're providing additional resolution data.

Boehm: That doesn't sound right to me, Brian.

Utley: Well, what you're doing is you're taking a portion of the image and you're expanding it, really, with additional pixels. So that's additional resolution data.

Boehm: Oh, I see.

Bernstein: Right.

Boehm: What you're saying is it's an adjective...it's digital data that has an image encoded with enhanced resolution. What are you providing? You're not providing resolution, you're providing data.

Bernstein: Data evaluation, necessary for the resolution.

Utley: But it's pixel-based data.

Boehm: And since it's pixel-based data, it will...

Bernstein: Or additional data for higher resolutions.

Boehm: Yeah, you're getting warm.

Utley: See, what's happening is that, to put it in discrete terms, you're going from a case where you have many source pixels per viewing window pixel, and you're reducing that ratio as you zoom in.

Boehm: Right, until you hit the pixelation limit.

Utley: Until you hit 1:1.

Boehm: Yeah. Okay, let me see if I can patch that up.

Utley: That's why you are providing additional...

Boehm: We've got a lot of clean talking about to do, so let's move on. Line 15 now, page 20.

Utley: "...greater than two times."

Boehm: "...It is important that the digital camera is configured to acquire a digital image. In this step, the camera is..." I would say, "...preferably set to the highest resolution."

Utley: I think in principal, that's what we would intuitively do; but essentially, should be generalize on that?

Bernstein: Yeah, there'll be variations on that.

Utley: Because as technology evolves...

Boehm: Right. You set the camera to acquire at least enough pixels to magnify...

Bernstein: For the magnification process.

Boehm: But if it's high resolution.

Bernstein: Right, then you get more, even if there's higher resolution available.

Utley: You see, we don't have cameras that give us very much flexibility here today, but tomorrow we'll have more flexibility.

Boehm: "...In this step..." it's possible the camera is set to acquire? "...at least enough pixels..."

Utley: Well, you notice that the camera [ ]. The camera has a storage device. It always takes the same number of pixels; it's what it stores that counts.

Boehm: Does a user have any clue of what that is? in other words, how would I know that my camera would do a magnification of 20 on this file?

Bernstein: You don't.

Utley: What it tells you is you create a high-resolution picture or a low-resolution picture, and if you set it to high, you'll only get a few pictures for whatever your storage medium is.

Bernstein: But I'll be you later, the camera will come out with a dial-in-your-zoom feature. Boom! It'll size it and appropriately....

Utley: In fact, they're already saying if you set it at this setting, it's equal to an 8x10; and if you set it to this setting, it's a 5x7.

Bernstein: Which is doing what we're doing.

Utley: That's already happening.

Bernstein: Right, well catch them, because I doubt it was happening in the past.

Utley: It wasn't.

Bernstein: Right. So it's new camera technology that might be infringing already. Which, you know, I see it going in the scanner...all these things.

Utley: You know, sooner or later, Brian, if what you said yesterday was correct, that this is all new, the ability to do it, we'll probably get every single facet of imaging that you know have a zoom factor. Why wouldn't you apply it to every facet?

Utley: Um, hm.

Bernstein: Okay.

Boehm: We could get tripped up, though, since I'm not an expert in the camera art. It might have been done on purpose; and if our claim reads on it, ...

Bernstein: Okay, but what if it was done for a different purpose, and we have a different purpose?

Boehm: If our claim reads on what was done, and it was...

Bernstein: So it wasn't done because I mean...

Boehm: Our camera will already have the capability of providing this file, and our claim says "providing this file," we're in trouble.

Bernstein: So optionally do it. Make it dependent.

Boehm: My secretary is saying we've got to get the checks today.

Bernstein: Okay, but definitely cover that because that's what's going to happen.

Boehm: In the future to set the camera.

Bernstein: No, it's happening. According to Brian, it's happening right now as we speak, so definitely get it in here.

Boehm: "...set the camera, if possible, to the desired magnification or scanned density."

Bernstein: Correct. "...to create that maximum zoom factor." Okay, claim 1, we dealt with.  
Now "providing" on line 2, we're going to make this a dependent claim now?

Boehm: I'm sorry, I lost you again.

Bernstein: I'm on page 24, claim 1, third paragraph of it, "...providing..."

Boehm: Did he skip some more math, Brian?

Utley: Beg your pardon?

Boehm: Did he skip some more math?

Utley: We just skipped over it. We've already done it.

Bernstein: I've never had to grade Jim and his math. Nor Brian's. I've got to tell you, I'm  
very impressed with Brian's whole grasp of the situation of the math here.

Boehm: Oh, the analysis is great.

Bernstein: It's incredible. It helps me understand it.

Boehm: Are we on 22, Eliot.

Bernstein: We're on 24.

Boehm: On 22, do we not worry about...oh, these aren't your scribbles, okay. I'll play  
with that. 23?

Bernstein: 24.

Boehm: 24. Got it.

Bernstein: Get rid of the "...size at least twice..."

Boehm: Yep, we'll do the "...greater than..."

Bernstein: "Providing" on line 8 becomes a dependent claim.

Boehm: Right.

Bernstein: Why do we have 10 times 100 times?

Boehm: Because if, again, the Prior Art happens to do it at two times but they do it...

Bernstein: Well then you should do 10, 11, 12...

Boehm: Our claim 1 is gone.

Bernstein: But then you should do 10, 11, 12, 13, 14, up to an infinite number.

Boehm: No, and here's the theory, and this is how dependent claims work, and here's the  
analysis that we go through. If claim 1 now says "greater than one," if  
anybody is doing it at greater than one, then claim 1 will fall. It's  
dead.

Bernstein: Okay.

Boehm: If anybody's done it before, your priority date's before you. Now we move to claim  
2. Has anybody done it at least ten times or at least twice will be my  
next claim.

Bernstein: Right. Ah, that's where you get your "at least twice" in here.

Boehm: Exactly. If the guy didn't do it at least twice, was there a good reason? Did he  
really not have the same invention? Well, hell, yes, he didn't have the  
same invention.

Bernstein: That's right.

Boehm: But it just so happened that he did more than one. My claim 1 is dead, and I can now jump to claim 2, which there are at least.

Bernstein: Got ya.

Boehm: That's how dependent claims work. That's why I have dependent claims there because you can't modify claims once they're issued.

Bernstein: Right.

Boehm: The reason why Steve had all those goofy 100s, and 200s and 300s in the spec...

Bernstein: Right?

Boehm: Is because during prosecution, we have them in the claims. And if the Prior Art comes out of the woodwork during prosecution, you might have to go say, oh, well, we didn't mean that, we meant above 100 or above 200.

Bernstein: Gotcha.

Boehm: It's pretty important.

Bernstein: Claim 6, "A single data file to be two files, three files, four files..."

Boehm: Right.

Bernstein: Why?

Boehm: Well, I like that claim.

Bernstein: Well, it could be in the digital image file, I like that, but it could be two, three, or four.

Boehm: But without the claim, ...

Utley: It says you have now to literally [ ] everything into a single file...

Bernstein: One file.

Utley: ...and you hold that patent.

Bernstein: Oh.

Boehm: And you see, claim 6...

Bernstein: <Talking in background to Utley.> He's got it in one file.

Utley: Right.

Bernstein: [ ] an image file with an applet built into each.

Utley: I'm on that path.

Bernstein: Beautiful.

Utley: If I had some time to work on it.

Bernstein: I got it. <Laughter.> Is the method of claim 6—we're in the user interface—a Java applet? Why limit it to Java? There are other forms that do this.

Utley: It's already in there.

Bernstein: Where?

Utley: It says in the first claim.

Bernstein: Okay, "...providing a..." which is now going to be a dependent claim.

Utley: It's "...providing the user interface continues to display..."

Bernstein: Okay, which is dependent on it.

Utley: It then further says, okay, and it may be a Java applet.

Bernstein: Right. Okay.

Boehm: Which sort of narrows it up.

Bernstein: Right. Okay. There are other things we could name there—plug-insurance, acrobats.

Boehm: It's only limited if you enforce that claim and if the guy infringes that claim.  
If it's not a Java applet, this claim won't do you any good. If it is a Java applet that the infringer uses, then you get to not only throw two claims or three claims at him...

Bernstein: What if it's Active X?

Utley: Yeah, Eliot brings up a good point. There's another technology, which is called Active X...

Boehm: Wonderful.

Utley: ...which already works with Windows, but...

Boehm: But the idea about...can you genericize that to say it's a data code segment?  
What's an applet? It's a small applications program, right?

Bernstein: Right.

Boehm: Well, let's say that.

Bernstein: Okay.

Boehm: Or we could just say an applet.

Utley: You could say Active X...

Bernstein: Java applet, Active X applet, or other...

Utley: You want a separate claim. Each one should be a separate claim.

Bernstein: Right.

Boehm: What I have to say is "...when the user interface is one of the following, Java or Active X."

Utley: Or "other."

Boehm: No, I can't do "other."

Bernstein: Can you do "other" in a new claim?

Boehm: Nope. The word "other" is invalid in a claim.

Utley: <Inaudible comment.>

Bernstein: In frame 1 because the [ ] user interface.

Boehm: Yeah, other claims have...

Bernstein: Okay, that's perfectly fine. In that "...further comprising, compressing...",  
that's optional, right?

Utley: Yeah.

Boehm: Everything here that's dependent is optional.

Bernstein: Okay. "...to a network server..." how about "to a set-top box"?

Boehm: Is that worth a separate dependent...

Bernstein: Absolutely! It's one of the raging things coming down the pipes.

Boehm: Okay, "...set-top box." Can you give me an example of a today technology set-top box that this will work in, and then tell me on figure 1...

Utley: We just happen to know there's development activities going on in a number of different of companies, and they're heading in this direction.

Boehm: Yeah, but your claims have to be buildable by somebody with ordinary skill in the art. Set-top box...

Bernstein: That's just a display system.

Utley: Web TV in an example of a set-top box.

Boehm: Oh, okay, that's right.

Utley: A set-top box that takes streaming information and then presents it on a TV screen.

Boehm: So what's the cable box sitting on my mom's TV? It's just a cable box that goes to the VCR on your TV. That's not a set-top box?

Utley: That is a set-top box. A very simple one.

Boehm: Yeah, it doesn't have a display on it. It uses your TV.

Utley: It uses your TV, but the newer ones all have computers in them and memory and can convert different formats.

Boehm: Right, but the set-top box itself doesn't have a video display.

Utley: No, it uses the TV as the video.

Boehm: Yeah, which is Web TV.

Bernstein: So to put in a TV claim.

Boehm: I don't have time to go look at claims right now. We're going to be crunched to get this on file tonight.

Bernstein: Okay.

Boehm: Okay. So my question, again, can you give me an example...you did, Web TV. It's a set manufactured by who? Or is it in there already.

Utley: Microsoft has a Web TV. And Dell had a Web TV; they just pulled it off the market. But Web TV is a primitive form of what's coming.

Boehm: I know, but you can't patent what's coming unless you can give an example of what you can build today,.

Utley: Web TV.

Boehm: Good. And I wanted to find out where that was in. Do you remember? I'll find it later.

Bernstein: Okay. Page 26, lines...

Utley: I'm not through with this one.

Bernstein: Okay.

Utley: Back to the mid area again. "The advantage of claim 1 is it applies to enhanced digital files which are not compressed." We have to make a provision as a dependent claim for transmitting over a network because the one that provides for transmitting over a network is tied to a compressed file.

Boehm: True, but what Steve is doing here in claim 8, there's the compression hanging on claim 1. Now if you do a compression, you can throw claim 8 and claim 1

and them. And if you upload it to a network server, now you can throw claim 9 and 8...

Utley: As long as you don't...

Boehm: if it's on a network server, but it would have to be compressed then. Oh, this is the one you talked about before.

Utley: Right.

Boehm: I'm sorry. So you need number 9 dependent on 1.

Utley: Right.

Boehm: Thank you. That's what we talked about yesterday.

Bernstein: That was it? <to Utley> Okay. 26, line 6,

Boehm: Of what claim?

Bernstein: 13.

Boehm: Line 6 of claim 13...oh, the "...least twice...

Bernstein: ...greater than."

Boehm: Okay. I don't remember...do we have a picture claim, meaning an independent claim that's fairly narrow that reads on your preferred embodiment in your product? We should because that's maybe what we have to go with because now that we've...here's my thinking...and this, Steve and I discussed this ad nauseam here. We're going to go with claim 1 in the EPO. The reason is we're filing a PCT application now and a U.S. Claims are cheap and free—not free, but they're cheap—and they take multiple claims in the PCT and in the U.S. But when we split to Europe, they don't like multiple claims. They will give you one apparatus and one method only if they are related. So we basically pick our best independent claim, but not all the time your broadest, believe it or not because they may find something that is...since you can't...how do I explain this? If you have your best claim...our claim 1 now is kind of reaching over our product that we really know we can...that we're comfortable with what we can get, and your product with what you can get right now is too narrow because somebody can modify it. What I usually do in Europe is go somewhere in the middle to get something that's broad enough to cover your product but still in a real-world application and not trying to claim the world because you don't get that much leeway to amend in Europe.

Bernstein: Is this to the "...least twice versus greater than one"?

Boehm: If there's little or no chance that an infringer is not going to do at least two, that will buy you...

Bernstein: There are chances that it might be.

Boehm: But what's the chance that Prior Art is going to come out of the woodwork...

Bernstein: None because...

Boehm: No, there's very good chance that Prior Art's going to come out of the woodwork and blow all of it...

Bernstein: Between 1 and 2?

Boehm: It's possible.

Bernstein: Well, that's what I'm saying, if that's the case and somebody else beat us to the punch, we should have a claim that takes us all the way from "greater than one." You don't want to box me into that statement; just make it as a claim.

Boehm: Okay, so you're saying that we would file the broadest idea in Europe? Well, we'll discuss that later when Europe rolls around.

Bernstein: Okay.

Boehm: That was why I did...the practice is to do different claims of varying scope and different formats.

Bernstein: Okay, on 15-claim 15-"moving"...is that panning?

Boehm: Yes.

Bernstein: Okay. [Plurality] Jim didn't like that because it means at least two.

Boehm: Jim didn't like it?

Bernstein: Yeah, that's his note. Yeah, absolutely, and that's what it means. That's the whole point of claim 16, which is dependent on 14, which is dependent on 13. Are you with me?

Bernstein: Yes.

Boehm: You're down in the mud now, and plurality may be thing that saves your butt.

Bernstein: Okay.

Boehm: Because your product does these, right?

Utley: Yes.

Boehm: Your preferred embodiment product does these.

Bernstein: Okay. Then my only last question was, can you throw something in to cover the game world? That specifically relates to gaming and flight simulation?

Boehm: How would we do this? In figure 1.

Bernstein: You'd be able to now use games differently, and you differently can use flight simulators differently.

Boehm: Okay, look at figure 1, Eliot.

Bernstein: Yep.

Boehm: What changes? Just the definition of what 28 is, right?

Bernstein: Figure 21, the display monitor, the display system is what you're saying?

Boehm: No, no, no. Figure 1. What changes when you go to games and flight simulators?

Bernstein: Because in those, the displays become now dependent of parameters of the game or the flight simulator that drive the display window.

Boehm: That's fine, but there's nothing structurally here that changes other than the user computer. It has now the flight program or the game program on it, right?

Utley: What happens is the user interface actually becomes an application-driven interface.

Bernstein: Right.

Utley: That's probably the key difference. And the question was, can we convert that user-driven interface to an application-driven interface?

Boehm: Meaning like a flight simulator program?

Bernstein: Absolutely.

Utley: So that what is displayed is under control of the program and not under control of the user.

Bernstein: Right. Because, you see, you don't want the pilot maybe to be able to do a nosedive. You might want him to be flying along and have a program that says...shock him, make him dive...

Utley: Well, with all the graphics, that the program knows where he is, and therefore moves the display according to where he is and what he's doing.

Bernstein: Right.

Utley: So it's...

Boehm: But under the control of the computer application of its own as opposed to...

Utley: Right.

Boehm: I see. So basically, it's not a network anymore. It basically doesn't fall into figure 1.

Utley: Well, it...

Bernstein: Figure 1 better not tie me to a network.

Boehm: Figure 1 ties you to a network as your preferred embodiment. This'll be probably what's on your...

Utley: It doesn't matter whether it's on a network or not.

Bernstein: Okay, as long as that's true, that's fine.

Utley: What we want is to make sure that what we call the user interface in here can also be a computer-based application interface.

Boehm: Okay, in order to do that, we've got to stick a claim on it or we have to put support in the spec now to do that. So what would we do? All I see that we'd do is...

Bernstein: You could broaden user interface.

Boehm: Yeah, we'll broaden the definition of user interface in the claim.

Bernstein: And then I'd throw in a quick claim that says those two things as examples of it.

Boehm: Good idea.

Bernstein: And we'll let you get to re-writing.

Boehm: Hang on a second...don't go away. "...broaden the user interface to have a control of either the server competitor or the user computer." Right?

Utley: Right.

Utley: And when we do that, that really then lays right on top of that disclosure that I made that we had talked about because what one of the items that I wanted to accomplish was to be able to control the display from the computer itself, or from an application, rather than from the user. Remember that?

Boehm: Yeah, sure. And in this example, the flight simulator application program would control the zoom and pan of the display?

Bernstein: Yes.

Boehm: That means you still provided a digital...claim 1 would still say that somebody at sometime provided digital image files for viewing on a computer...

Utley: Yes, right.

Boehm: So claim 1 would catch that.

Utley: Claim 1, as long as the user interface can be expanded to include a...

Boehm: Either a downloaded applet.

Utley: A program interface.

Boehm: Any program.

Bernstein: Right.

Utley: Right. And we won't have to say where the program resides.

Boehm: Yeah.

Bernstein: Yeah, because definitely in this world, gaming wouldn't know where to put it because now multiple users can access one central game.

Boehm: Great thought, guys.

Armstrong: Always save some of it for your last-minute work.

Boehm: Yeah, yeah. Well, I've got an hour. That's all. Brian, let's talk about the definition of force target and all that other garbage because I got confused in there, Jim got confused. It's in the specs...Steve did that. Do you know what page it's on because it's all over my desk.

Utley: Yeah, it starts at...

Bernstein: Okay, Doug, I'm done, right?

Utley: Yep.

Bernstein: Can you send me a copy of that? When do you think you'll be sending out a final copy?

Boehm: What is your...it's going to take me hours now.

Bernstein: I know.

Boehm: Worse case, I would say I could send you a draft at 8:00...something like that.

Bernstein: Okay, perfect.

Boehm: Now, are you going to be there today? Mail it or what? I could email it to you if you want. That would be easiest.

Armstrong: Then we're going to need some prints, right? Some signed copies?

Boehm: No, all you have to do...

Bernstein: Is verbally.

Boehm: All you have to do is [ ] that this is your invention; and when you go to read it the second time and sign the declaration, that you won't make any changes to the spec, and that was your invention the date that we filed it.

Utley: You can send one to me at my home.

Bernstein: And send one to Jim.

Boehm: But do you guys want another pass tonight.

Bernstein: Another what?

Boehm: Another pass at it. Do you want to re-read it?

Bernstein: I do. I absolutely will re-read the changes. I'll have Jim re-read them, and by 9:30 hopefully we'll be done reading it and be done.

Boehm: Okay, I'll see what I can do to push this through then.

Bernstein: Cool. Hopefully it'll just be a re-read and we'll say it's right.

Boehm: Yeah.

Bernstein: Because if something jumps at us...

Boehm: How do I get it to you? Do you want me to fax it? I want to email it. That's quicker for me.

Bernstein: Great, email it.

Boehm: To whom? Where? When?

Bernstein: Eliot@iviewit.com, brian@iviewit.com, and jim@iviewit.com.

Utley: No, send it to me at...<end of tape>

Transcription of Patent Meeting  
Conducted August 4, 2000  
Participants:  
Eliot Bernstein, Jim Armstrong,  
Brian Utley, Steven Becker, Simon Bernstein  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Armstrong: Are we aware of all the important dates I know you probably are, but are we +  
+Brian made aware of all of our deadlines and contingencies relative to  
those deadlines +~~that we~~ that we're not left with...I was a little  
surprised that a final pack that's been in the works for a year, and I  
know you weren't involved for a year, but in the works for a year required  
that Eliot and I spent the entire night and morning reviewing it in order  
to get it done.

Bernstein: What bothered me about that as well is that we'd go through the math, and then  
suddenly you have a document Brian sent you several days earlier regarding  
the math that has a bunch of changes in it, and none of that's in there. I  
mean, I don't understand that.

~~Becker~~Armstrong: ...was changed from that document anyway.

Boehm: Yeah, it was changed from that document anyway. I was working with Brian, who I  
thought was the master of that math, but...

Bernstein: But he had sent you an updated ~~map~~ math three days earlier that didn't appear in  
the final document that we were trying to...

Boehm: Okay, I don't know. Steve was handling that. I don't know whether...you know,  
Steve says he did put it in there, but then I don't...

Bernstein: But then we go through the document that we're filing, and it's not there.

Boehm: Okay, but we were on the third draft when I took it over. You guys had  
opportunities like crazy to...

Bernstein: But that's the thing. Brian had sent it to you earlier, and it still wasn't  
appearing in final drafts.

Boehm: If that's true, then something crossed in the email because Steve said he put it  
in there, and maybe there's a piece of the math missing between the  
crossing the emails. You're right in terms of...

Bernstein: Is Steve there?

Boehm: I don't know. He probably is.

Bernstein: And then my other question is quite a simple question my dad asked about  
electrical engineers being mathematicians and said, "Didn't they sit and  
pencil out the math of all this themselves?"

Boehm: Uh, huh. Here's what happened on that. Steve was filling the application. We  
worked with Brian and you, Eliot, on the application. In some of the  
letters and emails he said that he doesn't understand the math.

Bernstein: I'm not getting any of those.

Boehm: Huh?

Bernstein: I'm not getting any of those emails.

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy?

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~-out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~Armstrong: Don't jump to conclusions.

Bernstein: No, I'm not, but if this is correct, we've got some fundamental things that need to be discussed.

Boehm: If what's correct?

Armstrong: If he's correct about the math being wrong, but let's check it...

Boehm: No, I'll bet we could get a good patent if the math is totally wrong. I think we're barking up a tree here that's not a big wall.

Bernstein: But wait a minute. The question is if it still remains wrong and we gave you the right changes, it should have been filed right. All the sudden I'm left with a patent that...

Boehm: Okay, talk to Brian.

Bernstein: I will.

Boehm: Brian gave me the right changes. I filed what Brian gave me.

Bernstein: Okay.

Armstrong: Okay.

Boehm: And I don't mean to...you know...yell out of that, but that's what happened.

Bernstein: That's no problem. I totally hear that.

Armstrong: Thanks, Doug.

Boehm: Okay. Talk to you Monday.

<Hang up phones.>

Bernstein: 8/4/2000. 8:30 Doug Boehm conference call. Jim Armstrong, Eliot Bernstein. Steve, Jim, everybody, I'm taping the conversation, 8/4/ patent discussion regarding Docket 57103-120 with Brian Utley, Steve Becker, Jim Armstrong, Si Bernstein, and Eliot. Okay, guys.

Becker: [ ], too, if that's all right with everybody.

Bernstein: Yeah, did you get the fax from Jim?

Becker: I haven't received it yet.

Armstrong: It was sent actually to Doug on the "cc" line, but to a machine at 297-4900.

Becker: That's right. It'll go to our central fax department, and I just phoned up there and asked them to deliver that to me when it comes in.

Bernstein: Okay, but you've got the patent in front of you?

Becker: I don't. I don't, but I can get it.

Bernstein: Okay, well, let's do that.

Becker: Okay. I'll need a minute. I've got to go over the Doug's office.

Bernstein: Okay.

Armstrong: The fax is on its way to you now.

~~Becker~~Simon: It's on the way to me? |

Armstrong: Yeah.

~~Becker~~Simon: Okay, then I'm going to put you guys on hold... |

Armstrong: It's not done yet.

Becker: Well, I've got to go upstairs and get it, so hold on.

Armstrong: Never a dull moment.

UtleyBernstein:----- They didn't put...they didn't put in what we corrected them on... |

Bernstein:-----~~Inaudible comment.~~ |

Utley: And I did it again on Wednesday night.

Bernstein: And he said to me all these changes were in when I went through them at 11:15 at night with them. That all the math has been changed. I was looking at him and said these haven't been changed. He said, "No, I'm working on a copy that's been changed. I'm going to send it to Brian, and sign off..." So, well, now, again, we're back at this same thing. How do we change things? What effects does it have on us?

Utley: This has no effect. Mathematically, that's...

S. Bernstein: Were those faxed?

Bernstein: YeahYes. |

~~S. Bernstein~~Armstrong: Okay. Nine pages. |

Utley: But obviously this has an effect.

Bernstein: A huge effect because you have completely altered numbers.

Utley: Well, you could explain it; but the only way you could derive this is by having that be the square root.

Bernstein: But this is wrong that he missed this, and isn't that on your current math? Do you have your sheet that you did...current math...that he said he didn't have, had, whatever? Brian, do you have the patent book?

Utley: Yes.

Bernstein: Okay. I need to borrow that.

Armstrong: I would think that in a patent document being as important to us as it is, there's not an acceptable level of error. It's either got to be all right, or it's not acceptable.

Bernstein: Oh, and that's what we heard from Doug this morning. So, I mean it's hard to fathom this.

S. Bernstein: You know what guys? I don't understand. Why doesn't somebody... take five minutes, and tell me what...because I sat~~u~~ it in a meeting with all the lawyers, and... |

Bernstein: Here, Dad, let me give you an example. Is 2,560,000 times .8 the same as 2,560,000 times 1.25? Yes or no?

S. Bernstein: I doubt it!

Bernstein: Okay, well, that's the fuckin issue. That's how far off these are. |

S. Bernstein: Okay.

Becker: This is Steve. I'm back, and I can't seem to find that file. Doug is out today. You guys may know. So, I don't know how much help I'm going to be.

Bernstein: Okay, well, do you have the fax? Hey, ~~DP~~-Man, you've got the file right there. Just email it to him. |

Becker: Here it is. I've got the fax now.

Bernstein: ~~Okay~~---Steve, Doug also mentioned that you had emailed some correspondence to us that you didn't think the math was right earlier? I have no records of any of that. |

Becker: No, what I did was I faxed the draft over on Monday night, which incorporated some additional disclosure that Brian had sent. Basically, it was examples. It had the equations set out for both print film and digital examples, and then he had three examples for print film and one example for digital, and I essentially...I exactly basically cut and pasted that into the application.

Bernstein: Well, the application we got from Doug didn't have any of that. cut and paste because what it had was the old stuff and Brian referred to having sent this to you several days earlier and yet it wasn't in there.

MISSING SECTION GO BACK

Becker: I don't really know because at that point Doug was down there with you guys, and I presumed you were reviewing it on like Tuesday and Wednesday. And the Doug said he would take care of just...because we figured there would just be some minor changes after we'd incorporate all of that.

Bernstein: Well, it wasn't incorporated, so there were huge changes.

Becker: Oh.

Bernstein: And it would have been filed completely wrong had it not been for Jim Armstrong reviewing it. Everybody would have nodded off on this and accepted wrong, completely wrong, filings.

Becker: Maybe he should be part of this conversation.

Bernstein: He's on this conversation.

Becker: Oh, good. Hi, Brian.

Utley: Hi, Steve.

Bernstein: Brian's here and Jim Armstrong's here.

Becker: Okay. Well, the only link we're missing here is Doug because Doug took the last few steps of incorporating comments and actually filing the application on Wednesday.

Bernstein: Hey, ~~EB~~...~~EB~~-man, forward him a copy of the final draft, would you?

Armstrong: And that, Steve, I think the most important question to have answered is what are our rights and obligations and opportunities relative to correcting this without any ill effects to us?

Becker: Yeah. There's plenty of opportunity essentially. We can file...if there are substantial errors in the application as it was filed, we can simply file a new application as soon as we get those fixed either on Monday or Tuesday or what have you. The goal of filing on Wednesday was to maintain priority back to the provisional application, which was filed a year ago.

Bernstein: So, did we lose that if they're wrong?

Becker: No, because we can only claim priority back to the extent that the subject matter was originally disclosed in the provisional filing of August 2<sup>nd</sup> of last year, and none of these equations were filed back then.

Bernstein: But the original process was.

Becker: Right. And the original process is the [ ] preserved in the application. We're just talking about the details of the math examples that are in here. So we haven't lost anything.

Bernstein: Will we lose claiming back to the priority of the original provisional? So we did lose something, or am I incorrect in what I'm hearing.

Becker: Yeah, No, we didn't lose...the original provisional can only provide priority for what was originally disclosed, and the math was not originally disclosed, right?

Bernstein: Well, no, but the math is a subject of the invention, not vice-versa.

Becker: The reason I'm putting the math in there is essentially to provide concrete examples...

Bernstein: Of the invention.

Becker: Right.

Bernstein: But the invention was in there as of the priority date, and we had already talked with Chris Wheeler and everything regarding this. Were you on that conversation?

Becker: I don't remember.

Bernstein: Well, Brian, you were on that conversation. It's the conversation where we were going back to try to get the soonest date on the filing and correcting the provisional to encompass all of these things.

Utley: Well, you can't correct the provisional, but you can...what it does is it claims back for everything that references back to the original, but then incorporates all the new elements to bring it into...to make it into more of a complete statement.

Bernstein: I'm not sure I understand this. It was my understanding that we were going back to Ray [Joao's] patent and fixing it by inserting what we have here. When I talked to Doug, that was what he was under the impression we were going to do, and now that's all changed as of today.

Becker: You really can't fix a provisional application.

Bernstein: Not the provisional-the ~~regular~~-Ray Joao filing of August whatever-whatever day it was.

Utley: No, in March. March 24<sup>th</sup>.

Becker: Oh, okay. Yeah.

Bernstein: And that way, if that patent gets approved with all this in it, that's what we were doing, and we wanted that one to be approved first correctly because it obviously expedites our life by a long way.

Becker: This is the PCT application file of March 23<sup>rd</sup>. Is that what we're talking about?

Utley: Yeah, but the way that I recall the conversation, the spec cannot be changed...

Becker: Right.

Utley: ...but the claims can be.

Becker: Right, and they can be changed as long as they're supported by teachings that are in that specification.

Utley: Right.

Becker: Which is why you really...

Bernstein: And the specification can't change?

Becker: Right.

Bernstein: Why?

Becker: Because it would be kind of like...

Bernstein: I thought that was based on new matter.

Becker: That's exactly why it can't be changed.

Bernstein: So it can be changed if it's still the same matter?

Becker: The claims can be amended as long as they are still fully supported by the matter that's in the specification that's originally filed. Now, if you want to change your claims and they're not supported by the specification as originally filed, then you have to file a whole new application adding new matter to your specification that will support those claims.

Armstrong: Does the fact that a direct interpretation of what in general amounts to typos and oversights, but a direct interpretation of that affect our ability to change that supporting matter of that matter? Because if we directly interpret the math in the certain circumstances here, it will bring you to a wrong conclusion if it's a direct interpretation without having to reverse ~~such an error but~~ engineer what was meant to occur.

Becker: Well, I see. Then we need to get the math right, but it doesn't affect our priority. Only by a few days essentially.

Bernstein: Well, do we lose the ability to claim priority to what we were trying to claim here...

Becker: No.

Bernstein: ...by that date? So you can go back in and change the matter of this?

Becker: You don't go back and change the matter, you just file a new application which claims priority back to a prior application only for the subject matter that was...

Bernstein: But we missed that application.

Becker: No, we've got it in the form of this continuation, or this PCT, that we filed claiming priority back to that patent application. So we've preserved that chain of priority.

Armstrong: Are you then completely confident that errors that we need to correct right now then are not going to hurt us in any way, shape, or form as being able to claim as part of our invention all of the correct things that we want in there?

S. Bernstein: That's what I heard at that meeting, that we could go back and re-do that at a later date without having any implication.

Bernstein: As long as it wasn't new subject matter.

S. Bernstein: Exactly right. These are just corrections to the...

Bernstein: They're corrections, they're math, whatever.

S. Bernstein: Okay, but we're not saying this is a new way to get to that.

Bernstein: No.

S. Bernstein: Okay, that's what I heard. That's the notes I took. Eliot, you should have that on the tape recorder so that we know that.

Armstrong: Well, we do, and that would also support, I think, another issue, which is that we now have to go through the refiling of something else which was originally corrected several days ago and was somehow ignored so that this whole refiling shouldn't even cost us anything.

Bernstein: Well, and beyond that, Doug <sic>, what I'd like to really get down to is a letter from you, in writing, explaining all of my, you know, both from the Ray [Joa] patent forward, and I think you need to talk to Doug about it, of what our potential pitfalls are here with these filing errors, what our potential pitfalls are, what it caused to happen with that priority, priority equals, and if there's any harm to us. Because we keep just slipping back by these things. This should have been right. I mean, we have well documented, and Brian's well documented, that these changes were sent, and now we've missed a priority claim to that by not being able to go back and change our last filing. I need to know the liability here.

Becker: You know, I was not there on Wednesday night. Brian talked to Doug on this and then made final changes, and then...

Utley: Yeah, Doug sent me a next-to-last copy, which I went through and there were a number of errors—I have my notes on each one of those at home—and then I reviewed each one of those with Doug, agreed on what they were, and then Doug was going to send me the last copy, which apparently he didn't because I never received it. At that point in time, it was, I guess, about 11:30 or 11:45 our time.

Bernstein: And these were also discussed in great length with him for a whole day on the phone.

S. Bernstein: Yes, well, how about in the...

Bernstein: No, no, Dad, this is separate. But at great length this was discussed, every one of these changes.

Becker: The changes you sent me here, is this Brian's handwriting?

Utley: No, some of it isn't. Isn't correct.

Bernstein: Well, let's go through it because I'd like to...

Armstrong: Yeah, let's go through it.

Becker: I don't know if that's going to help that much because it's a question of what actually was filed and whether it incorporated the changes that Brian asked for the last minute.

Bernstein: It didn't.

Armstrong: We know that. This is what was filed.

Becker: Brian, didn't you just say that Doug didn't send you the final draft of what was filed?

Bernstein: He did it the next day.

Becker: Oh, he did the next day?

~~Armstrong~~Bernstein: Yeah, Jim, can you forward that to Steve real quick?

Armstrong: What?

Bernstein: Email it to him...the final draft?

Armstrong: Yeah.

Becker: Well, I'm not going to question...

Bernstein: Okay, but we need to go through and get the changes acknowledged, accepted, have you put it into the next whatever you're going to do to solve this, with a letter explaining what we've lost here.

Becker: All right.

Bernstein: Okay. Any liability, potential liability where we're exposed to from this.

Becker: Oh, I wouldn't worry about it. You guys are making a mountain...

Bernstein: Well, you know, I gotta tell you, I worry a lot about it from what Doug told us. So, you know what I mean? You tell me not to worry, but then you tell me it's very important that we're accurate in this filing; and then we're very inaccurate in the filing, and then we're not supposed to worry. I'll feel much better not worrying with a letter from you explaining why I shouldn't worry.

Armstrong: Steve, what's at your email?

Becker: Sbecker@foleylaw.com.

Armstrong: Sbecker?

Becker: Yeah, "S" as in Steven, "becker."

Armstrong: Got it.

Bernstein: Okay. Let's just go through this with you, Steve, so we can get the next step done.

Becker: All right.

Bernstein: Which is correcting the issues. Are you with us on page 13?

Becker: Right.

Bernstein: Okay. Jim?

Armstrong: On page 13, line 19, the expression of VWH should follow the way we express it in our definitions, which is VIH. Even though the two are equal, let's just follow the way that we have it expressed in our definitions on page 12.

Becker: Oh, I see. Okay.

Armstrong: Then on line 23, each of those expressions is not congruent with the way we've defined them. Despite the fact that we arrive at the same results, it doesn't apply the formula in exactly the same way. So for a reader, it ought to be the same. So for line 23, it should be the "square root of 2,560,000 times 1.25."

Becker: All right.

Armstrong: Okay. Not "2560 divided by .8."

Becker: Okay.

Armstrong: On line 24, it ought to be "1789 divided by 1.25."

Becker: I see. Okay.

Armstrong: Then on line 25, it ought to be "1441 divided by 4." Again, the results are the same; the expressions are not.

Utley: Now, on that last one, Jim, it's correct. |

Armstrong: It's what?

Utley: The scan density is 1789 divided by 5.

Armstrong: Okay, hold on. Scan density is defined by us as being...where the heck is it...oh, it's right up above..."target image height..." right up above on line 7..."minimum scan density is target image height," which in this case we just defined to be 1431...

Utley: Where are you reading from?

Armstrong: Line 7 of the same page. Line 7, page 13. So target image height is 1431 divided by the source image height, which is 4, so it should be 1431 divided by 4.

Utley: Well, the...yeah I guess that that equation, "MSD equals TIH/SIH," did not come from my documentation. |

~~Becker~~Armstrong: Hold on, let me look at this documentation. I've got it right here, |  
too.

Bernstein: Well, Steve, you have copies of this, too, that were sent to you...

Becker: Right.

Bernstein: ...of what Brian's looking at, several days ago. So how isn't this stuff flowing forward into the patents, especially when we pointed it out two times before filing? I mean, I'm just dumbfounded at this.

Utley: There was a change, Steve, which you were not involved...

Becker: The proper equations, ~~that I~~ wasn't there the last night when the last changes were put in, so I can't really speak to it.

Bernstein: No, but he sent you his changes several days ago.

Utley: Steve, there was a change that we decided on uh on uh Wednesday afternoon, which was to reflect aspect ratio as width divided by height, which uh I uh made, and that was created by the desire to reflect aspect ratio the way that displays are uh uh expressed as opposed to the way photographic images are expressed. Photographic images are expressed the opposite way, and that's the way the documentation uh uh had been originally prepared. But it was thought that it was uh perhaps more consistent with current technology to express it the way that displays are expressed. So I went through and changed...

Becker: You mean from that change in ~~invention? convention?~~ convention?

Utley: Yes. So that caused the equations to be reconstructed to reflect the uh uh inverse of what was there before because the affect ratio now is inverted.

Becker: I see.

Utley: And what happened was Doug apparently did not pick up all of those changes, even though I went through them very methodically the last thing uh Wednesday night when he sent me ~~his~~ uh uh his uh almost-final draft.

Becker: I see.

Utley: Uh And uh, Jim, just for your uh edification, that also affected the MSD shifting from a height to a width orientation. The number is the same, but it changed it from a height to a width.

Armstrong: So what's the correct formula for MSD?

Utley: It's TIW/SIW.

Armstrong: Okay.

Bernstein: So, you made this change with Doug, and it's still wrong in the patent?

Utley: Right

S. Bernstein: I'm a little concerned about the proficiency of the legal aspect of this. We sat there for hours, and then Brian stayed late into the night with this guy, and then he comes back and we don't file it right anyway? It seems like there's something wrong here. I mean, ...

Bernstein: I mean this is, yeah...

S. Bernstein: I mean, I'm just budding in because I have little or no knowledge as to what the numbers mean, I'm just listening to a conversation in which I'm hearing is that after four or five hours in a room locked together with lawyers and everybody else, we reach an agreement that those changes will be made. Now, my understanding is Brian stayed and made those changes, and then the lawyer didn't file the changes? What's the sense of that?

Bernstein: These are good points. Let's move forward, Jim.

S. Bernstein: These are points that have to go back to stockholders with money invested.

Bernstein: That's why I've asked Steve to send us a letter of what's happening, what our exposure is, by Monday or Tuesday, explaining how this didn't occur, get in, and what we're going to do to resolve it, and what that resolve initiates in the chain of events.

S. Bernstein: Well, the other side of it is this. If after all of this precaution has been taken—and Brian, you can correct me if you think different—but after all of this precaution has been taken, it appears that the fallacy of worrying about it ever gets accomplished. Brian stays, everybody works on it, it's still filed wrong. Now what if Jim Armstrong hadn't caught it. Brian was on a plane today...

Bernstein: Then none of Brian's changes even sent several days ago even would have even been in there. Math would have been wrong, equations would have been wrong, verbiage would have been wrong.

S. Bernstein: Am I right, Brian, in having this concern?

Utley: Uh Well, yeah, obviously it's uh clearly uh uh a major concern because there's nothing more disciplined than the uh uh mathematical expressions.

S. Bernstein: And you're comfortable that what you did, even if some of them were wrong, that we could have later corrected...

Bernstein: No, Dad, we sat here with Brian and Jim and Doug, and we went through it, and we all agreed it was right, and those changes do not appear.

Utley: No, we...uh uh

S. Bernstein: That makes me very nervous. Well, it makes me nervous to the extent that are all of the other patents done right?

Bernstein: Well, that's what I'm...I'm going to start having somebody review all of this. I mean, obviously there's...it opens up a whole can of worms.

S. Bernstein: Well, the other thing that I heard was—and not negatively or anything else—but I heard that perhaps Ray [Joa~~o~~ did this work and he was either concerned about it being a bit sloppy, blah, blah, blah, blah. What is the excuse for this law firm?

Bernstein: Well, let them write us what's happened here. I mean, I definitely need to see on paper, Steve, some kind of report on this. That it describes what occurred, why it's not reflected in the patent filings, and what our exposures are, and that'll tell us what we're dealing with in firm, etc., liabilities. I mean, we don't know that.

Armstrong: We should continue to look at the changes so that he's copy that reflects everything.

S. Bernstein: Well, even if there is no liability, what I'm still concerned about, even if it can be corrected, it's the exact same position—Brian, am I right?—that we found ourselves in with the last lawyer who did it. Okay, thank God we can make changes, but that isn't the answer. Why not just get it right, get it filed...

Bernstein: No, don't just say thank God we can make changes, Dad, because all of that brings additional liability to you. You miss dates, you miss claiming, you miss this and that—words that are very tricky and confusing, and only these guys can understand. So that's why I need it to be put in writing so I can have it analyzed...

S. Bernstein: Absolutely, I want it definitely, because I need to take it...you know, I need to have board member approval...

Bernstein: Oh, I think our board is going to be disastrous with this stuff about several things when we take this to them. And we need to know from the Ray [Joa~~o~~] level to the Foley-[Lard~~er~~] level, how this is going to be cleared up and what the problems were that occurred.

S. Bernstein: Okay, let's get that part in process; and it's unfortunate that Doug's not here because maybe it's something he could explain.

Bernstein: No, I talked to him this morning; and as a matter of fact, he said Steve had the math from Brian days before and by the time he got it, he thought it was all input correctly, and that was his excuse.

S. Bernstein: Well, what was he doing here with Brian?

Bernstein: Well, then we spent a whole day with him correcting it all so that it was right; and then by filing time, none of it was right. So, let's go forward. Let's just stay on track. We'll deal with all of these issues on Monday.

Utley: Uh I just say one thing. Uh Fortunately, uh I don't know The most important part of the math is all of the definitions. The examples are examples; but the most important part of the math is the are the definitions.

~~S. Becker~~Bernstein: Okay, are those right?

Armstrong: No. Well, there's one that's not ~~, we just found out which is [ ]~~. Line 7 of page 13...

Bernstein: Is wrong.

Armstrong: Is wrong. It should read...

Bernstein: ..."[ ] equals TIW/SIW."

Utley: They are mathematically uh uh equal. Both will give the same results. So It's a uh consistency question as opposed to an accuracy question.

S. Bernstein: And for a reader, it would probably be easier to be consistent.

Utley: Absolutely.

S. Bernstein: That's what we want. As long as we're spending all of this money and everybody's devoting their time to it, we want it to right-as right as you can possibly get it at any rate.

Bernstein: Okay, Dad, let's move forward.

Armstrong: That changes one thing on line 25. The expression on line 25 is now correct as it was typed, so scratch out my handwriting. Okay? All the other corrections stand as I explained them earlier. Now, on the last line of this page, that should read: "480 X 320."

Utley: That's correct.

Armstrong: Okay. Then on line 6 of page 14, I think we should consistently state which is width and which number is height because it's such an important distinction in the calculations. We did it on the previous example, but not on this one.

Bernstein: This then is width height

Armstrong: Width is [ ] height is 4

Utley: And that is what we had agreed upon on Wednesday afternoon.

Bernstein: Right. That changes again in a minute

Armstrong: Okay. Line 17, again we're just missing that square root symbol in order to make that equation work. Without the square root, it's millions instead of thousands. Now, in line 19, I had originally indicated this was correct; it's now incorrect because of our change in the formula for the density for the maximum scan density.

Bernstein: Steve, are you getting all of these?

Becker: Yep.

Armstrong: This should now read in line 19: "1789 divided by 5 equals 358."

Becker: "1789 divided by 5 equals 358?"

Armstrong: Yes.

Becker: All right.

S. Bernstein: Steve, I have a question to ask you.

Becker: Yes.

S. Bernstein: When Jim or Brian or anybody gives you these numbers, are they checked out by anybody, or do you just copy what we say and that's it?

Bernstein: No, they definitely don't copy what we say. That's an initial problem here, Dad.

S. Bernstein: Okay, I don't mean to be sarcastic.

Bernstein: No, but they would normally as mathematical people add up the equations.

S. Bernstein: Yeah, because your partner was telling me that most patent lawyers are engineers, which would lead me to believe that somebody would say, "well, I better check the math to make sure that guys who are not engineers know what the hell they're talking about." Is that done by your firm, or is it just accepted as gospel what we give you?

Becker: We don't have engineers or technical people check the math that you provide us.

S. Bernstein: Okay, so what we provide you, then, we live and die by?

Becker: Okay. Your job is to get that right.

Bernstein: Right, but what we did give you, you didn't provide in the patent.

S. Bernstein: Okay, we're trying to say the same thing.

Bernstein: Okay.

Armstrong: Let's just get it right.

S. Bernstein: At this point we're only interested in getting it right.

Armstrong: Line 27, that should be "36@H" for the height.

Bernstein: Which page?

Armstrong: Line 14, third-to-last line of the page.

Bernstein: Okay.

Armstrong: Now we're onto page 15. Again, we just need that square root symbol as indicated there.

Becker: Okay.

Armstrong: Then there is nothing on the next few pages until we get to page 18, this is an important omission for our calculation standpoint, but we need that square root symbol.

Becker: Okay.

Armstrong: Then I'm going to skip for a second this discussion on minimum scan density here because I want to talk to...go with Brian's comments, too, but on line 10, the correct figure is "1.33 equals 1.33."

Becker: Okay.

Utley: Yeah, that wasn't picked up from the other...from above, the aspect ratio.

Armstrong: Line 15, the square root symbol again is missing from that same equation. And then finally, I don't see why, in this example, or any digital example where we have no scanning to do, why we should even include any reference to minimum scan density because the only application of scanning in a digital world is if we were to print a digital photograph and later scan it, in which case we'd follow the print formulas, not the digital formulas. So, my suggestion here is that we change the sentence, beginning on line one, to end after the word "dimensions"...actually, strike the words "and minimum scan density" and also to eliminate line 23. Do you agree, Brian, that there's no reason to have that there?

Utley: It certainly doesn't add anything. Uh It doesn't uh uh subtract anything.

Armstrong: It just added confusion to me as a reader when I thought, "How do I calculate that?" and then realized it's not...we're not scanning anyway. Why ask someone to determine something that is not included as a step of the process? So I think if everyone agrees, we should strike the words "...and minimum scan density" in line 1 and 2...

Utley: No, what I would do, I wouldn't do that. What I would do is simply say, "...image size and dimensions" and then add a new sentence which says, "Minimum scan density is not required since we are dealing with a digital image."

Armstrong: That's fine, too. Then let's strike line 23.

Utley: No, I'd leave that in.

Armstrong: It's redundant, but that's okay. Do you see any other problems with the formulas? Did you review all of this again today, Brian?

Utley: Uh I've just uh uh I have not reviewed anything today. I wasn't aware of the problems until about three minutes ago.

Armstrong: Okay. So that covers my comments on that.

Bernstein: And, Steve, do me a favor. When you guys draft this letter, draft it to Si and Brian. Okay? I'd like to be cc'd on...and by the way, I'd like to be cc'd on any correspondence of anybody to do with the patents.

Becker: Okay.

Bernstein: One last thing. Doug mentioned that you had a file from Brian, a spreadsheet that part of the spreadsheet matter is not incorporated in here. He didn't know why...he couldn't explain why. I was wondering what that matter is, and where is it? Are you aware of that? Because he referred to you.

Becker: Did heTo me?

Bernstein: Yes.

Utley: Uh uh That's probably the image sizing spreadsheet.

Becker: Image sizing?

Utley: Yeah, I sent you two files on Monday.

Becker: Okay. Actually, you sent three all together. Oh, you sent three emails, and then the last one had two of them.

Utley: Right, the last one had two files: both the image sizing and the process.

Becker: Oh, you've got the macro, and then you've also got the description of the math. Now, what did you want included that wasn't?

Bernstein: Well, Doug said it should have been included, but it wasn't...the rest of that sheet.

Becker: What?

Bernstein: I don't know. Whichever half's missing.

Armstrong: Hold on one second...I don't want to confuse Steve. We do not want you to cut and paste out of those documents into these patent filing. Those documents do not reflect the way we want to express the math.

Bernstein: Right, but we might want them in there, B, correctly.

Armstrong: What?

Bernstein: We might want them in their correctly...

Armstrong: ~~They're not in there correctly.~~ We just went through it. It's now correct. If he employs all of the changes we just all agreed to...

Bernstein: No, but there's another sheet that's not reflected here.

Armstrong: Well, yes, I do want to talk about that. The macro, right?

Bernstein: Right. Can you forward that file to us--the Excel sheet--to Jim, me.

Armstrong: Just have Steve forwarded the whole email back to you.

Bernstein: Well, he doesn't have it in front of him, and Brian's got it right here.

Utley: No, I sent it to you. You were copied on it.

Bernstein: Okay. Let's just get the most up to date...any changes.

Becker: Yeah, Brian, remember, we made a decision not to file the claims directed to your macro--we made that decision last...a week before the...

Bernstein: Why?

Becker: Because it was going to involve some additional work, and we didn't have time at that point; and it was all new matter that wasn't going to claim priority to anything, so...

Bernstein: Well, what's new matter? If the math is part of describing the invention, then it's not new matter, according to what Doug's told me four times now.

Becker: Well, Eliot, as you recall, you always have to look at the claims of the application, and that defines the scope of your protection. The claims will also define...also have to be supported by the specifications. We were going to direct claims to the idea of using...of having a macro program, which is useful as a tool, to do these calculations in a rather simple process.

Bernstein: Okay, that's fine if you want to just claim a macro. That does it as a simplified process and add that as an additional patent for us, but the underlying math of it should all be applicable to the invention since it's just derived off the invention.

Becker: Yeah, math...

Bernstein: So it's not new matter, it's just an understanding of the matter. I mean, I swear we went through this four times the other day with that conclusion.

Becker: There are two files that Brian sent me. One of them was an Excel spreadsheet having six pages, and all of that material was included in the application in pretty much cut-and-paste format. His pages 2, 3, 4, and 6 were the examples, which I just cut and pasted as soon as I got them from Brian because they defined it all very particularly.

Bernstein: Okay, now you need to get back your record of that because 2, 3, 4, 5, and 6 that Brian is sitting here showing me, were never in these patents yesterday. So cutting and paste, you must have put them in the wrong document.

Utley: Those are the examples.

Bernstein: But those weren't...that's not what ended up in there.

Utley: They pulled these pictures out and put them as a uh uh uh figure sheet on the back, uh and then uh uh we ~~re-~~entered...

Bernstein: Wrong math.

Utley: ...the formulas in the body of the...

Armstrong: Hey, right. B, are those images...are you looking at the figures? Are all of these figures in the patent application.

Utley: We should be on figure 7.

Bernstein: Steve, figure 7?

Becker: Okay.

Bernstein: Are you looking at it?

Becker: Not in front of me, but I recall writing it.

Bernstein: Jim, figure 7, what do you see?

Armstrong: I don't have a figure 7...because that was part of...that didn't come in the patent application, that I was mailed~~but [ ]~~.

Bernstein: It's not part of that final patent?

Armstrong: I don't know about that, but it didn't come as part of that Word document.

Bernstein: That's what I just sent you, ~~that's~~ supposed to be the final revision of the patent.

Becker: We have to scan the drawings into a Word document; so if you just mailed the Word document, you probably didn't get any figures yet.

~~Armstrong:~~ Probably the figures were left off of that Ei-

Bernstein: Okay, do you have your patent application?

Armstrong: I've got the one we reviewed on Tuesday Wednesday.

Bernstein: And what's in there?

Armstrong: All the figures.

Bernstein: Right or wrong?

Armstrong: You know, I don't know. I didn't...Brian, was figure 7 changed at all with the restatement of our aspect ratio?

Utley: Yeah There were some additions that I made for clarification purposes. Uh If you look at the first page of the imaging process, where it says, uh uh the third box down, it says "viewing image," uh I inserted uh "SIR less than DWR" to tie it to the equation above it. And then in the one, the bottom, uh uh it has the expression "SIR greater than BWR," again, that is to tie it to the equation above it.

Armstrong: Yeah, because those two don't have a distinction, figure 7 as it is now.

Utley: Right. So that simply ties the image to the equation.

Armstrong: So do they have...have you sent them an updated amendment?

Utley: Yeah, that went out uh uh late Wednesday afternoon.

Armstrong: Okay, we've just got to make sure that the corrected figure 7...

Bernstein: Steve, can you fax us the filed patent?

Becker: No, I can't find it. I guess Doug took care of this from...

Bernstein: Does his secretary have a copy?

Becker: ...Monday night on. I spoke with her, and she wasn't clear...she wasn't able to find it.

Bernstein: Do we have a filed patent?

Becker: How certain would you like me to answer that question? I mean, Doug sent me an email saying we filed the patent.

Bernstein: Well, what he sent me that he said he filed is missing the diagrams. So, I have a final patent document missing...

S. Bernstein: When is Doug available?

Bernstein: Yeah, does he got a cell phone or something?

Becker: I don't know. I don't know. Maybe I can help clarify this...I mean, Eliot, you sound like you're really upset at us.

Bernstein: You know, I'm not a person to get upset until I see that I spend a lot hours going through this, Brian spends a lot of hours, we make all of these global changes...

Becker: Eliot, I've heard that a couple times already. Let me try to explain a little bit about patent law and maybe help everyone understand what has or has not happened. Okay, there's a lot of rhetoric being thrown on there, but there's...

Bernstein: Yeah, because we're blind.

Becker: I don't think all of it has a lot of basis in patent law.

S. Bernstein: That's good to hear, so let's hear that.

Becker: Okay, and Si, I thought you in particular might be interested to hear that.

S. Bernstein: Yeah, that's, you know, I'm not sure that adds any comfort because maybe what you're saying is it's not an exact science and then you move along...

Becker: Well, I'm going to go well beyond that.

S. Bernstein: Okay.

Becker: Does anyone have a copy of claim one they can read off of?

Bernstein: Yes.

Utley: Uh uh This is only a piece of it, right? |

Bernstein: Yeah.

Armstrong: It's Page 22. |

Becker: I'm working off what you emailed me, Jim, and I see page 24, lines 1 through 7. I guess they could have repaginated, but...

Armstrong: Oh, but Eliot had mailed you...or faxed you...

Becker: I'm sorry, what you emailed me.

Armstrong: Oh, okay. So it's changed then. I don't know why, though.

Becker: On the top of the page says "What this claim is."

Armstrong: "What this claim is"...

Becker: Do you have that?

Armstrong: Yes, page 22 in my printed on.

Becker: Okay.

Bernstein: Okay, hold on one second because I want to get my notes.

~~Utley~~S. Bernstein: What page is that, Jim?

Armstrong: Page 22 You don't have it, BrianSi.

S. Bernstein: Because I don't have 22.

Armstrong: Want me to fax it... email it to you?

S. Bernstein: No, that's okay, he's going to explain it to me. I want to see if I can't understand this.

Becker: Sure. It's very sort claims, seven lines long. It actually defines the scope of the patent protection that we are trying to obtain in this filing.

Armstrong: Who are we waiting for, Eliot?

Becker: I ~~think~~believe so.

Bernstein: Yeah I'm up front. We're waiting for Brian again.

Becker: Let me know when you're ready.

Bernstein: Okay, Steve, Brian stepped out for a minute, but I still want to address this issue. We invent something. I hire a mathematician. The mathematician solves the X, Y, and Z of the invention. Does he claim a new patent for himself?

Becker: Probably not. [Inventorship] typically follows with the conception of invention. If somebody else figures out how it was done, generally speaking that would.

Bernstein: Well, I want to be very ~~clear~~clear on this because Doug's thinking...I don't even know if then the next statement is correct or incorrect, but if a macro was created using the math that comes from the invention, where does it follow? Brian, I just asked him, if I hired a mathematician to do the math, put all of this into a thing, where does this follow. He says the invention, the inventor, etc. The guy you hired to do math wouldn't claim a new patent or a new invention, which is confusing to me because Doug now, as of this morning, told me that you're planning on filing a separate patent as inventor of a macro that just spawns off the math entitled to this invention. So I'm confused, and I want to be very specific on this of what our strategy is here on all of these peripheral pieces.

<End Side 1; begin Side 2>

Bernstein: Why don't you explain that to me again.

Becker: Can we go ahead with describing the claims?

Bernstein: Well, do you want to just finish that real quick, and then we'll go right back to the claims?

Becker: Okay, now what was the question you posed me, Eliot?

Bernstein: I hired a mathematician to solve for what I did. He comes up with an equation. Where does that equation belong? Does it belong filed as another patent? What's the inventorship, so to speak? And then, I design from that math a macro that solves that math with input formula. How should we be protecting that the whole way through, because I seem to be very confused about what I'm being told each day.

S. Bernstein: Okay, let him answer the question.

Becker: Invention follows whoever conceived the invention as claimed, and that's why the claim is so important because when you set forth in your claim what it exactly is that you're claiming, you have to ask who conceived of that idea—who was the first one to come up with it. So, typically if somebody really reduces your idea to equations that describe why it works or how it works, typically they would not be named as a co-inventor because they really didn't invent the idea. Now if you wanted to claim a macro which has user-input displays for receiving certain data that can be used by, say, a technician to determine the scan density of a print film image that would allow for the desired enlargement ratios and the desired target image size, that kind of is a separate idea, and that's why we thought it would be useful to claim that as a tool as well.

Bernstein: Okay, and I understand that part. I don't mind claiming that all day long.

Becker: Brian really was the one that built that and came up with it. It's based on principles that you learned, you know, a few years ago that maybe you didn't understand the math behind them, but certainly, I would think, be named an inventor on that.

Utley: I think that would probably claim both Eliot and myself as it relates to both aspects.

Becker: Right. But the important thing with the patent office is that it is...the patent office realizes that it is a bit of a grey issue in terms of who conceived what, so the important thing is not to have any deceptive intent.

~~S. Bernstein~~Armstrong: I think the most important thing is the distinction between invention and ownership. As I understand, all of this, every one of the patents that we have filed, all rights, title, and interests are viewit's, regardless of who the author/inventor is; and any revenue stream derived therefrom are viewit's, and that's the important thing. Is that true, despite and in light of the [\_\_]?

S. Bernstein: Well Jim that's ~~May~~ very next question

Armstrong: ~~r~~ because we could put anybody as an inventor; but as long as that doesn't entitle them to a disproportionate share of any revenues derived therefrom, then I don't care.

Becker: Yeah, invention or ownership initially vests in the inventor or inventors who are named in the application; but typically, inventors are under some obligation to assign to a corporate entity, either written or by cause of their employment—and you can get into the issues of shop right...you know, if somebody invented something on the corporate time and then went and...you know, it wasn't really part of his job description, I know this issue's going to be a little more tricky. But I think in this case...what we do typically as a practice to confirm ownership is to have the inventors sign a written assignment document over to whichever corporate entity they want to...

S. Bernstein: But haven't we followed that?

Becker: We've got those documents. I don't think we have them all signed and filed yet.

~~S. Bernstein~~Armstrong: Let's get them.

Utley: Well, Doug was doing that on Tuesday while he was here.

Becker: Okay. Did you do some signing of documents, Jim and Eliot?

Bernstein: Yeah. Right.

Becker: Okay, so that's in process.

Bernstein: Okay, and wasn't really the intent of my question. The intent of my question is to define, for my understanding, what should claim back to Ray [Joao's] patent, and that means that everything other than a macro shell should define back to the original patent and be filed, corrected, amended, however we get it in to the original patent documents since none of it's

new matter, it's just an explanation mathematically on every equation of what happens.

S. Bernstein: That's what I heard at the meeting.

Bernstein: And that is exactly what I've heard, repeated; and then this morning, it was completely opposite, and yesterday it was a little opposite—a little—and, you know, I've become very confused about which strategy we're taking, which road, because we decide something, and then it's changed, and we're doing something else, and I'm completely lost.

Becker: I think I can make this very clear for you if you'll give me an opportunity.

Bernstein: I will.

Becker: Let's take a look at claim one. Claim one states that what you're claiming is a method of providing a digital image file for viewing on a user display in a viewing window that has a predetermined size, and the method includes one step. The step is, very broadly stated—so bear with me here—providing a digital image file having a image size comprising a fixed number of pixels representative of an image wherein that image size is greater than that of the viewing window size. Now the broad concept that we're trying to claim here is being the first ones to provide a digital image file that has more data than is needed for the window size. And why are we trying to claim that? Because that allows you to zoom into the image without pixelation, and it allows you to pan around the image to corners that maybe are not shown in the original viewing window. Does everybody understand that?

Ullery S. Bernstein: I think so.

Armstrong: Yes.

S. Bernstein: I think we're on the same line.

Becker: Okay. So now the question becomes: Did we support that claim with relevant descriptions in the specifications. And what's our standard? Our standard is that we have to provide enough disclosure in the specifications to enable somebody to make and use that invention as claimed. This person needs to be somebody of ordinary skill in the art—in other words, somebody who can read this document and maybe has some technical background in imaging or image processing, for example, and can read what we've put in our document and can perform our methods claimed. Okay? Everyone with me so far?

Bernstein: Um, hm.

Becker: So we look back into the document that was filed on Wednesday and we say to ourselves, "Did we provide enough information in that document to allow somebody to teach somebody how to make and use a digital image file that has an image size greater than the viewing window size?" And one might argue that stating the solution in itself almost provides enough information to one of ordinary skill in the art to actually reduce this to practice and to make and use one. However, we've provided not only a description of several different ways of doing it, but also some examples, including math, that should make it abundantly clear to one of ordinary skill in the art how to do it. The test is whether it would require undue experimentation on the part of this fictitious person of ordinary skill in the art to make and use a digital image file having these characteristics. So the question you need to ask yourself with respect to this application is: "Okay, maybe there was an error or two in how it was expressed in examples or the number of pixels counted or division here or subtraction there, but was there enough in there to enable somebody, based on those teachings alone and, of course, their background, to make and use an image file having those characteristics?"

Ullery S. Bernstein: Okay.

Becker: And I think, based on a reading of it and based on what Jim just walked me through in these corrections that need to be made, that there probably was enough

in there. That there probably is. I mean, we've described in several different ways how to do it with print film images or with digital images. We described in generally, and then we went and described it specifically.

S. Bernstein: Okay. Can I ask you a question?

Bernstein: Wait, Dad, because that still doesn't answer my question. That answers this issue here.

S. Bernstein: Let him finish with it.

Bernstein: Okay. Are you going to take this back to Ray's original filing on our...

Becker: Let me do that next, okay? Now, with respect to Ray's original filing on August 2<sup>nd</sup> of last year, we asked the exact same inquiry when we review the specification that we filed on Wednesday: Did Ray's filing back on August 2<sup>nd</sup> of 1999 provide enough disclosure and enough teaching to enable one of ordinary skill in the art to make this file?

Bernstein: And we have a lot of disputes on that because it doesn't even cover zooming.

Becker: Right, but what it does describe, if I recall correctly, is it does describe that you want to enlarge a print film image to a certain size and then scan it at a high density. Now it doesn't tell what density, it doesn't give a number of pixels, ....

Bernstein: It doesn't talk about zooming in on the image.

Becker: It doesn't tell the number of pixels, but it does show one way of doing it with a print film image. It doesn't talk about digital images...doing it specifically with digital images. It may refer to it generally, I don't know. But that is the inquiry.

~~S. Bernstein~~Armstrong: If I hear you correctly, it is less important in the claim to say anything relative to zooming was in the claim to illustrate or to claim that the target image size is larger than the viewing image window because that is, in itself, your ability to have the zoom capability.

Becker: You're right. You can claim it all different kinds of ways. This was one way that we worked out in conjunction with Eliot and Brian two weeks ago. This is one of the ways we worked out claiming the invention.

~~S. Bernstein~~Armstrong: Because ultimately zooming is simply a feature of the invention.

Bernstein: Okay, hold on one second. Steve?

Becker: Yeah.

Bernstein: When I look at Ray's claim one, "What is claimed: An apparatus for producing a digital image comprising a device for generating a digital signal file from a print film image and a processor for processing said digital signal file and for generating an image file wherein said processor generates a first signal file from said digital signal file, and further wherein said processor processes said first signal file and generates set image file."

Becker: Okay.

Bernstein: Okay, we all agreed that that is completely insane...to describe anything about our invention...whatever.

Becker: I know it's all completely insane; but I think that with the claim that we drafted, ...

Bernstein: Yeah, he missed the point.

Becker: Okay.

Bernstein: Well, then, the claim we drafted, this was my question. It should be right here, in this claim, in the patent he filed to date back as far as I can to protect our dates, should be changed to the claim we just created.

Becker: Oh, no, this application died on Wednesday, and it doesn't proceed to a patent. A provisional application...

Bernstein: No, no, this isn't provisional. This is a filed patent. I'm ~~dealing with~~ one

Utley: This is the one that was filed March 24<sup>th</sup>.

Becker: Oh, okay.

Bernstein: By Ray [Joac].

Utley: So this was the PCT filing on March 24<sup>th</sup>.

Becker: Okay, thanks.

Bernstein: And my question is shouldn't the claims in this patent we just filed be exactly, if not identical, to the one...or should they be transposed to Ray [Joac's]? And it was my understanding from Doug that for speed and if the patent gets through, etc., that we would rather have it be based on that first patent filing.

Becker: That could be a recommended course of action.

Bernstein: And this is going to get dejected.

Utley: What we discussed on Tuesday...no, on Monday afternoon, was that uh one of our action items was to go back and review the uh March 24<sup>th</sup> filing and decide exactly how we were going to integrate into that filing the uh the uh claims that are that should be in there vis-á-vis the specification.

Becker: Okay.

Utley: That was one of the action items that we uh uh covered on Monday afternoon.

Bernstein: And now my question further goes to say that once we amend the claims, is there any way to amend the body?

Becker: No.

Bernstein: Even if we're not adding new subject matter?

Becker: You can amend the body if you don't add new subject matter.

Bernstein: Okay, so we can fix Ray's mess.

Becker: You can't add what we added in this application.

Bernstein: Which part? The math is just a description of the old matter, so therefore we should be able to add it.

Becker: It's not supported. It's not suggested in the prior applications.

Bernstein: Oh, it's all suggested because by the nature of the invention it's suggested.

Becker: I think the patent office will never allow us to add all of that matter into the application.

Bernstein: Okay, but we should add as much matter as we feel comfortable with to buff up Ray's original filing.

Becker: Sometimes if you change a word or a sentence in a specification...

Bernstein: Yeah?

Becker: The examiner will outright reject it for new matter.

Bernstein: Well, who cares? He's going to reject this for insanity in the first place. I mean, he's going to reject this for "what did you patent? Nothing?"

S. Bernstein: If I'm hearing Steve right, there's very little we can do to change the language and content of that particular patent...

Bernstein: No, you're not hearing him right because he just said you could change all of the claims whenever you want as long as the examiner hasn't approved them. And right now before the examiner starts approving...looking at this and saying it's nonsense, I'd rather get the right stuff in there. Now, we can get most of this stuff in there, albeit I'm going to need good argumentation as to why we can't get it all in there.

~~S. Bernstein~~ Armstrong: Steve, is that correct?

Becker: We can change the scope of the claims of the prior application...I mean, that's a good action item, a good thing to do. You know, as I mentioned, it's unlikely we'll be able to change the specification substantially; and if we don't quite...

Bernstein: Well, we should throw in the word "zoom" if we can.

Becker: At some point it becomes a question of language and what language you've used. If we come in and start saying, "Well, what we really were talking about is zoom and pan," Yeah, it's possible we could get some of those arguments through the examiner, but...

Bernstein: Well, we sure as shit should try.

~~Uteley~~ Bernstein Well, it looks like Ray took all of this out of here.

Becker: It's not as critical as getting one good filing on like we did on Wednesday.

~~S. Bernstein~~ Armstrong: Yeah, but the date's what's important.

Bernstein: Right.

~~S. Bernstein~~ Armstrong: If this March one...we have one good filing, but it's dated August 2<sup>nd</sup>. That's the difference.

Becker: But it claims priority back to...

Bernstein: The original provisional.

Becker: The original provisional, which is before this date, again to the extent that it's...

Bernstein: Right, and that's the strategy I have been hearing is the correct approach here, is that we should be cleaning up Ray's filed patent as best as we can without adding subject matter--and I don't think we really have any new subject matter other than a macro shell to re-widget our math, which is okay, we'll leave that out. But I definitely want the underlying math, because that's just not new subject matter, that's just old subject matter defined, and try to get as much of this in that examiner's hands as fast as we can because that is our first patent and we'd like it to approve. And then you know what? Leave the macro in this one, and then you've got a reason that you've got new matter in this one that doesn't conflict with your old matter. I mean, the math, I sat through with Doug, went through this with Chris Wheeler, my father, I heard all of those things, and then I'm hearing that that's not our strategy. So I just want to be very specific on this so that we get that completed in time. I know there are issues to timing, etc., that we don't want to wastewait.

Now, I'm also confused of how we particularly predicted our date as well on when this was first exhibited. According to my last notes of when you guys were down here originally, we kind of went through a timeline; and that timeline has now been changed to September, when, in fact, we felt it was more like April or something as the first commercial advantage. Now Doug's talking to me about September dates, and I can list you fifty things that occur before then that will be detrimental. As a matter of fact, the first one really being something like 8/10, which only gives us six days, if my numbers are correct. We signed a license contract with

[Centrec? Centrack?] to use and distribute your product. So that's well before 9/1; and these are some real critical things that depend on that date, if I'm not mistaken.

Utley: What contract?

Bernstein: [Centrec? Centrack?]. The license agreement was signed on 8/10.

Utley: The only thing we signed was a demo.

Bernstein: A demo license, yeah. Well, you were putting it up to commercialize on their site-- on a public site.

Utley: But there was no charge.

Bernstein: But it's not a question of charge, according to Doug. Correct, Steve?

Becker: I need to have some facts.

Bernstein: Okay. We signed a demo to put up on a company's Web site, and we did, our materials for public viewing so that they could identify customer response.

Becker: Oh. When was this?

Bernstein: 8/10.

Becker: Okay.

Bernstein: Now, there were conversations prior to that.

Becker: Well, the upside is that we've got an application on file as of this past Wednesday.

Bernstein: Well, what about changes?

~~S. Bernstein~~Armstrong: We have to deal with that one year of commercialization.

Bernstein: If we're not wrong, and I hate to preach to a lawyer, but that seems to be my understanding. So I'd like to get what is claimed in this one into Ray [Joao's] immediately, if not, somehow sooner.

Armstrong: Well, hold on, let him answer the question about commercialization. Would that be considered the first date of commercialization or a date of commercialization if there's one prior to it?

Bernstein: There's not, but...

Becker: Again, we have to start with the claimed invention...

Armstrong: This was ~~+~~zoom & pan imagery that we did for him.

Becker: Okay. And the inquiry is whether or not...

Bernstein: No, it's video, too, B, that we did.

Armstrong: There was video, too?

Bernstein: Sure.

Becker: The inquiry was whether or not the claimed invention was on sale more than one year before the filing date of the application.

Utley: This was a test program to determine feasibility.

Becker: That actually works in our favor. The laws recognize sort of experimental use as sort of being a mitigating factor in some types of public disclosure. Typically if it's a commercialization use, or to test the commercialization of the invention, they're less likely to find it to be...

Bernstein: Well, then, that's definitely what it was.

Becker: ...commercial use.

Utley: Is there any difference, Steve, between...we signed an agreement to do that.

Becker: Okay.

Utley: There was no public visibility for another month. So which date will be the reference date?

Becker: Would you call that a sale, that agreement?

Utley: No.

Becker: Okay.

Armstrong: Were we ever paid anything by [Centrec? Centrack?]?

Bernstein: No.

Utley: No.

Armstrong: Never.

Becker: Okay, that certainly works in our favor if it wasn't an actual sale of your product. In that case, you look more at the public disclosure date.

Bernstein: Well, that was the public disclosure date.

Utley: No, that was September.

Bernstein: No, it was this date because...well, whenever you put it up on the site publicly.

Becker: When did you put it up on the site publicly?

Utley: It was in September. It took us awhile to get there.

Becker: Okay. No problem, then, right?

Bernstein: If that's...I'm hanging my hat on a lot of things right there.

Utley: If that's the date of reference...

Bernstein: You know, I want to beat the 8/10 day of signing a license agreement because I don't know how that's going to be construed in court, nor do I care, when I can beat it right now.

Becker: Let me ask the question again, Eliot, do you think that the application that we filed on Wednesday does not provide enough information to enable somebody of ordinary skill in the art to practice or to make and use what we claim in claim one?

Armstrong: I could argue it doesn't.

Becker: Go ahead.

Armstrong: I might just simply because the actual deployment of it...or employment of it...does require the correct execution of those formulas; and other than one particular error that is very, very difficult to understand unless you have been part of one of these conversations about the formulas. I mean, that you have to reverse-engineer the formulas to find out that the square root in that definition is missing, otherwise you'll end up with target image areas of an enormous size and be totally lost. You'll end up just having a goofy result. I mean, I think it could be argued, that you need to be able to apply the math to create the image. It could be argued that you can conceptually create what it is that we are conceptually defining, but it's more difficult to do that without a precise understanding of the relationship of targets of subject images and viewing windows.

Becker: Well, let me turn it against you, Jim. That's a good analysis. I think it's interesting, but let me turn it against you and say if that's true, then our August 2, 1999, filing doesn't provide enough disclosure to enable one of ordinary skill in the art to make this claim.

Bernstein: On Ray [Joa's]?

Becker: ~~CONNECT~~Right, what he...

Bernstein: Yeah, that's why we want to change it before August 10<sup>th</sup>.

Armstrong: You said the August 2<sup>nd</sup> filing. This is the one we just did.

Bernstein: No, the March 3<sup>rd</sup> filing you mean.

Utley: March 24<sup>th</sup>.

Bernstein: March 24<sup>th</sup>, whatever.

Becker: Well, I guess I'm going as early as I can, which is why we tried to file on Wednesday...which is why we filed on Wednesday, so we could get the priority on the provisional application which, if I recall, read very much like the March 2000 application.

~~S. Bernstein~~Armstrong: The one you're referring to is the original provisional from August of 1999.

Becker: Yeah.

~~S. Bernstein~~Armstrong: Saying that if my argument holds, we have nothing of solid validity in that particular document.

Becker: No, what I'm telling you is that that document won't provide priority to this claim. In other words, our priority date will be Wednesday of this year, not Wednesday of last year...or not...

S. Bernstein: Because that provisional didn't provide somebody with ordinary skill in the art the ability to replicate what we did?

Becker: That's exactly right.

~~Bernstein~~Utley: March 24<sup>th</sup>

~~Bernstein~~...isn't that the one we're looking for?

Utley: March 24<sup>th</sup>?

Bernstein: Oh, no, that's the...

Utley: We're looking for the August one.

Bernstein: No, I'm looking for the provisional this claims to.  
<Two separate conversations going on at once; difficult to hear and follow...>

Becker: Let me ask you this...

S. Bernstein: Then that's to say--and maybe I'll question my own logic now--is it enough to say that somebody understands that in the viewing window that you create zoom and then create [ ] ability?

Becker: As long as we just...

Armstrong: That optimized the particular...

~~S. Bernstein~~Armstrong: And all we did was help to clarify...

Becker: I think that's pretty convincing. You know, you don't have to enable all the ways of doing it; you just have to enable essentially one way of doing it.

Bernstein: Okay. Despite all of this, I still want a firm yes or no.

Becker: I think was actually critically really finally getting to the issue.

Bernstein: No, yeah, we are.

Becker: Away from the rhetoric of accusations and...

Bernstein: Okay, okay, right, but...

Becker: And fear-mongering and calling the investors. I think we've gotten to...

Bernstein: Well, I mean, we've got to deal with things. These are real fears meaning we definitely have real issues. But looking beyond that, which is fine, I've got still an unanswered question: Does Ray [Joao's] set of claims change tomorrow, Monday, whatever, so that we can protect ourselves? Now you've agreed that's a good strategy, Doug's agreed that's a good strategy, but yet I hear no execution strategy, and that's what I want to make 100% sure that I can get as much of what we've discovered into Ray's incompetent work, and I will call it that, as possible. And your work is far more superior. These are some issues, but, you know, there's issues...it's a large thing to grasp, and we'll get through it. But I want to change what Ray [Joao's] done, and that was my understanding that we're going to take the claims that we've discovered in this application you just filed and put them into that one, and that the worst that's going to happen is that the examiner will approve the earlier one of Ray and yours will fall away, the second one.

Armstrong: Did somebody just join this call?

Bernstein: No.

Armstrong: Did you hear that beep, beep, beep?

Becker: I did. I don't know if anyone has joined.

Bernstein: Si? Si?

Armstrong: Maybe he got off.

Bernstein: Yeah.

Armstrong: Okay.

Becker: Well, let's do this, Eliot. Let's say that...I know you are concerned about the August 10<sup>th</sup> date, why don't we say that we will make some amendments to the claims in the prior filings you're referring to, and we'll clean that up as best we can and make sure that we have the claim amendments...

Bernstein: <Aside to Utley> This is the one we filed?

Utley: <To Bernstein> That's the provisional.

Bernstein: <To Utley> That's the provisional?

Utley: <To Bernstein> Right.

Armstrong: What about correcting the math in the one from two days ago?

Becker: Yeah, then again, I don't know what was filed; and again it appears...I really need to consult with Doug on that.

Armstrong: Yeah, but if we're of understanding what we talked about today is what he filed, and I believe that's it, then what do we do to correct that? We should probably correct that by the 10<sup>th</sup> as well.

Becker: Okay. Right. That actually was more important with the 8/10 date because these changes are considered to be better, then we need to get a filing out by that date.

Armstrong: Okay.

Bernstein: And Steve, just to remind you on this point, I still definitely for a comfort level and to keep accusations at bay, just a letter of what's occurred, what my risks are, and what our strategies for execution are on this filing relating to as well fixing this one as well as relating it to Ray [Joao's]. If you could write that clearly to us, that gives us a lot of comfort level.

Becker: All right. Hopefully what I explained today about priority will help.

Bernstein: Well, this gives it the final touch of you can rest assured, I've got it in writing. That's what I need to comfort me that I've got a strategy, that everybody's on the same page, so to speak, so that page doesn't shift, so that we don't get off that strategy and we all stay focused on that one sheet. So that would be critical. And what is our next due date? Is that on the 10<sup>th</sup> or the 8<sup>th</sup> or something, or am I missing...

Utley: Well, the only reason the 10<sup>th</sup> has any potential bearing is because that's when the test license...

Bernstein: I'd like to beat that here, on this claim, because if we can beat the 10<sup>th</sup> here on Ray [Joao's] filing, that's what we need to do there, right?

~~Becker~~Armstrong: That's actually not an important date for Ray [Joao's] filing.

Bernstein: Yes, it is.

~~Becker~~Armstrong: An important date for the filing that we did a few [weeks? days?] ago.

Bernstein: No, no, it's the same date. Commercialization is commercialization, and how it relates is the same here to us.

~~Becker~~Armstrong: Okay.

Bernstein: You know what I mean?

Becker: Yeah, I guess I do.

Armstrong: I'll make just one other general comment, Steve. Everyone else knows this, but you don't. I was just brought into this process Tuesday as the first time I've ever reviewed any patents. I've held them for Eliot in the past but never reviewed them; and was probably surprised with what I found was that it was an extremely important and at least, to my understanding, we had very little time to get it right, and we're now paying the price, of course. To the extent that that can be avoided in the future through careful planning, updates, and contingencies, I suggest we have a plan for that.

Becker: Yep.

Armstrong: So. Just an overall comment.

Becker: That's a good comment. I think it's important to get things done as early as possible, and we certainly have tried to do that throughout the process.

Bernstein: Steve, can you do me one last favor?

Becker: Yes?

Bernstein: Shoot over to Jim the three video patents we filed. He's signed a disclosure on it—the one you gave us—encompassing him for all patents.

Becker: All right. Jim, what's your role?

Armstrong: I'm the Director of Sales and Marketing.

Bernstein: But he's also a shareholder.

Becker: Okay.

Armstrong: I've been with this since before anybody else.

Becker: I see.

Armstrong: It was just basically me and Eliot and Guy before anybody else started, but I've never been involved in the patent review.

Becker: Now you want me to send a copy of the filings...the video filings?

Bernstein: Yeah. Can you just fax them to him?

Becker: Sure. Let me make sure I've got this right. Okay. We've got three...no, five applications, about 100 pages. Is that fine?

Armstrong: Yes.

Bernstein: We have four. Sorry.

Armstrong: Are they emailable, or no?

Becker: Yeah, they are emailable.

Armstrong: Let's do that instead.

Becker: But then you don't have the figures. We can email....

Armstrong: Email those, and then just fax the figures?

Becker: Yeah.

Armstrong: Okay, cool. The fax number is 732-747-5569. Email is [jim@iviewit.com](mailto:jim@iviewit.com).

Bernstein: And there's five video patents now. Correct, Steve?

Becker: I'm looking at my chart here: three US and three corresponding PCT [ ] applications that we wrote, and then there's a PCT video playback—that was the video playback invention—

Bernstein: Right.

Becker: And I think that's all.

Bernstein: Great. Let's get those out to Jim real quick. I'd like him reviewing those by the 8/10 date. Any changes, we're obviously going to try to revert to keep our 8/10 day as our commercialization day, giving us a little buffer if we're wrong.

Becker: All right.

Bernstein: You know what I mean? I mean because we don't know how people will interpret in the end what [Centrec? Centrack?] was, but to beat it would definitely give us a greater argument.

Becker: Yep.

Bernstein: So, all right, we'll pick this up...you're going to make those changes on this patent, correct?

Becker: I'm going to wait until I speak with Doug.

Bernstein: Okay, great.

Becker: To find out what was actually filed, and then we'll decide how best to proceed with amending that.

Armstrong: Steve, one more clarification. Did you say we have or have not had successful closure on the signing over of inventors' patents to the company?

Becker: I can't speak to that; Doug is working on that.

Armstrong: Okay, will you put that in our list of things to do...or your strategy that that gets completed?

Becker: Yeah.

Bernstein: Yeah, and B, I just signed as well as Brian and Jude and everybody. It's a large, thick document, so Doug should have an update, Steve, as to what is exactly signed. I think it was everything, correct? And we've got everybody here.

Armstrong: I've got emails that indicate that that was all done nine months ago.

Bernstein: No, it was, B, but then we filed patents; and then we thought the past was done, and now these new ones had to be done, so he came here, there was notaries here...it was, you know, it was a lot, but let's get an update on it.

Armstrong: I just want to see it in writing

Utley: In addition to that, everyone has individually signed a separate agreement with the company, conveying assigning to the company any intellectual property that's created as a result of their employment.

Armstrong: That I know. The key inventions, I just want to see that they've signed over because that's the value of the company right there. That's what I own stock in.

Bernstein: Correct. Okay. So let's get an update, and I think we're pretty close.

Armstrong: Okay.

Becker: Eliot, why don't we go through the list of things that you've asked me to do so we can be perfectly clear on this?

Bernstein: Okay.

Becker: The first is to amend Ray's PCT application, at least the claims, so that we have a good filing there, at least based on whatever Ray has in his specification. That's task #1.

Bernstein: Claims plus any additional language that's not new matter.

Becker: All right.

Bernstein: Okay.

Becker: You want a letter describing the...what was omitted or what was incorrect in this application filed Wednesday and to what extent that may have any bearing on rights.

Bernstein: Correct.

Becker: And also a course of action we feel is necessary to file new applications to amend these, make these corrections, or if there's something we feel we can do in an amendment that would not introduce new matter.

Bernstein: And our strategy going forward on this. By the way, that would mean our strategy as well on the video, correct? Because if there needs to be changes and the date did stick at 8/10, we need to make any changes we find by 8/10, correct?

Becker: Only if the changes are so substantial that they would jeopardize the ability of one skilled in the art to understand.

Bernstein: Okay, so critical errors. Okay. If we find them.

Becker: And that's why I think, you know...and if you're describing in your specifications how to make one, how to do it, provide most of the details. I mean, we've done a very detailed job of ...

Bernstein: No, I agree. I'm not...I agree. I see all that here.

Becker: Any time whatever we can get out of you guys in terms of describing how it works...that, in there when you describe a claim and there's an error, you know, there's an error in the math, will that dramatically affect and make it so somebody can't practice the invention at all, I don't know.

Bernstein: Right. So if it's critical by 8/10, it should be resolved. Correct?

Becker: With the video application, it doesn't help for us to go back and look at those. You guys go back and look at those and see if there's anything in there that you don't like.

Bernstein: Right. And if we find something in the claim, for example, that we don't like, we need to amend it by 8/10, right?

Becker: No.

Bernstein: Why?

Becker: Because the claims have to be supported by the specification as filed back on those dates, which were sometime in June...

Bernstein: Okay, but let's say all that fits, we also have the commercialization date.

Becker: The commercialization date...

Utley: I though <inaudible comment to Bernstein>

Bernstein: So we can go change the claims.

Becker: Typically [ ] prosecutions, as long as they're still supported by the specifications filed...

Bernstein: Right. So if we find any mistakes, we should change them, correct? In the video patents?

Becker: Yeah, as a general principle, that's a good idea.

Bernstein: Okay, good. All right. I think that sums up what we need. Send the letter to Si, myself, and Brian.

Becker: That's not a complete list of what you asked for me to do.

Bernstein: What else have we got? Sorry?

Becker: You've asked me to email to Jim Armstrong the three video applications and the playback application--the one playback application--

Bernstein: Right.

Becker: Now with respect to the video application, we have both PCT and US filings. Do you want us to send both of those? They've essentially identical--in fact, they are identical except the...

Bernstein: No. Just one.

Utley: Send the US.

Becker: All right, we'll send the US versions of those two. And we'll fax the figures. And element #4...Item #4 is to provide a written letter to Jim Armstrong regarding the assignment status of...

Bernstein: Well, that's to everybody. That's to Brian, Si, myself, Jim.

Becker: Brian, Si, Eliot, and Jim.

Bernstein: Right. Just giving us the update of where we are.

Armstrong: I think it's helpful to communicate to the shareholders.

Bernstein: Well, let's get it first, then we'll communicate at discretion, but I think we're there.

Becker: Okay, then, in terms of general things going forward: Eliot needs to be cc:'d on all correspondence relating to patents. Should we continue our practice of sending things to Brian?

Bernstein: Yeah.

Becker: All right, we'll continue our practice of sending things to Brian and cc:ing Eliot with copies.

Bernstein: Right, and I'd appreciate if all that email comes to iviewit.com. Therefore, I have copied records.

Becker: Are you saying you only want us to correspond with you via email, not letters? Not...

Bernstein: No, but if it is emails, iviewit.com emails because that gives me complete copied records on tape backups.

Armstrong: ~~De~~—don't send anything to any of us at a domain name other than iviewit.com, if you send it in email. |

Becker: That's the instructions?

Bernstein: Right.

Armstrong: Correct.

Becker: Don't send to any other email address besides one of your names at iviewit.com.

Bernstein: Correct.

Becker: Okay. Anything else in addition to those items?

Bernstein: Nope. Steve, I appreciate your taking the blunt end of this, I really do.

Becker: Well, I just wish you would not...

Bernstein: Well, we freaked out a little bit. You can understand that there's a reason to freak...I'm not just making this up. So based on that, let's try to resolve and move forward. |

Becker: Anything else?

Bernstein: Nope. Thanks very much.

Yellow = Meltzer Lippe (From Undated File #196675.1  
 Green = Foley & Lardner (Portfolio Date 102-119 6/13/2000) (Portfolio Date 122,122,123 11/30/2000)  
 Turquoise = Blakely Sokoloff (Portfolio Date 7/17/01)  
 Rose = Greenberg Traurig (Portfolio Date 4/12/02)  
 USPTO &OR PCT

Application Number	MLCS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING		57103/101			Missing	Missing	Missing							
MISSING		57103/112			Missing	Missing	Missing						101 - Here References 112 + 113 claims, no titles 0101 - Here references (0118 but letter attached to fax is 117, whats attached is	
MISSING		118 +117												
MISSING	5865				General File	Letter indicating this is the general file number not 5865-2								This folder disappears from MLGS files, it is referenced as general which then becomes 5865-2
60/125.824	5865-1				Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein + Zakirul Shirajee +	Jude Rosario	3/24/1999			Assigned 8/5/99 to ?		Was this assigned - MLGS/PR - Fail to disclose inventors - Failure to disclose invention process - Files 3 months
60/125.824		57103/102			Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein		3/24/1999		US	IHI	Provisional	Fail to correct Inventors, fix missing disclosures & notify USPTO OED of problems
60/125.824					Prov Lapse		Eliot Bernstein					Bernstein to Ivievit LLC to IHI Assigned 01/06/00 Reel Frame 010523/0 526		Fail to correct Inventors, fix missing disclosures & notify USPTO OED of problems
MISSING	5865-2				Missing	Missing Video Only Patent	LOST FILING	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application	
60/137,297	5865-2				General File	General Correspondence File	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario	6/3/1999		US	Assigned 8/5/99 to who	Strange why he opens a general file 3 months after 1st. What was general prior, in several references it is 5865. The video filing and we review form a client/matter intake it and then it disappears is not normal in the files. Try to get another of general file folder contents	This is supposed to be a video filing and we review it and then it disappears and is replaced with a general file folder contents	
60/137,297	5865-3	57103/103			Prov US	Apparatus & Method for Producing Enhanced Video Images	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario	6/3/1999		US	IHI	Provisional	Video Patent is missing Joao/Rubenstein say this is combo that covers the video + the combo. Filed months late	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60/137,921	5865-4		P002		Prov Lapse	Apparatus & Method for Playing Video Files Across the Internet	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario (Possible Jeff)	6/7/1999		US	Assigned 8/5/99	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	Operating other equipment to play movies remotely by activating others devices. DVD's, TAPES, MOVIES FROM RAM MLGS/PR - Fail to disclose inventors -	
60/137,921	5865-4	57103/104			Prov US	Apparatus & Method for Playing Video Files Across the Internet	Elliott Bernstein	Elliott Bernstein + Zakirul Shirajee + Jude Rosario (Possible Jeff)	6/7/1999		US	IHI	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems	Operating other equipment to play movies remotely by activating others devices. DVD's, TAPES, MOVIES FROM RAM MLGS/PR - Fail to disclose inventors -

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
60/141.440	5865-4.1		P003		Prov Lapse	Apparatus & Method for Providing and/or transmitting Video Data and/or Information in a Communication Network	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario + Jeff (Eliot + Jeff on remote concept using video from EIB + ZS + JR	6/29/1999			Not Filed		Remote control camera with video and zoom and camera mounts. Goes missing this invention. Joao has similar patents now. Missing inventors
60/141.440		57103/105			Prov US	Apparatus & Method for Providing and/or transmitting Video Data and/or Information in a Communication Network	Eliot Bernstein		6/29/1999		US	IHI IHI Reel Frame 01/0523-0574		Fail to correct inventors. fix missing disclosures & notify USPTO OED of problems
60/146.726	5865-6		P004		Prov Lapse	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	8/27/1999			Not Filed		Missing inventors, missing proper disclosure
60/146.726		57103/106			Prov US	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein		8/27/1999		US	IHI IHI Reel Frame 01/0523-0509		Fail to correct inventors. fix missing disclosures & notify USPTO OED of problems
			P005		Prov Lapse		Eliot Bernstein							Fail to correct inventors. fix missing disclosures & notify USPTO OED of problems

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
60/149,737	5865-5					Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot Bernstein	Eliot Bernstein + Zakirui Shirajee + Jude Rosario	8/19/1999			Not Filed		Missing inventors, missing proper disclosure
60/149,737		57103/107			Prov US	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot Bernstein		8/19/1999		US	IHI IHI Reel Frame 010523-0506	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
			P006		Prov Lapse									Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60/155,404	5865-7					Apparatus & Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein	Eliot Bernstein + Zakirui Shirajee + Jude Rosario	9/22/1999			Not Filed		Missing inventors, missing proper disclosure
60/155,404		57103/108			Prov US	Apparatus & Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein		9/22/1999		US	IHI IHI Reel Frame 010523-0183	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
			P007		Prov Lapse									Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
60,169,559	5865-8					Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein	Eliot Bernstein + Zakirui Shirajee + Jude Rosario	12/8/1999			IHI		Missing inventors, missing proper disclosure - looks like copy of last one
60/169,559		57103/109			Prov US	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot Bernstein		12/8/1999		US	IHI	Provisional	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING	5865-9		P008		Prov Lapse		Eliot Bernstein					IHI 01/06/00 Reel Frame 010523-0220		Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
						Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						May be missing filing signed by all three inventors and Joao somehow revoked it. This is supposed to be US filing but Joao does not send it
	5865-10				PCT Pending	Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						Joao files this to try and cover up for the US app that Jude Zak and Elliot signed and somehow he files this to say that was filed. Then after we catch him lying he suddenly sends over a US app that
		57103/110			1 PCT Pending	Enhanced Digital Images	Eliot Bernstein		3/23/2000	3/24/1999	PCT	IHI	International	Foley states they assigned but everyone else states it is not assigned
			P009		PCT Pending	<b>LAPSED BY BSZT</b>	Eliot Bernstein					Not Assigned		BSZT states not assigned Should never have been lapsed and wity never assigned
						Apparatus & Method for Producing Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario						JOAO NEVER ACCOUNTS FOR OR SENDS FOLEY INFO AT FIRST- THIS CORRESPONDS TO APP SIGNED BY ALL THREE AND SENT BY EIB+WITNESSES. JOAO USES THE SAME ATTRNY DCKT # 5865-1 FOR THIS FILING AS
09/522,721	5865-??				US Pending	Enhanced Digital Images	Eliot Bernstein	Eliot Bernstein + Zakirul Shirajee + Jude Rosario			US	NOT ASSIGNE D	US FILING	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems. Never assign. Foley in transcripts say they are
		57103-119			US Pending							NOT ASSIGNE D		

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
PCT/US00/108			P017		US Pending							NOT ASSIGNED D NOT ASSIGNED D		Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems. Never assign. BSZT lets this lapse losing original date, decide with Crossbow and Mondragon
PCT/US00/109		57103/111			4 PCT Pending	System & Method for Streaming an Enhanced Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000		PCT	MISSING International		This becomes limited to streaming and has wrong inventors, even after they meet with inventors
PCT/US00/110			P010		4 PCT Pending		Eliot Bernstein + Zakirul Shirajee					Not Assigned	Not only Foley Spread on Blakely find	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
PCT/US00/111					PCT Natl Phase							Not Assigned		
PCT/US00/112		57103/112			2 PCT Pending	System & Method for Providing an Enhanced Digital Video File	Eliot Bernstein + Jude Rosario + Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000	3/6/1999	PCT	MISSING International		This is really strange, it is a copy of the above app but we lose Zak and get Jude and Brian instead. The title here is the correct
PCT/US00/113			P011		2 PCT Pending		Eliot Bernstein + Zakirul Shirajee + Brian Utley					Applicant IHI	Not only Foley Spread on Blakely find	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
PCT/US00/114					PCT Natl Phase							IHI		
PCT/US00/115		57103/113			3 PCT Pending	System & Method for Playing a Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/2/2000	3/6/1999	PCT	MISSING International		Wrong inventors
PCT/US00/116			P012		3 PCT Pending		Eliot Bernstein + Zakirul Shirajee					IHI	Not only Foley Spread on Blakely find	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
PCT/US00/117					ABANDONED							IHI		
PCT/US00/118		57103/114			4 US Pending	System & Method for Streaming an Enhanced Digital Video File	Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	6/5/2000		US	MISSING Pending		Wrong inventors - wrong title and note that it is elb + zak

Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
09/587.730			P013		4 US Pending US Pending		Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	Applicant IHI IHI	Not only Foley Spread on Blakey find	Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/????		57103/115			3 US Pending	System & Method for Playing a Digital Video File	Eliot Bernstein Shirajee + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	MISSING Applicant IHI IHI	Not only Foley Spread on Blakey find	Wrong inventors Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/587.026			P014		3 US Pending US Pending		Eliot Bernstein + Zakirul Shirajee	Eliot Bernstein Zakirul Shirajee Jude Rosario						
09/????		57103/116			US Pending	System & Method for Providing an Enhanced Digital Video File	Eliot Bernstein + Brian Utley	Eliot Bernstein Zakirul Shirajee Jude Rosario	6/5/2000		US	MISSING Applicant IHI IHI	Not only Foley Spread on Blakey find	Here again the title is correct and the inventors get changed to elb+brian+Jude, and another similar app is filed Fail to correct inventors, fix missing disclosures & notify USPTO OED of problems
09/587.734			P015		2 US Pending US Pending		Eliot Bernstein + Jude Rosario + Brian Utley	Eliot Bernstein Zakirul Shirajee Jude Rosario						
Missing Entirely From Foley Docket		57103/117			5 ?	System & Method for Video Playback Over a Network	Eliot Bernstein + Jeffrey Friedstein UTLEY ON OUR COPY OF THIS	Eliot Bernstein Zakirul Shirajee Jude Rosario Jeff (Eliot + Jeff on remote video from EIB + ZS + JR						
						System & Method for Video Playback Over a Network	Bernstein, Eliot AI.		60/137.92 1 & US Prov 60/141/44 0				Is to continue 5665-4 & 4.1 & also 118 is attached instead	Foley states that EIB told them not to file US and this is BS File never sent to BSZT, yet fragments remain of
		57103/117			PCT Intern'l ?	?	Missing Eliot Bernstein + Jeffrey Friedstein Brian Utley							
					<b>Not Filed????</b>									NO file found at USPTO by CPR



Application Number	MLGS	F&L	BLAKELY	Greenberg	Status	Title of Invention Application	Inventors Listed On Application	True & Correct Inventors	Filing Date	Priority	Country	Assignee Type	Comments	Problems with Application
MISSING FROM FOLEY DOCKET		57103/120			6 MISSING	System & Method for Providing an Enhanced Digital Image File	Missing		Missing	?		MISSING ?	Not on Foley Spreadsheet, Blakely finds this or they then send to BSZT but Company is unaware it	
PCT/US00/21 211			P018		6 PCT Pending PCT Natl	Eliot Bernstein Eliot Bernstein + Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	9/2/2000		PCT	IHI	Applicant IHI International		
MISSING FROM FOLEY DOCKET		57103/121			6 MISSING	System & Method for Providing an Enhanced Digital Image File	Missing	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	Missing	?		MISSING ?		Missing oath & declaration when filed. EIB never saw this never invented with Utley - no EOB sig anywhere BSZT - Fails to report to OED or authorities - Fails to correct inventors
09/630.939			P019		6 US Pending	Eliot Bernstein + Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	8/2/2000		US		Not Assigned	Not only Foley Spread on Blakely find	
					US Pending	Eliot Bernstein + Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario					Not Assigned		Foley files without authorization - Utley as sole inventor - no assignment to Company Foley files without authorization - Utley as sole inventor - no assignment to Company. Utley in dep denies knowing about camera BSZT Never corrected the inventors or re-assigned it to Company. Failure to report the matter to OED
MISSING FROM FOLEY DOCKET		57103/122			US Prov	Zoom & Pan Using a Digital Camera	Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	9/18/2000		US	IHI	Provisional	
60/223.344					CANCELLED		Brian Utley					Not Assigned	Not only Foley Spread on Blakely find	
MISSING FROM FOLEY DOCKET		57103/123			US Prov	Zoom & Pan Imaging Design Tool	Brian Utley	Eliot Bernstein + Zakirul Shirajee + Jude Rosario	9/18/2000		US	IHI	Provisional	
60/233.341					CANCELLED		Brian Utley					Not Assigned	Not only Foley Spread on Blakely find	Foley files without authorization - Utley as sole inventor - no assignment to Company BSZT Never corrected the inventors or re-assigned it to Company. Failure to report the matter to OED

**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

THE WITNESS: There was a

266

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as

# BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATIONS

TELEPHONE (310) 207-3800

FACSIMILE (310) 820-5988  
(310) 820-5270

BSTZ\_MAIL@BSTZ.COM  
WWW.BSTZ.COM

INTELLECTUAL PROPERTY LAW

12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1026

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DENVER / ENGLEWOOD, CO

**Confirmation  
Copy**

August 4, 2001

**CONFIDENTIAL COMMUNICATION  
ATTORNEY-CLIENT PRIVILEGED**

**VIA E-MAIL**  
(And Confirmation By Mail)

Eliot Bernstein  
IVIEWIT.COM, INC.  
505 North Brand Boulevard, Suite 1420  
Glendale, California 91203

Re: Powers of Attorney for Six PCT Applications:

<b>Apparatus and Method for Producing Enhanced Digital Images</b> Serial No. PCT/US00/07772 Our File No. 005707.P009PCT Foley's Reference No. 110	<b>System and Method for Playing a Digital Video File</b> Serial No. PCT/US00/15406 Our File No. 005707.P012PCT Foley's Reference No. 113
<b>System and Method for Streaming an Enhanced Digital Video File</b> Serial No. PCT/US00/15408 Our File No. 005707.P010PCT Foley's Reference No. 111	<b>System and Method for Video Playback Over a Network</b> Serial No. PCT/US00/15602 Our File No. 005707.P016PCT Foley's Reference No. 118
<b>System and Method for Providing an Enhanced Digital Video File</b> Serial No. PCT/US00/15405 Our File No. 005707.P011PCT Foley's Reference No. 112	<b>System and Method for Providing an Enhanced Digital Image File</b> Serial No. PCT/US00/21211 Our File No. 005707.P018PCT Foley's Reference No. 120

Dear Eliot:

Being e-mailed (and enclosed herewith) are six (6) Powers of Attorney for the subject PCT Patent Applications, one Power for each inventor named in any one or more of the PCT patent applications, and one Power for the corporation, Iviewit Holdings, Inc. Three of the Powers require your signature, as follows: (i) one by you in your individual capacity; (ii) a second by you in your capacity as designee of the corporation to sign on behalf of Brian Utley (we hope the PCT Office will recognize Utley's having granted a Power of Attorney to his corporate employer); and (iii) a third by you for the corporation in your capacity as its Secretary. Kindly sign where your

# BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATIONS

Eliot Bernstein  
IVIEWIT.COM, INC.  
August 4, 2001  
Page 2 of 2

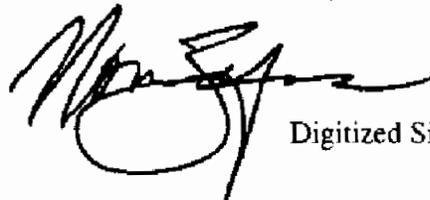
signature is indicated on the three Powers of Attorney and return the original executed Powers to our office via mail (we need to have each Power with an original signature). Also fax each Power to us at (310) 820-5988, to expedite the process.

As we discussed, we request that you also forward each of the three remaining Powers to Jude R. Rosario, Jeffrey S. Friedstein and Zakirul A. Shirajee, respectively, for their signatures. Kindly instruct each of them to execute the Powers and to return the originals to our office by mail. In order to expedite the matter, request each of them to fax a copy to us, if possible.

If you have any questions, please feel free to contact my Assistant, Jan Gass. We appreciate your attention to getting the subject Powers executed and returned to us. We will then attend to their filing with the PCT Office.

Best personal regards,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP



Digitized Signature

Norman Zafman

NZ/jg  
Enclosures

cc: Ross Miller (w/Enclosures via E-Mail) ✓

P.S. to Ross Miller:

Ross, please attend to getting a Board Resolution appointing Eliot as the corporation's designee for signing the subject Power on behalf of Brian Utley. We talked about this in the context of giving Eliot comfort; however, the PCT Office may well request such a Resolution (in addition to a copy of Utley's Employment Agreement, which we already have).

\* \* \* COMMUNICATION RESULT REPORT ( MAY. 2. 2001 3:41PM ) \* \* \*

TTI

MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
3 MEMORY TX		63-F :2030#057103#0101#15619998810#	OK	4/4

REASON FOR ERROR  
 E-1) HANG UP OR LINE FAIL  
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E-2) BUSY  
 E-4) NO FACSIMILE CONNECTION

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 TELEPHONE (414) 271-2400  
 FACSIMILE (414) 297-4800

# FACSIMILE TRANSMISSION

Total # of Pages 4 (including this page)

TO:	PHONE:	FAX #:
Brian Utley Iviewit.com, Inc.	561-999-8899	

elicit  
Line 561-999-8899 3/19/2004 8:06:12 PM

**From:** Barry L. Grossman  
**Sender's Direct Dial:** 414 297 5724  
**Date:** May 2, 2001  
**Client/Matter No:** 057103/0101  
**User ID No:** 2030

This comes after Utley is fired with cause and this file number does not match the patent file number

# FACSIMILE TRANSMISSION

Total # of Pages 4 (including this page)

TO:	PHONE:	FAX #:
Brian Utley Iviewit.com, Inc.	561-999-8899	561-999-8810

From: Barry L. Grossman  
Sender's Direct Dial: 414 297 5724  
Date: May 2, 2001  
Client/Matter No: 057103/0101  
User ID No: 2030

'01 MAY 2 16:45

**MESSAGE:**

eliot 3/19/2004 8:07:23 PM  
Line  
This comes after Utley is fired with  
cause and this file number does not  
match the patent file number

If there are any problems with this transmission or if you have not  
received all of the pages, please call (414) 297-5444.

Operator:	Time Sent:	Return Original To: <b>Barry L. Grossman</b>
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# FOLEY & LARDNER

ATTORNEYS AT LAW

BRUSSELS  
CHICAGO  
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DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE

FIRSTSTAR CENTER  
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SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE  
(414) 297-5724

EMAIL ADDRESS  
bgrossman@foleylaw.com

CLIENT/MATTER NUMBER  
057103/0101

May 2, 2001

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

**BY FACSIMILE**

Re: Provisional Patent Application No. 60/233,341  
(Our File No. 57103/0123)

Dear Mr. Utley:

I sent you an e-mail message concerning the referenced application. As stated in that message, on September 18, 2000 a provisional patent application was filed on your behalf. The title of the application is "Zoom and Pan Imaging Design Tool". The application number is 60/233,341. Our file number is 57103/123. Mr. Boehm informed you of the filing of the provisional application in a letter dated September 22.

The application was filed without paying a filing fee in accordance with Patent Office rules that permit this procedure. In my letter of February 26, 2001, I advised you that the filing fee must be paid in order to maintain the pendency of this application. I received no response to my letter.

The time for paying the filing fee may be extended until June 4 at the latest by paying substantial extension fees to the Patent and Trademark Office. If you choose to send in the fees, I am forwarding to you a copy of the form that must be returned with your reply to the Patent Office, the Notice to File Missing Parts.

FOLEY & LARDNER

Mr. Brian G. Utley

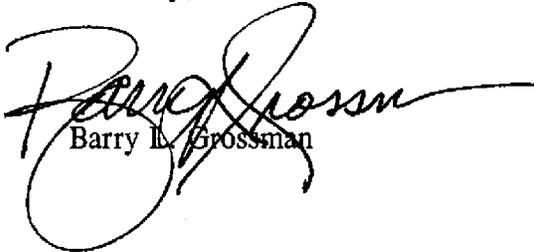
Iviewit.com, Inc.

May 2, 2001

Page 2

We will take no further action in this case. Please let us know if you would like us to return this file to you.

Sincerely,



Barry L. Grossman

eliot	3/19/2004 8:10:37 PM
Note	
There is no carbon copy on this letter as Foley was requested to provide on all patent matters and it comes after Utley is terminated. Prior to this the Company had no records of this application.	


**UNITED STATES PATENT AND TRADEMARK OFFICE**

 COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
*Filing Date Granted*

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 200.**

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**Grossman, Barry L.**

---

**From:** Grossman, Barry L.  
**Sent:** Wednesday, May 02, 2001 4:11 PM  
**To:** 'Brian G. Utley'  
**Subject:** RE: Provisional Patent Application

On September 18, 2000 a provisional patent application was filed on your behalf. The title of the application is "Zoom and Pan Imaging Design Tool". The application number is 60/233,341. Our file number is 57103/123. Mr. Boehm informed you of the filing of the provisional application in a letter dated September 22. The application was filed without paying a filing fee in accordance with Patent Office rules that permit this procedure. In my letter of February 26, 2001, I advised you that the filing fee must be paid in order to maintain the pendency of this application. I received no response to my letter. The time for paying the filing fee may be extended until June 4 at the latest by paying substantial extension fees to the Patent and Trademark Office.

We will take no further action in this case. Please let us know if you would like us to return this file to you.

Barry Grossman  
Foley & Lardner  
ph.: 414-297-5724  
e-mail: bgrossman@foleylaw.com

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\* \* \* COMMUNICATION RESULT REPORT ( FEB.26.2001 2:07PM ) \* \* \*

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
191 MEMORY TX		2030#057103#0123#15619998810#	OK	P. 9/9

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TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

## FACSIMILE TRANSMISSION



Total # of Pages 3 (including this page)

TO:	PHONE:	FAX #:
Mr. Brian G. Utley (Iviewit.com)	(561) 999-8899	(561) 999-8810

From: Barry Grossman
Sender's Direct Dial: (414)297-5571
Date: February 26, 2001
Client/Matter No: 57103/123
User ID No: 2030

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ATTORNEYS AT LAW  
FIRSTAR CENTER  
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**Total # of Pages 3 (including this page)**

TO:	PHONE:	FAX #:
Mr. Brian G. Utley (Iviewit.com)	(561) 999-8899	(561) 999-8810

**From:** Barry Grossman  
**Sender's Direct Dial:** (414)297-5571  
**Date:** February 26, 2001  
**Client/Matter No:** 57103/123  
**User ID No:** 2030

### MESSAGE:

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<b>Operator:</b>	<b>Time Sent:</b>	<b>Return Original To:</b>
		JLB

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# FOLEY & LARDNER

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WEST PALM BEACH

EMAIL ADDRESS  
bgrossman@foleylaw.com

**VIA FACSIMILE**

WRITER'S DIRECT LINE  
(414) 297-5724

February 26, 2001

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Patent Application No.: 60/233,341  
Filing Date: 8/02/2000  
Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley, Brian G.  
Our Ref.: 57103/123

Dear Mr. Utley:

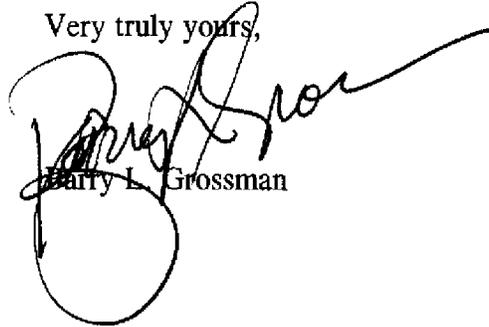
A payment is due to the Patent Office in order to keep the referenced application pending. In order to expedite filing of the application and to defer payment of the filing fee, the referenced application was filed in the Patent Office without paying the filing fee. Patent Office rules permit this procedure. The filing fee is now due. In order to avoid abandonment of the application, we will need to file the executed Declaration with the necessary fees on or before **April 04, 2001**. If you want to maintain this application, please send us a **certified check** in the amount of **\$420.00** as soon as possible so we can get this taken care of in an orderly fashion.

Because of the long overdue status of your account, we cannot pay the fees on your behalf without advance payment in full. We will require a certified check or if you prefer you may wire transfer the payment. I will send you account information if you want to use a wire transfer.

Mr. Brian G. Utley  
February 26, 2001  
Page 2

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Harry L. Grossman

cc: Raymond Hersh



eliot	3/19/2004 8:26:09 PM
Line	
Raymond Hersh is the CFO and should not have been cc'd ANY patent information.	

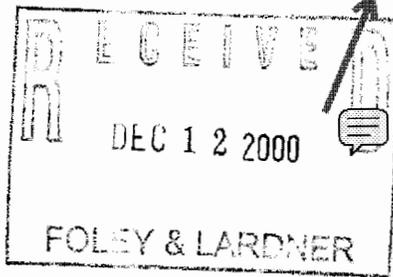


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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
777 East Wisconsin Avenue  
Firstar Center  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



\*OC000000005592300\*

Date Mailed: 12/04/2000

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

MP  
RESPONSE DUE 04 FEB 2001  
DECL FEE

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- The balance due by applicant is \$ 200.

*A copy of this notice MUST be returned with the reply.*

*James Washington*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY


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 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,341	09/18/2000	Brian G. Utley	57103/123

Foley & Lardner  
 777 East Wisconsin Avenue  
 Firstar Center  
 Milwaukee, WI 53202-5367


**FORMALITIES LETTER**


\*OC00000005592300\*

Date Mailed: 12/04/2000

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- **The balance due by applicant is \$ 200.**

---

*A copy of this notice **MUST** be returned with the reply.*

*James Washington*  
 \_\_\_\_\_  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/233,341	09/18/2000		0	57103/123	7		

Foley & Lardner  
777 East Wisconsin Avenue  
Firststar Center  
Milwaukee, WI 53202-5367

FILING RECEIPT



Date Mailed: 12/04/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

← Brian G. Utley, Boca Raton, FL ;

Continuing Data as Claimed by Applicant

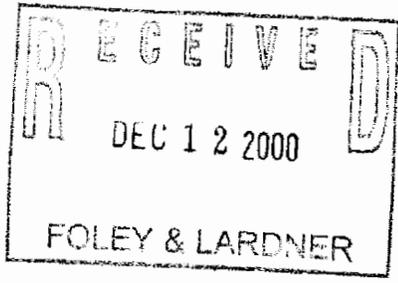
Foreign Applications

If Required, Foreign Filing License Granted 12/01/2000

Title

Zoom and pan imaging design tool

Preliminary Class



Data entry by : WASHINGTON, JAMES      Team : OIPE      Date: 12/04/2000



**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15 (b).

**PLEASE NOTE the following information about the Filing Receipt:**

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, DC 20231

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Brian G. Utley  
 Title: Zoom and Pan Imaging Design Tool  
 Appl. No.: Unknown  
 Filing Date: 9/18/2000  
 Examiner: Unknown  
 Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640465729US	9/18/00
(Express Mail Label Number)	(Date of Deposit)
Douglas A. Boehm	
(Printed Name)	
	
(Signature)	

**PROVISIONAL PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PROVISIONAL PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(c) is the provisional patent application of:

→ Brian G. Utley  
 1930 S.W. 8th Street  
 Boca Raton, Florida 33486

Enclosed are:

- Specification, Claim(s), Abstract, and Figures( <sup>112</sup>~~105~~ pages).
- Assignment of the invention to lviewit.com, Inc..
- Small Entity statement.

The filing fee is calculated below:

	Rate	Fee Totals
Basic Fee	\$150.00	\$150.00
[ X ] Small Entity Fees Apply (subtract 1/2 of above):	=	\$75.00
TOTAL FILING FEE: =		\$75.00

- [ ] A check in the amount of \$75.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 9/18/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.); 112
- Patent Application Specification and Figures (105 pgs.);

Assistant Commissioner for Patents:  
Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley  
Appl. No.: Unknown

Dkt. No. 57103/123  
DABO (9/18/00)

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Respectfully,  
Foley & Lardner

jc541 U.S. PTO

60/233341



09/18/00

FOREIGN FILING	
FFR 6	<u>18 MR 2001</u>
FFR 9	<u>18 JE 2001</u>
FFR 11	<u>18 AU 2001</u>
FFD	<u>09 SE 2001</u>
INITIALS <u>K</u>	DATE <u>9/20/00</u>

10/5/00



**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

# FOLEY & LARDNER

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WRITER'S DIRECT LINE  
(414) 297-5718

September 22, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Provisional Patent Application  
Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al.  
Our Ref.: 57103/122

U.S. Provisional Patent Application  
Title: Zoom and Pan Imaging Design Tool  
Inventor(s): Utley, Brian G.  
Our Ref.: 57103/123

Dear Brian:

Enclosed for your information and files are copies of the above-referenced patent applications that were filed with the U.S. Patent and Trademark Office on September 18, 2000. As soon as we receive the application numbers and confirmed filing dates, we will forward this information to you.

If you have any questions regarding this application, please do not hesitate to contact me.

eliot  
Line

No carbon copy to ANYONE, despite repeated requests in the transcripts to send cc to others. Company cannot verify this as it was not in the Company files until transfer of files from Foley

Very truly yours,



Douglas A. Boehm



Enclosure(s)

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy?



<b>eliot Note</b>	<b>3/10/2004 2:19:24 AM</b>
Boehm directed to copy company on patents and other matters	

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~-out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~Armstrong: Don't jump to conclusions.

Bernstein: No, I'm not, but if this is correct, we've got some fundamental things that need to be discussed.

1 training that you've had or maybe you -- you did 113  
2 indicate that you had any degree in mathematics.  
3 Is that something that you have some experience  
4 from from some other portion of your employment  
5 or background?  
6 A. I have training and experience in  
7 mathematics.  
8 Q. I'm sorry.  
9 A. I say I have training and experience  
10 in mathematics.  
11 Q. How about in the scaling video  
12 invention; is that part of what you've already  
13 described?  
14 A. That is readily derived from a  
15 mathematical background.  
16 Q. How about the remote control video  
17 applications?  
18 A. That's different.  
19 Q. Okay. Now going back to --  
20 A. What --  
21 Q. -- the patent dealing specifically  
22 with remote control applications.  
23 A. What I did there was I established  
24 the fact that the design point that Eliot had  
25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork

IVIEWIT.COM PATENT STATUS REPORT

LAPSED PROVISIONAL U.S. PATENT APPLICATIONS

05707

TITLE	OUR REF.	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE	REMARKS
Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	P006Z	Eliot I. Bernstein	United States	Serial No. 60/149,737	Filed 08/19/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0506	Lapsed  P018PCT filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P007Z	Eliot I. Bernstein	United States	Serial No. 60/155,404	Filed 09/22/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0183	Lapsed  P010PCT, P011PCT, P012PCT, P016PCT and P018PCT all filed based on this provisional application.
Apparatus and Method for Producing Enhanced Video Images and/or Video Files	P008Z	Eliot I. Bernstein	United States	Serial No. 60/169,559	Filed 12/08/99	Iviewit Holdings, Inc. Assigned: 01/06/00 Reel/Frame 010523/0220	Lapsed  P010PCT, P011PCT, P012PCT and P018PCT all filed based on this provisional application.
Zoom and Pan Imaging Using a Digital Camera	P020Z	Brian Utley	United States	Serial No. 60/223,344	Filed 09/18/00	Not assigned.	Lapsed
Zoom and Pan Imaging Design Tool	P021Z	Brian Utley	United States	Serial No. 60/233,341	Filed 09/18/00	Not assigned.	Lapsed



X = not here  
 ✓ = Patent  
 ! = Response  
 !! = Response w/ ref.

✓ = here (gotta)  
 ✓ = here (response)  
 ✓ = here (document response)

Page 1 of 2

CONFIDENTIAL

VIEWIT.COM PATENT PORTFOLIO

Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Priority
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Elliot I. Bernstein	Iviewit Holdings, Inc.	15/4	N/A
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/3/1999	Apparatus and Method for Producing Enhanced Video Images	Elliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/7/1999	Apparatus and Method for Playing Video Files Across the Internet	Elliot I. Bernstein	Iviewit Holdings, Inc.	1/0	N/A
4	57103/106	5865-4.1	U.S. (Provisional)	60/141,440	6/28/1999	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network	Elliot I. Bernstein	Iviewit Holdings, Inc.	25/2	N/A
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/2/1999	Apparatus and Method for Producing Enhanced Digital Images	Elliot I. Bernstein	Iviewit Holdings, Inc.	10/4	N/A
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/18/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Elliot I. Bernstein	Iviewit Holdings, Inc.	21/4	N/A
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Elliot I. Bernstein	Iviewit Holdings, Inc.	29/4	N/A
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/6/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Elliot I. Bernstein	Iviewit Holdings, Inc.	47/5	N/A
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images	Elliot I. Bernstein	Iviewit Holdings, Inc.	14/4	60/125,824

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57/03/110  
 int PCT-US000-0772

CONFIDENTIAL

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Tab No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/SHs	Priority
10	57103/111	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
11	57103/112	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Lilley, Rosario		33/3	60/137,297 60/155,404 60/169,559
12	57103/113	N/A	PCT (International)	PCT/US00/	6/2/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559
13	57103/114	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Streaming an Enhanced Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/111PCT
14	57103/115	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Playing a Digital Video File	Bernstein, Shirajee		29/3	60/137,297 60/155,404 60/169,559 57103/113PCT
15	57103/116	N/A	U.S. (Non-Provisional)	09/	6/5/2000	System and Method for Providing an Enhanced Digital Video File	Bernstein, Lilley, Rosario		33/3	60/137,297 60/155,404 60/169,559 57103/112PCT
16	57103/118	N/A	PCT (International)	PCT/US00/	6/7/2000	System and Method for Video Playback Over a Network	Bernstein, Friedstein, Lilley		24/2	60/137,921 60/141,440
17	57103/119	5865-1	U.S.	08/522,721	3/10/2000	Apparatus and Method for Producing Enhanced Digital Images	Bernstein		15/4	60/152,824

*[Handwritten scribbles and marks at the bottom of the page]*





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, DC 20540  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,344	09/18/2000	Brian G. Utley	57103/122

Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367



FORMALITIES LETTER



\*OC000000005649704\*

Date Mailed: 01/03/2001

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

MP  
RESPONSE DUE 02/16/2001  
DECL FEE

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 150 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$50 for a non-small entity, must be submitted with the missing items identified in this letter.
- Small Entity Statement is missing.
- The balance due by applicant is \$ 200.

*A copy of this notice **MUST** be returned with the reply.*

*OSmall*

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Initial Patent Examination Division (703) 308-1202

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 WASHINGTON, D.C. 20231  
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
60/233,344	09/18/2000	Brian G. Utley	57103/122

Foley & Lardner  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**


\*OC00000005649704\*

Date Mailed: 01/03/2001

**NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION**
**FILED UNDER 37 CFR 1.53(c)**
***Filing Date Granted***

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- Small Entity Statement is missing.
  
- The balance due by applicant is \$ 200.

*A copy of this notice **MUST** be returned with the reply.*

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Initial Patent Examination Division (703) 308-1202

**PART 2 - COPY TO BE RETURNED WITH RESPONSE**

Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al. Dkt. No. 57103/122  
Appl. No.: Unknown DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.);
- Patent Application Specification and Figures ( 95 pgs.);

Assistant Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

efiot 3/19/2004 10:36:26 PM  
Note

No filing stamps are on this at all as with other applications??

Title: Zoom and Pan Imaging Using a Digital Camera  
Inventor(s): Utley et al. Dkt. No. 57103/122  
Appl. No.: Unknown DABO (9/18/00)

- Transmittal of Patent Application (2 pgs.);
- Patent Application Specification and Figures ( 95 pgs.);

Assistant Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Utley et al. ←

Title: Zoom and Pan Imaging Using a Digital Camera

Appl. No.: Unknown

Filing Date: 9/18/2000

Examiner: Unknown

Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640465732US	9/18/00
(Express Mail Label Number)	(Date of Deposit)
Douglas A. Boehm	
(Printed Name)	
	
(Signature)	

**PROVISIONAL PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PROVISIONAL PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(c) is the provisional patent application of:

Brian G. Utley  
1930 S.W. 8th Street  
Boca Raton, Florida 33486

Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, Florida 33432-6080

eliot	3/19/2004 10:39:02 PM
Note	No signature for Eliot is in the files and BSZT states in portfolio that it is only Utley. There is no stamps from patent office or other proof this is legit. Was not in the Company files until Foley to BSZT transfer.

Enclosed are:

- [ X ] Specification, Claim(s), Abstract, and Figures ( 95 pages).
-   [ ] Assignment of the invention to lviewit.com, Inc.
-   [ ] Small Entity statement.

eliot	3/19/2004 10:40:42 PM
Line	Assignment never filed and small entity never filed.

The filing fee is calculated below:

	Rate	Fee Totals
Basic Fee	\$150.00	\$150.00
[ X ] Small Entity Fees Apply (subtract 1/2 of above):	=	\$75.00
TOTAL FILING FEE: =		\$75.00

- [ ] A check in the amount of \$75.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 9/18/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

eliot	3/19/2004 10:46:27 PM
Note	
Company has no original files on this patent or signatures or filing receipts from patent office.	

*Copy*



**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
USING A DIGITAL CAMERA**

Inventors:

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.



eliot
Note
No signature in files for Eliot and BS2T and patent office state Eliot is not listed???

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

# FOLEY & LARDNER

Attorneys at Law

Sender's Direct Line:  
(414) 297-5718

Atty. User ID:  
0128  
Client/Matter Code:  
57103/101

Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

## FACSIMILE TRANSMISSION COVER SHEET

TO: **Mr. Brian G. Utley**

COMPANY NAME: **lviewit.com, Inc.**

COMPANY LOCATION: **Boca Raton, Florida**

COMPANY PHONE NUMBER: **TEL: (561) 999-8899**

COMPANY FAX NUMBER: **FAX: (561) 999-8810**

FROM: **Douglas A. Boehm**

DATE: **June 6, 2000**

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 8

IF THERE ARE ANY PROBLEMS WITH THIS FACSIMILE TRANSMISSION, OR IF YOU HAVE NOT RECEIVED ALL OF THE PAGES, PLEASE CALL 414/297-5444.

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\*\*\*\*\*

Brian, Here is your copy of what was just faxed to Mr. Lewis S. Meltzer.

\*\*\*\*\*

Fax Operator: \_\_\_\_\_

Time Sent: \_\_\_\_\_

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
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EMAIL ADDRESS  
daboehm@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5718

June 6, 2000

Mr. Lewis S. Meltzer  
Meltzer, Lippe, Goldstein & Schlissel, P.C.  
190 Willis Avenue  
Mineola, New York 11501

Re: Transfer of IP files for IVIEWIT.COM

Dear Mr. Meltzer:

As you may recall, I am the patent attorney at Foley & Lardner that is currently handling the Iviewit.com IP matters that were previously handled by Ray Joao of your firm.

I recently received the following correspondence from your firm: (1) the original Assignment recorded in the United States Patent and Trademark Office (USPTO) for your Docket No. 5865-8 (U.S. Provisional Patent Application No. 60/169,559); and (2) the USPTO Filing Receipt (copy attached) for your Docket No. 5865-1 for Application No. 09/522,721. Although I sincerely appreciate your firm's diligence in continuing to forward Iviewit materials to me, this latest correspondence raises some very serious issues with respect to the Iviewit.com IP matters that were supposed to have been transferred to Foley & Lardner.

I was not previously told about this U.S. Non-Provisional Application being filed (item 2 above). It does not appear in any of the correspondence previously sent to Foley & Lardner. This raises the question of exactly what was filed in the U.S. Patent and Trademark Office, since I do not have a copy of any filing papers for this application. Was a U.S. Declaration filed? What specification and claims were filed? Was an Assignment filed for this application? I must have this information in order to take over prosecution of this application.

More importantly, however, this raises the question of whether any other provisional or non-provisional applications have been filed in the United States or any other country. Both the client, Brian Utley, President of Iviewit.com, and myself have previously asked your firm to transfer all of the Iviewit.com Intellectual Property files to me. (See attached letter to you dated April 28, 2000.) When the files that were sent to me were incomplete, I sent an e-mail (copy attached) to Dawn Laffin of your firm, asking her to look for other Iviewit matters. I subsequently requested that Nicole, Ray's former secretary,

## FOLEY &amp; LARDNER

Mr. Lewis S. Meltzer  
June 6, 2000  
Page 2

double-check that there were no other miscellaneous files that were not on the list of applications (also attached). Now I find out that, after three or four separate requests, all of the Iviewit patent matters were not transferred to us.

I formally request that you have your firm's Docket Administration Department review all of Ray Joao's files to ensure that all of the Iviewit.com materials have been transferred to me. Please forward all letters, memorandums, faxes, e-mails, notes, CD's, disks, and other correspondence between Iviewit.com and your firm, and between any third parties and your firm on behalf of Iviewit.com. It is particularly important that I know which patent applications were filed and what correspondence was submitted to the U.S. Patent & Trademark Office before the expiration of a critical date. Otherwise, the client could possibly lose patent rights. Please confirm that the attached "Iviewit.com Patent Portfolio" table, which lists the patent applications filed for Iviewit.com by your firm, is accurate and complete.

I also request that you contact Ray Joao to confirm which applications were filed in what countries and whether or not Ray has any additional Iviewit correspondence or materials that were not transferred to Foley & Lardner.

Furthermore, the client requests that I obtain a written confirmation from both you and Ray that all files, materials, and correspondence have been transferred to Foley & Lardner.

Please confirm receipt of this facsimile and let me know that these matters will be handled promptly and appropriately.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

cc: Mr. Brian Utley, Iviewit.com



# FOLEY & LARDNER

ATTORNEYS AT LAW

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MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4800

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
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WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
DABOEHM@FOLEYLAW.COM

VIA FACSIMILE

WRITER'S DIRECT LINE  
(414) 297-5718

April 28, 2000

Mr. Lewis S. Meltzer  
Meltzer, Lippe, Goldstein & Schlissel, P.C.  
190 Willis Avenue  
Mineola, New York 11501

Re: Transfer of IP files for IVIEWIT.COM

Dear Mr. Meltzer:

As you are aware, Mr. Brian Utley, President of IVIEWIT.COM, LLC, has requested in a previous letter that all Intellectual Property files for IVIEWIT.COM be transferred from Meltzer, Lippe to Foley & Lardner. Please have the files forwarded to me at the above address as soon as possible. Upon receipt of the IVIEWIT.COM files, Foley & Lardner will be responsible for taking action in these matters.

These Intellectual Property files include the eight provisional patent application matters listed on the attached sheet, as well as any other Intellectual Property matters that may be missing from this list. Furthermore, I would sincerely appreciate it if you could include copies on disk of the electronic word processing files for these matters, so the eight patent applications won't have to be retyped. Any electronic word processor format will suffice.

Of course, if any questions or problems arise, please do not hesitate to contact me. I thank you in advance for your cooperation.

Very truly yours,



Douglas A. Boehm

Attachment

cc: Ms. Nicole Pinou, Meltzer, Lippe  
Mr. Brian Utley, IVIEWIT.COM

## EXHIBIT A

## Patent Applications

Docket No.	Serial No.	Title	Date Filed	Date Assigned
5865-1	60/125,824	Apparatus and method for producing enhanced digital images	March 24, 1999	August 5, 1999
✓ 5865-3	60/137,297	Apparatus and method for producing enhanced video images	June 3, 1999	August 5, 1999
✓ 5865-4	60/137,291	Apparatus and method for playing video files across the Internet	June 7, 1999	August 5, 1999
✓ 5865-4.1	60/141,440	Apparatus and method for providing and/or for transmitting video data and/or information in a communication network	June 29, 1999	Not Filed
✓ 5865-5	60/149,737	Apparatus and method for producing enhanced digital images and/or digital video files	August 19, 1999	Not Filed
✓ 5865-6	60,146,726	Apparatus and method for producing enhanced digital images	August 2, 1999	Not Filed
✓ 5865-7	60/155,404	Apparatus and method for producing enhanced video images and/or video files	September 22, 1999	Not Filed
✓ 5865-8	60/169,559	Apparatus and method for producing enhanced video images and/or video files	December 8, 1999	Not Filed

**Boehm, Douglas A.**

---

**From:** Boehm, Douglas A.  
**Sent:** Tuesday, May 09, 2000 5:28 PM  
**To:** 'dlaffin@mig.com'  
**Subject:** lviewit.com Files

Dawn --

As I mentioned on the telephone this afternoon, I received your Federal Express package this morning containing the Meltzer, Lippe files for lviewit.com. The package contained 7 folders corresponding to your docket numbers 5865-1,3,4,4.1,5,6, and 7. However, the file folder for your docket no. 5865-8 is missing. Furthermore, not all of the paperwork for the PCT application (your docket no. 5865-10) was included in the first file 5865-1 (which is the PCT's parent case). Is there a 5865-10 file also?

During our phone conversation, you agreed to review your docket and files for 5865-8, 5865-10, and any other 5865 matters for lviewit.com tomorrow, and forward these files to me right away.

Thanks for your assistance.

--Doug

*Douglas A. Boehm  
Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Tel: (414)297-5718  
Fax: (414)297-4900  
Email: daboehm@foleylaw.com*

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**VIEWIT.COM PATENT PORTFOLIO**

**CONFIDENTIAL**

Ref. No.	F&L Dkt. No.	MLG Dkt. No.	Country (Type)	Appl. No.	Filing Date	Application Title	Inventor(s)	Assignee	No. Appl. Pgs/Shts	Comments
1	57103/102	5865-1	U.S. (Provisional)	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	15/4	
2	57103/103	5865-3	U.S. (Provisional)	60/137,297	6/03/1999	Apparatus and Method for Producing Enhanced Video Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	
3	57103/104	5865-4	U.S. (Provisional)	60/137,921	6/07/1999	Apparatus and Method for Playing Video Files Across the Internet	Eliot I. Bernstein	Iviewit Holdings, Inc.	1/0	
4	57103/105	5865-4.1	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	Eliot I. Bernstein	Iviewit Holdings, Inc.	25/2	
5	57103/106	5865-6	U.S. (Provisional)	60/146,726	8/02/1999	Apparatus and Method for Producing Enhanced Digital Images	Eliot I. Bernstein	Iviewit Holdings, Inc.	18/4	
6	57103/107	5865-5	U.S. (Provisional)	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	21/4	
7	57103/108	5865-7	U.S. (Provisional)	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	29/4	
8	57103/109	5865-8	U.S. (Provisional)	60/169,559	12/08/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files	Eliot I. Bernstein	Iviewit Holdings, Inc.	47/5	
9	57103/110	5865-10	PCT (International)	PCT/US00/07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital images	Eliot I. Bernstein		14/4	Claims Priority to 60/125,824 3/24/99 (102)

516.747.0653

3/9/2000

Guidance  
BIN 1 2 F101

Ray Joao

Ray, there are major missing items in docket's 1+6:

1. Claims do not reference stitching
2. Process is amended as shown on the diagram
3. The relationship between the enhanced digital image and the zoom and pan function together with controls is not clear
4. The description and claims stop at the production and loading of the image.

5. Object model Brian

**Becker, Steven C.**

**From:** Becker, Steven C.  
**Sent:** Monday, July 24, 2000 4:44 PM  
**To:** Eliot I. Bernstein (E-mail); Brian G. Utley (E-mail)  
**Cc:** Boehm, Douglas A.  
**Subject:** PCT Patent Application for "Zoom and Pan" Imaging

*Never saw this till all these books*

**Re:** PCT Patent Application for System and Method for Providing an Enhanced Digital Image File  
Inventor: Bernstein  
Our Ref. No.: 57103/120

Brian:

During our brief telephone conversation today, you provided a few comments in response to my letter to you dated July 21, 2000. These comments were based on your review of the prior provisional applications, and are summarized below.

1. The step of "enlarging" is not essential for all embodiments of the invention.
2. The aspects of zooming and panning, and the function of the applet must be described in greater detail. ←
3. The disclosure relating to acquiring a photograph of a film video should be removed. However, the disclosure relating to processing one frame of a video according to the process steps of the invention should be retained.
4. In the provisional patent application having our reference number 57103/108, the flowchart in FIG. 2A does not match the corresponding description in the specification. Correction is needed.

5. Again, in the application for 57103/108, the claims in their current form may not be of the proper scope and should be revised.
6. You commented that the prior-filed PCT applications relating to enhanced video files did not specifically mention potential applications in radiographic images, X-rays, MRIs, etc. Regardless of whether these specific applications are supported, additional subject matter cannot be introduced to the prior-filed PCT applications unless additional patent applications are filed. Please advise if you would like us to file patent applications directed to these specific applications. *IMAGE / and a video but we will process*

We discussed the possibility that the provisional applications currently on file may not provide sufficient disclosure to support all of the claims we may eventually want to file in the PCT patent application we are currently preparing, and, therefore, the sale of images using this process in September, 1999 may bar patentability in some foreign countries. You instructed us to proceed with the PCT filing to preserve whichever foreign filing rights are available. ←

Accordingly, comments 1-5 will be incorporated in the above-referenced PCT patent application. If you have any further questions or comments, please do not hesitate to contact me.

Steve Becker  
Foley & Lardner  
(414)297-5571

*They being oppos on tape*

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CORRECTED VERSION - CORRECTED ON 5/14/2003  
Transcription of Telephone Conference  
Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

57103/115

**UNITED STATES PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**



eliot Note
Missing inventor Rosario

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PLAYING  
A DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,297, filed June 3, 1999, U.S. Provisional Application No. 60/155,404, filed September 22, 1999, U.S. Provisional Application No. 60/169,559, filed December 8, 1999 and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video imaging. More specifically, the present invention relates to a system and method for providing high quality digital video files for streaming across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file first. A video player decompresses and plays the data as it is transferred to a user computer over the World-Wide Web. Streaming video avoids the delay entailed in downloading an entire file and then playing it with a plug-in application. Streaming video requires a communications connection (e.g., a network, Internet, etc.) and a computer powerful enough to execute the decompression algorithm in real time.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov



Bib Data Sheet

<b>SERIAL NUMBER</b> 09/587,026	<b>FILING DATE</b> 06/05/2000 <b>RULE</b> -	<b>CLASS</b> 707	<b>GROUP ART UNIT</b> 2771	<b>ATTORNEY DOCKET NO.</b> 57103/115
------------------------------------	--	---------------------	-------------------------------	---

**APPLICANTS**

Eliot I. Bernstein, Boca Raton, FL ;  
 Zakirul A. Shirajee, Boca Raton, FL ;

**\*\* CONTINUING DATA \*\*\*\*\***

THIS APPLN CLAIMS BENEFIT OF 60/137,297 06/03/1999  
 WHICH CLAIMS BENEFIT OF 60/155,404 09/22/1999  
 WHICH CLAIMS BENEFIT OF 60/169,559 12/08/1999

**\*\* FOREIGN APPLICATIONS \*\*\*\*\***

**IF REQUIRED, FOREIGN FILING LICENSE GRANTED \*\* 08/04/2000**

**\*\* SMALL ENTITY \*\***

Foreign Priority claimed <input type="checkbox"/> yes <input type="checkbox"/> no	<b>STATE OR COUNTRY</b> FL	<b>SHEETS DRAWING</b> 3	<b>TOTAL CLAIMS</b> 26	<b>INDEPENDENT CLAIMS</b> 3	
35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after Allowance					
Verified and Acknowledged	Examiner's Signature	Initials			

**ADDRESS**

Steven C Becker  
 Foley & Lardner  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5367

**TITLE**

System and method for playing a digital video file

<b>FILING FEE RECEIVED</b> 474	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees
		<input type="checkbox"/> 1.16 Fees ( Filing )
		<input type="checkbox"/> 1.17 Fees ( Processing Ext. of time )
		<input type="checkbox"/> 1.18 Fees ( Issue )
		<input type="checkbox"/> Other _____
		<input type="checkbox"/> Credit

THE U.S. PATENT & TRADEMARK OFFICE  
 OFFICIAL MAILROOM STAMP AFFIXED  
 HERETO, ACKNOWLEDGES RECEIPT OF  
 THE ITEMS CHECKED BELOW:

Serial No.: \_\_\_\_\_  
 Applicant: Bernstein et al.  
 Filing Date: \_\_\_\_\_  
 Title: System and Method for  
 Playing a Digital Video File

- Patent Application
- Drawing(s) 3 sheets (F) \_\_\_\_\_ (Inf.)
- Check \$ \_\_\_\_\_ No.: \_\_\_\_\_
- Declaration & Power of Attorney (Unexecuted)
- Extension of Time (duplicate)
- Preliminary Amendment
- Amendment
- Amendment After FINAL Rejection
- Issue Fee (Base and/or Balance)
- Letter to Official Draftsman
- Small Entity Statement
- Assignment/Fee & Form PTO No. 1585
- Trademark Application
- Form PTO No. 1449 & cited references
- Application Transmittal

3089  
 05/05/00  
 587026  
 U.S. PTO

DOCKET NO.: 57103/115 ATTY: SCB  
 DUE DATE: \_\_\_\_\_ 6/21/00

**FOREIGN FILING**  
**FFR 6** 05 DE 2000  
**FFR 9** 05 MR 2001  
**FFR 11** 05 MY 2001  
**FFD** 05 JE 2001  
**INITIALS** R **DATE** 6/19/00

IDS DUE 05 SE 2000



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System And Method For Playing  
 A Digital Video File  
 Appl. No.: Unknown  
 Filing Date: Unknown  
 Examiner: Unknown  
 Art Unit: Unknown

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231	
EL640468331US (Express Mail Label Number)	June 5, 2000 (Date of Deposit)
Shirley Miksa (Printed Name)	
<i>Shirley Miksa</i> (Signature)	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Zakirul A. Shirajee

eliot Note
Jude Rosario is missing

Enclosed are:

- [ X ] Specification, Claim(s), and Abstract (29 pages).
- [ X ] Informal drawings (3 sheets, Figures 1-3).
- [ X ] Unexecuted Declaration and Power of Attorney (4 pages).
- [ ] Assignment of the invention to lviewit.com, Inc..
- [ ] Assignment Recordation Cover Sheet.
- [ ] Check in the amount of \$40.00 for Assignment recordation.
- [ ] Small Entity statement.
- [ ] Information Disclosure Statement.
- [ ] Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

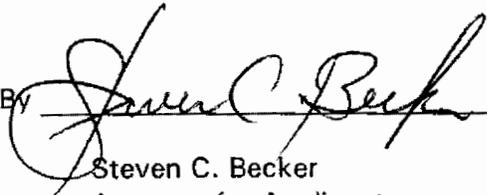
	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	26	- 20	= 6	x \$18.00	= \$108.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$798.00
[ ]	Small Entity Fees Apply (subtract 1/2 of above):				= \$0.00
	TOTAL FILING FEE:				= \$798.00

- [ ] A check in the amount of \$798.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/5/00

By   
 Steven C. Becker  
 Attorney for Applicant  
 Registration No. 42,308

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Playing A Digital Video File

---

(Attorney Docket No. 57103/115)

---

the specification of which (check one)

X  is attached hereto.

\_\_\_ was filed on \_\_\_\_\_ as United States Application Number or PCT International Application Number \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

- |                   |                 |
|-------------------|-----------------|
| RUSSELL J. BARRON | Reg. No. 29,512 |
| DAVID J. BATES    | Reg. No. 39,902 |
| STEVEN C. BECKER  | Reg. No. 42,308 |
| DOUGLAS A. BOEHM  | Reg. No. 32,014 |
| EDWARD W. BROWN   | Reg. No. 22,022 |
| CHARLES G. CARTER | Reg. No. 35,093 |
| ALISTAIR K. CHAN  | Reg. No. 44,603 |

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
FOLEY & LARDNER  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot J. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	
→ Date	

Name of second inventor

Zakirul A. Shirajee

Residence

Boca Raton, Florida

Citizenship

Bangladesh

Post Office Address

9485 Boca Cove Circle, #708, Boca Raton, Florida  
33428

→ Inventor's signature

→ Date

57103/115

**UNITED STATES PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PLAYING  
A DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,297, filed June 3, 1999, U.S. Provisional Application No. 60/155,404, filed September 22, 1999, U.S. Provisional Application No. 60/169,559, filed December 8, 1999 and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video imaging. More specifically, the present invention relates to a system and method for providing high quality digital video files for streaming across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file first. A video player decompresses and plays the data as it is transferred to a user computer over the World-Wide Web. Streaming video avoids the delay entailed in downloading an entire file and then playing it with a plug-in application. Streaming video requires a communications connection (e.g., a network, Internet, etc.) and a computer powerful enough to execute the decompression algorithm in real time.

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5387  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: U.S. Patent Application  
Title: System And  
Inventor(s): Bernste  
Our Ref.: 57103/11

eliot  
Note

This sent months after filing for review by inventors of first draft? Dicks VA Bar response said all inventors had time to review and sign.

Review of Patenting a Digital Video File

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000 as Application No. 09/587,026. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their duty to disclose to the U.S. Patent and Trademark Office any information of which they are

ESTABLISHED 1842

A MEMBER OF GLOBALLEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
July 27, 2000  
Page 2

aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Iviewit Holdings, Inc. by assigning all their rights in the invention to the company.

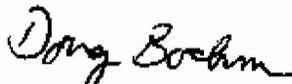
After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

eliot Note
No copies to anyone at Company or inventors

Very truly yours,

  
Douglas A. Boehm

Enclosure(s)

## FORMALITIES LETTER

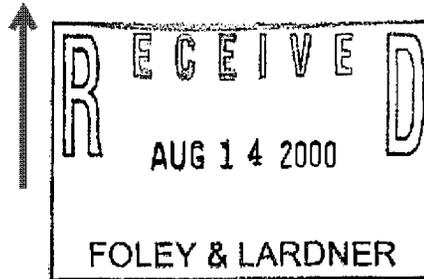


\*OC00000005299294\*

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark OfficeAddress: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,026	06/05/2000	Eliot I. Bernstein	57103/115

Steven C Becker  
Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367



Date Mailed: 08/04/2000

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$108.  
  - \$108 for 6 total claims over 20.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 928.

*A copy of this notice MUST be returned with the reply.*

*D. Bell FY*  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**NOTICE  
MISSING PARTS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System and Method for Playing a Digital Video File  
 Appl. No.: 09/587,026  
 Filing Date: 6/05/2000  
 Examiner: N/A  
 Art Unit: 2771

<p><b>CERTIFICATE OF MAILING</b>          I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.</p> <p style="text-align: center;"><u>Karen Meier</u> (Printed Name)</p> <p style="text-align: center;"><u><i>Karen Meier</i></u> (Signature)</p> <p style="text-align: center;"><u>October 3, 2000</u> (Date of Deposit)</p>
--

**TRANSMITTAL OF MISSING PARTS OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

<p>eliot Note</p> <p>These are signed on July 31 and sent on 10/3/00???</p>
---

Sir:

In response to the Notice to File Missing Parts of Application mailed on August 4, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- [ X ] Declaration and Power of Attorney (4 pages) enclosed
- [ X ] Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533)
- [ X ] Applicant is entitled to Small Entity status
- [ X ] Check in the amount of \$474.00 in payment of \$355.00 Basic filing fee, \$54.00 additional total claims fee, \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- [ ] Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Playing A Digital Video File

(Attorney Docket No. 57103/115)

the specification of which (check one)

     is attached hereto.

  x   was filed on June 5, 2000 as United States Application Number 09/587,026.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15406	June 2, 2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

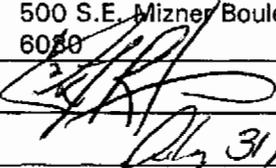
and I request that all correspondence be directed to:

Steven C. Becker  
**FOLEY & LARDNER**  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

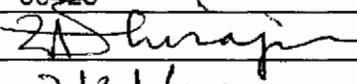
Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
Inventor's signature	
Date	July 31, 2000

eliot Note 3/21/2004 7:41:37 PM  
 Two months after filing.

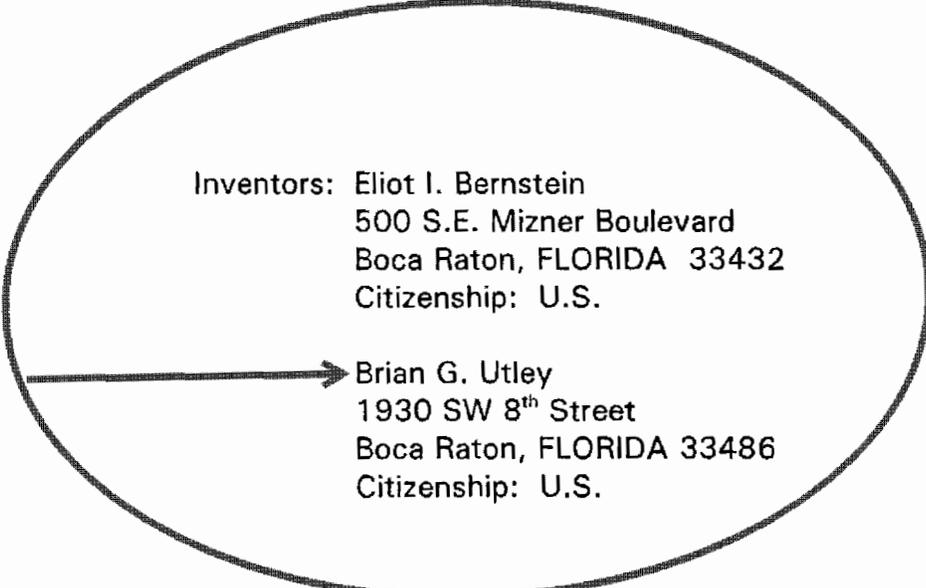
Name of second inventor	Zakirul A. Shirajee
Residence	Boca Raton, Florida
Citizenship	Bangladesh
Post Office Address	9485 Boca Cove Circle, #708, Boca Raton, Florida 33428
Inventor's signature	
Date	7/31/00



**U.S. PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**



Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**

**CROSS-REFERENCE TO RELATED APPLICATIONS**

The present application is a continuation-in-part of U.S. Patent Application No. 09/522,721, filed March 10, 2000, which claims the benefit of priority from U.S. Provisional Application No. 60/125,824, filed March 24, 1999. The present application also  
5 claims the benefit of priority from U.S. Provisional Application Nos. 60/146,726, filed August 2, 1999, 60/149,737, filed August 19, 1999, 60/155,404, filed September 22, 1999, and 60/169,559, filed December 8, 1999.

10 **FIELD OF THE INVENTION**

The present invention is directed to a system and a method for producing enhanced digital images and, in particular, to a system and a method for producing enhanced digital images having improved resolution for zooming and/or panning within a single file.

15 **BACKGROUND OF THE INVENTION**

In the field of digital imaging, the primary design challenge is that the viewer desires ideal image quality delivered to the viewer's display system. In a limited-bandwidth network, such as the Internet, it is important to transfer the image data in a  
20 reasonable amount of time. However, ideal image quality requires an enormous amount of digital data. Today's networks are not capable of transferring an ideal digital image in a reasonable time.

It is known that one can view a digital image on a display screen and "zoom" (i.e., magnify a portion of an image and



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Bernstein	57103/121

Douglas A Boehm  
Foley & Lardner  
Firstar Cneter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

eliot Note
No signature for Bernstein exists. Bernstein never invented anything with Utley.

↑  
**FORMALITIES LETTER**



Date Mailed: 09/29/2000

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

*Filing Date Granted*

MP  
RESPONSE DUE 29 NOV 2000  
DECL FEE

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- • The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice **MUST** be returned with the reply.*

*Kim Duncan*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



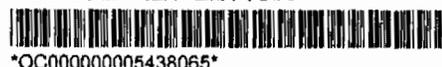
UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Bernstein	57103/121

Douglas A Boehm  
 Foley & Lardner  
 Firstar Cneter  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5367

**FORMALITIES LETTER**



\*OC000000005438065\*

Date Mailed: 09/29/2000

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

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- **The balance due by applicant is \$ 130.**

*A copy of this notice **MUST** be returned with the reply.*

*Kim Duncan*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/630,939	08/02/2000	2722	906	57103/121	7	32	3

Douglas A Boehm  
Foley & Lardner  
Firststar Cnter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

5889

FILING RECEIPT



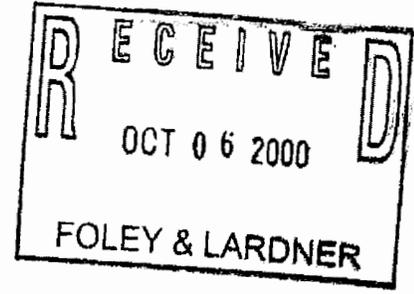
\*OC000000005438064\*

Date Mailed: 09/29/2000

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Eliot I. Bernstein, Boca Roton, FL ;  
Brian G. Utley, Boca Roton, FL ;



Continuing Data as Claimed by Applicant

Foreign Applications

If Required, Foreign Filing License Granted 09/28/2000

Title

System and method for providing an enhanced digital image file

Preliminary Class

358

Data entry by : DUNCAN, KIMBERELY      Team : OIPE      Date: 09/29/2000



**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

**PLEASE NOTE the following information about the Filing Receipt:**

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

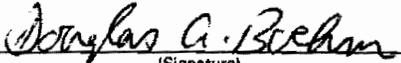
Assistant Commissioner for Patents  
Office of Initial Patent Examination  
Customer Service Center  
Washington, DC 20231





**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System and Method for Providing  
 an Enhanced Digital Image File  
 Appl. No.: Unknown  
 Filing Date: Unknown  
 Examiner: Unknown  
 Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL470736521US	8/2/00
<small>(Express Mail Label Number)</small>	<small>(Date of Deposit)</small>
Douglas A. Boehm	
<small>(Printed Name)</small>	
	
<small>(Signature)</small>	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Brian G. Utley

Enclosed are:

- Specification, Claim(s), and Abstract (30 pages).
- Informal drawings (7 sheets, Figures 1-7).
- Unexecuted Declaration and Power of Attorney ( 4 pages).
- Assignment of the invention to lviewit.com, Inc..
- Assignment Recordation Cover Sheet.
- Check in the amount of \$40.00 for Assignment recordation.
- Small Entity statement.
- Information Disclosure Statement.
- Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	31	- 20	= 11	x \$18.00	= \$198.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$0.00	= \$0.00
				SUBTOTAL:	= \$888.00
[ ]				Small Entity Fees Apply (subtract 1/2 of above):	= \$0.00
				TOTAL FILING FEE:	= \$888.00

- A check in the amount of \$888.00 to cover the filing fee is enclosed.
- The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 8/2/00

By Douglas A. Boehm

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

Douglas A. Boehm  
 Attorney for Applicant  
 Registration No. 32,014

**U.S. PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL IMAGE FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System and Method for Providing an Enhanced Digital Image File

(Attorney Docket No. 57103/121)

the specification of which (check one)

  X   is attached hereto.

       was filed on        as United States Application Number or PCT International Application Number        and was amended on        (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/125,824	3/24/1999
60/146,726	8/2/1999
60/149,737	8/19/1999
60/155,404	9/22/1999
60/169,559	12/8/1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
09/522,721		3/10/2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014



Name of second inventor	Brian G. Utley
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	1930 S.W. 8th Street, Boca Raton, Florida 33486
Inventor's signature	
Date	





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Berstein	57103/121

Douglas A Boehm  
Foley & Lardner  
Firststar Cneter  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

FORMALITIES LETTER



\*OC000000005438065\*

Date Mailed: 09/29/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

MP  
filed 09/29/2000  
DCL/ite

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

- The balance due by applicant is \$ 130.

A copy of this notice **MUST** be returned with the reply.

*Kim Duncan*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

Atty. Dkt. No. 57103/121

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

**System and Method for Providing an Enhanced Digital Image File**

(Attorney Docket No. 57103/121)

the specification of which (check one)

     is attached hereto.

  X   was filed on 8/2/2000 as United States Application Number or PCT International Application Number 09/630,939 and was amended on          (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

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Atty. Dkt. No. 57103/121

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60/165,404	9/22/1999
60/169,659	12/8/1999

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
09/522,721		3/10/2000	

Atty. Dkt. No. 57103/121

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DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Douglas A. Boehm  
 FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

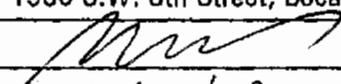
Telephone: (414) 297-5718  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Atty. Dkt. No. 57103/121

Name of first inventor Eliot I. Bernstein  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_

Name of second inventor Brian G. Utley  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 1930 S.W. 8th Street, Boca Raton, Florida 33486  
Inventor's signature   
Date  12/29/00

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System and Method for Providing an Enhanced Digital Image File

(Attorney Docket No. 57103/121)

the specification of which (check one)

     is attached hereto.

  X   was filed on 8/2/2000 as United States Application Number or PCT International Application Number 09/630,939 and was amended on          (if applicable).

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I HEREBY CLAIM foreign priority benefits under Title 35, United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/125,824	3/24/1999
60/146,726	8/2/1999
60/149,737	8/19/1999
60/155,404	9/22/1999
60/169,569	12/8/1999

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
08/522,721		3/10/2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,866
KEITH D. LINDENBAUM	Reg. No. 40,366
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
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MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 36,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Douglas A. Boehm  
FOLEY & LARDNER  
Firestar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Atty. Dkt. No. 57103/121

Name of first inventor Eliot I. Bernstein  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432  
 Inventor's signature *[Signature]*  
 Date 12/29/00

Name of second inventor Brian G. Utley  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 1930 S.W. 8th Street, Boca Raton, Florida 33486  
 Inventor's signature *[Signature]*  
 Date 12/29/00



eliot	3/20/2004 1:45:47 AM
Note	
This signature could have been taken from an any application that I saw and then switched.	

Our Ref.: 005707.P019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: )  
 )  
 Eliot I. Bernstein and Brian Utley )  
 )  
 Serial No.: 09/630,939 )  
 )  
 Filed: 08/02/00 )  
 )  
 For: SYSTEM AND METHOD FOR PROVIDING AN )  
 ENHANCED DIGITAL IMAGE FILE )  
 )  
 )

Art Unit:  
Examiner:

REVOCATION AND POWER OF ATTORNEY

The Hon. Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

The Applicant of the above-identified Application, hereby revokes all previous powers of attorney given in this Application, and appoints the firm of:

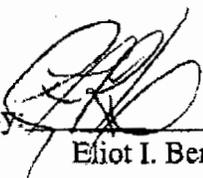
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, a firm including: William E. Alford, Reg. No. 37,764; Farzad E. Amini, Reg. No. 42,261; William Thomas Babbitt, Reg. No. 39,591; Carol F. Barry, Reg. No. 41,600; Jordan Michael Becker, Reg. No. 39,602; Lisa N. Benado, Reg. No. 39,995; Bradley J. Berezna, Reg. No. 33,474; Michael A. Bernadicou, Reg. No. 35,934; Roger W. Blakely, Jr., Reg. No. 25,831; R. Alan Burnett, Reg. No. 46,149; Gregory D. Caldwell, Reg. No. 39,926; Andrew C. Chen, Reg. No. 43,544; Jae-Hee Choi, Reg. No. 45,288; Thomas M. Coester, Reg. No. 39,637; Robert P. Cogan, Reg. No. 25,049; Donna Jo Coningsby, Reg. No. 41,684; Florin A. Corie, Reg. No. 46,244; Dennis M. deGuzman, Reg. No. 41,702; Stephen M. De Klerk, Reg. No. P46,503; Michael Anthony DeSanctis, Reg. No. 39,957; Daniel M. De Vos, Reg. No. 37,813; Justin M. Dillon, Reg. No. 42,486; Sanjeet Dutta, Reg. No. P46,145; Matthew C. Fagan, Reg. No. 37,542; Tarek N. Fahmi, Reg. No. 41,402; Mark C. Farrell, Reg. No. 45,988; George Fountain, Reg. No. 36,374; James Y. Go, Reg. No. 40,621; James A. Henry, Reg. No. 41,064; Willmore F. Holbrow III, Reg. No. 41,845; Sheryl Sue Holloway, Reg. No. 37,850; George W Hoover II, Reg. No. 32,992; Eric S. Hyman, Reg. No. 30,139; William W. Kidd, Reg. No. 31,772; Sang Hui Kim, Reg. No. 40,450; Walter T. Kim, Reg. No. 42,731; Eric T. King,

Reg. No. 44,188; Steven Laut, Reg. No. 47,736; George Brian Leavell, Reg. No. 45,436; Samuel S. Lee, Reg. No. 42,791; Gordon R. Lindeen III, Reg. No. 33,192; Jan Carol Little, Reg. No. 41,181; Robert G. Litts, Reg. No. 46,876; Julio Loza, Reg. No. 47,758; Joseph Lutz, Reg. No. 43,765; Lawrence Lycke, Reg. No. 38,540; Michael J. Mallie, Reg. No. 36,591; Andre L. Marais, under 37 C.F.R. § 10.9(b); Raul D. Martinez, Reg. No. 46,904; Paul A. Mendonsa, Reg. No. 42,879; Clive D. Menezes, Reg. No. 45,493; Chun M. Ng, Reg. No. 36,878; Thien T. Nguyen, Reg. No. 43,835; Thinh V. Nguyen, Reg. No. 42,034; Daniel E. Ovanezian, Reg. No. 41,236; Kenneth B. Paley, Reg. No. 38,989; Gregg A. Peacock, Reg. No. 45,001; Marina Portnova, Reg. No. P45,750; Michael A. Proksch, Reg. No. 43,021; Randol W. Read, Reg. No. 43,876; William F. Ryann, Reg. 44,313; James H. Salter, Reg. No. 35,668; William W. Schaal, Reg. No. 39,018; James C. Scheller, Reg. No. 31,195; Jeffrey S. Schubert, Reg. No. 43,098; George Simion, Reg. No. P47,089; Maria McCormack Sobrino, Reg. No. 31,639; Stanley W. Sokoloff, Reg. No. 25,128; Edwin H. Taylor, Reg. No. 25,129; Lance A. Termes, Reg. No. 43,184; John F. Travis, Reg. No. 43,203; Joseph A. Twarowski, Reg. No. 42,191; Kerry D. Tweet, Reg. No. 45,959; Mark C. Van Ness, Reg. No. 39,865; Thomas A. Van Zandt, Reg. No. 43,219; Lester J. Vincent, Reg. No. 31,460; Glenn E. Von Tersch, Reg. No. 41,364; John Patrick Ward, Reg. No. 40,216; Mark L. Watson, Reg. No. P46,322; Thomas C. Webster, Reg. No. P46,154; and Norman Zafman, Reg. No. 26,250; my patent attorneys, and Firasat Ali, Reg. No. 45,715; and Richard A. Nakashima, Reg. No. 42,023; my patent agents, of BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, with offices located at 12400 Wilshire Boulevard, 7th Floor, Los Angeles, California 90025, telephone (310) 207-3800, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Please direct all communications concerning this Application to:

Thomas M. Coester, Esq.  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 12400 Wilshire Boulevard, Seventh Floor  
 Los Angeles, CA 90025  
 (310) 207-3800

Date: July 27, 2001

By:   
 Eliot I. Bernstein

Date: \_\_\_\_\_

By: \_\_\_\_\_



*[Handwritten Signature]*  
Brian Utley, by Eliot Bernstein, his attorney-in-fact

*[Handwritten Signature]*  
Attorney  
in fact

eliot	3/20/2004 2:03:31 AM
Note	
Bernstein signs to remove Utley from patent with counsel BSZT	

57103/116

**UNITED STATES PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR PROVIDING**  
**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486  
Citizenship: U.S.

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

FOLEY & LARDNER

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999,  
and PCT International Application No. \_\_\_\_\_, filed June 2,  
2000.

FIELD OF THE INVENTION

The present invention relates generally to video  
10 imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
15 in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A video player decompresses and plays  
the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
20 video requires a communications connection (e.g., a network,  
Internet, etc.) and a computer powerful enough to execute the  
decompression algorithm in real time.

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5387  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D. C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot 3/21/2004 9:19:24 AM  
Oval

Sent two months after filing for inventor review, this contradicts statements to VA Bar that inventors had time to review and change applications.

Re: U.S. Patent Application  
Title: System And Method For Providing An Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/116

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000 as Application No. 09/587,734. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their

ESTABLISHED 1842

A MEMBER OF GLOBALVIA WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley

July 27, 2000

Page 2

duty to disclose to the U.S. Patent and Trademark Office any information of which they are aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

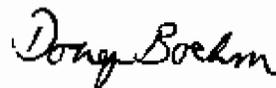
Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Ivivewit Holdings, Inc. by assigning all their rights in the invention to the company.

After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm

Enclosure(s)



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/630,939	08/02/2000	Eliot I. Berstein	57103/121

CONFIRMATION NO. 8688

FORMALITIES LETTER



\*OC00000005438065\*

Thomas M. Coester, Esq.  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 Seventh Floor  
 12400 Wilshire Boulevard  
 Los Angeles, CA 90025

Date Mailed: 08/30/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

eliot Oval 3/20/2004 2:24:44 AM

1 year after filing and 5 months after supposedly signing an oath for Foley, the Oath is still missing???

An application number and filing date have been accorded to this application, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice **MUST** be returned with the reply.*

Thank You

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

1 training that you've had or maybe you -- you did 113

2 indicate that you had any degree in mathematics.

3 Is that something that you have some experience

4 from from some other portion of your employment

5 or background?

6 A. I have training and experience in

7 mathematics.

8 Q. I'm sorry.

9 A. I say I have training and experience

10 in mathematics.

11 Q. How about in the scaling video

12 invention; is that part of what you've already

13 described?

14 A. That is readily derived from a

15 mathematical background.

16 Q. How about the remote control video

17 applications?

18 A. That's different.

19 Q. Okay. Now going back to --

20 A. What --

21 Q. -- the patent dealing specifically

22 with remote control applications.

23 A. What I did there was I established

24 the fact that the design point that Elicot had

25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Elliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

\* \* \* COMMUNICATION RESULT REPORT ( JUN. 6.2000 3:51PM ) \* \* \*

TTI 33RD FLOOR

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
923 MEMORY TX		1963#057103#0101#15619998810#	OK	P. 32/32

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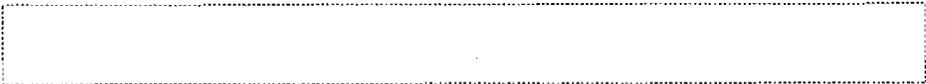
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TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 6, 2000  
 Client/Matter No: 57103/1000000 118 ←  
 User ID No: 1963

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## FACSIMILE TRANSMISSION



Total # of Pages **32** (including this page)

TO:	PHONE:	FAX #:
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From: Steve Becker  
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Date: June 6, 2000  
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MESSAGE:

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# FOLEY & LARDNER

eliot 3/20/2004 5:21:27 PM  
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 Although this document states facsimile there are no send headers?

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eliot  
 Note  
 Day before filing and we are getting 1st draft? Dick's VA Bar response says inventors had time to review. There are several apps claimed to be done this way.

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 sbcecker@foleylaw.com

*Via Facsimile*  
 June 6, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
 President  
 Iviewit.com, Inc.  
 One Boca Place  
 2255 Glades Road, Suite 337 West  
 Boca Raton, Florida 33431

Re: PCT International Patent Application  
 Title: System and Method for Video Playback Over a Network  
 Inventor(s): Bernstein et al.  
 Our Ref.: 57103/117

Dear Brian:

Enclosed please find the first draft of the above-referenced patent application (last page marked 001.793381.1), which has been prepared in accordance with the previously filed U.S. provisional patent applications (MLG Docket Nos. 5865-4 and 5865-4.1). As you know, a careful and critical review of this draft application by you and the inventors is imperative to ensure that the you are all satisfied with the content of the application and the proposed claim scope.

I note that Jeff Friedstein is named as a co-inventor on this application pursuant to Eliot Bernstein's instructions. Accordingly, Jeff must review a draft of the application before filing.

I also note that the deadline for filing this application in order to claim priority to all related provisional applications is Wednesday, June 7, 2000. Therefore, we must receive your comments as soon as possible.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

Mr. Brian G. Utley  
June 6, 2000  
Page 2

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application No. 60/137,921, filed June 7, 1999 (MLG Docket No. 5865-4) and U.S. Provisional Patent Application No. 60/141,440, filed June 29, 1999 (MLG Docket No. 5865-4.1).

You and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the two above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

During the review, please keep in mind that independent claims 1, 12, 19, 24, 31, and 38 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

Please have the inventors mark the appropriate changes on this copy of the application, make a copy of the changes, and return the hand-corrected copy to me via facsimile. A revised application incorporating the changes will then be submitted to you for your approval. We will handle execution of the formal papers at a later date.

Pursuant to your instructions, to preserve foreign filing options, I plan to designate all of the countries for filing under the PCT (see attached list of PCT Contracting States). Note, however, that not all foreign countries are members of the PCT (e.g., Taiwan), so to maintain the benefit of priority to the U.S. applications, we would have to file foreign national applications immediately in those non-PCT countries. This would require up-front translation costs and sufficient time for our foreign associates to prepare and file the applications before June 7, 2000. It is my understanding that you DO NOT want us to file in any countries other than those that are members of the PCT. Please let me know IMMEDIATELY if this understanding is not correct.

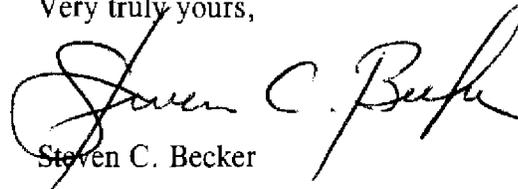
elliot 3/20/2004 5:37:06 PM  
Line

The Company is not in possession of these records or hand corrected copies and Foley claims to have retained no records of the files in the VA Bar Response.

Mr. Brian G. Utley  
June 6, 2000  
Page 3

If you or the inventors have any questions, please do not hesitate to contact me.  
I look forward to receiving at least your preliminary comments on the application by  
tomorrow.

Very truly yours,



Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

eibt Note	3/20/2004 5:18:41 PM
No carbon copies to anyone.	

Strange that Foley starts suddenly putting all these disclaimers regarding inventors.

PC 11 Application Form Application Control

Screen and Method for Video Playback Over a Network

Inventor(s): Bernstein, et al.

## INVENTOR INFORMATION SHEET

### Sections of a Utility Patent Application

- Background of the Invention

The Background of the Invention describes the technology that existed before your invention, i.e., the “prior art”. This section typically discusses how the need for your invention arose, describes how others attempted to satisfy that need prior to the time of your invention, and points out the deficiencies of the prior art in meeting that need. If you aware of any other prior art that should be mentioned in this background section, please supplement this section and forward any literature that you might have to me.

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- Claims

The claims are the most important part of the patent application. They precisely define the invention and determine the scope of legal protection granted by the patent. The claims must particularly point out and distinctly claim the invention. The claimed subject matter must be distinguishable over that which the prior art suggests to those skilled in this field. Accordingly, the claims should be scrutinized with a view toward protecting your precise

invention and those concepts which could be considered an outgrowth of it, yet not encompassing knowledge from the prior art or obvious extensions thereof. In other words, the scope of the claims must be broad enough to provide that patent protection to which you are entitled, yet narrow enough to be distinguishable over the prior art. The terminology of the claims must be adequately supported by the description contained in the specification. Please keep in mind that all dependent claims, which are identifiable by the phrase "according to claim x" or "of claim x", are interpreted as containing all of the limitations of the other claims which are referred to by that dependent claim. Thus, the independent claims are the broadest statement of your invention, and the dependent claims provide additional limitations to narrow the scope of your invention. Although the inventive concepts of each set of independent claims are interrelated, please keep in mind that they must be critically distinguished from each other. Each set of claims must stand on its own merit.

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inventors even though they did not physically work together or at the same time, did not make the same type or amount of contribution, or did not make a contribution to the subject matter of every claim in the patent. It is our understanding that the above-identified persons are to be named as co-inventors of this application. If this is not accurate, please call us to discuss the conception and development of each of the different embodiments of the invention, so that we will be able to confirm your determination of proper inventorship before filing the application.

Foley & Lardner

## PCT CONTRACTING STATES AND TWO-LETTER CODES

(108 on 1 May 2000)

AE United Arab Emirates	GD Grenada	MR Mauritania (OA)
AG Antigua and Barbuda	GE Georgia	MW Malawi (AP)
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GA Gabon (OA)	MN Mongolia	
GB United Kingdom (EP)		

57103/117



PCT INTERNATIONAL PATENT APPLICATION

for

SYSTEM AND METHOD FOR VIDEO PLAYBACK  
OVER A NETWORK

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

## TITLE OF THE INVENTION

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

## CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

## 5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

## 10 BACKGROUND OF THE INVENTION

The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of  
15 video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

20 The Internet marketplace is demanding enhanced resolution and high definition streaming video and precise representations of video images, objects, and events. Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file

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FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
916	MEMORY TX	1963#057103#0101#15613937458#	OK	P. 12/12

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E-2) BUSY  
E-4) NO FACSIMILE CONNECTION

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From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 6, 2000  
 Client/Matter No: 57103/101 ~~101~~ 118  
 User ID No: 1963

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# FOLEY & LARDNER

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TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

June 6, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Video Playback Over a Network  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/117

Dear Brian:

Enclosed please find a first draft of the claims of the above-referenced patent application, which have been prepared in accordance with oral disclosure provided to us by Eliot Bernstein yesterday and further in accordance with two former provisional applications (i.e., old docket numbers 5865-4 and 5865-4.1). As you know, a careful and critical review of these claims by you and the inventors is imperative to ensure that the you are all satisfied with the proposed claim scope.

Eliot has informed us that Jeff Friedstein is to be named as a co-inventor of this invention. Accordingly, please provide a copy of these claims and these instructions to Jeff at your earliest opportunity.

During the review, please keep in mind that independent claims 1, 12, 19, 24, 31, and 38 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

If you need any assistance in reviewing the claims, please feel free to contact me.

ESTABLISHED 184

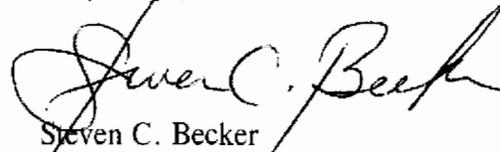
A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

FOLEY & LARDNER

Mr. Brian G. Utley  
June 6, 2000  
Page 2

We are currently drafting the corresponding specification for this application and will forward this to you for your review as soon as possible.

Very truly yours,



Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

Missing cover page with inventors listed on it

WHAT IS CLAIMED IS:

- 1           1.     A system for video playback over a network,  
2 comprising:  
3                 a video playback device configured to transmit a video  
4 signal from a non-volatile storage medium; and  
5                 a computer coupled to the video playback device  
6 configured to receive the video signal and to transmit the video  
7 signal over a network.
- 1           2.     The system of claim 1, further comprising a capture  
2 device coupled between the video playback device and the  
3 computer, the capture device configured to receive the video signal  
4 and to generate a digital video signal based on the video signal.
- 1           3.     The system of claim 2, wherein the computer utilizes  
2 video conferencing software to receive the digital video signal, to  
3 perform at least one processing step thereon, and to provide the  
4 digital video signal over the network.
- 1           4.     The system of claim 3, wherein the processing step  
2 includes configuring the digital video signal for full screen display on  
3 a user computer.
- 1           5.     The system of claim 4, wherein the capture device is  
2 configured to capture the video signal at a full screen size.
- 1           6.     The system of claim 1, wherein the network includes  
2 the Internet.

\* \* \* COMMUNICATION RESULT REPORT ( JUN. 7. 2000 9:39AM ) \* \* \*

TTI FOLEY LARDNER X7191

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
5630 MEMORY TX		G3-F : 1963#057103#0101#14152910288#	OK	32/32

117,118

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Eliot Bernstein (Guest - Room 624)	(561) 212-9254	(415) 291-0288

<b>From:</b> Steve Becker
<b>Sender's Direct Dial:</b> (414) 297-5571
<b>Date:</b> June 7, 2000
<b>Client/Matter No:</b> 057103/0101 (0118)
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(414) 297-5571

June 6, 2000

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President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

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I note that Jeff Friedstein is named as a co-inventor on this application pursuant to Eliot Bernstein's instructions. Accordingly, Jeff must review a draft of the application before filing.

I also note that the deadline for filing this application in order to claim priority to all related provisional applications is Wednesday, June 7, 2000. Therefore, we must receive your comments as soon as possible.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

Mr. Brian G. Utley  
June 6, 2000  
Page 2

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application No. 60/137,921, filed June 7, 1999 (MLG Docket No. 5865-4) and U.S. Provisional Patent Application No. 60/141,440, filed June 29, 1999 (MLG Docket No. 5865-4.1).

You and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the two above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

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FOLEY & LARDNER

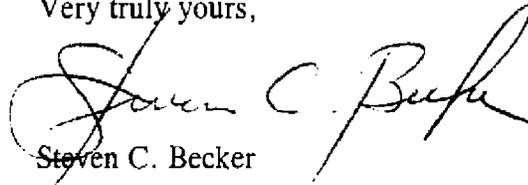
Mr. Brian G. Utley

June 6, 2000

Page 3

If you or the inventors have any questions, please do not hesitate to contact me. I look forward to receiving at least your preliminary comments on the application by tomorrow.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven C. Becker". The signature is written in a cursive style with a large, looping initial "S".

Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

PCT International Patent Application entitled  
**System and Method for Video Playback Over a Network**  
Inventor(s): Bernstein, et al.

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---

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The proper inventors would be those people who contributed to the subject matter of the invention as defined in the claims of the application. There may be joint

inventors even though they did not physically work together or at the same time, did not make the same type or amount of contribution, or did not make a contribution to the subject matter of every claim in the patent. It is our understanding that the above-identified persons are to be named as co-inventors of this application. If this is not accurate, please call us to discuss the conception and development of each of the different embodiments of the invention, so that we will be able to confirm your determination of proper inventorship before filing the application.

Foley & Lardner

PCT CONTRACTING STATES AND TWO-LETTER CODES

(108 on 1 May 2000)

AE United Arab Emirates	GD Grenada	MR Mauritania (OA)
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GA Gabon (OA)	MN Mongolia	ZA South Africa
GB United Kingdom (EP)		ZW Zimbabwe (AP)

57103/118



**PCT INTERNATIONAL PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR VIDEO PLAYBACK**

**OVER A NETWORK**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/117



TITLE OF THE INVENTION

eliot	3/22/2004 3:03:34 AM
Note	
The first page now states 118 and the rest is 117.	

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

10 BACKGROUND OF THE INVENTION

The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

20 The Internet marketplace is demanding enhanced resolution and high definition streaming video and precise representations of video images, objects, and events. Streaming video is a technique by which video is played in real time as it is downloaded over the Internet, as opposed to storing it in a local file

eliot  
Note

No fax header like the other ones!!

FOLEY & LARDNER  
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FACSIMILE (414) 297-4900

117,  
~~117~~ 118

## FACSIMILE TRANSMISSION

Total # of Pages 31 (including this page)

TO:	PHONE:	FAX #:
Jeff Friedstein	(847) 831-1360	(877) 852-0690

**From:** Steve Becker  
**Sender's Direct Dial:** (414) 297-5571  
**Date:** June 7, 2000  
**Client/Matter No:** 057103/0101 (0118)  
**User ID No:** 1963

**MESSAGE:**

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001.795794.1

Cover Page 1 of 1

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WRITER'S DIRECT LINE  
(414) 297-5571

June 6, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Video Playback Over a Network  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/117

Dear Brian:

Enclosed please find the first draft of the above-referenced patent application (last page marked 001.793381.1), which has been prepared in accordance with the previously filed U.S. provisional patent applications (MLG Docket Nos. 5865-4 and 5865-4.1). As you know, a careful and critical review of this draft application by you and the inventors is imperative to ensure that the you are all satisfied with the content of the application and the proposed claim scope.

I note that Jeff Friedstein is named as a co-inventor on this application pursuant to Eliot Bernstein's instructions. Accordingly, Jeff must review a draft of the application before filing.

I also note that the deadline for filing this application in order to claim priority to all related provisional applications is Wednesday, June 7, 2000. Therefore, we must receive your comments as soon as possible.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
June 6, 2000  
Page 2

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application No. 60/137,921, filed June 7, 1999 (MLG Docket No. 5865-4) and U.S. Provisional Patent Application No. 60/141,440, filed June 29, 1999 (MLG Docket No. 5865-4.1).

You and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the two above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

During the review, please keep in mind that independent claims 1, 12, 19, 24, 31, and 38 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

Please have the inventors mark the appropriate changes on this copy of the application, make a copy of the changes, and return the hand-corrected copy to me via facsimile. A revised application incorporating the changes will then be submitted to you for your approval. We will handle execution of the formal papers at a later date.

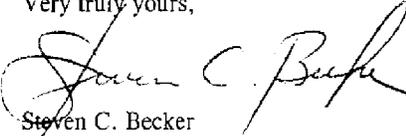
Pursuant to your instructions, to preserve foreign filing options, I plan to designate all of the countries for filing under the PCT (see attached list of PCT Contracting States). Note, however, that not all foreign countries are members of the PCT (e.g., Taiwan), so to maintain the benefit of priority to the U.S. applications, we would have to file foreign national applications immediately in those non-PCT countries. This would require up-front translation costs and sufficient time for our foreign associates to prepare and file the applications before June 7, 2000. It is my understanding that you DO NOT want us to file in any countries other than those that are members of the PCT. Please let me know IMMEDIATELY if this understanding is not correct.

FOLEY & LARDNER

Mr. Brian G. Utley  
June 6, 2000  
Page 3

If you or the inventors have any questions, please do not hesitate to contact me.  
I look forward to receiving at least your preliminary comments on the application by  
tomorrow.

Very truly yours,



Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

001.795106.1

## INVENTOR INFORMATION SHEET

### Sections of a Utility Patent Application

- Background of the Invention

The Background of the Invention describes the technology that existed before your invention, i.e., the "prior art". This section typically discusses how the need for your invention arose, describes how others attempted to satisfy that need prior to the time of your invention, and points out the deficiencies of the prior art in meeting that need. If you are aware of any other prior art that should be mentioned in this background section, please supplement this section and forward any literature that you might have to me.

- Summary of the Invention

The Summary of the Invention section is merely a brief paragraph listing of the basic claims, along with a statement of the objectives and advantages of the present invention.

- Brief Description of the Drawings

The Brief Description of the Drawings is merely a listing of the figures, and should be self-explanatory.

- Detailed Description of the Preferred Embodiments

The Detailed Description of the Preferred Embodiments section should provide a full, clear, and concise description of your invention so that any person skilled in the art could make or use the invention. Furthermore, the application must describe the "best mode" contemplated by the inventor(s) for carrying out the invention. In order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret.

- Claims

The claims are the most important part of the patent application. They precisely define the invention and determine the scope of legal protection granted by the patent. The claims must particularly point out and distinctly claim the invention. The claimed subject matter must be distinguishable over that which the prior art suggests to those skilled in this field. Accordingly, the claims should be scrutinized with a view toward protecting your precise

invention and those concepts which could be considered an outgrowth of it, yet not encompassing knowledge from the prior art or obvious extensions thereof. In other words, the scope of the claims must be broad enough to provide that patent protection to which you are entitled, yet narrow enough to be distinguishable over the prior art. The terminology of the claims must be adequately supported by the description contained in the specification. Please keep in mind that all dependent claims, which are identifiable by the phrase "according to claim x" or "of claim x", are interpreted as containing all of the limitations of the other claims which are referred to by that dependent claim. Thus, the independent claims are the broadest statement of your invention, and the dependent claims provide additional limitations to narrow the scope of your invention. Although the inventive concepts of each set of independent claims are interrelated, please keep in mind that they must be critically distinguished from each other. Each set of claims must stand on its own merit.

- Abstract of the Disclosure

The Abstract of the Disclosure section is a very brief description of what the application generally discloses.

- Drawings

The Drawings section should be self-explanatory.

#### Duty of Disclosure

All individuals associated with the filing or prosecution of a patent application are under a duty of candor and good faith to the U.S. Patent and Trademark Office. This duty specifically includes a duty to disclose any information known to be material to the patentability of any claim of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Pursuant to this duty of disclosure, we will file an Information Disclosure Statement with the U.S. application listing the patent documents found in any prior art searches, as well as any technical articles mentioned in the disclosure materials. Accordingly, if any additional information relevant to your invention should come to your attention at any time before issuance of the patent, please immediately let us know so we can either include it in the Information Disclosure Statement or submit a Supplemental Information Disclosure Statement.

#### Inventorship

The proper inventors would be those people who contributed to the subject matter of the invention as defined in the claims of the application. There may be joint

inventors even though they did not physically work together or at the same time, did not make the same type or amount of contribution, or did not make a contribution to the subject matter of every claim in the patent. It is our understanding that the above-identified persons are to be named as co-inventors of this application. If this is not accurate, please call us to discuss the conception and development of each of the different embodiments of the invention, so that we will be able to confirm your determination of proper inventorship before filing the application.

Foley & Lardner

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GB United Kingdom (EP)	MN Mongolia	ZW Zimbabwe (AP)

57103/118



**PCT INTERNATIONAL PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR VIDEO PLAYBACK**  
**OVER A NETWORK**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

↑  
TITLE OF THE INVENTION

SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional Application No. 60/137,921, filed June 7, 1999, and U.S. Provisional Application No. 60/141,440, filed June 29, 1999.

5 FIELD OF THE INVENTION

The present invention relates generally to a system and method for playing a video program over a network. The present invention also relates to a system and method for controlling a video device over a network.

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The widespread and ever-growing use of communication networks, such as the Internet and other computer-to-computer communication networks, for the dissemination of information, has fueled the need to provide for the transmission of video data over these networks. Currently, the transmission of video data over networks has been less than optimal, given current bandwidth and technology constraints. These constraints have impeded the ability to offer enhanced resolution and/or full motion video data over these networks.

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**PCT INTERNATIONAL PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR**  
**VIDEO PLAYBACK OVER A NETWORK**

International Application No.: PCT/US00/\_\_\_\_\_  
International Filing Date: June 2, 2000

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Jeffrey S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Citizenship: U.S.

→ Brian G. Uitley  
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Boca Raton, FL 33486  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TRANSMITTED LETTER TO THE UNITED STATES  
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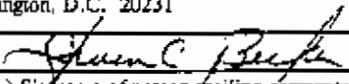
Date	07 June 2000
International Application No.	Not yet available
Attorney Docket No.	57103/118 ←

I. Certification under 37 CFR 1.10 (if applicable)

EL 640468305 US
Express Mail mailing number

07 June 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231


Signature of person mailing correspondence

Steven C. Becker
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
-------	---

Earliest priority date (Day/Month/Year)
07 June 1999

**SCREENING DISCLOSURE INFORMATION:** In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.	60/137,921	application no.	60/141,440
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Comments on the Amendments to the Abstract by the ISA/US under Rule 38. The following document(s) is(are) enclosed:

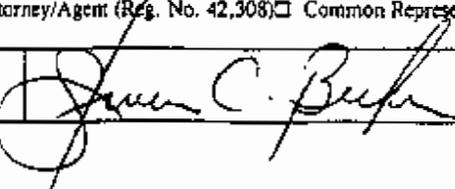
- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  A Power of Attorney (General or Regular)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages		of the figures
pages		of the description	pages		of the abstract
pages		of the claims			

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette
- V.  Other (please identify): PCT-EASY Diskette; Fee Calculation Sheet; and Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 42,308)  Common Representative

Typed name of signer	Steven C. Becker	Signature	
----------------------	------------------	-----------	--

## PCT REQUEST

57103/118

Original (for SUBMISSION) - printed on 07.05.2000 07:16:34 PM

0	For receiving Office use only	
0-1	International Application No.	
0-2	International Filing Date	
0-3	Name of receiving Office and "PCT International Application"	
0-4	Form - PCT/RO/101 PCT Request Prepared using	PCT-EASY Version 2.90 (updated 10.05.2000)
0-5	Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty	
0-6	Receiving Office (specified by the applicant)	United States Patent and Trademark Office (USPTO) (RO/US)
0-7	Applicant's or agent's file reference	57103/118
I	Title of Invention	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
II	Applicant	
II-1	This person is:	applicant only
II-2	Applicant for	all designated States except US
II-4	Name	IVIEWIT HOLDINGS, INC.
II-5	Address:	One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America
II-6	State of nationality	US
II-7	State of residence	US
II-8	Telephone No.	561 999 8899
II-9	Facsimile No.	561 999 8810
III-1	Applicant and/or inventor	
III-1-1	This person is:	applicant and inventor
III-1-2	Applicant for	US only
III-1-4	Name (LAST, First)	BERNSTEIN, Eliot, I.
III-1-5	Address:	500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 United States of America
III-1-6	State of nationality	US
III-1-7	State of residence	US

## PCT REQUEST

571031118

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III-2	Applicant and/or inventor	
III-2-1	This person is:	applicant and inventor
III-2-2	Applicant for	US only
III-2-4	Name (LAST, First)	FRIEDSTEIN, Jeffrey, S.
III-2-5	Address:	2142 Churchill Lane
		Highland Park, IL 60035
		United States of America
III-2-6	State of nationality	US
III-2-7	State of residence	US
III-3	Applicant and/or inventor	
III-3-1	This person is:	applicant and inventor
III-3-2	Applicant for	US only
III-3-4	Name (LAST, First)	UTLEY, Brian, G.
III-3-5	Address:	1930 SW 8th Street
		Boca Raton, FL 33486
		United States of America
III-3-6	State of nationality	US
III-3-7	State of residence	US
IV-1	Agent or common representative; or address for correspondence	
	The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:	agent
IV-1-1	Name	FOLEY & LARDNER
IV-1-2	Address:	777 East Wisconsin Avenue
		33rd Floor
		Milwaukee, WI 53202-5367
		United States of America
IV-1-3	Telephone No.	414 271-2400
IV-1-4	Facsimile No.	414 297-4900
IV-1-5	e-mail	sbecker@foleylaw.com
V	Designation of States	
V-1	Regional Patent	AP: GH GM KE LS MW MZ SD SL SZ TZ UG ZW
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	and any other State which is a Contracting State of the Harare Protocol and of the PCT
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		EP: AT BE CH&LI CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE and any other State which is a Contracting State of the European Patent Convention and of the PCT
		OA: BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT

## PCT REQUEST

57103/118

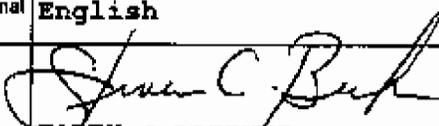
Original (for SUBMISSION) - printed on 07.06.2000 07:16:34 PM

V-2	National Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	AE AG AL AM AT AU AZ BA BB BG BR BY CA CH&LI CN CR CU CZ DE DK DM DZ EE ES FI GB GD GE GH GM HR HU ID IL IN IS JP KE KG KP KR KZ LC LK LR LS LT LU LV MA MD MG MK MN MW MX MZ NO NZ PL PT RO RU SD SE SG SI SK SL TJ TM TR TT TZ UA UG US UZ VN YU ZA ZW	
V-5	Precautionary Designation Statement In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.		
V-6	Exclusion(s) from precautionary designations	NONE	
VI-1	Priority claim of earlier national application		
VI-1-1	Filing date	07 June 1999 (07.06.1999)	
VI-1-2	Number	60/137,921	
VI-1-3	Country	US	
VI-2	Priority claim of earlier national application		
VI-2-1	Filing date	29 June 1999 (29.06.1999)	
VI-2-2	Number	60/141,440	
VI-2-3	Country	US	
VI-3	Priority document request The receiving Office is requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s).	VI-1, VI-2	
VII-1	International Searching Authority Chosen	European Patent Office (EPO) (ISA/EP)	
VIII	Check list	number of sheets	electronic file(s) attached
VIII-1	Request	4	-
VIII-2	Description	14	-
VIII-3	Claims	9	-
VIII-4	Abstract	1	abstract57103_118.txt
VIII-5	Drawings	2	-
VIII-7	TOTAL	30	
VIII-8	Accompanying items	paper document(s) attached	electronic file(s) attached
VIII-8	Fee calculation sheet	✓	-
VIII-16	PCT-EASY diskette	-	diskette
VIII-17	Other (specified):	Postcard	-
VIII-17	Other (specified):	Transmittal Sheet	-
VIII-18	Figure of the drawings which should accompany the abstract	1	

## PCT REQUEST

57103/119

Original (for SUBMISSION) - printed on 07.06.2000 07:16:34 PM

VIII-19	Language of filing of the international application	English
IX-1	Signature of applicant or agent	
IX-1-1	Name	FOLEY & LARDNER
IX-1-2	Name of signatory	Steven C. BECKER
IX-1-3	Capacity	Agent

## FOR RECEIVING OFFICE USE ONLY

10-1	Date of actual receipt of the purported international application	
10-2	Drawings:	
10-2-1	Received	
10-2-2	Not received	
10-3	Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application	
10-4	Date of timely receipt of the required corrections under PCT Article 11(2)	
10-5	International Searching Authority	ISA/EP
10-6	Transmittal of search copy delayed until search fee is paid	

## FOR INTERNATIONAL BUREAU USE ONLY

11-1	Date of receipt of the record copy by the International Bureau	
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# FOLEY & LARDNER

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WRITER'S DIRECT LINE  
(414) 297-5718

August 23, 2000

eliot	3/20/2004 10:57:18 AM
Note	
No carbon copy although they were demanded to in transcripts	

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

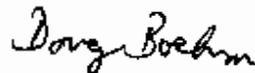
Re: PCT International Patent  
Application No.: PCT/US00/15602  
Filing Date: 6/07/2000  
Title: System and Method for Video Playback Over a Network  
Applicant: Iviewit Holdings, Inc.  
Our Ref.: 57103/118

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 18, 2000, in connection with the above-identified application.

We will keep you informed of all future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)



TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	18 August 2000
International Application No.	PCT/US00/15602
Attorney Docket No.	57103/118 ←

I. Certification under 37 CFR 1.10 (if applicable)

EE 163291378 US
Express Mail mailing number

18 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR VIDEO PLAYBACK OVER A NETWORK
-------	---

Earliest priority date (Day/Month/Year)

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Four Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages	1-2	of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91       A Petition       A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant       Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15602  
International  
Filing Date : 07 June 2000 (07.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR VIDEO PLAYBACK  
OVER A NETWORK

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

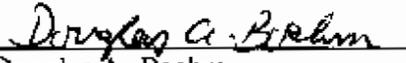
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 24 July 2000, Applicant respectfully submits four (4) duly-executed PCT General Appointments of Agent, and two (2) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 18 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

eliot  
Note

Utley signature after the  
filing

FOR: VIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
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attorneys at law of Firststar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
[Signature], in U.S.A.

BY:

[Signature]

Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States



**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

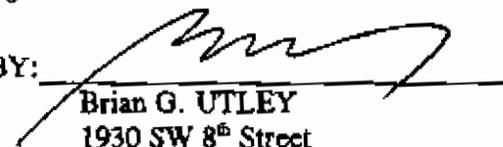
**FOLEY & LARDNER**

and

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attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000 at Boca Raton, FL in U.S.A.

BY: 

Brian G. UTLEY  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486  
United States of America

International application No.	International filing date	Priority Date Claimed
PCT/US00/15602	07 JUN 00	07 JUN 99

- C.  In order that U.S. National processing may begin, certain items must be received by the DO/EO/US by the expiration of applicable time limit under
- PCT Article 22 or
  - PCT Article 39.
- Specifically:
- 1. U.S. National Fee
  - 2. Oath or Declaration ←
  - 3. Copy of Application
  - 4. Translation of application
  - 5. Amendments under PCT Article 19, if any
  - 6. Translation of PCT Article 19 Amendments, if applicable
  - 7. Search Report or PCT Article 17(2) declaration
  - 8. International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), if applicable
  - 9. Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b), if applicable

**THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.**  
 [35 U.S.C. 371(d)]

D. Further information for the applicant:

**This is only a reminder.**

UNITED STATES DESIGNATED/ELECTED OFFICE

Address Only:  
 Assistant Commissioner for Patent  
 Box PCT  
 Washington, D.C. 20231 Attn:RO/US

Authorized Office  
 Catherine B. Williams



developed image can be enlarged to sizes of between 8"x8" and 8"x12", or to any other appropriate size. The developed image is enlarged to provide additional photo information to scanning device 18. The developed image can be enlarged many times before the granularity of the image is visible to the human eye. An enlargement magnification capability of up to 1700 times or more may be attained for most views or scenes. It is, however, recommended that larger enlargement sizes be obtained for smaller developed images. As mentioned, the step of enlarging may not be necessary in all cases (e.g., where the size of the print film image or developed image is large enough to provide sufficient data to scanning device 18).

*and  
over  
target  
frame*

At step 58, the enlarged image is scanned by scanning device 18 in order to generate a bitmap image file or other digital image file, such as, JPEG, GIF, or other files. Scanning occurs at a high scan density (e.g., 100 dpi or more, greater than 200 dpi, or about 600 dpi) to provide a large number of pixels in the resulting digital image file. Contrary to the teachings of the prior art, a large number of pixels are provided in the digital image file. According to one example, a sufficient number of pixels are provided in the enhanced digital image file to allow a user to magnify the digitized image in the viewing window of display 30 by a magnification factor of ~~two~~ without pixelation. Alternatively, a sufficient number of pixels are provided to allow the user to magnify the digitized image by a magnification factor of five, ten, twenty, one-hundred, or more.

*Additional frame also require handling properly in the existing open image file*

*Which is it*

*for the cut frame size*

*what's*

*additional pixels*

*no. 1*

*1.5 2x  
^ 1*

According to one exemplary embodiment, the number of pixels provided in the enhanced digital image file is based on a viewing window size and the desired magnification ratio. By

*5000 dpi 1 bit  
600 - 1400 dpi*

*check file size instantly  
time/file size*

providing more pixels in the enhanced digital image file than is required for a full-window view in the viewing window, the user is able to zoom and pan within the digital image during viewing without pixelation.

5 FIG. 7 illustrates relationships between a source image (e.g., a scanned print film image), a viewing window (e.g., a portion of display 30), a viewing image (e.g., a subset of pixels from the source image to be displayed in the viewing window), and a target image (e.g., the enhanced digital image file). The following parameters and description are for the purpose of creating large, clear, zoomable and panable images from a variety of photographic, non-digital source images.

10 The source image (si) has a source image height (sih) and a source image width (siw). Thus, the source image aspect ratio (siar) can be determined as:

*1/5 is a viewing window a display not made of pixels, i.e. TV.*  
$$siar = sih/siw$$

20 The viewing window (vw) is the window defined in pixels, within which is to be displayed the source image. The viewing window (vw) has a viewing window height (vwh) and a viewing window width (vww), both defined in pixels. Thus, the viewing window aspect ratio can be determined as:

*this could be striken*

25 
$$vwar = vwh/vww$$

It is noted that the source image (si) may have a different aspect ratio than the viewing window (vw). To place the source image (si) in the viewing window (vw), a subset of pixels



$$TIW^2 = \frac{TIH}{SIAR}$$

$$SIAR \times TIW^2 = TIH$$

$$SIAR = \frac{TIH}{TIW^2}$$

$$SIAR = \frac{TIH}{TIW}$$

$$SIAR = TIAR$$

$$tiw = \sqrt{\frac{tis}{siar}}$$

and

$$\frac{TIH}{TIW} = SIAR$$

$$tis = tiw \times siar$$

SIAR = TIAR - IS THIS INTENDED?

$$TIW^2 = \frac{TIH}{SIAR}$$

$$\frac{TIW^2}{SIAR} = \frac{TIH}{SIAR} \quad (TIH \times TIW)$$

$$\frac{1}{SIAR} = \frac{TIH}{1}$$

what about cropping  
letterbox formats  
stretching  
what about a SI that is 8x6 and you enlarge it to 8x10.

The relationship between the target image and the viewing image is shown in FIG. 7. The relationship between the target image and the viewing window is also shown. A zoom to the maximum level will be shown in the viewing window as illustrated at drawing 120. By panning the viewing window, every portion of the target image may be viewed from each level of zooming.

To determine the minimum scan density (msd) to avoid pixelation at the desired magnification factor (mf):

$$msd = \frac{tis}{mf}$$

$$msd = \frac{100}{8} = 12.5$$

why isn't mf part of this equation?  
Explain where's dpi?

EXAMPLE 1

Determine the target image size and dimensions, and minimum scan density for the following case:

Source Image = 4" x 6"

Desired Magnification Factor = 20

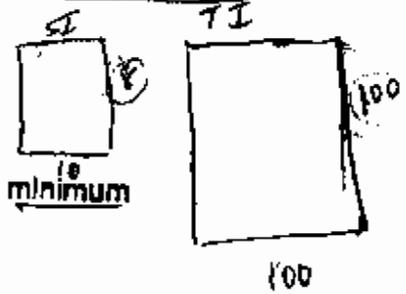
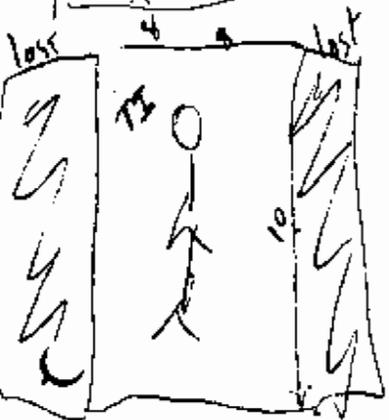
Source Image Aspect Ratio = 4/6 = 0.8

Define the Viewing Window: assume 320h x 480w pixels

Viewing Window Aspect Ratio = 320 / 480 = 0.75

The Source Image Aspect Ratio is > the Viewing

$$\frac{4}{6} \quad (SIAR)$$



Window Aspect Ratio:

0.8 > 0.75 therefore:

$v_{ih} = v_{wh} = 320$  pixels

$v_{iw} = v_{wh} / 0.8 = 320 / 0.8 = 400$  pixels

*should be v<sub>wh</sub> on p. 19*

The Viewing Image size =  $v_{is} = 320 \times 400 = 128,000$

pixels - *how does this equate to other, non-pixel, display mediums*

The Target Image size =  $v_{is} \times 20 = 128,000 \times 20 = 2,560,000$  pixels  $TIS = \frac{v_{is}}{MF}$

$TIS = \frac{128,000}{.20}$

*need to reconcile this w/ formula on p. 14*

The Target Image width =  $\sqrt{2,560,000 / 0.8} = 1789$  pixels

The Target Image height =  $1789 \times 0.8 = 1431$  pixels

$TIW = \sqrt{\frac{TIS}{SIAR}} = \sqrt{\frac{2,560,000}{.8}} = \sqrt{3,200,000} = 1789$

*is the formula on p. 13 is right?*

The Minimum Scan Density =  $1789 / 5 = 358$  pixels per inch  
 $1789 / 4 = 447.25$

The photo scan can be any scan density > ~~357~~ pixels per inch  
 $447.25$

$447.25$

Thus, a 4" x 5" print film image should be scanned at greater than ~~357~~ pixels per inch to allow magnification/zoom up to 20 times in a viewing window of 320 x 240 pixels. An enhanced digital image file having 2,560,000 pixels provides a sufficient number of pixels for this example.

EXAMPLE 2

Determine the Target Image size and dimensions, and minimum scan density for the following case:

Source Image =  $4'' \times 5''$

Desired Magnification Factor = 20

Source Image Aspect Ratio =  $4 / 5 = 0.8$

Define the Viewing Window: assume 360h x 400w pixels

Viewing Window Aspect Ratio =  $360 / 400 = 0.9$

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

$0.8 < 0.9$  therefore:

$v_{1w} = v_{2w} = 400$  pixels

$v_{1h} = \frac{v_{1w}}{V_{1W}} \times 0.8 = 400 \times 0.8 = 320$  pixels

The Viewing Image size =  $v_{1s} = 320 \times 400 = 128,000$  pixels

The Target Image size =  $v_{1s} \times 20 = 128,000 \times 20 = 2,560,000$  pixels

*Where is this relationship defined*

The Target Image width =  $\sqrt{2,560,000 / 0.8} = 1789$  pixels

The Target Image height =  $1789 \times 0.8 = 1431$  pixels

The Minimum Scan Density =  $1789 / 5 = 358$  pixels per inch

*p. 15 MSF =  $T_{1h} / S_{1H} = 1431 / 4 = 357.75$*

The photo scan can be any scan density > ~~358~~ pixels per inch  
*357.75*

Atty. Dkt. No. 57103/120

**EXAMPLE 3**

Determine the Target Image size and dimensions, and minimum scan density for the following case:

H      W

Source Image = 5" x 4" (portrait orientation)  
 Desired Magnification Factor = 20  
 Source Image Aspect Ratio = 5 / 4 = 1.25

~~5 = H~~  
~~4 = W~~  
 5 = H  
 4 = W

Define the Viewing Window: assume 360h x 400w pixels  
 Viewing Window Aspect Ratio = 360 / 400 = 0.9

The Source Image Aspect Ratio is > the Viewing Window Aspect Ratio:

1.25 > 0.9 therefore:

$v_{ih} = v_{wh} = 360$  pixels

$v_{iw} = \frac{v_{ih}}{1.25} = 360 / 1.25 = 288$  pixels

The Viewing Image size =  $v_{is} = 360 \times 288 = 103,680$  pixels

The Target Image size =  $v_{is} \times 20 = 103,680 \times 20 = 2,073,600$  pixels

The Target Image width =  $2,073,600 / 1.25 = 1288$  pixels

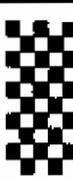
The Target Image height =  $1288 \times 1.25 = 1610$  pixels

The Minimum Scan Density =  $1288 / 4 = 322$  pixels per inch

$MSD = t_{ih}/s_{ih} = 1288/5 = 257.6$

The photo scan can be any scan density > 322 pixels per inch

257.6



**ESSENTIAL**

**To:** Doug Boehm **Fax:** 414-297-4900

---

**From:** Jim Armstrong **Date:** 8/4/00

---

**Re:** iviewit.com, LLC. **Pages:** 9 (including cover)

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**CC:** Eliot Bernstein, Steve Becker

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The following pages from the most recent filing contain errors in the the form of either  
 technical errors or improper formula expression. These errors include many of the same  
 errors that we discussed on Wednesday.

Please call Eliot and/or me as soon as possible to discuss how we correct these errors. My  
 direct number is 732-747-1448 and Eliot's is 561-999-8899.

Thanks.

-Jim

Atty. Dkt. No. 57103/120

determined by comparing the source image aspect ratio (sir) to the viewing window aspect ratio (vwr), as shown:

if  $sir < vwr$  then:

$$vih = vwh$$

5  $viw = vih * sir$

but if  $sir \geq vwr$  then:

$$viw = vww$$

$$vih = viw / sir$$

This relationship is illustrated in FIG. 7.

10 Note that the target image (ti) is created from the source image (si), by scaling the image (si) down to fit within the viewing window (vw). When the target image (ti) is scaled down by the desired maximum magnification factor (mmf) to fit within the viewing window (vw), the scaled target image is called the viewing image (vi).

15 The maximum magnification factor (mmf) is defined as the ratio of the target image area (tia) to the viewing image area (via). This ratio will determine the amount of zoom available without causing the image to distort due to pixelation, i.e., when fewer pixels are in the viewing image being displayed than available in the viewing window.

20 So:

$$\text{target image area (tia)} = tiw \times tih$$

and since

$$via = viw \times vih$$

then

25  $tia = via \times mmf$

To obtain the target image width and height:

$$tiw = \text{squareroot}(tia * sir)$$

$$tih = tiw / sir$$

30 The relationship between the target image and the viewing image is shown in FIG. 7. The relationship between the target image

Atty. Dkt. No. 57103/120

and the viewing window is also shown. A zoom to the maximum level will be shown in the viewing window as illustrated at representation 120 of FIG. 7. By panning the viewing window, every portion of the target image may be viewed from each level of zooming.

5 To determine the minimum scan density (msd) to avoid pixelation at the desired maximum magnification factor (mmf):

$$msd = th/sih = t/w/siw$$

EXAMPLE 1

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

Source Image = 5" wide x 4" high

Desired Magnification Factor = 20

Source Image Aspect Ratio = 5 / 4 = 1.25

Define the Viewing Window: assume 480w x 320h pixels

15 Viewing Window Aspect Ratio = 480 / 320 = 1.5

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

1.25 < 1.5 therefore:  $v/h$

$$vih = vwh = 320 \text{ pixels}$$

$$viw = vwh * 1.25 = 320 * 1.25 = 400 \text{ pixels}$$

20 The Viewing Image Area = vis = 320 x 400 = 128,000 pixels

The Target Image Area = vis x 20 = 128,000 x 20 = 2,560,000

pixels

$$TIN = \sqrt{2560000 * 1.25} = 1789$$

The Target Image width = 2,560,000 / 0.8 = 1789 pixels

The Target Image height = 1789 x 0.8 = 1431 pixels  $TIN = \frac{1789}{1.25} = 1431$

WRONG EXPRESSIONS USED

25 The Minimum Scan Density = 1789 / 5 = 358 pixels per inch

The photo scan can be any scan density > 357 pixels per inch

1431/5 = 358  
OK

Thus, a 5 x 4" print film image should be scanned at greater than 357 pixels per inch to allow magnification/zoom up to 20 times in a viewing window of 320 x 240 pixels. An enhanced digital

480 x 320

Atty. Dkt. No. 57103/120

image file having 2,560,000 pixels provides a sufficient number of pixels for this example.

## EXAMPLE 2

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

5 density for the following case:

Source image = 5" x 4"  $\rightarrow$  state which is height & which is width.

Desired Maximum Magnification Factor = 20

Source Image Aspect Ratio = 5 / 4 = 1.25

Define the Viewing Window: assume 400w x 360h pixels

10 Viewing Window Aspect Ratio = 400 / 360 = 1.11

The Source Image Aspect Ratio is > the Viewing Window Aspect Ratio:

1.25 > 1.11 therefore:

$v_{iw} = v_{ww} = 400$  pixels

$v_{ih} = v_{iw} / 1.25 = 400 / 1.25 = 320$  pixels

15 The Viewing Image Area =  $v_{ia} = 400 \times 320 = 128,000$  pixels

The Target Image Area =  $v_{ia} \times 20 = 128,000 \times 20 = 2,560,000$  pixels

*wrong expression used*  $\rightarrow$  The Target Image width =  $2,560,000 \div 1.25 = 1789$  pixels  $TIW = \sqrt{2,560,000 \div 1.25} = 1789$

The Target Image height =  $1789 / 1.25 = 1431$  pixels

The Minimum Scan Density =  $1431 / 4 = 358$  pixels per inch  $\rightarrow$  correct

20 The photo scan can be any scan density > 357 pixels per inch

## EXAMPLE 3

Determine the Target Image Area and dimensions, and minimum scan density for the following case:

25 Source Image = 4" wide x 5" high (portrait orientation)

Desired Magnification Factor = 20

Source Image Aspect Ratio = 4 / 5 = 0.8

Define the Viewing Window: assume 400w x 360h pixels

Viewing Window Aspect Ratio = 400 / 360 = 1.11

The Source Image Aspect Ratio is < the Viewing Window Aspect Ratio:

Atty. Dkt. No. 57103/120

0.8 < 1.11 therefore:

$$v_{ih} = v_{wh} = 360 \text{ pixels}$$

$$v_{iw} = v_{ih} * 0.8 = 360 * 0.8 = 288 \text{ pixels}$$

The Viewing Image area =  $v_{ia} = 360 \times 288 = 103,680$  pixels

5 The Target Image area =  $v_{ia} \times 20 = 103,680 \times 20 = 2,073,600$  pixels

Wrong Expression USED → The Target Image width =  $2,073,600 * 0.8 = 1288$  pixels  $T_{iw} = \sqrt{2,073,600 * 0.8} = 1298$

The Target Image height =  $1288 / 0.8 = 1610$  pixels

The Minimum Scan Density =  $1610 / 5 = 322$  pixels per inch

The photo scan can be any scan density > 321 pixels per inch

10 Returning now to FIG. 2, at step 60, the enhanced digital image file is provided to computer 22 in a digitized format, i.e., pixel-based, bitmapped, etc. (as opposed to vector graphics based format), such as in either in a bitmap BMP format or a compressed JPEG format. Computer 22 performs a touch-up operation on the scanned image in  
 15 order to make refinements or enhancements thereto. This touch-up operation is accomplished by utilizing imaging software. Touch-up steps may include cleaning the edges of the image, adjusting lighting, adjusting colors, etc. Adobe PhotoShop software, manufactured by Adobe Systems Inc., San Jose, California, can be used as the imaging  
 20 software for touching up the images.

According to one example, multiple images can be stitched together after scanning, and before or after compression, thereby creating a panoramic scene or image, or simply a scene requiring a plurality of photographs. This stitching operation can be performed by  
 25 utilizing photo stitching software such as, for example, Photo Vista software by Live Picture, Live Picture Reality Studio or Live Picture Object Modeler. Stitching may comprise sufficient photos for a 360 degree panoramic image of a scene. If images are stitched, they may be touched-up at step 60.

Atty. Dkt. No. 57103/120

At step 62, if desired, and if the enhanced digital image file has not yet been compressed (e.g., by scanning device 18 or the touch-up software), the image is then converted from a bitmap file format (e.g., BMP) to a compressed file format (e.g., JPEG). Other compression algorithms are contemplated. Adobe Image Ready software is utilized to perform the BMP-to-JPEG file conversion in this exemplary embodiment. The compression is set to a very high compression factor, such as, 70% to 90%, but may alternatively be set to other compression factors. The target image area be set as one of the parameters for compression, thus ensuring an optimum compressed file size.

At step 64, user interface or control data is associated with the enhanced digital image file. The user interface data is a program or code segment (e.g., a Java applet) that provides a graphic user interface on display 30 upon loading of the image. The user interface program is associated with the enhanced digital image file such that the combined file or files can automatically launch the graphic user interface, decompress the digital image data, and display at least a portion of the digital image data within a viewing window having a predetermined viewing size on display 30.

The user interface data may alternatively be a plug-in, applet, or other software program, such as, Photo Vista, Reality Studio, or Object Modeler manufactured by Live Picture Inc., San Francisco, California, or an Ipix plug-in manufactured by Internet Pictures Corporation of Oak Ridge, Tennessee. The user interface data may be either associated with the enhanced digital image file such that it is downloaded with the enhanced digital image data, or it may be launched independently from the enhanced digital image data as, for example, an applet or plug-in on user computer 28. If the user interface data is launched independently of the image data, it may either be first opened by the user before downloading the enhanced digital image file, or it may

Atty. Dkt. No. 57103/120

be automatically opened by the enhanced digital image file, such as, via a script or other code segment within the enhanced digital image file.

Referring to FIG. 3, an exemplary screen print 80 from display 30 is shown illustrating the graphical user interface 82 generated by the user interface program. User interface 82 includes a viewing window or frame 84 for displaying the digital image data 86. User interface 82 further includes zoom buttons 88 for allowing the user to zoom into and out of digital image data 86. By actuating one of zoom buttons 88, user interface program resizes digital image data 86 within viewing frame 84. User interface 82 further includes panning buttons 90 to allow the user to pan up, down, left, and right within image data 86.

Once the user interface program is associated with the enhanced digital image data, the resulting image is ready for providing to a network server, projection from a projector, display system, posting, or playback, to or from a host computer, a Web server, a Web site, or a Web page. At step 66, the enhanced digital image is uploaded to a network server. In the instance where the enhanced digital image is posted to an Internet Web server, the upload from computer 22 to the respective server can be performed by utilizing file uploading software, such as, Web FTP (file transfer protocol) Pro software, manufactured by Ipswitch, Inc., Lexington, Massachusetts.

Referring now to FIGS. 3, 4, and 5, exemplary print screens are shown illustrating the result of an upload or download of the enhanced digital image file to user computer 28 for display on display 30. In FIG. 3, digital image data 86 of a collectible stamp image is shown within a viewing window 84. Although viewing window 84 is slightly smaller than the full-screen size of display 30 (e.g., 640 x 480 pixels in this example), viewing window 84 can alternatively be configured for full-screen display, or display in other sizes or resolutions. As shown, digital image data 86 shows no sign of pixelation.

Atty. Dkt. No. 57103/120

In FIG. 4, a user has actuated zoom buttons 88 to zoom-in to the digital image. In response, the user interface program provides additional digital image data from the enhanced digital image file stored in a memory (e.g., a hard drive) of user computer 28, to provide a zoomed view of the digital image. Thus, the view of FIG. 4 also shows little sign of pixelation even though the image has been magnified many times.

In FIG. 5, a user has actuated pan buttons 90 to display the lower left-hand corner of the digital image data within viewing window 84. The user has also actuated zoom buttons 88 to zoom-in to the digital image data. Again, little pixelation is visible.

As mentioned, the principles described herein are also operable with a digital image taken by a digital camera. Referring now to FIG. 6, a method 100 of providing an enhanced digital image file utilizing a digital camera is shown. At step 102, the digital camera is configured to acquire a digital image. In this step, the camera is set with a high resolution to acquire at least enough pixels for a magnification of two times the size of the viewing window provided on display 30, though higher numbers of pixel data may also be acquired.

Again referring to FIG. 7 and the corresponding description hereinabove, with a digital source image, the maximum magnification factor (mmf) should not produce a target image larger than the source image in pixels because of the pixel distortion or pixelation effect, i.e., distortion due to fewer pixels in the image being displayed than available in the viewing window. Since:

$$\text{target image area (tia)} = \text{tiw} \times \text{tih} = \text{via} \times \text{mmf}$$

then to obtain the target image width and height:

$$\text{tiw} = \sqrt{\text{tia} \times \text{sir}}$$

$$\text{tih} = \text{tiw} / \text{sir}$$

If  $\text{tih} > \text{sih}$  then set  $\text{tih} = \text{sih}$  and  $\text{tiw} = \text{siw}$

*need the square root*

Atty. Dkt. No. 57103/120

EXAMPLE 4

Determine the Target Image size and dimensions, and minimum scan density for the following case:

Source Image =  $1600 \times 1200$  pixels

Desired Magnification Factor = 20

Source Image Aspect Ratio =  $1600 / 1200 = 1.33$

Define the Viewing Window: assume 480w x 360h pixels

Viewing Window Aspect Ratio =  $480 / 360 = 1.33$

The Source Image Aspect Ratio is = the Viewing Window Aspect Ratio:

0.75 = 0.75 therefore:  $> 1.33 = 1.33$

$v_{ih} = v_{wh} = 360$  pixels

$v_{iw} = v_{ih} * 1.33 = 360 * 1.33 = 480$  pixels

The Viewing Image area =  $v_{ia} = 480 \times 360 = 172,800$  pixels

The Target Image area =  $v_{ia} \times 20 = 172,800 \times 20 = 3,456,000$  pixels

The Target Image width =  $\sqrt{3,456,000 * 1.33} = 2147$  pixels

The Target Image height =  $2147 / 1.33 = 1610$  pixels

But  $t_{ih}$  of 1610 pixels is  $> 1200$  pixels therefore:

$t_{ih} = 1200$  pixels

$t_{iw} = 1600$  pixels

$t_{ia} = 1200 \times 1600 = 1,920,000$  pixels

Effective Maximum Magnification Factor =  $t_{ia} / v_{ia}$   
 $= 1,920,000 / 172,800 = 11.1$

The Minimum Scan Density = N/A

Steps 104 (touch-up image), 106 (compress file), 108

(associate user interface data), and 110 (upload file) may proceed as described with reference to FIG. 2 in the print film image exemplary method.

The above method can be repeated using different depth images or digital photographs for the images in order to create areas of higher resolution or "hot spots" within an image for detailed close-up

*wrong expression*

*Why always ASD at all? It's not applicable. If a digital image is printed and later scanned, then you will follow the math steps for print, not the steps for DIGITAL*

1 camera with you at any of those meetings? 199

2 A. I didn't take a camera with me.

3 Q. Now, going back to the Iviewit  
4 technologies, the heart of the company's  
5 property, intellectual property, was there ever  
6 any concern expressed to you, as COO and  
7 president of the company, concerning the math,  
8 the poor math that was submitted to the patent  
9 office with errors? Is there anyone who  
10 expressed any concern to you about that?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: There was a dispute as  
13 to the consistency of the mathematical  
14 representation, not to accuracy.

15 By MR. SELZ:

16 Q. Okay. So it wasn't dealing with the  
17 accuracy of the math or computational errors; it  
18 was dealing with whether or not the math properly  
19 applied the processes involved?

20 A. No. It was, I said, consistency.

21 Q. Consistency, okay. Well, explain to  
22 me what you mean by consistency, then, sir, so I  
23 can understand.

24 A. Well, there may be several different  
25 ways of deriving the same number, and it could be

1 derived using one form in one place and another 200

2 form in another place. The result is always the  
3 same and both forms are accurate.

4 Q. But they're not consistent?

5 A. They are not -- they don't show the  
6 same format, but the values and the value derived  
7 is always the same. It is mathematically  
8 correct.

9 Q. Okay. So did anyone ever express to  
10 you a concern about those particular issues?

11 A. There was a concern expressed, yes.

12 Q. By who?

13 A. By Eliot Bernstein.

14 Q. How about Murice Buchsbaum, did he  
15 ever express any concern to you about the math  
16 submitted?

17 A. Murice Buchsbaum didn't understand  
18 the math.

19 Q. Okay. So he never, he never  
20 expressed any concern to you then?

21 A. Not on that score.

22 Q. Did the board of directors ever  
23 question you about the patent materials submitted  
24 or any problems with the patent submitted to  
25 these intellectual property rights?

1 A. No.

2 MR. PRUSASKI: Object to the form.

3 By MR. SELZ:

4 Q. Did you ever discuss with the board  
5 of directors any of the problems with Foley &  
6 Lardner or Meltzer Lippy's work with regard to  
7 the patent?

8 A. I don't recall discussing any  
9 problem with respect to Foley & Lardner's work  
10 because I don't recall any problem with Foley &  
11 Lardner's work.

12 Q. Okay. How about Meltzer Lippy, I  
13 think you described yesterday, there were some  
14 concerns; were those discussed with the board of  
15 directors?

16 A. The work done with Meltzer Lipper,  
17 was done mostly before my time.

18 Q. What about the part that was done  
19 during your time, were you concerned about any of  
20 the quality of the work that was performed or any  
21 problems you felt might arise from that work?

22 A. I did not, during that time,  
23 discover any problems.

24 If I may ask the question, I'm  
25 puzzling here to understand why this form of

1 questioning is relevant to the Proskauer  
2 litigation?

202

3 Q. Well, actually, sir, and I don't  
4 mean to be impolite in any manner whatsoever, but  
5 the role here for you is not really to ask these  
6 questions, but rather to answer the questions  
7 that are posed. So, although I appreciate your  
8 concerns, that's not something really for you to  
9 determine, but rather for posing counsel to bring  
10 before the court, if these matters should ever be  
11 submitted.

12 So, again, I'm not attempting to be  
13 rude or impolite in any manner, but these are the  
14 questions we can pose to you and you are duty  
15 bound to answer them.

16 MR. PRUSASKI: I would just say to  
17 some extent, because he's not represented here, I  
18 think he's got the right to --

19 MR. SELZ: He doesn't have any right  
20 to object. And you know, Chris, you and I both  
21 know, that even if you object to the form of a  
22 question or relevancy, the witness still has to  
23 answer it.

24 MR. PRUSASKI: I agree, and I think  
25 Mr. Utley knows that he needs to answer the

1 questions, but I think because he's not 203

2 represented, to some extent, he does have the  
3 right to question the relevancy.

4 MR. SELZ: Well, I mean, he can  
5 object based on the relevancy or you can object  
6 based on the relevancy, but he cannot question  
7 the validity of what I'm asking based on a  
8 relevancy objection.

9 MR. PRUSASKI: Okay. I just think  
10 that his last comment was basically just a lay  
11 person's objection to the relevance.

12 MR. SELZ: That's fine. I mean, you  
13 know --

14 MR. PRUSASKI: And I'd like to  
15 state --

16 MR. SELZ: I don't even know if he  
17 has standing to interpose an objection because  
18 he's not a party to the case. So, well, I guess  
19 whatever, but the bottom line is we'll proceed so  
20 we can hopefully get through this as quickly as  
21 possible and release Mr. Utley from his  
22 obligations here.

23 MR. PRUSASKI: Okay. And I'd like  
24 to join Mr. Utley with objecting to the relevance  
25 of the question too. Go ahead.

1 MR. SELZ: (No response.) 204  
2 MR. PRUSASKI: Steve?  
3 MR. SELZ: Yeah, I'm still here.  
4 MR. PRUSASKI: Okay. Go ahead when  
5 you're ready. I guess we're done.  
6 MR. SELZ: You're done with your  
7 objections. Okay, fine.  
8 MR. BERNSTEIN: Could somebody  
9 repeat the last question for me, please.  
10 MR. SELZ: The last question was are  
11 you, are, were you aware of any situations  
12 according to -- Madam Court Reporter, actually if  
13 you could do me a favor, if you read back that  
14 last question, I would appreciate it.  
15 (Whereupon, the requested portion  
16 was read back.)  
17 MR. SELZ: That's fine, thank you.  
18 By MR. SELZ:  
19 Q. Did Foley & Lardner ever discuss  
20 with you any potential errors in the patents and  
21 any potential liabilities that would arise from  
22 those errors?  
23 MR. PRUSASKI: Object to the form.  
24 Assumes facts not in evidence.  
25 MR. SELZ: Well, let me start off

1 with the basic question then.

205

2 By MR. SELZ:

3 Q. Did Foley & Lardner ever advise you  
4 that there were any errors in the patents?

5 A. No.

6 Q. So, then, they never advised you of  
7 any liabilities or any errors that might arise  
8 from any errors because there weren't any; is  
9 that your testimony is today?

10 A. They never advised me that there  
11 were any errors in the patents.

12 Q. Okay. Now, with regard to the  
13 Proskauer Rose billing, you had indicated that  
14 you had authorized certain payments to be made  
15 and Mr. Prusaski had showed you a series of  
16 letters sent to you by Chris Wheeler and your  
17 responses on a couple of those.

18 Were those payments ever authorized  
19 by the board of directors of Iviewit?

20 A. The board of directors normally does  
21 not become involved in the administration of  
22 accounts receivable and accounts payable.

23 Q. Okay. Well, you, in your own  
24 testimony, sir, indicated that the company was in  
25 a cash poor position; is that true?

**Eliot I. Bernstein**

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**From:** Eliot I. Bernstein [alps1@bellsouth.net]**Sent:** Wednesday, August 09, 2000 11:10 AM**To:** Douglas Boehm (E-mail); James F Armstrong (E-mail); Simon L. Bernstein (E-mail); brian@iviewit.com[www.iviewit.com](http://www.iviewit.com)

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

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

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

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

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

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

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

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

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

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

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

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

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

Best regards,

Eliot

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

From: Boehm, Douglas A.

To: Eliot Bernstein (Iviewit)

Sent: 8/9/00 2:46 AM

Subject: PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED

Eliot--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third, I doubt if you have ever checked to see if your competitors have patents covering your technology. You may find out, rather abruptly I'm afraid, that the people you're going to attempt to license may have a better patent portfolio than you do. All of a sudden you'll end up being the licensee. Or what's worse, you may have to shut down and re-engineer your business to avoid a multimillion dollar patent infringement lawsuit. This is a real risk -- much more of a risk than losing a priority date because a square root sign was missing from a math formula of an example in one of your patent applications. You should keep things in perspective.

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

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

Please let me know what you decide.

--Doug

>Douglas A. Boehm

>Foley & Lardner  
>777 East Wisconsin Avenue  
>Milwaukee, Wisconsin 53202  
>Tel: (414)297-5718  
>Fax:(414)297-4900  
>Email: [daboehm@foleylaw.com](mailto:daboehm@foleylaw.com)

>

>NOTE: The information transmitted in and/or attached to this message  
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>error, please contact the sender and delete the material from any  
>computer.

>

>Best regards,

*Eliot*

Eliot I. Bernstein  
Founder & Chief Technology Officer

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email: [eliot@iviewit.com](mailto:eliot@iviewit.com)  
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Voice: 561.999.8899  
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Toll Free: 877.484.8444  
Cellular: 561.212.9254

**Becker, Steven C.**

---

**From:** Becker, Steven C.  
**Sent:** Monday, July 24, 2000 4:44 PM  
**To:** Eliot I. Bernstein (E-mail); Brian G. Utley (E-mail)  
**Cc:** Boehm, Douglas A.  
**Subject:** PCT Patent Application for "Zoom and Pan" Imaging

**Re:** PCT Patent Application for System and Method for Providing an Enhanced Digital Image File  
Inventor: Bernstein  
Our Ref. No.: 57103/120

Brian:

During our brief telephone conversation today, you provided a few comments in response to my letter to you dated July 21, 2000. These comments were based on your review of the prior provisional applications, and are summarized below.

1. The step of "enlarging" is not essential for all embodiments of the invention.
2. The aspects of zooming and panning, and the function of the applet must be described in greater detail.
3. The disclosure relating to acquiring a photograph of a film video should be removed. However, the disclosure relating to processing one frame of a video according to the process steps of the invention should be retained.
4. In the provisional patent application having our reference number 57103/108, the flowchart in FIG. 2A does not match the corresponding description in the specification. Correction is needed.
5. Again, in the application for 57103/108, the claims in their current form may not be of the proper scope and should be revised.
6. You commented that the prior-filed PCT applications relating to enhanced video files did not specifically mention potential applications in radiographic images, X-rays, MRIs, etc. Regardless of whether these specific applications are supported, additional subject matter cannot be introduced to the prior-filed PCT applications unless additional patent applications are filed. Please advise if you would like us to file patent applications directed to these specific applications.

We discussed the possibility that the provisional applications currently on file may not provide sufficient disclosure to support all of the claims we may eventually want to file in the PCT patent application we are currently preparing, and, therefore, the sale of images using this process in September, 1999 may bar patentability in some foreign countries. You instructed us to proceed with the PCT filing to preserve whichever foreign filing rights are available.

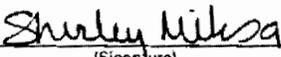
Accordingly, comments 1-5 will be incorporated in the above-referenced PCT patent application. If you have any further questions or comments, please do not hesitate to contact me.

Steve Becker  
Foley & Lardner  
(414)297-5571

NOTE: The information transmitted in this correspondence is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you receive this correspondence in error, please contact the sender and delete the material from any computer.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
Title: System And Method For  
Providing An Enhanced Digital  
Video File  
Appl. No.: Unknown  
Filing Date: Unknown  
Examiner: Unknown  
Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640468359US (Express Mail Label Number)	June 5, 2000 (Date of Deposit)
Shirley Miksa (Printed Name)	
 (Signature)	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Brian G. Utley  
Jude R. Rosario

Enclosed are:

- [ X ] Specification, Claim(s), and Abstract (33 pages).
- [ X ] Informal drawings (3 sheets, Figures 1-3).
- [ X ] Unexecuted Declaration and Power of Attorney (4 pages).
- [ ] Assignment of the invention to Iviewit.com, Inc..
- [ ] Assignment Recordation Cover Sheet.
- [ ] Check in the amount of \$40.00 for Assignment recordation.
- [ ] Small Entity statement.
- [ ] Information Disclosure Statement.

[ ] Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	55	- 20	= 35	x \$18.00	= \$630.00
Independents:	6	- 3	= 3	x \$78.00	= \$234.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$1554.00
[ ] Small Entity Fees Apply (subtract 1/2 of above):					= \$0.00
				TOTAL FILING FEE:	= \$1554.00

- [ ] A check in the amount of \$1,554.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

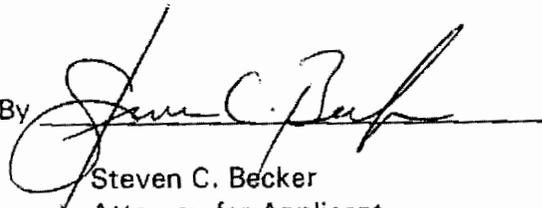
Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date

6/5/00

By



Steven C. Becker  
Attorney for Applicant  
Registration No. 42,308

FOLEY & LARDNER  
Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5571  
Facsimile: (414) 297-4900

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

---

System And Method For Providing An Enhanced Digital Video File

---

(Attorney Docket No. 57103/116)

---

the specification of which (check one)

  X   is attached hereto.

     was filed on          as United States Application Number or PCT International Application Number          and was amended on          (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
 FOLEY & LARDNER  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	_____
→ Date	_____

Name of second inventor	Brian G. Utley
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	1930 SW 8th Street, Boca Raton, Florida 33486
→ Inventor's signature	
→ Date	

Name of third inventor	Jude R. Rosario
Residence	Coconut Creek, Florida
Citizenship	Bangladesh
Post Office Address	5580 NW 61 Street, Apt. #625, Coconut Creek, Florida 33073
→ Inventor's signature	
→ Date	

FORMALITIES LETTER



\*OC00000005281098\*

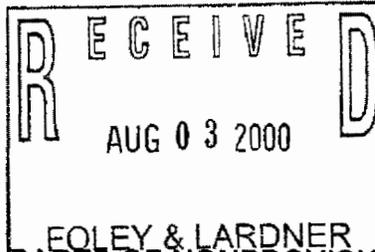


UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,734	06/05/2000	Eliot I Bernstein	57103/116

Foley & Lardner  
777 E Wisconsin Avenue  
Milwaukee, WI 53202



Date Mailed: 07/31/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

MP  
RESPONSE DUE 30 SEP 2000  
DCL/FEE

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$864.
  - \$630 for 35 total claims over 20.
  - \$234 for 3 independent claims over 3.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 1684.

A copy of this notice MUST be returned with the reply.

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

\$3100

Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED  
DIGITAL VIDEO FILE

Inventor(s): Bernstein et al.  
Appl. No.: 09/587,734

Dkt. No. 57103/116  
DABO (10/2/00)

- Transmittal of Missing Parts of Patent Application (2 pgs.)
- Executed Declaration and Power of Attorney (4 pgs.);
- Check Number #523256 for \$855.00 .

Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED  
DIGITAL VIDEO FILE

Inventor(s): Bernstein et al.  
Appl. No.: 09/587,734

Dkt. No. 57103/116  
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Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner



10/27/00

10/1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED DIGITAL VIDEO FILE  
Appl. No.: 09/587,734  
Filing Date: 6/05/2000  
Examiner: N/A  
Art Unit: 2712

<p align="center"><b>CERTIFICATE OF MAILING</b></p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.</p> <p align="center"><i>Shirley Miksa</i> (Printed Name)</p> <p align="center"><i>Shirley Miksa</i> (Signature)</p> <p align="center"><u>October 2, 2000</u> (Date of Deposit)</p>
---

**TRANSMITTAL OF MISSING PARTS  
OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

Sir:

In response to the Notice to File Missing Parts of Application mailed on July 31, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- Executed Declaration and Power of Attorney (4 pages) enclosed
- Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533) enclosed
- Applicant is entitled to Small Entity status
- Check in the amount of \$855.00 in payment of \$355.00 Basic filing fee, \$315.00 additional total claims fee, \$120.00 additional independent claims fee, and \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed

herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 10/2/00

By Douglas A. Boehm

FOLEY & LARDNER  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

Douglas A. Boehm  
Attorney for Applicant  
Registration No. 32,014

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Providing An Enhanced Digital Video File

(Attorney Docket No. 57103/116)

the specification of which (check one)

       is attached hereto.

  X   was filed on June 5, 2000 as United States Application Number 09/587,734.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15405	June 2, 2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
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ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

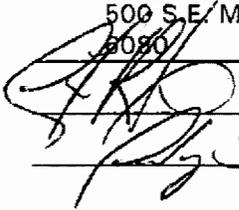
and I request that all correspondence be directed to:

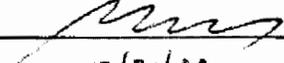
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 Milwaukee, Wisconsin 53202-5367

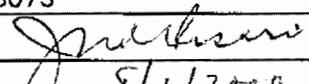
Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor Eliot I. Bernstein  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080  
 Inventor's signature   
 Date 3.2.2002

Name of second inventor Brian G. Utley  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 1930 SW 8th Street, Boca Raton, Florida 33486  
Inventor's signature   
Date 7/31/00

Name of third inventor Jude R. Rosario  
Residence Coconut Creek, Florida  
Citizenship Bangladesh  
Post Office Address 5580 NW 61 Street, Apt. #625, Coconut Creek, Florida 33073  
Inventor's signature   
Date 8/1/2000

Q. Okay. Other than that, he never

109

represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

**UNITED STATES PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR**

**STREAMING AN ENHANCED DIGITAL VIDEO FILE**

eliot Note
Missing Rosario as inventor. Title is wrong.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

# FOLEY & LARDNER

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WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot  
Note

This letter is two months after filing in Dick VA Bar response he states inventors had time to review and correct before filing

Re: U.S. Patent Application  
Title: System And Method For Streaming An Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/114

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000, as Application No. 09/587,730. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their

ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley

July 27, 2000

Page 2

duty to disclose to the U.S. Patent and Trademark Office any information of which they are aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

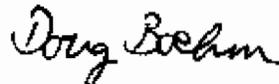
Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Ivivewit Holdings, Inc. by assigning all their rights in the invention to the company.

After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Streaming An Enhanced Digital Video File

(Attorney Docket No. 57103/114)

the specification of which (check one)

X  is attached hereto.

     was filed on           as United States Application Number or PCT International Application Number           and was amended on           (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

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Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

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JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
FOLEY & LARDNER  
Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	
Date	

Name of second inventor

Zakirul A. Shirajee

Residence

Boca Raton, Florida

Citizenship

Bangladesh

Post Office Address

9485 Boca Cove Circle, #708, Boca Raton, Florida  
33428

→ Inventor's signature

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.

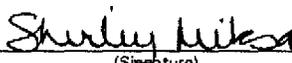
Title: System And Method For Streaming An Enhanced Digital Video File

Appl. No.: Unknown

Filing Date: Unknown

Examiner: Unknown

Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640468345US <small>(Express Mail Label Number)</small>	June 5, 2000 <small>(Date of Deposit)</small>
Shirley Miksa <small>(Printed Name)</small>	
 <small>(Signature)</small>	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Zakirul A. Shirajee

Enclosed are:

- Specification, Claim(s), and Abstract (29 pages).
- Informal drawings (3 sheets, Figures 1-3).
- Unexecuted Declaration and Power of Attorney (4 pages).
- Preliminary Amendment.

Assignment of the invention to lviewit.com, Inc..

Assignment Recordation Cover Sheet.

Check in the amount of \$40.00 for Assignment recordation.

Small Entity statement.

Information Disclosure Statement.

Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

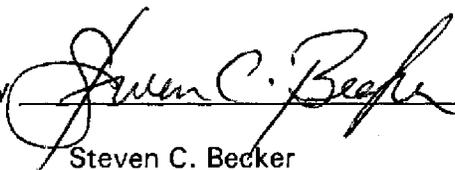
	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	27	- 20	= 7	x \$18.00	= \$126.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$816.00
<input type="checkbox"/> Small Entity Fees Apply (subtract 1/2 of above):					= \$0.00
				TOTAL FILING FEE:	= \$816.00

- A check in the amount of \$816.00 to cover the filing fee is enclosed.
- The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/5/00

By 

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

Steven C. Becker  
 Attorney for Applicant  
 Registration No. 42,308

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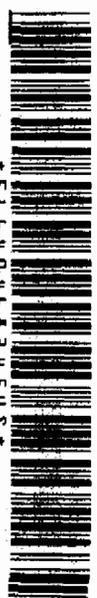


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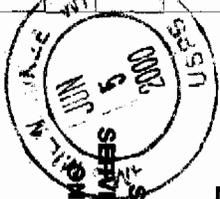


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Steven C. Becker  
57103/114

Assistant Commissioner for Patents  
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Washington, D.C. 20231

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Serial No.: \_\_\_\_\_

Applicant: Bernstein et al.

Filing Date: \_\_\_\_\_

Title: System And Method

for Making An Enhanced  
Digital Video File

- Patent Application
- Drawing(s) 3 sheets (F) \_\_\_\_\_ (Inf.)
- Check \$ \_\_\_\_\_ No.: \_\_\_\_\_
- Declaration & Power of Attorney Finex Intel
- Extension of Time (duplicate)
- Preliminary Amendment
- Amendment
- Amendment After FINAL Rejection
- Issue Fee (Base and/or Balance)
- Letter to Official Draftsman
- Small Entity Statement
- Assignment/Fee & Form PTO No. 1595
- Trademark Application
- Form PTO No. 1449 & cited references
- Application Transmittal

15530 U.S. PATENT OFFICE  
09/587730  
06/05/00

DOCKET NO.: 57103/114 ATTY: SCB

DUE DATE: \_\_\_\_\_ 6/2/00

DUE DATE: \_\_\_\_\_

FOREIGN FILING

**UNITED STATES PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR**

**STREAMING AN ENHANCED DIGITAL VIDEO FILE**

eliot Note
Missing Rosario as inventor. Title is wrong.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999,  
and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
10 and method for providing high quality digital video files for streaming  
across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
15 storing it in a local file first. A video player decompresses and plays  
the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
video requires a communications connection (e.g., a network,  
20 Internet, etc.) and a computer powerful enough to execute the  
decompression algorithm in real time.

## FORMALITIES LETTER



\*OC00000005296978\*

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark OfficeAddress: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,730	06/05/2000	Eliot I. Bernstein	57103/114

Steven C Becker  
Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

Date Mailed: 08/04/2000

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

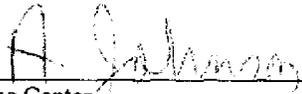
FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$126.
  - \$126 for 7 total claims over 20.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 946.

*A copy of this notice **MUST** be returned with the reply.*

  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.

Title: System And Method For Streaming An Enhanced Digital Video File

Appl. No.: 09/587,730

**Filing Date: 6/05/2000**

Examiner: N/A

Art Unit: 2711

<b>CERTIFICATE OF MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.	
<i>Karen Mejer</i>	_____ (Printed Name)
<i>Karen Mejer</i>	_____ (Signature)
<b>October 3, 2000</b>	_____ (Date of Deposit)

**TRANSMITTAL OF MISSING PARTS OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

Sir:

In response to the Notice to File Missing Parts of Application mailed on August 4, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- Declaration and Power of Attorney (4 pages) enclosed
- Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533)
- Applicant is entitled to Small Entity status
- Check in the amount of \$483.00 in payment of \$355.00 Basic filing fee, \$63.00 additional total claims fee, \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed

herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 10/3/00

By Douglas A. Boehm

FOLEY & LARDNER  
Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

Douglas A. Boehm  
Attorney for Applicant  
Registration No. 32,014

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Streaming An Enhanced Digital Video File

(Attorney Docket No. 57103/114)

the specification of which (check one)

     is attached hereto.

  X   was filed on June 5, 2000 as United States Application Number 09/587,730.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15408	June 2, 2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

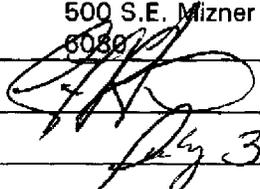
and I request that all correspondence be directed to:

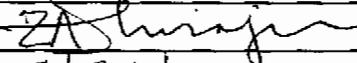
Steven C. Becker  
**FOLEY & LARDNER**  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-5080
Inventor's signature	
Date	July 31, 2000

Name of second inventor	Zakirul A. Shirajee
Residence	Boca Raton, Florida
Citizenship	Bangladesh
Post Office Address	9485 Boca Cove Circle, #708, Boca Raton, Florida 33428
Inventor's signature	
Date	7/31/00

57103/112

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/112

WHAT IS CLAIMED IS:

- 1           1.     A method of providing a streaming video file,  
2     comprising:  
3                 providing digital video data having a capture frame size  
4     of at least 69,300 pixels per frame; and  
5                 converting the digital video data to a streaming video  
6     file having a converted frame size of at least 69,300 pixels per  
7     frame.
- 1           2.     The method of claim 1, wherein the capture frame size  
2     has an aspect ratio of 4:3 and the converted frame size of has an  
3     aspect ratio of 4:3.
- 1           3.     The method of claim 2, wherein the capture frame size  
2     is at least 304 x 228 pixels and the converted frame size is at least  
3     304 x 228 pixels.
- 1           4.     The method of claim 3, wherein the capture frame size  
2     is approximately 320 x 240 pixels and the converted frame size is  
3     approximately 320 x 240 pixels.
- 1           5.     The method of claim 1, wherein the step of providing  
2     includes capturing a video signal.
- 1           6.     The method of claim 5, wherein the step of providing  
2     includes digitizing the video signal to generate the digital video data.
- 1           7.     The method of claim 6, wherein the step of providing  
2     includes storing the captured video data as a data file in a storage

ScB  
Work copy

# FOLEY & LARDNER

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JACKSONVILLE  
LOS ANGELES  
MADISON  
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TALLAHASSEE  
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WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

- Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111
  
- Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112
  
- Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

Dear Brian:

Enclosed please find a third draft of the first above-referenced patent application, which has been prepared in accordance with additional comments received from Eliot, Zak, and you today.

I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of these draft patent applications by you and the inventors is imperative to ensure that you are all satisfied with the content of the

FOLEY & LARDNER

Mr. Brian G. Utley

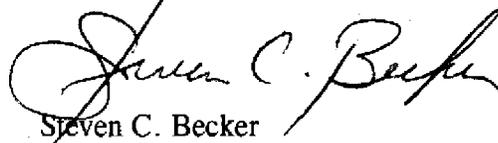
June 1, 2000

Page 2

application and, in particular, with the proposed claim scope. Please follow the instructions in my letter to you dated May 29, 2000 as you review these draft patent applications.

Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

57103/112

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.  
*Brian G. Utley*  
Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

WHAT IS CLAIMED IS:

1           1.     A method of providing a streaming video file,  
2 comprising:  
3                     providing digital video data having a capture frame size  
4 of at least 69,300 pixels per frame; and  
5                     converting the digital video data to a streaming video  
6 file having a converted frame size of at least 69,300 pixels per  
7 frame.

1           2.     The method of claim 1, wherein the capture frame size  
2 has an aspect ratio of 4:3 and the converted frame size of has an  
3 aspect ratio of 4:3.

1           3.     The method of claim 2, wherein the capture frame size  
2 is at least 304 x 228 pixels and the converted frame size is at least  
3 304 x 228 pixels.

1           4.     The method of claim 3, wherein the capture frame size  
2 is approximately 320 x 240 pixels and the converted frame size is  
3 approximately 320 x 240 pixels.

1           5.     The method of claim 1, wherein the step of providing  
2 includes capturing a video signal.

1           6.     The method of claim 5, wherein the step of providing  
2 includes digitizing the video signal to generate the digital video data.

1           7.     The method of claim 6, wherein the step of providing  
2 includes storing the captured video data as a data file in a storage

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR  
PLAYING A DIGITAL VIDEO FILE**



<b>eliot Note</b>
Missing Rosario

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**

eliot  
Note

Never filed and Utley replaces Rosario, this is probably what the inventors saw when they signed the application.

**Inventors:** Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
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**FOLEY & LARDNER**  
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Milwaukee, Wisconsin 53202  
(414) 271-2400

ScB  
Work copy

# FOLEY & LARDNER

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LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

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WEST PALM BEACH

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

*Via Facsimile*  
June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

Dear Brian:

Enclosed please find a third draft of the first above-referenced patent application, which has been prepared in accordance with additional comments received from Eliot, Zak, and you today.

I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of these draft patent applications by you and the inventors is imperative to ensure that you are all satisfied with the content of the

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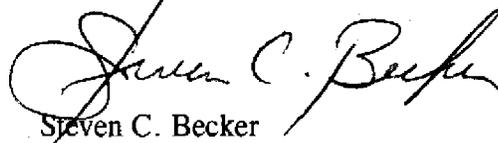
June 1, 2000

Page 2

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Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR  
PLAYING A DIGITAL VIDEO FILE**

eliot Note
Are there any written letters to the effect of changing inventors with inventors signatures and approvals for filing from provisional applications, there are none in the Company possession.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

+ Zak  
(full  
size)

~~Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh~~

~~Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh~~

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

WHAT IS CLAIMED IS:

1           1.     A method of playing a digital video file, comprising:  
2                     providing a digital video file in a first storage device;  
3                     downloading a first portion of the digital video file  
4 across a network to a computer having a second storage device;  
5                     simultaneously playing the first downloaded portion  
6 from the second storage device and downloading a second portion of  
7 the digital video file.

1           2.     The method of claim 1, further comprising capturing a  
2 video signal to generate the digital video file.

1           3.     The method of claim 2, further comprising compressing  
2 the captured video signal, wherein the digital video file is  
3 compressed.

1           4.     The method of claim 3, wherein the digital video file is  
2 compressed into an MPEG format.

1           5.     The method of claim 1, wherein the network is the  
2 Internet.

1           6.     The method of claim 1, wherein at least 5% of digital  
2 video file is downloaded before the step of simultaneously playing.

1           7.     The method of claim 1, wherein the second storage  
2 device includes a magnetic storage device.

1           8.     The method of claim 7, wherein the second storage  
2 device is a hard drive.

**PATENT COOPERATION TREATY**

From the RECEIVING OFFICE

**PCT**

INVITATION TO CORRECT DEFECTS IN  
THE INTERNATIONAL APPLICATION

(PCT Articles 3(4)(i) and 14(1) and Rule 26)

To:  
DOUGLAS A. BOEHM  
FOLEY & LARDNER  
777 EAST WISCONSIN AVENUE  
33RD FLOOR  
MILWAUKEE, WI 53202 5367

Date of mailing (day/month/year)	03 JUL 00
Applicant's or agent's file reference  57103/113	<b>REPLY DUE</b> within <u>one</u> month <del>two</del> from the above date of mailing ←
International application No.  PCT/US00/15406	International filing date (day/month/year)  02 JUN 00
Applicant IVIEWIT HOLDINGS, INC.	

1. The applicant is hereby **invited**, within the time limit indicated above, to correct the defects in the international application as filed, the defects specified on the attached

Annex A  
 Annex B1 (text matter of the international application as filed)  
 Annex C1 (drawings of the international application as filed)

2. The applicant is hereby **invited**, within the time limit indicated above, to correct the defects in the translation of the international application furnished under Rule 12.3, the defects specified on the attached

Annex A  
 Annex B2 (text matter of the translation of the international application)  
 Annex C2 (drawings of the translation of the international application)

**Additional observations (if necessary):**

**HOW TO CORRECT THE DEFECTS?**

Correction must be submitted by filing a replacement sheet embodying the correction and a letter accompanying the replacement sheet, which shall draw attention to the difference between the replaced sheet and the replacement sheet. A correction may be stated in a letter only if it is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and direct reproducibility of the sheet onto which the correction is to be transferred (Rule 26.4(a)).

**ATTENTION**

Failure to correct the defects will result in the international application being considered withdrawn by this receiving Office (see Rule 26.5 for further details).

A copy of this invitation and any attachments has been sent to the International Bureau  and the International Searching Authority.

Name and mailing address of the receiving Office Assistant Commissioner for Patent Box PCT Washington, D.C. 20231 Attn:RO/US Facsimile No. 703-305-3230	Authorized officer Virginia L. Irby <i>J L Irby</i> Telephone No. 703-305-3748
---	--

**The receiving Office has found the following defects in the international application as filed:**

1. As to **signature**\* of the international application (Rules 4.15 and 90.4), the request:
- is not signed.
  - is not signed by all applicants.
  - is not accompanied by the statement referred to in the check list in Box No. VIII of the request explaining the lack of the signature of an applicant for the designation of the United States of America.
  - is signed by what appears to be an agent/common representative but
    - the international application is not accompanied by a power of attorney appointing him.
    - the power of attorney accompanying the international application was not signed by all the applicants.
  - other (*specify*):

The signature is also required for the applicant/inventors.

\* All applicants must sign, including inventors if they are also applicants (e.g. where the United States of America is designated).

2. As to indications concerning the **applicant**, the request (Rules 4.4 and 4.5):

- does not properly indicate the applicant's name (*specify*):
- does not indicate the applicant's address.
- does not properly indicate the applicant's address (*specify*):
- does not indicate the applicant's nationality.
- does not indicate the applicant's residence.
- other (*specify*):

3. As to the **language** of certain elements of the international application, other than the description and claims ( Rules 12.1(c) and 26.3ter(a) and (c)):

- the **request** is not in a language which is both a language accepted by this receiving Office and a language of publication, which is (are):
- the **text matter of the drawings** is not in the language in which the international application is to be published, which is:
- the **abstract** is not in the language in which the international application is to be published, which is:

4. The **title** of the invention:

- is not indicated in Box No. I of the request (Rule 4.1(a)).
- is not indicated at the top of the first sheet of the description (Rule 5.1(a)).
- as appearing in Box No. I of the request is not identical with the title heading the description (Rule 5.1(a)).

5. As to the **abstract** (Rule 8):

- the international application does not contain an abstract.

The receiving Office has found that, with regard to the presentation of the drawings of the international application as filed, the physical requirements are not complied with to the extent that compliance therewith is necessary for:

1.  reasonably uniform international publication (Rules 11 and 26.3(a)(i)) (defects to be specified):

**Sheets containing drawings:**

- a.  the sheets do not admit of direct reproduction.  
 b.  the sheets are not free from creases, cracks, folds.  
 c.  one side of the sheets is not left unused.  
 d.  the paper of the sheets is not flexible/strong/white/smooth/non-shiny/durable.  
 e.  the drawings do not commence on a new sheet.  
 f.  the sheets are not connected as prescribed (Rule 11.4(b)).  
 g.  the sheets are not A4 size (29.7cm x 21cm).  
 h.  the minimum margins on the sheets are not as prescribed **Fig. 2 - 3**  
 (top: 2.5cm; left side: 2.5cm; right side: 1.5cm; bottom: 1cm).  
 i.  the file reference number indicated on the sheets does not appear in the left-hand corner of the sheets, within 1.5cm of the top of the sheets.  
 j.  the file reference number exceeds the maximum of 12 characters.  
 k.  the sheets are not free from frames around usable or used surfaces.  
 l.  the sheets are not numbered in consecutive Arabic numerals (e.g. 1/3, 2/3, 3/3). **All**  
 m.  the sheet numbers are not centered at the top or bottom of the sheets.  
 n.  the sheet numbers are in the margin (see h. above for the size of the margins).  
 o.  the sheets contain alterations/overwritings/interlineations/too many erasures.  
 p.  the sheets contain photocopy marks.

**Drawings (Rule 11.13):**

- a.  do not admit of direct reproduction.  
 b.  contain unnecessary text matter.  
 c.  contain words so placed as to prevent translation without interference with lines thereof.  
 d.  are not executed in durable black color; the lines are not uniformly thick and well-defined. **Fig. 1-3**  
 e.  contain cross-sections not properly hatched.  
 f.  would not be properly distinguishable in reduced reproduction.  
 g.  contain scales not represented graphically.  
 h.  contain numbers, letters and reference lines lacking simplicity and clarity. **Fig. 1-3**  
 i.  contain lines drafted without the aid of drafting instruments.  
 j.  contain disproportionate elements of a figure not necessary for clarity.  
 k.  contain numbers and letters of height less than 0.32 cm.  
 l.  contain letters not conforming to the Latin, and where customary, Greek alphabets.  
 m.  contain figures on two or more sheets which form a single complete figure but which are not able to be assembled without concealing parts thereof.  
 n.  contain figures which are not properly arranged and clearly separated.  
 o.  contain different figures not numbered in consecutive Arabic numerals.  
 p.  contain different figures not numbered independent of the numbering of the sheets.  
 q.  are not restricted to reference signs mentioned in the description.  
 r.  do not contain reference signs that are mentioned in the description.  
 s.  contain the same feature denoted by different reference signs.  
 t.  are not arranged in an upright position, clearly separated from one another.  
 u.  are not presented sideways with the top of the figures at the left side of the sheets.

2.  satisfactory reproduction (Rules 11 and 26.3(b)(i)).

Further observations (if necessary):

Shading or solid black objective figure number

New drawings are required

<b>TO:</b> DOUGLAS A. BOEHM FOLEY & LARDNER 777 EAST WISCONSIN AVENUE 33RD FLOOR MILWAUKEE, WI 53202 5367	<b>UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)</b>	
	<b>NOTIFICATION OF STATUS OF REQUIREMENTS UNDER 35 U.S.C. 371</b>	
	DATE OF MAILING <i>(day/month/year)</i>	03 JUL 00
FILE REFERENCE		57103/113

**IDENTIFICATION OF INTERNATIONAL APPLICATION**

International application No.	International filing date <i>(day/month/year)</i>	Priority Date Claimed
PCT/US00/15406	02 JUN 00	03 JUN 99

Applicant for DO/EO/US

BERNSTEIN, ELIOT

**NOTIFICATION**

The applicant is hereby advised that the U.S. Patent and Trademark Office in its capacity as  Designated Office  Elected Office has received following items as of the date of mailing indicated above.

1.  U.S. Nation fee [35 U.S.C 371 (c) (1)]
  2.  Oath of declaration [35 U.S.C 371 (c) (4)]
  3.  Copy of International application as [35 U.S.C 371 (c) (2)]
  4.  Translation of Application [35 U.S.C 371 (c) (2)]
  5.  Amendments under PCT Article 19 [35 U.S.C 371 (c) (3)]
  6.  Translation of PCT Article 19 Amendments [35 U.S.C 371 (c) (3)]
  7.  Search Report or Declaration under PCT Article 17(2) [35 U.S.C 371 (a)]
  8.  International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(b) [35 U.S.C 371 (a)]
  9.  Translation of Annexs to the International Preliminary Examination Report under PCT Article 36(3)(b) [35 U.S.C 371 (c) (5)]
  10.  Other items received:
 

<input type="checkbox"/> Assignment Document	<input type="checkbox"/> Prior Art Statement	<input type="checkbox"/> Preliminary Amendment
--	--	--
- A.  Requirements for U.S. National processing have been met. Processing will commence
- |   |   |  |
|---|---|--|
| <input type="checkbox"/> at the expiration of the applicable time limit under either          | <input type="checkbox"/> PCT Article 22 [35 U.S.C 371 (b)] or | <input type="checkbox"/> PCT Article 39 [35 U.S.C 371 (b)] |
| <input type="checkbox"/> on the date indicated below under the provisions of 35 U.S.C 371 (f) |   |  |

U.S. NATIONAL SERIAL#

DATE UNDER 35 U.S.C. 102(e)

DATE OF COMMENCEMENT  
OF NATIONAL PROCESSING

*All correspondence submitted after the date of commencement of U.S. National processing indicated above should refer to the U.S. National Serial Number and the appropriate U.S. National processing organization of Officer.*

- B.  As the above identified application has been accepted for U.S. National processing under the provision of 35 U.S.C. 371 (f) before expiration of the applicable time limit under  PCT Article 22  PCT Article 39, applicant is reminded that
- |   |   |
|---|---|
| <input type="checkbox"/> Amendments under PCT Article 19 and/or | <input type="checkbox"/> the International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3) (a), and (b) and any translation thereof, if applicable, must be submitted to the Patent and Trademark Office as soon as they are available. |
|---|---|

<b>International application No.</b>	<b>International filing date</b>	<b>Priority Date Claimed</b>
PCT/US00/15406	02 JUN 00	03 JUN 99

C.  In order that U.S. National processing may begin, certain items must be received by the DO/EO/US by the expiration of applicable time limit under

- PCT Article 22 or
- PCT Article 39.

Specifically:

- 1. U.S. National Fee
- 2. Oath or Declaration
- 3. Copy of Application
- 4. Translation of application
- 5. Amendments under PCT Article 19, if any
- 6. Translation of PCT Article 19 Amendments, if applicable
- 7. Search Report or PCT Article 17(2) declaration
- 8. International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), if applicable
- 9. Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b), if applicable

**THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.**  
 [35. U.S.C. 371(d)]

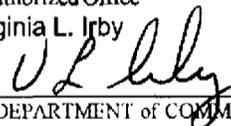
D. Further information for the applicant:

**This is only a reminder.**

**UNITED STATES DESIGNATED/ELECTED OFFICE**

Address Only:  
 Assistant Commissioner for Patent  
 Box PCT  
 Washington, D.C. 20231 Attn:RO/US

Authorized Office  
 Virginia L. Irby



# FOLEY & LARDNER

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FACSIMILE (414) 297-4900

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TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5718

August 11, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent  
Application No.: PCT/US00/15406  
Filing Date: 6/02/2000  
Title: System and Method for Playing a  
Digital Video File  
Applicant: Iviewit.com  
Our Ref.: 57103/113

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 2, 2000, in connection with the above-identified application.

We will keep you informed of all future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	02 August 2000
International Application No.	PCT/US00/15406
Attorney Docket No.	57103/113

I. Certification under 37 CFR 1.10 (if applicable)

EL 640466596 US
Express Mail mailing number

02 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR PLAYING A DIGITAL VIDEO FILE	Earliest priority date (Day/Month/Year)

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Three (3) Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	Pages	1-3	of the figures
pages		of the description	Pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A Boehm</i>
----------------------	------------------	-----------	------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15406  
International  
Filing Date : 02 June 2000 (02.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR PLAYING A DIGITAL  
VIDEO FILE

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

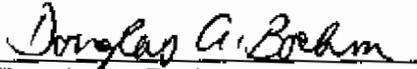
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 03 July 2000, Applicant respectfully submits three (3) duly-executed PCT General Appointments of Agent, and three (3) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 02 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firststar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

FOR: VIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
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---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
Florida, in U.S.A.

BY: 

Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States of America

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

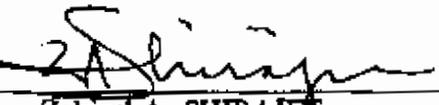
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RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 92,014
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WALTER E. ZIMMERMAN	Reg. No. 40,883

---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31 day of July 2000 at Boca Raton, in U.S.A.

BY: 

Zakirul A. SHIRAJEE  
9485 Boca Cove Circle, #708  
Boca Raton, FL 33428  
United States of America

57103/111

DRAFT

PCT INTERNATIONAL PATENT APPLICATION

for

SYSTEM AND METHOD FOR PROVIDING  
AN ENHANCED DIGITAL VIDEO FILE

14672  
31.8  
E31

eliot  
Note

Title changes on day of filing??

Inventors:

Eliot I. Bernstein  
[home address]  
[citizenship]

Zach . . .  
[home address]  
[citizenship]

Zakirul  
Shirajee

Jude . . .  
[home address]  
[citizenship]

Jude Rosario

FOLEY & LARDNER

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

eliot  
Note

Eliot handwriting

57103/111

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, and U.S.  
6 Provisional Application No. 60/169,559, filed December 8, 1999.

FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
10 across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A plug-in to a web browser, such as  
15 *Real Player or Media Player* Netscape Navigator, decompresses and plays the data as it is  
transferred to a user computer over the World-Wide Web. Streaming  
video avoids the delay entailed in downloading an entire file and then  
playing it with a plug-in application. Streaming video requires a fast  
20 connection and a computer powerful enough to execute the  
decompression algorithm in real time.

In the field of streaming video, the primary design  
challenge is that the viewer desires perfect video quality over a

*1760  
\$131.4  
EV 31*

*not true that  
it must be  
just  
and our  
process  
increases  
quality of  
video*

# FOLEY & LARDNER

ATTORNEYS AT LAW

FIRSTSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
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SAN FRANCISCO  
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TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

CHICAGO  
DENVER  
EVANSTON  
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MADISON  
MILWAUKEE  
ORLANDO

EMAIL ADDRESS  
sbecker@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5571

August 1, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Streaming an Enhanced Digital Video  
File  
Applicant: Iviewit Holdings, Inc.  
Our Ref.: 57103/111

Dear Brian:

We are pleased to confirm that the above-identified application was filed with the U.S. Receiving Office on June 2, 2000, and accorded Application Number PCT/US00/15408. In accordance with your instructions, all PCT member countries were designated, and the European Patent Office was appointed as the International Searching Authority for this matter. Enclosed for your records is a copy of the application as filed, the transmittal of filing fees, and the related notification from the United States Receiving Office.

Please note that the deadline for entering the national phase of this application is February 3, 2001. National phase may be deferred for another ten months, until December 3, 2001, by filing a Chapter II Demand for International Preliminary Examination. This Demand must be filed by January 3, 2001. For any country in which we do not meet the national phase deadline or, alternatively, the International Preliminary Examination deadline, the PCT application will be considered withdrawn.

ESTABLISHED 184

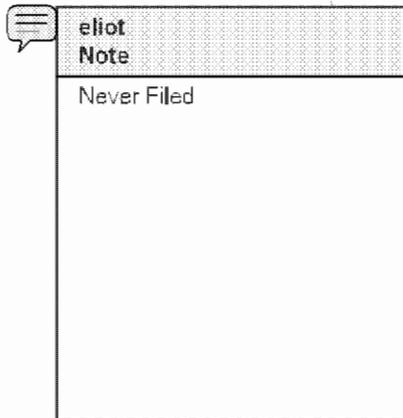
A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**



**Inventors:** Eliot I. Bernstein  
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Boca Raton, FL 33432-6080  
Citizenship: U.S.

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9485 Boca Cove Circle  
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**FOLEY & LARDNER**  
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FOLEY & LARDNER  
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361  
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# FACSIMILE TRANSMISSION

[Empty rectangular box]

Total # of Pages 31 (including this page)

TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 2, 2000  
 Client/Matter No: 57103/111  
 User ID No: 1963

## MESSAGE:

### CONFIDENTIAL AND PRIVILEGED

Brian: Attached is a fourth draft of the patent application (our reference number 57103/111). Please review per the instructions in my prior letter of May 29, 2000. In particular, please ensure that all named inventors (Eliot and Zak) and you read and understand the proposed claim scope. If you have any questions, please contact me. - Steve

If there are any problems with this transmission or if you have not received all of the pages, please call (414) 297-6444.

Operator:	Time Sent:	Return Original To:
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CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

57103/111

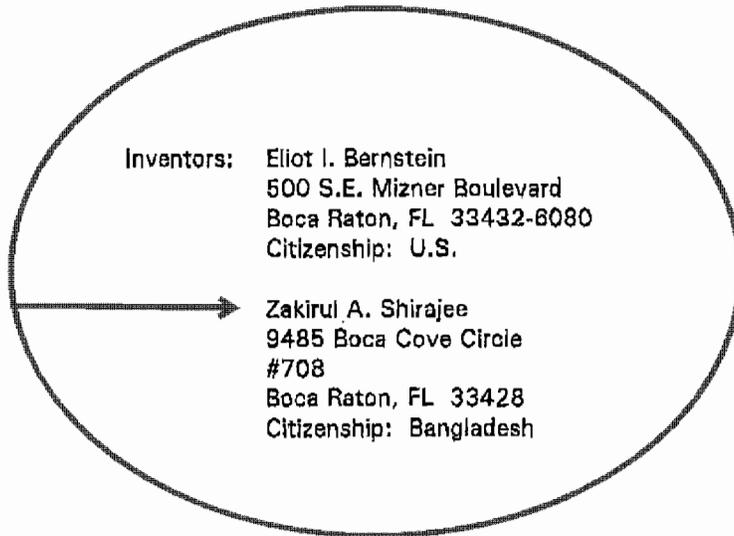
eliot	3/22/2004 4:15:08 AM
Note	
Shirajee does not get filed on this application as an inventor, only an applicant	

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**STREAMING AN ENHANCED DIGITAL VIDEO FILE**



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

(19) World Intellectual Property Organization  
International Bureau



(43) International Publication Date  
14 December 2000 (14.12.2000)

PCT

(10) International Publication Number  
WO 00/76220 A1

(51) International Patent Classification: H04N 7/173, 7/24

(74) Agent: FOLEY & LARDNER; 777 East Wisconsin Avenue, 33rd Floor, Milwaukee, WI 53202-5367 (US).

(21) International Application Number: PCT/US00/15408

(81) Designated States (national): AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, CA, CH, CN, CR, CU, CZ, DE, DK, DM, DZ, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TR, TT, TZ, UA, UG, US, UZ, VN, YU, ZA, ZW.

(22) International Filing Date: 2 June 2000 (02.06.2000)

(25) Filing Language: English

(26) Publication Language: English

(30) Priority Data:  
60/137,297 3 June 1999 (03.06.1999) US  
60/155,404 22 September 1999 (22.09.1999) US  
60/169,559 8 December 1999 (08.12.1999) US

(84) Designated States (regional): ARIPO patent (GH, GM, KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG).

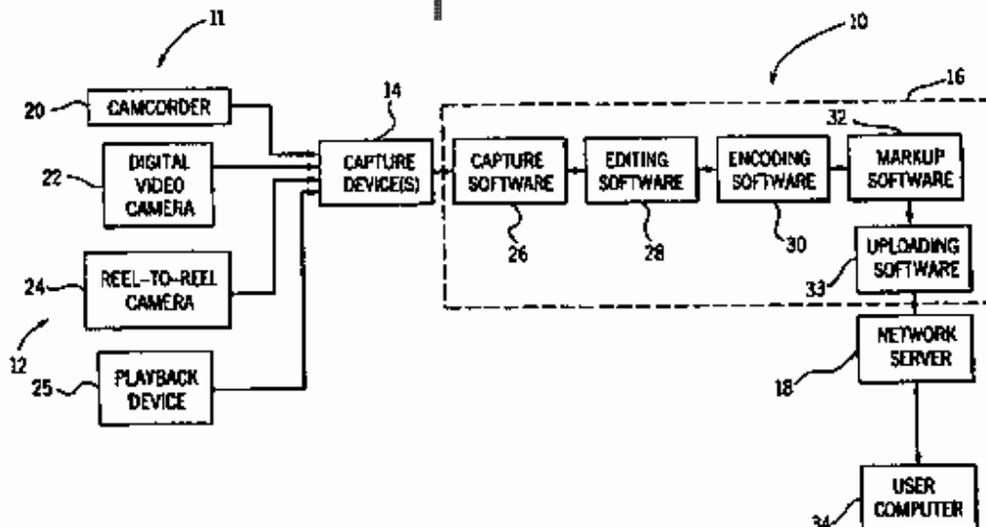
(71) Applicants (for all designated States except US):  
IVIEWIT HOLDINGS, INC. [USA/US]; One Boca Place, 2255 Glades Road, Suite 337 West, Boca Raton, FL 33431 (US). SHIRAJEE, Zakirul, A. [BD/US]; 9485 Boca Cove Circle, #708, Boca Raton, FL 33428 (US).

Published:  
— With international search report.  
— Before the expiration of the time limit for amending the claims and to be republished in the event of receipt of amendments.

(72) Inventor; and  
(75) Inventor/Applicant (for US only): BERNSTEIN, Eliot, I. [US/US]; 500 S.E. Mizner Boulevard, Boca Raton, FL 33432-6080 (US).

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

(54) Title: SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE



(57) Abstract: A method of streaming video includes providing a source video signal having a predetermined source video parameter; converting the source video signal to a streaming digital video file while maintaining substantially the same source video parameter; uploading the streaming digital video file to a network server; expanding the viewing frame size of the display screen to a full screen display mode; and playing the streaming digital video file in the full screen display mode.

WO 00/76220 A1

TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	02 June 2000
International Application No.	Not yet available
Attorney Docket No.	57103/111

I. Certification under 37 CFR 1.10 (if applicable)

EL 640468230 US
Express Mail mailing number

02 June 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Douglas A. Boehm</i>
Signature of person mailing correspondence

Douglas A. Boehm
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE	Earliest priority date (Day/Month/Year)
		03 June 1999

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.  
 B.  There is no prior U.S. application relating to this invention.  
 C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.	60/137,297	application no.	60/155,404
Application no.	60/169,559	application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.  
 E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Comments on the Amendments to the Abstract by the ISA/US under Rule 38. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application  
 B.  A Power of Attorney (General or Regular)  
 C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages		of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents  
 E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette  
 V.  Other (please identify): PCT-EASY Diskette; Fee Calculation Sheet; Check; and Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

## PCT REQUEST

57103/111

Original (for SUBMISSION) - printed on 02.06.2000 09:09:15 PM

0	For receiving Office use only	
0-1	International Application No.	
0-2	International Filing Date	
0-3	Name of receiving Office and "PCT International Application"	
0-4	Form - PCT/RO/101 PCT Request	
0-4-1	Prepared using	PCT-EASY Version 2.90 (updated 10.05.2000)
0-5	Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty	
0-6	Receiving Office (specified by the applicant)	United States Patent and Trademark Office (USPTO) (RO/US)
0-7	Applicant's or agent's file reference	57103/111
I	Title of invention	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE
II	Applicant	
II-1	This person is:	applicant only
II-2	Applicant for	all designated States except US
II-4	Name	IVIEWIT HOLDINGS, INC.
II-5	Address:	One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America
II-6	State of nationality	US
II-7	State of residence	US
II-8	Telephone No.	561 999 8899
II-9	Facsimile No.	561 999 8810
III-1	Applicant and/or inventor	
III-1-1	This person is:	applicant and inventor
III-1-2	Applicant for	US only
III-1-4	Name (LAST, First)	BERNSTEIN, Eliot, I.
III-1-5	Address:	500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 United States of America
III-1-6	State of nationality	US
III-1-7	State of residence	US

PCT REQUEST

57103/111

Original (for SUBMISSION) - printed on 02.06.2000 09:09:15 PM

III-2	<b>Applicant and/or inventor</b>	
III-2-1	This person is:	applicant only
III-2-2	Applicant for	all designated States except US
III-2-4	Name (LAST, First)	SHIRAJEE, Zakirul, A.
III-2-5	Address:	9485 Boca Cove Circle, #708
		Boca Raton, FL 33428
		United States of America
III-2-6	State of nationality	BD
III-2-7	State of residence	US
IV-1	<b>Agent or common representative; or address for correspondence</b>	agent
	The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:	
IV-1-1	Name	FOLEY & LARDNER
IV-1-2	Address:	777 East Wisconsin Avenue
		33rd Floor
		Milwaukee, WI 53202-5367
		United States of America
IV-1-3	Telephone No.	414 271-2400
IV-1-4	Facsimile No.	414 297-4900
IV-1-5	e-mail	daboehm@foleylaw.com
V	<b>Designation of States</b>	
V-1	Regional Patent	AP: GH GM KE LS MW MZ SD SL SZ TZ UG ZW
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	and any other State which is a Contracting State of the Harare Protocol and of the PCT
		EA: AM AZ BY KG KZ MD RU TJ TM and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT
		EP: AT BE CH&LI CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE and any other State which is a Contracting State of the European Patent Convention and of the PCT
		OA: BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT
V-2	National Patent	AE AG AL AM AT AU AZ BA BB BG BR BY CA
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	CH&LI CN CR CU CZ DE DK DM DZ EE ES FI
		GB GD GE GH GM HR HU ID IL IN IS JP KE
		KG KP KR KZ LC LK LR LS LT LU LV MA MD
		MG MK MN MW MX MZ NO NZ PL PT RO RU SD
		SE SG SI SK SL TJ TM TR TT TZ UA UG US
		UZ VN YU ZA ZW

## PCT REQUEST

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V-5	<b>Precautionary Designation Statement</b> In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.	
V-6	<b>Exclusion(s) from precautionary designations</b>	NONE
VI-1	<b>Priority claim of earlier national application</b>	
VI-1-1	Filing date	03 June 1999 (03.06.1999)
VI-1-2	Number	60/137,297
VI-1-3	Country	US
VI-2	<b>Priority claim of earlier national application</b>	
VI-2-1	Filing date	22 September 1999 (22.09.1999)
VI-2-2	Number	60/155,404
VI-2-3	Country	US
VI-3	<b>Priority claim of earlier national application</b>	
VI-3-1	Filing date	08 December 1999 (08.12.1999)
VI-3-2	Number	60/169,559
VI-3-3	Country	US
VI-4	<b>Priority document request</b> The receiving Office is requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s):	VI-1, VI-2, VI-3
VII-1	<b>International Searching Authority Chosen</b>	European Patent Office (EPO) (ISA/EP)
VIII	<b>Check list</b>	number of sheets      electronic file(s) attached
VIII-1	Request	4      -
VIII-2	Description	23      -
VIII-3	Claims	5      -
VIII-4	Abstract	1      abstract57103_111.txt
VIII-5	Drawings	3      -
VIII-7	TOTAL	36
VIII-8	<b>Accompanying items</b>	paper document(s) attached      electronic file(s) attached
VIII-8	Fee calculation sheet	✓      -
VIII-16	PCT-EASY diskette	-      diskette
VIII-17	Other (specified):	Postcard      -
VIII-17	Other (specified):	Transmittal Sheet      -
VIII-18	<b>Figure of the drawings which should accompany the abstract</b>	1
VIII-19	<b>Language of filing of the international application</b>	English

## PCT REQUEST

57103/111

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IX-1	Signature of applicant or agent	<i>Douglas A. Boehm</i>
IX-1-1	Name	FOLEY & LARDNER
IX-1-2	Name of signatory	Douglas A. BOEHM
IX-1-3	Capacity	Agent

## FOR RECEIVING OFFICE USE ONLY

10-1	Date of actual receipt of the purported international application	
10-2	Drawings:	
10-2-1	Received	
10-2-2	Not received	
10-3	Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application	
10-4	Date of timely receipt of the required corrections under PCT Article 11(2)	
10-5	International Searching Authority	ISA/EP
10-6	Transmittal of search copy delayed until search fee is paid	

## FOR INTERNATIONAL BUREAU USE ONLY

11-1	Date of receipt of the record copy by the International Bureau	
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**PCT (ANNEX - FEE CALCULATION SHEET)**

57103/111

Original (for **SUBMISSION**) - printed on 02.06.2000 09:09:15 PM

(This sheet is not part of and does not count as a sheet of the international application)

0	<b>For receiving Office use only</b>		
0-1	International Application No.		
0-2	Date stamp of the receiving Office		
0-4	<b>Form - PCT/RO/101 (Annex) PCT Fee Calculation Sheet</b>		
0-4-1	Prepared using	<b>PCT-EASY Version 2.90 (updated 10.05.2000)</b>	
0-9	Applicant's or agent's file reference	<b>57103/111</b>	
2	Applicant	<b>IVIEWIT HOLDINGS, INC., et al.</b>	
12	<b>Calculation of prescribed fees</b>	fee amount/multiplier	total amounts (USD)
12-1	Transmittal fee T	⇒	240
12-2	Search fee S	⇒	925
12-3	International fee Basic fee (first 30 sheets) b1	427	
12-4	Remaining sheets	6	
12-5	Additional amount (X)	10	
12-6	Total additional amount b2	60	
12-7	b1 + b2 = B	487	
12-8	Designation fees Number of designations contained in international application	86	
12-9	Number of designation fees payable (maximum 8)	8	
12-10	Amount of designation fee (X)	92	
12-11	Total designation fees D	736	
12-12	PCT-EASY fee reduction R	-132	
12-13	Total International fee (B+D-R) I	⇒	1,091
12-14	Fee for priority document Number of priority documents requested	3	
12-15	Fee per document (X)	15	
12-16	Total priority document fee P	⇒	45
12-17	<b>TOTAL FEES PAYABLE (T+S+I+P)</b>	⇒	<b>2,301</b>
12-19	Mode of payment	<b>other: Check will follow within 30 days of filing</b>	

**VALIDATION LOG AND REMARKS**

13-2	Validation messages Contents	<b>Yellow!</b> The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.
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Original (for **SUBMISSION**) - printed on 02.06.2000 09:09:15 PM**PCT-EASY INFORMATION SHEET**

(For applicant use only, DO NOT submit this sheet with the international application)

**VALIDATION LOG**

	Contents
Yellow!	The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.

Before submitting the International Application, please carefully verify that:

- the information contained on printed Request form is correct;
- Box IX of the Request form has been signed;
- all elements of the international application as indicated in Box VIII of the Request form have been attached; and,
- the diskette containing the PCT-EASY zip file of the International Application has been enclosed and has been clearly labeled "PCT-EASY", with the applicant's or agent's file reference, and the first applicant's name.

**ATTENTION**

DO NOT modify any indications on the Request form printout. The attached PCT-EASY application has been locked. If an error or an omission is discovered at this time, you must copy the submitted application as a template and make the change or correction in a new application (using the submitted application as a template). You may create such a template by copying the submitted application from the "Stored Forms" folder to the "New PCT Forms" folder. Open the new (.OWO) file created in the "New PCT Forms" folder, correct the errors and proceed with the submission process again.



eliot	3/22/2004 4:25:13 AM
Note:	
The Company filing copy is missing inventor page????	

57103/111

#### TITLE OF THE INVENTION

SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

#### CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, and U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999.

#### FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
10 across a network.

#### BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A video player decompresses and plays  
15 the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
video requires a communications connection (e.g., a network,  
Internet, etc.) and a computer powerful enough to execute the  
20 decompression algorithm in real time.

In the field of streaming video, the primary design  
challenge is that the viewer desires perfect video quality over a

# FOLEY & LARDNER

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WRITER'S DIRECT LINE  
(414) 297-5571

May 30, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video  
File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Dear Brian:

Enclosed please find the first draft of the above-referenced patent application (last page marked 001.789397.1), which has been prepared in accordance with the previously filed U.S. provisional patent applications. As you know, a careful and critical review of this draft application by you and the inventors is imperative to ensure that the you are all satisfied with the content of the application and the proposed claim scope.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application Number 60/125,824, filed June 3, 1999 (MLG Docket No. 5865-3) and those portions of U.S. Provisional Patent Applications 60/155,404, filed September 22, 1999 (MLG Docket No. 5865-7) and 60/169,559, filed December 8, 1999 (MLG Docket No. 5865-8) that pertain to the video streaming technology (as opposed to the zoom and pan technology). I also added the specific details of your preferred embodiments of the invention at the time of invention (EXAMPLE A) and more recently (EXAMPLE B).

ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
May 30, 2000  
Page 2

As you can see from the question marks appearing on various pages throughout the draft, I had a few questions during the preparation of the application. In addition to addressing these questions, you and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the three above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

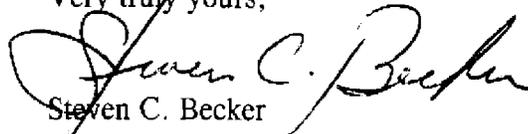
During the review, please keep in mind that independent claims 1, 11, and 19 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

Please have the inventors mark the appropriate changes on this copy of the application, make a copy of the changes, and return the hand-corrected copy to me via facsimile. A revised application incorporating the changes will then be submitted to you for your approval. We will handle execution of the formal papers at a later date.

Pursuant to your instructions, to preserve foreign filing options, I plan to designate all of the countries for filing under the PCT (see attached list of PCT Contracting States). Note, however, that not all foreign countries are members of the PCT (e.g., Taiwan), so to maintain the benefit of priority to the U.S. applications, we would have to file foreign national applications immediately in those non-PCT countries. This would require up-front translation costs and sufficient time for our foreign associates to prepare and file the applications before June 3, 2000. It is my understanding that you DO NOT want us to file in any countries other than those that are members of the PCT. Please let me know IMMEDIATELY if this understanding is not correct.

If you or the inventor(s) have any questions, please do not hesitate to contact me. I look forward to receiving at least your preliminary comments on the application by tomorrow.

Very truly yours,

  
Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

PCT International Patent Application entitled  
**System and Method for Providing an Enhanced Digital Video File**  
Inventor(s): Bernstein, et al.

## **INVENTOR INFORMATION SHEET**

### Sections of a Utility Patent Application

- Background of the Invention

The Background of the Invention describes the technology that existed before your invention, i.e., the "prior art". This section typically discusses how the need for your invention arose, describes how others attempted to satisfy that need prior to the time of your invention, and points out the deficiencies of the prior art in meeting that need. If you are aware of any other prior art that should be mentioned in this background section, please supplement this section and forward any literature that you might have to me.

- Summary of the Invention

The Summary of the Invention section is merely a brief paraphrasing of the basic claims, along with a statement of the objectives and advantages of the present invention.

- Brief Description of the Drawings

The Brief Description of the Drawings is merely a listing of the figures, and should be self-explanatory.

- Detailed Description of the Preferred Embodiments

The Detailed Description of the Preferred Embodiments section should provide a full, clear, and concise description of your invention so that any person skilled in the art could make or use the invention. Furthermore, the application must describe the "best mode" contemplated by the inventor(s) for carrying out the invention. In order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret.

- Claims

The claims are the most important part of the patent application. They precisely define the invention and determine the scope of legal protection granted by the patent. The claims must particularly point out and distinctly claim the invention. The claimed subject matter must be distinguishable over that which the prior art suggests to those skilled in this field. Accordingly, the claims should be scrutinized with a view toward protecting your precise

invention and those concepts which could be considered an outgrowth of it, yet not encompassing knowledge from the prior art or obvious extensions thereof. In other words, the scope of the claims must be broad enough to provide that patent protection to which you are entitled, yet narrow enough to be distinguishable over the prior art. The terminology of the claims must be adequately supported by the description contained in the specification. Please keep in mind that all dependent claims, which are identifiable by the phrase "according to claim x" or "of claim x", are interpreted as containing all of the limitations of the other claims which are referred to by that dependent claim. Thus, the independent claims are the broadest statement of your invention, and the dependent claims provide additional limitations to narrow the scope of your invention. Although the inventive concepts of each set of independent claims are interrelated, please keep in mind that they must be critically distinguished from each other. Each set of claims must stand on its own merit.

- Abstract of the Disclosure

The Abstract of the Disclosure section is a very brief description of what the application generally discloses.

- Drawings

The Drawings section should be self-explanatory.

#### Duty of Disclosure

All individuals associated with the filing or prosecution of a patent application are under a duty of candor and good faith to the U.S. Patent and Trademark Office. This duty specifically includes a duty to disclose any information known to be material to the patentability of any claim of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Pursuant to this duty of disclosure, we will file an Information Disclosure Statement with the U.S. application listing the patent documents found in any prior art searches, as well as any technical articles mentioned in the disclosure materials. Accordingly, if any additional information relevant to your invention should come to your attention at any time before issuance of the patent, please immediately let us know so we can either include it in the Information Disclosure Statement or submit a Supplemental Information Disclosure Statement.

#### Inventorship

The proper inventors would be those people who contributed to the subject matter of the invention as defined in the claims of the application. There may be joint

**PCT INTERNATIONAL PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**

**Inventors:** Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
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Boca Raton, FL 33428  
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Apt #625  
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Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
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Scib  
Work copy

# FOLEY & LARDNER

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WEST PALM BEACH

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sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

June 1, 2000

## CONFIDENTIAL AND PRIVILEGED



Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

Dear Brian:

Enclosed please find a third draft of the first above-referenced patent application, which has been prepared in accordance with additional comments received from Eliot, Zak, and you today.

I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of the application by you and the inventors is imperative to ensure that you are

eliot  
Note  
57103-111 is missing inventor cover page. No one is copied on these letters.

ns by  
the

FOLEY & LARDNER

Mr. Brian G. Utley

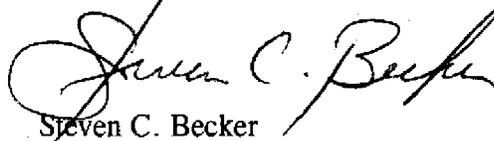
June 1, 2000

Page 2

application and, in particular, with the proposed claim scope. Please follow the instructions in my letter to you dated May 29, 2000 as you review these draft patent applications.

Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

eliot	3/21/2004 4:05:37 PM
Note	
Missing pages with inventors this is as sent	

limited-bandwidth network. Perfect video quality requires an enormous amount of digital data. Today's networks are not capable of transferring real streaming video to ~~g~~ <sup>Real streaming video includes video having</sup> having a real, full-motion frame rate comparable to NTSC (National Television Standards Committee) at 29.97 frames per second (fps), PAL (Phase Alternative Line) at 25 fps, and SECAM (Séquentiel Couleur Avec Mémoire) at 50 fps <sup>at least 24 fps, or at a frame rate sufficient to substantially</sup> ~~in a reasonable amount of time~~ <sup>reduce or eliminate jerky motion</sup>

It is known to capture video using a capture device, compress the resulting captured video, store the compressed video, and send the compressed video across the Internet. However, prior attempts have failed to produce high quality streaming video that can be transmitted over the Internet. For example, prior attempts at streaming video have been unable to produce full-screen, real video frame rate video at any acceptable quality.

Several teachings have emerged that attempt to improve the quality and decrease the file size of streaming video. One teaching in the art is to reduce the number of frames per second that are being encoded, from the 29 to 30 fps of standard television to 6 or 7 fps or less for streaming video. While this reduces the amount of data that is being sent, the video appears jittery and corresponding voice appears asynchronous with the jittery video. Another teaching in the art is to capture the video at a small frame size of 160 x 120 or less. The small frame size of 160 x 120 is the widely used standard in Internet streaming video. Further teachings are directed to reducing the amount of data that is provided prior to compressing to reduce the file size resulting from compression. Other teachings in the art have pointed toward compressing a digital video file as much as possible prior to transmission. Full-screen, full-

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TELEPHONE (414) 271-2400  
FACSIMILE (414) 207-4000

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# FACSIMILE TRANSMISSION

Original Forwarded by U.S. Mail

Total # of Pages **48** (including this page)

TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 1, 2000  
 Client/Matter No: 57103/111  
 User ID No: 1963

**MESSAGE:**

## CONFIDENTIAL AND PRIVILEGED

If there are any problems with this transmission or if you have not received all of the pages, please call (414) 297-5444.

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CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

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WRITER'S DIRECT LINE  
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June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
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Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
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Our Ref.: 57103/113

Dear Brian:

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I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of these draft patent applications by you and the inventors is imperative to ensure that you are all satisfied with the content of the

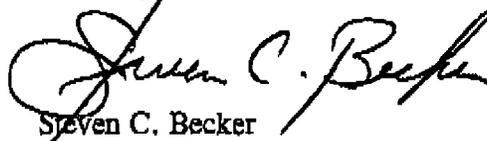
FOLEY & LARDNER

Mr. Brian G. Utley  
June 1, 2000  
Page 2

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Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

57103/111

**PCT INTERNATIONAL PATENT APPLICATION**

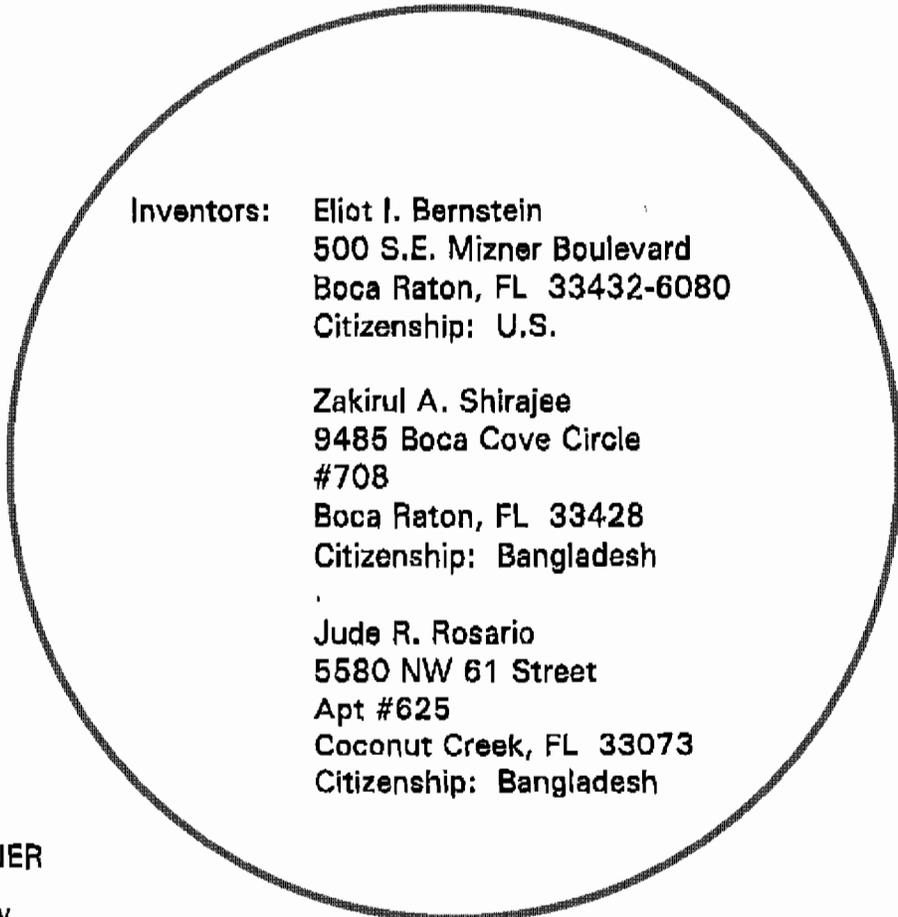
for

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**

**eliot Note**

On the Company copy of this letter it is has the 111 cover page with all the correct inventors. The copy transferred to our counsel by Foley does not and the same letter is missing this page.



**Inventors:** Eliot I. Bernstein  
 500 S.E. Mizner Boulevard  
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From the RECEIVING OFFICE:

PCT

To:  
 DOUGLAS A. BOEHM  
 HOLEY & LARDNER  
 777 EAST WISCONSIN AVENUE  
 THIRD FLOOR  
 MILWAUKEE, WI 53202-5367

JUL 4 9 2000  
 HOLEY & LARDNER

NOTIFICATION OF THE INTERNATIONAL APPLICATION NUMBER AND OF THE INTERNATIONAL FILING DATE

(PCT Rule 20.5(c))

Date of mailing (day/month/year): 03 JUL 2000

Applicant's or agent's file reference 57/103/111		IMPORTANT NOTIFICATION	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 JUN 00	Priority date (day/month/year) 03 JUN 99	
Applicant: EVIDENT HOLDINGS, INC.			
Title of the invention: SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE			

1. The applicant is hereby notified that the international application has been accorded the international application number and the international filing date indicated above.

2. The applicant is further notified that the record copy of the international application:

- was transmitted to the International Bureau on 03 JUL 2000
- has not yet been transmitted to the International Bureau for the reason indicated below and a copy of this notification has been sent to the International Bureau\*:
  - because the necessary national security clearance has not yet been obtained.
  - because (reason to be specified):

RESPONSE DUE: 03 JUL 2000  
 Int. No. 57/103/111

\* The International Bureau monitors the transmission of the record copy by the receiving Office and will notify the applicant (with Form PCT/IB/501) if its receipt. Should the record copy not have been received by the expiration of 14 months from the priority date, the International Bureau will notify the applicant (Rule 22.1(c)).

3. FOREIGN TRANSMITTAL LICENSE INFORMATION Completed by: *DAH*

- Additional license for foreign transmittal not required. This subject matter is covered by a license already granted on the equivalent U.S. national application. Refer to that license for information concerning its scope.
- License for foreign transmittal not required. 37 CFR 5.11(e)(1) or 37 CFR 5.11(e)(2). However, a license may be required for additional subject matter. See 37 CFR 5.15(b).
- Foreign transmittal license granted, 35 U.S.C. 434; 37 CFR 5.11 on 6-27-00 (date)
  - 37 CFR 5.15(a)
  - 37 CFR 5.15(b)

Name and mailing address of the receiving Office: Assistant Commissioner for Patents Box PCT Washington, D.C. 20231 Facsimile No.	Authorized officer: Virginia J. Kelly PCT Operations (APO Team 10) Telephone No. (703) 305-3748 / (703) 305-3230 (FAX)
---	---

PATENT COOPERATION TREATY

From the RECEIVING OFFICE:

PCT

To:  
DOUGLAS A. BOEHM  
ROLEY & LARDNER  
177 EAST WISCONSIN AVENUE  
33RD FLOOR  
MILWAUKEE, WI 53202-5307

INVITATION TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION

(PCT Articles 34(6) and 39(1) and Rule 26)

Applicant's or agent's file reference: <b>57108411</b>	Date of mailing (day/month/year) <b>03 JUL 00</b>
International application No. <b>PCT/US00/15408</b>	Priority of filing over national phase <b>02 JUN 00</b>
Applicant <b>VIEWIT HOLDINGS, INC.</b>	

1. The applicant is hereby invited, within the time limit indicated above, to correct the defects in the international application in all the defects specified on the attached:

- Annex A
- Annex B1 description of the international application as filed
- Annex C1 drawings of the international application as filed

2. The applicant is hereby invited, within the time limit indicated above, to correct the defects in the translation of the international application furnished under Rule 41.2, in the defects specified on the attached:

- Annex A
- Annex B1 description of the translation of the international application
- Annex C1 drawings of the translation of the international application

Additional observations (if necessary):

**HOW TO CORRECT THE DEFECTS:**

Correction must be submitted by filing a replacement sheet containing the correction and a letter explaining the replacement sheet, which shall indicate in detail the difference between the replaced sheet and the replacement sheet. A correction may be spaced to either side of the sheet, provided that it can be transferred from the letter to the correct copy without adversely affecting the clarity and correct spacing of the sheet, and which the correction is as indicated in Rule 26.4(d).

**ATTENTION:**

Failure to correct the defects will result in the international application being considered withdrawn by the Receiving Office (see Rule 26.5 for further details).

A copy of this invitation and any attachments has been sent to the International Bureau:

- and the International Searching Authority.

Name and mailing address of the receiving Office: Assistant Commissioner for Patent PCT Washington, D.C. 20531 Phone No. 505-994-1111	Authorized officer: Virginia L. Fry <i>V.L. Fry</i> Telephone No. 703-901-3740
---	--

The receiving Office has found the following defects in the international application as filed:

1. As to the signature\* of the international application (Rules 4.15 and 9C.1), the request:

- a.  is not signed;
- b.  is not signed by the applicant;
- c.  is not countersigned by the competent authority in the State, but in that State, with the request proposing the publication of the signature of an applicant for the designation of the United States of America;
- d.  is signed by what appears to be an agent, without representation, but:
  - the international application is not accompanied by a power of attorney appointing him;
  - the power of attorney accompanying the international application was not signed by all the applicants;
- e.  other specific:

This signature is also required for the applicant/inventor:

2. As to the applicant manuscript, including annexes (if they are also applicants to a State of the United States of America or designated States):

3. As to the international preliminary application, the request (Rules 4 and 9C.1):

- a.  does not properly indicate the applicant's name;
- b.  does not indicate the applicant's address;
- c.  does not properly indicate the applicant's address (priority);
- d.  does not indicate the applicant's nationality;
- e.  does not indicate the applicant's residence;
- f.  other specific:

4. As to the language of certain elements of the international application, other than the description and claims (Rules 12.1(c) and 26.3(a)(ii) and (iii)):

- a.  the request is in a language which is not a language accepted by this receiving Office and a language of publication, which is not:
- b.  the text number of the drawing(s) in the language in which the international application is to be published, which is:
- c.  the abstract is not in the language in which the international application is to be published, which is:

5. The title of the invention:

- a.  is not indicated (Article 8.1 of the request (Rule 8.1(a)));
- b.  is not indicated at the top of the first sheet of the description (Rule 8.1(a));
- c.  as appearing in Box No. 1 of the request is not identical with the title appearing in the description (Rule 8.1(a)).

6. As to the abstract (Rule 8C):

- the international application does not contain an abstract

The receiving Office has found that, with regard to the presentation of the drawings of the international application as filed, the applicant's drawings are not compliant with the extent of compliance therewith necessary for:

1.  essentially the form International Publication (Rules) 1 and 26, Article 26/2, or to be prepared:

**Sheet containing drawings:**

- a.  the sheets do not consist of sheets reproduced;  
 b.  the sheets do not have firm corners, cracks, folds;  
 c.  one side of the sheets is not left unused;  
 d.  the paper of the sheets must be thick enough to be reproduced clearly;  
 e.  the drawings do not overprint on a new sheet;  
 f.  the sheets are not corrected as prescribed (Rule) 1.2(b);  
 g.  the sheets are not 297 mm x 210 mm;  
 h.  the margins of the sheets are not as prescribed (Fig. 2-3)  
 (top: 2.5 cm, left side: 2.2 cm, right side: 1.5 cm, bottom: 1 cm);  
 i.  the file reference number indicated on the sheets does not appear in the left-hand corner of the sheets, within 1.5 cm of the top of the sheets;  
 j.  the file reference number exceeds the maximum of 12 characters;  
 k.  the sheets are not free from frames around tables or used cartons;  
 l.  the drawings are not numbered in consecutive Arabic numerals in g. 10, 20, 30, etc. (All);  
 m.  the sheet numbers are not centered at the top or bottom of the sheets;  
 n.  the sheet numbers are in the margin (see g. above for the size of the margin);  
 o.  the sheets contain abbreviations or acronyms not defined in the text;  
 p.  the sheets contain philatelic marks.

**Drawings (Rule) 1.3.1:**

- a.  do not show a clear reproduction;  
 b.  contain unnecessary text marks;  
 c.  contain lines or objects which prevent translation without interference with lines thereof;  
 d.  are not executed in suitable black color, the lines are not uniformly thick and well-defined (Fig. 1-3);  
 e.  contain cross-sections not properly hatched;  
 f.  would not be properly distinguished in the printed reproduction;  
 g.  contain scales not represented graphically;  
 h.  contain numbers, letters and reference signs lacking simplicity and clarity (Fig. 1-3);  
 i.  contain lines or text within the area of drafting instruments;  
 j.  contain disproportionate elements of a figure not necessary for clarity;  
 k.  contain numbers and letters of height less than 0.3 mm;  
 l.  contain letters not conforming to the Latin, and where customary, Greek, alphabets;  
 m.  contain figures on two or more sheets which form a single complete figure but which are not able to be assembled without consulting both sheets;  
 n.  contain figures which are not properly arranged and clearly separated;  
 o.  contain different figures not numbered in consecutive Arabic numerals;  
 p.  contain different figures not numbered independent of the numbering of the sheets;  
 q.  are not restricted to reference signs mentioned in the description;  
 r.  do not contain reference signs that are mentioned in the description;  
 s.  contain the same figures denoted by different reference signs;  
 t.  are not arranged in an upright position, clearly separated from one another;  
 u.  are not prepared sideways with the top of the figures at the left side of the sheets.

2.  satisfactory reproduction (Rules) 1 and 26.2(b)(ii)

**Further observations (if necessary):**

Shading or solid black objective figure number

New drawings are required

TO:  
 DR. GLAS A. BOEHM  
 FOLEY & LARONER  
 777 EAST WISCONSIN AVENUE  
 33RD FLOOR  
 MILWAUKEE, WI 53202-5057

UNITED STATES DESIGNATED ELECTRONIC FEE  
 (DUE FEES)

NOTIFICATION OF STATUS OF  
 REQUIREMENTS UNDER 35 U.S.C. 371

DATE OF MAILING  
 (By the Office)

03 JUL 00

FILE REFERENCE

87105/113

IDENTIFICATION OF INTERNATIONAL APPLICATION

International application No.	International filing date (By the Office)	Priority Date Claimed
PCT/US98/15408	02 JUN 00	03 JUN 00

Applicant for DUE FEES

BERNHEIM ELIOT

NOTIFICATION

The applicant is hereby advised that the U.S. Patent and Trademark Office in its capacity as  Designated Office  Elected Office has received following items as of the date of mailing indicated above:

- 1.  U.S. Notice (see 35 U.S.C. 371 (d) (1))
- 2.  Oath of declaration (35 U.S.C. 371 (e) (8))
- 3.  Copy of International application as (35 U.S.C. 371 (a) (2))
- 4.  Translation of Application (35 U.S.C. 371 (e) (2))
- 5.  Amendments under PCT Article 19 (35 U.S.C. 371 (e) (3))
- 6.  Translation of PCT Article 19 Amendments (35 U.S.C. 371 (e) (3))
- 7.  Search Report or Declaration under PCT Article 17(2) (35 U.S.C. 371 (a))
- 8.  International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(b) (35 U.S.C. 371 (a))
- 9.  Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b) (35 U.S.C. 371 (a) (3))
- 10.  Other items received:
  - Assignment Document
  - Prior Art Statement
  - Preliminary Amendment
- A.  Requirements for U.S. National processing have been met. Processing will commence
  - at the expiration of the applicable time limit under either:
    - PCT Article 22 (35 U.S.C. 371 (b)) or
    - PCT Article 39 (35 U.S.C. 371 (c))
  - on the date indicated below under the provisions of 35 U.S.C. 371 (d)

U.S. NATIONAL SERIAL	DATE UNDER 35 U.S.C. 376(b)	DATE OF COMMENCEMENT OF NATIONAL PROCESSING
----------------------	-----------------------------	---

All correspondence received after the date of commencement of U.S. National processing indicated above should refer to the U.S. National Serial Number and the appropriate U.S. National processing organization of Office.

- B.  As the above identified application has been accepted for U.S. National processing under the provision of 35 U.S.C. 371 (d) before expiration of the applicable time limit under  PCT Article 22  PCT Article 39, applicant is reminded that:
  - Amendments under PCT Article 19 and/or
  - the International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), and (b) and any translation thereof, if applicable, must be submitted to the Patent and Trademark Office as soon as they are available.

International application No.	International Filing Date	Priority Date Claimed
PCT/US06/15496	02 APR 06	03 JUN 95

- In order that U.S. National processing may begin, certain items must be received by the DQ/EO/US by the expiration of applicable time limit under:
- PCT Article 21 or
  - PCT Article 23
- Specifically:
1. U.S. National Fee
  2. Oath or Declaration
  3. Copy of Application
  4. Translation of application
  5. Amendments under PCT Article 19, if any
  6. Translation of PCT Article 19 Amendments, if applicable
  7. Search Report or PCT Article 17(2) declaration
  8. International Preliminary Examination Report and its Answer, if any, under PCT Article 36(1)(a), if applicable
  9. Translation of Answer to the International Preliminary Examination Report under PCT Article 36(1)(b), if applicable

THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.  
(35 U.S.C. 371(b))

D. Further information for the applicant:

This is only a reminder.

UNITED STATES DESIGNATED ELECTED OFFICE

Address Office:  
Assistant Commissioner for Patent  
Exam PCT  
Washington, D.C. 20533 Att: EO/US

Authorized Office:  
Virginia Int'l  
*[Signature]*

PCT (ANNEX - FEE CALCULATION SHEET)

57100111

Original for SUBMISSION - printed on 02/05/2000 09:03:15 PM

(This sheet is part of and does not count as a sheet of the international application)

1	For receiving Office use only: International Application No.	PCT/US 00/15408		
6-3	Date stamp of the receiving Office	02 JUN 2000 (02.06.00)		
6-4	Form - PCT/RO/101 (Annex) PCT Fee Calculation Sheet	PCT-EASY Version 2.90 (updated 10.05.2000)		
6-4-1	Prepared with			
6-6	Applicant's or agent's file reference	57103/111		
7	Applicant	VIEWIT HOLDINGS, INC., et al.		
12	Calculation of prescribed fees	Fee amount/multiplicator	total payable (USD)	
12-1	International fee	1	240	240
12-2	Search fee	5	925	925
12-3	International fee - basic fee (first 20 sheets)	01	427	
12-4	Remaining sheets	6		
12-5	Additional amount	(X) 10		
12-6	Total additional amount	02	60	
12-7	Sum = 12-3	0	487	
12-8	Designation fees: Number of designations indicated in international application	06		
12-9	Number of designation fees payable (maximum 6)	6		
12-10	Amount of designation fee	(X) 92		
12-11	Total designation fees	0	736	
12-12	PCT-EASY fee reduction	0	-132	
12-13	Total international fee (12-1+12-3+12-7+12-11+12-12)	1	1,091	1091
12-14	Fee for priority document: Number of priority documents requested	3		
12-15	Fee per document	(X) 15		
12-16	Total priority document fee	0	45	45
12-17	TOTAL FEES PAYABLE (12-13+12-16)	0	2,501	2501
12-18	Mode of payment	other: Check will follow within 30 days of filing		

VALIDATION LOGS AND REMARKS

13-1	Validation messages: Contents	Yellow! The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.
------	----------------------------------	--

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5718

August 11, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

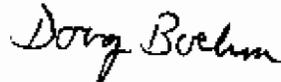
Re: PCT International Patent  
Application No.: PCT/US00/15408  
Filing Date: 6/02/2000  
Title: System and Method for Generating an  
Enhanced Digital Video File  
Applicant: Iveiwit.com  
Our Ref.: 57103/111

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 2, 2000, in connection with the above-identified application.

We will keep you informed of future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

**TRANSMITTAL LETTER TO THE UNITED STATES RECEIVING OFFICE**

Date	02 August 2000
International Application No.	PCT/US00/15408
Attorney Docket No.	57103/111

**I. Certification under 37 CFR 1.10 (if applicable)**

EL 640466582US
Express Mail mailing number

02 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

**II.  New International Application**

TITLE	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE
-------	--

Earliest priority date (Day/Month/Year)
---

**SCREENING DISCLOSURE INFORMATION:** In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  **CONSIDERED TO ALTER** the general nature of the invention in a manner which would  made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and

eliot  
Note  
Why Power of Attorney on this versus Oath and Declarations??

**III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:**

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Three (3) Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages	1-3	of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91     A Petition     A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant     Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15408  
International  
Filing Date : 02 June 2000 (02.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

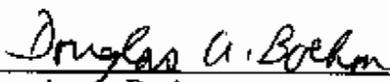
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 03 July 2000, Applicant respectfully submits three (3) duly-executed PCT General Appointments of Agent, and three (3) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 02 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEB	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES O. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

eliot 3/22/2004 4:48:46 AM  
Note  
What is Utley doing here???

FOR: IVIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
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WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
Florida, in U.S.A.

BY: 

Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States of America

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

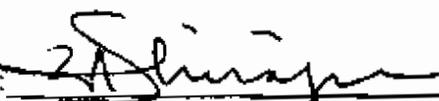
---

RUSSELL J. BARRON	Reg. No.	29,512
DAVID J. BATES	Reg. No.	39,902
STEVEN C. BECKER	Reg. No.	42,308
DOUGLAS A. BOEHM	Reg. No.	32,014
EDWARD W. BROWN	Reg. No.	22,022
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WILLIAM J. DICK	Reg. No.	22,205
BARRY L. GROSSMAN	Reg. No.	30,844
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KATHERINE D. LEE	Reg. No.	44,865
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DAVID G. LUETTGEN	Reg. No.	39,282
RICHARD J. MC KENNA	Reg. No.	35,610
JAMES G. MORROW	Reg. No.	32,505
TODD A. RATHE	Reg. No.	38,276
MICHAEL D. RECHTIN	Reg. No.	30,128
CHRISTOPHER M. TUROSKI	Reg. No.	44,456
JAMES A. WILKE	Reg. No.	34,279
JOSEPH N. ZIEBERT	Reg. No.	35,421
WALTER E. ZIMMERMAN	Reg. No.	40,883

---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31 day of July 2000 at Boca Raton, in U.S.A.

BY:   
Zakirul A. SHIRAJEE  
9485 Boca Cove Circle, #708  
Boca Raton, FL 33428  
United States of America

eliot  
Note  
What form is this??

PCT/US00/15408

PATENT COOPERATION TREATY

**RECEIVED**

From the INTERNATIONAL BUREAU

PCT FEB 11 2002

NOTIFICATION OF A CHANGE  
OF THE RECORDING  
OF A CHANGE  
LOS ANGELES

(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

To:  
COESTER, Thomas M.  
Blakely, Sokoloff Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707, P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:  
 the applicant     the inventor     the agent     the common representative

Name and Address SHIRAJEE, Zakirul, A. 9485 Boca Cove Circle, #706 Boca Raton, FL 33428 United States of America	State of Nationality BD	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:  
 the person     the name     the address     the nationality     the residence

Name and Address SHIRAJEE, Zakirul, A. 9466 Boca Cove Circle, #310 Boca Raton, FL 33428 United States of America	State of Nationality BD	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

3. Further observations, if necessary:  
**Please note that the above applicant for all designated states except US has now been recorded as applicant/inventor for the US only.**

4. A copy of this notification has been sent to:  
 the receiving Office  
 the International Searching Authority  
 the International Preliminary Examining Authority  
 the designated Offices concerned  
 the elected Offices concerned  
 other: SHIRAJEE, Zakirul, A.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No.: (41-22) 740.14.35	Authorized officer Sangeeta JAIYA Telephone No.: (41-22) 338.83.38
---	--

elijot  
 Note  
 What form is this????

PCT/US00/15408

PATENT COOPERATION TREATY

**RECEIVED**  
 FEB 11 2002

From the INTERNATIONAL BUREAU

PCT

**NOTIFICATION OF THE BUREAU OF SOKOLOFF, TAYLOR & ZAFMAN  
 OF A CHANGE** LOS ANGELES

(PCT Rule 92bis.1 and  
 Administrative Instructions, Section 422)

COESTER, Thomas, M.  
 Blakely, Sokoloff, Taylor & Zafman  
 7th Floor  
 12400 Wilshire Blvd.  
 Los Angeles, CA 90025  
 ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707. P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address BERNSTEIN, Elliot, I. 500 S.E. Mizner Boulevard Boca Raton, FL 33432-6000 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address BERNSTEIN, Elliot, I. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	elijot 3/22/2004 4:35:23 AM Note Why no copy sent to Bernstein	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Sangeeta JAIYA
Facsimile No.: (41-22) 740.14.35	Telephone No.: (41-22) 338.83.38

eliot  
Note  
What form is this why on all of them blanked out??

PATENT COOPERATION TREATY

**RECEIVED**  
FEB 11 2002

From the INTERNATIONAL BUREAU

**NOTIFICATION OF THE RECORDING OF A CHANGE**  
(PCT Rule 92bis.1 and Administrative Instructions, Section 422)

COESTER, Thomas, M.  
Blakely, Sokoloff, Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707. P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address IVIEWIT HOLDINGS, INC. One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

NO DOCKETING REQUIRED  
Docketing Mgr.

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address IVIEWIT HOLDINGS, INC. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No.: (41-22) 740.14.35	Authorized officer Sangeeta JAIYA Telephone No.: (41-22) 338.83.38
---	--

12-3-01 + Changes

## Patent and PCT File - Retirement/Inactivation Form 6-3-02

Secretary or Attorney - Fill out form to indicate the desired change in status, then give form and file to Docketing.

Secretary Name: Keely

- Patents
- Application Abandoned
- Patent Lapsed for Non-Payment of Annuities
- Patent Expired
- Other: Give reason \_\_\_\_\_

- PCT Applications
- Lapsed
- Entered National Phase
- Other: Give reason \_\_\_\_\_

Client Name: Interview.com

Client & Matter No.: 005707-P010 PCT

Serial Number PCT/US00/15408 OR

Patent Number \_\_\_\_\_

- Instructions received from Client dated: \_\_\_\_\_
- Continuation Application under Rule 1.62 filed (for Abandoned Applications)

Please check one of the following:

- Return File to Attorney       Return File to File Room       Inactivate File

Attorney Signature Thomas J. Sieman

**Docketing** to check off below as completed. If file is to be inactivated, forward all copies of form and file to File Management Assistant. If not, insert all copies of form in file and return to attorney or file room.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> All docket dates cleared      | <input type="checkbox"/> Status updated on Patent or PCT database |
| <input type="checkbox"/> CPA notified (U. S. Issued patents only) | <input type="checkbox"/> File stamped with appropriate status     |
|   | <input type="checkbox"/> All watch for dates cleared              |

Date: 12/4/1

Docketing Signature(s): [Signature]

For Inactivation of Files:

**File Management Assistant** to check off below as completed.

- Enter file in FM P-2 Metro database.
- Enter file in WSI Records Management database, with box identification.
- Print out 3 copies of content list (inventory sheet).

Attach 1 copy of inventory sheet to box containing files.

Retain 1 copy of inventory sheet and pink copy of this form for your records.

Deliver 1 copy of inventory sheet along with remaining copies of this form to the Database Management Assistant.

Date: \_\_\_\_\_

File Management Assistant Signature: \_\_\_\_\_

**Database Management Assistant** to check off below as completed.

- Note change of status for all affected files on FM Client Matter database
- Note change of status for all affected files on WSI Matter Maintenance database.
- Retain yellow copy of form and box inventory sheet for your records, then give white copy of form to Docketing Supervisor.

Date: \_\_\_\_\_

Database Management Assistant Signature: \_\_\_\_\_

JUL 10 '01 08:42AM

## EXECUTIVE EMPLOYMENT AGREEMENT

EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") made as of the 3rd day of August, 1999, by and between iviewit.com LLC, a Delaware limited liability company with an address at 2255 Glades Road, Suite 337 West, Boca Raton, Florida 33431 (the "Company"), and BRIAN G. UTLEY with an address at 1930 Southwest 8<sup>th</sup> Street, Boca Raton, Florida 33486 (the "Executive").

WHEREAS, the Company desires to employ Executive and to ensure the continued availability to the Company of the Executive's services, and the Executive is willing to accept such employment and render such services, all upon and subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, the Company and the Executive hereby agree as follows with respect to the Executive's employment with the Company:

1. **Employment.** The Company shall employ the Executive and the Executive shall be employed with the Company, on the terms and conditions hereinafter set forth, for a period commencing as of the date hereof (the "Effective Date") and ending three (3) years after the date hereof, unless sooner terminated pursuant to the provisions of this Agreement. Such period of employment shall be automatically extended for successive one-year terms of employment, unless either the Company or the Executive notifies the other in writing at least ninety (90) days prior to the end of the then current term that it or he does not intend to renew such employment, in which case such employment will expire at the end of the then current term. All references herein to the "Employment Period" shall refer to both the initial term and any such successive renewal terms. During his employment hereunder, the Executive shall be the President and Chief Operating Officer of each of the Company, uview.com, Inc., a Delaware corporation ("uview") and iviewit LLC, a Delaware limited liability company ("iviewit") (uview and iviewit are collectively referred to herein as the "Affiliates").

2. **Exclusive Efforts.** The Executive shall devote his full time, best efforts, skills and attention to the business and affairs of the Company and the Affiliates, shall serve the Company and the Affiliates faithfully and competently and shall at all times act in the Company's and the Affiliates' best interests. The services to be rendered by Executive during the Employment Period shall be the normal duties of a person employed as a President and Chief Operating Officer by a corporation in the Company's business, subject at all times to the direction and control of the Company's Board of Directors (the "Board").

3. **Compensation and Benefits.** The Company shall pay to the Executive, and the Executive agrees to accept, compensation as follows:

(a) Subject to the provisions of Section 3(b) below, the Company shall pay to the Executive, and the Executive agrees to accept, an initial base compensation of Fifty Thousand Dollars (\$50,000) per year (the "Initial Salary"). All compensation payable to Executive hereunder shall be payable in accordance with the normal payroll policies of the Company and shall be subject to all usual and customary payroll deductions, including all applicable withholding taxes.

(b) The Initial Salary shall be increased by: (i) Fifty Thousand Dollars (\$50,000) to One Hundred Thousand Dollars (\$100,000) per year on September 3, 1999 (the "Salary Increase Date"), (ii) an additional Fifty Thousand Dollars (\$50,000) to One Hundred Fifty Thousand Dollars (\$150,000) per year beginning six (6) months following the Salary Increase Date, and (iii) an additional One Hundred Thousand Dollars (\$100,000) to Two Hundred Fifty Thousand Dollars (\$250,000) per year beginning twelve (12) months following the Salary Increase Date.

(c) In addition to the compensation provided for in Sections 3(a) and 3(b), on the Effective Date, the Company shall cause uvieu to issue in the Executive's name seventeen thousand one hundred thirty-eight (17,138) shares of uvieu's Class B Common Stock (the "Initial Shares"), for the consideration of \$.05 per share. The Executive shall be entitled to receive up to seventeen thousand one hundred thirty-eight (17,138) additional shares of uvieu's Class B Common Stock at future dates during the Employment Period as determined in the Board's sole discretion, subject to Executive's fulfillment of certain performance standards established, from time to time, by the Board.

(d) The compensation provided for in Sections 3(a) and 3(b) shall be in addition to any pension or retirement benefits, hospital and medical, disability, and other benefits, if any, made generally available by the Company, in its sole discretion, to its executive officers.

(e) Executive acknowledges that it is the Company's intent to purchase a "key-man" life insurance policy on the life of Executive for the benefit of the Company (the "Insurance Policy"). Executive agrees to cooperate fully in the acquisition, modification, amendment or supplement of the Insurance Policy, including submitting to any physical examination and providing any medical information as may be required by the insurer. In the event Executive dies within the Employment Period, the Personal Representative(s) (the "Personal Representatives") of Executive's estate (the "Estate") shall, at the Personal Representatives' sole discretion, elect to surrender to the Company all right, title and interest in and to the Initial Shares and obtain payment from the Company of the proceeds (the "Proceeds") of the Insurance Policy (the "Election"). The Election shall be in writing and delivered to and received by the Company at its then corporate headquarters within four (4) months from the date of Executive's death. Within seven (7) business days after the Company's dated receipt of the Election, if the Personal Representatives elect to receive the Proceeds, the Personal Representatives shall deliver the Initial Shares (along with executed stock powers) to the Company at its then corporate headquarters at which time the Company shall issue a certified or cashier's check payable to the Estate for the full amount of the Proceeds; provided, however, that if at the time of the Election the Company has not received the Proceeds, and if the Personal Representatives elect to receive the Proceeds, the

Company shall notify the Personal Representatives at such time as it receives the Proceeds, and, upon receipt of such notification, the Personal Representatives shall then be required to tender the Initial Shares to the Company at its corporate headquarters within seven (7) days of said notification, upon which the Company shall comply with the provisions of this Section regarding remittance of the Proceeds. If the Personal Representatives fail to comply with the provisions of the preceding sentence, the Company shall, at its sole discretion, notify the Personal Representatives as to whether it will demand the surrender of the Initial Shares (and make the corresponding payment of the insurance proceeds) no later than nine (9) months from the date of Executive's death or the deadline for filing Executive's Federal estate tax return, whichever occurs later.

(f) The Executive shall be entitled to four (4) weeks paid vacation per year. Such vacation time allowance shall not cumulatively accrue, and any unused vacation time for each year of the Employment Period shall be forfeited by Executive if not used during each year.

4. **Business Expenses.** The Executive shall be reimbursed for all usual and reasonable expenses incurred on behalf of the Company and the Affiliates, as applicable, as approved by the Board, in accordance with Company practices and procedures, provided that:

(a) Each such expenditure is of a nature qualifying it as a proper deduction on the federal and state income tax returns of the Company and any of the Affiliates, as applicable, as a business expense and not as deductible compensation to Executive; and

(b) Executive furnishes the Company with adequate documentary evidence required by federal and state statutes and regulations for the substantiation of such expenditures as deductible business expenses of the Company and of any of the Affiliates, as applicable, and not as deductible compensation to Executive.

Executive agrees that, if at any time, any payment made to Executive by the Company as a business expense reimbursement shall be disallowed in whole or in part as a deductible expense to the Company or any of the Affiliates, as applicable, by the appropriate taxing authorities, Executive shall reimburse the Company or any of the Affiliates, as applicable, to the full extent of such disallowance.

5. **Termination.**

(a) This Agreement may be immediately terminated by the Company at any time during the Employment Period for cause. In such an event of termination, the Company shall be obligated only to continue to pay to Executive his compensation, if any, earned up to the effective date of termination. "Cause" for purposes hereof shall mean (i) a breach of any of the provisions of this Agreement by Executive, (ii) conviction for any criminal offense involving a felony or (iii) willful misconduct, gross negligence or malfeasance.

(b) Except as otherwise provided herein, this Agreement and the obligations of the Company hereunder will terminate upon the death or at the Company's option, the disability

of the Executive. For purposes of this Section 5(b), "disability" shall mean that for a period of four consecutive months or six months in any 12-month period the Executive is incapable of substantially fulfilling the duties set forth in Section 2 or hereafter assigned to him because of physical, mental or emotional incapacity resulting from injury, sickness or disease as determined by an independent physician selected by the Company. Upon any such termination upon death or disability, the Company will pay the Executive or his legal representative, as the case may be, his compensation (including the Initial Shares issuable to Executive pursuant to Section 3(c) above), if any, earned through the date of such termination of employment.

6. Restrictive Covenants.

(a) Executive acknowledges that his services and responsibilities are unique in character and are of particular significance to the Company and to the Affiliates, that the Company and its Affiliates are competitive businesses and Executive's continued and exclusive service to the Company and the Affiliates under this Agreement is of a high degree of importance to the Company and the Affiliates. Therefore, during the Employment Period and for a period of two (2) years thereafter (the "Noncompete Period"), Executive shall not, directly or indirectly, as owner, partner, joint venturer, employee, broker, agent, corporate officer, principal, licensor, shareholder (unless as owner of no more than one percent (1%) of the issued and outstanding capital stock of such entity if such stock is traded on a major securities exchange) or in any other capacity whatsoever, engage in or have any connection with any business which is "competitive" with the Company or any of its Affiliates, and which operates anywhere in the "Restricted Territory" (as hereinafter defined). For purposes of this Agreement, a business will be deemed to be "competitive" with the Company and its Affiliates if it is engaged in the same business that the Company or any of its Affiliates are engaged in, or contemplates engaging in, including, but not limited to, any business engaged in whole or in part in developing, marketing, and implementing technology that allows products and services to be advertised and marketed via the internet. In recognition of the world wide access afforded by the internet, the parties agree that for purposes of this Agreement, "Restricted Territory" shall mean worldwide.

(b) During the Noncompete Period, the Executive shall not:

(i) directly or indirectly, by initiating contact or otherwise, induce, influence, combine or conspire with, or attempt to induce, influence, combine or conspire with, any of the officers, employees or agents of the Company to terminate his, her or its employment or relationship with or to compete against the Company or any of the Affiliates;

(ii) directly or indirectly, by initiating contact or otherwise, divert or attempt to divert any or all of any customers' or suppliers' business with the Company or any of the Affiliates.

(c) If, in any judicial proceedings, a court shall refuse to enforce any of the covenants included in this Section 6, then such unenforceable covenant shall be amended to relate to such lesser scope, period or geographical area as shall be enforceable. In the event the

Company or any of its Affiliates should bring any legal action or other proceeding against Executive for enforcement of this Agreement, the calculation of the Noncompete Period shall not include the period of time commencing with the filing of legal action or other proceeding to enforce this Agreement through the date of final judgment or final resolution, including all appeals, if any, of such legal action or other proceeding unless the Company and the Affiliates are receiving the practical benefits of this Section 6 during such time. The existence of any claim or cause of action by Executive against the Company or any of the Affiliates predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Company or any of the Affiliates of these covenants.

(d) Executive hereby acknowledges that the restrictions on his activity as contained in this Agreement are required for the Company's reasonable protection and are a material inducement to the Company to enter into this Agreement. Executive hereby agrees that in the event of the violation by him of any of the provisions of this Agreement, the Company and its Affiliates and its or their permitted assigns (which are intended third-party beneficiaries of these covenants) will be entitled to institute and prosecute proceedings at law or in equity to obtain damages with respect to such violation, to enforce the specific performance of this Agreement by Executive, to enjoin Executive from engaging in any activity in violation hereof, or any combination of the foregoing remedies together with any other remedies available at law or in equity.

7. Treatment and Ownership of Confidential Information.

(a) The parties hereto acknowledge that Executive shall or may be making use of, acquiring and adding to Confidential Information (as that term is defined in subparagraph (b) below). Executive covenants and agrees that during the Employment Period and at all times thereafter he shall not, except with the prior written consent of the Company, or except if he is acting during the Employment Period solely for the benefit of the Company or any of the Affiliates in connection with the Company's or any of the Affiliates' business and in accordance with the Company's business practices and policies, at any time, disclose, divulge, report, transfer or use, for any purposes whatsoever, any of such Confidential Information, including Confidential Information obtained, used, acquired or added by, or disclosed to, Executive prior to the date of this Agreement.

(b) For purposes of this Agreement, the term "Confidential Information" shall mean all of the following materials and information which Executive receives, conceives or develops or has received, conceived or developed, in whole or in part, in connection with Executive's employment with the Company:

The Company's and the Affiliates' materials and information (regardless of the form of such information, including without limitation, in writing, electronic, computerized or other recorded form, oral or visual) concerning, or related in any way to, the Company and the Affiliates' or its or their businesses, including without limitation: (i) the contents of any Business Plan, projections or financial or credit information or data relating to the Company or any of its Affiliates; (ii) the contents of any manuals or written materials of the Company or any of its Affiliates; (iii) the

names and records of actual or prospective clients, customers, suppliers, lenders, financing sources, or related persons; (iv) the terms of various agreements between the Company or the Affiliates and third parties; (v) any data or database, or other information compiled or developed by the Company or its Affiliates; (vi) any computer programs and listings, source codes and/or object codes, file structures, trademarks, trade secrets, patents, patent designs, patent applications, copyrights, forms, procedures, processes, training methods, developments, technical information, marketing activities and procedures and methods of operation, together with any other information, data, know-how or knowledge of a confidential or proprietary nature; and (vii) any information of a type described above derived or obtained from the internet or any website of the Company or its Affiliates, including without limitation, the file structure relating to such website or the content of such website.

(c) Executive covenants and agrees that all right, title and interest in any Confidential Information shall be and shall remain the exclusive property of the Company and the Affiliates, as applicable. Executive agrees to promptly disclose to the Company all Confidential Information developed in whole or in part by Executive within the scope of this Agreement and to assign to the Company or any of the Affiliates, as the Company determines in its sole discretion, any right, title or interest Executive may have in such Confidential Information. Executive agrees to turn over to the Company all physical manifestations of the Confidential Information in his possession or under his control at the request of the Company.

#### 8. Inventions.

(a) Executive agrees to promptly inform and to disclose to the Company, in writing, all inventions, developments, procedures, ideas, innovations, systems, programs, techniques, processes, information, discoveries, improvements and modifications which Executive creates (collectively the "Inventions"), either alone or with others, while in the Company's employ, or while performing services for the Affiliates, whether or not during working hours, and at all times thereafter if the Inventions:

- (i) relate to the present or anticipated business of the Company or any of the Affiliates;
- (ii) relate to any actual or demonstrably anticipated research or development work of the Company or any of the Affiliates;
- (iii) result from any work performed by the Executive for the Company or any of the Affiliates or customers of either; or
- (iv) were invented utilizing the Company's or any of the Affiliates equipment, supplies, facilities, time or any information (whether or not considered Confidential Information) obtained from or useful to the Company or any of the Affiliates.

(b) Assignment. All of the above-described Inventions, and all rights relating thereto, shall be assigned by virtue of this Agreement and without further action by Executive to the Company and shall be and shall remain the exclusive property of the Company.

(c) Ownership. With respect to each Invention assigned to the Company, Executive hereby grants, transfers and assigns to the Company all of his rights, title and interest, if any, in any and all written materials (including but not limited to programmed instructional material), pictorial reproductions, drawings and other graphic representations and works of similar nature upon which he may be engaged in, including rights to translation and reproductions in all forms or formats and the copyrights thereto, if any, and Executive agrees that the Company may copyright said materials in the Company's name and secure renewal, reissues and extensions of such copyrights for such periods of time as the law may permit.

(d) Executive Assistance. During the Employment Period and at all times thereafter, the Executive agrees to assist the Company and the Affiliates in obtaining patents or copyrights on any Inventions assigned to the Company that the Company or any or all of the Affiliates, in the Company's sole discretion, seeks to patent or copyright. Executive also agrees to sign all documents, and do all things necessary to obtain such patents or copyrights, to further assign them to the Company or any of the Affiliates, as applicable, and to protect the Company and the Affiliates against infringement by other parties. Executive agrees that such actions will be without compensation, but at no expense to the Executive.

(e) Attorney-in-Fact. Executive irrevocably appoints any Company-selected designee to act as his agent and attorney-in-fact to perform all acts necessary to obtain patents and/or copyrights as required by this Agreement if Executive (i) refuses to perform those acts or (ii) is unavailable, within the meaning of the United States Patent and Copyright Laws. It is expressly intended by Executive that the foregoing power of attorney is coupled with an interest.

(f) Records. Executive shall keep complete, accurate and authentic information and records on all Inventions in the manner and form reasonably requested by the Company. Such information and records, and all copies thereof, shall be the property of the Company as to any Inventions within the meaning of this Agreement. In addition, Executive agrees to promptly surrender all such original and copies of such information and records at the request of the Company.

9. Executive Representations and Warranties. The Executive represents and warrants to the Company that he is free of known physical and mental disabilities that would, with or without reasonable accommodations that would not create an undue hardship for the Company, impair his performance hereunder and he is fully empowered to enter and perform his obligations under this Agreement. Without limiting the generality of the foregoing, Executive represents and warrants that he is under no restrictive covenants to any person or entity that will be violated by his entering into and performing this Agreement. The Executive shall indemnify the Company on demand for and against any and all judgments, losses, claims, damages, expenses and costs (including without limitation all legal fees and costs, even if incident to appeals) incurred or

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suffered by the Company as a result of any breach by Executive of this representation and warranty.

10. **Binding Effect.** Except as herein otherwise provided, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their personal representatives, successors, heirs and assigns.

11. **Severability.** Invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions.

12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

13. **Entire Agreement.** This Agreement and the Confidentiality Agreement dated July 9, 1999 by and between iViewit, Inc. (together with its direct and indirect subsidiaries and affiliates) and Executive contains the entire understanding between the parties and this Agreement may not be changed or modified except by an Agreement in writing signed by all the parties hereto.

14. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when either hand delivered or deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses first stated herein, or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as provided herein.

15. **Prevailing Parties.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

16. **Survival.** Notwithstanding any termination of this Agreement, the provisions of Sections 6 through 16 shall survive such termination.

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IN WITNESS WHEREOF, this Agreement has been duly signed by the Executive and on behalf of the Company as of the day and year first above written.

iviewit.com LLC

By:   
\_\_\_\_\_  
Eliot I. Bernstein, Vice President

  
\_\_\_\_\_  
BRIAN G. UTLEY

PATENT COOPERATION TREATY

VIEWIT.COM  
05707.010

**RECEIVED**  
PCT  
DEC 18 2001

from the INTERNATIONAL BUREAU

**NOTIFICATION OF THE RECORDING  
OF A CHANGE**

(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

BLAKELY, Sokoloff, Taylor & Zafman  
Blakely, Sokoloff, Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 10 December 2001 (10.12.01)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

**NO DOCKETING REQUIRED**  
Docketing Mgt

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address FOLEY & LARDNER 777 East Wisconsin Avenue 33rd Floor Milwaukee, WI 53202-5367 United States of America	State of Nationality	State of Residence
	Telephone No. 414 271-2400	
	Facsimile No. 414 297-4900	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address COESTER, Thomas, M. Blakely, Sokoloff, Taylor & Zafman 7th Floor 12400 Wilshire Blvd. Los Angeles, CA 90025 United States of America	State of Nationality	State of Residence
	Telephone No. 310 207-3800	
	Facsimile No. 310 820-5988	
	Teleprinter No.	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other: FOLEY & LARDNER

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Beate GIFFO-SCHMITT
Facsimile No.: (41-22) 740.14.35	Telephone No.: (41-22) 338.83.38

CORRECTED VERSION - CORRECTED ON 5/14/2003  
Transcription of Telephone Conference  
Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table

Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of the firms' files.

<Inaudible comment.>

Utley: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

Simon Bernstein: You have no notes, no data on...?

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

Wheeler: The work product is yours. He may maintain copies of his files and everything; or his confidential notes to himself are not necessarily yours. But the work "product" is...

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here—this was before Brian came—I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did - now going to that same nature, that's the provisional I think we're talking about...

Wheeler: Right.

Bernstein: But he flew out here again with me and Brian and went through this as he went to file this--this is a 3/23/2000 file--that also fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't see them...

Bernstein: Well, you saw because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep maintaining it as...

Bernstein: Okay, but you have every record...

Wheeler: Everything you gave me we maintain. We don't...

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

Simon Bernstein: I know you don't you're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we had it in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?

Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.

Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, correct?

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.

Bernstein: But then when I look through this...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's described in this document, and without "undue" experimentation, without inventing it himself.

Simon Bernstein: Right.

Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

Simon Bernstein: Is that what we've done so far?

Bernstein: No.

Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

Wheeler: That's what we're aiming to do, that's what we're hoping to do.

Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

Wheeler: He was trying to do it in a broad...

Wheeler: He did say conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

Simon Bernstein: In the provisional.

Boehm: Uhhuh To that text, or you lose your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean...

E. Bernstein: It's not even in there.

Wheeler: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional? You can't add subject matter to the provisional?

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

E. Bernstein: It's not in the filing either.

Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.

Bernstein: It didn't pixelate. Not in here at all.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, explain to him where it's missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have without it being construed as an addition.

Boehm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another

lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average designer of this type of software—can he read this document and make and use of your invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't mater as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

Simon Bernstein:           What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm:                   Does that support our...Sure...

Simon Bernstein:           I mean, if we were to litigate against another person that infringes on our...

Boehm:                   An infringer.

Simon Bernstein:         Supportable for the sake of argument?

Boehm:                   Right. Yes. That is a fair argument

Simon Bernstein:           OK so then I don't know that, at least from first blush

Bernstein:               That's the provisional you're reading though, right?

Boehm:                   Aren't they the same? I think they're identical, aren't they?

Boehm:                   You can check in his notebook.

Boehm:                   Are there differences?

Bernstein:               Where did you find that piece that you just read?

Wheeler:                 Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that Joao. I thought that we had agreements for doing everything, but apparently Joao filed...

Boehm:                   For that one, yes.

Wheeler:                 But he didn't bother telling anybody.

Boehm:                   That's the one that we didn't find out until way late.

Wheeler: Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least resistance, and he thought he could go back...is there an amendment procedure?

Boehm: Yeah, there's an amendment procedure.

Wheeler: That he could do it a few months later or something like that?

Utley: We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.

Wheeler: Okay.

Bernstein: And you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. How did a guy to file a patent without any of us--obviously, not me, but Eliot, Brian.?

Boehm: Jim wasn't around yet.

Simon Bernstein: Okay, but Chris was and so on and so forth--how did they get through the crack that he did this?

Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do--his time factor--he was going to...he didn't think he would get this in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and file it.

Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

Utley: he knew at the time that he probably would be leaving?

Utley: Right.

Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.

Boehm: Just speculating.

Eliot Bernstein: What day did you give him those notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: That could be too. One other reason is...

Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the feature..."

Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? it has caused iviewit. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

eliot	3/10/2004 8:50:03 PM
Note	
Utley in deposition states he was unaware of any problems with Joao work	

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about...

Eliot Bernstein: Well 1<sup>st</sup>- lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

Simon Bernstein: Someone comes after you the second day after...

Boehm: Who's the first inventor, that's what you're after.

Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One-year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file that, but you need to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

Simon: Which might have short-circuited us because of all of the lack of funds.

Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: Yeah two things happened during the year. One, the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

Simon: Here's what we did. We hired Ray Joao on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been made.

Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray Joao...just an observation.

Boehm: Hmm...is it all patent attorneys? <Laughter>

Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit personally, I haven't heard of a patent attorney in my life telling me that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now

why is that going to hurt you? Two main reasons. One is if you put it on sale-offered it for sale- or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had publicly disclosed it, that would protect...getting the application on file will protect you from losing your date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone-you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new matter

Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: whose judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side would, say that's baloney that's too broad you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.

Boehm: So the offers for sale won't normally kick off a foreign...

Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year grace period.

Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes--yes we are within that grace period

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our knowledge, we have swept up all this in this filing, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original formal filing to strengthen the claims - broaden the claims ... to the maximum extent that we can.

Boehm: if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into the application.

Utley: What we're trying to do is protect the date day of March 24

Boehm: The original...

Utley: The original date as March the 24<sup>th</sup>, but filing should remain an objective.

Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

Buchsbaum: You mean the examiner of the commission

Bernstein: We're not going to be able to say it was in the claim.

Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.

Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file an continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but as far as, doing it broadly, if you're saying to claim it broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.

Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: Foley & Lardner. It identifies what you're trying to do.  
[not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.

Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your forum of law there's always going back and refining and refining and refining that was wrong.  
<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7<sup>th</sup>, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.

Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. Correct?

Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted a feature which

typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

Wheeler: I mean, he's describing I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see, this is different.

Boehm: But it doesn't matter right now

Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of having described this

Boehm: This is the background that's...problem. He's got...

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Boehm: That kind of invention, right, it's got to state...

Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...

Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you

want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

Boehm: March 24<sup>th</sup>, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.

Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention actually. What we do understand a little bit about is the theory in business; and now that we know that Ray Joao was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

Simon Bernstein: Who owns them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]

Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

Boehm: So I've so I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of this? Sure.

Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that has an obligation to sign is on the list of names in these patents right, because the company was part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because you may due corporate due diligence for financial reasons or if...and they will say has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

Buchsbaum: Has everybody signed off on these? Brian?

Boehm: See these tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over but you're real clean on it because these are all based on the original filing , which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: So all of the other inventors would have a helluva problem trying to say they owned anything.

Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were it went into bankruptcy, what would happen to those patents? How would those patents [ ]?

Wheeler: It depends on which at iviewit you're talking about.

Simon Bernstein: The one that they are held in.

Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

Wheeler: There is a possibility, but that's one of the main reasons... But the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors getting a piece back?

Wheeler: No, no, no. On the \$800,000 loan, those people, it's secured by the patent.

Simon Bernstein: What about the \$600,000...or the other \$800,000 loan?

Wheeler: The others weren't loans. The others were equity, as I recall.

Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where note holders

Wheeler: No, because there was no quid pro quo at that time. The note holders I mean you can't go back and do it, we had that talk Si

Wheeler: I mean, you can't go back...

Bernstein: The note? I believe they're not final, even though we told people they would be by this time.

Wheeler: The note holders took their money in without taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't ... back to a failure to the corporation

Simon Bernstein: ...Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem

Buchsbaum: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because ...posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga lose his?

Bernstein: Would Huizenga lose his stake in it to Crossbow?

Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of...??

Simon: We all could have put in another \$10. I mean, at the time we did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

Wheeler: There would have had to have been some material consideration, not just \$10. It would have been...

Simon: So it would have been \$10,000...

Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new

considerations that you could demand as a condition to be collateral.

Simon:                   What we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley:                   That's new subject matter.

Simon:                   Well, I only brought it up because it had to do with the patents.

Utley:                   I know but can we finish the patent discussions before we bring up new subject matter.

Simon:                   You can, but I want to make sure that we do finish.

Utley:                   No, I agree with you Si.

Si:                       The problem is that I made claims to certain people like Don Kane, who put up \$100,000, who thinks...

Bernstein:           Let's get back to that. No, let's get back to it. It's a definite point. There are people.

Buchsbaum:           This is a business issue for later.

Bernstein:           No, we're asked by these very people these questions.

Boehm:                 Did you get your question answered on the...

Buchsbaum:           Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

Boehm:                 Yeah, but after...I find everybody, we can get guys to sign.

Buchsbaum:           We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum:           There aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm:                 No, there's not.

Boehm:                 So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum:           You just have to get people around and sign.

Boehm:                 No, that should not be and issue.

Buchsbaum: That might be questions brought up when people do due diligence. Is everybody else on these?

Bernstein: That's why we're closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

Utley: The other piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined process—the mathematical representations of what's in and how it works and stuff like that.

Wheeler: (...???)

Buchsbaum: That will also be included in there, right?

Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form my opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps we would have liked to have tidied up some things better, like to have had Mr. Joao tidy them up. The good news is considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24<sup>th</sup> last year. Second, we will look at the March 24<sup>th</sup> year 2000 filing and determine how we should amend that to include additional claims and broaden that filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back...

Boehm: as long as you don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.

Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

Boehm: The question never even gets answered half the time in the real world. I will claim priority back on the document, and then if the examiner doesn't care, nobody cares

Bernstein: It gets through.

Boehm: It gets through.

Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

Wheeler: So I'm not adding flesh in defense...

Simon: New flesh.

Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray Joao numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

Utley: No Crossbow notes would be converted to equity when someone else comes in.

Si? Of course, and that's gone. And those issues are gone.

Wheeler: Well, Yeah, so that it was the ...it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of your collateral.

Simon: Yes, of course. As soon as it converts to equity, it's gone.

Wheeler: But I mean, what if you didn't convert yours to equity[ ]?

Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for

distribution. But of that amount[ ] unless there's nothing to distribute.

Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

Buchsbaum: You're talking about the small amount of money, that have any value, it should be reasonable value, and those would be taken out anyway.

Simon: Except that we seem to feel that we have an obligation to those, to protect the other stockholders who...had all good...I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?].

Utley: Will you look it up and see what it's going to take to do it?

Wheeler: I'll coordinate that

Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

Simon: I don't know. Can you handle the old money the same way? I don't think so.

Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on subsequent money.

Simon: Well, but to ask Don Kane to put up \$10,000 when he's got \$160,000 in the...\$135,000 in the company, and then he only gets 10%...\$10,000 worth of consideration...I'd like to protect his whole \$165,000, which is what he has.

Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$400,000 that's on the books. Then there's another \$100,000 besides what he put in originally. Sal has a loan on the books of \$25,000. Your guy should have had a loan on the books for \$250,000.

Utley: No, that's equity. Okay.

Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me \$10,000 to pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and Mitch.

Simon: You haven't sold any of your stock?

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.

Buchsbaum: That's the way to do that?

Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

Simon: Sure, I just wanted to make sure that it was done. I didn't even know ...???that bank account

Bernstein: Not that I didn't.

Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop to the US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

Simon: Let me ask you. You're not a lawyer, what do you recommend?

Boehm: Well, it's more money up front.

Simon: How much money? A great sum of money?

Boehm: No, it's another grand to file.

Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.

Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those earlier filings?

Boehm: Those other two.

Buchsbaum: That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: Plus you're gonna get an office action back from the patent office on him...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

Boehm Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?

Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to...???

Utley: Because he's claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorders off, right? <Recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?

Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess \$5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, well get Rays to another indiscriminate level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products--or whatever it is--per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..

Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That the patent will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.

Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be approved. The investors are going to say...

Buchsbaum: The first one that we're going to be issued will be issued in May.

Bernstein: And the investors are going to say what happened to patent one.

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in. 18 months to two years

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and wasn't able to and got clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah. Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

Boehm: But what, the test - I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say

Utley Doug come back, close it out again.  
<Inaudible comment.>

Boehm: There were two points. One was the PCT and I got that in correct.

Buchsbaum: Right.

Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it issues. You never do it before. I don't even like to do it then. I like to do it after all the...

Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.

Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.

Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.

Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.

Boehm: Now it's intentional!

Utley: But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?

Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly—if that's the goal, which sounds like it's a good goal—then, no, I think we should amend the claims with a preliminary amendment before the examination.

Utley: A preliminary amendment?

Boehm: A preliminary amendment.

Bernstein: Encompassing everything we can throw in there?

Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...

Bernstein: So we're going back to the original

Boehm: So I'll fix the 119 case yeah

Bernstein: March 3, 2000, to encompass what we've embraced.

Utley:               When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm:               Yeah, that's...

Bernstein: That's my guess.

Utley:               When will you be in a position to...

Boehm:               I'd have to...a few days...

Utley:               About a week or so?

Boehm:               Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>

Transcription of Patent Meeting  
Conducted August 4, 2000  
Participants:  
Eliot Bernstein, Jim Armstrong,  
Brian Utley, Steven Becker, Simon Bernstein  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Armstrong: Are we aware of all the important dates I know you probably are, but are we +  
+Brian made aware of all of our deadlines and contingencies relative to  
those deadlines +~~that we~~ that we're not left with...I was a little  
surprised that a final pack that's been in the works for a year, and I  
know you weren't involved for a year, but in the works for a year required  
that Eliot and I spent the entire night and morning reviewing it in order  
to get it done.

Bernstein: What bothered me about that as well is that we'd go through the math, and then  
suddenly you have a document Brian sent you several days earlier regarding  
the math that has a bunch of changes in it, and none of that's in there. I  
mean, I don't understand that.

~~Becker~~Armstrong: ...was changed from that document anyway.

Boehm: Yeah, it was changed from that document anyway. I was working with Brian, who I  
thought was the master of that math, but...

Bernstein: But he had sent you an updated ~~map~~ math three days earlier that didn't appear in  
the final document that we were trying to...

Boehm: Okay, I don't know. Steve was handling that. I don't know whether...you know,  
Steve says he did put it in there, but then I don't...

Bernstein: But then we go through the document that we're filing, and it's not there.

Boehm: Okay, but we were on the third draft when I took it over. You guys had  
opportunities like crazy to...

Bernstein: But that's the thing. Brian had sent it to you earlier, and it still wasn't  
appearing in final drafts.

Boehm: If that's true, then something crossed in the email because Steve said he put it  
in there, and maybe there's a piece of the math missing between the  
crossing the emails. You're right in terms of...

Bernstein: Is Steve there?

Boehm: I don't know. He probably is.

Bernstein: And then my other question is quite a simple question my dad asked about  
electrical engineers being mathematicians and said, "Didn't they sit and  
pencil out the math of all this themselves?"

Boehm: Uh, huh. Here's what happened on that. Steve was filling the application. We  
worked with Brian and you, Eliot, on the application. In some of the  
letters and emails he said that he doesn't understand the math.

Bernstein: I'm not getting any of those.

Boehm: Huh?

Bernstein: I'm not getting any of those emails.

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy? 

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~ out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~ Armstrong:

eliot 3/10/2004 2:19:24 AM  
Note

Bernstein: No, Boehm directed to copy company on patents and other matters we got some fundamental things that need

Boehm: If what's correct?

Armstrong: If he's correct about the math being wrong, but let's check it...

Boehm: No, I'll bet we could get a good patent if the math is totally wrong. I think we're barking up a tree here that's not a big wall.

Bernstein: But wait a minute. The question is if it still remains wrong and we gave you the right changes, it should have been filed right. All the sudden I'm left with a patent that...

Boehm: Okay, talk to Brian.

Bernstein: I will.

Boehm: Brian gave me the right changes. I filed what Brian gave me.

Bernstein: Okay.

Armstrong: Okay.

Boehm: And I don't mean to...you know...yell out of that, but that's what happened.

Bernstein: That's no problem. I totally hear that.

Armstrong: Thanks, Doug.

Boehm: Okay. Talk to you Monday.

<Hang up phones.>

Bernstein: 8/4/2000. 8:30 Doug Boehm conference call. Jim Armstrong, Eliot Bernstein. Steve, Jim, everybody, I'm taping the conversation, 8/4/ patent discussion regarding Docket 57103-120 with Brian Utley, Steve Becker, Jim Armstrong, Si Bernstein, and Eliot. Okay, guys.

Becker: [ ], too, if that's all right with everybody.

Bernstein: Yeah, did you get the fax from Jim?

Becker: I haven't received it yet.

Armstrong: It was sent actually to Doug on the "cc" line, but to a machine at 297-4900.

Becker: That's right. It'll go to our central fax department, and I just phoned up there and asked them to deliver that to me when it comes in.

Bernstein: Okay, but you've got the patent in front of you?

Becker: I don't. I don't, but I can get it.

Bernstein: Okay, well, let's do that.

Becker: Okay. I'll need a minute. I've got to go over the Doug's office.

Bernstein: Okay.

Armstrong: The fax is on its way to you now.

~~Becker~~Simon: It's on the way to me? |

Armstrong: Yeah.

~~Becker~~Simon: Okay, then I'm going to put you guys on hold... |

Armstrong: It's not done yet.

Becker: Well, I've got to go upstairs and get it, so hold on.

Armstrong: Never a dull moment.

UtleyBernstein:----- They didn't put...they didn't put in what we corrected them on... |

Bernstein:-----~~Inaudible comment.~~ |

Utley: And I did it again on Wednesday night.

Bernstein: And he said to me all these changes were in when I went through them at 11:15 at night with them. That all the math has been changed. I was looking at him and said these haven't been changed. He said, "No, I'm working on a copy that's been changed. I'm going to send it to Brian, and sign off..." So, well, now, again, we're back at this same thing. How do we change things? What effects does it have on us?

Utley: This has no effect. Mathematically, that's...

S. Bernstein: Were those faxed?

Bernstein: YeahYes. |

~~S. Bernstein~~Armstrong: Okay. Nine pages. |

Utley: But obviously this has an effect.

Bernstein: A huge effect because you have completely altered numbers.

Utley: Well, you could explain it; but the only way you could derive this is by having that be the square root.

Bernstein: But this is wrong that he missed this, and isn't that on your current math? Do you have your sheet that you did...current math...that he said he didn't have, had, whatever? Brian, do you have the patent book?

Utley: Yes.

Bernstein: Okay. I need to borrow that.

Armstrong: I would think that in a patent document being as important to us as it is, there's not an acceptable level of error. It's either got to be all right, or it's not acceptable.

Bernstein: Oh, and that's what we heard from Doug this morning. So, I mean it's hard to fathom this.

S. Bernstein: You know what guys? I don't understand. Why doesn't somebody... take five minutes, and tell me what...because I sat~~z~~ it in a meeting with all the lawyers, and... |

Bernstein: Here, Dad, let me give you an example. Is 2,560,000 times .8 the same as 2,560,000 times 1.25? Yes or no?

S. Bernstein: I doubt it!

Bernstein: Okay, well, that's the fuckin issue. That's how far off these are. |

S. Bernstein: Okay.

Becker: This is Steve. I'm back, and I can't seem to find that file. Doug is out today. You guys may know. So, I don't know how much help I'm going to be.

Bernstein: Okay, well, do you have the fax? Hey, ~~DP~~-Man, you've got the file right there. Just email it to him. |

Becker: Here it is. I've got the fax now.

Bernstein: ~~Okay~~---Steve, Doug also mentioned that you had emailed some correspondence to us that you didn't think the math was right earlier? I have no records of any of that. |

Becker: No, what I did was I faxed the draft over on Monday night, which incorporated some additional disclosure that Brian had sent. Basically, it was examples. It had the equations set out for both print film and digital examples, and then he had three examples for print film and one example for digital, and I essentially...I exactly basically cut and pasted that into the application.

Bernstein: Well, the application we got from Doug didn't have any of that- cut and paste because what it had was the old stuff and Brian referred to having sent this to you several days earlier and yet it wasn't in there.

MISSING SECTION GO BACK

Becker: I don't really know because at that point Doug was down there with you guys, and I presumed you were reviewing it on like Tuesday and Wednesday. And the Doug said he would take care of just...because we figured there would just be some minor changes after we'd incorporate all of that.

Bernstein: Well, it wasn't incorporated, so there were huge changes.

Becker: Oh.

Bernstein: And it would have been filed completely wrong had it not been for Jim Armstrong reviewing it. Everybody would have nodded off on this and accepted wrong, completely wrong, filings.

Becker: Maybe he should be part of this conversation.

Bernstein: He's on this conversation.

Becker: Oh, good. Hi, Brian.

Utley: Hi, Steve.

Bernstein: Brian's here and Jim Armstrong's here.

Becker: Okay. Well, the only link we're missing here is Doug because Doug took the last few steps of incorporating comments and actually filing the application on Wednesday.

Bernstein: Hey, ~~EB~~-man, forward him a copy of the final draft, would you?

Armstrong: And that, Steve, I think the most important question to have answered is what are our rights and obligations and opportunities relative to correcting this without any ill effects to us?

Becker: Yeah. There's plenty of opportunity essentially. We can file...if there are substantial errors in the application as it was filed, we can simply file a new application as soon as we get those fixed either on Monday or Tuesday or what have you. The goal of filing on Wednesday was to maintain priority back to the provisional application, which was filed a year ago.

Bernstein: So, did we lose that if they're wrong?

Becker: No, because we can only claim priority back to the extent that the subject matter was originally disclosed in the provisional filing of August 2<sup>nd</sup> of last year, and none of these equations were filed back then.

Bernstein: But the original process was.

Becker: Right. And the original process is ~~the~~ preserved in the application. We're just talking about the details of the math examples that are in here. So we haven't lost anything.

Bernstein: Will we lose claiming back to the priority of the original provisional? So we did lose something, or am I incorrect in what I'm hearing.

Becker: Yeah, No, we didn't lose...the original provisional can only provide priority for what was originally disclosed, and the math was not originally disclosed, right?

Bernstein: Well, no, but the math is a subject of the invention, not vice-versa.

Becker: The reason I'm putting the math in there is essentially to provide concrete examples...

Bernstein: Of the invention.

Becker: Right.

Bernstein: But the invention was in there as of the priority date, and we had already talked with Chris Wheeler and everything regarding this. Were you on that conversation?

Becker: I don't remember.

Bernstein: Well, Brian, you were on that conversation. It's the conversation where we were going back to try to get the soonest date on the filing and correcting the provisional to encompass all of these things.

Utley: Well, you can't correct the provisional, but you can...what it does is it claims back for everything that references back to the original, but then incorporates all the new elements to bring it into...to make it into more of a complete statement.

Bernstein: I'm not sure I understand this. It was my understanding that we were going back to Ray [Joao's] patent and fixing it by inserting what we have here. When I talked to Doug, that was what he was under the impression we were going to do, and now that's all changed as of today.

Becker: You really can't fix a provisional application.

Bernstein: Not the provisional-the ~~regular~~-Ray Joao filing of August whatever-whatever day it was.

Utley: No, in March. March 24<sup>th</sup>.

Becker: Oh, okay. Yeah.

Bernstein: And that way, if that patent gets approved with all this in it, that's what we were doing, and we wanted that one to be approved first correctly because it obviously expedites our life by a long way.

Becker: This is the PCT application file of March 23<sup>rd</sup>. Is that what we're talking about?

Utley: Yeah, but the way that I recall the conversation, the spec cannot be changed...

Becker: Right.

Utley: ...but the claims can be.

Becker: Right, and they can be changed as long as they're supported by teachings that are in that specification.

Utley: Right.

Becker: Which is why you really...

Bernstein: And the specification can't change?

Becker: Right.

Bernstein: Why?

Becker: Because it would be kind of like...

Bernstein: I thought that was based on new matter.

Becker: That's exactly why it can't be changed.

Bernstein: So it can be changed if it's still the same matter?

Becker: The claims can be amended as long as they are still fully supported by the matter that's in the specification that's originally filed. Now, if you want to change your claims and they're not supported by the specification as originally filed, then you have to file a whole new application adding new matter to your specification that will support those claims.

Armstrong: Does the fact that a direct interpretation of what in general amounts to typos and oversights, but a direct interpretation of that affect our ability to change that supporting matter of that matter? Because if we directly interpret the math in the certain circumstances here, it will bring you to a wrong conclusion if it's a direct interpretation without having to reverse ~~such an error but~~ engineer what was meant to occur.

Becker: Well, I see. Then we need to get the math right, but it doesn't affect our priority. Only by a few days essentially.

Bernstein: Well, do we lose the ability to claim priority to what we were trying to claim here...

Becker: No.

Bernstein: ...by that date? So you can go back in and change the matter of this?

Becker: You don't go back and change the matter, you just file a new application which claims priority back to a prior application only for the subject matter that was...

Bernstein: But we missed that application.

Becker: No, we've got it in the form of this continuation, or this PCT, that we filed claiming priority back to that patent application. So we've preserved that chain of priority.

Armstrong: Are you then completely confident that errors that we need to correct right now then are not going to hurt us in any way, shape, or form as being able to claim as part of our invention all of the correct things that we want in there?

S. Bernstein: That's what I heard at that meeting, that we could go back and re-do that at a later date without having any implication.

Bernstein: As long as it wasn't new subject matter.

S. Bernstein: Exactly right. These are just corrections to the...

Bernstein: They're corrections, they're math, whatever.

S. Bernstein: Okay, but we're not saying this is a new way to get to that.

Bernstein: No.

S. Bernstein: Okay, that's what I heard. That's the notes I took. Eliot, you should have that on the tape recorder so that we know that.

Armstrong: Well, we do, and that would also support, I think, another issue, which is that we now have to go through the refiling of something else which was originally corrected several days ago and was somehow ignored so that this whole refiling shouldn't even cost us anything.

Bernstein: Well, and beyond that, Doug <sic>, what I'd like to really get down to is a letter from you, in writing, explaining all of my, you know, both from the Ray [Joa] patent forward, and I think you need to talk to Doug about it, of what our potential pitfalls are here with these filing errors, what our potential pitfalls are, what it caused to happen with that priority, priority equals, and if there's any harm to us. Because we keep just slipping back by these things. This should have been right. I mean, we have well documented, and Brian's well documented, that these changes were sent, and now we've missed a priority claim to that by not being able to go back and change our last filing. I need to know the liability here.

Becker: You know, I was not there on Wednesday night. Brian talked to Doug on this and then made final changes, and then...

Utley: Yeah, Doug sent me a next-to-last copy, which I went through and there were a number of errors—I have my notes on each one of those at home—and then I reviewed each one of those with Doug, agreed on what they were, and then Doug was going to send me the last copy, which apparently he didn't because I never received it. At that point in time, it was, I guess, about 11:30 or 11:45 our time.

Bernstein: And these were also discussed in great length with him for a whole day on the phone.

S. Bernstein: Yes, well, how about in the...

Bernstein: No, no, Dad, this is separate. But at great length this was discussed, every one of these changes.

Becker: The changes you sent me here, is this Brian's handwriting?

Utley: No, some of it isn't. Isn't correct.

Bernstein: Well, let's go through it because I'd like to...

Armstrong: Yeah, let's go through it.

Becker: I don't know if that's going to help that much because it's a question of what actually was filed and whether it incorporated the changes that Brian asked for the last minute.

Bernstein: It didn't.

Armstrong: We know that. This is what was filed.

Becker: Brian, didn't you just say that Doug didn't send you the final draft of what was filed?

Bernstein: He did it the next day.

Becker: Oh, he did the next day?

~~Armstrong~~Bernstein: Yeah, Jim, can you forward that to Steve real quick?

Armstrong: What?

Bernstein: Email it to him...the final draft?

Armstrong: Yeah.

Becker: Well, I'm not going to question...

Bernstein: Okay, but we need to go through and get the changes acknowledged, accepted, have you put it into the next whatever you're going to do to solve this, with a letter explaining what we've lost here.

Becker: All right.

Bernstein: Okay. Any liability, potential liability where we're exposed to from this.

Becker: Oh, I wouldn't worry about it. You guys are making a mountain...

Bernstein: Well, you know, I gotta tell you, I worry a lot about it from what Doug told us. So, you know what I mean? You tell me not to worry, but then you tell me it's very important that we're accurate in this filing; and then we're very inaccurate in the filing, and then we're not supposed to worry. I'll feel much better not worrying with a letter from you explaining why I shouldn't worry.

Armstrong: Steve, what's at your email?

Becker: Sbecker@foleylaw.com.

Armstrong: Sbecker?

Becker: Yeah, "S" as in Steven, "becker."

Armstrong: Got it.

Bernstein: Okay. Let's just go through this with you, Steve, so we can get the next step done.

Becker: All right.

Bernstein: Which is correcting the issues. Are you with us on page 13?

Becker: Right.

Bernstein: Okay. Jim?

Armstrong: On page 13, line 19, the expression of VWH should follow the way we express it in our definitions, which is VIH. Even though the two are equal, let's just follow the way that we have it expressed in our definitions on page 12.

Becker: Oh, I see. Okay.

Armstrong: Then on line 23, each of those expressions is not congruent with the way we've defined them. Despite the fact that we arrive at the same results, it doesn't apply the formula in exactly the same way. So for a reader, it ought to be the same. So for line 23, it should be the "square root of 2,560,000 times 1.25."

Becker: All right.

Armstrong: Okay. Not "2560 divided by .8."

Becker: Okay.

Armstrong: On line 24, it ought to be "1789 divided by 1.25."

Becker: I see. Okay.

Armstrong: Then on line 25, it ought to be "1441 divided by 4." Again, the results are the same; the expressions are not.

Utley: Now, on that last one, Jim, it's correct. |

Armstrong: It's what?

Utley: The scan density is 1789 divided by 5.

Armstrong: Okay, hold on. Scan density is defined by us as being...where the heck is it...oh, it's right up above..."target image height..." right up above on line 7..."minimum scan density is target image height," which in this case we just defined to be 1431...

Utley: Where are you reading from?

Armstrong: Line 7 of the same page. Line 7, page 13. So target image height is 1431 divided by the source image height, which is 4, so it should be 1431 divided by 4.

Utley: Well, the...yeah I guess that that equation, "MSD equals TIH/SIH," did not come from my documentation. |

~~Becker~~Armstrong: Hold on, let me look at this documentation. I've got it right here, |  
too.

Bernstein: Well, Steve, you have copies of this, too, that were sent to you...

Becker: Right.

Bernstein: ...of what Brian's looking at, several days ago. So how isn't this stuff flowing forward into the patents, especially when we pointed it out two times before filing? I mean, I'm just dumbfounded at this.

Utley: There was a change, Steve, which you were not involved...

Becker: The proper equations, ~~that I~~ wasn't there the last night when the last changes were put in, so I can't really speak to it.

Bernstein: No, but he sent you his changes several days ago.

Utley: Steve, there was a change that we decided on uh on uh Wednesday afternoon, which was to reflect aspect ratio as width divided by height, which uh I uh made, and that was created by the desire to reflect aspect ratio the way that displays are uh uh expressed as opposed to the way photographic images are expressed. Photographic images are expressed the opposite way, and that's the way the documentation uh uh had been originally prepared. But it was thought that it was uh perhaps more consistent with current technology to express it the way that displays are expressed. So I went through and changed...

Becker: You mean from that change in ~~invention? convention?~~ convention?

Utley: Yes. So that caused the equations to be reconstructed to reflect the uh uh inverse of what was there before because the affect ratio now is inverted.

Becker: I see.

Utley: And what happened was Doug apparently did not pick up all of those changes, even though I went through them very methodically the last thing uh Wednesday night when he sent me ~~his~~-his uh his uh almost-final draft.

Becker: I see.

Utley: Uh And uh, Jim, just for your uh edification, that also affected the MSD shifting from a height to a width orientation. The number is the same, but it changed it from a height to a width.

Armstrong: So what's the correct formula for MSD?

Utley: It's TIW/SIW.

Armstrong: Okay.

Bernstein: So, you made this change with Doug, and it's still wrong in the patent?

Utley: Right

S. Bernstein: I'm a little concerned about the proficiency of the legal aspect of this. We sat there for hours, and then Brian stayed late into the night with this guy, and then he comes back and we don't file it right anyway? It seems like there's something wrong here. I mean, ...

Bernstein: I mean this is, yeah...

S. Bernstein: I mean, I'm just budding in because I have little or no knowledge as to what the numbers mean, I'm just listening to a conversation in which I'm hearing is that after four or five hours in a room locked together with lawyers and everybody else, we reach an agreement that those changes will be made. Now, my understanding is Brian stayed and made those changes, and then the lawyer didn't file the changes? What's the sense of that?

Bernstein: These are good points. Let's move forward, Jim.

S. Bernstein: These are points that have to go back to stockholders with money invested.

Bernstein: That's why I've asked Steve to send us a letter of what's happening, what our exposure is, by Monday or Tuesday, explaining how this didn't occur, get in, and what we're going to do to resolve it, and what that resolve initiates in the chain of events.

S. Bernstein: Well, the other side of it is this. If after all of this precaution has been taken—and Brian, you can correct me if you think different—but after all of this precaution has been taken, it appears that the fallacy of worrying about it ever gets accomplished. Brian stays, everybody works on it, it's still filed wrong. Now what if Jim Armstrong hadn't caught it. Brian was on a plane today...

Bernstein: Then none of Brian's changes even sent several days ago even would have even been in there. Math would have been wrong, equations would have been wrong, verbiage would have been wrong.

S. Bernstein: Am I right, Brian, in having this concern?

Utley: Uh Well, yeah, obviously it's uh clearly uh uh a major concern because there's nothing more disciplined than the uh uh mathematical expressions.

S. Bernstein: And you're comfortable that what you did, even if some of them were wrong, that we could have later corrected...

Bernstein: No, Dad, we sat here with Brian and Jim and Doug, and we went through it, and we all agreed it was right, and those changes do not appear.

Utley: No, we...uh uh

S. Bernstein: That makes me very nervous. Well, it makes me nervous to the extent that are all of the other patents done right?

Bernstein: Well, that's what I'm...I'm going to start having somebody review all of this. I mean, obviously there's...it opens up a whole can of worms.

S. Bernstein: Well, the other thing that I heard was—and not negatively or anything else—but I heard that perhaps Ray [Joa~~q~~ did this work and he was either concerned about it being a bit sloppy, blah, blah, blah, blah. What is the excuse for this law firm?

Bernstein: Well, let them write us what's happened here. I mean, I definitely need to see on paper, Steve, some kind of report on this. That it describes what occurred, why it's not reflected in the patent filings, and what our exposures are, and that'll tell us what we're dealing with in firm, etc., liabilities. I mean, we don't know that.

Armstrong: We should continue to look at the changes so that he's copy that reflects everything.

S. Bernstein: Well, even if there is no liability, what I'm still concerned about, even if it can be corrected, it's the exact same position—Brian, am I right?—that we found ourselves in with the last lawyer who did it. Okay, thank God we can make changes, but that isn't the answer. Why not just get it right, get it filed...

Bernstein: No, don't just say thank God we can make changes, Dad, because all of that brings additional liability to you. You miss dates, you miss claiming, you miss this and that—words that are very tricky and confusing, and only these guys can understand. So that's why I need it to be put in writing so I can have it analyzed...

S. Bernstein: Absolutely, I want it definitely, because I need to take it...you know, I need to have board member approval...

Bernstein: Oh, I think our board is going to be disastrous with this stuff about several things when we take this to them. And we need to know from the Ray [Joa~~q~~] level to the Foley-[Lard~~ver~~] level, how this is going to be cleared up and what the problems were that occurred.

S. Bernstein: Okay, let's get that part in process; and it's unfortunate that Doug's not here because maybe it's something he could explain.

Bernstein: No, I talked to him this morning; and as a matter of fact, he said Steve had the math from Brian days before and by the time he got it, he thought it was all input correctly, and that was his excuse.

S. Bernstein: Well, what was he doing here with Brian?

Bernstein: Well, then we spent a whole day with him correcting it all so that it was right; and then by filing time, none of it was right. So, let's go forward. Let's just stay on track. We'll deal with all of these issues on Monday.

Utley: Uh I just say one thing. Uh Fortunately, uh I don't know The most important part of the math is all of the definitions. The examples are examples; but the most important part of the math is the are the definitions.

~~S. Becker~~Bernstein: Okay, are those right?

Armstrong: No. Well, there's one that's not ~~, we just found out which is [ ]~~. Line 7 of page 13...

Bernstein: Is wrong.

Armstrong: Is wrong. It should read...

Bernstein: ..."[ ] equals TIW/SIW."

Utley: They are mathematically uh uh equal. Both will give the same results. So It's a uh consistency question as opposed to an accuracy question.

S. Bernstein: And for a reader, it would probably be easier to be consistent.

Utley: Absolutely.

S. Bernstein: That's what we want. As long as we're spending all of this money and everybody's devoting their time to it, we want it to right-as right as you can possibly get it at any rate.

Bernstein: Okay, Dad, let's move forward.

Armstrong: That changes one thing on line 25. The expression on line 25 is now correct as it was typed, so scratch out my handwriting. Okay? All the other corrections stand as I explained them earlier. Now, on the last line of this page, that should read: "480 X 320."

Utley: That's correct.

Armstrong: Okay. Then on line 6 of page 14, I think we should consistently state which is width and which number is height because it's such an important distinction in the calculations. We did it on the previous example, but not on this one.

Bernstein: This then is width height

Armstrong: Width is [ ] height is 4

Utley: And that is what we had agreed upon on Wednesday afternoon.

Bernstein: Right. That changes again in a minute

Armstrong: Okay. Line 17, again we're just missing that square root symbol in order to make that equation work. Without the square root, it's millions instead of thousands. Now, in line 19, I had originally indicated this was correct; it's now incorrect because of our change in the formula for the density for the maximum scan density.

Bernstein: Steve, are you getting all of these?

Becker: Yep.

Armstrong: This should now read in line 19: "1789 divided by 5 equals 358."

Becker: "1789 divided by 5 equals 358?"

Armstrong: Yes.

Becker: All right.

S. Bernstein: Steve, I have a question to ask you.

Becker: Yes.

S. Bernstein: When Jim or Brian or anybody gives you these numbers, are they checked out by anybody, or do you just copy what we say and that's it?

Bernstein: No, they definitely don't copy what we say. That's an initial problem here, Dad.

S. Bernstein: Okay, I don't mean to be sarcastic.

Bernstein: No, but they would normally as mathematical people add up the equations.

S. Bernstein: Yeah, because your partner was telling me that most patent lawyers are engineers, which would lead me to believe that somebody would say, "well, I better check the math to make sure that guys who are not engineers know what the hell they're talking about." Is that done by your firm, or is it just accepted as gospel what we give you?

Becker: We don't have engineers or technical people check the math that you provide us.

S. Bernstein: Okay, so what we provide you, then, we live and die by?

Becker: Okay. Your job is to get that right.

Bernstein: Right, but what we did give you, you didn't provide in the patent.

S. Bernstein: Okay, we're trying to say the same thing.

Bernstein: Okay.

Armstrong: Let's just get it right.

S. Bernstein: At this point we're only interested in getting it right.

Armstrong: Line 27, that should be "36@H" for the height.

Bernstein: Which page?

Armstrong: Line 14, third-to-last line of the page.

Bernstein: Okay.

Armstrong: Now we're onto page 15. Again, we just need that square root symbol as indicated there.

Becker: Okay.

Armstrong: Then there is nothing on the next few pages until we get to page 18, this is an important omission for our calculation standpoint, but we need that square root symbol.

Becker: Okay.

Armstrong: Then I'm going to skip for a second this discussion on minimum scan density here because I want to talk to...go with Brian's comments, too, but on line 10, the correct figure is "1.33 equals 1.33."

Becker: Okay.

Utley: Yeah, that wasn't picked up from the other...from above, the aspect ratio.

Armstrong: Line 15, the square root symbol again is missing from that same equation. And then finally, I don't see why, in this example, or any digital example where we have no scanning to do, why we should even include any reference to minimum scan density because the only application of scanning in a digital world is if we were to print a digital photograph and later scan it, in which case we'd follow the print formulas, not the digital formulas. So, my suggestion here is that we change the sentence, beginning on line one, to end after the word "dimensions"...actually, strike the words "and minimum scan density" and also to eliminate line 23. Do you agree, Brian, that there's no reason to have that there?

Utley: It certainly doesn't add anything. Uh It doesn't uh uh subtract anything.

Armstrong: It just added confusion to me as a reader when I thought, "How do I calculate that?" and then realized it's not...we're not scanning anyway. Why ask someone to determine something that is not included as a step of the process? So I think if everyone agrees, we should strike the words "...and minimum scan density" in line 1 and 2...

Utley: No, what I would do, I wouldn't do that. What I would do is simply say, "...image size and dimensions" and then add a new sentence which says, "Minimum scan density is not required since we are dealing with a digital image."

Armstrong: That's fine, too. Then let's strike line 23.

Utley: No, I'd leave that in.

Armstrong: It's redundant, but that's okay. Do you see any other problems with the formulas? Did you review all of this again today, Brian?

Utley: Uh I've just uh uh I have not reviewed anything today. I wasn't aware of the problems until about three minutes ago.

Armstrong: Okay. So that covers my comments on that.

Bernstein: And, Steve, do me a favor. When you guys draft this letter, draft it to Si and Brian. Okay? I'd like to be cc'd on...and by the way, I'd like to be cc'd on any correspondence of anybody to do with the patents.

Becker: Okay.

Bernstein: One last thing. Doug mentioned that you had a file from Brian, a spreadsheet that part of the spreadsheet matter is not incorporated in here. He didn't know why...he couldn't explain why. I was wondering what that matter is, and where is it? Are you aware of that? Because he referred to you.

Becker: Did heTo me?

Bernstein: Yes.

Utley: Uh uh That's probably the image sizing spreadsheet.

Becker: Image sizing?

Utley: Yeah, I sent you two files on Monday.

Becker: Okay. Actually, you sent three all together. Oh, you sent three emails, and then the last one had two of them.

Utley: Right, the last one had two files: both the image sizing and the process.

Becker: Oh, you've got the macro, and then you've also got the description of the math. Now, what did you want included that wasn't?

Bernstein: Well, Doug said it should have been included, but it wasn't...the rest of that sheet.

Becker: What?

Bernstein: I don't know. Whichever half's missing.

Armstrong: Hold on one second...I don't want to confuse Steve. We do not want you to cut and paste out of those documents into these patent filing. Those documents do not reflect the way we want to express the math.

Bernstein: Right, but we might want them in there, B, correctly.

Armstrong: What?

Bernstein: We might want them in their correctly...

Armstrong: ~~They're not in there correctly.~~ We just went through it. It's now correct. If he employs all of the changes we just all agreed to...

Bernstein: No, but there's another sheet that's not reflected here.

Armstrong: Well, yes, I do want to talk about that. The macro, right?

Bernstein: Right. Can you forward that file to us--the Excel sheet--to Jim, me.

Armstrong: Just have Steve forwarded the whole email back to you.

Bernstein: Well, he doesn't have it in front of him, and Brian's got it right here.

Utley: No, I sent it to you. You were copied on it.

Bernstein: Okay. Let's just get the most up to date...any changes.

Becker: Yeah, Brian, remember, we made a decision not to file the claims directed to your macro--we made that decision last...a week before the...

Bernstein: Why?

Becker: Because it was going to involve some additional work, and we didn't have time at that point; and it was all new matter that wasn't going to claim priority to anything, so...

Bernstein: Well, what's new matter? If the math is part of describing the invention, then it's not new matter, according to what Doug's told me four times now.

Becker: Well, Eliot, as you recall, you always have to look at the claims of the application, and that defines the scope of your protection. The claims will also define...also have to be supported by the specifications. We were going to direct claims to the idea of using...of having a macro program, which is useful as a tool, to do these calculations in a rather simple process.

Bernstein: Okay, that's fine if you want to just claim a macro. That does it as a simplified process and add that as an additional patent for us, but the underlying math of it should all be applicable to the invention since it's just derived off the invention.

Becker: Yeah, math...

Bernstein: So it's not new matter, it's just an understanding of the matter. I mean, I swear we went through this four times the other day with that conclusion.

Becker: There are two files that Brian sent me. One of them was an Excel spreadsheet having six pages, and all of that material was included in the application in pretty much cut-and-paste format. His pages 2, 3, 4, and 6 were the examples, which I just cut and pasted as soon as I got them from Brian because they defined it all very particularly.

Bernstein: Okay, now you need to get back your record of that because 2, 3, 4, 5, and 6 that Brian is sitting here showing me, were never in these patents yesterday. So cutting and paste, you must have put them in the wrong document.

Utley: Those are the examples.

Bernstein: But those weren't...that's not what ended up in there.

Utley: They pulled these pictures out and put them as a uh uh uh figure sheet on the back, uh and then uh uh we ~~re-~~entered...

Bernstein: Wrong math.

Utley: ...the formulas in the body of the...

Armstrong: Hey, right. B, are those images...are you looking at the figures? Are all of these figures in the patent application.

Utley: We should be on figure 7.

Bernstein: Steve, figure 7?

Becker: Okay.

Bernstein: Are you looking at it?

Becker: Not in front of me, but I recall writing it.

Bernstein: Jim, figure 7, what do you see?

Armstrong: I don't have a figure 7...because that was part of...that didn't come in the patent application, that I was mailed~~but [ ]~~.

Bernstein: It's not part of that final patent?

Armstrong: I don't know about that, but it didn't come as part of that Word document.

Bernstein: That's what I just sent you, ~~that's~~ supposed to be the final revision of the patent.

Becker: We have to scan the drawings into a Word document; so if you just mailed the Word document, you probably didn't get any figures yet.

Armstrong: Probably the figures were left off of that Ei-

Bernstein: Okay, do you have your patent application?

Armstrong: I've got the one we reviewed on Tuesday Wednesday.

Bernstein: And what's in there?

Armstrong: All the figures.

Bernstein: Right or wrong?

Armstrong: You know, I don't know. I didn't...Brian, was figure 7 changed at all with the restatement of our aspect ratio?

Utley: Yeah There were some additions that I made for clarification purposes. Uh If you look at the first page of the imaging process, where it says, uh uh the third box down, it says "viewing image," uh I inserted uh "SIR less than DWR" to tie it to the equation above it. And then in the one, the bottom, uh uh it has the expression "SIR greater than BWR," again, that is to tie it to the equation above it.

Armstrong: Yeah, because those two don't have a distinction, figure 7 as it is now.

Utley: Right. So that simply ties the image to the equation.

Armstrong: So do they have...have you sent them an updated amendment?

Utley: Yeah, that went out uh uh late Wednesday afternoon.

Armstrong: Okay, we've just got to make sure that the corrected figure 7...

Bernstein: Steve, can you fax us the filed patent?

Becker: No, I can't find it. I guess Doug took care of this from...

Bernstein: Does his secretary have a copy?

Becker: ...Monday night on. I spoke with her, and she wasn't clear...she wasn't able to find it.

Bernstein: Do we have a filed patent?

Becker: How certain would you like me to answer that question? I mean, Doug sent me an email saying we filed the patent.

Bernstein: Well, what he sent me that he said he filed is missing the diagrams. So, I have a final patent document missing...

S. Bernstein: When is Doug available?

Bernstein: Yeah, does he got a cell phone or something?

Becker: I don't know. I don't know. Maybe I can help clarify this...I mean, Eliot, you sound like you're really upset at us.

Bernstein: You know, I'm not a person to get upset until I see that I spend a lot hours going through this, Brian spends a lot of hours, we make all of these global changes...

Becker: Eliot, I've heard that a couple times already. Let me try to explain a little bit about patent law and maybe help everyone understand what has or has not happened. Okay, there's a lot of rhetoric being thrown on there, but there's...

Bernstein: Yeah, because we're blind.

Becker: I don't think all of it has a lot of basis in patent law.

S. Bernstein: That's good to hear, so let's hear that.

Becker: Okay, and Si, I thought you in particular might be interested to hear that.

S. Bernstein: Yeah, that's, you know, I'm not sure that adds any comfort because maybe what you're saying is it's not an exact science and then you move along...

Becker: Well, I'm going to go well beyond that.

S. Bernstein: Okay.

Becker: Does anyone have a copy of claim one they can read off of?

Bernstein: Yes.

Utley: Uh uh This is only a piece of it, right? |

Bernstein: Yeah.

Armstrong: ~~It's~~ Page 22. |

Becker: I'm working off what you emailed me, Jim, and I see page 24, lines 1 through 7. I guess they could have repaginated, but...

Armstrong: Oh, but Eliot had mailed you...or faxed you...

Becker: I'm sorry, what you emailed me.

Armstrong: Oh, okay. So it's changed then. I don't know why, though.

Becker: On the top of the page says "What this claim is."

Armstrong: "What this claim is"...

Becker: Do you have that?

Armstrong: Yes, page 22 in my printed on.

Becker: Okay.

Bernstein: Okay, hold on one second because I want to get my notes.

UtleyS. Bernstein: What page is that, Jim?

Armstrong: Page 22 You don't have it, BrianSi.

S. Bernstein: Because I don't have 22.

Armstrong: Want me to fax it... email it to you?

S. Bernstein: No, that's okay, he's going to explain it to me. I want to see if I can't understand this.

Becker: Sure. It's very sort claims, seven lines long. It actually defines the scope of the patent protection that we are trying to obtain in this filing.

Armstrong: Who are we waiting for, Eliot?

Becker: I ~~think~~believe so.

Bernstein: Yeah I'm up front. We're waiting for Brian again.

Becker: Let me know when you're ready.

Bernstein: Okay, Steve, Brian stepped out for a minute, but I still want to address this issue. We invent something. I hire a mathematician. The mathematician solves the X, Y, and Z of the invention. Does he claim a new patent for himself?

Becker: Probably not. [Inventorship] typically follows with the conception of invention. If somebody else figures out how it was done, generally speaking that would.

Bernstein: Well, I want to be very ~~clear~~clear on this because Doug's thinking...I don't even know if then the next statement is correct or incorrect, but if a macro was created using the math that comes from the invention, where does it follow? Brian, I just asked him, if I hired a mathematician to do the math, put all of this into a thing, where does this follow. He says the invention, the inventor, etc. The guy you hired to do math wouldn't claim a new patent or a new invention, which is confusing to me because Doug now, as of this morning, told me that you're planning on filing a separate patent as inventor of a macro that just spawns off the math entitled to this invention. So I'm confused, and I want to be very specific on this of what our strategy is here on all of these peripheral pieces.

<End Side 1; begin Side 2>

Bernstein: Why don't you explain that to me again.

Becker: Can we go ahead with describing the claims?

Bernstein: Well, do you want to just finish that real quick, and then we'll go right back to the claims?

Becker: Okay, now what was the question you posed me, Eliot?

Bernstein: I hired a mathematician to solve for what I did. He comes up with an equation. Where does that equation belong? Does it belong filed as another patent? What's the inventorship, so to speak? And then, I design from that math a macro that solves that math with input formula. How should we be protecting that the whole way through, because I seem to be very confused about what I'm being told each day.

S. Bernstein: Okay, let him answer the question.

Becker: Inventorship follows whoever conceived the invention as claimed, and that's why the claim is so important because when you set forth in your claim what it exactly is that you're claiming, you have to ask who conceived of that idea—who was the first one to come up with it. So, typically if somebody really reduces your idea to equations that describe why it works or how it works, typically they would not be named as a co-inventor because they really didn't invent the idea. Now if you wanted to claim a macro which has user-input displays for receiving certain data that can be used by, say, a technician to determine the scan density of a print film image that would allow for the desired enlargement ratios and the desired target image size, that kind of is a separate idea, and that's why we thought it would be useful to claim that as a tool as well.

Bernstein: Okay, and I understand that part. I don't mind claiming that all day long.

Becker: Brian really was the one that built that and came up with it. It's based on principles that you learned, you know, a few years ago that maybe you didn't understand the math behind them, but certainly, I would think, be named an inventor on that.

Utley: I think that would probably claim both Eliot and myself as it relates to both aspects.

Becker: Right. But the important thing with the patent office is that it is...the patent office realizes that it is a bit of a grey issue in terms of who conceived what, so the important thing is not to have any deceptive intent.

~~S. Bernstein~~Armstrong: I think the most important thing is the distinction between inventorship and ownership. As I understand, all of this, every one of the patents that we have filed, all rights, title, and interests are iviewit's, regardless of who the author/inventor is; and any revenue stream derived therefrom are iviewit's, and that's the important thing. Is that true, despite and in light of the [\_\_]?

S. Bernstein: Well Jim that's May very next question

Armstrong: 7 because we could put anybody as an inventor; but as long as that doesn't entitle them to a disproportionate share of any revenues derived therefrom, then I don't care.

Becker: Yeah, inventorship or ownership initially vests in the inventor or inventors who are named in the application; but typically, inventors are under some obligation to assign to a corporate entity, either written or by cause of their employment—and you can get into the issues of shop right...you know, if somebody invented something on the corporate time and then went and...you know, it wasn't really part of his job description, I know this issue's going to be a little more tricky. But I think in this case...what we do typically as a practice to confirm ownership is to have the inventors sign a written assignment document over to whichever corporate entity they want to...

S. Bernstein: But haven't we followed that?

Becker: We've got those documents. I don't think we have them all signed and filed yet.

~~S. Bernstein~~Armstrong: Let's get them.

Utley: Well, Doug was doing that on Tuesday while he was here.

Becker: Okay. Did you do some signing of documents, Jim and Eliot?

Bernstein: Yeah. Right.

Becker: Okay, so that's in process.

Bernstein: Okay, and wasn't really the intent of my question. The intent of my question is to define, for my understanding, what should claim back to Ray [Joao's] patent, and that means that everything other than a macro shell should define back to the original patent and be filed, corrected, amended, however we get it in to the original patent documents since none of it's

new matter, it's just an explanation mathematically on every equation of what happens.

S. Bernstein: That's what I heard at the meeting.

Bernstein: And that is exactly what I've heard, repeated; and then this morning, it was completely opposite, and yesterday it was a little opposite—a little—and, you know, I've become very confused about which strategy we're taking, which road, because we decide something, and then it's changed, and we're doing something else, and I'm completely lost.

Becker: I think I can make this very clear for you if you'll give me an opportunity.

Bernstein: I will.

Becker: Let's take a look at claim one. Claim one states that what you're claiming is a method of providing a digital image file for viewing on a user display in a viewing window that has a predetermined size, and the method includes one step. The step is, very broadly stated—so bear with me here—providing a digital image file having a image size comprising a fixed number of pixels representative of an image wherein that image size is greater than that of the viewing window size. Now the broad concept that we're trying to claim here is being the first ones to provide a digital image file that has more data than is needed for the window size. And why are we trying to claim that? Because that allows you to zoom into the image without pixelation, and it allows you to pan around the image to corners that maybe are not shown in the original viewing window. Does everybody understand that?

Ullery S. Bernstein: I think so.

Armstrong: Yes.

S. Bernstein: I think we're on the same line.

Becker: Okay. So now the question becomes: Did we support that claim with relevant descriptions in the specifications. And what's our standard? Our standard is that we have to provide enough disclosure in the specifications to enable somebody to make and use that invention as claimed. This person needs to be somebody of ordinary skill in the art—in other words, somebody who can read this document and maybe has some technical background in imaging or image processing, for example, and can read what we've put in our document and can perform our methods claimed. Okay? Everyone with me so far?

Bernstein: Um, hm.

Becker: So we look back into the document that was filed on Wednesday and we say to ourselves, "Did we provide enough information in that document to allow somebody to teach somebody how to make and use a digital image file that has an image size greater than the viewing window size?" And one might argue that stating the solution in itself almost provides enough information to one of ordinary skill in the art to actually reduce this to practice and to make and use one. However, we've provided not only a description of several different ways of doing it, but also some examples, including math, that should make it abundantly clear to one of ordinary skill in the art how to do it. The test is whether it would require undue experimentation on the part of this fictitious person of ordinary skill in the art to make and use a digital image file having these characteristics. So the question you need to ask yourself with respect to this application is: "Okay, maybe there was an error or two in how it was expressed in examples or the number of pixels counted or division here or subtraction there, but was there enough in there to enable somebody, based on those teachings alone and, of course, their background, to make and use an image file having those characteristics?"

Ullery S. Bernstein: Okay.

Becker: And I think, based on a reading of it and based on what Jim just walked me through in these corrections that need to be made, that there probably was enough

in there. That there probably is. I mean, we've described in several different ways how to do it with print film images or with digital images. We described in generally, and then we went and described it specifically.

S. Bernstein: Okay. Can I ask you a question?

Bernstein: Wait, Dad, because that still doesn't answer my question. That answers this issue here.

S. Bernstein: Let him finish with it.

Bernstein: Okay. Are you going to take this back to Ray's original filing on our...

Becker: Let me do that next, okay? Now, with respect to Ray's original filing on August 2<sup>nd</sup> of last year, we asked the exact same inquiry when we review the specification that we filed on Wednesday: Did Ray's filing back on August 2<sup>nd</sup> of 1999 provide enough disclosure and enough teaching to enable one of ordinary skill in the art to make this file?

Bernstein: And we have a lot of disputes on that because it doesn't even cover zooming.

Becker: Right, but what it does describe, if I recall correctly, is it does describe that you want to enlarge a print film image to a certain size and then scan it at a high density. Now it doesn't tell what density, it doesn't give a number of pixels, ....

Bernstein: It doesn't talk about zooming in on the image.

Becker: It doesn't tell the number of pixels, but it does show one way of doing it with a print film image. It doesn't talk about digital images...doing it specifically with digital images. It may refer to it generally, I don't know. But that is the inquiry.

~~S. Bernstein~~Armstrong: If I hear you correctly, it is less important in the claim to say anything relative to zooming was in the claim to illustrate or to claim that the target image size is larger than the viewing image window because that is, in itself, your ability to have the zoom capability.

Becker: You're right. You can claim it all different kinds of ways. This was one way that we worked out in conjunction with Eliot and Brian two weeks ago. This is one of the ways we worked out claiming the invention.

~~S. Bernstein~~Armstrong: Because ultimately zooming is simply a feature of the invention.

Bernstein: Okay, hold on one second. Steve?

Becker: Yeah.

Bernstein: When I look at Ray's claim one, "What is claimed: An apparatus for producing a digital image comprising a device for generating a digital signal file from a print film image and a processor for processing said digital signal file and for generating an image file wherein said processor generates a first signal file from said digital signal file, and further wherein said processor processes said first signal file and generates set image file."

Becker: Okay.

Bernstein: Okay, we all agreed that that is completely insane...to describe anything about our invention...whatever.

Becker: I know it's all completely insane; but I think that with the claim that we drafted, ...

Bernstein: Yeah, he missed the point.

Becker: Okay.

Bernstein: Well, then, the claim we drafted, this was my question. It should be right here, in this claim, in the patent he filed to date back as far as I can to protect our dates, should be changed to the claim we just created.

Becker: Oh, no, this application died on Wednesday, and it doesn't proceed to a patent. A provisional application...

Bernstein: No, no, this isn't provisional. This is a filed patent. I'm ~~dealing~~ dealing with ~~one~~

Utley: This is the one that was filed March 24<sup>th</sup>.

Becker: Oh, okay.

Bernstein: By Ray [Joac].

Utley: So this was the PCT filing on March 24<sup>th</sup>.

Becker: Okay, thanks.

Bernstein: And my question is shouldn't the claims in this patent we just filed be exactly, if not identical, to the one...or should they be transposed to Ray [Joac's]? And it was my understanding from Doug that for speed and if the patent gets through, etc., that we would rather have it be based on that first patent filing.

Becker: That could be a recommended course of action.

Bernstein: And this is going to get dejected.

Utley: What we discussed on Tuesday...no, on Monday afternoon, was that uh one of our action items was to go back and review the uh March 24<sup>th</sup> filing and decide exactly how we were going to integrate into that filing the uh the uh claims that are that should be in there vis-á-vis the specification.

Becker: Okay.

Utley: That was one of the action items that we uh uh covered on Monday afternoon.

Bernstein: And now my question further goes to say that once we amend the claims, is there any way to amend the body?

Becker: No.

Bernstein: Even if we're not adding new subject matter?

Becker: You can amend the body if you don't add new subject matter.

Bernstein: Okay, so we can fix Ray's mess.

Becker: You can't add what we added in this application.

Bernstein: Which part? The math is just a description of the old matter, so therefore we should be able to add it.

Becker: It's not supported. It's not suggested in the prior applications.

Bernstein: Oh, it's all suggested because by the nature of the invention it's suggested.

Becker: I think the patent office will never allow us to add all of that matter into the application.

Bernstein: Okay, but we should add as much matter as we feel comfortable with to buff up Ray's original filing.

Becker: Sometimes if you change a word or a sentence in a specification...

Bernstein: Yeah?

Becker: The examiner will outright reject it for new matter.

Bernstein: Well, who cares? He's going to reject this for insanity in the first place. I mean, he's going to reject this for "what did you patent? Nothing?"

S. Bernstein: If I'm hearing Steve right, there's very little we can do to change the language and content of that particular patent...

Bernstein: No, you're not hearing him right because he just said you could change all of the claims whenever you want as long as the examiner hasn't approved them. And right now before the examiner starts approving...looking at this and saying it's nonsense, I'd rather get the right stuff in there. Now, we can get most of this stuff in there, albeit I'm going to need good argumentation as to why we can't get it all in there.

~~S. Bernstein~~ Armstrong: Steve, is that correct?

Becker: We can change the scope of the claims of the prior application...I mean, that's a good action item, a good thing to do. You know, as I mentioned, it's unlikely we'll be able to change the specification substantially; and if we don't quite...

Bernstein: Well, we should throw in the word "zoom" if we can.

Becker: At some point it becomes a question of language and what language you've used. If we come in and start saying, "Well, what we really were talking about is zoom and pan," Yeah, it's possible we could get some of those arguments through the examiner, but...

Bernstein: Well, we sure as shit should try.

~~Uteley~~ Bernstein Well, it looks like Ray took all of this out of here.

Becker: It's not as critical as getting one good filing on like we did on Wednesday.

~~S. Bernstein~~ Armstrong: Yeah, but the date's what's important.

Bernstein: Right.

~~S. Bernstein~~ Armstrong: If this March one...we have one good filing, but it's dated August 2<sup>nd</sup>. That's the difference.

Becker: But it claims priority back to...

Bernstein: The original provisional.

Becker: The original provisional, which is before this date, again to the extent that it's...

Bernstein: Right, and that's the strategy I have been hearing is the correct approach here, is that we should be cleaning up Ray's filed patent as best as we can without adding subject matter--and I don't think we really have any new subject matter other than a macro shell to re-widget our math, which is okay, we'll leave that out. But I definitely want the underlying math, because that's just not new subject matter, that's just old subject matter defined, and try to get as much of this in that examiner's hands as fast as we can because that is our first patent and we'd like it to approve. And then you know what? Leave the macro in this one, and then you've got a reason that you've got new matter in this one that doesn't conflict with your old matter. I mean, the math, I sat through with Doug, went through this with Chris Wheeler, my father, I heard all of those things, and then I'm hearing that that's not our strategy. So I just want to be very specific on this so that we get that completed in time. I know there are issues to timing, etc., that we don't want to ~~wastewait~~.

Now, I'm also confused of how we particularly predicted our date as well on when this was first exhibited. According to my last notes of when you guys were down here originally, we kind of went through a timeline; and that timeline has now been changed to September, when, in fact, we felt it was more like April or something as the first commercial advantage. Now Doug's talking to me about September dates, and I can list you fifty things that occur before then that will be detrimental. As a matter of fact, the first one really being something like 8/10, which only gives us six days, if my numbers are correct. We signed a license contract with

[Centrec? Centrack?] to use and distribute your product. So that's well before 9/1; and these are some real critical things that depend on that date, if I'm not mistaken.

Utley: What contract?

Bernstein: [Centrec? Centrack?]. The license agreement was signed on 8/10.

Utley: The only thing we signed was a demo.

Bernstein: A demo license, yeah. Well, you were putting it up to commercialize on their site-- on a public site.

Utley: But there was no charge.

Bernstein: But it's not a question of charge, according to Doug. Correct, Steve?

Becker: I need to have some facts.

Bernstein: Okay. We signed a demo to put up on a company's Web site, and we did, our materials for public viewing so that they could identify customer response.

Becker: Oh. When was this?

Bernstein: 8/10.

Becker: Okay.

Bernstein: Now, there were conversations prior to that.

Becker: Well, the upside is that we've got an application on file as of this past Wednesday.

Bernstein: Well, what about changes?

~~S. Bernstein~~Armstrong: We have to deal with that one year of commercialization.

Bernstein: If we're not wrong, and I hate to preach to a lawyer, but that seems to be my understanding. So I'd like to get what is claimed in this one into Ray [Joao's] immediately, if not, somehow sooner.

Armstrong: Well, hold on, let him answer the question about commercialization. Would that be considered the first date of commercialization or a date of commercialization if there's one prior to it?

Bernstein: There's not, but...

Becker: Again, we have to start with the claimed invention...

Armstrong: This was ~~+~~zoom & pan imagery that we did for him.

Becker: Okay. And the inquiry is whether or not...

Bernstein: No, it's video, too, B, that we did.

Armstrong: There was video, too?

Bernstein: Sure.

Becker: The inquiry was whether or not the claimed invention was on sale more than one year before the filing date of the application.

Utley: This was a test program to determine feasibility.

Becker: That actually works in our favor. The laws recognize sort of experimental use as sort of being a mitigating factor in some types of public disclosure. Typically if it's a commercialization use, or to test the commercialization of the invention, they're less likely to find it to be...

Bernstein: Well, then, that's definitely what it was.

Becker: ...commercial use.

Utley: Is there any difference, Steve, between...we signed an agreement to do that.

Becker: Okay.

Utley: There was no public visibility for another month. So which date will be the reference date?

Becker: Would you call that a sale, that agreement?

Utley: No.

Becker: Okay.

Armstrong: Were we ever paid anything by [Centrec? Centrack?]?

Bernstein: No.

Utley: No.

Armstrong: Never.

Becker: Okay, that certainly works in our favor if it wasn't an actual sale of your product. In that case, you look more at the public disclosure date.

Bernstein: Well, that was the public disclosure date.

Utley: No, that was September.

Bernstein: No, it was this date because...well, whenever you put it up on the site publicly.

Becker: When did you put it up on the site publicly?

Utley: It was in September. It took us awhile to get there.

Becker: Okay. No problem, then, right?

Bernstein: If that's...I'm hanging my hat on a lot of things right there.

Utley: If that's the date of reference...

Bernstein: You know, I want to beat the 8/10 day of signing a license agreement because I don't know how that's going to be construed in court, nor do I care, when I can beat it right now.

Becker: Let me ask the question again, Eliot, do you think that the application that we filed on Wednesday does not provide enough information to enable somebody of ordinary skill in the art to practice or to make and use what we claim in claim one?

Armstrong: I could argue it doesn't.

Becker: Go ahead.

Armstrong: I might just simply because the actual deployment of it...or employment of it...does require the correct execution of those formulas; and other than one particular error that is very, very difficult to understand unless you have been part of one of these conversations about the formulas. I mean, that you have to reverse-engineer the formulas to find out that the square root in that definition is missing, otherwise you'll end up with target image areas of an enormous size and be totally lost. You'll end up just having a goofy result. I mean, I think it could be argued, that you need to be able to apply the math to create the image. It could be argued that you can conceptually create what it is that we are conceptually defining, but it's more difficult to do that without a precise understanding of the relationship of targets of subject images and viewing windows.

Becker: Well, let me turn it against you, Jim. That's a good analysis. I think it's interesting, but let me turn it against you and say if that's true, then our August 2, 1999, filing doesn't provide enough disclosure to enable one of ordinary skill in the art to make this claim.

Bernstein: On Ray [Joa's]?

Becker: ~~Correct~~Right, what he...

Bernstein: Yeah, that's why we want to change it before August 10<sup>th</sup>.

Armstrong: You said the August 2<sup>nd</sup> filing. This is the one we just did.

Bernstein: No, the March 3<sup>rd</sup> filing you mean.

Utley: March 24<sup>th</sup>.

Bernstein: March 24<sup>th</sup>, whatever.

Becker: Well, I guess I'm going as early as I can, which is why we tried to file on Wednesday...which is why we filed on Wednesday, so we could get the priority on the provisional application which, if I recall, read very much like the March 2000 application.

~~S. Bernstein~~Armstrong: The one you're referring to is the original provisional from August of 1999.

Becker: Yeah.

~~S. Bernstein~~Armstrong: Saying that if my argument holds, we have nothing of solid validity in that particular document.

Becker: No, what I'm telling you is that that document won't provide priority to this claim. In other words, our priority date will be Wednesday of this year, not Wednesday of last year...or not...

S. Bernstein: Because that provisional didn't provide somebody with ordinary skill in the art the ability to replicate what we did?

Becker: That's exactly right.

~~Bernstein~~Utley: March 24<sup>th</sup>

~~Bernstein~~...isn't that the one we're looking for?

Utley: March 24<sup>th</sup>?

Bernstein: Oh, no, that's the...

Utley: We're looking for the August one.

Bernstein: No, I'm looking for the provisional this claims to.  
<Two separate conversations going on at once; difficult to hear and follow...>

Becker: Let me ask you this...

S. Bernstein: Then that's to say--and maybe I'll question my own logic now--is it enough to say that somebody understands that in the viewing window that you create zoom and then create [ ] ability?

Becker: As long as we just...

Armstrong: That optimized the particular...

~~S. Bernstein~~Armstrong: And all we did was help to clarify...

Becker: I think that's pretty convincing. You know, you don't have to enable all the ways of doing it; you just have to enable essentially one way of doing it.

Bernstein: Okay. Despite all of this, I still want a firm yes or no.

Becker: I think was actually critically really finally getting to the issue.

Bernstein: No, yeah, we are.

Becker: Away from the rhetoric of accusations and...

Bernstein: Okay, okay, right, but...

Becker: And fear-mongering and calling the investors. I think we've gotten to...

Bernstein: Well, I mean, we've got to deal with things. These are real fears meaning we definitely have real issues. But looking beyond that, which is fine, I've got still an unanswered question: Does Ray [Joao's] set of claims change tomorrow, Monday, whatever, so that we can protect ourselves? Now you've agreed that's a good strategy, Doug's agreed that's a good strategy, but yet I hear no execution strategy, and that's what I want to make 100% sure that I can get as much of what we've discovered into Ray's incompetent work, and I will call it that, as possible. And your work is far more superior. These are some issues, but, you know, there's issues...it's a large thing to grasp, and we'll get through it. But I want to change what Ray [Joao's] done, and that was my understanding that we're going to take the claims that we've discovered in this application you just filed and put them into that one, and that the worst that's going to happen is that the examiner will approve the earlier one of Ray and yours will fall away, the second one.

Armstrong: Did somebody just join this call?

Bernstein: No.

Armstrong: Did you hear that beep, beep, beep?

Becker: I did. I don't know if anyone has joined.

Bernstein: Si? Si?

Armstrong: Maybe he got off.

Bernstein: Yeah.

Armstrong: Okay.

Becker: Well, let's do this, Eliot. Let's say that...I know you are concerned about the August 10<sup>th</sup> date, why don't we say that we will make some amendments to the claims in the prior filings you're referring to, and we'll clean that up as best we can and make sure that we have the claim amendments...

Bernstein: <Aside to Utley> This is the one we filed?

Utley: <To Bernstein> That's the provisional.

Bernstein: <To Utley> That's the provisional?

Utley: <To Bernstein> Right.

Armstrong: What about correcting the math in the one from two days ago?

Becker: Yeah, then again, I don't know what was filed; and again it appears...I really need to consult with Doug on that.

Armstrong: Yeah, but if we're of understanding what we talked about today is what he filed, and I believe that's it, then what do we do to correct that? We should probably correct that by the 10<sup>th</sup> as well.

Becker: Okay. Right. That actually was more important with the 8/10 date because these changes are considered to be better, then we need to get a filing out by that date.

Armstrong: Okay.

Bernstein: And Steve, just to remind you on this point, I still definitely for a comfort level and to keep accusations at bay, just a letter of what's occurred, what my risks are, and what our strategies for execution are on this filing relating to as well fixing this one as well as relating it to Ray [Joao's]. If you could write that clearly to us, that gives us a lot of comfort level.

Becker: All right. Hopefully what I explained today about priority will help.

Bernstein: Well, this gives it the final touch of you can rest assured, I've got it in writing. That's what I need to comfort me that I've got a strategy, that everybody's on the same page, so to speak, so that page doesn't shift, so that we don't get off that strategy and we all stay focused on that one sheet. So that would be critical. And what is our next due date? Is that on the 10<sup>th</sup> or the 8<sup>th</sup> or something, or am I missing...

Utley: Well, the only reason the 10<sup>th</sup> has any potential bearing is because that's when the test license...

Bernstein: I'd like to beat that here, on this claim, because if we can beat the 10<sup>th</sup> here on Ray [Joao's] filing, that's what we need to do there, right?

~~Becker~~Armstrong: That's actually not an important date for Ray [Joao's] filing.

Bernstein: Yes, it is.

~~Becker~~Armstrong: An important date for the filing that we did a few [weeks? days?] ago.

Bernstein: No, no, it's the same date. Commercialization is commercialization, and how it relates is the same here to us.

~~Becker~~Armstrong: Okay.

Bernstein: You know what I mean?

Becker: Yeah, I guess I do.

Armstrong: I'll make just one other general comment, Steve. Everyone else knows this, but you don't. I was just brought into this process Tuesday as the first time I've ever reviewed any patents. I've held them for Eliot in the past but never reviewed them; and was probably surprised with what I found was that it was an extremely important and at least, to my understanding, we had very little time to get it right, and we're now paying the price, of course. To the extent that that can be avoided in the future through careful planning, updates, and contingencies, I suggest we have a plan for that.

Becker: Yep.

Armstrong: So. Just an overall comment.

Becker: That's a good comment. I think it's important to get things done as early as possible, and we certainly have tried to do that throughout the process.

Bernstein: Steve, can you do me one last favor?

Becker: Yes?

Bernstein: Shoot over to Jim the three video patents we filed. He's signed a disclosure on it—the one you gave us—encompassing him for all patents.

Becker: All right. Jim, what's your role?

Armstrong: I'm the Director of Sales and Marketing.

Bernstein: But he's also a shareholder.

Becker: Okay.

Armstrong: I've been with this since before anybody else.

Becker: I see.

Armstrong: It was just basically me and Eliot and Guy before anybody else started, but I've never been involved in the patent review.

Becker: Now you want me to send a copy of the filings...the video filings?

Bernstein: Yeah. Can you just fax them to him?

Becker: Sure. Let me make sure I've got this right. Okay. We've got three...no, five applications, about 100 pages. Is that fine?

Armstrong: Yes.

Bernstein: We have four. Sorry.

Armstrong: Are they emailable, or no?

Becker: Yeah, they are emailable.

Armstrong: Let's do that instead.

Becker: But then you don't have the figures. We can email....

Armstrong: Email those, and then just fax the figures?

Becker: Yeah.

Armstrong: Okay, cool. The fax number is 732-747-5569. Email is [jim@iviewit.com](mailto:jim@iviewit.com).

Bernstein: And there's five video patents now. Correct, Steve?

Becker: I'm looking at my chart here: three US and three corresponding ECT [ ] applications that we wrote, and then there's a PCT video playback—that was the video playback invention—

Bernstein: Right.

Becker: And I think that's all.

Bernstein: Great. Let's get those out to Jim real quick. I'd like him reviewing those by the 8/10 date. Any changes, we're obviously going to try to revert to keep our 8/10 day as our commercialization day, giving us a little buffer if we're wrong.

Becker: All right.

Bernstein: You know what I mean? I mean because we don't know how people will interpret in the end what [Centrec? Centrack?] was, but to beat it would definitely give us a greater argument.

Becker: Yep.

Bernstein: So, all right, we'll pick this up...you're going to make those changes on this patent, correct?

Becker: I'm going to wait until I speak with Doug.

Bernstein: Okay, great.

Becker: To find out what was actually filed, and then we'll decide how best to proceed with amending that.

Armstrong: Steve, one more clarification. Did you say we have or have not had successful closure on the signing over of inventors' patents to the company?

Becker: I can't speak to that; Doug is working on that.

Armstrong: Okay, will you put that in our list of things to do...or your strategy that that gets completed?

Becker: Yeah.

Bernstein: Yeah, and B, I just signed as well as Brian and Jude and everybody. It's a large, thick document, so Doug should have an update, Steve, as to what is exactly signed. I think it was everything, correct? And we've got everybody here.

Armstrong: I've got emails that indicate that that was all done nine months ago.

Bernstein: No, it was, B, but then we filed patents; and then we thought the past was done, and now these new ones had to be done, so he came here, there was notaries here...it was, you know, it was a lot, but let's get an update on it.

Armstrong: I just want to see it in writing

Utley: In addition to that, everyone has individually signed a separate agreement with the company, conveying assigning to the company any intellectual property that's created as a result of their employment.

Armstrong: That I know. The key inventions, I just want to see that they've signed over because that's the value of the company right there. That's what I own stock in.

Bernstein: Correct. Okay. So let's get an update, and I think we're pretty close.

Armstrong: Okay.

Becker: Eliot, why don't we go through the list of things that you've asked me to do so we can be perfectly clear on this?

Bernstein: Okay.

Becker: The first is to amend Ray's PCT application, at least the claims, so that we have a good filing there, at least based on whatever Ray has in his specification. That's task #1.

Bernstein: Claims plus any additional language that's not new matter.

Becker: All right.

Bernstein: Okay.

Becker: You want a letter describing the...what was omitted or what was incorrect in this application filed Wednesday and to what extent that may have any bearing on rights.

Bernstein: Correct.

Becker: And also a course of action we feel is necessary to file new applications to amend these, make these corrections, or if there's something we feel we can do in an amendment that would not introduce new matter.

Bernstein: And our strategy going forward on this. By the way, that would mean our strategy as well on the video, correct? Because if there needs to be changes and the date did stick at 8/10, we need to make any changes we find by 8/10, correct?

Becker: Only if the changes are so substantial that they would jeopardize the ability of one skilled in the art to understand.

Bernstein: Okay, so critical errors. Okay. If we find them.

Becker: And that's why I think, you know...and if you're describing in your specifications how to make one, how to do it, provide most of the details. I mean, we've done a very detailed job of ...

Bernstein: No, I agree. I'm not...I agree. I see all that here.

Becker: Any time whatever we can get out of you guys in terms of describing how it works...that, in there when you describe a claim and there's an error, you know, there's an error in the math, will that dramatically affect and make it so somebody can't practice the invention at all, I don't know.

Bernstein: Right. So if it's critical by 8/10, it should be resolved. Correct?

Becker: With the video application, it doesn't help for us to go back and look at those. You guys go back and look at those and see if there's anything in there that you don't like.

Bernstein: Right. And if we find something in the claim, for example, that we don't like, we need to amend it by 8/10, right?

Becker: No.

Bernstein: Why?

Becker: Because the claims have to be supported by the specification as filed back on those dates, which were sometime in June...

Bernstein: Okay, but let's say all that fits, we also have the commercialization date.

Becker: The commercialization date...

Utley: I though <inaudible comment to Bernstein>

Bernstein: So we can go change the claims.

Becker: Typically [ ] prosecutions, as long as they're still supported by the specifications filed...

Bernstein: Right. So if we find any mistakes, we should change them, correct? In the video patents?

Becker: Yeah, as a general principle, that's a good idea.

Bernstein: Okay, good. All right. I think that sums up what we need. Send the letter to Si, myself, and Brian.

Becker: That's not a complete list of what you asked for me to do.

Bernstein: What else have we got? Sorry?

Becker: You've asked me to email to Jim Armstrong the three video applications and the playback application--the one playback application--

Bernstein: Right.

Becker: Now with respect to the video application, we have both PCT and US filings. Do you want us to send both of those? They've essentially identical--in fact, they are identical except the...

Bernstein: No. Just one.

Utley: Send the US.

Becker: All right, we'll send the US versions of those two. And we'll fax the figures. And element #4...Item #4 is to provide a written letter to Jim Armstrong regarding the assignment status of...

Bernstein: Well, that's to everybody. That's to Brian, Si, myself, Jim.

Becker: Brian, Si, Eliot, and Jim.

Bernstein: Right. Just giving us the update of where we are.

Armstrong: I think it's helpful to communicate to the shareholders.

Bernstein: Well, let's get it first, then we'll communicate at discretion, but I think we're there.

Becker: Okay, then, in terms of general things going forward: Eliot needs to be cc:'d on all correspondence relating to patents. Should we continue our practice of sending things to Brian?

Bernstein: Yeah.

Becker: All right, we'll continue our practice of sending things to Brian and cc:ing Eliot with copies.

Bernstein: Right, and I'd appreciate if all that email comes to iviewit.com. Therefore, I have copied records.

Becker: Are you saying you only want us to correspond with you via email, not letters? Not...

Bernstein: No, but if it is emails, iviewit.com emails because that gives me complete copied records on tape backups.

Armstrong: ~~De~~—don't send anything to any of us at a domain name other than iviewit.com, if you send it in email. |

Becker: That's the instructions?

Bernstein: Right.

Armstrong: Correct.

Becker: Don't send to any other email address besides one of your names at iviewit.com.

Bernstein: Correct.

Becker: Okay. Anything else in addition to those items?

Bernstein: Nope. Steve, I appreciate your taking the blunt end of this, I really do.

Becker: Well, I just wish you would not...

Bernstein: Well, we freaked out a little bit. You can understand that there's a reason to freak...I'm not just making this up. So based on that, let's try to resolve and move forward. |

Becker: Anything else?

Bernstein: Nope. Thanks very much.

Q. Okay. Other than that, he never

109

represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

1 A. I think you asked me that yesterday. 193

2 Q. I hate to be repetitive, but I'm  
3 working from what I got.

4 A. Okay. That was, that should have  
5 been July of 1999.

6 Q. How about Jude Zach, was he one of  
7 the people involved with the development of the  
8 Iviewit technologies?

9 MR. BERNSTEIN: That's two people,  
10 Jude and Zach.

11 By MR. SELZ:

12 Q. I'm sorry, Jude and Zach?

13 A. That's what I was told.

14 Q. So, again, that's before your time  
15 at Iviewit?

16 A. Yes.

17 Q. How about Todd Kloslosy, I think  
18 K-I-O-S-I-O-S-Y, at Web Cast?

19 A. I don't recall anyone by the name of  
20 Todd at Web Cast.

21 MR. BERNSTEIN: Scott.

22 By MR. SELZ:

23 Q. Scott. It's hard with the speaker  
24 phone.

25 A. I'm sorry.

# INCIDENT/INVESTIGATION REPORT

I N C I D E N T D A T A	Agency Name <b>Boca Raton Police Department</b>		Case# <b>2001-054580</b>			
	ORI <b>0500200</b>		Date / Time Reported <b>06/20/2001 10:12 Wed</b>			
	Location of Incident <b>2255 W Glades Rd - STE 337 W, Boca Raton FL</b>		Premise Type <b>Commercial / Office</b>	Zone/Tract <b>41</b>	Last Known Secure <b>04/27/2001 10:12 Fri</b>	
			At Found <b>05/18/2001 10:12 Fri</b>			
	#1	Crime Incident(s) <b>Embezzlement EMB</b>	(Com)	Weapon / Tools <b>NONE/NOT APPLICABLE</b>	Activity	
		Entry	Exit	Security		
	#2	Crime Incident	( )	Weapon / Tools	Activity	
	Entry	Exit	Security			
	#3	Crime Incident	( )	Weapon / Tools	Activity	
	Entry	Exit	Security			
MO	Alarm/No Alarm, Method Of Entry/No Force, Object Of Entry/Office Equipment, Presence Of Victim/On Premises					
V I C T I M	# of Victims	Type: BUSINESS		Injury: 0	Domestic: N	
	VI	Victim/Business Name (Last, First, Middle) <b>VIEWIT.COM, INC.</b>		Victim of Crime # <b>1</b>	DOB Age	
				Race	Sex	
				Relationship To Offender <b>21</b>	Resident Status <b>Resident</b>	
				Military Branch/Status		
	Home Address <b>2255 W GLADES RD - 337W, Boca Raton, FL 33431-</b>			Home Phone <b>561-999-8899</b>		
	Employer Name/Address			Business Phone		
	VYR	Make	Model	Style	Color	
					Lic/Lis	
					VIN	
O T H E R S  I N V O L V E D	CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)					
	Type: INDIVIDUAL (NOT A LE OFFICER)					
	Code	Name (Last, First, Middle) <b>KASSER, WILLIAM</b>		Victim of Crime #	DOB Age	
	<b>CM</b>			<b>1</b>	<b>10/24/1947</b> <b>53</b>	
				Race <b>W</b>	Sex <b>M</b>	
				Relationship To Offender	Resident Status	
					Military Branch/Status	
		Home Address <b>991 Nw 9th St Boca Raton, FL 33486</b>			Home Phone <b>561-999-8899</b>	
		Employer Name/Address <b>Iviewit.com, Inc, 2255 W Glades Rd (CONTROLLER)</b>			Business Phone <b>561-999-8899</b>	
		Type: INDIVIDUAL (NOT A LE OFFICER)				
Code	Name (Last, First, Middle) <b>REALE, MICHAEL</b>		Victim of Crime #	DOB Age		
<b>SB</b>				<b>30</b>		
			Race <b>W</b>	Sex <b>M</b>		
			Relationship To Offender	Resident Status		
				Military Branch/Status		
	Home Address <b>5304 Ventura Dr Delray Beach, FL 33484</b>			Home Phone <b>561-499-8850</b>		
	Employer Name/Address			Business Phone		
P R O P E R T Y	1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)					
	VI #	Code	Status Fmt/To	Value	OJ	
		<b>OCE</b>	<b>S</b>	<b>\$40,000.00</b>		
					QTY	
					<b>2</b>	
					Property Description	
					<b>Computer Other</b>	
					Make/Model	
					<b>DELL</b>	
					Serial Number	
	Officer/ID# <b>ULLOA, J. (TRAF) (A351)</b>		Total Stolen Value: \$40,000.00			
	Invest ID# <b>MEYER, S. P. (ISD, ISD) (528)</b>		Supervisor <b>DIXON, C. (PATL, A2)</b>			
Status	Complainant Signature		Case Status <b>Exceptionally</b>	<b>08/10/2001</b>	Case Disposition: <b>Exceptionally Cleared</b>	
				<b>08/10/2001</b>	<b>Page 1</b>	

# Incident Report Additional Name List

Boca Raton Police Department

OCA: 2001-054580

## Additional Name List

NameCode/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) SB 2	UTLEY, BRIAN		10/27/1932	68	W	M
	Address 1930 Sw 8th St, Boca Raton, FL 33486-					H: 561-750-6876
	Empl/Addr					B: 561-289-8145



## REPORTING OFFICER NARRATIVE

Boca Raton Police Department

		OCA 2001-054580
Victim <i>IVIEWIT.COM, INC.</i>	Offense <i>EMBEZZLEMENT</i>	Date / Time Reported <i>Wed 06/20/2001 10:12</i>

ON 06-20-2001 I SPOKE WITH WILLIAM KASSER(CONTROLLER) OF IVIEWIT.COM BY TELEPHONE. KASSER STATED THAT ON 04-27-2001, THE EX-PRESIDENT(BRIAN UTLEY) AND THE V.P. OF OPERATIONS(MICHAEL REALE) FOR THEIR COMPANY, STOLE 2 DELL MODIFIED COMPUTER/ENCODING MACHINES(UNKNOWN MODEL & SERIAL #) THAT WERE VALUED AT \$40,000.00. THE COMPUTERS WERE NAMED "THE BOMBER" AND "THE NITRO".

KASSER ADVISED ME THAT THESE COMPUTERS WERE MODIFIED TO ENCODE VIDEOS AND HAD LARGER DISK DRIVES AND VIDEO ENCODING CARDS INSTALLED. THIS IS WHAT MADE THEM SO VALUABLE. THESE COMPUTERS GENERATED REVENUE FOR THE COMPANY.

KASSER ADVISED ME THAT THEIR COMPANY WAS CLOSING THEIR BOCA OFFICE AT 2255 W. GLADES ROAD AT THE END OF APRIL AND RELOCATING TO CALIFORNIA, AND UTLEY AND REALE WERE BEING TERMINATED AT THAT TIME. ON UTLEY'S LAST DAY, HE HAD ADVISED KASSER THAT HE WAS INTERESTED IN PURCHASING 2 STANDARD DESKTOP COMPUTERS FROM THEM FOR \$1,000.00 A PIECE. KASSER AGREED, UTLEY GAVE 2 SEPARATE CHECKS FOR \$1,000.00 A PIECE, AND AT THAT TIME ALL OF THE COMPUTERS WERE BEING BOXED UP TO BE RELOCATED TO CALIFORNIA.

KASSER STATED THAT REALE WAS SUPERVISING THE PACKING OF THE COMPUTERS AND KNEW EXACTLY WHAT CONTENTS WERE IN EACH BOX. ONCE THE BOXES WERE PACKED, REALE GAVE UTLEY THE OKAY TO TAKE 2 BOXES CONTAINING THE MOST VALUABLE COMPUTERS AND NOT THE BOXES WITH THE STANDARD COMPUTERS.

KASSER THEN STATED THAT HE HAD FOUND OUT APPROXIMATELY 3 WEEKS LATER, ONCE THE BOXES HAD ARRIVED IN CALIFORNIA, THAT THE MOST VALUABLE COMPUTERS WERE NOT DELIVERED. AT THAT TIME, KASSER THEN CONTACTED UTLEY AND UTLEY ADMITTED THAT HIMSELF AND REALE HAD TAKEN THE MOST VALUABLE COMPUTERS AND TOLD KASSER THAT THEY WERE ONLY WORTH \$1,000.00 A PIECE ANYWAY. UTLEY WAS ASKED TO RETURN THESE COMPUTERS AND TAKE THE CORRECT ONES AND HE REFUSED.

I THEN SPOKE WITH ROSS MILLER, WHO IS THE COMPANIES ATTORNEY, WHO ADVISED ME THAT REALE WAS IN CHARGE OF PACKAGING EACH COMPUTER AND WRONGFULLY AND INTENTIONALLY LET UTLEY TAKE THE MOST VALUABLE COMPUTERS, WITHOUT CONSENT FROM ANYONE ELSE IN THE COMPANY. ROSS ALSO CONFIRMED ALL OF THE ABOVE INFORMATION GIVEN BY KASSER. ROSS ADVISED ME THAT HE HAD BEEN TOLD BY SEVERAL 3RD PARTIES THAT REALE AND UTLEY ADMITTED TO HAVING THE ABOVE STATED EQUIPMENT AND ASKED 3RD PARTIES FOR ASSISTANCE IN OPERATING IT. ROSS HAS A SUSPICION THAT THE EQUIPMENT MAY BE USED TO START A BUSINESS FOR REALE AND UTLEY.

ON 06-20-2001 AT 12:28 HOURS, I CONTACTED UTLEY AT 561-750-6876, WHO ADVISED ME THAT HE DID HAVE THE EQUIPMENT, BUT ADVISED THAT THE DEAL WAS STRAIGHT FORWARD AND HE POINTED OUT TO KASSER EXACTLY WHAT COMPUTERS HE WOULD BE TAKING AND ALL WAS AGREED ON. UTLEY ADVISED THAT HE PAID \$1,000.00 PER COMPUTER AND THAT IT WAS A GENEROUS OFFER . UTLEY BELIEVES THAT KASSER MUST HAVE DECIDED AFTER THE FACT THAT HE DID NOT RECEIVE ENOUGH MONEY FOR THESE COMPUTERS AND IS EXAGGERATING ABOUT THEIR \$40,000.00 VALUE.

ON 06-20-2001 AT 13:00 HOURS, I SPOKE WITH REALE AT 561-499-8850, WHO ADVISED ME THAT HE DID NOT HAVE ANY INVOLVEMENT IN ANY COMPUTER THEFT. REALE ADVISED

**REPORTING OFFICER NARRATIVE**

*Boca Raton Police Department*

Victim <i>IVIEWIT.COM, INC.</i>	Offense <i>EMBEZZLEMENT</i>	OCA <i>2001-054580</i>
		Date / Time Reported <i>Wed 06/20/2001 10:12</i>

ME THAT UTLEY HAD POINTED OUT THE COMPUTERS THAT HE WAS GOING TO PURCHASE FOR \$1,000.00 EACH AND THAT IS WHAT WAS TAKEN WHEN THEY LEFT THE COMPANY. REALE STATED THAT PAYING \$1,000.00 FOR EACH OF THE COMPUTERS THAT THEY TOOK WAS A VERY GENEROUS OFFER, DUE TO THEIR AGE AND VINTAGE. REALE STATED THAT THE COMPUTERS HAD STANDARD HARDWARE, SO THE VALUE THAT WAS GIVEN BY KASSER WAS WAY ABOVE IT'S FAIR MARKET VALUE. REALE STATED THAT HE HAS MANY YEARS OF EXPERIENCE WITH COMPUTERS AND KNOWS WHAT THEY ARE WORTH. REALE FEELS THAT KASSER'S COMPLAINT IS MOTIVATED BY EMOTIONS AND NOT MONEY.

I ADVISED THE COMPLAINANT TO CONTACT THE P.D. IF THERE IS ANY ADDITIONAL INFORMATION, AND I WAS ASKED BY KASSER TO PLEASE HAVE SOMEONE CONTACT HIM REGARDING AN INVESTIGATION INTO THIS MATTER.

## Incident Report Suspect List

Boca Raton Police Department

OCA: 2001-054580

<b>1</b>	Name (Last, First, Middle) <i>Utley, Brian</i>				Also Known As				Home Address <i>1930 SW 8TH ST BOCA RATON, FL 33486 561-750-6876</i>			
	Business Address <i>561-289-8145</i>											
DOB.	Age	Race	Sex	Hgt	Wgt	Hair	Eye	Scars, Marks, Tattoos, or other distinguishing features				
<i>10/27/1932</i>	<i>68</i>	<i>W</i>	<i>M</i>									
<i>Reported Suspect Detail</i>				Suspect Age	Race	Sex	Height	Weight	SSN			
									<i>528-40-3812</i>			
Weapon, Type	Feature	Make	Model		Color	Caliber	Dir of Travel		Mode of Travel			
Veh Yr/Make/Model		Drs	Style		Color	Lic/St		VIN				
Notes						Physical Char						

**CASE SUPPLEMENTAL REPORT**  
*NOT SUPERVISOR APPROVED*

Printed: 02/27/2002 10:35

Boca Raton Police Department

OCA: **2001054580**

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Case Status: *Exceptionally Cleared*

Offense: *EMBEZZLEMENT*

Case Mng Status: *Exceptionally Cleared*

Occured: *04/27/2001*

Investigator: *MEYER, S. P. (528)*

Date / Time: *08/08/2001 16:17:26, Wednesday*

Supervisor: *(0)*

Supervisor Review Date / Time: *NOT REVIEWED*

Contact:

Reference: *Follow Up*

---

06/26/2001 at 14:00 hours I spoke to William Kasser concerning the theft of computers from Ivewit.Com. William Kasser, who is the Controller for Ivewit.Com, verified that all of the information on the original report was accurate. Kasser advised that the Ex-President of the Boca branch of Ivewit.Com, Brian Utley, stole two Hi-tech computers from the Company after he was terminated from his position.

Kasser found out that the hi-tech computers, the "Nitro" and the "Bomber", were missing when he received a phone call from Eliot Bernstien in California. Kasser was told later by Michael Reale that Brian Utley had the Bomber and the Nitro. Kasser feels that Reale assisted Utley in stealing the computers from the Company when he was packaging the computers.

When Kasser called Utley Kasser asked Utley if he had the bomber and the Nitro. Utley told Kasser that he had the Nitro and Bomber and that he legally purchased the computers from the company for \$1000.00 each. Kasser was present when Utley asked Ross Miller if he could purchase two of the computers from the Company for \$1,000.00 each. Kasser told Utley that the deal was for two of the generic computers, not the Nitro and the Bomber. Kasser told me that Utley knew that the Nitro and the Bomber were worth \$40,000.00. Utley told Kasser that he was not going to return the computers to the Company.

06/27/2001 at 10:30 hours I went to Ivewit.Com and I spoke to Ross Miller concerning this case. According to Miller, Utley approached him on May 3rd while Utley was cleaning out his office. Utley asked Miller if he could purchase his desktop computer and another generic computer from the business. Miller pointed to the generic computers in the general office area and he stated, "your computer and one of those computers". Utley confirmed that he wanted to purchase his office computer and one of the computers Miller was pointing to.

Miller told me that there was no way that Utley could have confused the Bomber and Nitro for two of the generic computers. First of all, the generic computers were still not boxed and sitting on the desks in the general area of the business. The Bomber and Nitro were already boxed and sitting in the hi-tech room, which is separate from the general office area. Second of all, Utley knows that the Bomber and the Nitro are the two most hi-tech computers in the business. Being President of the Company Utley knew that the computers were worth \$40,000.00. Even if Utley grabbed the wrong computers from the Company he was well aware of what he had when he opened the boxes.

06/29/2001 at 11:30 A.M. Detective Ganci and I drove to Utley's house, which is located at 1930 SW 8th Street in Boca Raton. According to Utley he had possession of the Nitro and the Bomber. Utley told me that he purchased the computers from Ross Miller for \$1,000.00 each. Utley told me that the Nitro and the Bomber were only worth \$1,000.00 each. Utley told me that the software on the Bomber and the Nitro was outdated and no longer worth \$40,000.00. Utley told me that the software on the computer might have been worth \$40,000.00 at one point.

When I asked Utley where the computers were he told me that they were out of the state. Utley then stated, "if the Company gives me \$40,000.00 for the computers I will subtract that from the lawsuit I am filing against them". I told Utley that I would be filing charges against him for grand theft if he did not return the computers to Miller or Kasser. Utley told me that he would speak to his lawyer and then called me with his decision.

**CASE SUPPLEMENTAL REPORT**

Printed: 02/27/2002 10:35

*NOT SUPERVISOR APPROVED**Boca Raton Police Department*OCA: **2001054580**

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *Exceptionally Cleared*Offense: *EMBEZZLEMENT*Case Mng Status: *Exceptionally Cleared*Occured: *04/27/2001*

07/02/2001 at 08:30 hours I called Utley's Attorney, Bart Houston, after hearing a message on my answering machine from Houston. Houston told me that Utley agreed to return the Bomber and Nitro to Ivewit.Com. Arrangements were made to have Utley bring the computers to the Police Department and give them to William Kasser on 07/13/2001 at 09:30 hours.

07/02/2001 09:45 hours I advised Kasser to come to the Police Department on 07/13/2001 at 09:30 hours to receive the computers from Utley.

07/13/2001 at 09:30 hours I met Kasser and Utley and at the Police Department for the return of the computers. Kasser handed Utley a check for \$2,000.00 and Utley gave Kasser the Bomber and the Nitro. When Utley returned the computers he did not return the monitors. Utley agreed to send Kasser a check for \$200.00 in the mail for the computer monitors.

Because Utley returned the computers Kasser told me that his Company no longer wanted to press charges against Utley for the theft of the computers. Kasser signed a refusal to prosecute form, which was turned in with the file. Written statements from Kasser and Miller were put into evidence at the Police Department.

**EXHIBITS “OTHER”**

DEPOSITIONS IN SEPARATE FILE ON CD DUE TO SIZE

USE THE BOOKMARKS FOR INDIVIDUAL DEPOSITIONS

WACHOVIA LETTERS

UTLEY EXHIBITS

# FOLEY & LARDNER

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WRITER'S DIRECT LINE  
(414) 297-5718

May 11, 2000

CONFIDENTIAL

Mr. Scott Bowman

Wachovia Bank

Re: Iviewit.com LLC Intellectual Property Portfolio  
Our Ref.: 57103/101

Dear Mr. Bowman:

Mr. Brian Utley of Iviewit.com requested that we provide you with information regarding the Intellectual Property matters of the company.

Foley & Lardner has just recently been retained to take over the patent matters from Iviewit.com's previous patent counsel. As discussed below, we have only had the opportunity to provide an initial review of the patent matters as we work toward the preparation and filing of additional patent applications in an effort to provide a comprehensive Intellectual Property position for Iviewit.com. Although we believe that the information and statements contained herein are factually accurate, they are not intended to be any type of representation or opinion as to the scope, strength, or value of Iviewit's Intellectual Property portfolio.

### *Technology Overview*

In our initial discussions with Iviewit, we concentrated our efforts on two primary inventive technologies: (1) Enhanced Digital Imaging Technique (a.k.a., "Zoom & Pan"); and (2) Enhanced Video Streaming Technique (a.k.a., "Full-Screen Full-Motion Video"). These two technologies are the subject of numerous patent applications (see below) already on file. Other inventions were also identified and discussed, but there was a greater need to study these first two because of the upcoming dates that must be met to file additional patent applications. We even identified inventive aspects of Iviewit's business technologies that may be appropriate for a "business method" patent. These other inventions will be fully investigated and evaluated in the next few months.

ESTABLISHED 1842

Mr. Scott Bowman  
 May 11, 2000  
 Page 2

*Patents*

Iviewit.com's previous patent counsel filed eight provisional patent applications in the United States Patent and Trademark Office, and one PCT International patent application in the World Intellectual Property Office.

As you may be aware, a U.S. provisional application for patent is a U.S. national patent application that provides the means to establish an early effective filing date and allows the term "Patent Pending" to be applied. However, a provisional application itself cannot issue into a patent having enforceable rights. A non-provisional application for patent must be filed within 12 months of the provisional application's filing date to claim the benefit of priority. Only the non-provisional application may issue into a patent having enforceable rights.

Provisional applications for patent are not examined on their merits, and there is no requirement to include patent claims in the application. Hence, a provisional patent application (1) provides simplified filing with a lower initial investment for one full year before committing to the higher cost of filing and prosecuting a non-provisional application for patent, (2) establishes an official United States patent application filing date for the invention (to the extent the invention is fully described in the provisional) such that patent rights are not lost, and (3) enables immediate commercial promotion of the invention with greater security against having the invention stolen. However, provisional U.S. patent applications remain confidential in the United States Patent and Trademark Office.

The following eight U.S. provisional applications have been filed for Iviewit:

<i>F&amp;L Docket No.</i>	<i>MLG Docket No.</i>	<i>Patent Appl. No.</i>	<i>Appl. Filing Date</i>	<i>Application Title</i>
57103/102	5865-1	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images
57103/103	5865-3	60/137,297	6/03/1999	Apparatus and Method for Producing Enhanced Video Images
57103/104	5865-4	60/137,921	6/07/1999	Apparatus and Method for Playing Video Files Across the Internet
57103/105	5865-4.1	60/141,440	6/29/1999	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network.
57103/106	5865-6	60/146,726	8/02/1999	Apparatus and Method for Producing Enhanced Digital Images
57103/107	5865-5	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files

Mr. Scott Bowman  
 May 11, 2000  
 Page 3

57103/108	5865-7	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files
57103/109	5865-8	60/169,559	12/08/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files

The first of these eight U.S. provisional applications (Docket No. 57103/102) was filed in the PCT within a year of its filing date (as described below). The remaining seven provisional applications are still pending in the U.S. PTO.

As you may also be aware, a patent application can also be filed as an "international" patent application under the Patent Cooperation Treaty (the "PCT"). By filing one international patent application, the patent applicant can simultaneously seek protection for an invention in each of a large number of countries (the "contracting states") that are "designated" in the PCT application. For example, a PCT application designating the United States may be filed in place of a U.S. non-provisional application to initiate the process for obtaining a United States patent based on the provisional application. As another example, a PCT application designating Europe has the effect of a European patent application among the PCT contracting states that are also party to the European Patent Convention, provided they are each designated for a European patent. The PCT international application is published 18 months after its priority date.

The following PCT International Application has been filed for Iviewit:

<i>F&amp;L Docket No.</i>	<i>MLG Docket No.</i>	<i>Patent Appl. No.</i>	<i>Appl. Filing Date</i>	<i>Application Title</i>
57103/110	5865-10	PCT/US00 /07772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images

This PCT application is the same as, and properly claims priority to, the first U.S. provisional application (Docket No. 57103/102). Therefore, only the subject matter set forth in the first U.S. provisional application will be covered by this PCT application and any patents that result from it.

We should receive the PCT search results in about three months, and the PCT application is scheduled to be published on 9/24/2000. This will be the first opportunity for the world to see what patent protection Iviewit has applied for. The United States and all foreign countries were designated in this PCT application, but the actual decision of which countries warrant patent protection still needs to be made.

Mr. Scott Bowman  
May 11, 2000  
Page 4

As shown from the titles of these patent applications, various combinations of the first two technologies are covered in different applications. However, the first application (and, accordingly, the PCT application) appears to only relate to the first "zoom and pan" technology. The other applications relate to the other technologies, so additional U.S. or PCT or foreign patent applications still need to be filed.

Since a U.S. provisional application is not examined and will never issue as a patent itself, it does not make sense to discuss any "scope of protection" for a provisional application. Patent claims still need to be prepared and a non-provisional application still has to be filed for each invention that warrants it. Furthermore, the patent applicant has the opportunity to amend the claims during the prosecution of the non-provisional application. Since the language of the claims of the patent that are examined and finally granted are the only true measure of the scope of protection of any invention, any attempt to evaluate the scope before the application is actually allowed to issue is premature, and could be misleading to those that don't understand the patent system. Therefore, we cannot comment on the scope of patent protection for any of the Iviewit technologies at this time.

Proper assignments have been executed by the inventor, Eliot Bernstein, and recorded in the United States Patent and Trademark Office for all of the provisional applications. Iviewit Holdings Inc. is the assignee and owner of all the inventions.

We are currently in the process of reviewing all the Iviewit technologies and preparing an appropriate number of non-provisional patent applications to be filed in the next few months.

#### *Trademarks*

The Proskauer, Rose law firm is handling the Trademarks for Iviewit.com. Numerous trademark applications are on file with the United States Patent and Trademark Office. Please contact Mr. Utley for further information regarding this Intellectual Property.

#### *Copyrights*

Since any "original work of authorship" that is "fixed in a tangible medium of expression" is automatically protected by copyright laws, Iviewit already has copyrights in any software that it developed. However, registration of the copyright works in the United States Copyright Office affords stronger copyright protection. We have identified several copyright works at Iviewit that we plan to file applications to register the copyrights in the near future.

#### *Trade Secrets*

Iviewit has developed a significant amount of software, technical information, and know-how, and has taken significant steps to protect this intellectual property. For example,

Mr. Scott Bowman  
May 11, 2000  
Page 5

Iviewit has consistently implemented confidentiality agreements with third parties, development agreements with its consultants, and invention agreements with its employees. We are currently in the process of reviewing Iviewit's trade secret protection efforts to ensure that this Intellectual Property remains protected.

Very truly yours,



Douglas A. Boehm

cc: Mr. Brian G. Utley

eliot Note
Only Utley?

# FOLEY & LARDNER

ATTORNEYS AT LAW

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WRITER'S DIRECT LINE  
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May 12, 2000

**CONFIDENTIAL**

Mr. Scott C. Bowman  
Wachovia Securities, Inc.  
191 Peachtree Street, NE  
Atlanta, Georgia 30303

eliot	3/22/2004 6:47:02 AM
Note	
Whole document changes in one day and this is very limited who made changes. Who was this fax sent to. Do we have Bowman copy??	

Re: Iviewit.com LLC Patent Portfolio  
Our Ref.: 57103/101

Dear Mr. Bowman:

Mr. Brian Utley of Iviewit.com has requested that we provide you with certain information regarding the patent portfolio of the company. Please note that this information is confidential and proprietary to Iviewit, since it pertains to technology that is the subject matter of Iviewit's pending patent applications which are maintained in secrecy in the United States Patent and Trademark Office. Therefore, we expect that you will keep this information confidential and not disclose it to anyone outside Wachovia Securities.

Foley & Lardner has just recently been retained to take over responsibility for the patent matters from Iviewit's previous patent counsel. As of this date, we have only had the opportunity to provide an initial review of the patent matters as we work toward the preparation and filing of patent applications for Iviewit. Although we believe that the information and statements contained herein are factually accurate, they are not intended to be any type of representation, warranty, or opinion as to the scope, strength, or value of Iviewit's patent portfolio. Nothing contained herein shall be considered as providing you with legal advice or as creating an attorney-client relationship with Wachovia Securities. We recommend that you obtain your own independent legal counsel before acting on this information.

Iviewit's previous patent counsel filed eight provisional patent applications in the United States Patent and Trademark Office (USPTO), and one PCT international patent application in the World Intellectual Property Office (WIPO). As of this date, no patents have been granted on any of these applications, and, to our knowledge, Iviewit has no other granted patents.

FOLEY & LARDNER

Mr. Scott Bowman  
May 12, 2000  
Page 3

this PCT application, but the final decision of which countries the application will be filed still needs to be made.

Assignments have been executed by the inventor, Eliot Bernstein, and recorded in the United States Patent and Trademark Office for all eight provisional applications. Iviewit Holdings Inc. is on record as the assignee and owner of all these inventions.

We are currently in the process of reviewing all the Iviewit provisional patent applications and preparing an appropriate number of non-provisional patent applications to be filed in the next few months.

Very truly yours,



Douglas A. Boehm

cc: Mr. Brian G. Utley

eliot Note
Only Utley gets cc'd??

## FOLEY &amp; LARDNER

Mr. Scott Bowman  
 May 12, 2000  
 Page 2

The following eight U.S. provisional applications have been filed for Iviewit:

<i>F&amp;L Docket No.</i>	<i>MLG Docket No.</i>	<i>Patent Appl. No.</i>	<i>Appl. Filing Date</i>	<i>Application Title</i>
57103/102	5865-1	60/125,824	3/24/1999	Apparatus and Method for Producing Enhanced Digital Images
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57103/104	5865-4	60/137,921	6/07/1999	Apparatus and Method for Playing Video Files Across the Internet
57103/105	5865-4.1	60/141,440	6/29/1999	Apparatus and Method for Providing and/or Transmitting Video Data and/or Information in a Communication Network.
57103/106	5865-6	60/146,726	8/02/1999	Apparatus and Method for Producing Enhanced Digital Images
57103/107	5865-5	60/149,737	8/19/1999	Apparatus and Method for Producing Enhanced Digital Images and/or Digital Video Files
57103/108	5865-7	60/155,404	9/22/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files
57103/109	5865-8	60/169,559	12/08/1999	Apparatus and Method for Producing Enhanced Video Images and/or Video Files

The first of these eight U.S. provisional applications (Docket No. 57103/102) was filed as an international application (described below) within a year of its filing date. The remaining seven provisional applications are still pending in the USPTO.

The following PCT international application has been filed for Iviewit:

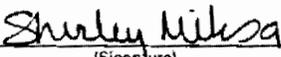
<i>F&amp;L Docket No.</i>	<i>MLG Docket No.</i>	<i>Patent Appl. No.</i>	<i>Appl. Filing Date</i>	<i>Application Title</i>
57103/110	5865-10	PCT/US00 107772	3/23/2000	Apparatus and Method for Producing Enhanced Digital Images

This PCT application (Docket No. 57103/110) is substantially the same as, and claims priority to, the first U.S. provisional application (Docket No. 57103/102). We should receive the PCT search results in about three months, and the PCT application is scheduled to be published on 9/24/2000. The United States and all foreign countries were designated in

**EXHIBIT H**  
**US PATENT 09/587,734**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
Title: System And Method For  
Providing An Enhanced Digital  
Video File  
Appl. No.: Unknown  
Filing Date: Unknown  
Examiner: Unknown  
Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640468359US (Express Mail Label Number)	June 5, 2000 (Date of Deposit)
Shirley Miksa (Printed Name)	
 (Signature)	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Brian G. Utley  
Jude R. Rosario

Enclosed are:

- [ X ] Specification, Claim(s), and Abstract (33 pages).
- [ X ] Informal drawings (3 sheets, Figures 1-3).
- [ X ] Unexecuted Declaration and Power of Attorney (4 pages).
- [ ] Assignment of the invention to Iviewit.com, Inc..
- [ ] Assignment Recordation Cover Sheet.
- [ ] Check in the amount of \$40.00 for Assignment recordation.
- [ ] Small Entity statement.
- [ ] Information Disclosure Statement.

[ ] Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

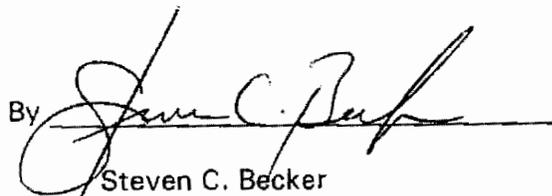
	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	55	- 20	= 35	x \$18.00	= \$630.00
Independents:	6	- 3	= 3	x \$78.00	= \$234.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$1554.00
[ ] Small Entity Fees Apply (subtract 1/2 of above):					= \$0.00
				TOTAL FILING FEE:	= \$1554.00

- [ ] A check in the amount of \$1,554.00 to cover the filing fee is enclosed.
- [ X ] The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- [ ] The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/5/00

By 

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

Steven C. Becker  
 Attorney for Applicant  
 Registration No. 42,308

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

---

System And Method For Providing An Enhanced Digital Video File

---

(Attorney Docket No. 57103/116)

---

the specification of which (check one)

  X   is attached hereto.

     was filed on \_\_\_\_\_ as United States Application Number or PCT International Application Number \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
 FOLEY & LARDNER  
 Firststar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	_____
→ Date	_____

Name of second inventor	Brian G. Utley
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	1930 SW 8th Street, Boca Raton, Florida 33486
→ Inventor's signature	
→ Date	

Name of third inventor	Jude R. Rosario
Residence	Coconut Creek, Florida
Citizenship	Bangladesh
Post Office Address	5580 NW 61 Street, Apt. #625, Coconut Creek, Florida 33073
→ Inventor's signature	
→ Date	

FORMALITIES LETTER



\*OC00000005281098\*

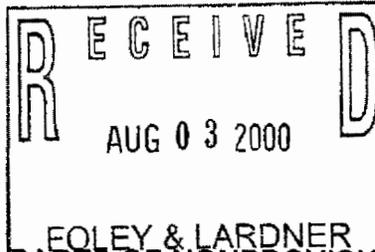


UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,734	06/05/2000	Eliot I Bernstein	57103/116

Foley & Lardner  
777 E Wisconsin Avenue  
Milwaukee, WI 53202



Date Mailed: 07/31/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

MP  
RESPONSE DUE 30 SEP 2000  
DCL/FEE

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$864.
  - \$630 for 35 total claims over 20.
  - \$234 for 3 independent claims over 3.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 1684.

A copy of this notice MUST be returned with the reply.

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

\$3100

Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED  
DIGITAL VIDEO FILE

Inventor(s): Bernstein et al.  
Appl. No.: 09/587,734

Dkt. No. 57103/116  
DABO (10/2/00)

- Transmittal of Missing Parts of Patent Application (2 pgs.)
- Executed Declaration and Power of Attorney (4 pgs.);
- Check Number #523256 for \$855.00 .

Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner

Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED  
DIGITAL VIDEO FILE

Inventor(s): Bernstein et al.  
Appl. No.: 09/587,734

Dkt. No. 57103/116  
DABO (10/2/00)

- Transmittal of Missing Parts of Patent Application (2 pgs.)
- Executed Declaration and Power of Attorney (4 pgs.);
- Check Number #523256 for \$855.00 .

Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,  
Foley & Lardner



10/27/00

10/1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
Title: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED DIGITAL VIDEO FILE  
Appl. No.: 09/587,734  
Filing Date: 6/05/2000  
Examiner: N/A  
Art Unit: 2712

<p align="center"><b>CERTIFICATE OF MAILING</b></p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.</p> <p align="center"><i>Shirley Miksa</i> (Printed Name)</p> <p align="center"><i>Shirley Miksa</i> (Signature)</p> <p align="center"><u>October 2, 2000</u> (Date of Deposit)</p>
---

**TRANSMITTAL OF MISSING PARTS  
OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

Sir:

In response to the Notice to File Missing Parts of Application mailed on July 31, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- Executed Declaration and Power of Attorney (4 pages) enclosed
- Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533) enclosed
- Applicant is entitled to Small Entity status
- Check in the amount of \$855.00 in payment of \$355.00 Basic filing fee, \$315.00 additional total claims fee, \$120.00 additional independent claims fee, and \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed

M M M  
Newt, Inc

LAW OFFICES

ARMSTRONG HIRSCH JACKOWAY TYERMAN & WERTHEIMER

A PROFESSIONAL CORPORATION

1888 CENTURY PARK EAST, 18<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90067-1722

KARL R. AUSTEN  
JOSEPH D'ONOFRIO  
ALAN J. EPSTEIN  
HOWARD A. FISHMAN  
ANDREW L. GALKER  
ROBERT S. GETMAN  
GEORGE T. HAYUM\*  
BARRY L. HIRSCH\*  
JAMES R. JACKOWAY\*  
JONATHAN D. KAUFELT\*  
CHRISTIANNE F. KERNS  
JAMES C. MANDELBAUM\*

ANDREA S. MATIAUDA  
DAVID J. MATLOF  
MARCUS S. MORRIS  
MICHELE M. MULROONEY  
GEOFFREY W. OBLATH  
RANDY M. SCHIENBERG  
SCOTT A. STEIN  
ROBERT L. STULBERG  
BARRY W. TYERMAN  
ROBERT S. WALLERSTEIN  
ERIC C. WEISSLER\*  
ALAN S. WERTHEIMER

\*ALSO ADMITTED IN NEW YORK

file  
TELEPHONE  
(310) 553-0305  
FACSIMILE  
(310) 553-5036  
OF COUNSEL  
ALLAN L. ALEXANDER  
ARTHUR D. ARMSTRONG  
RONALD J. BASS  
GERALDINE S. HEMMERLING  
OUR FILE

June 9, 1999

9999

Via Facsimile 561-241-7145

Christopher C. Wheeler, Esq.  
Proskauer Rose LLP  
2255 Glades Road  
Suite 340 West  
Boca Raton, Florida 33431-7360

Re: iviewit

Dear Christopher:

I would very much appreciate your sending two Confidentiality Agreements to Mr. Gemal Seede, one addressed individually and one to Netcubator, the company which employs him at address below:

Mr. Gemal Seede  
Netcubator  
30 W. Green Street  
Pasadena, California 91105  
Facsimile: 626-449-4395

Please send the Confidentiality Agreements directly to Mr. Seede, with a copy to my attention. Also please include in your cover letter a statement, similar to the one set forth in the Confidentiality Agreement you sent to Richard Rossman on April 26th, regarding Proskauer's general views on the novel and protectible nature of the patents and technology.

Very truly yours,

  
Alan J. Epstein

AJE:jbn  
AE\LETTERS\WHEELER\LTR

Christopher C. Wheeler, Esq.  
June 9, 1999  
Page 2

cc: Mr. Eliot Bernstein  
Mr. Jeff Freedstein  
Michele M. Mulrooney, Esq.  
James R. Jackoway, Esq.

**PROSKAUER ROSE LLP**

2255 Las Road  
Suite West  
Boca Raton, FL 33431-7360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.432.7746  
Fax 561.241.7145

NEW YORK  
LOS ANGELES  
WASHINGTON  
NEWARK  
PARIS

**Christopher C. Wheeler**  
Member of the Firm

Direct Dial 561.995.4702  
cwheeler@proskauer.com

June 8, 1999

Via Fax

Mr. Amre Youness  
Mr. Ahmed Alfi  
Mr. Frank Khulusi  
301 North Lake Avenue, Suite 910  
Pasadena, CA 91101

Gentlemen:

At the request of Alan Epstein, I am forwarding the enclosed Confidentiality Agreements to you. I would appreciate your signing and returning your Agreement to me.

We have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far too early to make any final pronouncements. We do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Sincerely,



Christopher C. Wheeler

CCW/gb

cc: Alan J. Epstein - Via Fax

0894/40017-001 BRLIB1/232129 v1

06/08/99 04:48 PM (2743)

PROSKAUER ROSE LLP

225F Glades Road  
Suite J West  
Boca Raton, FL 33431-7380  
Telephone 561.241.7400  
Elsewhere In Florida  
800.432.7748  
Fax 561.241.7145

NEW YORK  
LOS ANGELES  
WASHINGTON  
NEWARK  
PARIS

Christopher C. Wheeler  
Member of the Firm

Direct Dial 561.985.4702  
cwheeler@proskauer.com

June 8, 1999

Via Fax

Mr. Paul Heeschen  
Heeschen & Associates  
450 Newport Center Drive, Suite 450  
Newport Beach, CA 92660

Dear Mr. Heeschen:

At the request of Alan Epstein, I am forwarding the enclosed Confidentiality Agreement to you. I would appreciate your signing and returning it to me.

We have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far too early to make any final pronouncements. We do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Sincerely,



Christopher C. Wheeler

CCW/gb

cc: Alan J. Epstein - Via Fax

0894/40017-001 BRLIB1/232130 v1

06/08/99 04:51 PM (2743)

## CONFIDENTIALITY AGREEMENT

The undersigned acknowledges and agrees that any and all "Proprietary Information" provided by or on behalf of **iviewit, Inc.** (together with its direct and indirect subsidiaries and affiliates, the "Company"), **Simon L. Bernstein, Eliot I. Bernstein, or any officer, director, employee, agent or representative of the Company** to the undersigned, or to which the undersigned otherwise gains access to, shall be subject to the terms and conditions of this Agreement. "Proprietary Information" means all materials and information (regardless of the form of such information, including without limitation, in writing, electronic, computerized or other recorded form, oral or visual) that the undersigned may receive or learn of now or in the future concerning, or related in any way to, the Company or its business, including without limitation: (i) the contents of any Business Plan, projections or financial or credit information or data relating to the Company; (ii) the contents of any manuals or written materials of the Company; (iii) the names and records of actual or prospective clients, customers, suppliers, lenders, financing sources, or related persons; (iv) the terms of various agreements between the Company and third parties; (v) any data or database, or other information compiled or developed by the Company; (vi) any computer programs and listings, source codes and/or object codes, file structures, trademarks, trade secrets, patents, patent designs, patent applications, copyrights, forms, procedures, processes, training methods, developments, technical information, marketing activities and procedures and methods of operation, together with any other information, data, know-how or knowledge of a confidential or proprietary nature; and (vii) any information of a type described above derived or obtained from the internet or any website of the Company, including without limitation, the file structure relating to such website or the content of such website. Notwithstanding the foregoing, the term "Proprietary Information" does not include information which (i) is already known to the undersigned or in the undersigned's possession (other than that which was furnished to the undersigned by or on behalf of the Company prior to the date of this Agreement), (ii) is or becomes generally available to the public other than as a result of a disclosure by the undersigned, or (iii) becomes available to the undersigned on a non-confidential basis from a source other than the Company or its representatives, provided that such source is not known, after inquiry, to be bound by a confidentiality agreement with, or other obligation of secrecy to, the Company.

The undersigned acknowledges that the Proprietary Information constitutes valuable, special and unique assets of the Company. The undersigned agrees (a) to receive in trust, and treat as confidential, the Proprietary Information; (b) not to use any of the Proprietary Information for any purpose without the prior written consent of **Simon L. Bernstein or Eliot Bernstein**; (c) not to disclose any of the Proprietary Information to anyone (other than to such of the undersigned's advisors who have a need to know such Information for the sole purpose of assisting the undersigned in evaluating such Information; provided that the undersigned shall be liable for any breach of confidentiality or use by such advisors) without the prior written consent of **Simon L. Bernstein or Eliot Bernstein**; and (d) not to reproduce, fax, distribute, store, reverse engineer or copy any Proprietary Information in any form without the prior written consent of **Simon L. Bernstein or Eliot Bernstein**. The undersigned understands that all Proprietary Information is confidential and that all rights, title and interest in the Proprietary Information is and shall remain the exclusive property of the Company, and no license or other rights are being granted to the undersigned by the Company.

The undersigned further agrees that the Company shall be entitled to equitable relief, including injunction, in the event of any breach of this Confidentiality Agreement, that the granting of such relief will not be opposed and that such relief shall not be the exclusive remedy for such breach. Furthermore, the undersigned agrees to defend and hold harmless the Company from any loss, cost, expense (including attorney's fees and litigation expenses), claim, liability, or damage arising from or related to a breach of this Confidentiality Agreement.

The undersigned has executed this Confidentiality Agreement as of the date set forth below.

**iviewit, Inc.**

Attention: Eliot I. Bernstein  
500 S.E. Mizner Boulevard, Suite 102  
Boca Raton, Florida 33432-6080  
800.519.0234

IF AN INDIVIDUAL:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name - please print)

IF A COMPANY:

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name - please print)

Date: \_\_\_\_\_

herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 10/2/00

By Douglas A. Boehm

FOLEY & LARDNER  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

Douglas A. Boehm  
Attorney for Applicant  
Registration No. 32,014

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Providing An Enhanced Digital Video File

(Attorney Docket No. 57103/116)

the specification of which (check one)

       is attached hereto.

  X   was filed on June 5, 2000 as United States Application Number 09/587,734.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15405	June 2, 2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
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PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
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RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

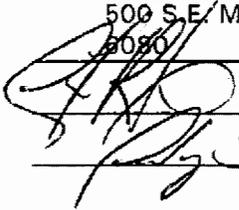
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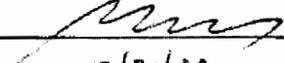
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 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

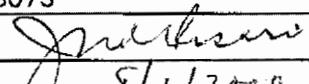
Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor Eliot I. Bernstein  
 Residence Boca Raton, Florida  
 Citizenship USA  
 Post Office Address 500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080  
 Inventor's signature   
 Date 3.2.2002

Name of second inventor Brian G. Utley  
Residence Boca Raton, Florida  
Citizenship USA  
Post Office Address 1930 SW 8th Street, Boca Raton, Florida 33486  
Inventor's signature   
Date 7/31/00

Name of third inventor Jude R. Rosario  
Residence Coconut Creek, Florida  
Citizenship Bangladesh  
Post Office Address 5580 NW 61 Street, Apt. #625, Coconut Creek, Florida 33073  
Inventor's signature   
Date 8/1/2000

Q. Okay. Other than that, he never

109

represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

**UNITED STATES PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR**

**STREAMING AN ENHANCED DIGITAL VIDEO FILE**

eliot Note
Missing Rosario as inventor. Title is wrong.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

# FOLEY & LARDNER

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WASHINGTON, D.C.  
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WRITER'S DIRECT LINE  
(414) 297-5571

July 27, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot  
Note

This letter is two months after filing in Dick VA Bar response he states inventors had time to review and correct before filing

Re: U.S. Patent Application  
Title: System And Method For Streaming An Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/114

Dear Brian:

Enclosed please find the final draft of the above-referenced patent application which was filed with the U. S. Patent and Trademark Office on June 5, 2000, as Application No. 09/587,730. I have also enclosed various formal papers which require the inventors' signatures.

Please have the inventors thoroughly read the patent application, including the specification, claims, and drawings, to ensure that it provides an accurate and complete description of the invention. The written description should be sufficiently complete to enable someone of ordinary skill in the art to make and use the invention. The application must describe the "best mode" contemplated by the inventors for carrying out the invention, i.e., in order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret. If, after review of the application, the inventors find that anything in the application is incomplete, inaccurate, untrue, or possibly misleading, please contact me immediately so we can discuss the matter. If any typographical, grammatical, or other minor formal errors are found, please have them noted in a separate memo to me such that I can correct them by amendment at a later date.

If everything appears to be in order, please have the inventors read, sign, and date the Declaration and Power of Attorney form at the colored tags. By executing this document, they will be verifying the originality of their invention and acknowledging their

ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley

July 27, 2000

Page 2

duty to disclose to the U.S. Patent and Trademark Office any information of which they are aware that could be material to the examination of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Note that the Declaration is signed under penalty of perjury, so careful consideration should be paid to its contents before signing.

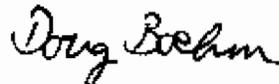
Each inventor should also read, sign, and date the enclosed Assignment and Agreement, which must be executed in the presence of a Notary Public. By executing the Assignment, they will be acknowledging their obligation to Ivivewit Holdings, Inc. by assigning all their rights in the invention to the company.

After the inventors execute the formal papers, please return the fully executed documents to me as soon as possible. You may keep the copy of the patent application for your records.

Now that the patent application is on file, any device covered by the claims of the application may be marked "Patent Applied For" or "Patent Pending" or an abbreviation thereof. This "Patent Pending" marking is not mandatory, as it only serves as a cautionary warning to would-be competitors that the device may be subject to patent protection in the future. However, this marking should be continued only as long as the application is still pending in the United States Patent and Trademark Office. If the application issues as a patent, the appropriate patent number should replace this marking. If the application should become abandoned and this is the only application pertinent to the device, then the marking should be eliminated entirely.

If you have any questions regarding any of the above, please do not hesitate to contact me.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Streaming An Enhanced Digital Video File

(Attorney Docket No. 57103/114)

the specification of which (check one)

  X   is attached hereto.

       was filed on        as United States Application Number or PCT International Application Number        and was amended on        (if applicable).

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

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U.S. Provisional Application Number	Filing Date

I HEREBY CLAIM the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
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RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
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CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

and I request that all correspondence be directed to:

Steven C. Becker  
FOLEY & LARDNER  
Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-6080
→ Inventor's signature	
Date	

Name of second inventor

Zakirul A. Shirajee

Residence

Boca Raton, Florida

Citizenship

Bangladesh

Post Office Address

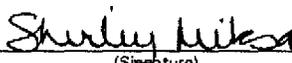
9485 Boca Cove Circle, #708, Boca Raton, Florida  
33428

→ Inventor's signature

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.  
 Title: System And Method For Streaming An Enhanced Digital Video File  
 Appl. No.: Unknown  
 Filing Date: Unknown  
 Examiner: Unknown  
 Art Unit: Unknown

<b>CERTIFICATE OF EXPRESS MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
EL640468345US <small>(Express Mail Label Number)</small>	June 5, 2000 <small>(Date of Deposit)</small>
Shirley Miksa <small>(Printed Name)</small>	
 <small>(Signature)</small>	

**UTILITY PATENT APPLICATION**  
**TRANSMITTAL**

Assistant Commissioner for Patents  
Box PATENT APPLICATION  
Washington, D.C. 20231

Sir:

Transmitted herewith for filing under 37 C.F.R. § 1.53(b) is the nonprovisional utility patent application of:

Eliot I. Bernstein  
Zakirul A. Shirajee

Enclosed are:

- Specification, Claim(s), and Abstract (29 pages).
- Informal drawings (3 sheets, Figures 1-3).
- Unexecuted Declaration and Power of Attorney (4 pages).
- Preliminary Amendment.

Assignment of the invention to lviewit.com, Inc..

Assignment Recordation Cover Sheet.

Check in the amount of \$40.00 for Assignment recordation.

Small Entity statement.

Information Disclosure Statement.

Form PTO-1449 with copies of \_\_\_ listed reference(s).

The filing fee is calculated below:

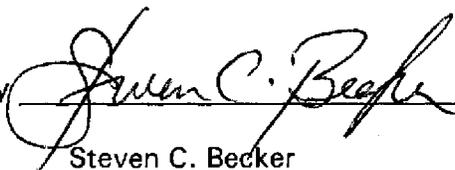
	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Fee				\$690.00	\$690.00
Total Claims:	27	- 20	= 7	x \$18.00	= \$126.00
Independents:	3	- 3	= 0	x \$78.00	= \$0.00
If any Multiple Dependent Claim(s) present:				+ \$260.00	= \$0.00
				SUBTOTAL:	= \$816.00
<input type="checkbox"/> Small Entity Fees Apply (subtract 1/2 of above):					= \$0.00
				TOTAL FILING FEE:	= \$816.00

- A check in the amount of \$816.00 to cover the filing fee is enclosed.
- The required filing fees are not enclosed but will be submitted in response to the Notice to File Missing Parts of Application.
- The Assistant Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Assistant Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/5/00

By 

FOLEY & LARDNER  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367  
 Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

Steven C. Becker  
 Attorney for Applicant  
 Registration No. 42,308

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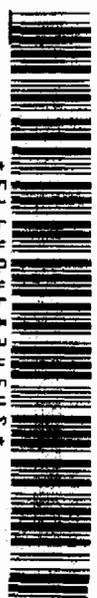


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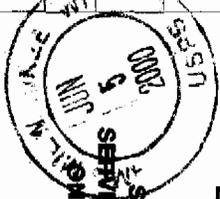


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Steven C. Becker  
57103/114

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Assistant Commissioner for Patents  
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THE ITEMS CHECKED BELOW:

Serial No.: \_\_\_\_\_

Applicant: Bernstein et al.

Filing Date: \_\_\_\_\_

Title: System And Method

for Making An Enhanced  
Digital Video File

- Patent Application
- Drawing(s) 3 sheets (F) \_\_\_\_\_ (Inf.)
- Check \$ \_\_\_\_\_ No.: \_\_\_\_\_
- Declaration & Power of Attorney Finex Intel
- Extension of Time (duplicate)
- Preliminary Amendment
- Amendment
- Amendment After FINAL Rejection
- Issue Fee (Base and/or Balance)
- Letter to Official Draftsman
- Small Entity Statement
- Assignment/Fee & Form PTO No. 1595
- Trademark Application
- Form PTO No. 1449 & cited references
- Application Transmittal

15530 U.S. PATENT OFFICE  
09/587730  
06/05/00

DOCKET NO.: 57103/114 ATTY: SCB

DUE DATE: \_\_\_\_\_ 6/2/00

DUE DATE: \_\_\_\_\_

FOREIGN FILING

**UNITED STATES PATENT APPLICATION**  
**for**  
**SYSTEM AND METHOD FOR**  
**STREAMING AN ENHANCED DIGITAL VIDEO FILE**

eliot Note
Missing Rosario as inventor. Title is wrong.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999,  
and PCT International Application No. \_\_\_\_\_, filed June 2, 2000.

FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
10 and method for providing high quality digital video files for streaming  
across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
15 storing it in a local file first. A video player decompresses and plays  
the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
video requires a communications connection (e.g., a network,  
20 Internet, etc.) and a computer powerful enough to execute the  
decompression algorithm in real time.

**EXHIBIT H**  
**US PATENT 09/587,730**

## FORMALITIES LETTER



\*OC00000005296978\*

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark OfficeAddress: COMMISSIONER OF PATENT AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/587,730	06/05/2000	Eliot I. Bernstein	57103/114

Steven C Becker  
Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5367

Date Mailed: 08/04/2000

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

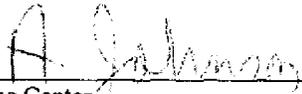
FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 690 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$126.
  - \$126 for 7 total claims over 20.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 946.

*A copy of this notice MUST be returned with the reply.*

  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bernstein et al.

Title: System And Method For Streaming An Enhanced Digital Video File

Appl. No.: 09/587,730

**Filing Date: 6/05/2000**

Examiner: N/A

Art Unit: 2711

<b>CERTIFICATE OF MAILING</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date below.	
<i>Karen Mejer</i>	_____ (Printed Name)
<i>Karen Mejer</i>	_____ (Signature)
<b>October 3, 2000</b>	_____ (Date of Deposit)

**TRANSMITTAL OF MISSING PARTS OF PATENT APPLICATION**

Commissioner for Patents  
Washington, D.C. 20231

Attn: BOX MISSING PARTS

Sir:

In response to the Notice to File Missing Parts of Application mailed on August 4, 2000, in the above-identified application, transmitted herewith are the missing parts needed to complete the filing of the subject patent application.

- Declaration and Power of Attorney (4 pages) enclosed
- Copy of Notice to File Missing Parts (Part 2 of Form PTO-1533)
- Applicant is entitled to Small Entity status
- Check in the amount of \$483.00 in payment of \$355.00 Basic filing fee, \$63.00 additional total claims fee, \$65.00 late filing fee (37 C.F.R. § 1.16(e)) enclosed
- Please charge Deposit Account No. 06-1447 in the amount of      in payment of surcharge fee (37 C.F.R. § 1.16(e))

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed

herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 10/3/00

By Douglas A. Boehm

FOLEY & LARDNER  
Firstar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367  
Telephone: (414) 297-5718  
Facsimile: (414) 297-4900

Douglas A. Boehm  
Attorney for Applicant  
Registration No. 32,014

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I HEREBY DECLARE:

THAT my residence, post office address, and citizenship are as stated below next to my name;

THAT I believe I am the original, first, and sole inventor (if only one inventor is named below) or an original, first, and joint inventor (if plural inventors are named below or in an attached Declaration) of the subject matter which is claimed and for which a patent is sought on the invention entitled

System And Method For Streaming An Enhanced Digital Video File

(Attorney Docket No. 57103/114)

the specification of which (check one)

     is attached hereto.

  X   was filed on June 5, 2000 as United States Application Number 09/587,730.

THAT I do not know and do not believe that the same invention was ever known or used by others in the United States of America, or was patented or described in any printed publication in any country, before I (we) invented it;

THAT I do not know and do not believe that the same invention was patented or described in any printed publication in any country, or in public use or on sale in the United States of America, for more than one year prior to the filing date of this United States application;

THAT I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed by me (us), or by my (our) legal representatives or assigns, more than twelve months (six months for design patents) prior to the filing date of this United States application;

THAT I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment specifically referred to above;

THAT I believe that the above-identified specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, and sets forth the best mode contemplated by me of carrying out the invention; and

THAT I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I HEREBY CLAIM foreign priority benefits under Title 35, United States Code §119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number	Country	Foreign Filing Date	Priority Claimed?	Certified Copy Attached?

I HEREBY CLAIM the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

U.S. Provisional Application Number	Filing Date
60/137,297	June 3, 1999
60/155,404	September 22, 1999
60/169,559	December 8, 1999

I HEREBY CLAIM the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Application Number	Parent Filing Date	Parent Patent Number
	PCT/US00/15408	June 2,2000	

I HEREBY APPOINT the following registered attorneys and agents of the law firm of FOLEY & LARDNER to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, and to transact all business in the United States Patent and Trademark Office connected therewith:

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603

JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

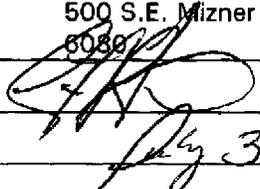
and I request that all correspondence be directed to:

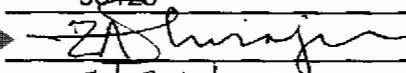
Steven C. Becker  
**FOLEY & LARDNER**  
 Firstar Center  
 777 East Wisconsin Avenue  
 Milwaukee, Wisconsin 53202-5367

Telephone: (414) 297-5571  
 Facsimile: (414) 297-4900

I UNDERSTAND AND AGREE THAT the foregoing attorneys and agents appointed by me to prosecute this application do not personally represent me or my legal interests, but instead represent the interests of the legal owner(s) of the invention described in this application.

I FURTHER DECLARE THAT all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name of first inventor	Eliot I. Bernstein
Residence	Boca Raton, Florida
Citizenship	USA
Post Office Address	500 S.E. Mizner Boulevard, Boca Raton, Florida 33432-5080
Inventor's signature	
Date	July 31, 2000

Name of second inventor	Zakirul A. Shirajee
Residence	Boca Raton, Florida
Citizenship	Bangladesh
Post Office Address	9485 Boca Cove Circle, #708, Boca Raton, Florida 33428
Inventor's signature	
Date	7/31/00

**EXHIBIT H**  
**PCT US 00 15405**

57103/112

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/112

WHAT IS CLAIMED IS:

- 1           1.     A method of providing a streaming video file,  
2     comprising:  
3                 providing digital video data having a capture frame size  
4     of at least 69,300 pixels per frame; and  
5                 converting the digital video data to a streaming video  
6     file having a converted frame size of at least 69,300 pixels per  
7     frame.
- 1           2.     The method of claim 1, wherein the capture frame size  
2     has an aspect ratio of 4:3 and the converted frame size of has an  
3     aspect ratio of 4:3.
- 1           3.     The method of claim 2, wherein the capture frame size  
2     is at least 304 x 228 pixels and the converted frame size is at least  
3     304 x 228 pixels.
- 1           4.     The method of claim 3, wherein the capture frame size  
2     is approximately 320 x 240 pixels and the converted frame size is  
3     approximately 320 x 240 pixels.
- 1           5.     The method of claim 1, wherein the step of providing  
2     includes capturing a video signal.
- 1           6.     The method of claim 5, wherein the step of providing  
2     includes digitizing the video signal to generate the digital video data.
- 1           7.     The method of claim 6, wherein the step of providing  
2     includes storing the captured video data as a data file in a storage

ScB  
Work copy

# FOLEY & LARDNER

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EMAIL ADDRESS  
sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

- Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111
  
- Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112
  
- Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

Dear Brian:

Enclosed please find a third draft of the first above-referenced patent application, which has been prepared in accordance with additional comments received from Eliot, Zak, and you today.

I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of these draft patent applications by you and the inventors is imperative to ensure that you are all satisfied with the content of the

FOLEY & LARDNER

Mr. Brian G. Utley

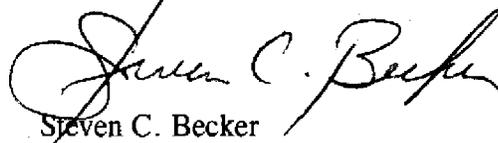
June 1, 2000

Page 2

application and, in particular, with the proposed claim scope. Please follow the instructions in my letter to you dated May 29, 2000 as you review these draft patent applications.

Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,

A handwritten signature in cursive script that reads "Steven C. Becker". The signature is written in black ink and is positioned above the printed name.

Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

57103/112

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.  
*Brian G. Utley*  
Zakirul A. Shirajee  
9485 Boca Cove Circle  
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Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
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Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/112

Poll 201

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**AN ENHANCED DIGITAL VIDEO FILE**

Inventors: ✓ Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
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Citizenship: U.S.

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✓ BRIAN

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Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**EXHIBIT H**  
**PCT US 00 15406**

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**DIGITAL VIDEO FILE**

eliot  
Note

Missing Rosario

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
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Boca Raton, FL 33428  
Citizenship: Bangladesh

**FOLEY & LARDNER**

Attorneys at Law

777 E. Wisconsin Avenue

Milwaukee, Wisconsin 53202

(414) 271-2400

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**PLAYING A DIGITAL VIDEO FILE**

eliot  
Note

Never filed and Utley replaces Rosario, this is probably what the inventors saw when they signed the application.

**Inventors:** Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
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*Via Facsimile*  
June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

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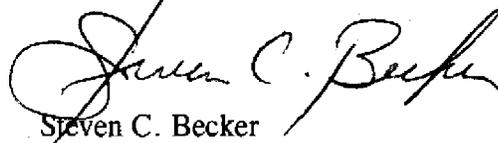
June 1, 2000

Page 2

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Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR  
PLAYING A DIGITAL VIDEO FILE**

<b>eliot Note</b>
Are there any written letters to the effect of changing inventors with inventors signatures and approvals for filing from provisional applications, there are none in the Company possession.

Inventors: Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

*+ Zak*  
*(full name)*

~~Zakirul A. Shirajee  
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Citizenship: Bangladesh~~

~~Jude R. Rosario  
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Coconut Creek, FL 33073  
Citizenship: Bangladesh~~

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

WHAT IS CLAIMED IS:

1           1.     A method of playing a digital video file, comprising:  
2                     providing a digital video file in a first storage device;  
3                     downloading a first portion of the digital video file  
4 across a network to a computer having a second storage device;  
5                     simultaneously playing the first downloaded portion  
6 from the second storage device and downloading a second portion of  
7 the digital video file.

1           2.     The method of claim 1, further comprising capturing a  
2 video signal to generate the digital video file.

1           3.     The method of claim 2, further comprising compressing  
2 the captured video signal, wherein the digital video file is  
3 compressed.

1           4.     The method of claim 3, wherein the digital video file is  
2 compressed into an MPEG format.

1           5.     The method of claim 1, wherein the network is the  
2 Internet.

1           6.     The method of claim 1, wherein at least 5% of digital  
2 video file is downloaded before the step of simultaneously playing.

1           7.     The method of claim 1, wherein the second storage  
2 device includes a magnetic storage device.

1           8.     The method of claim 7, wherein the second storage  
2 device is a hard drive.



**The receiving Office has found the following defects in the international application as filed:**

1. As to **signature**\* of the international application (Rules 4.15 and 90.4), the request:
- is not signed.
  - is not signed by all applicants.
  - is not accompanied by the statement referred to in the check list in Box No. VIII of the request explaining the lack of the signature of an applicant for the designation of the United States of America.
  - is signed by what appears to be an agent/common representative but
    - the international application is not accompanied by a power of attorney appointing him.
    - the power of attorney accompanying the international application was not signed by all the applicants.
  - other (*specify*):

The signature is also required for the applicant/inventors.

\* All applicants must sign, including inventors if they are also applicants (e.g. where the United States of America is designated).

2. As to indications concerning the **applicant**, the request (Rules 4.4 and 4.5):

- does not properly indicate the applicant's name (*specify*):
- does not indicate the applicant's address.
- does not properly indicate the applicant's address (*specify*):
- does not indicate the applicant's nationality.
- does not indicate the applicant's residence.
- other (*specify*):

3. As to the **language** of certain elements of the international application, other than the description and claims ( Rules 12.1(c) and 26.3ter(a) and (c)):

- the **request** is not in a language which is both a language accepted by this receiving Office and a language of publication, which is (are):
- the **text matter of the drawings** is not in the language in which the international application is to be published, which is:
- the **abstract** is not in the language in which the international application is to be published, which is:

4. The **title** of the invention:

- is not indicated in Box No. I of the request (Rule 4.1(a)).
- is not indicated at the top of the first sheet of the description (Rule 5.1(a)).
- as appearing in Box No. I of the request is not identical with the title heading the description (Rule 5.1(a)).

5. As to the **abstract** (Rule 8):

- the international application does not contain an abstract.

The receiving Office has found that, with regard to the presentation of the drawings of the international application as filed, the physical requirements are not complied with to the extent that compliance therewith is necessary for:

1.  reasonably uniform international publication (Rules 11 and 26.3(a)(i)) (defects to be specified):

**Sheets containing drawings:**

- a.  the sheets do not admit of direct reproduction.  
 b.  the sheets are not free from creases, cracks, folds.  
 c.  one side of the sheets is not left unused.  
 d.  the paper of the sheets is not flexible/strong/white/smooth/non-shiny/durable.  
 e.  the drawings do not commence on a new sheet.  
 f.  the sheets are not connected as prescribed (Rule 11.4(b)).  
 g.  the sheets are not A4 size (29.7cm x 21cm).  
 h.  the minimum margins on the sheets are not as prescribed **Fig. 2 - 3**  
 (top: 2.5cm; left side: 2.5cm; right side: 1.5cm; bottom: 1cm).  
 i.  the file reference number indicated on the sheets does not appear in the left-hand corner of the sheets, within 1.5cm of the top of the sheets.  
 j.  the file reference number exceeds the maximum of 12 characters.  
 k.  the sheets are not free from frames around usable or used surfaces.  
 l.  the sheets are not numbered in consecutive Arabic numerals (e.g. 1/3, 2/3, 3/3). **All**  
 m.  the sheet numbers are not centered at the top or bottom of the sheets.  
 n.  the sheet numbers are in the margin (see h. above for the size of the margins).  
 o.  the sheets contain alterations/overwritings/interlineations/too many erasures.  
 p.  the sheets contain photocopy marks.

**Drawings (Rule 11.13):**

- a.  do not admit of direct reproduction.  
 b.  contain unnecessary text matter.  
 c.  contain words so placed as to prevent translation without interference with lines thereof.  
 d.  are not executed in durable black color; the lines are not uniformly thick and well-defined. **Fig. 1-3**  
 e.  contain cross-sections not properly hatched.  
 f.  would not be properly distinguishable in reduced reproduction.  
 g.  contain scales not represented graphically.  
 h.  contain numbers, letters and reference lines lacking simplicity and clarity. **Fig. 1-3**  
 i.  contain lines drafted without the aid of drafting instruments.  
 j.  contain disproportionate elements of a figure not necessary for clarity.  
 k.  contain numbers and letters of height less than 0.32 cm.  
 l.  contain letters not conforming to the Latin, and where customary, Greek alphabets.  
 m.  contain figures on two or more sheets which form a single complete figure but which are not able to be assembled without concealing parts thereof.  
 n.  contain figures which are not properly arranged and clearly separated.  
 o.  contain different figures not numbered in consecutive Arabic numerals.  
 p.  contain different figures not numbered independent of the numbering of the sheets.  
 q.  are not restricted to reference signs mentioned in the description.  
 r.  do not contain reference signs that are mentioned in the description.  
 s.  contain the same feature denoted by different reference signs.  
 t.  are not arranged in an upright position, clearly separated from one another.  
 u.  are not presented sideways with the top of the figures at the left side of the sheets.

2.  satisfactory reproduction (Rules 11 and 26.3(b)(i)).

Further observations (if necessary):

Shading or solid black objective figure number

New drawings are required

<b>TO:</b> DOUGLAS A. BOEHM FOLEY & LARDNER 777 EAST WISCONSIN AVENUE 33RD FLOOR MILWAUKEE, WI 53202 5367	<b>UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)</b>	
	<b>NOTIFICATION OF STATUS OF REQUIREMENTS UNDER 35 U.S.C. 371</b>	
	DATE OF MAILING <i>(day/month/year)</i>	03 JUL 00
FILE REFERENCE		57103/113

**IDENTIFICATION OF INTERNATIONAL APPLICATION**

International application No.	International filing date <i>(day/month/year)</i>	Priority Date Claimed
PCT/US00/15406	02 JUN 00	03 JUN 99

Applicant for DO/EO/US

BERNSTEIN, ELIOT

**NOTIFICATION**

The applicant is hereby advised that the U.S. Patent and Trademark Office in its capacity as  Designated Office  Elected Office has received following items as of the date of mailing indicated above.

1.  U.S. Nation fee [35 U.S.C 371 (c) (1)]
  2.  Oath of declaration [35 U.S.C 371 (c) (4)]
  3.  Copy of International application as [35 U.S.C 371 (c) (2)]
  4.  Translation of Application [35 U.S.C 371 (c) (2)]
  5.  Amendments under PCT Article 19 [35 U.S.C 371 (c) (3)]
  6.  Translation of PCT Article 19 Amendments [35 U.S.C 371 (c) (3)]
  7.  Search Report or Declaration under PCT Article 17(2) [35 U.S.C 371 (a)]
  8.  International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(b) [35 U.S.C 371 (a)]
  9.  Translation of Annexs to the International Preliminary Examination Report under PCT Article 36(3)(b) [35 U.S.C 371 (c) (5)]
  10.  Other items received:
 

<input type="checkbox"/> Assignment Document	<input type="checkbox"/> Prior Art Statement	<input type="checkbox"/> Preliminary Amendment
--	--	--
- A.  Requirements for U.S. National processing have been met. Processing will commence
- |   |
|---|
| <input type="checkbox"/> at the expiration of the applicable time limit under either          |
| <input type="checkbox"/> PCT Article 22 [35 U.S.C 371 (b)] or                                 |
| <input type="checkbox"/> PCT Article 39 [35 U.S.C 371 (b)]                                    |
| <input type="checkbox"/> on the date indicated below under the provisions of 35 U.S.C 371 (f) |

U.S. NATIONAL SERIAL#

DATE UNDER 35 U.S.C. 102(e)

DATE OF COMMENCEMENT  
OF NATIONAL PROCESSING

*All correspondence submitted after the date of commencement of U.S. National processing indicated above should refer to the U.S. National Serial Number and the appropriate U.S. National processing organization of Officer.*

- B.  As the above identified application has been accepted for U.S. National processing under the provision of 35 U.S.C. 371 (f) before expiration of the applicable time limit under  PCT Article 22  PCT Article 39, applicant is reminded that
- |   |
|---|
| <input type="checkbox"/> Amendments under PCT Article 19 and/or   |
| <input type="checkbox"/> the International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3) (a), and (b) and any translation thereof, if applicable, must be submitted to the Patent and Trademark Office as soon as they are available. |

<b>International application No.</b>	<b>International filing date</b>	<b>Priority Date Claimed</b>
PCT/US00/15406	02 JUN 00	03 JUN 99

C.  In order that U.S. National processing may begin, certain items must be received by the DO/EO/US by the expiration of applicable time limit under

- PCT Article 22 or
- PCT Article 39.

Specifically:

- 1. U.S. National Fee
- 2. Oath or Declaration
- 3. Copy of Application
- 4. Translation of application
- 5. Amendments under PCT Article 19, if any
- 6. Translation of PCT Article 19 Amendments, if applicable
- 7. Search Report or PCT Article 17(2) declaration
- 8. International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), if applicable
- 9. Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b), if applicable

**THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.**  
 [35. U.S.C. 371(d)]

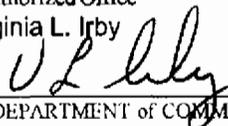
D. Further information for the applicant:

**This is only a reminder.**

**UNITED STATES DESIGNATED/ELECTED OFFICE**

Address Only:  
 Assistant Commissioner for Patent  
 Box PCT  
 Washington, D.C. 20231 Attn:RO/US

Authorized Office  
 Virginia L. Irby



# FOLEY & LARDNER

ATTORNEYS AT LAW

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MILWAUKEE, WISCONSIN 53202-5367  
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FACSIMILE (414) 297-4900

SACRAMENTO  
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SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5718

August 11, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent  
Application No.: PCT/US00/15406  
Filing Date: 6/02/2000  
Title: System and Method for Playing a  
Digital Video File  
Applicant: Iviewit.com  
Our Ref.: 57103/113

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 2, 2000, in connection with the above-identified application.

We will keep you informed of all future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	02 August 2000
International Application No.	PCT/US00/15406
Attorney Docket No.	57103/113

I. Certification under 37 CFR 1.10 (if applicable)

EL 640466596 US
Express Mail mailing number

02 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR PLAYING A DIGITAL VIDEO FILE	Earliest priority date (Day/Month/Year)

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Three (3) Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	Pages	1-3	of the figures
pages		of the description	Pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A Boehm</i>
----------------------	------------------	-----------	------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15406  
International  
Filing Date : 02 June 2000 (02.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR PLAYING A DIGITAL  
VIDEO FILE

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

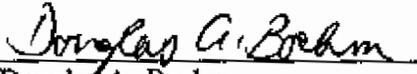
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 03 July 2000, Applicant respectfully submits three (3) duly-executed PCT General Appointments of Agent, and three (3) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 02 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firststar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

FOR: VIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
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DAVID G. LUETTIGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
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JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
Florida, in U.S.A.

BY: 

Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States of America

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

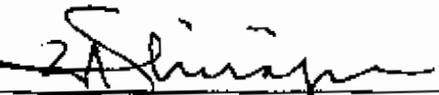
---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 92,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
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JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31 day of July 2000 at Boca Raton, in U.S.A.

BY: 

Zakirul A. SHIRAJEE  
9485 Boca Cove Circle, #708  
Boca Raton, FL 33428  
United States of America

57103/111

DRAFT

PCT INTERNATIONAL PATENT APPLICATION

for

SYSTEM AND METHOD FOR PROVIDING  
AN ENHANCED DIGITAL VIDEO FILE

14672  
31.8  
E31

eliot  
Note  
Title changes on day of filing??

Inventors:

Eliot I. Bernstein  
[home address]  
[citizenship]

Zach . . .  
[home address]  
[citizenship]

Zakirul  
Shirajee

Jude . . .  
[home address]  
[citizenship]

Jude Rosario

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

eliot  
Note  
Eliot handwriting

57103/111



DRAFT

**eliot Note**

Title changes days before filing. We catch Utley with two sets of patents and then get two similar patents with different names??

PCT INTERNATIONAL PATENT APPLICATION

for

SYSTEM AND METHOD FOR PROVIDING

AN ENHANCED DIGITAL VIDEO FILE

Inventors:

Elot L. Bernstein  
[home address]  
[citizenship]

Zach *Utley* Shivajee  
[home address]  
[citizenship]

Jude *Rosario*  
[home address]  
[citizenship]

UP, 2  
5040  
BN

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

57103/111

TITLE OF THE INVENTION

SYSTEM AND METHOD FOR PROVIDING AN  
ENHANCED DIGITAL VIDEO FILE

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, and U.S.  
6 Provisional Application No. 60/169,559, filed December 8, 1999.

FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
10 across a network.

BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A plug-in to a web browser, such as  
15 *Real Player or Media Player* Netscape Navigator, decompresses and plays the data as it is  
transferred to a user computer over the World-Wide Web. Streaming  
video avoids the delay entailed in downloading an entire file and then  
playing it with a plug-in application. Streaming video requires a fast  
20 connection and a computer powerful enough to execute the  
decompression algorithm in real time.

In the field of streaming video, the primary design  
challenge is that the viewer desires perfect video quality over a

*1760  
\$131.4  
EV 31*

*not true that  
it must be  
just  
and our  
process  
increases  
quality of  
video*

<p>eliot Note</p>
<p>No date on this and either Boehm or Becker selling how they did this after the fact. In fact, they still leave Shirajee off and he remains off.</p>

*Jennifer*  
*(N) - 762-8620*

**PCT INTERNATIONAL PATENT APPLICATION**

<p>eliot Note</p>
<p>Title changes??</p>

for

**SYSTEM AND METHOD FOR PROVIDING ←**

**A DIGITAL VIDEO FILE**

Inventors:	Eliot I. Bernstein 500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 Citizenship: U.S.
✓	Zakirul A. Shirajee 9485 Boca Cove Circle #708 Boca Raton, FL 33428 Citizenship: Bangladesh
X	Jude R. Rosario 5580 NW 61 Street Apt #625 Coconut Creek, FL 33073 Citizenship: Bangladesh

*SKUAN?* *NOT*  
*BRIAN*

FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

*Rec'd*

# FOLEY & LARDNER

ATTORNEYS AT LAW

FIRSTSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
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WRITER'S DIRECT LINE  
(414) 297-5571

August 1, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Streaming an Enhanced Digital Video  
File  
Applicant: Iviewit Holdings, Inc.  
Our Ref.: 57103/111

Dear Brian:

We are pleased to confirm that the above-identified application was filed with the U.S. Receiving Office on June 2, 2000, and accorded Application Number PCT/US00/15408. In accordance with your instructions, all PCT member countries were designated, and the European Patent Office was appointed as the International Searching Authority for this matter. Enclosed for your records is a copy of the application as filed, the transmittal of filing fees, and the related notification from the United States Receiving Office.

Please note that the deadline for entering the national phase of this application is February 3, 2001. National phase may be deferred for another ten months, until December 3, 2001, by filing a Chapter II Demand for International Preliminary Examination. This Demand must be filed by January 3, 2001. For any country in which we do not meet the national phase deadline or, alternatively, the International Preliminary Examination deadline, the PCT application will be considered withdrawn.

ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

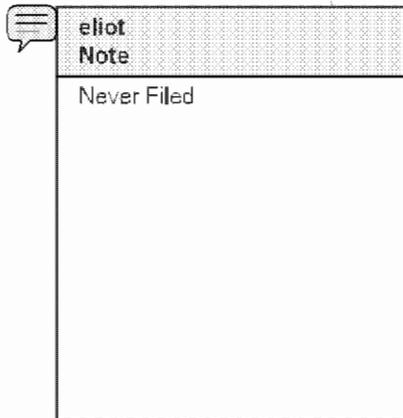
**EXHIBIT H**  
**PCT US 00 15408**

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**



**Inventors:** Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

FOLEY & LARDNER  
ATTORNEYS AT LAW  
FIRSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 267-4900

361  
Bin 1  
SU 360

# FACSIMILE TRANSMISSION

[Empty rectangular box]

Total # of Pages 31 (including this page)

TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 2, 2000  
 Client/Matter No: 57103/111  
 User ID No: 1963

## MESSAGE:

### CONFIDENTIAL AND PRIVILEGED

Brian: Attached is a fourth draft of the patent application (our reference number 57103/111). Please review per the instructions in my prior letter of May 29, 2000. In particular, please ensure that all named inventors (Eliot and Zak) and you read and understand the proposed claim scope. If you have any questions, please contact me. - Steve

If there are any problems with this transmission or if you have not received all of the pages, please call (414) 297-6444.

Operator:	Time Sent:	Return Original To:
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57103/111

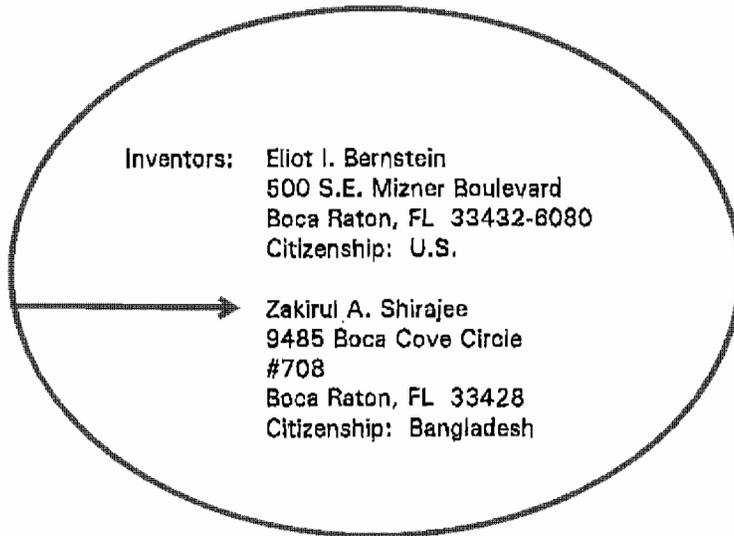
eliot	3/22/2004 4:15:08 AM
Note	
Shirajee does not get filed on this application as an inventor, only an applicant	

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR**

**STREAMING AN ENHANCED DIGITAL VIDEO FILE**



**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

(19) World Intellectual Property Organization  
International Bureau



(43) International Publication Date  
14 December 2000 (14.12.2000)

PCT

(10) International Publication Number  
WO 00/76220 A1

(51) International Patent Classification: H04N 7/173, 7/24

(74) Agent: FOLEY & LARDNER; 777 East Wisconsin Avenue, 33rd Floor, Milwaukee, WI 53202-5367 (US).

(21) International Application Number: PCT/US00/15408

(81) Designated States (national): AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, CA, CH, CN, CR, CU, CZ, DE, DK, DM, DZ, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NO, NZ, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TR, TT, TZ, UA, UG, US, UZ, VN, YU, ZA, ZW.

(22) International Filing Date: 2 June 2000 (02.06.2000)

(25) Filing Language: English

(26) Publication Language: English

(30) Priority Data:  
60/137,297 3 June 1999 (03.06.1999) US  
60/155,404 22 September 1999 (22.09.1999) US  
60/169,559 8 December 1999 (08.12.1999) US

(84) Designated States (regional): ARIPO patent (GH, GM, KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZW), Eurasian patent (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG).

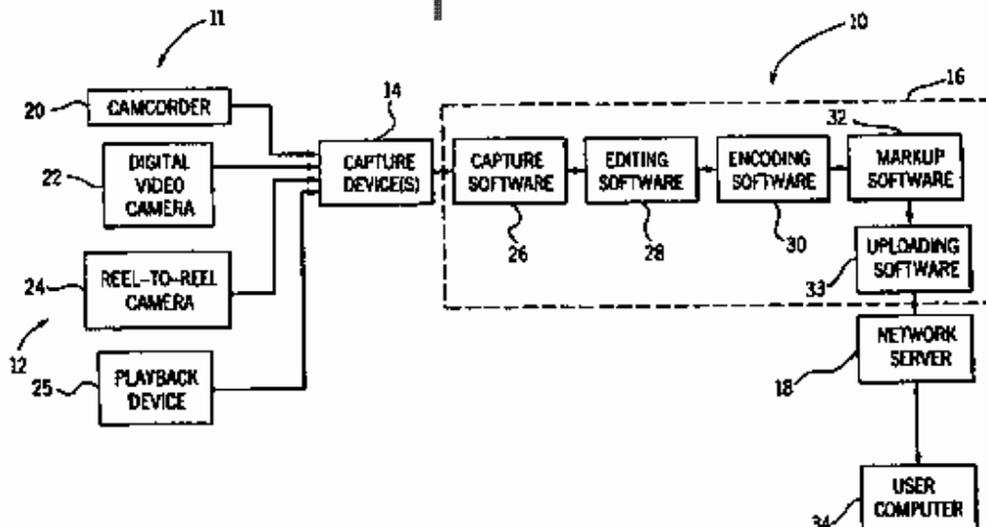
(71) Applicants (for all designated States except US):  
IVIEWIT HOLDINGS, INC. [USA/US]; One Boca Place, 2255 Glades Road, Suite 337 West, Boca Raton, FL 33431 (US). SHIRAJEE, Zakirul, A. [BD/US]; 9485 Boca Cove Circle, #708, Boca Raton, FL 33428 (US).

Published:  
— With international search report.  
— Before the expiration of the time limit for amending the claims and to be republished in the event of receipt of amendments.

(72) Inventor; and  
(75) Inventor/Applicant (for US only): BERNSTEIN, Eliot, I. [US/US]; 500 S.E. Mizner Boulevard, Boca Raton, FL 33432-6080 (US).

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

(54) Title: SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE



(57) Abstract: A method of streaming video includes providing a source video signal having a predetermined source video parameter; converting the source video signal to a streaming digital video file while maintaining substantially the same source video parameter; uploading the streaming digital video file to a network server; expanding the viewing frame size of the display screen to a full screen display mode; and playing the streaming digital video file in the full screen display mode.

WO 00/76220 A1

et/or Note Why different companies
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6/8/00

Patent Information Print

Page: 1

Docket No	57103/111 ✓	Attorney	DOUGLAS A. BOEHM ✓
Country	Patent Cooperation Treaty	Agent	
Case Type	REGULAR CASE TYPE	Client/Divis	IVIEWIT.COM ✓
Relation Typ	ORIGINAL OR PARENT CASE	Current Owne	IVIEWIT HOLDINGS INC. ✓
Filing Type	PATENT COOPERATION TREATY	Prev Own	
Filing No		Associate	
Ag Ref No		Oper Grp	
Status	FILED	First Filing	03JE1999 ✓
Sub Stat		Sub Stat Dt	
Parent Count	United States	Parent Filin	03JE1999 ✓
Parent No	60/137297 ✓	Parent Grant	
Total Claims		Ind. Claims	
Application	N/A	Application	02JE2000 ✓
Patent No		Grant Dt	
Publication		Publication	
Assigned		Expiration D	
Conv Type	FIRST FILED CASE	Tax Base Dt	
		Next Tax Dt	
Customer	FLPP	Verified	N

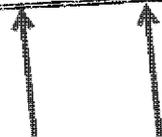
Create Dt	08JE2000	Update User	KAS
Update Dt	08JE2000	Update Tm	5:44 PM

\*\* Actions \*\*

Action	DESIGNATION FEE	DeadLn Dt	
Act Due Date	03JE2000*	Comp Dt	03JE2000
Taken Dt		Resp Atty #1	
Resp Atty #1		Resp Atty #2	
Action	IB 301 RECORD COPY	DeadLn Dt	
Act Due Date	03AU2000*	Comp Dt	03AU2000
Taken Dt		Resp Atty #1	
Resp Atty #1		Resp Atty #2	
Action	LETTER OF INSTRUCTION	DeadLn Dt	
Act Due Date	03AU2000	Comp Dt	
Taken Dt		Resp Atty #1	
Resp Atty #1		Resp Atty #2	
Action	DEADLINE FOR INSTRUCTIONS	DeadLn Dt	
Act Due Date	20AU2000	Comp Dt	
Taken Dt		Resp Atty #1	
Resp Atty #1		Resp Atty #2	
Action	CONFIRM DESIGNATION COUNT	DeadLn Dt	
Act Due Date	03SE2000*	Comp Dt	
Taken Dt		Resp Atty #1	
Resp Atty #1		Resp Atty #2	

Please verify all information and return to Docketing ASAP with any changes. This completed document MUST BE PLACED IN THE FILE.

Initials \_\_\_\_\_ Date \_\_\_\_\_



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Page: 2

Action PRIORITY DOCUMENT TO BE F  
 Act Due Date 03OC2000\* DeadLn Dt  
 Taken Dt Comp Dt 03OC2000  
 Resp Atty #1 Resp Atty #2

Action PUBLISHED  
 Act Due Date 03DE2000\* DeadLn Dt  
 Taken Dt Comp Dt 03DE2000  
 Resp Atty #1 Resp Atty #2

Action FILE DEMAND FOR PRE EXAM  
 Act Due Date 03JA2001\* DeadLn Dt  
 Taken Dt Comp Dt  
 Resp Atty #1 Resp Atty #2

Action NATIONAL FILING TO BE REQ  
 Act Due Date 03FE2001\* DeadLn Dt  
 Taken Dt Comp Dt  
 Resp Atty #1 Resp Atty #2

Action IPEA 402  
 Act Due Date 03FE2001\* DeadLn Dt  
 Taken Dt Comp Dt 03FE2001  
 Resp Atty #1 Resp Atty #2

Action INTERNATIONAL EXAMINATION  
 Act Due Date 03OC2001\* DeadLn Dt  
 Taken Dt Comp Dt 03OC2001  
 Resp Atty #1 Resp Atty #2

Action 30 MONTH NATIONAL PHASE E  
 Act Due Date 03DE2001\* DeadLn Dt  
 Taken Dt Comp Dt  
 Resp Atty #1 Resp Atty #2



eliot  
 Note  
 Shirajee not an inventor on application filed, this is in files without a stamp and very misleading

\* Inventors \*\*

Assigned  
 Inv Name BERNSTEIN ELIOT I. ✓  
 Assigned  
 Inv Name SHIRAJEE ZAKIRUL A. ✓

\* Related Id \*\*

System Patent Docket No 57103/103  
 Ctry USA CS Type L  
 RL Type Filing Type  
 Filing No Remarks

System Patent Docket No 57103/111  
 Ctry PCT CS Type  
 RL Type Filing Type P  
 Filing No Remarks From 57103/103 USA L

6/8/00

Patent Information Print

Page: 3

System	Patent	Docket No	57103/112	
Ctry	PCT	CS Type		
RL Type		Filing Type	P	
Filing No		Remarks	From 57103/103	USA L
System	Patent	Docket No	57103/113	
Ctry	PCT	CS Type		
RL Type		Filing Type	P	
Filing No		Remarks	From 57103/103	USA L
System	Patent	Docket No	57103/118	
Ctry	PCT	CS Type		
RL Type		Filing Type	P	
Filing No		Remarks	From 57103/103	USA L

\*\* Title \*\*

Title SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE

\*\* Text \*\*

Text Type ASG  
Text ASSIGNED BY IVIEWIT LLC TO IVIEWIT HOLDINGS INC. ON DOC DTD  
28DE1999 RECRD PTO  
06JA2000 AT R010523/P0494

TRANSMITTAL LETTER TO THE UNITED STATES  
RECEIVING OFFICE

Date	02 June 2000
International Application No.	Not yet available
Attorney Docket No.	57103/111

I. Certification under 37 CFR 1.10 (if applicable)

EL 640468230 US
Express Mail mailing number

02 June 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Douglas A. Boehm</i>
Signature of person mailing correspondence

Douglas A. Boehm
Typed or printed name of person mailing correspondence

II.  New International Application

TITLE	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE	Earliest priority date (Day/Month/Year)
		03 June 1999

SCREENING DISCLOSURE INFORMATION: In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.  
 B.  There is no prior U.S. application relating to this invention.  
 C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: *priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority*)

Application no.	60/137,297	application no.	60/155,404
Application no.	60/169,559	application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.  
 E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  DOES NOT ALTER  MIGHT BE CONSIDERED TO ALTER the general nature of the invention in a manner which would require the U.S. application to have been made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and 37 CFR 5.1. See 37 CFR 5.15.

III.  Comments on the Amendments to the Abstract by the ISA/US under Rule 38. The following document(s) is(are) enclosed:

- A.  A Response to the Invitation to Correct Defects in the International Application  
 B.  A Power of Attorney (General or Regular)  
 C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages		of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents  
 E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91  A Petition  A Sequence Listing Diskette  
 V.  Other (please identify): PCT-EASY Diskette; Fee Calculation Sheet; Check; and Postcard

The person signing this form is the:  Applicant  Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

## PCT REQUEST

57103/111

Original (for SUBMISSION) - printed on 02.06.2000 09:09:15 PM

0	For receiving Office use only	
0-1	International Application No.	
0-2	International Filing Date	
0-3	Name of receiving Office and "PCT International Application"	
0-4	Form - PCT/RO/101 PCT Request	
0-4-1	Prepared using	PCT-EASY Version 2.90 (updated 10.05.2000)
0-5	Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty	
0-6	Receiving Office (specified by the applicant)	United States Patent and Trademark Office (USPTO) (RO/US)
0-7	Applicant's or agent's file reference	57103/111
I	Title of invention	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE
II	Applicant	
II-1	This person is:	applicant only
II-2	Applicant for	all designated States except US
II-4	Name	IVIEWIT HOLDINGS, INC.
II-5	Address:	One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America
II-6	State of nationality	US
II-7	State of residence	US
II-8	Telephone No.	561 999 8899
II-9	Facsimile No.	561 999 8810
III-1	Applicant and/or inventor	
III-1-1	This person is:	applicant and inventor
III-1-2	Applicant for	US only
III-1-4	Name (LAST, First)	BERNSTEIN, Eliot, I.
III-1-5	Address:	500 S.E. Mizner Boulevard Boca Raton, FL 33432-6080 United States of America
III-1-6	State of nationality	US
III-1-7	State of residence	US

PCT REQUEST

57103/111

Original (for SUBMISSION) - printed on 02.06.2000 09:09:15 PM

III-2	<b>Applicant and/or inventor</b>	
III-2-1	This person is:	applicant only
III-2-2	Applicant for	all designated States except US
III-2-4	Name (LAST, First)	SHIRAJEE, Zakirul, A.
III-2-5	Address:	9485 Boca Cove Circle, #708
		Boca Raton, FL 33428
		United States of America
III-2-6	State of nationality	BD
III-2-7	State of residence	US
IV-1	<b>Agent or common representative; or address for correspondence</b>	agent
	The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as:	
IV-1-1	Name	FOLEY & LARDNER
IV-1-2	Address:	777 East Wisconsin Avenue
		33rd Floor
		Milwaukee, WI 53202-5367
		United States of America
IV-1-3	Telephone No.	414 271-2400
IV-1-4	Facsimile No.	414 297-4900
IV-1-5	e-mail	daboehm@foleylaw.com
V	<b>Designation of States</b>	
V-1	Regional Patent	AP: GH GM KE LS MW MZ SD SL SZ TZ UG ZW
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	and any other State which is a Contracting State of the Harare Protocol and of the PCT
		EA: AM AZ BY KG KZ MD RU TJ TM and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT
		EP: AT BE CH&LI CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE and any other State which is a Contracting State of the European Patent Convention and of the PCT
		OA: BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT
V-2	National Patent	AE AG AL AM AT AU AZ BA BB BG BR BY CA
	(other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned)	CH&LI CN CR CU CZ DE DK DM DZ EE ES FI
		GB GD GE GH GM HR HU ID IL IN IS JP KE
		KG KP KR KZ LC LK LR LS LT LU LV MA MD
		MG MK MN MW MX MZ NO NZ PL PT RO RU SD
		SE SG SI SK SL TJ TM TR TT TZ UA UG US
		UZ VN YU ZA ZW

## PCT REQUEST

57103/111

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V-5	<b>Precautionary Designation Statement</b> In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.	
V-6	<b>Exclusion(s) from precautionary designations</b>	NONE
VI-1	<b>Priority claim of earlier national application</b>	
VI-1-1	Filing date	03 June 1999 (03.06.1999)
VI-1-2	Number	60/137,297
VI-1-3	Country	US
VI-2	<b>Priority claim of earlier national application</b>	
VI-2-1	Filing date	22 September 1999 (22.09.1999)
VI-2-2	Number	60/155,404
VI-2-3	Country	US
VI-3	<b>Priority claim of earlier national application</b>	
VI-3-1	Filing date	08 December 1999 (08.12.1999)
VI-3-2	Number	60/169,559
VI-3-3	Country	US
VI-4	<b>Priority document request</b> The receiving Office is requested to prepare and transmit to the International Bureau a certified copy of the earlier application(s) identified above as item(s):	VI-1, VI-2, VI-3
VII-1	<b>International Searching Authority Chosen</b>	European Patent Office (EPO) (ISA/EP)
VIII	<b>Check list</b>	number of sheets      electronic file(s) attached
VIII-1	Request	4      -
VIII-2	Description	23      -
VIII-3	Claims	5      -
VIII-4	Abstract	1      abstract57103_111.txt
VIII-5	Drawings	3      -
VIII-7	TOTAL	36
VIII-8	<b>Accompanying items</b>	paper document(s) attached      electronic file(s) attached
VIII-8	Fee calculation sheet	✓      -
VIII-16	PCT-EASY diskette	-      diskette
VIII-17	Other (specified):	Postcard      -
VIII-17	Other (specified):	Transmittal Sheet      -
VIII-18	<b>Figure of the drawings which should accompany the abstract</b>	1
VIII-19	<b>Language of filing of the international application</b>	English

## PCT REQUEST

57103/111

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IX-1	Signature of applicant or agent	<i>Douglas A. Boehm</i>
IX-1-1	Name	FOLEY & LARDNER
IX-1-2	Name of signatory	Douglas A. BOEHM
IX-1-3	Capacity	Agent

## FOR RECEIVING OFFICE USE ONLY

10-1	Date of actual receipt of the purported international application	
10-2	Drawings:	
10-2-1	Received	
10-2-2	Not received	
10-3	Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application	
10-4	Date of timely receipt of the required corrections under PCT Article 11(2)	
10-5	International Searching Authority	ISA/EP
10-6	Transmittal of search copy delayed until search fee is paid	

## FOR INTERNATIONAL BUREAU USE ONLY

11-1	Date of receipt of the record copy by the International Bureau	
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**PCT (ANNEX - FEE CALCULATION SHEET)**

57103/111

Original (for **SUBMISSION**) - printed on 02.06.2000 09:09:15 PM

(This sheet is not part of and does not count as a sheet of the international application)

0	<b>For receiving Office use only</b>		
0-1	International Application No.		
0-2	Date stamp of the receiving Office		
0-4	<b>Form - PCT/RO/101 (Annex) PCT Fee Calculation Sheet</b>		
0-4-1	Prepared using	<b>PCT-EASY Version 2.90 (updated 10.05.2000)</b>	
0-9	Applicant's or agent's file reference	<b>57103/111</b>	
2	Applicant	<b>IVIEWIT HOLDINGS, INC., et al.</b>	
12	<b>Calculation of prescribed fees</b>	fee amount/multiplier	total amounts (USD)
12-1	Transmittal fee T	⇒	240
12-2	Search fee S	⇒	925
12-3	International fee Basic fee (first 30 sheets) b1	427	
12-4	Remaining sheets	6	
12-5	Additional amount (X)	10	
12-6	Total additional amount b2	60	
12-7	b1 + b2 = B	487	
12-8	Designation fees Number of designations contained in international application	86	
12-9	Number of designation fees payable (maximum 8)	8	
12-10	Amount of designation fee (X)	92	
12-11	Total designation fees D	736	
12-12	PCT-EASY fee reduction R	-132	
12-13	Total International fee (B+D-R) I	⇒	1,091
12-14	Fee for priority document Number of priority documents requested	3	
12-15	Fee per document (X)	15	
12-16	Total priority document fee P	⇒	45
12-17	<b>TOTAL FEES PAYABLE (T+S+I+P)</b>	⇒	<b>2,301</b>
12-19	Mode of payment	<b>other: Check will follow within 30 days of filing</b>	

**VALIDATION LOG AND REMARKS**

13-2	Validation messages Contents	<b>Yellow!</b> The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.
------	---------------------------------	--

Original (for **SUBMISSION**) - printed on 02.06.2000 09:09:15 PM**PCT-EASY INFORMATION SHEET**

(For applicant use only, DO NOT submit this sheet with the international application)

**VALIDATION LOG**

	Contents
Yellow!	The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.

Before submitting the International Application, please carefully verify that:

- the information contained on printed Request form is correct;
- Box IX of the Request form has been signed;
- all elements of the international application as indicated in Box VIII of the Request form have been attached; and,
- the diskette containing the PCT-EASY zip file of the International Application has been enclosed and has been clearly labeled "PCT-EASY", with the applicant's or agent's file reference, and the first applicant's name.

**ATTENTION**

DO NOT modify any indications on the Request form printout. The attached PCT-EASY application has been locked. If an error or an omission is discovered at this time, you must copy the submitted application as a template and make the change or correction in a new application (using the submitted application as a template). You may create such a template by copying the submitted application from the "Stored Forms" folder to the "New PCT Forms" folder. Open the new (.OWO) file created in the "New PCT Forms" folder, correct the errors and proceed with the submission process again.



eliot	3/22/2004 4:25:13 AM
Note:	
The Company filing copy is missing inventor page????	

57103/111

#### TITLE OF THE INVENTION

SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

#### CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims the benefit of U.S. Provisional  
Application No. 60/137,297, filed June 3, 1999, U.S. Provisional  
Application No. 60/155,404, filed September 22, 1999, and U.S.  
5 Provisional Application No. 60/169,559, filed December 8, 1999.

#### FIELD OF THE INVENTION

The present invention relates generally to video  
imaging. More specifically, the present invention relates to a system  
and method for providing high quality digital video files for streaming  
10 across a network.

#### BACKGROUND OF THE INVENTION

Streaming video is a technique by which video is played  
in real time as it is downloaded over the Internet, as opposed to  
storing it in a local file first. A video player decompresses and plays  
15 the data as it is transferred to a user computer over the World-Wide  
Web. Streaming video avoids the delay entailed in downloading an  
entire file and then playing it with a plug-in application. Streaming  
video requires a communications connection (e.g., a network,  
Internet, etc.) and a computer powerful enough to execute the  
20 decompression algorithm in real time.

In the field of streaming video, the primary design  
challenge is that the viewer desires perfect video quality over a

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTSTAR CENTER  
777 EAST WISCONSIN AVENUE  
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SACRAMENTO  
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sbecker@foleylaw.com

Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

May 30, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video  
File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Dear Brian:

Enclosed please find the first draft of the above-referenced patent application (last page marked 001.789397.1), which has been prepared in accordance with the previously filed U.S. provisional patent applications. As you know, a careful and critical review of this draft application by you and the inventors is imperative to ensure that the you are all satisfied with the content of the application and the proposed claim scope.

Please have the inventor(s) thoroughly read the application draft, including the specification, claims, and drawings, to ensure that it provides a complete and accurate description of the invention. The attached "Inventor Information Sheet" provides a brief explanation of the parts of a utility patent application, the duty of disclosure, and inventorship. I would also like you to personally read and comment on this draft.

This PCT application incorporates all of the subject matter of U.S. Provisional Patent Application Number 60/125,824, filed June 3, 1999 (MLG Docket No. 5865-3) and those portions of U.S. Provisional Patent Applications 60/155,404, filed September 22, 1999 (MLG Docket No. 5865-7) and 60/169,559, filed December 8, 1999 (MLG Docket No. 5865-8) that pertain to the video streaming technology (as opposed to the zoom and pan technology). I also added the specific details of your preferred embodiments of the invention at the time of invention (EXAMPLE A) and more recently (EXAMPLE B).

ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Mr. Brian G. Utley  
May 30, 2000  
Page 2

As you can see from the question marks appearing on various pages throughout the draft, I had a few questions during the preparation of the application. In addition to addressing these questions, you and the inventors should feel free to supplement, correct, or modify any part of the application. In particular, please review the subject matter disclosed in the three above-referenced provisional patent applications. After your review, if you or the inventors feel that any subject matter from these three provisional patent applications should be reflected in the draft PCT application, but is not, please notify me immediately.

The drawings attached to the application are informal sketches that will suffice for purposes of filing. Formal drawings will be prepared at a later date, as they are required for publication of the PCT application.

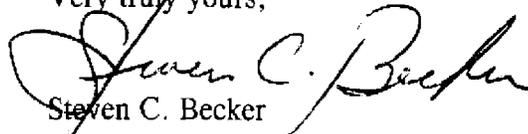
During the review, please keep in mind that independent claims 1, 11, and 19 are the broadest statements of the invention, and the remaining dependent claims add limitations to further define different embodiments of the invention. Please note that it is the inventors' legal obligations to "read and understand" the contents of the application - including the claims. Each inventor will have to sign a declaration attesting that they did so.

Please have the inventors mark the appropriate changes on this copy of the application, make a copy of the changes, and return the hand-corrected copy to me via facsimile. A revised application incorporating the changes will then be submitted to you for your approval. We will handle execution of the formal papers at a later date.

Pursuant to your instructions, to preserve foreign filing options, I plan to designate all of the countries for filing under the PCT (see attached list of PCT Contracting States). Note, however, that not all foreign countries are members of the PCT (e.g., Taiwan), so to maintain the benefit of priority to the U.S. applications, we would have to file foreign national applications immediately in those non-PCT countries. This would require up-front translation costs and sufficient time for our foreign associates to prepare and file the applications before June 3, 2000. It is my understanding that you DO NOT want us to file in any countries other than those that are members of the PCT. Please let me know IMMEDIATELY if this understanding is not correct.

If you or the inventor(s) have any questions, please do not hesitate to contact me. I look forward to receiving at least your preliminary comments on the application by tomorrow.

Very truly yours,

  
Steven C. Becker

Enclosure(s)  
cc: Douglas A. Boehm

PCT International Patent Application entitled  
**System and Method for Providing an Enhanced Digital Video File**  
Inventor(s): Bernstein, et al.

## **INVENTOR INFORMATION SHEET**

### Sections of a Utility Patent Application

- Background of the Invention

The Background of the Invention describes the technology that existed before your invention, i.e., the "prior art". This section typically discusses how the need for your invention arose, describes how others attempted to satisfy that need prior to the time of your invention, and points out the deficiencies of the prior art in meeting that need. If you aware of any other prior art that should be mentioned in this background section, please supplement this section and forward any literature that you might have to me.

- Summary of the Invention

The Summary of the Invention section is merely a brief paraphrasing of the basic claims, along with a statement of the objectives and advantages of the present invention.

- Brief Description of the Drawings

The Brief Description of the Drawings is merely a listing of the figures, and should be self-explanatory.

- Detailed Description of the Preferred Embodiments

The Detailed Description of the Preferred Embodiments section should provide a full, clear, and concise description of your invention so that any person skilled in the art could make or use the invention. Furthermore, the application must describe the "best mode" contemplated by the inventor(s) for carrying out the invention. In order to obtain a valid patent, no important details about the preferred embodiment of the invention can be withheld as a trade secret.

- Claims

The claims are the most important part of the patent application. They precisely define the invention and determine the scope of legal protection granted by the patent. The claims must particularly point out and distinctly claim the invention. The claimed subject matter must be distinguishable over that which the prior art suggests to those skilled in this field. Accordingly, the claims should be scrutinized with a view toward protecting your precise

invention and those concepts which could be considered an outgrowth of it, yet not encompassing knowledge from the prior art or obvious extensions thereof. In other words, the scope of the claims must be broad enough to provide that patent protection to which you are entitled, yet narrow enough to be distinguishable over the prior art. The terminology of the claims must be adequately supported by the description contained in the specification. Please keep in mind that all dependent claims, which are identifiable by the phrase "according to claim x" or "of claim x", are interpreted as containing all of the limitations of the other claims which are referred to by that dependent claim. Thus, the independent claims are the broadest statement of your invention, and the dependent claims provide additional limitations to narrow the scope of your invention. Although the inventive concepts of each set of independent claims are interrelated, please keep in mind that they must be critically distinguished from each other. Each set of claims must stand on its own merit.

- Abstract of the Disclosure

The Abstract of the Disclosure section is a very brief description of what the application generally discloses.

- Drawings

The Drawings section should be self-explanatory.

#### Duty of Disclosure

All individuals associated with the filing or prosecution of a patent application are under a duty of candor and good faith to the U.S. Patent and Trademark Office. This duty specifically includes a duty to disclose any information known to be material to the patentability of any claim of the application. Material information could include patents, brochures and other publications (including those authored by a competitor, inventor, or co-worker), published industry standards, as well as information on possible prior uses of the invention, prior sales or offers to sell the invention, prior knowledge of the invention by others, prior invention by another, inventorship conflicts, and the like. This duty of disclosure is an important requirement of the law, and continues throughout the entire prosecution of the patent application until the application issues as a patent. Pursuant to this duty of disclosure, we will file an Information Disclosure Statement with the U.S. application listing the patent documents found in any prior art searches, as well as any technical articles mentioned in the disclosure materials. Accordingly, if any additional information relevant to your invention should come to your attention at any time before issuance of the patent, please immediately let us know so we can either include it in the Information Disclosure Statement or submit a Supplemental Information Disclosure Statement.

#### Inventorship

The proper inventors would be those people who contributed to the subject matter of the invention as defined in the claims of the application. There may be joint

**PCT INTERNATIONAL PATENT APPLICATION**

**for**

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**

**Inventors:** Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
Citizenship: U.S.

Zakirul A. Shirajee  
9485 Boca Cove Circle  
#708  
Boca Raton, FL 33428  
Citizenship: Bangladesh

Jude R. Rosario  
5580 NW 61 Street  
Apt #625  
Coconut Creek, FL 33073  
Citizenship: Bangladesh

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

Scib  
Work copy

# FOLEY & LARDNER

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Via Facsimile

WRITER'S DIRECT LINE  
(414) 297-5571

June 1, 2000

## CONFIDENTIAL AND PRIVILEGED

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431



Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

Dear Brian:

Enclosed please find a third draft of the first above-referenced patent application, which has been prepared in accordance with additional comments received from Eliot, Zak, and you today.

I also enclose the claims, front page, and abstract from the second and third above-referenced patent applications. The remainder of the second and third patent applications is substantially identical to the first application.

As you know, a careful and critical review of the application by you and the inventors is imperative to ensure that you are

eliot  
Note

57103-111 is missing inventor cover page. No one is copied on these letters.

ns by  
the

FOLEY & LARDNER

Mr. Brian G. Utley

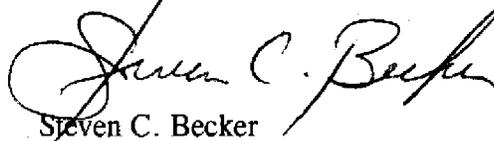
June 1, 2000

Page 2

application and, in particular, with the proposed claim scope. Please follow the instructions in my letter to you dated May 29, 2000 as you review these draft patent applications.

Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

eliot	3/21/2004 4:05:37 PM
Note	
Missing pages with inventors this is as sent	

limited-bandwidth network. Perfect video quality requires an enormous amount of digital data. Today's networks are not capable of transferring real streaming video to ~~g~~ <sup>Real streaming video includes video having</sup> having a real, full-motion frame rate comparable to NTSC (National Television Standards Committee) at 29.97 frames per second (fps), PAL (Phase Alternative Line) at 25 fps, and SECAM (Séquentiel Couleur Avec Mémoire) at 50 fps <sup>at least 24 fps, or at a frame rate sufficient to substantially</sup> ~~in a reasonable amount of time~~ <sup>reduce or eliminate jerky motion</sup>.

It is known to capture video using a capture device, compress the resulting captured video, store the compressed video, and send the compressed video across the Internet. However, prior attempts have failed to produce high quality streaming video that can be transmitted over the Internet. For example, prior attempts at streaming video have been unable to produce full-screen, real video frame rate video at any acceptable quality.

Several teachings have emerged that attempt to improve the quality and decrease the file size of streaming video. One teaching in the art is to reduce the number of frames per second that are being encoded, from the 29 to 30 fps of standard television to 6 or 7 fps or less for streaming video. While this reduces the amount of data that is being sent, the video appears jittery and corresponding voice appears asynchronous with the jittery video. Another teaching in the art is to capture the video at a small frame size of 160 x 120 or less. The small frame size of 160 x 120 is the widely used standard in Internet streaming video. Further teachings are directed to reducing the amount of data that is provided prior to compressing to reduce the file size resulting from compression. Other teachings in the art have pointed toward compressing a digital video file as much as possible prior to transmission. Full-screen, full-

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FACSIMILE (414) 207-4000

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36.2

# FACSIMILE TRANSMISSION

Original Forwarded by U.S. Mail

Total # of Pages **48** (including this page)

TO:	PHONE:	FAX #:
Brian Utley	(561) 999-8899	(561) 999-8810

From: Steve Becker  
 Sender's Direct Dial: (414)297-5571  
 Date: June 1, 2000  
 Client/Matter No: 57103/111  
 User ID No: 1963

**MESSAGE:**

## CONFIDENTIAL AND PRIVILEGED

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CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

# FOLEY & LARDNER

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(414) 297-5571

June 1, 2000

**CONFIDENTIAL AND PRIVILEGED**

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

Re: PCT International Patent Application  
Title: System and Method for Providing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/111

Re: PCT International Patent Application  
Title: System and Method for Providing an Enhanced Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/112

Re: PCT International Patent Application  
Title: System and Method for Playing a Digital Video File  
Inventor(s): Bernstein et al.  
Our Ref.: 57103/113

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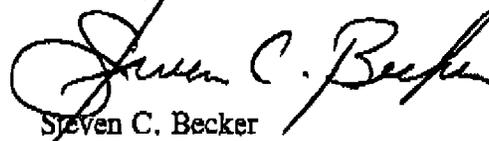
FOLEY & LARDNER

Mr. Brian G. Utley  
June 1, 2000  
Page 2

application and, in particular, with the proposed claim scope. Please follow the instructions in my letter to you dated May 29, 2000 as you review these draft patent applications.

Please phone me at your earliest convenience on Friday, June 2, to provide me with any additional comments you or the inventors may have.

Sincerely,



Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

**eliot  
Note**

111

On the Company copy of this letter it is has the 111 cover page with all the correct inventors. The copy transferred to our counsel by Foley does not and the same letter is missing this page.

**PCT INTERNATIONAL PATENT APPLICATION**

for

**SYSTEM AND METHOD FOR PROVIDING**

**A DIGITAL VIDEO FILE**



**Inventors:** Eliot I. Bernstein  
 500 S.E. Mizner Boulevard  
 Boca Raton, FL 33432-6080  
 Citizenship: U.S.

Zakirul A. Shirajee  
 9485 Boca Cove Circle  
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 Boca Raton, FL 33428  
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Jude R. Rosario  
 5580 NW 61 Street  
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 Citizenship: Bangladesh

**FOLEY & LARDNER**  
**Attorneys at Law**  
 777 E. Wisconsin Avenue  
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August 1, 2000

Mr. Brian G. Utley  
President  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot Note
Two months after filing

Re: PCT International Patent Application  
Title: System and Method for Streaming an Enhanced Digital Video File  
Applicant: Iviewit Holdings, Inc.  
Our Ref.: 57103/111

Dear Brian:

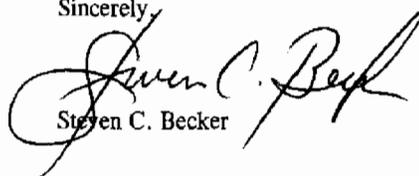
We are pleased to confirm that the above-identified application was filed with the U.S. Receiving Office on June 2, 2000, and accorded Application Number PCT/US00/15408. In accordance with your instructions, all PCT member countries were designated, and the European Patent Office was appointed as the International Searching Authority for this matter. Enclosed for your records is a copy of the application as filed, the transmittal of filing fees, and the related notification from the United States Receiving Office.

Please note that the deadline for entering the national phase of this application is February 3, 2001. National phase may be deferred for another ten months, until December 3, 2001, by filing a Chapter II Demand for International Preliminary Examination. This Demand must be filed by January 3, 2001. For any country in which we do not meet the national phase deadline or, alternatively, the International Preliminary Examination deadline, the PCT application will be considered withdrawn.

ESTABLISHED 184

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, SINGAPORE, STOCKHOLM AND STUTTGART

Sincerely,

  
Steven C. Becker

Enclosure(s)

cc: Douglas A. Boehm

From the RECEIVING OFFICE:

PCT

To:  
 DOUGLAS A. BOEHM  
 HOLEY & LARDNER  
 777 EAST WISCONSIN AVENUE  
 THIRD FLOOR  
 MILWAUKEE, WI 53202-5367

JUL 4 9 2000  
 HOLEY & LARDNER

NOTIFICATION OF THE INTERNATIONAL APPLICATION NUMBER AND OF THE INTERNATIONAL FILING DATE

(PCT Rule 20.5(c))

Date of mailing (day/month/year): 03 JUL 2000

Applicant's or agent's file reference 57/103/111		IMPORTANT NOTIFICATION	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 JUN 00	Priority date (day/month/year) 03 JUN 99	
Applicant: EVIDENT HOLDINGS, INC.			
Title of the invention: SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE			

1. The applicant is hereby notified that the international application has been accorded the international application number and the international filing date indicated above.

2. The applicant is further notified that the record copy of the international application:

- was transmitted to the International Bureau on 03 JUL 2000
- has not yet been transmitted to the International Bureau for the reason indicated below and a copy of this notification has been sent to the International Bureau\*:
  - because the necessary national security clearance has not yet been obtained.
  - because (reason to be specified):

RESPONSE DUE: 03 JUL 2000  
 Int. No. 57/103/111

\* The International Bureau monitors the transmission of the record copy by the receiving Office and will notify the applicant (with Form PCT/IB/501) if its receipt. Should the record copy not have been received by the expiration of 14 months from the priority date, the International Bureau will notify the applicant (Rule 22.1(c)).

3. FOREIGN TRANSMITTAL LICENSE INFORMATION Completed by: *DAH*

- Additional license for foreign transmittal not required. This subject matter is covered by a license already granted on the equivalent U.S. national application. Refer to that license for information concerning its scope.
- License for foreign transmittal not required. 37 CFR 5.11(e)(1) or 37 CFR 5.11(e)(2). However, a license may be required for additional subject matter. See 37 CFR 5.15(b).
- Foreign transmittal license granted, 35 U.S.C. 404; 37 CFR 5.11 on 06-27-00 (date)
- 37 CFR 5.15(a)  37 CFR 5.15(b)

Name and mailing address of the receiving Office: Assistant Commissioner for Patents Box PCT Washington, D.C. 20231 Facsimile No.	Authorized officer: Virginia J. Kelly PCT Operations (APO Team 10) Telephone No. (703) 305-3748 / (703) 305-3230 (FAX)
---	---

PATENT COOPERATION TREATY

From the RECEIVING OFFICE:

PCT

To:  
DOUGLAS A. BOEHM  
ROLEY & LARDNER  
177 EAST WISCONSIN AVENUE  
33RD FLOOR  
MILWAUKEE, WI 53202-5307

INVITATION TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION

(EXT. Articles 34(6) and 34(7) and Rule 26)

Applicant's or agent's file reference: 57108414	Date of mailing (day/month/year) 03 JUL 00
International application No. PCT/US00/15408	REPLY DUE within ONE month <del>1500</del> from the above date of mailing. Date of filing over, only (day/month/year) 02 JUN 00
Applicant VIEWIT HOLDINGS, INC.	

1. The applicant is hereby invited, within the time limit indicated above, to correct the defects in the international application in as brief a fashion as possible as specified on the attached:

- Annex A
- Annex B1 description of the international application as filed
- Annex C1 drawings of the international application as filed

2. The applicant is hereby invited, within the time limit indicated above, to correct the defects in the translation of the international application furnished under Rule 43.2, the defects specified on the attached:

- Annex A
- Annex B1 description of the translation of the international application
- Annex C1 drawings of the translation of the international application

Additional observations (if necessary):

HOW TO CORRECT THE DEFECTS:

Correction must be submitted by filing a replacement sheet containing the correction and a letter explaining the replacement sheet, which shall indicate in detail the difference between the replaced sheet and the replacement sheet. A correction may be spaced to include only that text such as claims that is not transferred from the laster to the second copy without adversely affecting the clarity and correct spacing of the sheet, and which the correction is as indicated in Rule 26.4(d).

ATTENTION:

Failure to correct the defects will result in the international application being considered withdrawn by the Receiving Office (see Rule 26.5 for further details).

A copy of this invitation and any attachments has been sent to the International Bureau:

- and the International Searching Authority.

Name and mailing address of the receiving Office: Assistant Commissioner for Patent PCT Washington, D.C. 20531 Phone No. 505-994-1111	Authorized officer: Virginia L. Fry Telephone No. 703-901-3740
---	--

The receiving Office has found the following defects in the international application as filed:

1. As to the signature\* of the international application (Rules 4.15 and 9C.1), the request:

- a.  is not signed;
- b.  is not signed by the applicant;
- c.  is not countersigned by the competent authority in the State, but in that State, with the request proposing the publication of the signature of an applicant for the designation of the United States of America;
- d.  is signed by what appears to be an agent, without representation, but:
  - the international application is not accompanied by a power of attorney appointing him;
  - the power of attorney accompanying the international application was not signed by all the applicants;
- e.  other specific:

This signature is also required for the applicant/inventor:

2. As to the applicant manuscript, including annexes, if they are also applicants to designate the United States of America as designated States:

3. As to the international preliminary examination report (Rules 4 and 9C.1):

- a.  does not properly indicate the applicant's name;
- b.  does not indicate the applicant's address;
- c.  does not properly indicate the applicant's address (priority);
- d.  does not indicate the applicant's nationality;
- e.  does not indicate the applicant's residence;
- f.  other specific:

4. As to the language of certain elements of the international application, other than the description and claims (Rules 12.1(c) and 26.3(a)(i) and (ii)):

- a.  the request is in a language which is not a language accepted by this receiving Office and a language of publication, which is not:
- b.  the text number of the drawing(s) is in the language in which the international application is to be published, which is:
- c.  the abstract is not in the language in which the international application is to be published, which is:

5. As to the title of the invention:

- a.  is not indicated in item No. 1 of the request (Rule 4.1(a));
- b.  is not indicated at the top of the first sheet of the description (Rule 3.1(a));
- c.  as appearing in item No. 1 of the request is not identical with the title appearing in the description (Rule 3.1(a)).

6. As to the abstract (Rule 5C):

- a.  the international application does not contain an abstract

The receiving Office has found that, with regard to the presentation of the drawings of the international application as filed, the applicant's drawings are not compliant with the extent of compliance therewith necessary for:

1.  essentially the form International Publication (Rules) 1 and 26, Article 26/2, or to be prepared:

**Sheet containing drawings:**

- a.  the sheets do not consist of sheets reproduced;  
 b.  the sheets do not have firm corners, cracks, folds;  
 c.  one side of the sheets is not left unruled;  
 d.  the paper of the sheets must be of a weight of at least 80 g/m<sup>2</sup> (not applicable);  
 e.  the drawings do not overhang on a new sheet;  
 f.  the sheets are not corrected as prescribed (Rule) 1.2(b);  
 g.  the sheets are not 297 mm x 210 mm;  
 h.  the margins of the sheets are not as prescribed: **Fig. 2-3**  
 (top: 2.5 cm, left side: 2.5 cm, right side: 1.5 cm, bottom: 1 cm);  
 i.  the file reference number indicated on the sheets does not appear in the left-hand corner of the sheets, within 1.5 cm of the top of the sheets;  
 j.  the file reference number exceeds the maximum of 12 characters;  
 k.  the sheets are not free from frames around tables of used characters;  
 l.  the characters are not numbered in consecutive Arabic numerals in g, 10, 20, 30, **A11**;  
 m.  the sheet numbers are not centered at the top or bottom of the sheets;  
 n.  the sheet numbers are in the margin (see g, above for the size of the margin);  
 o.  the sheets contain characters or drawings which are not in the primary language;  
 p.  the sheets contain philatelic marks.

**Drawings (Rule) 1.3.1:**

- a.  do not consist of clear reproductions;  
 b.  contain unnecessary text marks;  
 c.  contain lines or objects which prevent translation without interference with lines thereof;  
 d.  are not executed in suitable black color, the lines are not uniformly thick and well-defined: **Fig. 1-3**;  
 e.  contain cross-sections not properly hatched;  
 f.  would not be properly distinguishable in standard reproduction;  
 g.  contain scales not represented graphically;  
 h.  contain numbers, letters and reference signs lacking simplicity and clarity: **Fig. 1-3**;  
 i.  contain lines or text within the area of drafting instruments;  
 j.  contain disproportionate elements of a figure not necessary for clarity;  
 k.  contain numbers and letters of height less than 0.37 mm;  
 l.  contain letters not conforming to the Latin, and where customary, Greek, alphabets;  
 m.  contain figures on two or more sheets which form a single complete figure but which are not able to be assembled without consulting both sheets;  
 n.  contain figures which are not properly arranged and clearly separated;  
 o.  contain different figures not numbered in consecutive Arabic numerals;  
 p.  contain different figures not numbered independent of the numbering of the sheets;  
 q.  are not restricted to reference signs mentioned in the description;  
 r.  do not contain reference signs that are mentioned in the description;  
 s.  contain the same figures denoted by different reference signs;  
 t.  are not arranged in an upright position, clearly separated from one another;  
 u.  are not prepared sideways with the top of the figures at the left side of the sheets.

2.  satisfactory reproduction (Rules) 1 and 26.2B(ii)

**Further observations (if necessary):**

**Shading or solid black objective figure number**

**New drawings are required!**

TO:  
 DR. GLAS A. BOEHM  
 FOLEY & LARONER  
 777 EAST WISCONSIN AVENUE  
 33RD FLOOR  
 ONE WAUWATSE, WI 53222-8367

UNITED STATES DESIGNATED ELECTRONIC FEE  
 (DUE FEES)

NOTIFICATION OF STATUS OF  
 REQUIREMENTS UNDER 35 U.S.C. 371

DATE OF MAILING  
 03 JUL 00

FILE REFERENCE  
 87105/113

IDENTIFICATION OF INTERNATIONAL APPLICATION		
International application No.	International filing date (as prescribed)	Priority Date Claimed
PCT/US88/15408	02 JUN 00	03 JUN 00
Applicant for DUE FEES BERNSTEIN ELIOT		

NOTIFICATION

The applicant is hereby advised that the U.S. Patent and Trademark Office in its capacity as  Designated Office  Elected Office has received following items as of the date of mailing indicated above:

1.  U.S. National fee [35 U.S.C. 371 (d) (1)]
2.  Oath of declaration [35 U.S.C. 371 (c) (8)]
3.  Copy of International application as [35 U.S.C. 371 (a) (2)]
4.  Translation of Application [35 U.S.C. 371 (c) (2)]
5.  Amendments under PCT Article 19 [35 U.S.C. 371 (c) (3)]
6.  Translation of PCT Article 19 Amendments [35 U.S.C. 371 (c) (3)]
7.  Search Report or Declaration under PCT Article 17(2) [35 U.S.C. 371 (a)]
8.  International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(b) [35 U.S.C. 371 (a)]
9.  Translation of Annexes to the International Preliminary Examination Report under PCT Article 36(3)(b) [35 U.S.C. 371 (c) (3)]
10.  Other items received:
  - Assignment Document
  - Prior Art Statement
  - Preliminary Amendment

A.  Requirements for U.S. National processing have been met. Processing will commence

- at the expiration of the applicable time limit under either:
  - PCT Article 22 [35 U.S.C. 371 (b)] or
  - PCT Article 39 [35 U.S.C. 371 (c)]
- on the date indicated below under the provisions of 35 U.S.C. 371 (d)

U.S. NATIONAL SERIAL	DATE UNDER 35 U.S.C. 102(b)	DATE OF COMMENCEMENT OF NATIONAL PROCESSING
<p>All correspondence received after the date of commencement of U.S. National processing indicated above should refer to the U.S. National Serial Number and the appropriate U.S. National processing organization or Office.</p>		
<p>B. <input type="checkbox"/> As the above identified application has been accepted for U.S. National processing under the provision of 35 U.S.C. 371 (d) before expiration of the applicable time limit under <input type="checkbox"/> PCT Article 22 <input type="checkbox"/> PCT Article 39, applicant is reminded that:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Amendments under PCT Article 19 and/or</li> <li><input type="checkbox"/> the International Preliminary Examination Report and its Annexes, if any, under PCT Article 36(3)(a), and (b) and any translation thereof, if applicable, must be submitted to the Patent and Trademark Office as soon as they are available.</li> </ul>		

International application No.	International Filing Date	Priority Date Claimed
PCT/US06/15496	02 APR 06	03 JUN 95

In order that U.S. National processing may begin, certain items must be received by the DQ/EO/US by the expiration of applicable time limit under:

- PCT Article 21 or
- PCT Article 23

Specifically:

- 1. U.S. National Fee
- 2. Oath or Declaration
- 3. Copy of Application
- 4. Translation of application
- 5. Amendments under PCT Article 19, if any
- 6. Translation of PCT Article 19 Amendments, if applicable
- 7. Search Report or PCT Article 17(2) declaration
- 8. International Preliminary Examination Report and its Answer, if any, under PCT Article 36(1)(a), if applicable
- 9. Translation of Answer to the International Preliminary Examination Report under PCT Article 36(1)(b), if applicable

THE ABOVE CHECK ITEMS MUST BE TIMELY RECEIVED TO AVOID ABANDONMENT OF THE APPLICATION.  
(35 U.S.C. 7769)

D. Further information for the applicant:

This is only a reminder.

UNITED STATES DESIGNATED ELECTED OFFICE

Address Office:  
Assistant Commissioner for Patent  
Exam PCT  
Washington, D.C. 20533 Att: EO/US

Authorized Office:  
Virginia Int'l  
*[Signature]*

PCT (ANNEX - FEE CALCULATION SHEET)

57100111

Original for SUBMISSION - printed on 02/05/2000 09:03:15 PM

(This sheet is part of and does not count as a sheet of the international application)

1	For receiving Office use only: International Application No.	PCT/US 00/15408		
6-4	Date stamp of the receiving Office	02 JUN 2000 (02.06.00)		
6-4	Form - PCT/RO/101 (Annex) PCT Fee Calculation Sheet	PCT-EASY Version 2.90 (updated 10.05.2000)		
6-4-1	Prepared with			
6-6	Applicant's or agent's file reference	57103/111		
7	Applicant	VIEWIT HOLDINGS, INC., et al.		
12	Calculation of prescribed fees	Fee amount/multiplicator	total payable (USD)	
12-1	International fee	1	240	240
12-2	Search fee	5	925	925
12-3	International fee - basic fee (first 20 sheets)	01	427	
12-4	Remaining sheets	6		
12-5	Additional amount	(X) 10		
12-6	Total additional amount	02	60	
12-7	Sum = 12-3	6	487	
12-8	Designation fees: Number of designations indicated in international application	66		
12-9	Number of designation fees payable (maximum 6)	6		
12-10	Amount of designation fee	(X) 92		
12-11	Total designation fees	0	736	
12-12	PCT-EASY fee reduction	6	-132	
12-13	Total international fee (12-1+12-3+12-7+12-11+12-12)	1	1,091	1091
12-14	Fee for priority document: Number of priority documents requested	3		
12-15	Fee per document	(X) 15		
12-16	Total priority document fee	6	45	45
12-17	TOTAL FEES PAYABLE (12-13+12-16)	0	2,501	2501
12-18	Mode of payment	other: Check will follow within 30 days of filing		

VALIDATION LOGS AND REMARKS

13-1	Validation messages: Contents	Yellow! The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form.
------	----------------------------------	--

# FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO  
DENVER  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MILWAUKEE  
ORLANDO

FIRSTSTAR CENTER  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WISCONSIN 53202-5367  
TELEPHONE (414) 271-2400  
FACSIMILE (414) 297-4900

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON, D.C.  
WEST PALM BEACH

EMAIL ADDRESS  
daboehm@foleylaw.com

WRITER'S DIRECT LINE  
(414) 297-5718

August 11, 2000

Mr. Brian G. Utley  
President & COO  
Iviewit.com, Inc.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431

eliot  
Note

Filed two months  
later.

Re: PCT International Patent  
Application No.: PCT/US00/15408  
Filing Date: 6/02/2000  
Title: System and Method for Generating an  
Enhanced Digital Video File  
Applicant: Iveiwit.com  
Our Ref.: 57103/111

Dear Brian:

Enclosed for your records is a copy of the Response to the Invitation to Correct Defects in the International Application, which was filed with the United States Patent and Trademark Office on August 2, 2000, in connection with the above-identified application.

We will keep you informed of future developments as they occur. Please feel free to contact me with any questions or comments regarding this matter.

Very truly yours,



Douglas A. Boehm

Enclosure(s)

**TRANSMITTAL LETTER TO THE UNITED STATES RECEIVING OFFICE**

Date	02 August 2000
International Application No.	PCT/US00/15408
Attorney Docket No.	57103/111

**I. Certification under 37 CFR 1.10 (if applicable)**

EL 640466582US
Express Mail mailing number

02 August 2000
Date of Deposit

I hereby certify that the application/correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

<i>Shirley M. Miksa</i>
Signature of person mailing correspondence

Shirley M. Miksa
Typed or printed name of person mailing correspondence

**II.  New International Application**

TITLE	SYSTEM AND METHOD FOR STREAMING AN ENHANCED DIGITAL VIDEO FILE
-------	--

Earliest priority date (Day/Month/Year)
---

**SCREENING DISCLOSURE INFORMATION:** In order to assist in screening the accompanying international application for purposes of determining whether a license for foreign transmittal should and could be granted and for other purposes, the following information is supplied. (Note: check as many boxes as apply):

- A.  The invention disclosed was not made in the United States.
- B.  There is no prior U.S. application relating to this invention.
- C.  The following prior U.S. application(s) contain subject matter which is related to the invention disclosed in the attached international application. (NOTE: priority to these applications may or may not be claimed on form PCT/RO/101 (Request) and this listing does not constitute a claim for priority)

Application no.		application no.	
Application no.		application no.	

- D.  The present international application  is identical to  contains less subject matter than that found in the prior U.S. application(s) identified in paragraph C above.
- E.  The present international application  contains additional subject matter not found in the prior U.S. application(s) identified in paragraph C above. The additional subject matter is found throughout the application and  **CONSIDERED TO ALTER** the general nature of the invention in a manner which would  made available for inspection by the appropriate defense agencies under 35 U.S.C. 181 and

eliot  
Note  
Why Power of Attorney on this versus Oath and Declarations??

**III.  Response to an Invitation from the RO/US. The following document(s) is(are) enclosed:**

- A.  A Response to the Invitation to Correct Defects in the International Application
- B.  Three (3) Powers of Attorney (General)
- C.  Replacement pages:

pages		of the request (PCT/RO/101)	pages	1-3	of the figures
pages		of the description	pages		of the
pages		of the claims			abstract

- D.  Submission of Priority Documents
- E.  Fees as specified on attached Fee Calculation sheet form PCT/RO/101 annex

- IV.  A Request for Rectification under PCT Rule 91     A Petition     A Sequence Listing Diskette
- V.  Other (please identify): Postcard

The person signing this form is the:  Applicant     Attorney/Agent (Reg. No. 32,014)  Common Representative

Typed name of signer	Douglas A. Boehm	Signature	<i>Douglas A. Boehm</i>
----------------------	------------------	-----------	-------------------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Iviewit Holdings, Inc., et al.  
International  
Application No. : PCT/US00/15408  
International  
Filing Date : 02 June 2000 (02.06.2000)  
Title of  
Invention : SYSTEM AND METHOD FOR STREAMING AN  
ENHANCED DIGITAL VIDEO FILE

**RESPONSE TO THE INVITATION  
TO CORRECT DEFECTS IN THE INTERNATIONAL APPLICATION**

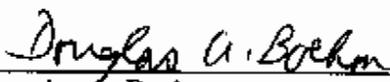
Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

ATTN: RO/US

Sir or Madam:

In response to the Invitation to Correct Defects in the International Application (Form PCT/RO/106) dated 03 July 2000, Applicant respectfully submits three (3) duly-executed PCT General Appointments of Agent, and three (3) sheets of formal drawings, for filing in connection with the above-identified application.

Respectfully submitted,

  
Douglas A. Boehm  
Registration No. 32,014

Dated: 02 August 2000

Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES O. MORROW	Reg. No. 32,505
RICHARD B. O'PLANICK	Reg. No. 29,096
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31st day of July, 2000 at Boca Raton, FL  
in U.S.A.

eliot 3/22/2004 4:48:46 AM  
Note  
What is Utley doing here???

FOR: IVIEWIT HOLDINGS, INC.  
One Boca Place  
2255 Glades Road, Suite 337 West  
Boca Raton, Florida 33431  
United States of America

BY: [Signature]  
Title: PRESIDENT

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
HARRY L. GROSSMAN	Reg. No. 30,844
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DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 21 day of July, 2000, at Boca Raton,  
Florida, in U.S.A.

BY: 

Eliot I. BERNSTEIN  
500 S.E. Mizner Boulevard  
Boca Raton, FL 33432-6080  
United States of America

**PATENT COOPERATION TREATY**  
**GENERAL APPOINTMENT OF AGENT**

The undersigned applicant hereby appoints, individually and collectively,

**FOLEY & LARDNER**

and

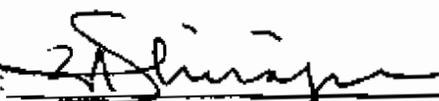
---

RUSSELL J. BARRON	Reg. No. 29,512
DAVID J. BATES	Reg. No. 39,902
STEVEN C. BECKER	Reg. No. 42,308
DOUGLAS A. BOEHM	Reg. No. 32,014
EDWARD W. BROWN	Reg. No. 22,022
CHARLES G. CARTER	Reg. No. 35,093
ALISTAIR K. CHAN	Reg. No. 44,603
JOHN C. COOPER III	Reg. No. 26,416
JEFFREY N. COSTAKOS	Reg. No. 34,144
WILLIAM J. DICK	Reg. No. 22,205
BARRY L. GROSSMAN	Reg. No. 30,844
PAUL S. HUNTER	Reg. No. 44,787
KATHERINE D. LEE	Reg. No. 44,865
KEITH D. LINDENBAUM	Reg. No. 40,365
DAVID G. LUETTGEN	Reg. No. 39,282
RICHARD J. MC KENNA	Reg. No. 35,610
JAMES G. MORROW	Reg. No. 32,505
TODD A. RATHE	Reg. No. 38,276
MICHAEL D. RECHTIN	Reg. No. 30,128
CHRISTOPHER M. TUROSKI	Reg. No. 44,456
JAMES A. WILKE	Reg. No. 34,279
JOSEPH N. ZIEBERT	Reg. No. 35,421
WALTER E. ZIMMERMAN	Reg. No. 40,883

---

attorneys at law of Firstar Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, telephone (414) 271-2400 to act on its behalf before the competent International Authorities in connection with any and all international applications filed by it, and to receive payments on its behalf.

Signed this 31 day of July 2000 at Boca Raton, in U.S.A.

BY:   
Zakirul A. SHIRAJEE  
9485 Boca Cove Circle, #708  
Boca Raton, FL 33428  
United States of America

eliot  
Note  
What form is this?? It is attached with filed Utley employment agreement

PCT/US00/15408

PATENT COOPERATION TREATY

**RECEIVED**

From the INTERNATIONAL BUREAU

PCT FEB 11 2002

To:

NOTIFICATION OF ~~THE RECORDING~~ **RECORDING**  
OF A CHANGE  
LOS ANGELES

COESTER, Thomas M.  
Blakely, Sokoloff Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707, P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address SHIRAJEE, Zakirul, A. 9485 Boca Cove Circle, #706 Boca Raton, FL 33428 United States of America	State of Nationality BD	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address SHIRAJEE, Zakirul, A. 9486 Boca Cove Circle, #310 Boca Raton, FL 33428 United States of America	State of Nationality BD	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

3. Further observations, if necessary:

**Please note that the above applicant for all designated states except US has now been recorded as applicant/inventor for the US only.**

4. A copy of this notification has been sent to:

the receiving Office  
 the International Searching Authority  
 the International Preliminary Examining Authority  
 the designated Offices concerned  
 the elected Offices concerned  
 other: SHIRAJEE, Zakirul, A.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No.: (41-22) 740.14.35	Authorized officer Sangeeta JAIYA Telephone No.: (41-22) 338.83.38
---	--

elijot  
 Note  
 What form is this????

PCT/US00/15408

PATENT COOPERATION TREATY

**RECEIVED**  
 FEB 11 2002

From the INTERNATIONAL BUREAU

PCT

**NOTIFICATION OF THE BUREAU OF A CHANGE**  
 FROM BERNSTEIN, ELIOT, TAYLOR & ZAFMAN  
 LOS ANGELES

(PCT Rule 92bis.1 and  
 Administrative Instructions, Section 422)

COESTER, Thomas, M.  
 Blakely, Sokoloff, Taylor & Zafman  
 7th Floor  
 12400 Wilshire Blvd.  
 Los Angeles, CA 90025  
 ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707. P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address BERNSTEIN, Eliot, I. 500 S.E. Mizner Boulevard Boca Raton, FL 33432-6000 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address BERNSTEIN, Eliot, I. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

elijot 3/22/2004 4:35:23 AM  
 Note  
 Why no copy sent to Bernstein

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Sangeeta JAIYA
Facsimile No.: (41-22) 740.14.35	Telephone No.: (41-22) 338.83.38

eliot  
Note  
What form is this why on all of them blanked out??

PATENT COOPERATION TREATY

**RECEIVED**  
FEB 11 2002

From the INTERNATIONAL BUREAU

**NOTIFICATION OF THE RECORDS OFF, TAYLOR & ZAFMAN  
OF A CHANGE**  
LOS ANGELES  
(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

COESTER, Thomas, M.  
Blakely, Sokoloff, Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 01 February 2002 (01.02.02)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111 05707. P010	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address IVIEWIT HOLDINGS, INC. One Boca Place 2255 Glades Road Suite 337 West Boca Raton, FL 33431 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

*NO DOCKETING REQUIRED  
Docketing Mgr.*

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address IVIEWIT HOLDINGS, INC. 505 North Brand Boulevard Suite 1420 Glendale, CA 91203 United States of America	State of Nationality US	State of Residence US
	Telephone No. 561 999 8899	
	Facsimile No. 561 999 8810	
	Teleprinter No.	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No.: (41-22) 740.14.35	Authorized officer Sangeeta JAIYA Telephone No.: (41-22) 338.83.38
---	--

12-3-01 + 6-3-02

### Patent and PCT File - Retirement/Inactivation Form 6-3-02

Secretary or Attorney - Fill out form to indicate the desired change in status, then give form and file to Docketing.

Secretary Name: Keely

- Patents
- Application Abandoned
  - Patent Lapsed for Non-Payment of Annuities
  - Patent Expired
  - Other: Give reason \_\_\_\_\_

- PCT Applications
- Lapsed
  - Entered National Phase
  - Other: Give reason \_\_\_\_\_

Client Name: Interview.com

Client & Matter No.: 005707-P010 PCT

Serial Number PCT/US00/15408 OR

Patent Number \_\_\_\_\_

- Instructions received from Client dated: \_\_\_\_\_
- Continuation Application under Rule 1.62 filed (for Abandoned Applications)

Please check one of the following:

- Return File to Attorney
- Return File to File Room
- Inactivate File

Attorney Signature Thomas J. Sieman

**Docketing** to check off below as completed. If file is to be inactivated, forward all copies of form and file to File Management Assistant. If not, insert all copies of form in file and return to attorney or file room.

- All docket dates cleared
- CPA notified (U. S. Issued patents only)
- Status updated on Patent or PCT database
- File stamped with appropriate status
- All watch for dates cleared

Date: 12/4/1 Docketing Signature(s): [Signature]

For Inactivation of Files:

File Management Assistant to check off below as completed.

- Enter file in FM P-2 Metro database.
- Enter file in WSI Records Management database, with box identification.
- Print out 3 copies of content list (inventory sheet).

Attach 1 copy of inventory sheet to box containing files.  
 Retain 1 copy of inventory sheet and pink copy of this form for your records.  
 Deliver 1 copy of inventory sheet along with remaining copies of this form to the Database Management Assistant.

Date: \_\_\_\_\_ File Management Assistant Signature: \_\_\_\_\_

**Database Management Assistant** to check off below as completed.

- Note change of status for all affected files on FM Client Matter database
- Note change of status for all affected files on WSI Matter Maintenance database.
- Retain yellow copy of form and box inventory sheet for your records, then give white copy of form to Docketing Supervisor.

Date: \_\_\_\_\_ Database Management Assistant Signature: \_\_\_\_\_

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## EXECUTIVE EMPLOYMENT AGREEMENT

EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") made as of the 3rd day of August, 1999, by and between iviewit.com LLC, a Delaware limited liability company with an address at 2255 Glades Road, Suite 337 West, Boca Raton, Florida 33431 (the "Company"), and BRIAN G. UTLEY with an address at 1930 Southwest 8<sup>th</sup> Street, Boca Raton, Florida 33486 (the "Executive").

WHEREAS, the Company desires to employ Executive and to ensure the continued availability to the Company of the Executive's services, and the Executive is willing to accept such employment and render such services, all upon and subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, the Company and the Executive hereby agree as follows with respect to the Executive's employment with the Company:

1. **Employment.** The Company shall employ the Executive and the Executive shall be employed with the Company, on the terms and conditions hereinafter set forth, for a period commencing as of the date hereof (the "Effective Date") and ending three (3) years after the date hereof, unless sooner terminated pursuant to the provisions of this Agreement. Such period of employment shall be automatically extended for successive one-year terms of employment, unless either the Company or the Executive notifies the other in writing at least ninety (90) days prior to the end of the then current term that it or he does not intend to renew such employment, in which case such employment will expire at the end of the then current term. All references herein to the "Employment Period" shall refer to both the initial term and any such successive renewal terms. During his employment hereunder, the Executive shall be the President and Chief Operating Officer of each of the Company, uview.com, Inc., a Delaware corporation ("uview") and iviewit LLC, a Delaware limited liability company ("iviewit") (uview and iviewit are collectively referred to herein as the "Affiliates").

2. **Exclusive Efforts.** The Executive shall devote his full time, best efforts, skills and attention to the business and affairs of the Company and the Affiliates, shall serve the Company and the Affiliates faithfully and competently and shall at all times act in the Company's and the Affiliates' best interests. The services to be rendered by Executive during the Employment Period shall be the normal duties of a person employed as a President and Chief Operating Officer by a corporation in the Company's business, subject at all times to the direction and control of the Company's Board of Directors (the "Board").

3. **Compensation and Benefits.** The Company shall pay to the Executive, and the Executive agrees to accept, compensation as follows:

(a) Subject to the provisions of Section 3(b) below, the Company shall pay to the Executive, and the Executive agrees to accept, an initial base compensation of Fifty Thousand Dollars (\$50,000) per year (the "Initial Salary"). All compensation payable to Executive hereunder shall be payable in accordance with the normal payroll policies of the Company and shall be subject to all usual and customary payroll deductions, including all applicable withholding taxes.

(b) The Initial Salary shall be increased by: (i) Fifty Thousand Dollars (\$50,000) to One Hundred Thousand Dollars (\$100,000) per year on September 3, 1999 (the "Salary Increase Date"), (ii) an additional Fifty Thousand Dollars (\$50,000) to One Hundred Fifty Thousand Dollars (\$150,000) per year beginning six (6) months following the Salary Increase Date, and (iii) an additional One Hundred Thousand Dollars (\$100,000) to Two Hundred Fifty Thousand Dollars (\$250,000) per year beginning twelve (12) months following the Salary Increase Date.

(c) In addition to the compensation provided for in Sections 3(a) and 3(b), on the Effective Date, the Company shall cause uvieu to issue in the Executive's name seventeen thousand one hundred thirty-eight (17,138) shares of uvieu's Class B Common Stock (the "Initial Shares"), for the consideration of \$.05 per share. The Executive shall be entitled to receive up to seventeen thousand one hundred thirty-eight (17,138) additional shares of uvieu's Class B Common Stock at future dates during the Employment Period as determined in the Board's sole discretion, subject to Executive's fulfillment of certain performance standards established, from time to time, by the Board.

(d) The compensation provided for in Sections 3(a) and 3(b) shall be in addition to any pension or retirement benefits, hospital and medical, disability, and other benefits, if any, made generally available by the Company, in its sole discretion, to its executive officers.

(e) Executive acknowledges that it is the Company's intent to purchase a "key-man" life insurance policy on the life of Executive for the benefit of the Company (the "Insurance Policy"). Executive agrees to cooperate fully in the acquisition, modification, amendment or supplement of the Insurance Policy, including submitting to any physical examination and providing any medical information as may be required by the insurer. In the event Executive dies within the Employment Period, the Personal Representative(s) (the "Personal Representatives") of Executive's estate (the "Estate") shall, at the Personal Representatives' sole discretion, elect to surrender to the Company all right, title and interest in and to the Initial Shares and obtain payment from the Company of the proceeds (the "Proceeds") of the Insurance Policy (the "Election"). The Election shall be in writing and delivered to and received by the Company at its then corporate headquarters within four (4) months from the date of Executive's death. Within seven (7) business days after the Company's dated receipt of the Election, if the Personal Representatives elect to receive the Proceeds, the Personal Representatives shall deliver the Initial Shares (along with executed stock powers) to the Company at its then corporate headquarters at which time the Company shall issue a certified or cashier's check payable to the Estate for the full amount of the Proceeds; provided, however, that if at the time of the Election the Company has not received the Proceeds, and if the Personal Representatives elect to receive the Proceeds, the

Company shall notify the Personal Representatives at such time as it receives the Proceeds, and, upon receipt of such notification, the Personal Representatives shall then be required to tender the Initial Shares to the Company at its corporate headquarters within seven (7) days of said notification, upon which the Company shall comply with the provisions of this Section regarding remittance of the Proceeds. If the Personal Representatives fail to comply with the provisions of the preceding sentence, the Company shall, at its sole discretion, notify the Personal Representatives as to whether it will demand the surrender of the Initial Shares (and make the corresponding payment of the insurance proceeds) no later than nine (9) months from the date of Executive's death or the deadline for filing Executive's Federal estate tax return, whichever occurs later.

(f) The Executive shall be entitled to four (4) weeks paid vacation per year. Such vacation time allowance shall not cumulatively accrue, and any unused vacation time for each year of the Employment Period shall be forfeited by Executive if not used during each year.

4. **Business Expenses.** The Executive shall be reimbursed for all usual and reasonable expenses incurred on behalf of the Company and the Affiliates, as applicable, as approved by the Board, in accordance with Company practices and procedures, provided that:

(a) Each such expenditure is of a nature qualifying it as a proper deduction on the federal and state income tax returns of the Company and any of the Affiliates, as applicable, as a business expense and not as deductible compensation to Executive; and

(b) Executive furnishes the Company with adequate documentary evidence required by federal and state statutes and regulations for the substantiation of such expenditures as deductible business expenses of the Company and of any of the Affiliates, as applicable, and not as deductible compensation to Executive.

Executive agrees that, if at any time, any payment made to Executive by the Company as a business expense reimbursement shall be disallowed in whole or in part as a deductible expense to the Company or any of the Affiliates, as applicable, by the appropriate taxing authorities, Executive shall reimburse the Company or any of the Affiliates, as applicable, to the full extent of such disallowance.

5. **Termination.**

(a) This Agreement may be immediately terminated by the Company at any time during the Employment Period for cause. In such an event of termination, the Company shall be obligated only to continue to pay to Executive his compensation, if any, earned up to the effective date of termination. "Cause" for purposes hereof shall mean (i) a breach of any of the provisions of this Agreement by Executive, (ii) conviction for any criminal offense involving a felony or (iii) willful misconduct, gross negligence or malfeasance.

(b) Except as otherwise provided herein, this Agreement and the obligations of the Company hereunder will terminate upon the death or at the Company's option, the disability

of the Executive. For purposes of this Section 5(b), "disability" shall mean that for a period of four consecutive months or six months in any 12-month period the Executive is incapable of substantially fulfilling the duties set forth in Section 2 or hereafter assigned to him because of physical, mental or emotional incapacity resulting from injury, sickness or disease as determined by an independent physician selected by the Company. Upon any such termination upon death or disability, the Company will pay the Executive or his legal representative, as the case may be, his compensation (including the Initial Shares issuable to Executive pursuant to Section 3(c) above), if any, earned through the date of such termination of employment.

6. Restrictive Covenants.

(a) Executive acknowledges that his services and responsibilities are unique in character and are of particular significance to the Company and to the Affiliates, that the Company and its Affiliates are competitive businesses and Executive's continued and exclusive service to the Company and the Affiliates under this Agreement is of a high degree of importance to the Company and the Affiliates. Therefore, during the Employment Period and for a period of two (2) years thereafter (the "Noncompete Period"), Executive shall not, directly or indirectly, as owner, partner, joint venturer, employee, broker, agent, corporate officer, principal, licensor, shareholder (unless as owner of no more than one percent (1%) of the issued and outstanding capital stock of such entity if such stock is traded on a major securities exchange) or in any other capacity whatsoever, engage in or have any connection with any business which is "competitive" with the Company or any of its Affiliates, and which operates anywhere in the "Restricted Territory" (as hereinafter defined). For purposes of this Agreement, a business will be deemed to be "competitive" with the Company and its Affiliates if it is engaged in the same business that the Company or any of its Affiliates are engaged in, or contemplates engaging in, including, but not limited to, any business engaged in whole or in part in developing, marketing, and implementing technology that allows products and services to be advertised and marketed via the internet. In recognition of the world wide access afforded by the internet, the parties agree that for purposes of this Agreement, "Restricted Territory" shall mean worldwide.

(b) During the Noncompete Period, the Executive shall not:

(i) directly or indirectly, by initiating contact or otherwise, induce, influence, combine or conspire with, or attempt to induce, influence, combine or conspire with, any of the officers, employees or agents of the Company to terminate his, her or its employment or relationship with or to compete against the Company or any of the Affiliates;

(ii) directly or indirectly, by initiating contact or otherwise, divert or attempt to divert any or all of any customers' or suppliers' business with the Company or any of the Affiliates.

(c) If, in any judicial proceedings, a court shall refuse to enforce any of the covenants included in this Section 6, then such unenforceable covenant shall be amended to relate to such lesser scope, period or geographical area as shall be enforceable. In the event the

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Company or any of its Affiliates should bring any legal action or other proceeding against Executive for enforcement of this Agreement, the calculation of the Noncompete Period shall not include the period of time commencing with the filing of legal action or other proceeding to enforce this Agreement through the date of final judgment or final resolution, including all appeals, if any, of such legal action or other proceeding unless the Company and the Affiliates are receiving the practical benefits of this Section 6 during such time. The existence of any claim or cause of action by Executive against the Company or any of the Affiliates predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Company or any of the Affiliates of these covenants.

(d) Executive hereby acknowledges that the restrictions on his activity as contained in this Agreement are required for the Company's reasonable protection and are a material inducement to the Company to enter into this Agreement. Executive hereby agrees that in the event of the violation by him of any of the provisions of this Agreement, the Company and its Affiliates and its or their permitted assigns (which are intended third-party beneficiaries of these covenants) will be entitled to institute and prosecute proceedings at law or in equity to obtain damages with respect to such violation, to enforce the specific performance of this Agreement by Executive, to enjoin Executive from engaging in any activity in violation hereof, or any combination of the foregoing remedies together with any other remedies available at law or in equity.

**7. Treatment and Ownership of Confidential Information.**

(a) The parties hereto acknowledge that Executive shall or may be making use of, acquiring and adding to Confidential Information (as that term is defined in subparagraph (b) below). Executive covenants and agrees that during the Employment Period and at all times thereafter he shall not, except with the prior written consent of the Company, or except if he is acting during the Employment Period solely for the benefit of the Company or any of the Affiliates in connection with the Company's or any of the Affiliates' business and in accordance with the Company's business practices and policies, at any time, disclose, divulge, report, transfer or use, for any purposes whatsoever, any of such Confidential Information, including Confidential Information obtained, used, acquired or added by, or disclosed to, Executive prior to the date of this Agreement.

(b) For purposes of this Agreement, the term "Confidential Information" shall mean all of the following materials and information which Executive receives, conceives or develops or has received, conceived or developed, in whole or in part, in connection with Executive's employment with the Company:

The Company's and the Affiliates' materials and information (regardless of the form of such information, including without limitation, in writing, electronic, computerized or other recorded form, oral or visual) concerning, or related in any way to, the Company and the Affiliates' or its or their businesses, including without limitation: (i) the contents of any Business Plan, projections or financial or credit information or data relating to the Company or any of its Affiliates; (ii) the contents of any manuals or written materials of the Company or any of its Affiliates; (iii) the

names and records of actual or prospective clients, customers, suppliers, lenders, financing sources, or related persons; (iv) the terms of various agreements between the Company or the Affiliates and third parties; (v) any data or database, or other information compiled or developed by the Company or its Affiliates; (vi) any computer programs and listings, source codes and/or object codes, file structures, trademarks, trade secrets, patents, patent designs, patent applications, copyrights, forms, procedures, processes, training methods, developments, technical information, marketing activities and procedures and methods of operation, together with any other information, data, know-how or knowledge of a confidential or proprietary nature; and (vii) any information of a type described above derived or obtained from the internet or any website of the Company or its Affiliates, including without limitation, the file structure relating to such website or the content of such website.

(c) Executive covenants and agrees that all right, title and interest in any Confidential Information shall be and shall remain the exclusive property of the Company and the Affiliates, as applicable. Executive agrees to promptly disclose to the Company all Confidential Information developed in whole or in part by Executive within the scope of this Agreement and to assign to the Company or any of the Affiliates, as the Company determines in its sole discretion, any right, title or interest Executive may have in such Confidential Information. Executive agrees to turn over to the Company all physical manifestations of the Confidential Information in his possession or under his control at the request of the Company.

#### 8. Inventions.

(a) Executive agrees to promptly inform and to disclose to the Company, in writing, all inventions, developments, procedures, ideas, innovations, systems, programs, techniques, processes, information, discoveries, improvements and modifications which Executive creates (collectively the "Inventions"), either alone or with others, while in the Company's employ, or while performing services for the Affiliates, whether or not during working hours, and at all times thereafter if the Inventions:

- (i) relate to the present or anticipated business of the Company or any of the Affiliates;
- (ii) relate to any actual or demonstrably anticipated research or development work of the Company or any of the Affiliates;
- (iii) result from any work performed by the Executive for the Company or any of the Affiliates or customers of either; or
- (iv) were invented utilizing the Company's or any of the Affiliates equipment, supplies, facilities, time or any information (whether or not considered Confidential Information) obtained from or useful to the Company or any of the Affiliates.

(b) Assignment. All of the above-described Inventions, and all rights relating thereto, shall be assigned by virtue of this Agreement and without further action by Executive to the Company and shall be and shall remain the exclusive property of the Company.

(c) Ownership. With respect to each Invention assigned to the Company, Executive hereby grants, transfers and assigns to the Company all of his rights, title and interest, if any, in any and all written materials (including but not limited to programmed instructional material), pictorial reproductions, drawings and other graphic representations and works of similar nature upon which he may be engaged in, including rights to translation and reproductions in all forms or formats and the copyrights thereto, if any, and Executive agrees that the Company may copyright said materials in the Company's name and secure renewal, reissues and extensions of such copyrights for such periods of time as the law may permit.

(d) Executive Assistance. During the Employment Period and at all times thereafter, the Executive agrees to assist the Company and the Affiliates in obtaining patents or copyrights on any Inventions assigned to the Company that the Company or any or all of the Affiliates, in the Company's sole discretion, seeks to patent or copyright. Executive also agrees to sign all documents, and do all things necessary to obtain such patents or copyrights, to further assign them to the Company or any of the Affiliates, as applicable, and to protect the Company and the Affiliates against infringement by other parties. Executive agrees that such actions will be without compensation, but at no expense to the Executive.

(e) Attorney-in-Fact. Executive irrevocably appoints any Company-selected designee to act as his agent and attorney-in-fact to perform all acts necessary to obtain patents and/or copyrights as required by this Agreement if Executive (i) refuses to perform those acts or (ii) is unavailable, within the meaning of the United States Patent and Copyright Laws. It is expressly intended by Executive that the foregoing power of attorney is coupled with an interest.

(f) Records. Executive shall keep complete, accurate and authentic information and records on all Inventions in the manner and form reasonably requested by the Company. Such information and records, and all copies thereof, shall be the property of the Company as to any Inventions within the meaning of this Agreement. In addition, Executive agrees to promptly surrender all such original and copies of such information and records at the request of the Company.

9. Executive Representations and Warranties. The Executive represents and warrants to the Company that he is free of known physical and mental disabilities that would, with or without reasonable accommodations that would not create an undue hardship for the Company, impair his performance hereunder and he is fully empowered to enter and perform his obligations under this Agreement. Without limiting the generality of the foregoing, Executive represents and warrants that he is under no restrictive covenants to any person or entity that will be violated by his entering into and performing this Agreement. The Executive shall indemnify the Company on demand for and against any and all judgments, losses, claims, damages, expenses and costs (including without limitation all legal fees and costs, even if incident to appeals) incurred or

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suffered by the Company as a result of any breach by Executive of this representation and warranty.

10. **Binding Effect.** Except as herein otherwise provided, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their personal representatives, successors, heirs and assigns.

11. **Severability.** Invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions.

12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

13. **Entire Agreement.** This Agreement and the Confidentiality Agreement dated July 9, 1999 by and between iViewit, Inc. (together with its direct and indirect subsidiaries and affiliates) and Executive contains the entire understanding between the parties and this Agreement may not be changed or modified except by an Agreement in writing signed by all the parties hereto.

14. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when either hand delivered or deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses first stated herein, or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as provided herein.

15. **Prevailing Parties.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

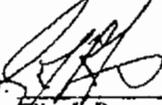
16. **Survival.** Notwithstanding any termination of this Agreement, the provisions of Sections 6 through 16 shall survive such termination.

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IN WITNESS WHEREOF, this Agreement has been duly signed by the Executive and on behalf of the Company as of the day and year first above written.

iviewit.com LLC

By:   
\_\_\_\_\_  
Eliot I. Bernstein, Vice President

  
\_\_\_\_\_  
BRIAN G. UTLEY

PATENT COOPERATION TREATY

VIEWIT.COM  
05707.0010

**RECEIVED**  
PCT  
DEC 18 2001

from the INTERNATIONAL BUREAU

**NOTIFICATION OF THE RECORDING  
OF A CHANGE**

(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
LOS ANGELES

COESTER, Thomas, M.  
Blakely, Sokoloff, Taylor & Zafman  
7th Floor  
12400 Wilshire Blvd.  
Los Angeles, CA 90025  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 10 December 2001 (10.12.01)	<b>IMPORTANT NOTIFICATION</b>
Applicant's or agent's file reference 57103/111	
International application No. PCT/US00/15408	International filing date (day/month/year) 02 June 2000 (02.06.00)

**NO DOCKETING REQUIRED**  
Docketing Mgt.

1. The following indications appeared on record concerning:

the applicant     the inventor     the agent     the common representative

Name and Address FOLEY & LARDNER 777 East Wisconsin Avenue 33rd Floor Milwaukee, WI 53202-5367 United States of America	State of Nationality	State of Residence
	Telephone No. 414 271-2400	
	Facsimile No. 414 297-4900	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

the person     the name     the address     the nationality     the residence

Name and Address COESTER, Thomas, M. Blakely, Sokoloff, Taylor & Zafman 7th Floor 12400 Wilshire Blvd. Los Angeles, CA 90025 United States of America	State of Nationality	State of Residence
	Telephone No. 310 207-3800	
	Facsimile No. 310 820-5988	
	Teleprinter No.	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

the receiving Office     the designated Offices concerned  
 the International Searching Authority     the elected Offices concerned  
 the International Preliminary Examining Authority     other: FOLEY & LARDNER

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Beate GIFFO-SCHMITT
Facsimile No.: (41-22) 740.14.35	Telephone No.: (41-22) 338.83.38

CORRECTED VERSION - CORRECTED ON 5/14/2003  
Transcription of Telephone Conference  
Conducted July 31, 2000

Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are ...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table

Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of the firms' files.

<Inaudible comment.>

Utley: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

Simon Bernstein: You have no notes, no data on...?

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

Wheeler: The work product is yours. He may maintain copies of his files and everything; or his confidential notes to himself are not necessarily yours. But the work "product" is...

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here—this was before Brian came—I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did - now going to that same nature, that's the provisional I think we're talking about...

Wheeler: Right.

Bernstein: But he flew out here again with me and Brian and went through this as he went to file this--this is a 3/23/2000 file--that also fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't see them...

Bernstein: Well, you saw because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep maintaining it as...

Bernstein: Okay, but you have every record...

Wheeler: Everything you gave me we maintain. We don't...

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

Simon Bernstein: I know you don't you're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we had it in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?

Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.

Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, correct?

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.

Bernstein: But then when I look through this...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's described in this document, and without "undue" experimentation, without inventing it himself.

Simon Bernstein: Right.

Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

Simon Bernstein: Is that what we've done so far?

Bernstein: No.

Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

Wheeler: That's what we're aiming to do, that's what we're hoping to do.

Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

Wheeler: He was trying to do it in a broad...

Wheeler: He did say conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

Simon Bernstein: In the provisional.

Boehm: Uhhuh To that text, or you lose your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean...

E. Bernstein: It's not even in there.

Wheeler: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional? You can't add subject matter to the provisional?

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

E. Bernstein: It's not in the filing either.

Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.

Bernstein: It didn't pixelate. Not in here at all.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, explain to him where it's missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have without it being construed as an addition.

Boehm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another

lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average designer of this type of software—can he read this document and make and use of your invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't mater as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

Simon Bernstein:           What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm:                   Does that support our...Sure...

Simon Bernstein:           I mean, if we were to litigate against another person that infringes on our...

Boehm:                   An infringer.

Simon Bernstein:         Supportable for the sake of argument?

Boehm:                   Right. Yes. That is a fair argument

Simon Bernstein:           OK so then I don't know that, at least from first blush

Bernstein:               That's the provisional you're reading though, right?

Boehm:                   Aren't they the same? I think they're identical, aren't they?

Boehm:                   You can check in his notebook.

Boehm:                   Are there differences?

Bernstein:               Where did you find that piece that you just read?

Wheeler:                 Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that Joao. I thought that we had agreements for doing everything, but apparently Joao filed...

Boehm:                   For that one, yes.

Wheeler:                 But he didn't bother telling anybody.

Boehm:                   That's the one that we didn't find out until way late.

Wheeler: Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least resistance, and he thought he could go back...is there an amendment procedure?

Boehm: Yeah, there's an amendment procedure.

Wheeler: That he could do it a few months later or something like that?

Utley: We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.

Wheeler: Okay.

Bernstein: And you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. How did a guy to file a patent without any of us--obviously, not me, but Eliot, Brian.?

Boehm: Jim wasn't around yet.

Simon Bernstein: Okay, but Chris was and so on and so forth--how did they get through the crack that he did this?

Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do--his time factor--he was going to...he didn't think he would get this in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and file it.

Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

Utley: he knew at the time that he probably would be leaving?

Utley: Right.

Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.

Boehm: Just speculating.

Eliot Bernstein: What day did you give him those notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: That could be too. One other reason is...

Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the feature..."

Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? it has caused iviewit. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

eliot	3/10/2004 8:50:03 PM
Note	
Utley in deposition states he was unaware of any problems with Joao work	

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about...

Eliot Bernstein: Well 1<sup>st</sup>- lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

Simon Bernstein: Someone comes after you the second day after...

Boehm: Who's the first inventor, that's what you're after.

Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One-year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file that, but you need to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

Simon: Which might have short-circuited us because of all of the lack of funds.

Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: Yeah two things happened during the year. One, the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

Simon: Here's what we did. We hired Ray Joao on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been made.

Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray Joao...just an observation.

Boehm: Hmm...is it all patent attorneys? <Laughter>

Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit personally, I haven't heard of a patent attorney in my life telling me that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now

why is that going to hurt you? Two main reasons. One is if you put it on sale—offered it for sale— or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had publicly disclosed it, that would protect...getting the application on file will protect you from losing your date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone—you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new matter

Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: whose judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side would, say that's baloney that's too broad you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.

Boehm: So the offers for sale won't normally kick off a foreign...

Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year grace period.

Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes--yes we are within that grace period

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our knowledge, we have swept up all this in this filing, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original formal filing to strengthen the claims - broaden the claims ... to the maximum extent that we can.

Boehm: if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into the application.

Utley: What we're trying to do is protect the date day of March 24

Boehm: The original...

Utley: The original date as March the 24<sup>th</sup>, but filing should remain an objective.

Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

Buchsbaum: You mean the examiner of the commission

Bernstein: We're not going to be able to say it was in the claim.

Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.

Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file an continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but as far as, doing it broadly, if you're saying to claim it broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.

Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: Foley & Lardner. It identifies what you're trying to do.  
[not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.

Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your forum of law there's always going back and refining and refining and refining that was wrong.  
<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7<sup>th</sup>, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.

Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. Correct?

Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted a feature which

typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

Wheeler: I mean, he's describing I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see, this is different.

Boehm: But it doesn't matter right now

Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of having described this

Boehm: This is the background that's...problem. He's got...

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Boehm: That kind of invention, right, it's got to state...

Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...

Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you

want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

Boehm: March 24<sup>th</sup>, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.

Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention actually. What we do understand a little bit about is the theory in business; and now that we know that Ray Joao was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

Simon Bernstein: Who owns them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]

Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

Boehm: So I've so I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of this? Sure.

Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that has an obligation to sign is on the list of names in these patents right, because the company was part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because you may due corporate due diligence for financial reasons or if...and they will say has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

Buchsbaum: Has everybody signed off on these? Brian?

Boehm: See these tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over but you're real clean on it because these are all based on the original filing , which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: So all of the other inventors would have a helluva problem trying to say they owned anything.

Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were it went into bankruptcy, what would happen to those patents? How would those patents [ ]?

Wheeler: It depends on which at iviewit you're talking about.

Simon Bernstein: The one that they are held in.

Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

Wheeler: There is a possibility, but that's one of the main reasons... But the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors getting a piece back?

Wheeler: No, no, no. On the \$800,000 loan, those people, it's secured by the patent.

Simon Bernstein: What about the \$600,000...or the other \$800,000 loan?

Wheeler: The others weren't loans. The others were equity, as I recall.

Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where note holders

Wheeler: No, because there was no quid pro quo at that time. The note holders I mean you can't go back and do it, we had that talk Si

Wheeler: I mean, you can't go back...

Bernstein: The note? I believe they're not final, even though we told people they would be by this time.

Wheeler: The note holders took their money in without taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't ... back to a failure to the corporation

Simon Bernstein: ...Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem

Buchsbaum: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because ...posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga lose his?

Bernstein: Would Huizenga lose his stake in it to Crossbow?

Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of...??

Simon: We all could have put in another \$10. I mean, at the time we did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

Wheeler: There would have had to have been some material consideration, not just \$10. It would have been...

Simon: So it would have been \$10,000...

Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new

considerations that you could demand as a condition to be collateral.

Simon:                   What we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley:                   That's new subject matter.

Simon:                   Well, I only brought it up because it had to do with the patents.

Utley:                   I know but can we finish the patent discussions before we bring up new subject matter.

Simon:                   You can, but I want to make sure that we do finish.

Utley:                   No, I agree with you Si.

Si:                       The problem is that I made claims to certain people like Don Kane, who put up \$100,000, who thinks...

Bernstein:               Let's get back to that. No, let's get back to it. It's a definite point. There are people.

Buchsbaum:              This is a business issue for later.

Bernstein:              No, we're asked by these very people these questions.

Boehm:                   Did you get your question answered on the...

Buchsbaum:              Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

Boehm:                   Yeah, but after...I find everybody, we can get guys to sign.

Buchsbaum:              We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum:              There aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm:                   No, there's not.

Boehm:                   So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum:              You just have to get people around and sign.

Boehm:                   No, that should not be and issue.

Buchsbaum: That might be questions brought up when people do due diligence. Is everybody else on these?

Bernstein: That's why we're closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

Utley: The other piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined process—the mathematical representations of what's in and how it works and stuff like that.

Wheeler: (...???)

Buchsbaum: That will also be included in there, right?

Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form my opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps we would have liked to have tidied up some things better, like to have had Mr. Joao tidy them up. The good news is considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24<sup>th</sup> last year. Second, we will look at the March 24<sup>th</sup> year 2000 filing and determine how we should amend that to include additional claims and broaden that filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back...

Boehm: as long as you don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.

Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

Boehm: The question never even gets answered half the time in the real world. I will claim priority back on the document, and then if the examiner doesn't care, nobody cares

Bernstein: It gets through.

Boehm: It gets through.

Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

Wheeler: So I'm not adding flesh in defense...

Simon: New flesh.

Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray Joao numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

Utley: No Crossbow notes would be converted to equity when someone else comes in.

Si? Of course, and that's gone. And those issues are gone.

Wheeler: Well, Yeah, so that it was the ...it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of your collateral.

Simon: Yes, of course. As soon as it converts to equity, it's gone.

Wheeler: But I mean, what if you didn't convert yours to equity[ ]?

Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for

distribution. But of that amount[ ] unless there's nothing to distribute.

Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

Buchsbaum: You're talking about the small amount of money, that have any value, it should be reasonable value, and those would be taken out anyway.

Simon: Except that we seem to feel that we have an obligation to those, to protect the other stockholders who...had all good...I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?].

Utley: Will you look it up and see what it's going to take to do it?

Wheeler: I'll coordinate that

Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

Simon: I don't know. Can you handle the old money the same way? I don't think so.

Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on subsequent money.

Simon: Well, but to ask Don Kane to put up \$10,000 when he's got \$160,000 in the...\$135,000 in the company, and then he only gets 10%...\$10,000 worth of consideration...I'd like to protect his whole \$165,000, which is what he has.

Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$400,000 that's on the books. Then there's another \$100,000 besides what he put in originally. Sal has a loan on the books of \$25,000. Your guy should have had a loan on the books for \$250,000.

Utley: No, that's equity. Okay.

Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me \$10,000 to pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and Mitch.

Simon: You haven't sold any of your stock?

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.

Buchsbaum: That's the way to do that?

Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

Simon: Sure, I just wanted to make sure that it was done. I didn't even know ...???that bank account

Bernstein: Not that I didn't.

Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop to the US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

Simon: Let me ask you. You're not a lawyer, what do you recommend?

Boehm: Well, it's more money up front.

Simon: How much money? A great sum of money?

Boehm: No, it's another grand to file.

Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.

Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those earlier filings?

Boehm: Those other two.

Buchsbaum: That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: Plus you're gonna get an office action back from the patent office on him...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

Boehm Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?

Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to...???

Utley: Because he's claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorders off, right? <Recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?

Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess \$5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, well get Rays to another indiscriminate level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products--or whatever it is--per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..

Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That the patent will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.

Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be approved. The investors are going to say...

Buchsbaum: The first one that we're going to be issued will be issued in May.

Bernstein: And the investors are going to say what happened to patent one.

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in. 18 months to two years

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and wasn't able to and got clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah. Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances people to get around you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

Boehm: But what, the test - I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say

Utley Doug come back, close it out again.  
<Inaudible comment.>

Boehm: There were two points. One was the PCT and I got that in correct.

Buchsbaum: Right.

Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it issues. You never do it before. I don't even like to do it then. I like to do it after all the...

Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.

Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.

Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.

Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.

Boehm: Now it's intentional!

Utley: But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?

Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly—if that's the goal, which sounds like it's a good goal—then, no, I think we should amend the claims with a preliminary amendment before the examination.

Utley: A preliminary amendment?

Boehm: A preliminary amendment.

Bernstein: Encompassing everything we can throw in there?

Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...

Bernstein: So we're going back to the original

Boehm: So I'll fix the 119 case yeah

Bernstein: March 3, 2000, to encompass what we've embraced.

Utley:               When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm:               Yeah, that's...

Bernstein: That's my guess.

Utley:               When will you be in a position to...

Boehm:               I'd have to...a few days...

Utley:               About a week or so?

Boehm:               Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>

Transcription of Patent Meeting  
Conducted August 4, 2000  
Participants:  
Eliot Bernstein, Jim Armstrong,  
Brian Utley, Steven Becker, Simon Bernstein  
Docket 57103-120

*Note: Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified.*

Armstrong: Are we aware of all the important dates I know you probably are, but are we +  
+Brian made aware of all of our deadlines and contingencies relative to  
those deadlines +~~that we~~ that we're not left with...I was a little  
surprised that a final pack that's been in the works for a year, and I  
know you weren't involved for a year, but in the works for a year required  
that Eliot and I spent the entire night and morning reviewing it in order  
to get it done.

Bernstein: What bothered me about that as well is that we'd go through the math, and then  
suddenly you have a document Brian sent you several days earlier regarding  
the math that has a bunch of changes in it, and none of that's in there. I  
mean, I don't understand that.

~~Becker~~Armstrong: ...was changed from that document anyway.

Boehm: Yeah, it was changed from that document anyway. I was working with Brian, who I  
thought was the master of that math, but...

Bernstein: But he had sent you an updated ~~map~~ math three days earlier that didn't appear in  
the final document that we were trying to...

Boehm: Okay, I don't know. Steve was handling that. I don't know whether...you know,  
Steve says he did put it in there, but then I don't...

Bernstein: But then we go through the document that we're filing, and it's not there.

Boehm: Okay, but we were on the third draft when I took it over. You guys had  
opportunities like crazy to...

Bernstein: But that's the thing. Brian had sent it to you earlier, and it still wasn't  
appearing in final drafts.

Boehm: If that's true, then something crossed in the email because Steve said he put it  
in there, and maybe there's a piece of the math missing between the  
crossing the emails. You're right in terms of...

Bernstein: Is Steve there?

Boehm: I don't know. He probably is.

Bernstein: And then my other question is quite a simple question my dad asked about  
electrical engineers being mathematicians and said, "Didn't they sit and  
pencil out the math of all this themselves?"

Boehm: Uh, huh. Here's what happened on that. Steve was filling the application. We  
worked with Brian and you, Eliot, on the application. In some of the  
letters and emails he said that he doesn't understand the math.

Bernstein: I'm not getting any of those.

Boehm: Huh?

Bernstein: I'm not getting any of those emails.

Boehm: Well, then, talk to Brian because we were corresponding with Brian on that, and I don't know why you weren't getting it if that was the case, and I don't know which letter went to who, blah, blah, blah, but I do know that we mentioned that we didn't understand the math, and we were up to the third draft, if I recall; and you're right, Jim, that it shouldn't have taken...it shouldn't have been last minute and you should have had time to do it. I totally agree, but I can't take total blame for that...

Bernstein: But wait a minute. Steve has fundamental errors on understanding the math, and yet we're going to file it with him having math problems?

Boehm: It's your duty to either help us to understand...

Bernstein: But then I've got a point. We did help you. We sat on the phone for an entire day, walked through this...

Boehm: The day of the filing you mean?

Bernstein: And if this math is still wrong, I mean, there's something really fundamentally wrong here.

Armstrong: Let me check it again.

Bernstein: Yeah, let us call you back in a while. Is Steve in today, too?

Armstrong: I didn't get involved until Wednesday.

Boehm: Right.

Armstrong: I'll tell you one thing, Doug, that you should do as just a matter of course going forward. Eliot being the owner of the company and the person that Brian reports to is any future email correspondence should always be copied to him. That's kind of just a standard practice we all do in the company.

Boehm: To copy? 

Armstrong: Yeah.

Boehm: Okay. I didn't know that.

Bernstein: You ask me to review and sign these patents, and you're not sending me information. What do you mean.

Armstrong: I think had we known that there was a question of validating Brian's math, Eliot would have brought me in a lot earlier.

Bernstein: I would have brought a mathematician in. I mean, this is ridiculous.

Armstrong: Yeah, I'm just a friend that's good at math, not a mathematician.

Boehm: Right, well.

Armstrong: Go to your meeting. We're going to check this patent ~~stats~~-out, and we'll talk to you letter.

Boehm: Well, you've got to talk to Brian, too.

Armstrong: Yeah.

Bernstein: I think because I now seriously have to report a lot of things to a board of people that we're going to have to have a meeting at some point either today or Monday with a few of the key people in the company who are investors, etc., so that they understand what they are investing or not investing in.

~~Becker~~ Armstrong:

eliot 3/10/2004 2:19:24 AM  
Note

Bernstein: No, Boehm directed to copy company on patents and other matters we got some fundamental things that need

Boehm: If what's correct?

Armstrong: If he's correct about the math being wrong, but let's check it...

Boehm: No, I'll bet we could get a good patent if the math is totally wrong. I think we're barking up a tree here that's not a big wall.

Bernstein: But wait a minute. The question is if it still remains wrong and we gave you the right changes, it should have been filed right. All the sudden I'm left with a patent that...

Boehm: Okay, talk to Brian.

Bernstein: I will.

Boehm: Brian gave me the right changes. I filed what Brian gave me.

Bernstein: Okay.

Armstrong: Okay.

Boehm: And I don't mean to...you know...yell out of that, but that's what happened.

Bernstein: That's no problem. I totally hear that.

Armstrong: Thanks, Doug.

Boehm: Okay. Talk to you Monday.

<Hang up phones.>

Bernstein: 8/4/2000. 8:30 Doug Boehm conference call. Jim Armstrong, Eliot Bernstein. Steve, Jim, everybody, I'm taping the conversation, 8/4/ patent discussion regarding Docket 57103-120 with Brian Utley, Steve Becker, Jim Armstrong, Si Bernstein, and Eliot. Okay, guys.

Becker: [ ], too, if that's all right with everybody.

Bernstein: Yeah, did you get the fax from Jim?

Becker: I haven't received it yet.

Armstrong: It was sent actually to Doug on the "cc" line, but to a machine at 297-4900.

Becker: That's right. It'll go to our central fax department, and I just phoned up there and asked them to deliver that to me when it comes in.

Bernstein: Okay, but you've got the patent in front of you?

Becker: I don't. I don't, but I can get it.

Bernstein: Okay, well, let's do that.

Becker: Okay. I'll need a minute. I've got to go over the Doug's office.

Bernstein: Okay.

Armstrong: The fax is on its way to you now.

~~Becker~~Simon: It's on the way to me? |

Armstrong: Yeah.

~~Becker~~Simon: Okay, then I'm going to put you guys on hold... |

Armstrong: It's not done yet.

Becker: Well, I've got to go upstairs and get it, so hold on.

Armstrong: Never a dull moment.

UtleyBernstein:----- They didn't put...they didn't put in what we corrected them on... |

Bernstein:-----~~Inaudible comment.~~ |

Utley: And I did it again on Wednesday night.

Bernstein: And he said to me all these changes were in when I went through them at 11:15 at night with them. That all the math has been changed. I was looking at him and said these haven't been changed. He said, "No, I'm working on a copy that's been changed. I'm going to send it to Brian, and sign off..." So, well, now, again, we're back at this same thing. How do we change things? What effects does it have on us?

Utley: This has no effect. Mathematically, that's...

S. Bernstein: Were those faxed?

Bernstein: YeahYes. |

~~S. Bernstein~~Armstrong: Okay. Nine pages. |

Utley: But obviously this has an effect.

Bernstein: A huge effect because you have completely altered numbers.

Utley: Well, you could explain it; but the only way you could derive this is by having that be the square root.

Bernstein: But this is wrong that he missed this, and isn't that on your current math? Do you have your sheet that you did...current math...that he said he didn't have, had, whatever? Brian, do you have the patent book?

Utley: Yes.

Bernstein: Okay. I need to borrow that.

Armstrong: I would think that in a patent document being as important to us as it is, there's not an acceptable level of error. It's either got to be all right, or it's not acceptable.

Bernstein: Oh, and that's what we heard from Doug this morning. So, I mean it's hard to fathom this.

S. Bernstein: You know what guys? I don't understand. Why doesn't somebody... take five minutes, and tell me what...because I sat~~at~~ it in a meeting with all the lawyers, and... |

Bernstein: Here, Dad, let me give you an example. Is 2,560,000 times .8 the same as 2,560,000 times 1.25? Yes or no?

S. Bernstein: I doubt it!

Bernstein: Okay, well, that's the fuckin issue. That's how far off these are. |

S. Bernstein: Okay.

Becker: This is Steve. I'm back, and I can't seem to find that file. Doug is out today. You guys may know. So, I don't know how much help I'm going to be.

Bernstein: Okay, well, do you have the fax? Hey, ~~DP~~-Man, you've got the file right there. Just email it to him. |

Becker: Here it is. I've got the fax now.

Bernstein: ~~Okay~~---Steve, Doug also mentioned that you had emailed some correspondence to us that you didn't think the math was right earlier? I have no records of any of that. |

Becker: No, what I did was I faxed the draft over on Monday night, which incorporated some additional disclosure that Brian had sent. Basically, it was examples. It had the equations set out for both print film and digital examples, and then he had three examples for print film and one example for digital, and I essentially...I exactly basically cut and pasted that into the application.

Bernstein: Well, the application we got from Doug didn't have any of that- cut and paste because what it had was the old stuff and Brian referred to having sent this to you several days earlier and yet it wasn't in there.

MISSING SECTION GO BACK

Becker: I don't really know because at that point Doug was down there with you guys, and I presumed you were reviewing it on like Tuesday and Wednesday. And the Doug said he would take care of just...because we figured there would just be some minor changes after we'd incorporate all of that.

Bernstein: Well, it wasn't incorporated, so there were huge changes.

Becker: Oh.

Bernstein: And it would have been filed completely wrong had it not been for Jim Armstrong reviewing it. Everybody would have nodded off on this and accepted wrong, completely wrong, filings.

Becker: Maybe he should be part of this conversation.

Bernstein: He's on this conversation.

Becker: Oh, good. Hi, Brian.

Utley: Hi, Steve.

Bernstein: Brian's here and Jim Armstrong's here.

Becker: Okay. Well, the only link we're missing here is Doug because Doug took the last few steps of incorporating comments and actually filing the application on Wednesday.

Bernstein: Hey, ~~EB~~-man, forward him a copy of the final draft, would you?

Armstrong: And that, Steve, I think the most important question to have answered is what are our rights and obligations and opportunities relative to correcting this without any ill effects to us?

Becker: Yeah. There's plenty of opportunity essentially. We can file...if there are substantial errors in the application as it was filed, we can simply file a new application as soon as we get those fixed either on Monday or Tuesday or what have you. The goal of filing on Wednesday was to maintain priority back to the provisional application, which was filed a year ago.

Bernstein: So, did we lose that if they're wrong?

Becker: No, because we can only claim priority back to the extent that the subject matter was originally disclosed in the provisional filing of August 2<sup>nd</sup> of last year, and none of these equations were filed back then.

Bernstein: But the original process was.

Becker: Right. And the original process is ~~the~~ preserved in the application. We're just talking about the details of the math examples that are in here. So we haven't lost anything.

Bernstein: Will we lose claiming back to the priority of the original provisional? So we did lose something, or am I incorrect in what I'm hearing.

Becker: Yeah, No, we didn't lose...the original provisional can only provide priority for what was originally disclosed, and the math was not originally disclosed, right?

Bernstein: Well, no, but the math is a subject of the invention, not vice-versa.

Becker: The reason I'm putting the math in there is essentially to provide concrete examples...

Bernstein: Of the invention.

Becker: Right.

Bernstein: But the invention was in there as of the priority date, and we had already talked with Chris Wheeler and everything regarding this. Were you on that conversation?

Becker: I don't remember.

Bernstein: Well, Brian, you were on that conversation. It's the conversation where we were going back to try to get the soonest date on the filing and correcting the provisional to encompass all of these things.

Utley: Well, you can't correct the provisional, but you can...what it does is it claims back for everything that references back to the original, but then incorporates all the new elements to bring it into...to make it into more of a complete statement.

Bernstein: I'm not sure I understand this. It was my understanding that we were going back to Ray [Joao's] patent and fixing it by inserting what we have here. When I talked to Doug, that was what he was under the impression we were going to do, and now that's all changed as of today.

Becker: You really can't fix a provisional application.

Bernstein: Not the provisional-the ~~regular~~-Ray Joao filing of August whatever-whatever day it was.

Utley: No, in March. March 24<sup>th</sup>.

Becker: Oh, okay. Yeah.

Bernstein: And that way, if that patent gets approved with all this in it, that's what we were doing, and we wanted that one to be approved first correctly because it obviously expedites our life by a long way.

Becker: This is the PCT application file of March 23<sup>rd</sup>. Is that what we're talking about?

Utley: Yeah, but the way that I recall the conversation, the spec cannot be changed...

Becker: Right.

Utley: ...but the claims can be.

Becker: Right, and they can be changed as long as they're supported by teachings that are in that specification.

Utley: Right.

Becker: Which is why you really...

Bernstein: And the specification can't change?

Becker: Right.

Bernstein: Why?

Becker: Because it would be kind of like...

Bernstein: I thought that was based on new matter.

Becker: That's exactly why it can't be changed.

Bernstein: So it can be changed if it's still the same matter?

Becker: The claims can be amended as long as they are still fully supported by the matter that's in the specification that's originally filed. Now, if you want to change your claims and they're not supported by the specification as originally filed, then you have to file a whole new application adding new matter to your specification that will support those claims.

Armstrong: Does the fact that a direct interpretation of what in general amounts to typos and oversights, but a direct interpretation of that affect our ability to change that supporting matter of that matter? Because if we directly interpret the math in the certain circumstances here, it will bring you to a wrong conclusion if it's a direct interpretation without having to reverse ~~such an error but~~ engineer what was meant to occur.

Becker: Well, I see. Then we need to get the math right, but it doesn't affect our priority. Only by a few days essentially.

Bernstein: Well, do we lose the ability to claim priority to what we were trying to claim here...

Becker: No.

Bernstein: ...by that date? So you can go back in and change the matter of this?

Becker: You don't go back and change the matter, you just file a new application which claims priority back to a prior application only for the subject matter that was...

Bernstein: But we missed that application.

Becker: No, we've got it in the form of this continuation, or this PCT, that we filed claiming priority back to that patent application. So we've preserved that chain of priority.

Armstrong: Are you then completely confident that errors that we need to correct right now then are not going to hurt us in any way, shape, or form as being able to claim as part of our invention all of the correct things that we want in there?

S. Bernstein: That's what I heard at that meeting, that we could go back and re-do that at a later date without having any implication.

Bernstein: As long as it wasn't new subject matter.

S. Bernstein: Exactly right. These are just corrections to the...

Bernstein: They're corrections, they're math, whatever.

S. Bernstein: Okay, but we're not saying this is a new way to get to that.

Bernstein: No.

S. Bernstein: Okay, that's what I heard. That's the notes I took. Eliot, you should have that on the tape recorder so that we know that.

Armstrong: Well, we do, and that would also support, I think, another issue, which is that we now have to go through the refiling of something else which was originally corrected several days ago and was somehow ignored so that this whole refiling shouldn't even cost us anything.

Bernstein: Well, and beyond that, Doug <sic>, what I'd like to really get down to is a letter from you, in writing, explaining all of my, you know, both from the Ray [Joa] patent forward, and I think you need to talk to Doug about it, of what our potential pitfalls are here with these filing errors, what our potential pitfalls are, what it caused to happen with that priority, priority equals, and if there's any harm to us. Because we keep just slipping back by these things. This should have been right. I mean, we have well documented, and Brian's well documented, that these changes were sent, and now we've missed a priority claim to that by not being able to go back and change our last filing. I need to know the liability here.

Becker: You know, I was not there on Wednesday night. Brian talked to Doug on this and then made final changes, and then...

Utley: Yeah, Doug sent me a next-to-last copy, which I went through and there were a number of errors—I have my notes on each one of those at home—and then I reviewed each one of those with Doug, agreed on what they were, and then Doug was going to send me the last copy, which apparently he didn't because I never received it. At that point in time, it was, I guess, about 11:30 or 11:45 our time.

Bernstein: And these were also discussed in great length with him for a whole day on the phone.

S. Bernstein: Yes, well, how about in the...

Bernstein: No, no, Dad, this is separate. But at great length this was discussed, every one of these changes.

Becker: The changes you sent me here, is this Brian's handwriting?

Utley: No, some of it isn't. Isn't correct.

Bernstein: Well, let's go through it because I'd like to...

Armstrong: Yeah, let's go through it.

Becker: I don't know if that's going to help that much because it's a question of what actually was filed and whether it incorporated the changes that Brian asked for the last minute.

Bernstein: It didn't.

Armstrong: We know that. This is what was filed.

Becker: Brian, didn't you just say that Doug didn't send you the final draft of what was filed?

Bernstein: He did it the next day.

Becker: Oh, he did the next day?

~~Armstrong~~Bernstein: Yeah, Jim, can you forward that to Steve real quick?

Armstrong: What?

Bernstein: Email it to him...the final draft?

Armstrong: Yeah.

Becker: Well, I'm not going to question...

Bernstein: Okay, but we need to go through and get the changes acknowledged, accepted, have you put it into the next whatever you're going to do to solve this, with a letter explaining what we've lost here.

Becker: All right.

Bernstein: Okay. Any liability, potential liability where we're exposed to from this.

Becker: Oh, I wouldn't worry about it. You guys are making a mountain...

Bernstein: Well, you know, I gotta tell you, I worry a lot about it from what Doug told us. So, you know what I mean? You tell me not to worry, but then you tell me it's very important that we're accurate in this filing; and then we're very inaccurate in the filing, and then we're not supposed to worry. I'll feel much better not worrying with a letter from you explaining why I shouldn't worry.

Armstrong: Steve, what's at your email?

Becker: Sbecker@foleylaw.com.

Armstrong: Sbecker?

Becker: Yeah, "S" as in Steven, "becker."

Armstrong: Got it.

Bernstein: Okay. Let's just go through this with you, Steve, so we can get the next step done.

Becker: All right.

Bernstein: Which is correcting the issues. Are you with us on page 13?

Becker: Right.

Bernstein: Okay. Jim?

Armstrong: On page 13, line 19, the expression of VWH should follow the way we express it in our definitions, which is VIH. Even though the two are equal, let's just follow the way that we have it expressed in our definitions on page 12.

Becker: Oh, I see. Okay.

Armstrong: Then on line 23, each of those expressions is not congruent with the way we've defined them. Despite the fact that we arrive at the same results, it doesn't apply the formula in exactly the same way. So for a reader, it ought to be the same. So for line 23, it should be the "square root of 2,560,000 times 1.25."

Becker: All right.

Armstrong: Okay. Not "2560 divided by .8."

Becker: Okay.

Armstrong: On line 24, it ought to be "1789 divided by 1.25."

Becker: I see. Okay.

Armstrong: Then on line 25, it ought to be "1441 divided by 4." Again, the results are the same; the expressions are not.

Utley: Now, on that last one, Jim, it's correct. |

Armstrong: It's what?

Utley: The scan density is 1789 divided by 5.

Armstrong: Okay, hold on. Scan density is defined by us as being...where the heck is it...oh, it's right up above..."target image height..." right up above on line 7..."minimum scan density is target image height," which in this case we just defined to be 1431...

Utley: Where are you reading from?

Armstrong: Line 7 of the same page. Line 7, page 13. So target image height is 1431 divided by the source image height, which is 4, so it should be 1431 divided by 4.

Utley: Well, the...yeah I guess that that equation, "MSD equals TIH/SIH," did not come from my documentation. |

~~Becker~~Armstrong: Hold on, let me look at this documentation. I've got it right here, |  
too.

Bernstein: Well, Steve, you have copies of this, too, that were sent to you...

Becker: Right.

Bernstein: ...of what Brian's looking at, several days ago. So how isn't this stuff flowing forward into the patents, especially when we pointed it out two times before filing? I mean, I'm just dumbfounded at this.

Utley: There was a change, Steve, which you were not involved...

Becker: The proper equations, ~~that I~~ wasn't there the last night when the last changes were put in, so I can't really speak to it.

Bernstein: No, but he sent you his changes several days ago.

Utley: Steve, there was a change that we decided on uh on uh Wednesday afternoon, which was to reflect aspect ratio as width divided by height, which uh I uh made, and that was created by the desire to reflect aspect ratio the way that displays are uh uh expressed as opposed to the way photographic images are expressed. Photographic images are expressed the opposite way, and that's the way the documentation uh uh had been originally prepared. But it was thought that it was uh perhaps more consistent with current technology to express it the way that displays are expressed. So I went through and changed...

Becker: You mean from that change in ~~(invention? convention?)~~ convention?

Utley: Yes. So that caused the equations to be reconstructed to reflect the uh uh inverse of what was there before because the affect ratio now is inverted.

Becker: I see.

Utley: And what happened was Doug apparently did not pick up all of those changes, even though I went through them very methodically the last thing uh Wednesday night when he sent me ~~his~~-his uh his uh almost-final draft.

Becker: I see.

Utley: Uh And uh, Jim, just for your uh edification, that also affected the MSD shifting from a height to a width orientation. The number is the same, but it changed it from a height to a width.

Armstrong: So what's the correct formula for MSD?

Utley: It's TIW/SIW.

Armstrong: Okay.

Bernstein: So, you made this change with Doug, and it's still wrong in the patent?

Utley: Right

S. Bernstein: I'm a little concerned about the proficiency of the legal aspect of this. We sat there for hours, and then Brian stayed late into the night with this guy, and then he comes back and we don't file it right anyway? It seems like there's something wrong here. I mean, ...

Bernstein: I mean this is, yeah...

S. Bernstein: I mean, I'm just budding in because I have little or no knowledge as to what the numbers mean, I'm just listening to a conversation in which I'm hearing is that after four or five hours in a room locked together with lawyers and everybody else, we reach an agreement that those changes will be made. Now, my understanding is Brian stayed and made those changes, and then the lawyer didn't file the changes? What's the sense of that?

Bernstein: These are good points. Let's move forward, Jim.

S. Bernstein: These are points that have to go back to stockholders with money invested.

Bernstein: That's why I've asked Steve to send us a letter of what's happening, what our exposure is, by Monday or Tuesday, explaining how this didn't occur, get in, and what we're going to do to resolve it, and what that resolve initiates in the chain of events.

S. Bernstein: Well, the other side of it is this. If after all of this precaution has been taken—and Brian, you can correct me if you think different—but after all of this precaution has been taken, it appears that the fallacy of worrying about it ever gets accomplished. Brian stays, everybody works on it, it's still filed wrong. Now what if Jim Armstrong hadn't caught it. Brian was on a plane today...

Bernstein: Then none of Brian's changes even sent several days ago even would have even been in there. Math would have been wrong, equations would have been wrong, verbiage would have been wrong.

S. Bernstein: Am I right, Brian, in having this concern?

Utley: Uh Well, yeah, obviously it's uh clearly uh uh a major concern because there's nothing more disciplined than the uh uh mathematical expressions.

S. Bernstein: And you're comfortable that what you did, even if some of them were wrong, that we could have later corrected...

Bernstein: No, Dad, we sat here with Brian and Jim and Doug, and we went through it, and we all agreed it was right, and those changes do not appear.

Utley: No, we...uh uh

S. Bernstein: That makes me very nervous. Well, it makes me nervous to the extent that are all of the other patents done right?

Bernstein: Well, that's what I'm...I'm going to start having somebody review all of this. I mean, obviously there's...it opens up a whole can of worms.

S. Bernstein: Well, the other thing that I heard was—and not negatively or anything else—but I heard that perhaps Ray [Joa~~q~~ did this work and he was either concerned about it being a bit sloppy, blah, blah, blah, blah. What is the excuse for this law firm?

Bernstein: Well, let them write us what's happened here. I mean, I definitely need to see on paper, Steve, some kind of report on this. That it describes what occurred, why it's not reflected in the patent filings, and what our exposures are, and that'll tell us what we're dealing with in firm, etc., liabilities. I mean, we don't know that.

Armstrong: We should continue to look at the changes so that he's copy that reflects everything.

S. Bernstein: Well, even if there is no liability, what I'm still concerned about, even if it can be corrected, it's the exact same position—Brian, am I right?—that we found ourselves in with the last lawyer who did it. Okay, thank God we can make changes, but that isn't the answer. Why not just get it right, get it filed...

Bernstein: No, don't just say thank God we can make changes, Dad, because all of that brings additional liability to you. You miss dates, you miss claiming, you miss this and that—words that are very tricky and confusing, and only these guys can understand. So that's why I need it to be put in writing so I can have it analyzed...

S. Bernstein: Absolutely, I want it definitely, because I need to take it...you know, I need to have board member approval...

Bernstein: Oh, I think our board is going to be disastrous with this stuff about several things when we take this to them. And we need to know from the Ray [Joa~~q~~] level to the Foley-[Lard~~ver~~] level, how this is going to be cleared up and what the problems were that occurred.

S. Bernstein: Okay, let's get that part in process; and it's unfortunate that Doug's not here because maybe it's something he could explain.

Bernstein: No, I talked to him this morning; and as a matter of fact, he said Steve had the math from Brian days before and by the time he got it, he thought it was all input correctly, and that was his excuse.

S. Bernstein: Well, what was he doing here with Brian?

Bernstein: Well, then we spent a whole day with him correcting it all so that it was right; and then by filing time, none of it was right. So, let's go forward. Let's just stay on track. We'll deal with all of these issues on Monday.

Utley: Uh I just say one thing. Uh Fortunately, uh I don't know The most important part of the math is all of the definitions. The examples are examples; but the most important part of the math is the are the definitions.

~~S. Becker~~Bernstein: Okay, are those right?

Armstrong: No. Well, there's one that's not ~~, we just found out which is [ ]~~. Line 7 of page 13...

Bernstein: Is wrong.

Armstrong: Is wrong. It should read...

Bernstein: ..."[ ] equals TIW/SIW."

Utley: They are mathematically uh uh equal. Both will give the same results. So It's a uh consistency question as opposed to an accuracy question.

S. Bernstein: And for a reader, it would probably be easier to be consistent.

Utley: Absolutely.

S. Bernstein: That's what we want. As long as we're spending all of this money and everybody's devoting their time to it, we want it to right-as right as you can possibly get it at any rate.

Bernstein: Okay, Dad, let's move forward.

Armstrong: That changes one thing on line 25. The expression on line 25 is now correct as it was typed, so scratch out my handwriting. Okay? All the other corrections stand as I explained them earlier. Now, on the last line of this page, that should read: "480 X 320."

Utley: That's correct.

Armstrong: Okay. Then on line 6 of page 14, I think we should consistently state which is width and which number is height because it's such an important distinction in the calculations. We did it on the previous example, but not on this one.

Bernstein: This then is width height

Armstrong: Width is [ ] height is 4

Utley: And that is what we had agreed upon on Wednesday afternoon.

Bernstein: Right. That changes again in a minute

Armstrong: Okay. Line 17, again we're just missing that square root symbol in order to make that equation work. Without the square root, it's millions instead of thousands. Now, in line 19, I had originally indicated this was correct; it's now incorrect because of our change in the formula for the density for the maximum scan density.

Bernstein: Steve, are you getting all of these?

Becker: Yep.

Armstrong: This should now read in line 19: "1789 divided by 5 equals 358."

Becker: "1789 divided by 5 equals 358?"

Armstrong: Yes.

Becker: All right.

S. Bernstein: Steve, I have a question to ask you.

Becker: Yes.

S. Bernstein: When Jim or Brian or anybody gives you these numbers, are they checked out by anybody, or do you just copy what we say and that's it?

Bernstein: No, they definitely don't copy what we say. That's an initial problem here, Dad.

S. Bernstein: Okay, I don't mean to be sarcastic.

Bernstein: No, but they would normally as mathematical people add up the equations.

S. Bernstein: Yeah, because your partner was telling me that most patent lawyers are engineers, which would lead me to believe that somebody would say, "well, I better check the math to make sure that guys who are not engineers know what the hell they're talking about." Is that done by your firm, or is it just accepted as gospel what we give you?

Becker: We don't have engineers or technical people check the math that you provide us.

S. Bernstein: Okay, so what we provide you, then, we live and die by?

Becker: Okay. Your job is to get that right.

Bernstein: Right, but what we did give you, you didn't provide in the patent.

S. Bernstein: Okay, we're trying to say the same thing.

Bernstein: Okay.

Armstrong: Let's just get it right.

S. Bernstein: At this point we're only interested in getting it right.

Armstrong: Line 27, that should be "36@H" for the height.

Bernstein: Which page?

Armstrong: Line 14, third-to-last line of the page.

Bernstein: Okay.

Armstrong: Now we're onto page 15. Again, we just need that square root symbol as indicated there.

Becker: Okay.

Armstrong: Then there is nothing on the next few pages until we get to page 18, this is an important omission for our calculation standpoint, but we need that square root symbol.

Becker: Okay.

Armstrong: Then I'm going to skip for a second this discussion on minimum scan density here because I want to talk to...go with Brian's comments, too, but on line 10, the correct figure is "1.33 equals 1.33."

Becker: Okay.

Utley: Yeah, that wasn't picked up from the other...from above, the aspect ratio.

Armstrong: Line 15, the square root symbol again is missing from that same equation. And then finally, I don't see why, in this example, or any digital example where we have no scanning to do, why we should even include any reference to minimum scan density because the only application of scanning in a digital world is if we were to print a digital photograph and later scan it, in which case we'd follow the print formulas, not the digital formulas. So, my suggestion here is that we change the sentence, beginning on line one, to end after the word "dimensions"...actually, strike the words "and minimum scan density" and also to eliminate line 23. Do you agree, Brian, that there's no reason to have that there?

Utley: It certainly doesn't add anything. Uh It doesn't uh uh subtract anything.

Armstrong: It just added confusion to me as a reader when I thought, "How do I calculate that?" and then realized it's not...we're not scanning anyway. Why ask someone to determine something that is not included as a step of the process? So I think if everyone agrees, we should strike the words "...and minimum scan density" in line 1 and 2...

Utley: No, what I would do, I wouldn't do that. What I would do is simply say, "...image size and dimensions" and then add a new sentence which says, "Minimum scan density is not required since we are dealing with a digital image."

Armstrong: That's fine, too. Then let's strike line 23.

Utley: No, I'd leave that in.

Armstrong: It's redundant, but that's okay. Do you see any other problems with the formulas? Did you review all of this again today, Brian?

Utley: Uh I've just uh uh I have not reviewed anything today. I wasn't aware of the problems until about three minutes ago.

Armstrong: Okay. So that covers my comments on that.

Bernstein: And, Steve, do me a favor. When you guys draft this letter, draft it to Si and Brian. Okay? I'd like to be cc'd on...and by the way, I'd like to be cc'd on any correspondence of anybody to do with the patents.

Becker: Okay.

Bernstein: One last thing. Doug mentioned that you had a file from Brian, a spreadsheet that part of the spreadsheet matter is not incorporated in here. He didn't know why...he couldn't explain why. I was wondering what that matter is, and where is it? Are you aware of that? Because he referred to you.

Becker: Did heTo me?

Bernstein: Yes.

Utley: Uh uh That's probably the image sizing spreadsheet.

Becker: Image sizing?

Utley: Yeah, I sent you two files on Monday.

Becker: Okay. Actually, you sent three all together. Oh, you sent three emails, and then the last one had two of them.

Utley: Right, the last one had two files: both the image sizing and the process.

Becker: Oh, you've got the macro, and then you've also got the description of the math. Now, what did you want included that wasn't?

Bernstein: Well, Doug said it should have been included, but it wasn't...the rest of that sheet.

Becker: What?

Bernstein: I don't know. Whichever half's missing.

Armstrong: Hold on one second...I don't want to confuse Steve. We do not want you to cut and paste out of those documents into these patent filing. Those documents do not reflect the way we want to express the math.

Bernstein: Right, but we might want them in there, B, correctly.

Armstrong: What?

Bernstein: We might want them in their correctly...

Armstrong: ~~They're not in there correctly.~~ We just went through it. It's now correct. If he employs all of the changes we just all agreed to...

Bernstein: No, but there's another sheet that's not reflected here.

Armstrong: Well, yes, I do want to talk about that. The macro, right?

Bernstein: Right. Can you forward that file to us--the Excel sheet--to Jim, me.

Armstrong: Just have Steve forwarded the whole email back to you.

Bernstein: Well, he doesn't have it in front of him, and Brian's got it right here.

Utley: No, I sent it to you. You were copied on it.

Bernstein: Okay. Let's just get the most up to date...any changes.

Becker: Yeah, Brian, remember, we made a decision not to file the claims directed to your macro--we made that decision last...a week before the...

Bernstein: Why?

Becker: Because it was going to involve some additional work, and we didn't have time at that point; and it was all new matter that wasn't going to claim priority to anything, so...

Bernstein: Well, what's new matter? If the math is part of describing the invention, then it's not new matter, according to what Doug's told me four times now.

Becker: Well, Eliot, as you recall, you always have to look at the claims of the application, and that defines the scope of your protection. The claims will also define...also have to be supported by the specifications. We were going to direct claims to the idea of using...of having a macro program, which is useful as a tool, to do these calculations in a rather simple process.

Bernstein: Okay, that's fine if you want to just claim a macro. That does it as a simplified process and add that as an additional patent for us, but the underlying math of it should all be applicable to the invention since it's just derived off the invention.

Becker: Yeah, math...

Bernstein: So it's not new matter, it's just an understanding of the matter. I mean, I swear we went through this four times the other day with that conclusion.

Becker: There are two files that Brian sent me. One of them was an Excel spreadsheet having six pages, and all of that material was included in the application in pretty much cut-and-paste format. His pages 2, 3, 4, and 6 were the examples, which I just cut and pasted as soon as I got them from Brian because they defined it all very particularly.

Bernstein: Okay, now you need to get back your record of that because 2, 3, 4, 5, and 6 that Brian is sitting here showing me, were never in these patents yesterday. So cutting and paste, you must have put them in the wrong document.

Utley: Those are the examples.

Bernstein: But those weren't...that's not what ended up in there.

Utley: They pulled these pictures out and put them as a uh uh uh figure sheet on the back, uh and then uh uh we ~~re-~~entered...

Bernstein: Wrong math.

Utley: ...the formulas in the body of the...

Armstrong: Hey, right. B, are those images...are you looking at the figures? Are all of these figures in the patent application.

Utley: We should be on figure 7.

Bernstein: Steve, figure 7?

Becker: Okay.

Bernstein: Are you looking at it?

Becker: Not in front of me, but I recall writing it.

Bernstein: Jim, figure 7, what do you see?

Armstrong: I don't have a figure 7...because that was part of...that didn't come in the patent application, that I was mailed~~but [ ]~~.

Bernstein: It's not part of that final patent?

Armstrong: I don't know about that, but it didn't come as part of that Word document.

Bernstein: That's what I just sent you, ~~that's~~ supposed to be the final revision of the patent.

Becker: We have to scan the drawings into a Word document; so if you just mailed the Word document, you probably didn't get any figures yet.

Armstrong: Probably the figures were left off of that Ei-

Bernstein: Okay, do you have your patent application?

Armstrong: I've got the one we reviewed on Tuesday Wednesday.

Bernstein: And what's in there?

Armstrong: All the figures.

Bernstein: Right or wrong?

Armstrong: You know, I don't know. I didn't...Brian, was figure 7 changed at all with the restatement of our aspect ratio?

Utley: Yeah There were some additions that I made for clarification purposes. Uh If you look at the first page of the imaging process, where it says, uh uh the third box down, it says "viewing image," uh I inserted uh "SIR less than DWR" to tie it to the equation above it. And then in the one, the bottom, uh uh it has the expression "SIR greater than BWR," again, that is to tie it to the equation above it.

Armstrong: Yeah, because those two don't have a distinction, figure 7 as it is now.

Utley: Right. So that simply ties the image to the equation.

Armstrong: So do they have...have you sent them an updated amendment?

Utley: Yeah, that went out uh uh late Wednesday afternoon.

Armstrong: Okay, we've just got to make sure that the corrected figure 7...

Bernstein: Steve, can you fax us the filed patent?

Becker: No, I can't find it. I guess Doug took care of this from...

Bernstein: Does his secretary have a copy?

Becker: ...Monday night on. I spoke with her, and she wasn't clear...she wasn't able to find it.

Bernstein: Do we have a filed patent?

Becker: How certain would you like me to answer that question? I mean, Doug sent me an email saying we filed the patent.

Bernstein: Well, what he sent me that he said he filed is missing the diagrams. So, I have a final patent document missing...

S. Bernstein: When is Doug available?

Bernstein: Yeah, does he got a cell phone or something?

Becker: I don't know. I don't know. Maybe I can help clarify this...I mean, Eliot, you sound like you're really upset at us.

Bernstein: You know, I'm not a person to get upset until I see that I spend a lot hours going through this, Brian spends a lot of hours, we make all of these global changes...

Becker: Eliot, I've heard that a couple times already. Let me try to explain a little bit about patent law and maybe help everyone understand what has or has not happened. Okay, there's a lot of rhetoric being thrown on there, but there's...

Bernstein: Yeah, because we're blind.

Becker: I don't think all of it has a lot of basis in patent law.

S. Bernstein: That's good to hear, so let's hear that.

Becker: Okay, and Si, I thought you in particular might be interested to hear that.

S. Bernstein: Yeah, that's, you know, I'm not sure that adds any comfort because maybe what you're saying is it's not an exact science and then you move along...

Becker: Well, I'm going to go well beyond that.

S. Bernstein: Okay.

Becker: Does anyone have a copy of claim one they can read off of?

Bernstein: Yes.

Utley: Uh uh This is only a piece of it, right? |

Bernstein: Yeah.

Armstrong: ~~It's~~ Page 22. |

Becker: I'm working off what you emailed me, Jim, and I see page 24, lines 1 through 7. I guess they could have repaginated, but...

Armstrong: Oh, but Eliot had mailed you...or faxed you...

Becker: I'm sorry, what you emailed me.

Armstrong: Oh, okay. So it's changed then. I don't know why, though.

Becker: On the top of the page says "What this claim is."

Armstrong: "What this claim is"...

Becker: Do you have that?

Armstrong: Yes, page 22 in my printed on.

Becker: Okay.

Bernstein: Okay, hold on one second because I want to get my notes.

UtleyS. Bernstein: What page is that, Jim?

Armstrong: Page 22 You don't have it, BrianSi.

S. Bernstein: Because I don't have 22.

Armstrong: Want me to fax it... email it to you?

S. Bernstein: No, that's okay, he's going to explain it to me. I want to see if I can't understand this.

Becker: Sure. It's very sort claims, seven lines long. It actually defines the scope of the patent protection that we are trying to obtain in this filing.

Armstrong: Who are we waiting for, Eliot?

Becker: I ~~think~~ believe so.

Bernstein: Yeah I'm up front. We're waiting for Brian again.

Becker: Let me know when you're ready.

Bernstein: Okay, Steve, Brian stepped out for a minute, but I still want to address this issue. We invent something. I hire a mathematician. The mathematician solves the X, Y, and Z of the invention. Does he claim a new patent for himself?

Becker: Probably not. [Inventorship] typically follows with the conception of invention. If somebody else figures out how it was done, generally speaking that would.

Bernstein: Well, I want to be very ~~clear~~clear on this because Doug's thinking...I don't even know if then the next statement is correct or incorrect, but if a macro was created using the math that comes from the invention, where does it follow? Brian, I just asked him, if I hired a mathematician to do the math, put all of this into a thing, where does this follow. He says the invention, the inventor, etc. The guy you hired to do math wouldn't claim a new patent or a new invention, which is confusing to me because Doug now, as of this morning, told me that you're planning on filing a separate patent as inventor of a macro that just spawns off the math entitled to this invention. So I'm confused, and I want to be very specific on this of what our strategy is here on all of these peripheral pieces.

<End Side 1; begin Side 2>

Bernstein: Why don't you explain that to me again.

Becker: Can we go ahead with describing the claims?

Bernstein: Well, do you want to just finish that real quick, and then we'll go right back to the claims?

Becker: Okay, now what was the question you posed me, Eliot?

Bernstein: I hired a mathematician to solve for what I did. He comes up with an equation. Where does that equation belong? Does it belong filed as another patent? What's the inventorship, so to speak? And then, I design from that math a macro that solves that math with input formula. How should we be protecting that the whole way through, because I seem to be very confused about what I'm being told each day.

S. Bernstein: Okay, let him answer the question.

Becker: Invention follows whoever conceived the invention as claimed, and that's why the claim is so important because when you set forth in your claim what it exactly is that you're claiming, you have to ask who conceived of that idea—who was the first one to come up with it. So, typically if somebody really reduces your idea to equations that describe why it works or how it works, typically they would not be named as a co-inventor because they really didn't invent the idea. Now if you wanted to claim a macro which has user-input displays for receiving certain data that can be used by, say, a technician to determine the scan density of a print film image that would allow for the desired enlargement ratios and the desired target image size, that kind of is a separate idea, and that's why we thought it would be useful to claim that as a tool as well.

Bernstein: Okay, and I understand that part. I don't mind claiming that all day long.

Becker: Brian really was the one that built that and came up with it. It's based on principles that you learned, you know, a few years ago that maybe you didn't understand the math behind them, but certainly, I would think, be named an inventor on that.

Utley: I think that would probably claim both Eliot and myself as it relates to both aspects.

Becker: Right. But the important thing with the patent office is that it is...the patent office realizes that it is a bit of a grey issue in terms of who conceived what, so the important thing is not to have any deceptive intent.

~~S. Bernstein~~Armstrong: I think the most important thing is the distinction between invention and ownership. As I understand, all of this, every one of the patents that we have filed, all rights, title, and interests are in viewit's, regardless of who the author/inventor is; and any revenue stream derived therefrom are in viewit's, and that's the important thing. Is that true, despite and in light of the [ ]?

S. Bernstein: Well Jim that's ~~May~~ very next question

Armstrong: because we could put anybody as an inventor; but as long as that doesn't entitle them to a disproportionate share of any revenues derived therefrom, then I don't care.

Becker: Yeah, invention or ownership initially vests in the inventor or inventors who are named in the application; but typically, inventors are under some obligation to assign to a corporate entity, either written or by cause of their employment—and you can get into the issues of shop right...you know, if somebody invented something on the corporate time and then went and...you know, it wasn't really part of his job description, I know this issue's going to be a little more tricky. But I think in this case...what we do typically as a practice to confirm ownership is to have the inventors sign a written assignment document over to whichever corporate entity they want to...

S. Bernstein: But haven't we followed that?

Becker: We've got those documents. I don't think we have them all signed and filed yet.

~~S. Bernstein~~Armstrong: Let's get them.

Utley: Well, Doug was doing that on Tuesday while he was here.

Becker: Okay. Did you do some signing of documents, Jim and Eliot?

Bernstein: Yeah. Right.

Becker: Okay, so that's in process.

Bernstein: Okay, and wasn't really the intent of my question. The intent of my question is to define, for my understanding, what should claim back to Ray [Joao's] patent, and that means that everything other than a macro shell should define back to the original patent and be filed, corrected, amended, however we get it in to the original patent documents since none of it's

new matter, it's just an explanation mathematically on every equation of what happens.

S. Bernstein: That's what I heard at the meeting.

Bernstein: And that is exactly what I've heard, repeated; and then this morning, it was completely opposite, and yesterday it was a little opposite—a little—and, you know, I've become very confused about which strategy we're taking, which road, because we decide something, and then it's changed, and we're doing something else, and I'm completely lost.

Becker: I think I can make this very clear for you if you'll give me an opportunity.

Bernstein: I will.

Becker: Let's take a look at claim one. Claim one states that what you're claiming is a method of providing a digital image file for viewing on a user display in a viewing window that has a predetermined size, and the method includes one step. The step is, very broadly stated—so bear with me here—providing a digital image file having a image size comprising a fixed number of pixels representative of an image wherein that image size is greater than that of the viewing window size. Now the broad concept that we're trying to claim here is being the first ones to provide a digital image file that has more data than is needed for the window size. And why are we trying to claim that? Because that allows you to zoom into the image without pixelation, and it allows you to pan around the image to corners that maybe are not shown in the original viewing window. Does everybody understand that?

Ullery S. Bernstein: I think so.

Armstrong: Yes.

S. Bernstein: I think we're on the same line.

Becker: Okay. So now the question becomes: Did we support that claim with relevant descriptions in the specifications. And what's our standard? Our standard is that we have to provide enough disclosure in the specifications to enable somebody to make and use that invention as claimed. This person needs to be somebody of ordinary skill in the art—in other words, somebody who can read this document and maybe has some technical background in imaging or image processing, for example, and can read what we've put in our document and can perform our methods claimed. Okay? Everyone with me so far?

Bernstein: Um, hm.

Becker: So we look back into the document that was filed on Wednesday and we say to ourselves, "Did we provide enough information in that document to allow somebody to teach somebody how to make and use a digital image file that has an image size greater than the viewing window size?" And one might argue that stating the solution in itself almost provides enough information to one of ordinary skill in the art to actually reduce this to practice and to make and use one. However, we've provided not only a description of several different ways of doing it, but also some examples, including math, that should make it abundantly clear to one of ordinary skill in the art how to do it. The test is whether it would require undue experimentation on the part of this fictitious person of ordinary skill in the art to make and use a digital image file having these characteristics. So the question you need to ask yourself with respect to this application is: "Okay, maybe there was an error or two in how it was expressed in examples or the number of pixels counted or division here or subtraction there, but was there enough in there to enable somebody, based on those teachings alone and, of course, their background, to make and use an image file having those characteristics?"

Ullery S. Bernstein: Okay.

Becker: And I think, based on a reading of it and based on what Jim just walked me through in these corrections that need to be made, that there probably was enough

in there. That there probably is. I mean, we've described in several different ways how to do it with print film images or with digital images. We described in generally, and then we went and described it specifically.

S. Bernstein: Okay. Can I ask you a question?

Bernstein: Wait, Dad, because that still doesn't answer my question. That answers this issue here.

S. Bernstein: Let him finish with it.

Bernstein: Okay. Are you going to take this back to Ray's original filing on our...

Becker: Let me do that next, okay? Now, with respect to Ray's original filing on August 2<sup>nd</sup> of last year, we asked the exact same inquiry when we review the specification that we filed on Wednesday: Did Ray's filing back on August 2<sup>nd</sup> of 1999 provide enough disclosure and enough teaching to enable one of ordinary skill in the art to make this file?

Bernstein: And we have a lot of disputes on that because it doesn't even cover zooming.

Becker: Right, but what it does describe, if I recall correctly, is it does describe that you want to enlarge a print film image to a certain size and then scan it at a high density. Now it doesn't tell what density, it doesn't give a number of pixels, ....

Bernstein: It doesn't talk about zooming in on the image.

Becker: It doesn't tell the number of pixels, but it does show one way of doing it with a print film image. It doesn't talk about digital images...doing it specifically with digital images. It may refer to it generally, I don't know. But that is the inquiry.

~~S. Bernstein~~Armstrong: If I hear you correctly, it is less important in the claim to say anything relative to zooming was in the claim to illustrate or to claim that the target image size is larger than the viewing image window because that is, in itself, your ability to have the zoom capability.

Becker: You're right. You can claim it all different kinds of ways. This was one way that we worked out in conjunction with Eliot and Brian two weeks ago. This is one of the ways we worked out claiming the invention.

~~S. Bernstein~~Armstrong: Because ultimately zooming is simply a feature of the invention.

Bernstein: Okay, hold on one second. Steve?

Becker: Yeah.

Bernstein: When I look at Ray's claim one, "What is claimed: An apparatus for producing a digital image comprising a device for generating a digital signal file from a print film image and a processor for processing said digital signal file and for generating an image file wherein said processor generates a first signal file from said digital signal file, and further wherein said processor processes said first signal file and generates set image file."

Becker: Okay.

Bernstein: Okay, we all agreed that that is completely insane...to describe anything about our invention...whatever.

Becker: I know it's all completely insane; but I think that with the claim that we drafted, ...

Bernstein: Yeah, he missed the point.

Becker: Okay.

Bernstein: Well, then, the claim we drafted, this was my question. It should be right here, in this claim, in the patent he filed to date back as far as I can to protect our dates, should be changed to the claim we just created.

Becker: Oh, no, this application died on Wednesday, and it doesn't proceed to a patent. A provisional application...

Bernstein: No, no, this isn't provisional. This is a filed patent. I'm ~~dealing~~ dealing with ~~one~~

Utley: This is the one that was filed March 24<sup>th</sup>.

Becker: Oh, okay.

Bernstein: By Ray [Joac].

Utley: So this was the PCT filing on March 24<sup>th</sup>.

Becker: Okay, thanks.

Bernstein: And my question is shouldn't the claims in this patent we just filed be exactly, if not identical, to the one...or should they be transposed to Ray [Joac's]? And it was my understanding from Doug that for speed and if the patent gets through, etc., that we would rather have it be based on that first patent filing.

Becker: That could be a recommended course of action.

Bernstein: And this is going to get dejected.

Utley: What we discussed on Tuesday...no, on Monday afternoon, was that uh one of our action items was to go back and review the uh March 24<sup>th</sup> filing and decide exactly how we were going to integrate into that filing the uh the uh claims that are that should be in there vis-á-vis the specification.

Becker: Okay.

Utley: That was one of the action items that we uh uh covered on Monday afternoon.

Bernstein: And now my question further goes to say that once we amend the claims, is there any way to amend the body?

Becker: No.

Bernstein: Even if we're not adding new subject matter?

Becker: You can amend the body if you don't add new subject matter.

Bernstein: Okay, so we can fix Ray's mess.

Becker: You can't add what we added in this application.

Bernstein: Which part? The math is just a description of the old matter, so therefore we should be able to add it.

Becker: It's not supported. It's not suggested in the prior applications.

Bernstein: Oh, it's all suggested because by the nature of the invention it's suggested.

Becker: I think the patent office will never allow us to add all of that matter into the application.

Bernstein: Okay, but we should add as much matter as we feel comfortable with to buff up Ray's original filing.

Becker: Sometimes if you change a word or a sentence in a specification...

Bernstein: Yeah?

Becker: The examiner will outright reject it for new matter.

Bernstein: Well, who cares? He's going to reject this for insanity in the first place. I mean, he's going to reject this for "what did you patent? Nothing?"

S. Bernstein: If I'm hearing Steve right, there's very little we can do to change the language and content of that particular patent...

Bernstein: No, you're not hearing him right because he just said you could change all of the claims whenever you want as long as the examiner hasn't approved them. And right now before the examiner starts approving...looking at this and saying it's nonsense, I'd rather get the right stuff in there. Now, we can get most of this stuff in there, albeit I'm going to need good argumentation as to why we can't get it all in there.

~~S. Bernstein~~ Armstrong: Steve, is that correct?

Becker: We can change the scope of the claims of the prior application...I mean, that's a good action item, a good thing to do. You know, as I mentioned, it's unlikely we'll be able to change the specification substantially; and if we don't quite...

Bernstein: Well, we should throw in the word "zoom" if we can.

Becker: At some point it becomes a question of language and what language you've used. If we come in and start saying, "Well, what we really were talking about is zoom and pan," Yeah, it's possible we could get some of those arguments through the examiner, but...

Bernstein: Well, we sure as shit should try.

~~Uteley~~ Bernstein Well, it looks like Ray took all of this out of here.

Becker: It's not as critical as getting one good filing on like we did on Wednesday.

~~S. Bernstein~~ Armstrong: Yeah, but the date's what's important.

Bernstein: Right.

~~S. Bernstein~~ Armstrong: If this March one...we have one good filing, but it's dated August 2<sup>nd</sup>. That's the difference.

Becker: But it claims priority back to...

Bernstein: The original provisional.

Becker: The original provisional, which is before this date, again to the extent that it's...

Bernstein: Right, and that's the strategy I have been hearing is the correct approach here, is that we should be cleaning up Ray's filed patent as best as we can without adding subject matter--and I don't think we really have any new subject matter other than a macro shell to re-widget our math, which is okay, we'll leave that out. But I definitely want the underlying math, because that's just not new subject matter, that's just old subject matter defined, and try to get as much of this in that examiner's hands as fast as we can because that is our first patent and we'd like it to approve. And then you know what? Leave the macro in this one, and then you've got a reason that you've got new matter in this one that doesn't conflict with your old matter. I mean, the math, I sat through with Doug, went through this with Chris Wheeler, my father, I heard all of those things, and then I'm hearing that that's not our strategy. So I just want to be very specific on this so that we get that completed in time. I know there are issues to timing, etc., that we don't want to ~~wastewait~~.

Now, I'm also confused of how we particularly predicted our date as well on when this was first exhibited. According to my last notes of when you guys were down here originally, we kind of went through a timeline; and that timeline has now been changed to September, when, in fact, we felt it was more like April or something as the first commercial advantage. Now Doug's talking to me about September dates, and I can list you fifty things that occur before then that will be detrimental. As a matter of fact, the first one really being something like 8/10, which only gives us six days, if my numbers are correct. We signed a license contract with

[Centrec? Centrack?] to use and distribute your product. So that's well before 9/1; and these are some real critical things that depend on that date, if I'm not mistaken.

Utley: What contract?

Bernstein: [Centrec? Centrack?]. The license agreement was signed on 8/10.

Utley: The only thing we signed was a demo.

Bernstein: A demo license, yeah. Well, you were putting it up to commercialize on their site-- on a public site.

Utley: But there was no charge.

Bernstein: But it's not a question of charge, according to Doug. Correct, Steve?

Becker: I need to have some facts.

Bernstein: Okay. We signed a demo to put up on a company's Web site, and we did, our materials for public viewing so that they could identify customer response.

Becker: Oh. When was this?

Bernstein: 8/10.

Becker: Okay.

Bernstein: Now, there were conversations prior to that.

Becker: Well, the upside is that we've got an application on file as of this past Wednesday.

Bernstein: Well, what about changes?

~~S. Bernstein~~Armstrong: We have to deal with that one year of commercialization.

Bernstein: If we're not wrong, and I hate to preach to a lawyer, but that seems to be my understanding. So I'd like to get what is claimed in this one into Ray [Joao's] immediately, if not, somehow sooner.

Armstrong: Well, hold on, let him answer the question about commercialization. Would that be considered the first date of commercialization or a date of commercialization if there's one prior to it?

Bernstein: There's not, but...

Becker: Again, we have to start with the claimed invention...

Armstrong: This was ~~+~~zoom & pan imagery that we did for him.

Becker: Okay. And the inquiry is whether or not...

Bernstein: No, it's video, too, B, that we did.

Armstrong: There was video, too?

Bernstein: Sure.

Becker: The inquiry was whether or not the claimed invention was on sale more than one year before the filing date of the application.

Utley: This was a test program to determine feasibility.

Becker: That actually works in our favor. The laws recognize sort of experimental use as sort of being a mitigating factor in some types of public disclosure. Typically if it's a commercialization use, or to test the commercialization of the invention, they're less likely to find it to be...

Bernstein: Well, then, that's definitely what it was.

Becker: ...commercial use.

Utley: Is there any difference, Steve, between...we signed an agreement to do that.

Becker: Okay.

Utley: There was no public visibility for another month. So which date will be the reference date?

Becker: Would you call that a sale, that agreement?

Utley: No.

Becker: Okay.

Armstrong: Were we ever paid anything by [Centrec? Centrack?]?

Bernstein: No.

Utley: No.

Armstrong: Never.

Becker: Okay, that certainly works in our favor if it wasn't an actual sale of your product. In that case, you look more at the public disclosure date.

Bernstein: Well, that was the public disclosure date.

Utley: No, that was September.

Bernstein: No, it was this date because...well, whenever you put it up on the site publicly.

Becker: When did you put it up on the site publicly?

Utley: It was in September. It took us awhile to get there.

Becker: Okay. No problem, then, right?

Bernstein: If that's...I'm hanging my hat on a lot of things right there.

Utley: If that's the date of reference...

Bernstein: You know, I want to beat the 8/10 day of signing a license agreement because I don't know how that's going to be construed in court, nor do I care, when I can beat it right now.

Becker: Let me ask the question again, Eliot, do you think that the application that we filed on Wednesday does not provide enough information to enable somebody of ordinary skill in the art to practice or to make and use what we claim in claim one?

Armstrong: I could argue it doesn't.

Becker: Go ahead.

Armstrong: I might just simply because the actual deployment of it...or employment of it...does require the correct execution of those formulas; and other than one particular error that is very, very difficult to understand unless you have been part of one of these conversations about the formulas. I mean, that you have to reverse-engineer the formulas to find out that the square root in that definition is missing, otherwise you'll end up with target image areas of an enormous size and be totally lost. You'll end up just having a goofy result. I mean, I think it could be argued, that you need to be able to apply the math to create the image. It could be argued that you can conceptually create what it is that we are conceptually defining, but it's more difficult to do that without a precise understanding of the relationship of targets of subject images and viewing windows.

Becker: Well, let me turn it against you, Jim. That's a good analysis. I think it's interesting, but let me turn it against you and say if that's true, then our August 2, 1999, filing doesn't provide enough disclosure to enable one of ordinary skill in the art to make this claim.

Bernstein: On Ray [Joa's]?

Becker: ~~Correct~~Right, what he...

Bernstein: Yeah, that's why we want to change it before August 10<sup>th</sup>.

Armstrong: You said the August 2<sup>nd</sup> filing. This is the one we just did.

Bernstein: No, the March 3<sup>rd</sup> filing you mean.

Utley: March 24<sup>th</sup>.

Bernstein: March 24<sup>th</sup>, whatever.

Becker: Well, I guess I'm going as early as I can, which is why we tried to file on Wednesday...which is why we filed on Wednesday, so we could get the priority on the provisional application which, if I recall, read very much like the March 2000 application.

~~S. Bernstein~~Armstrong: The one you're referring to is the original provisional from August of 1999.

Becker: Yeah.

~~S. Bernstein~~Armstrong: Saying that if my argument holds, we have nothing of solid validity in that particular document.

Becker: No, what I'm telling you is that that document won't provide priority to this claim. In other words, our priority date will be Wednesday of this year, not Wednesday of last year...or not...

S. Bernstein: Because that provisional didn't provide somebody with ordinary skill in the art the ability to replicate what we did?

Becker: That's exactly right.

~~Bernstein~~Utley: March 24<sup>th</sup>

~~Bernstein~~...isn't that the one we're looking for?

Utley: March 24<sup>th</sup>?

Bernstein: Oh, no, that's the...

Utley: We're looking for the August one.

Bernstein: No, I'm looking for the provisional this claims to.  
<Two separate conversations going on at once; difficult to hear and follow...>

Becker: Let me ask you this...

S. Bernstein: Then that's to say--and maybe I'll question my own logic now--is it enough to say that somebody understands that in the viewing window that you create zoom and then create [ ] ability?

Becker: As long as we just...

Armstrong: That optimized the particular...

~~S. Bernstein~~Armstrong: And all we did was help to clarify...

Becker: I think that's pretty convincing. You know, you don't have to enable all the ways of doing it; you just have to enable essentially one way of doing it.

Bernstein: Okay. Despite all of this, I still want a firm yes or no.

Becker: I think was actually critically really finally getting to the issue.

Bernstein: No, yeah, we are.

Becker: Away from the rhetoric of accusations and...

Bernstein: Okay, okay, right, but...

Becker: And fear-mongering and calling the investors. I think we've gotten to...

Bernstein: Well, I mean, we've got to deal with things. These are real fears meaning we definitely have real issues. But looking beyond that, which is fine, I've got still an unanswered question: Does Ray [Joao's] set of claims change tomorrow, Monday, whatever, so that we can protect ourselves? Now you've agreed that's a good strategy, Doug's agreed that's a good strategy, but yet I hear no execution strategy, and that's what I want to make 100% sure that I can get as much of what we've discovered into Ray's incompetent work, and I will call it that, as possible. And your work is far more superior. These are some issues, but, you know, there's issues...it's a large thing to grasp, and we'll get through it. But I want to change what Ray [Joao's] done, and that was my understanding that we're going to take the claims that we've discovered in this application you just filed and put them into that one, and that the worst that's going to happen is that the examiner will approve the earlier one of Ray and yours will fall away, the second one.

Armstrong: Did somebody just join this call?

Bernstein: No.

Armstrong: Did you hear that beep, beep, beep?

Becker: I did. I don't know if anyone has joined.

Bernstein: Si? Si?

Armstrong: Maybe he got off.

Bernstein: Yeah.

Armstrong: Okay.

Becker: Well, let's do this, Eliot. Let's say that...I know you are concerned about the August 10<sup>th</sup> date, why don't we say that we will make some amendments to the claims in the prior filings you're referring to, and we'll clean that up as best we can and make sure that we have the claim amendments...

Bernstein: <Aside to Utley> This is the one we filed?

Utley: <To Bernstein> That's the provisional.

Bernstein: <To Utley> That's the provisional?

Utley: <To Bernstein> Right.

Armstrong: What about correcting the math in the one from two days ago?

Becker: Yeah, then again, I don't know what was filed; and again it appears...I really need to consult with Doug on that.

Armstrong: Yeah, but if we're of understanding what we talked about today is what he filed, and I believe that's it, then what do we do to correct that? We should probably correct that by the 10<sup>th</sup> as well.

Becker: Okay. Right. That actually was more important with the 8/10 date because these changes are considered to be better, then we need to get a filing out by that date.

Armstrong: Okay.

Bernstein: And Steve, just to remind you on this point, I still definitely for a comfort level and to keep accusations at bay, just a letter of what's occurred, what my risks are, and what our strategies for execution are on this filing relating to as well fixing this one as well as relating it to Ray [Joao's]. If you could write that clearly to us, that gives us a lot of comfort level.

Becker: All right. Hopefully what I explained today about priority will help.

Bernstein: Well, this gives it the final touch of you can rest assured, I've got it in writing. That's what I need to comfort me that I've got a strategy, that everybody's on the same page, so to speak, so that page doesn't shift, so that we don't get off that strategy and we all stay focused on that one sheet. So that would be critical. And what is our next due date? Is that on the 10<sup>th</sup> or the 8<sup>th</sup> or something, or am I missing...

Utley: Well, the only reason the 10<sup>th</sup> has any potential bearing is because that's when the test license...

Bernstein: I'd like to beat that here, on this claim, because if we can beat the 10<sup>th</sup> here on Ray [Joao's] filing, that's what we need to do there, right?

~~Becker~~Armstrong: That's actually not an important date for Ray [Joao's] filing.

Bernstein: Yes, it is.

~~Becker~~Armstrong: An important date for the filing that we did a few [weeks? days?] ago.

Bernstein: No, no, it's the same date. Commercialization is commercialization, and how it relates is the same here to us.

~~Becker~~Armstrong: Okay.

Bernstein: You know what I mean?

Becker: Yeah, I guess I do.

Armstrong: I'll make just one other general comment, Steve. Everyone else knows this, but you don't. I was just brought into this process Tuesday as the first time I've ever reviewed any patents. I've held them for Eliot in the past but never reviewed them; and was probably surprised with what I found was that it was an extremely important and at least, to my understanding, we had very little time to get it right, and we're now paying the price, of course. To the extent that that can be avoided in the future through careful planning, updates, and contingencies, I suggest we have a plan for that.

Becker: Yep.

Armstrong: So. Just an overall comment.

Becker: That's a good comment. I think it's important to get things done as early as possible, and we certainly have tried to do that throughout the process.

Bernstein: Steve, can you do me one last favor?

Becker: Yes?

Bernstein: Shoot over to Jim the three video patents we filed. He's signed a disclosure on it—the one you gave us—encompassing him for all patents.

Becker: All right. Jim, what's your role?

Armstrong: I'm the Director of Sales and Marketing.

Bernstein: But he's also a shareholder.

Becker: Okay.

Armstrong: I've been with this since before anybody else.

Becker: I see.

Armstrong: It was just basically me and Eliot and Guy before anybody else started, but I've never been involved in the patent review.

Becker: Now you want me to send a copy of the filings...the video filings?

Bernstein: Yeah. Can you just fax them to him?

Becker: Sure. Let me make sure I've got this right. Okay. We've got three...no, five applications, about 100 pages. Is that fine?

Armstrong: Yes.

Bernstein: We have four. Sorry.

Armstrong: Are they emailable, or no?

Becker: Yeah, they are emailable.

Armstrong: Let's do that instead.

Becker: But then you don't have the figures. We can email....

Armstrong: Email those, and then just fax the figures?

Becker: Yeah.

Armstrong: Okay, cool. The fax number is 732-747-5569. Email is [jim@iviewit.com](mailto:jim@iviewit.com).

Bernstein: And there's five video patents now. Correct, Steve?

Becker: I'm looking at my chart here: three US and three corresponding ECT [ ] applications that we wrote, and then there's a PCT video playback—that was the video playback invention—

Bernstein: Right.

Becker: And I think that's all.

Bernstein: Great. Let's get those out to Jim real quick. I'd like him reviewing those by the 8/10 date. Any changes, we're obviously going to try to revert to keep our 8/10 day as our commercialization day, giving us a little buffer if we're wrong.

Becker: All right.

Bernstein: You know what I mean? I mean because we don't know how people will interpret in the end what [Centrec? Centrack?] was, but to beat it would definitely give us a greater argument.

Becker: Yep.

Bernstein: So, all right, we'll pick this up...you're going to make those changes on this patent, correct?

Becker: I'm going to wait until I speak with Doug.

Bernstein: Okay, great.

Becker: To find out what was actually filed, and then we'll decide how best to proceed with amending that.

Armstrong: Steve, one more clarification. Did you say we have or have not had successful closure on the signing over of inventors' patents to the company?

Becker: I can't speak to that; Doug is working on that.

Armstrong: Okay, will you put that in our list of things to do...or your strategy that that gets completed?

Becker: Yeah.

Bernstein: Yeah, and B, I just signed as well as Brian and Jude and everybody. It's a large, thick document, so Doug should have an update, Steve, as to what is exactly signed. I think it was everything, correct? And we've got everybody here.

Armstrong: I've got emails that indicate that that was all done nine months ago.

Bernstein: No, it was, B, but then we filed patents; and then we thought the past was done, and now these new ones had to be done, so he came here, there was notaries here...it was, you know, it was a lot, but let's get an update on it.

Armstrong: I just want to see it in writing

Utley: In addition to that, everyone has individually signed a separate agreement with the company, conveying assigning to the company any intellectual property that's created as a result of their employment.

Armstrong: That I know. The key inventions, I just want to see that they've signed over because that's the value of the company right there. That's what I own stock in.

Bernstein: Correct. Okay. So let's get an update, and I think we're pretty close.

Armstrong: Okay.

Becker: Eliot, why don't we go through the list of things that you've asked me to do so we can be perfectly clear on this?

Bernstein: Okay.

Becker: The first is to amend Ray's PCT application, at least the claims, so that we have a good filing there, at least based on whatever Ray has in his specification. That's task #1.

Bernstein: Claims plus any additional language that's not new matter.

Becker: All right.

Bernstein: Okay.

Becker: You want a letter describing the...what was omitted or what was incorrect in this application filed Wednesday and to what extent that may have any bearing on rights.

Bernstein: Correct.

Becker: And also a course of action we feel is necessary to file new applications to amend these, make these corrections, or if there's something we feel we can do in an amendment that would not introduce new matter.

Bernstein: And our strategy going forward on this. By the way, that would mean our strategy as well on the video, correct? Because if there needs to be changes and the date did stick at 8/10, we need to make any changes we find by 8/10, correct?

Becker: Only if the changes are so substantial that they would jeopardize the ability of one skilled in the art to understand.

Bernstein: Okay, so critical errors. Okay. If we find them.

Becker: And that's why I think, you know...and if you're describing in your specifications how to make one, how to do it, provide most of the details. I mean, we've done a very detailed job of ...

Bernstein: No, I agree. I'm not...I agree. I see all that here.

Becker: Any time whatever we can get out of you guys in terms of describing how it works...that, in there when you describe a claim and there's an error, you know, there's an error in the math, will that dramatically affect and make it so somebody can't practice the invention at all, I don't know.

Bernstein: Right. So if it's critical by 8/10, it should be resolved. Correct?

Becker: With the video application, it doesn't help for us to go back and look at those. You guys go back and look at those and see if there's anything in there that you don't like.

Bernstein: Right. And if we find something in the claim, for example, that we don't like, we need to amend it by 8/10, right?

Becker: No.

Bernstein: Why?

Becker: Because the claims have to be supported by the specification as filed back on those dates, which were sometime in June...

Bernstein: Okay, but let's say all that fits, we also have the commercialization date.

Becker: The commercialization date...

Utley: I though <inaudible comment to Bernstein>

Bernstein: So we can go change the claims.

Becker: Typically [ ] prosecutions, as long as they're still supported by the specifications filed...

Bernstein: Right. So if we find any mistakes, we should change them, correct? In the video patents?

Becker: Yeah, as a general principle, that's a good idea.

Bernstein: Okay, good. All right. I think that sums up what we need. Send the letter to Si, myself, and Brian.

Becker: That's not a complete list of what you asked for me to do.

Bernstein: What else have we got? Sorry?

Becker: You've asked me to email to Jim Armstrong the three video applications and the playback application--the one playback application--

Bernstein: Right.

Becker: Now with respect to the video application, we have both PCT and US filings. Do you want us to send both of those? They've essentially identical--in fact, they are identical except the...

Bernstein: No. Just one.

Utley: Send the US.

Becker: All right, we'll send the US versions of those two. And we'll fax the figures. And element #4...Item #4 is to provide a written letter to Jim Armstrong regarding the assignment status of...

Bernstein: Well, that's to everybody. That's to Brian, Si, myself, Jim.

Becker: Brian, Si, Eliot, and Jim.

Bernstein: Right. Just giving us the update of where we are.

Armstrong: I think it's helpful to communicate to the shareholders.

Bernstein: Well, let's get it first, then we'll communicate at discretion, but I think we're there.

Becker: Okay, then, in terms of general things going forward: Eliot needs to be cc:'d on all correspondence relating to patents. Should we continue our practice of sending things to Brian?

Bernstein: Yeah.

Becker: All right, we'll continue our practice of sending things to Brian and cc:ing Eliot with copies.

Bernstein: Right, and I'd appreciate if all that email comes to iviewit.com. Therefore, I have copied records.

Becker: Are you saying you only want us to correspond with you via email, not letters? Not...

Bernstein: No, but if it is emails, iviewit.com emails because that gives me complete copied records on tape backups.

Armstrong: ~~De~~—don't send anything to any of us at a domain name other than iviewit.com, if you send it in email. |

Becker: That's the instructions?

Bernstein: Right.

Armstrong: Correct.

Becker: Don't send to any other email address besides one of your names at iviewit.com.

Bernstein: Correct.

Becker: Okay. Anything else in addition to those items?

Bernstein: Nope. Steve, I appreciate your taking the blunt end of this, I really do.

Becker: Well, I just wish you would not...

Bernstein: Well, we freaked out a little bit. You can understand that there's a reason to freak...I'm not just making this up. So based on that, let's try to resolve and move forward. |

Becker: Anything else?

Bernstein: Nope. Thanks very much.

Q. Okay. Other than that, he never

109

represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

1 A. I think you asked me that yesterday. 193

2 Q. I hate to be repetitive, but I'm  
3 working from what I got.

4 A. Okay. That was, that should have  
5 been July of 1999.

6 Q. How about Jude Zach, was he one of  
7 the people involved with the development of the  
8 Iviewit technologies?

9 MR. BERNSTEIN: That's two people,  
10 Jude and Zach.

11 By MR. SELZ:

12 Q. I'm sorry, Jude and Zach?

13 A. That's what I was told.

14 Q. So, again, that's before your time  
15 at Iviewit?

16 A. Yes.

17 Q. How about Todd Kloslosy, I think  
18 K-I-O-S-I-O-S-Y, at Web Cast?

19 A. I don't recall anyone by the name of  
20 Todd at Web Cast.

21 MR. BERNSTEIN: Scott.

22 By MR. SELZ:

23 Q. Scott. It's hard with the speaker  
24 phone.

25 A. I'm sorry.

June 7, 20001

To: Ross Miller

From: Bill Kasser

Re: Brian Utley

I spoke by telephone with Brian today regarding the return of the two encoding machines known as the Bomber and the Nitro. When I told Brian that I was looking for the machines he said that they had been sold. When I asked who bought them he said he had. He said that they were the two computers he bought for \$1,000 each. He said that Mike Reale had chosen them for him. I told him that they were worth more than the \$1,000 each. He stated that they would not be worth more than \$1,000 on the open market. I asked Brian to return the computers. He said he would not. He raised the issue of his claims arising out of his termination. I told him that I did not believe that related to the question of the two computers, and did not want to get involved in that argument now. I confirmed that Brian was taking the position that he would not return the computers and ended the call.

As background to the above, I believed, owing to discussions with Brian and Ross that the two computers that Brian bought were personal computers of the type commonly used in administrative positions in the office. I was under the impression that one of them was the one that Brian used during his employment with iviewit. I believed that Brian was acting in good faith and was purchasing at a reasonable price what would be surplus machines. I even helped him carry them to his car.

As we now know, these computers had been modified, at considerable cost, for use as encoding machines. Eliot indicated in a conversation yesterday that one of them had cost \$16,000 and the other \$24,000. They could be useful in the California operation. More importantly, they represent a sizable investment on the part of iviewit and would not have knowingly sold for \$1,000 each.

# City of Boca Raton

Police Department

To Protect and Serve

Case#: 01-54580

Time: 09:45

I, WILLIAM R. KASSER, knowingly and of my own free will, do hereby request that my police report, reflected under case # 01-54580 was handled to my satisfaction but that I do not wish to prosecute in this case and request the case be inactivated and not followed up any further.

Therefore, I WILLIAM R. KASSER, knowingly of my own free will hereby release and absolve and hold free from all harm, liability and damage whatsoever, the Boca Raton Police Services Department, their agent or representative, their directors, officers, employees and agents, individually, collectively and personally.

William R. Kasser  
Signature

7/13/01  
Date

2255 GLADYS RD STE 337W  
Address

BOCA RATON FL 33431  
City/State/Zip

(561) 999-8899  
Area Code/Phone

[Signature] 528  
Witness

forms\release



# Incident Report Additional Name List

Boca Raton Police Department

OCA: 2001-054580

## Additional Name List

NameCode/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) SB 2	UTLEY, BRIAN		10/27/1932	70	W	M
	Address 1930 Sw 8th St, Boca Raton, FL 33486-					H: 561-750-6876
	Empl/Addr					B: 561-289-8145



REPORTING OFFICER NARRATIVE

Boca Raton Police Department

OCA	2001-054580
Date / Time Reported	Wed 06/20/2001 10:12

Victim	IVIEWIT COM INC
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Offense	EMBEZZLEMENT
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ON 06-20-2001 I SPOKE WITH WILLIAM KASSER(CONTROLLER) OF IVIEWIT.COM BY TELEPHONE. KASSER STATED THAT ON 04-27-2001, THE EX-PRESIDENT(BRIAN UTLEY) AND THE V.P. OF OPERATIONS(MICHAEL REALE) FOR THEIR COMPANY, STOLE 2 DELL MODIFIED COMPUTER/ENCODING MACHINES(UNKNOWN MODEL & SERIAL #) THAT WERE VALUED AT \$40,000.00. THE COMPUTERS WERE NAMED "THE BOMBER" AND "THE NITRO".

KASSER ADVISED ME THAT THESE COMPUTERS WERE MODIFIED TO ENCODE VIDEOS AND HAD LARGER DISK DRIVES AND VIDEO ENCODING CARDS INSTALLED. THIS IS WHAT MADE THEM SO VALUABLE. THESE COMPUTERS GENERATED REVENUE FOR THE COMPANY.

KASSER ADVISED ME THAT THEIR COMPANY WAS CLOSING THEIR BOCA OFFICE AT 2255 W. GLADES ROAD AT THE END OF APRIL AND RELOCATING TO CALIFORNIA, AND UTLEY AND REALE WERE BEING TERMINATED AT THAT TIME. ON UTLEY'S LAST DAY, HE HAD ADVISED KASSER THAT HE WAS INTERESTED IN PURCHASING 2 STANDARD DESKTOP COMPUTERS FROM THEM FOR \$1,000.00 A PIECE. KASSER AGREED, UTLEY GAVE 2 SEPARATE CHECKS FOR \$1,000.00 A PIECE, AND AT THAT TIME ALL OF THE COMPUTERS WERE BEING BOXED UP TO BE RELOCATED TO CALIFORNIA.

KASSER STATED THAT REALE WAS SUPERVISING THE PACKING OF THE COMPUTERS AND KNEW EXACTLY WHAT CONTENTS WERE IN EACH BOX. ONCE THE BOXES WERE PACKED, REALE GAVE UTLEY THE OKAY TO TAKE 2 BOXES CONTAINING THE MOST VALUABLE COMPUTERS AND NOT THE BOXES WITH THE STANDARD COMPUTERS.

KASSER THEN STATED THAT HE HAD FOUND OUT APPROXIMATELY 3 WEEKS LATER, ONCE THE BOXES HAD ARRIVED IN CALIFORNIA, THAT THE MOST VALUABLE COMPUTERS WERE NOT DELIVERED. AT THAT TIME, KASSER THEN CONTACTED UTLEY AND UTLEY ADMITTED THAT HIMSELF AND REALE HAD TAKEN THE MOST VALUABLE COMPUTERS AND TOLD KASSER THAT THEY WERE ONLY WORTH \$1,000.00 A PIECE ANYWAY. UTLEY WAS ASKED TO RETURN THESE COMPUTERS AND TAKE THE CORRECT ONES AND HE REFUSED.

I THEN SPOKE WITH ROSS MILLER, WHO IS THE COMPANIES ATTORNEY, WHO ADVISED ME THAT REALE WAS IN CHARGE OF PACKAGING EACH COMPUTER AND WRONGFULLY AND INTENTIONALLY LET UTLEY TAKE THE MOST VALUABLE COMPUTERS, WITHOUT CONSENT FROM ANYONE ELSE IN THE COMPANY. ROSS ALSO CONFIRMED ALL OF THE ABOVE INFORMATION GIVEN BY KASSER. ROSS ADVISED ME THAT HE HAD BEEN TOLD BY SEVERAL 3RD PARTIES THAT REALE AND UTLEY ADMITTED TO HAVING THE ABOVE STATED EQUIPMENT AND ASKED 3RD PARTIES FOR ASSISTANCE IN OPERATING IT. ROSS HAS A SUSPICION THAT THE EQUIPMENT MAY BE USED TO START A BUSINESS FOR REALE AND UTLEY.

ON 06-20-2001 AT 12:28 HOURS, I CONTACTED UTLEY AT 561-750-6876, WHO ADVISED ME THAT HE DID HAVE THE EQUIPMENT, BUT ADVISED THAT THE DEAL WAS STRAIGHT FORWARD AND HE POINTED OUT TO KASSER EXACTLY WHAT COMPUTERS HE WOULD BE TAKING AND ALL WAS AGREED ON. UTLEY ADVISED THAT HE PAID \$1,000.00 PER COMPUTER AND THAT IT WAS A GENEROUS OFFER. UTLEY BELIEVES THAT KASSER MUST HAVE DECIDED AFTER THE FACT THAT HE DID NOT RECEIVE ENOUGH MONEY FOR THESE COMPUTERS AND IS EXAGGERATING ABOUT THEIR \$40,000.00 VALUE.

ON 06-20-2001 AT 13:00 HOURS, I SPOKE WITH REALE AT 561-499-8850, WHO ADVISED ME THAT HE DID NOT HAVE ANY INVOLVEMENT IN ANY COMPUTER THEFT. REALE ADVISED

**REPORTING OFFICER NARRATIVE**

*Boca Raton Police Department*

		OCA 2001-054580	
Victim IVIEWIT COM INC	Offense EMBEZZLEMENT	Date / Time Reported Wed 06/20/2004 10:12	

ME THAT UTLEY HAD POINTED OUT THE COMPUTERS THAT HE WAS GOING TO PURCHASE FOR \$1,000.00 EACH AND THAT IS WHAT WAS TAKEN WHEN THEY LEFT THE COMPANY. REALE STATED THAT PAYING \$1,000.00 FOR EACH OF THE COMPUTERS THAT THEY TOOK WAS A VERY GENEROUS OFFER, DUE TO THEIR AGE AND VINTAGE. REALE STATED THAT THE COMPUTERS HAD STANDARD HARDWARE, SO THE VALUE THAT WAS GIVEN BY KASSER WAS WAY ABOVE IT'S FAIR MARKET VALUE. REALE STATED THAT HE HAS MANY YEARS OF EXPERIENCE WITH COMPUTERS AND KNOWS WHAT THEY ARE WORTH. REALE FEELS THAT KASSER'S COMPLAINT IS MOTIVATED BY EMOTIONS AND NOT MONEY.

I ADVISED THE COMPLAINANT TO CONTACT THE P.D. IF THERE IS ANY ADDITIONAL INFORMATION, AND I WAS ASKED BY KASSER TO PLEASE HAVE SOMEONE CONTACT HIM REGARDING AN INVESTIGATION INTO THIS MATTER.

# Incident Report Suspect List

Boca Raton Police Department

OCA: 2001-054580

<b>1</b>	Name (Last, First, Middle) <i>Utley, Brian</i>				Also Known As				Home Address <i>1930 SW 8TH ST BOCA RATON, FL 33486 561-750-6876</i>			
	Business Address <i>561-289-8145</i>											
DOB.	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State.		
<i>10/27/1932</i>	<i>68</i>	<i>W</i>	<i>M</i>			<i>0</i>						
Scars, Marks, Tattoos, or other distinguishing features												
<b>Reported Suspect Detail</b>												
Suspect Age				Race	Sex	Height		Weight		SSN		
Weapon, Type	Feature		Make		Model			Color	Caliber	Dir of Travel Mode of Travel		
Veh Yr/Make/Model			Drs	Style		Color		Lic/St		VIN		
Notes						Physical Char						

**CASE SUPPLEMENTAL REPORT**

Printed: 03/24/2004 16:48

*NOT SUPERVISOR APPROVED*

Boca Raton Police Department

OCA: 2001054580

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *EXCEPTIONALLY CLEARED* Case Mng Status: *EXCEPTIONALLY CLEARED* Occured: 04/27/2001Offense: *EMBEZZLEMENT*Investigator: *MEYER, S. P. (528)*Date / Time: *08/08/2001 16:17:26, Wednesday*Supervisor: *(0)*Supervisor Review Date / Time: *NOT REVIEWED*

Contact:

Reference: *Follow Up*

06/26/2001 at 14:00 hours I spoke to William Kasser concerning the theft of computers from Iviewit.Com. William Kasser, who is the Controller for Iviewit.Com, verified that all of the information on the original report was accurate. Kasser advised that the Ex-President of the Boca branch of Iviewit.Com, Brian Utley, stole two Hi-tech computers from the Company after he was terminated from his position.

Kasser found out that the hi-tech computers, the "Nitro" and the "Bomber", were missing when he received a phone call from Eliot Bernstien in California. Kasser was told later by Michael Reale that Brian Utley had the Bomber and the Nitro. Kasser feels that Reale assisted Utley in stealing the computers from the Company when he was packaging the computers.

When Kasser called Utley Kasser asked Utley if he had the bomber and the Nitro. Utley told Kasser that he had the Nitro and Bomber and that he legally purchased the computers from the company for \$1000.00 each. Kasser was present when Utley asked Ross Miller if he could purchase two of the computers from the Company for \$1,000.00 each. Kasser told Utley that the deal was for two of the generic computers, not the Nitro and the Bomber. Kasser told me that Utley knew that the Nitro and the Bomber were worth \$40,000.00. Utley told Kasser that he was not going to return the computers to the Company.

06/27/2001 at 10:30 hours I went to Iviewit.Com and I spoke to Ross Miller concerning this case. According to Miller, Utley approached him on May 3rd while Utley was cleaning out his office. Utley asked Miller if he could purchase his desktop computer and another generic computer from the business. Miller pointed to the generic computers in the general office area and he stated, "your computer and one of those computers". Utley confirmed that he wanted to purchase his office computer and one of the computers Miller was pointing to.

Miller told me that there was no way that Utley could have confused the Bomber and Nitro for two of the generic computers. First of all, the generic computers were still not boxed and sitting on the desks in the general area of the business. The Bomber and Nitro were already boxed and sitting in the hi-tech room, which is separate from the general office area. Second of all, Utley knows that the Bomber and the Nitro are the two most hi-tech computers in the business. Being President of the Company Utley knew that the computers were worth \$40,000.00. Even if Utley grabbed the wrong computers from the Company he was well aware of what he had when he opened the boxes.

06/29/2001 at 11:30 A.M. Detective Ganci and I drove to Utley's house, which is located at 1930 SW 8th Street in Boca Raton. According to Utley he had possession of the Nitro and the Bomber. Utley told me that he purchased the computers from Ross Miller for \$1,000.00 each. Utley told me that the Nitro and the Bomber were only worth \$1,000.00 each. Utley told me that the software on the Bomber and the Nitro was outdated and no longer worth \$40,000.00. Utley told me that the software on the computer might have been worth \$40,000.00 at one point.

When I asked Utley where the computers were he told me that they were out of the state. Utley then stated, "if the Company gives me \$40,000.00 for the computers I will subtract that from the lawsuit I am filing against them". I told Utley that I would be filing charges against him for grand theft if he did not return the computers to Miller or Kasser. Utley told me that he would speak to his lawyer and then called me with his decision.

**CASE SUPPLEMENTAL REPORT**  
*NOT SUPERVISOR APPROVED*

Printed: 03/24/2004 16:48

*Boca Raton Police Department*

OCA: **2001054580**

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

**Case Status:** *EXCEPTIONALLY CLEARED*    **Case Mng Status:** *EXCEPTIONALLY CLEARED*    **Occured:** *04/27/2001*  
**Offense:** *EMBEZZLEMENT*

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07/02/2001 at 08:30 hours I called Utley's Attorney, Bart Houston, after hearing a message on my answering machine from Houston. Houston told me that Utley agreed to return the Bomber and Nitro to Iviewit.Com. Arrangements were made to have Utley bring the computers to the Police Department and give them to William Kasser on 07/13/2001 at 09:30 hours.

07/02/2001 09:45 hours I advised Kasser to come to the Police Department on 07/13/2001 at 09:30 hours to receive the computers from Utley.

07/13/2001 at 09:30 hours I met Kasser and Utley and at the Police Department for the return of the computers. Kasser handed Utley a check for \$2,000.00 and Utley gave Kasser the Bomber and the Nitro. When Utley returned the computers he did not return the monitors. Utley agreed to send Kasser a check for \$200.00 in the mail for the computer monitors.

Because Utley returned the computers Kasser told me that his Company no longer wanted to press charges against Utley for the theft of the computers. Kasser signed a refusal to prosecute form, which was turned in with the file. Written statements from Kasser and Miller were put into evidence at the Police Department.

June 7, 20001

To: Ross Miller

From: Bill Kasser

Re: Brian Utley

I spoke by telephone with Brian today regarding the return of the two encoding machines known as the Bomber and the Nitro. When I told Brian that I was looking for the machines he said that they had been sold. When I asked who bought them he said he had. He said that they were the two computers he bought for \$1,000 each. He said that Mike Reale had chosen them for him. I told him that they were worth more than the \$1,000 each. He stated that they would not be worth more than \$1,000 on the open market. I asked Brian to return the computers. He said he would not. He raised the issue of his claims arising out of his termination. I told him that I did not believe that related to the question of the two computers, and did not want to get involved in that argument now. I confirmed that Brian was taking the position that he would not return the computers and ended the call.

As background to the above, I believed, owing to discussions with Brian and Ross that the two computers that Brian bought were personal computers of the type commonly used in administrative positions in the office. I was under the impression that one of them was the one that Brian used during his employment with iviewit. I believed that Brian was acting in good faith and was purchasing at a reasonable price what would be surplus machines. I even helped him carry them to his car.

As we now know, these computers had been modified, at considerable cost, for use as encoding machines. Eliot indicated in a conversation yesterday that one of them had cost \$16,000 and the other \$24,000. They could be useful in the California operation. More importantly, they represent a sizable investment on the part of iviewit and would not have knowingly sold for \$1,000 each.

# City of Boca Raton

Police Department

To Protect and Serve

Case#: 01-54580

Time: 09:45

I, WILLIAM R. KASSER, knowingly and of my own free will, do hereby request that my police report, reflected under case # 01-54580 was handled to my satisfaction but that I do not wish to prosecute in this case and request the case be inactivated and not followed up any further.

Therefore, I WILLIAM R. KASSER, knowingly of my own free will hereby release and absolve and hold free from all harm, liability and damage whatsoever, the Boca Raton Police Services Department, their agent or representative, their directors, officers, employees and agents, individually, collectively and personally.

William R. Kasser  
Signature

7/13/01  
Date

2255 GLADES RD STE 337W  
Address

BOCA RATON FL 33431  
City/State/Zip

(561) 999-8899  
Area Code/Phone

[Signature]  
Witness

528

forms\release

06/26/01  
1400

Bill Kasser

- Mike Reale supervised the packing for the move
- Mike Reale knew what was in what box (Utley knew the value)
- Kasser helped Utley put the computer boxes into his car on ~~June~~<sup>May</sup> 4th.
- Utley gave Kasser the first check for 1000.00 ~~After~~ the day they loaded the boxes.
- Utley handed Kasser the second check for \$1000.00 on May 8th.
- Kasser has not seen him since
- May have told Reale (Head of operations) that the two computers were regular desk top computers.
- Kasser had no intention to sale Reale or Utley the Boomer or the Nitro.
- Kasser spoke to Utley - Utley refused to return the computer. Kasser spoke to him a week before this report was made
- The computers were discovered missing when the boxes arrived in California. Around the middle of May

- California called Miller that the Nitro and Bomber were missing.
- Miller asked Kasser to call Utley, because he thought that Utley may have taken them. Mike Reale had told Kasser that <sup>Utley had them</sup>
- Utley told Bill that he had the Bomber and the Nitro. He told Bill that he took them and paid \$2000. (Kasser called Utley a couple of days after speaking to Reale)
- Kasser told him that he would refund the money or give him two work computers.
- \$16,000 Bomber
- \$24,000 Nitro
- Utley was claiming that the Bomber and the Nitro were only worth \$2000<sup>00</sup>
- ~~when the deal~~
- Reale and Utley claimed at the end of the business that the company owed them money. \$200,000.00 claim in the law suite.
- During Kasser's phone conversation with Utley, Utley asked Kasser, "when am I going to get my severance?"

- Kasser told Utley that the computers and the Severance are separate matters

Ross Miller

2255 W Glade #337 W

W-561-999-8899

C-770 310 8187

DOB 10/13/53

Consultant Coordinate operations

- 2 Computers were in boxes
- ~~Does not know the com.~~
- Believe that <sup>they</sup> are called Bomber and Nitro
- Pres. Since 1999
- Bomber and Nitro were regular
- Mike
- These computer had a configuration he wanted
- Working with Michael Reate to get password
- They have a law suite pending.

Eliot Berstien called Reale and asked him about the computers. Reale told him that the Boomer and the Nitro were in Boca.

- Reale went to Kasser's office on another matter a couple of days after the phone call. Reale told Kasser that Utley had the computers.
- Reale knew that Utley had the Nitro and the Boomer because he packed.

1030

Ross Miller:

- April 27<sup>th</sup> was the final day of work for employees.
- May 3<sup>rd</sup> Utley<sup>res.</sup> came to the business to pack his belongings from his office.
- Reale was working w/ the movers packing from April 30 - May 3<sup>rd</sup>.
- There was a general list of inventory = what's in the box.
- Utley ask Miller on May 3<sup>rd</sup> if he could have his office computer and an additional computer.

Miller

- Utley walked to Kasser and asked him about the price of the comp.
- Utley told Miller that he would buy them for \$1000.00
- The only items that were parked at that time were the high end computers
- Miller and Utley stood in the general Area. Utley advised that he wanted his office computer and one other basic computer.
- Miller pointed to the general computers in the office area and specifically asked him "You want one of these computers which includes the Monitor, tower and Key board."
- Miller <sup>asked Utley</sup> confirmed several times that the computers were the standard computers.
- Bill Kasser told Miller that the computer was 2000 new 1000 for the standard computers was a good deal.
- ~~Utley~~ Utley paid \$1000 immediately then paid 1000 the following Monday.
- Miller then went to his office and Utley continue to pack
- Kasser helped Utley carry the boxes down
- Nitro and the Bomer were the two main computer

- Reale knew that Utley took the boxes. (Reale and Utley were friends)  
~~No one~~ - Miller heard this from Ex-Employees who told current employees.
- Reale contacted Matt Mink an exemployee to find out some codes for the Nitro and Boomer Tony Freuden is the current employee who received a phone call from Reale. Tony told Kasser by E-mail that Reale called him concerning the codes.  
Matthew S. Mink  
954-916-2062
- ~~Utley~~ Kasser and Miller had nothing to do with the packing of the computers.
- Didn't know about the theft of the computer for awhile after they were delivered to California they were more concerned about the server being down the computers sat in the boxes.

10/27/32-3812  
528-40-7457 Florida  
393-  
JK. DL

11/20  
130 Stated

If the company gives me the 40 thousand for the computers I will subtract that from my lawsuit

07/02/01 0830

I call Utley's Attorney Carl Houston after getting a message from him - Houston told me Utley will return the computers

954-7793800

07/02/01 0945

Informed Kasser that the computer will be returned

07/13/01  
930-1045

Computer exchange for \$2000 check in PD parking lot



## WRITTEN STATEMENT NO. 1

### Basic Allegation

Iviewit Holdings, Inc. ("Company") alleges the **MISAPPROPRIATION AND CONVERSION OF APPROXIMATELY SIX HUNDRED AND FIFTY FIVE THOUSAND DOLLARS (\$655,000) TO ONE MILLION DOLLARS (\$1,000,000)** in Company funds by the individuals named below, collectively identified by name, address, and telephone number attached herein as Exhibit A which also contains all individuals related to this transaction in any way. Iviewit also claims the destruction of Corporate records and accounting records of the Company, in an attempt to cover-up such misappropriation of Company funds.

### Material Facts

On or about November 2000, the Company's then counsel, a one Christopher C. Wheeler, Esq. ("Wheeler") a Partner in the Boca Ration office of the New York based law firm of Proskauer Rose LLP ("Proskauer") introduced a new investor to the Company for purposes of investigating an investment opportunity in the Company, a one Bruce T. Prolow ("Prolow"), Carl Tiedemann ("Tiedemann"), and their associate a one Craig Smith ("Smith"), collectively of Tiedemann Prolow, LLC ("TP") of New York, N.Y.

Subsequently, later in the fourth quarter of 2000, the Company has knowledge that Prolow, Tiedemann, and Smith are introduced to technical demonstrations of the Company's patent pending technologies, and meet and discuss a possible financial investment with the then executives of the Company, a one Brian G. Utley, President & Chief Operating Officer ("Utley"), Raymond T. Hersh ("Hersh"), Chief Financial Officer, Michael Reale ("Reale"), Vice President of Operations and Christopher Wheeler, Esq.. Moreover, parole evidence from former Company Board members (Utley, Donald G. Kane II, Gerald R. Lewin CPA, Eliot I. Bernstein, Simon L. Bernstein, Maurice R. Buchsbaum, and Kenneth Anderson) shall indicate that the proposed investment originally consisted of a capital contribution of One Million Dollars (\$1,000,000) in exchange for Company securities, a true copy draft of which is attached herein as Exhibit B.

Additionally, the Company has knowledge that TP is a minority investor in a distance learning Internet Company known as InternetTrain.com based in New Jersey. Moreover, Bureau of Investigative Operations of Boca Raton Police Department ("BOI") should be apprised that the Company's intellectual property, consisting of video scaling and pan and zoom imaging technologies and combinations thereof (estimated value of the Companies technologies has been appraised at several billion dollars annually), would be critical applications in the TP portfolio company, InternetTrain's, distance learning



environments. Already, after a police investigation (Exhibit C) based on employee statements, Utley and Reale upon being fired for other malfeasances regarding the patents, were found to have been stealing highly proprietary computers to the Distance Learning Company and were ordered by the Boca Raton police department to return such computers to the Company.

Furthermore, in the first quarter of 2001, with regard to TP's proposed investment in the Company, the Company has knowledge that the parties exchanged draft Subscription Agreements consisting of a Convertible Note investment with a detachable Warrant, again for the aforementioned proposed investment \$1,000,000; later and based on information from the Company's since terminated executives, Utley, Hersh, and Reale, the Company learns that the proposed investment, closed on February 14, 2001 without knowledge of the Company's Board, without approval of the Company's board, and without finalized documentation for viewing by the Company's board or investors (Exhibit D), ultimately comprised of a purported Subscription Agreement consisting of a Convertible Note (never executed) with a principal face amount of Three Hundred and Forty Five Thousand Dollars (\$345,000) and a Warrant to purchase One Thousand Seven Hundred and Eighty (1,780) shares of the Company's Class B common stock (assembled and delivered to TP some two months subsequent to the closing, or April 18, 2001, and at time that the aforementioned executives, Utley, Hersh, and Reale had been terminated by the Company), and a wire transfer confirmation from TP, final copies of which are believed to be attached herein as Exhibit E. Furthermore, at this time Mr. Wheeler was requested several times to come to Board meetings to discuss the transaction and circulate the documents, at which point he quit as corporate counsel.

Still further, on or about April 2001, a former Company engineer, Anthony R. Frenden ("Frenden"), attests to viewing a large, silver suitcase filled with cash in the Company's offices in the possession of Reale, and reports that the cash, on information by Reale, was received from Prolow, and the uses of funds, again on information by Reale, was to continue Iviewit operations illegally in other environments, a true copy of Frenden's statement is attached herein, as well as a portion of Zakirul Shirajee's taped testimony, as Exhibit F (notarized statement forthcoming); similarly, a taped conversation with one of the Company's inventor's Zakirul Shirajee corroborates the statement of Frenden, and discussions with the Company's former network administrator, Tammy Raymond shall further corroborate said statement. The employees were asked which computers held the Iviewit processes, how the processes were done and asked to leave the Company to start work at their new Company, following these discussion the computers pointed to by the employees were stolen.

### **Conclusion**

The Company alleges that the difference of the initial investment discussions with TP of up to \$1 million scaled down to the final reported funding, purportedly \$345,000, the difference being up to \$655,000, and reasonable close to the estimation of Frenden of approximately \$500,000 in a suit case filled with cash, wherein said approximate \$655,000 was misappropriated by Utley, Reale, Hersh, in collusion with Prolow and



Wheeler, all for the benefit of Utley, Reale, Hersh, Prolow, and Wheeler in other ventures whether InternetTrain<sup>1</sup> or pornographic video, thereby to the detriment of the Company and its shareholders. This assumption of the Company is based only on the evidence provided by Tiedemann/Prolow claiming that \$345,000 was invested, the Company has no transactional documents, no tax returns and no bank statements to support this claim.

Lastly, the Company encourages a full investigation of these allegations by interviewing said individuals of Exhibit A (especially the recount of the events surrounding the transaction by Wheeler, who in recent deposition testimony in a civil litigation matter of no relation to this Written Statement, wherein Wheeler, purportedly, has no knowledge of the events surrounding this transaction as indicated by Exhibit G attached herein), and securing whether by subpoena or court order the following records: the accounting records of the Company's former outside CPA firm, Goldstein Lewin & Co (since requested by the Company but still not received and further refusal to release remaining records by Gerald Lewin); records of Proskauer (since the subject of a court order to produce said records, but still missing); records of TP pertaining to the transaction; and First Union National Bank of Florida, Account No. 2000006722656; Bank Statements of all 8 Iviewit entities; Tax Returns to show this transaction (also requested from Goldstein Lewin & Co and still missing); Accounting Records from InternetTrain to assess if the stolen monies were transferred to this Company; Board Meeting Notes and Corporate Records which were held by Proskauer Rose and then according to recent statements by Christopher Wheeler were given to an ex-employee, William Kasser, without Company consent. Further, upon request to turn over corporate documents Mr. Kasser demanded \$250,000 of which there was no basis for such demand. Upon a letter from Simon Bernstein's counsel to turn over Company property, Mr. Kasser turned over none of the documents purported to be transferred to him by Mr. Wheeler.

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<sup>1</sup> At this juncture, the Company encourages BOI to cross reference Boca Raton Police Department Case No. 2001-054580 pertaining to the theft of proprietary equipment by Utley, Hersh, and Reale.



## EXHIBIT A

### NAMED INDIVIDUALS

#### a

##### **AIM Bernstein, Simon L.**

Bus: (561) 988-8984  
Home: (561) 477-9096  
Mobile: (561) 302-2598 or 7  
Car: 407-251-919567  
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#### e

##### **Emerald Capital Partners, Inc. Buchsbaum, Maurice**

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#### g

##### **GDI Kane, Donald G.**

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#### i

##### **I View It Technologies, Inc. Bernstein, Eliot I.**

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##### **I View It Technologies, Inc. Frenden, Anthony R.**

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##### **I View It Technologies, Inc. Kasser, William R.**

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**EXHIBIT B**  
**LOAN DOCUMENTS – ORIGINAL \$1,000,000 SET DONE 1/23/01 THREE**  
**WEEKS PRIOR TO PURPORTED WIRE TRANSFER**

*[DRAFT - FOR DISCUSSION PURPOSES ONLY]*

**iviewit HOLDINGS, INC.**  
**SUBSCRIPTION AGREEMENT**

iviewit Holdings, Inc., a Delaware corporation (the "Company/iviewit"), and Tiedemann Prolow, LLC (the "Purchaser") hereby agree as follows:

1. **Offering.** The Company is offering (the "Offering") to Purchaser one (1) Unit consisting of (i) [up to a \$1,000,000] principal amount convertible promissory note (the "Investor Note") and (ii) warrants to purchase up to [5,160] shares of the Company's Class B Non-Voting Common Stock at [\$155.00] per share ("Warrants" and together with the Investor Note and the Class B Non-Voting Common Stock (the "Class B Common Stock") issuable upon conversion of the Investor Note or upon exercise of any Warrants, the "Unit"). All terms not otherwise defined herein shall have the same meaning as defined in the Form of Convertible Investor Note and the Form of Warrant, attached to this Subscription Agreement (this "Agreement") as Exhibit "A" (Form of Convertible Investor Note) and Exhibit "B" (Form of Warrant), respectively.

2. **Sale and Purchase of the Unit.** Subject to the terms and conditions hereof, the Purchaser irrevocably subscribes for one (1) Unit consisting of (i) [up to a \$1,000,000] principal amount convertible promissory note and (ii) warrants to purchase up to [5,160] shares of the Class B Non-Voting Common Stock of the Company at [\$155.00] per share for a total purchase price of [\$600,000] (the "Purchase Price"). The Purchaser acknowledges that prior to the execution hereof, the books and records of the Company, including financial information, have been made available and continue to be available for inspection by the Purchaser at the office of the Company.

3. **Payment by Purchaser.** Simultaneous with the execution of this Agreement, the Purchaser shall make payment for the Unit by delivering to the Company the Purchase Price in the form of a cashier's check, money order or other immediately available funds (made payable to ["iviewit Holdings, Inc."]), along with a fully executed Subscription Agreement.

4. **Acceptance of Subscription.** It is understood and agreed that the Company shall have the right, in its sole discretion, to accept or reject this subscription, in whole or in part, and that same shall be deemed to be accepted by the Company only when it is signed by the Company. This subscription may not be terminated or revoked by the Purchaser, except as provided hereafter. In the event this subscription is rejected by the Company, the consideration for this subscription will be returned promptly to the Purchaser without interest and without deduction for any expenses.

5. **Closing.** Subject to any rights of rescission, the closing of the sale and purchase described in Section 2 hereof (the "Closing") shall occur upon the Company's acceptance of Purchaser's subscription to purchase the Unit. The Company may reject Purchaser's subscription, in whole or in part, in its sole discretion and for any reason (or for no reason). Investments are not



binding on the Company until accepted by the Company. The Company will refuse any subscriptions by giving written notice to the Purchaser by personal delivery or first-class mail.

6. Representations and Warranties by the Company and Purchaser.

6.1 The Company represents and warrants that it is a corporation validly existing and in good standing under the laws of the State of Delaware with the authority to issue and sell the Unit and to carry out the provisions hereof.

6.2 Purchaser represents, warrants and covenants with the Company and to each officer, director, principal, member, controlling person, employee and agent of the Company that Purchaser is a "accredited investor" as such term is defined in Rule 501 of the Securities Act of 1993, as amended (the "Act") and that:

(a) Investment Suitability. The Purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Unit;

(b) Degree of Risk. The Purchaser recognizes that the Purchaser's investment in the Unit involves a high degree of risk which may result in the loss of a portion of or the total amount of the Purchaser's investment. The Purchaser acknowledges that the Purchaser has carefully considered all risks incident to the purchase of the Unit, including without limitation, those risks set forth on Exhibit "C" attached hereto, and that the Purchaser has been advised and is fully aware that the business of the Company is highly speculative and involves a high degree of risk.

(c) Information True and Correct. All the information that the Purchaser has furnished to the Company, including without limitation, the information set forth in the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D" hereto, or which is set forth in this Agreement, is correct and complete as of the date of this Agreement and, if there should be any material change in such information prior to the Closing, Purchaser will immediately furnish the revised and corrected information to the Company.

(d) Applicable Securities Laws. The Purchaser intends that only the state securities laws of the state listed in the residential address of the Purchaser below, together with the federal securities laws, govern this transaction.

(e) Relationship to the Company. Purchaser or its affiliates has a preexisting personal or business relationship with the Company or its respective officers, directors or controlling persons. By reason of Purchaser's business or financial experience, or the business or financial experience of his or her professional advisor who is unaffiliated with and who is not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, Purchaser has the capacity and has taken all steps necessary to protect his, her or its own interests in connection with an investment in the Unit. Purchaser has had access to and has been provided with all information, including financial information as the Purchaser may require, has had the



opportunity to obtain any additional information necessary to verify the accuracy of the information contained in such documents and to evaluate the merits and risks of the investment, and has been given the opportunity to meet with officials of the Company and to have said officials answer any questions and the terms and conditions of this particular investment, and all such questions have been answered to the Purchaser's full satisfaction. In reaching the conclusion that the Purchaser desires to acquire the Unit, the Purchaser has carefully evaluated the Purchaser's financial resources and investments and acknowledges that the Purchaser is able to bear the economic risks of this investment.

(f) Purchaser's Liquidity. The Purchaser has adequate means of providing for his, her or its current needs and contingencies and has no need for liquidity in connection with the investment contemplated herein. Purchaser acknowledges that he, she or it must bear the economic risk of investment in the Unit for an indefinite period of time, and that he, she or it could bear a loss of his, her or its entire investment in the Unit without materially impairing his, her or its financial wherewithal. Purchaser's overall commitment to investments which are not readily marketable is not disproportionate to the net worth of the Purchaser, and the Purchaser's investment in the Unit will not cause such overall commitment to become excessive.

(g) Restrictions on Transfer. Purchaser acknowledges and understands that neither the Unit nor any component thereof has been registered under the Act or under any state securities laws and agrees that neither the Unit nor any component thereof can be resold unless it is subsequently registered under the Act and pertinent state securities acts unless an exemption from such registration is available; that the Purchaser agrees not to resell or otherwise dispose of all or any part of the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable), except as permitted by law; and that there is no assurance and it is unlikely that Rule 144 under the Act will be available as a basis for exemption from registration of the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable) in the foreseeable future.

(h) Nondistributive Intent. Purchaser understands that the exemption from registration under the Act upon which the Unit is being offered depends upon, among other things, the bona fide nature of Purchaser's nondistributive intent with respect to the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable) as expressed herein. The Purchaser is purchasing the Unit for investment for the account of the Purchaser, not for the account of any other person, and not with any present intention to resell or otherwise distribute the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable).

(i) Information. The information contained on the signature page hereof and in the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D" hereto is true and correct. The Purchaser will provide to the Company such additional information as may be reasonably requested by the Company to enable it to satisfy itself as to the knowledge and experience of the Purchaser and the Purchaser's ability to bear the economic risk of an investment in the Unit.



(j) Residency. The Purchaser is incorporated in the state set forth on page 7 hereof and its business is conducted in the state set forth on page 7 hereof.

(k) Rescission Right for Florida Residents. Purchaser hereby intends that his, her or its signature hereon shall constitute an irrevocable subscription for the dollar amount of Unit specified herein. Notwithstanding Section 2 and the prior sentence, the Purchaser, if a Florida resident, shall have the right, pursuant to Section 517.061(11)(a)(5) of the Florida Statutes, at any time within three (3) days after the Purchaser first tenders the Purchase Price or the date of Purchaser's execution of this Agreement, whichever is later, to notify the Company, pursuant to the provisions of Section 9, of the Purchaser's intent to cancel this Agreement. In such event, this Agreement shall be canceled and of no further force or effect, and the Company shall promptly cause to be refunded to the Purchaser the Purchase Price paid by the Purchaser for the Unit, without interest or deduction. [This Section may be omitted if Purchaser is not a Florida entity.]

(l) Organization: Authorization. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York. Purchaser has the power and authority to execute this Agreement and perform Purchaser's obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement and the transactions contemplated hereby have been approved by all requisite action on the part of Purchaser. This Agreement and the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D", along with the other documents, instruments and agreements of Purchaser executed in connection herewith have been duly executed and delivered by Purchaser and constitute valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application affecting creditors' rights and except as enforcement may be limited by general equitable principles.

#### 7. Transfer of Unit.

7.1 Legend. Until the occurrence of one of the events specified in Section 7.3, any certificates representing any component of the Unit (including without limitation, the Class B Common Stock issuable upon conversion of the convertible Investor Note or upon the exercise of a Warrant) shall be stamped or otherwise imprinted with a legend substantially in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS THESE SECURITIES ARE FIRST REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR QUALIFIED UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR UNTIL THE COMPANY SHALL HAVE RECEIVED AN OPINION OF LEGAL



COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT THESE SECURITIES MAY LAWFULLY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT SUCH REGISTRATION AND/OR QUALIFICATION IN RELIANCE UPON AN APPLICABLE EXEMPTION.

7.2 Opinion of Counsel. Prior to any transfer or attempted transfer of the Unit (or any component thereof) issued hereunder, or any interest therein, the Purchaser, or, if the Purchaser is not the person proposing such transfer, the holder of the Unit, shall give the Company written notice of the Purchaser's or holder's intention to make such transfer, describing the manner of the intended transfer and the proposed transferee. Promptly after receiving such written notice, the Company shall present copies thereof to counsel for the Company and to any special counsel designated by the Purchaser or by such holder. If in the opinion of each of such counsel the proposed transfer may be effected without registration of the Unit under the applicable federal or state securities laws, the Company, shall immediately notify the Purchaser or such holder of such opinions, whereupon the Unit proposed to be transferred shall be transferred in accordance with the terms of said notice. The Company shall not be required to effect any such transfer prior to the receipt of such favorable opinion(s); provided, however, the Company may waive the requirement that the Purchaser obtain an opinion of counsel, in its sole and absolute discretion. As a condition to such favorable opinion, counsel for the Company may require an investment letter and other appropriate representations to be executed by the proposed transferee. Purchaser agrees to pay the reasonable fees and expenses of special counsel designated by the Purchaser, or of counsel to the Company in the event Company counsel renders such opinion, in connection with any such proposed transfer.

7.3 Removal of Securities Transfer Restrictions. The restrictions imposed by Sections 7.1 and 7.2 herein shall terminate as to the Unit if:

- (a) Such Unit shall have been effectively registered under the Act and any applicable state law and sold by the holder thereof in accordance with such registration; or
- (b) Written opinions to the effect that such registration is no longer required or necessary under any federal or state law or regulation or governmental authority shall have been received from legal counsel for the Company.

8. Indemnification - Representations of Purchaser. As a material inducement to the Company in permitting Purchaser to purchase the Unit hereby, Purchaser represents and warrants that none of the representations or warranties made by Purchaser herein ("Purchaser Statements") contain any intentionally false or misleading statement. Purchaser shall indemnify the Company to the extent it incurs or suffers any damage, expenses (including, without limitation, attorneys' fees and expenses, even if incident to appeals), loss, claim, judgment or liability resulting from the Company's reliance upon any Purchaser Statement made by Purchaser. In the event Purchaser refuses or fails to indemnify the Company under this Section, the Company may withhold from any distributions or dividends to which Purchaser would otherwise be entitled, an amount sufficient to



satisfy such indemnity obligation as a set-off, without limiting the right of the Company to proceed in any other legal, equitable or contractual remedy directly against Purchaser for the indemnity obligation.

9. Notices. All notices, requests, consents and other communications hereunder shall be in writing (including telex, telefax and other telegraphic communication) and shall be (as elected by the person giving such notice) delivered by messenger or courier service, or mailed first-class postage prepaid registered or certified mail:

(a) If to any holder of the Unit, addressed to such holder at the address set forth below or at the Purchaser or holder's address as shown on the books of the Company or the Purchaser or holder's agent or to such other address as may from time to time be furnished to the Company in writing by any such holder.

(b) If to the Company, addressed to the Company at 2255 Glades Road, Suite 337W, Boca Raton, Florida 33431, Attn: Brian G. Utley, President, or at such other address as may from time to time be furnished to the Purchaser in writing by the Company.

Each such notice shall be deemed delivered and received: (i) on the date delivered if by personal delivery; (ii) on the date of transmission with confirmed answer back if by telex, telefax or other telegraphic method; and (iii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

10. Miscellaneous Provisions. This Agreement represents the entire subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective administrators, personal and other legal representatives, heirs, successors and permitted assigns.

The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. All agreements, covenants, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. It is expressly understood that Sections 6, 7, 8, 9 and 10 shall survive the Closing and any subsequent sale or other transfer by the Purchaser of any portion of the Unit (or any securities underlying the Unit).



This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally: (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the District Court of the United States, Southern District of Florida; (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which that party may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Print or Type Below

Amount Subscribed for by Purchaser:

\_\_\_\_\_  
Name of Purchaser

\_\_\_\_\_  
Business Address of Purchaser

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the Purchaser hereby executes this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2001.

Purchaser:  
TIEDEMANN PROLOW, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AGREED as to [up to \$1,000,000] for the Unit this \_\_\_\_ day of \_\_\_\_\_, 2001.

iviewit Holdings, Inc.

By: \_\_\_\_\_  
Name: Brian G. Utley  
Its: President



**EXHIBIT "A"**  
**Form of Investor Note**

4708/40017-001 BRLIB1/287673 v3

A-I

01/23/01 02:14 PM (11111)

**PROSK0270**



**EXHIBIT "B"**  
**Form of Warrant**

4708/40017-001 BRLIB1/287673 v3

B-1

01/23/01 02:14 PM (11111)

**PROSK0271**



**EXHIBIT "C"**  
**Risk Factors**

**[TO BE CAREFULLY REVIEWED AND UPDATED BY IVIEWIT]**

*The following risk factors should be carefully considered in evaluating us and our business before purchasing the Unit offered hereby. Investment in the Unit involves a high degree of risk and should be regarded as speculative. You should consider investing in the Unit only if you can afford the loss of your entire investment.*

**We have a limited operating history.**

We are a development stage company and have only begun to market our products in early 2000 and only achieved commercialization in May 2000. Additionally, since our predecessor company was only recently organized in January 1999, we have a very limited operating history available to evaluate our business and prospects. Potential investors should consider our prospects in light of the following risks, expenses and uncertainties that may be encountered by development stage companies, particularly in the new and emerging e-commerce market:

- An evolving and unproven business model,
- Managing a development stage business in a rapidly changing market,
- Attracting customers and maintenance of customer satisfaction,
- Introducing innovative technology,
- Minimizing technical difficulties, system downtime and the effect of Internet brownouts.

In addition to other factors, in order to address these risks we must successfully:

- Develop initial relationships with strategic partners,
- Implement our evolving business model,
- Establish internal accounting systems and controls,
- Create and effect an efficient transaction processing system, and

If we do not successfully manage these risks, as well as other factors that we may encounter as a development stage technology, our business will suffer. We cannot assure you that we will successfully address these risks or other adverse factors or that we will be able to successfully implement our business strategy.

**We have incurred losses and expect to incur substantial net losses for the foreseeable future.**

Since commencing our pre-incorporation operations, we have operated at a loss and have incurred net losses of \$ \_\_\_\_\_ for the period from inception through December 31, 2000. These figures are based on unaudited financial statements of the consolidated financial statements of iviewit and its subsidiaries (wholly-owned and majority-owned). We expect that operating losses and negative cash flow will continue for the foreseeable future as we must invest in marketing and promotional



activities, technology and development of our operating systems. We cannot be certain when and if we will achieve sufficient revenues in relation to expenses to become profitable. If we are unable to become profitable, an investor could lose his or her entire investment.

Our future profitability depends, in part, on generating and sustaining revenue growth while maintaining reasonable expense levels. Slower revenue growth than we anticipate or operating expenses that exceed our expectations would harm our business. If we achieve profitability, we cannot be certain that we would be able to sustain or increase profitability in the future.

**We will need additional capital to fund our business as early as four months following the closing of this Offering.**

We require substantial working capital to fund our business and will need more in the future. We will likely experience negative cash flow from operations for the foreseeable future. We expect that the proceeds from this Offering, together with our available funds, should be sufficient to meet our needs for working capital and capital expenditures needs for approximately four months following completion of the Offering, although we may need to raise additional funds prior to such periods. We will need to raise additional funds promptly after such periods through the issuance of equity, equity-related or debt securities. If we are successful in raising additional funds, your stock ownership percentage will be diluted in the near future. If we are unable to obtain adequate additional financing on reasonable terms, our operations will suffer and we may never become profitable. If we are unable to become profitable, you will lose your entire investment. We cannot be certain that adequate additional financing will be available to us or that if available, it will be on terms and conditions advantageous to iviewit.

**This Offering may be integrated with other sales of our securities.**

All sales that are part of the same private offering must meet all of the terms and conditions of a private offering pursuant to Regulation D ("Regulation D") of the Securities Act. Generally, offers and sales that are made more than six months before the start of a private offering or made more than six months after completing a private offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for iviewit that are of the same or a similar class as those offered or sold under Regulation D. The following factors are considered in determining whether offers and sales should be integrated for the purpose of the exemption under Regulation D:

- Whether the sales are part of a single plan of financing,
- Whether the sales involve issuing the same class of securities,
- Whether the sales have been made at or about the same time,
- Whether the same type of consideration is being received, and
- Whether the sales are made for the same general purpose.

Because we estimate that we will require additional financing within six months from the date of the final closing of this Offering, we must consider the ramifications of undertaking a new private offering within the six month period, in view of the rules concerning integration. To the extent that



the current offering is integrated with any past or future offering and we are unable to rely upon an appropriate exemption from registration under the Securities Act as to the combined offerings, purchasers in the offerings could seek to cause iVIEWIT to make a rescission offer under applicable federal securities laws, or applicable state securities statutes. In the event of rescission, an investor would be entitled to receive repayment of the amount invested, together with interest at a prescribed statutory rate in the state where the investor resides. To the extent that iVIEWIT were required to make such payments to investors, it would have a material adverse impact on us and could result in termination of our operations. Additionally, the Securities and Exchange Commission ("SEC") or certain state securities administrators could seek to take action against iVIEWIT or its officers and directors in connection with any subsequent offerings. The SEC and state securities administrators are generally empowered to issue cease and desist orders and to levy fines, and may also seek injunctive relief. The time and resources we would be required to spend in defending any action by the SEC or such state securities administrators would have a material adverse effect on us and could result in termination of our operations, even if we should ultimately prevail.

**The Purchaser of the Unit will experience substantial dilution.**

Based upon the estimated Offering price of [up to \$1,000,000] for the Unit, the purchaser of the Unit will experience an immediate and substantial dilution. Certain of our stockholders, including major stockholders, have dilutive adjustment provisions as well as pre-emptive rights to acquire additional iVIEWIT securities. Additionally, we intend to enter into discussions with various corporate entities for the purpose of developing strategic relationships and obtaining additional capital investments. In connection with these discussions, we may make potentially dilutive issuances of equity securities (or securities convertible into or otherwise exchangeable for equity securities) to corporate entities at significantly lower per share valuations of us than the Offering price per Unit. Issuing such securities may also adversely affect iVIEWIT's ability to obtain additional capital in the future.

**Our management has broad discretion as to the use of the net proceeds from this Offering.**

We estimate that we will use 100% of the net proceeds from this Offering for working capital and general corporate purposes. Our management will have broad discretion as to the specific purposes for which that portion of the net proceeds will be used. Therefore, you have little information as to how our management will use a substantial portion of the net proceeds from this Offering.

**We are materially dependent on our executive officers.**

We are materially dependent on the efforts and abilities of Brian G. Utley, our President and Chief Operating Officer and Eliot I. Bernstein, our Vice Chairman, Vice President, Secretary and Treasurer. We have entered into a written three-year employment agreement with Mr. Utley and have an oral employment agreement with Mr. Bernstein. The loss of the services of Mr. Utley or Mr. Bernstein could have a material adverse effect upon our business and future prospects.



**We need to attract, retain and motivate skilled personnel and retain our key personnel in order for our business to succeed.**

Our ability to develop and market our technical services and products will depend on our ability to attract, retain and motivate highly skilled technical, managerial and marketing personnel. If we are unable to attract and retain the necessary personnel, our systems may not operate efficiently and we may not sufficiently market our products and services. These difficulties could materially and adversely affect our business and results of operations.

**Many older personal computers do not have the ability to download our digital and/or video images within a reasonable amount of time.**

Currently, only those personal computers with cable modems, DSL, T-1 or ISDN lines have the ability to download our high resolution digital images within a reasonable period of time. These lines are also required to receive high quality streaming videos. Additionally, many older personal computers may not yet have the ability to view full motion video. As such, our technologies and products may not be available to all computer users via the Internet.

**To date, we have commenced only limited marketing and sales activities and are uncertain of our market acceptance.**

We have recently commenced limited marketing and sales activities relating to our services and have limited financial, personnel and other resources to undertake extensive development, marketing, sales and advertising activities. The need for our products will depend upon consumer demand. Developing market acceptance for our proposed products will require substantial marketing and sales efforts and we will need to spend a significant amount of funds in order to inform consumers about our products and to make our brand name readily recognizable. We cannot assure you that we will be able to penetrate existing traditional markets for our products or that any of our marketing efforts will result in demand for, or market acceptance of, our products.

**Our ability to develop and protect software and other intellectual property is uncertain.**

Our success will be heavily dependent upon our ability to develop and protect our proprietary software, patents, processes, copyrights, trademarks, trade secrets, know-how, show-how and other proprietary technology and content ("Intellectual Property") necessary to, among other things, construct, operate, maintain and enhance our web site, [www.iviewit.com](http://www.iviewit.com) (the "iViewit Site") and its contents, services and features. In moving our business model forward, we will rely on a combination of contractual rights, patents, trade secrets, know-how, trademarks, non-disclosure agreements, licenses and other technical measures to establish and protect our proprietary rights. We are, however, currently in the process of seeking patent and trademark protection for our technology, name and logo. In addition, we intend to enter into license agreements for copyrighted materials that will be made available through our products and services. There can be no assurance that we, or those we may engage on our behalf, will be able to protect our Intellectual Property or that such efforts will be adequate to prevent misappropriation of the technology or independent development by others of products with features based upon, or otherwise similar to, ours.



The development of new technologies for use via the Internet and elsewhere is highly competitive and ever-changing. While we are seeking federal patent, trademark and copyright protection for our Intellectual Property, we cannot assure you that we have senior rights to our Intellectual Property, that we will receive statutory protection under applicable patent, trademark or copyright laws, or that our Intellectual Property is even subject to patent, trademark and/or copyright protection. If we cannot avail our Intellectual Property to such protection, our only protections may be contractual, through our implementing trade secret policies, or through other common law efforts. Nonetheless, we intend to vigorously defend any and all rights we may have, now or in the future, in our Intellectual Property. However, we cannot assure you that we will be successful in pursuing our rights or if we are successful, that it will be timely. In addition, although we believe that any software or other technology or processes we develop will be independently developed and will not infringe on the proprietary rights or trade secrets of others, we cannot assure any investor that any software or other technology or processes we develop will not so infringe or that third parties will not assert infringement claims, trade secret violations, competitive torts or other proprietary rights violations against us in the future. In the case of infringement, we could, under certain circumstances, be required to modify our products or obtain a license. We can make no assurances that we would be able to do either in a timely manner or upon acceptable terms and conditions, and such failure could have a material adverse effect on iviewit. There can be no assurance that we will have the resources to defend or prosecute a patent infringement or other proprietary rights infringement or other causes of action.

**Our business is subject to risks associated with competition in the marketplace.**

While we believe that we are currently the leading company developing and producing high-quality, enhanced digital images and video for use on the Internet and the World Wide Web, other companies may have developed, or will develop in the future, similar technologies. To the extent that other companies do enter our market, we cannot assure you that we will be able to compete successfully or that competitive pressures will not damage our business. Our competitors may be larger, may have substantially greater financial, distribution and marketing resources, and may have more established reputations and better brand name recognition than us. In addition, our competitors may be able to secure products on more favorable terms. Some on-line competitors may be able to use the Internet as a marketing medium to reach significant numbers of potential users more effectively than we can.

**Our brand may not attain sufficient recognition.**

We believe that establishing, maintaining and enhancing our brand is a critical aspect of our efforts to attract and, ultimately, to expand our on-line traffic. The number of Internet sites that may offer competing services increases the importance of establishing and maintaining brand name recognition. Promotion of the *iviewit Site* will depend largely on our ability to provide a high-quality on-line experience supported by a high level of customer service, which cannot be assured. To attract and retain on-line users, and to promote and maintain the *iviewit Site* in response to competitive pressures, we may find it necessary to increase substantially our financial commitment to creating and maintaining a strong brand loyalty among customers. This will require significant expenditures on advertising and marketing. If we are unable to provide high-quality on-line services



or customer support, or we otherwise fail to promote and maintain the *iviewit Site*, or if we incur excessive expenses in an attempt to promote and maintain the *iviewit Site*, our business, prospects, financial condition and results of operations would be materially adversely affected.

**Our business depends on continued growth of electronic commerce.**

Our future revenues and profits, if any, will depend substantially upon the acceptance and use of the Internet and other on-line services as an effective medium of commerce by our target client. Rapid growth in the use of, and interest in, the Internet and on-line services is a recent phenomenon. Acceptance and use of the Internet and other on-line services may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt, and continue to use, the Internet and other on-line services as a medium of commerce. Demand and market acceptance for recently introduced services and products over the Internet are subject to a high level of uncertainty and there exist few proven services and products. Our target client has historically used traditional means of commerce to purchase scientific research, equipment, and supplies. For us to be successful, these customers must accept and utilize the *iviewit Site* to satisfy their needs for such products.

In addition, the Internet may not be accepted as a viable long-term commercial marketplace for a number of other reasons beyond our control, including potentially inadequate development of the necessary network infrastructure or delayed development of enabling technologies and performance improvements. To the extent that the Internet continues to experience significant expansion in the number of users, bandwidth growth requirements, the infrastructure for the Internet may be unable to support the demands placed upon it. In addition, the Internet could lose its viability due to delays in the development or adoption of new standards and protocols required to handle increased levels of Internet activity, or due to increased governmental regulation. Changes in or insufficient availability of telecommunications services to support the Internet also could result in slower response times and adversely affect usage of the Internet generally.

**We need to keep up with rapid technological changes that affect electronic commerce.**

To become and, ultimately, remain competitive, we must develop and continually enhance and improve the responsiveness, functionality and features of our on-line operations. The Internet and the electronic commerce industry are characterized by:

- Rapid technological change,
- Changes in user and customer requirements and preferences,
- Frequent new product and service introductions embodying new technologies, and
- The emergence of new industry standards and practices.

Our success will depend, in part, on our ability to:

- License leading technologies useful in our business,
- Create and enhance our proposed services,



- Further develop services and technology that address the varied needs of our customers, and
- Respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis.

The development of the *iviewit Site* and other proprietary technology entails significant technical and business risks. We may not successfully use new technologies effectively or adapt the *iviewit Site*, proprietary technology and transaction-processing systems, if and when developed, to customer requirements or emerging industry standards. If we are unable, for technical, legal, financial or other reasons, to adapt in a timely manner, in response to changing market conditions or customer requirements, our business, financial condition and results of operations could be seriously harmed.

**Electronic commerce is subject to security risks.**

A fundamental requirement of electronic commerce and communications is the secure transmission of confidential information over public networks. We intend to rely on encryption and authentication technology licensed from third parties to provide the security and authentication necessary for secure transmission of confidential information, such as customer credit card numbers. In addition, we intend to maintain an extensive confidential database of customer profiles and transaction information. Advances in computer capabilities, new discoveries in the field of cryptography, or other events or developments may result in a compromise or breach of the methods used by us to protect customer transaction data. If any such compromise of our security were to occur, it could seriously harm our reputation, business, financial condition and results of operations. A party who is able to circumvent the security measures we may put in place could misappropriate proprietary information or cause interruptions in our operations, if and when developed.

We may be required to expend significant capital and other resources to protect against such security breaches or to alleviate problems caused by such breaches. Concerns over the security of the Internet and other on-line transactions and the privacy of users may also inhibit the growth of the Internet and other on-line services, especially as a means of conducting commercial transactions. To the extent that our activities or third-party contractors involve the storage and transmission of proprietary information, such as credit card numbers, security breaches could damage our reputation and expose us to a risk of loss or litigation and possible liability. The security measures we intend to put in place may not prevent security breaches and failure to prevent such security breaches may seriously harm our business, financial condition and results of operations.

**We will depend on communications and service providers to operate our business.**

We will depend on communications and service providers to provide our Internet users with access to the *iviewit Site*. We will also depend on communications and service providers to provide us, our content providers and our customers with uninterrupted service. The *iviewit Site* could experience disruptions or interruptions in service due to failures by these providers. In addition, our users will depend on Internet service providers and Web site operators for access to the *iviewit Site*. Each of these groups has experienced significant outages in the past and could experience outages, delays and other difficulties due to system failures unrelated to our systems. These types of occurrences



could cause users to perceive the *iviewit Site* as not functioning properly and therefore cause them to stop using our services.

**You are unlikely to receive dividends for the foreseeable future.**

We have never declared or paid dividends on any shares of our capital stock and do not anticipate paying any dividends in the foreseeable future. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business.

**There is no public market for our securities.**

None of our common stock or preferred stock have been registered under the Securities Act of 1933, as amended (the "Securities Act"), and, therefore, must be held indefinitely unless it is subsequently registered under the Securities Act or an exemption from the registration requirements of the Securities Act is available. Rule 144 promulgated under the Securities Act, which allows dispositions of unregistered securities under certain circumstances, is not currently available with respect to any of our capital stock and there can be no assurance that it will ever be available. Certificates representing our securities will bear legends with respect to restrictions on subsequent transfers. Consequently, the purchaser of the Unit will not be able to liquidate its investment readily. There is no public market for any of our capital stock, nor can we assure you that one will develop. As a result, the purchaser of the Unit will have to bear the economic risk of its investment for an indefinite period.

**We are relying upon a private offering exemption in order to sell the Shares.**

We are offering the Unit under the private offering exemptions from registration available under the Securities Act and the laws of the states in which the Unit will be sold. If we fail to comply with the requirements of these exemptions, investor in this Offering may have the right to rescind its purchase if it wishes. Since complying with exemption rules is highly technical, it is possible that, if the purchaser seeks to rescind its purchase of the Unit, it may succeed. If the purchaser was to successfully rescind its purchase of the Unit, we could face severe financial demands that could materially impact iviewit.

**Arbitrary offering price of the Unit.**

The Unit Offering price has been determined by us and is arbitrary since it does not necessarily bear any specific relationship to the assets, book value or our potential earnings or any other recognized criteria of value.

*We cannot foresee all risk factors that may affect our business or operations. Moreover, we cannot assure that we will successfully effectuate our business plan. The prospective investor should carefully analyze the risks and merits of investing in the Unit and should take the risk factors discussed above into consideration when making such analysis.*



Exhibit "D"

iviewit Holdings, Inc.  
CONFIDENTIAL OFFEREE-PURCHASER QUESTIONNAIRE

Name(s) of Offeree-Purchaser(s): (1) \_\_\_\_\_

1. Please state your:

E-mail address: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_

Business fax: (\_\_\_\_) \_\_\_\_\_

Business telephone(s): (\_\_\_\_) \_\_\_\_\_

(\_\_\_\_) \_\_\_\_\_

Nature of Your Business: \_\_\_\_\_

State of Incorporation \_\_\_\_\_

Social Security Number(s): (1) \_\_\_\_\_

(or, if applicable, Employer I.D. Number) (2) \_\_\_\_\_

2. The undersigned investor is (check the alternative(s), if any, which is(are) applicable):

(a) \_\_\_\_\_ ALTERNATIVE ONE: Any director or executive officer of the Company.

(b) \_\_\_\_\_ ALTERNATIVE TWO: Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000.

(c) \_\_\_\_\_ ALTERNATIVE THREE: Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the



same income level in the current year.

(d) \_\_\_\_\_ ALTERNATIVE FOUR: Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Unit offered, whose purchase is directed by a sophisticated person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment as further described in Rule 506(b)(2)(ii) of the 33 Act.

(e) \_\_\_\_\_ ALTERNATIVE FIVE: An organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, a corporation, limited liability company, Massachusetts or similar business trust, or partnership, in each case not formed for the specific purpose of acquiring the Unit, with total assets in excess of \$5,000,000.

\*Please indicate value of assets:

<u>Year</u>	<u>Assets</u>
2000	\$ _____
2001 (expected)	\$ _____

(f) \_\_\_\_\_ ALTERNATIVE SIX: Any entity in which all of the equity owners are "accredited investors." An "accredited investor" means any person who comes within any of the categories (a) through (e) above, or who you reasonably believe comes within any of the above categories, at the time of the sale of the securities to that person or entity.

3. Please indicate type of ownership subscribed for:

\_\_\_\_\_ Limited Liability Company  
\_\_\_\_\_ Corporation

I understand that the Company will be relying on the accuracy and completeness of my responses to the foregoing questions and I represent and warrant to the Company as follows:

- (i) The answers to the above questions are complete and correct and may be relied upon by the Company in determining whether the offering in connection with which I have executed this Questionnaire is exempt from registration under the 33 Act and exempt from registration under pertinent state securities laws; and



- (ii) I will notify the Company immediately of any material change in any statement made herein that occurs prior to the closing of any purchase of a Unit in the proposed investment.

\_\_\_\_\_  
Date

TIEDEMANN PROLOW, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT C**  
**POLICE REPORT – EMBEZZLEMENT (UTLEY & REALE)**

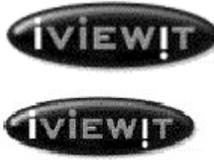


Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

		INCIDENT/INVESTIGATION REPORT				Case# 2001-054580			
I N C I D E N T D A T A	Agency Name <i>Boca Raton Police Department</i>	ORI <i>0500200</i>	Location of Incident <i>2255 W Glades Rd - STE 337 W, Boca Raton, FL</i>		Premise Type <i>Commercial / Office</i>	Zone/Tract <i>41</i>	Date / Time Reported <i>06/20/2001 10:12 Wed</i>		
			Crime Incident(s) <i>Embezzlement (Cem)</i>		Weapon / Tools <i>NONE/NOT APPLICABLE</i>		Last Known Seizure <i>04/27/2001 10:12 Fri</i>		
			Crime Incident <i>EMB</i>		Entry	Exit	Security		
M O			Crime Incident <i>( )</i>		Entry	Exit	Security		
			Crime Incident <i>( )</i>		Entry	Exit	Security		
			Crime Incident <i>( )</i>		Entry	Exit	Security		
MO <i>Alarm/No Alarm, Method Of Entry/No Force, Object Of Entry/Office Equipment, Presence Of Victim/On Premises</i>									
V I C T I M	# of Victims <i>1</i>	Type <i>BUSINESS</i>	Injury <i>0</i>		Domestic <i>N</i>				
	Victim/Business Name (Last, First, Middle) <i>IVIEWIT.COM, INC.</i>		Victim of Crime # <i>1</i>	DOB <i>Age</i>	Race	Sex	Relationship To Offender <i>21</i>		
	Home Address <i>2255 W GLADES RD - 337W, Boca Raton, FL 33451-</i>		Employer Name/Address		Home Phone <i>561-999-8899</i>	Business Phone			
	YVR	Make	Model	Style	Color	Lie/Us	VIN		
	CODES: V = Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)								
O T H E R S	Type <i>INDIVIDUAL (NOT A LE OFFICER)</i>	Code Name (Last, First, Middle) <i>KASSER, WILLIAM</i>		Victim of Crime #	DOB <i>10/24/1947</i>	Race	Sex		
	Home Address <i>991 Nw 9th St Boca Raton, FL 33486</i>		Employer Name/Address <i>Iviewit.com, Inc. 2255 W Glades Rd (CONTROLLER)</i>		Home Phone <i>561-999-8899</i>	Business Phone <i>561-999-8899</i>			
	Type <i>INDIVIDUAL (NOT A LE OFFICER)</i>	Code Name (Last, First, Middle) <i>REALE, MICHAEL</i>		Victim of Crime #	DOB <i>Age 30</i>	Race	Sex		
	Home Address <i>5304 Ventura Dr Delray Beach, FL 33484</i>		Employer Name/Address		Home Phone <i>561-499-8850</i>	Business Phone			
	1 = None 2 = Burned 3 = Counterfeit/ Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown								
P R O P E R T Y	VI #	Code	Status Pmt/Is	Value	OJ	QTY	Property Description	Make/Model	Serial Number
		<i>OCE</i>	<i>5</i>	<i>340,000.00</i>		<i>2</i>	<i>Computer Other</i>	<i>DELL</i>	
Officer/ID# <i>ULLOA, J. (TRAF) (A351)</i>		Invest I/W <i>MEYER, S. P. (ISD, ISD) (528)</i>		Complainant Signature		Case Status <i>Exceptionally</i> <i>08/10/2001</i>		Case Disposition: <i>Exceptionally Cleared</i> <i>08/10/2001</i> <i>Page 1</i>	
Total Stolen Value: \$40,000.00		Supervisor <i>DIXON, C. (PATL, A2)</i>		Printed By: PNEWELL, RECORDS1		Sys#: 351041		02/27/2002 10:35:32	







Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

**REPORTING OFFICER NARRATIVE**

Boca Raton Police Department		CCA
Victim IVIEWIT.COM, INC.	Offense EMBEZZLEMENT	2001-034580 Date / Time Reported Wed 06/29/2001 10:12

ON 06-20-2001 I SPOKE WITH WILLIAM KASSER(CONTROLLER) OF IVIEWIT.COM BY TELEPHONE. KASSER STATED THAT ON 04-27-2001, THE EX-PRESIDENT(BRIAN UTLEY) AND THE V.P. OF OPERATIONS(MICHAEL REALE) FOR THEIR COMPANY, STOLE 2 DELL MODIFIED COMPUTER/ENCODING MACHINES(UNKNOWN MODEL & SERIAL #) THAT WERE VALUED AT \$40,000.00. THE COMPUTERS WERE NAMED "THE BOMBER" AND "THE NITRO".

KASSER ADVISED ME THAT THESE COMPUTERS WERE MODIFIED TO ENCODE VIDEOS AND HAD LARGER DISK DRIVES AND VIDEO ENCODING CARDS INSTALLED. THIS IS WHAT MADE THEM SO VALUABLE. THESE COMPUTERS GENERATED REVENUE FOR THE COMPANY.

KASSER ADVISED ME THAT THEIR COMPANY WAS CLOSING THEIR BOCA OFFICE AT 2255 W. GLADES ROAD AT THE END OF APRIL AND RELOCATING TO CALIFORNIA, AND UTLEY AND REALE WERE BEING TERMINATED AT THAT TIME. ON UTLEY'S LAST DAY, HE HAD ADVISED KASSER THAT HE WAS INTERESTED IN PURCHASING 2 STANDARD DESKTOP COMPUTERS FROM THEM FOR \$1,000.00 A PIECE. KASSER AGREED, UTLEY GAVE 2 SEPARATE CHECKS FOR \$1,000.00 A PIECE, AND AT THAT TIME ALL OF THE COMPUTERS WERE BEING BOXED UP TO BE RELOCATED TO CALIFORNIA.

KASSER STATED THAT REALE WAS SUPERVISING THE PACKING OF THE COMPUTERS AND KNEW EXACTLY WHAT CONTENTS WERE IN EACH BOX. ONCE THE BOXES WERE PACKED, REALE GAVE UTLEY THE OKAY TO TAKE 2 BOXES CONTAINING THE MOST VALUABLE COMPUTERS AND NOT THE BOXES WITH THE STANDARD COMPUTERS.

KASSER THEN STATED THAT HE HAD FOUND OUT APPROXIMATELY 3 WEEKS LATER, ONCE THE BOXES HAD ARRIVED IN CALIFORNIA, THAT THE MOST VALUABLE COMPUTERS WERE NOT DELIVERED. AT THAT TIME, KASSER THEN CONTACTED UTLEY AND UTLEY ADMITTED THAT HIMSELF AND REALE HAD TAKEN THE MOST VALUABLE COMPUTERS AND TOLD KASSER THAT THEY WERE ONLY WORTH \$1,000.00 A PIECE ANYWAY. UTLEY WAS ASKED TO RETURN THESE COMPUTERS AND TAKE THE CORRECT ONES AND HE REFUSED.

I THEN SPOKE WITH ROSS MILLER, WHO IS THE COMPANIES ATTORNEY, WHO ADVISED ME THAT REALE WAS IN CHARGE OF PACKAGING EACH COMPUTER AND WRONGFULLY AND INTENTIONALLY LET UTLEY TAKE THE MOST VALUABLE COMPUTERS, WITHOUT CONSENT FROM ANYONE ELSE IN THE COMPANY. ROSS ALSO CONFIRMED ALL OF THE ABOVE INFORMATION GIVEN BY KASSER. ROSS ADVISED ME THAT HE HAD BEEN TOLD BY SEVERAL 3RD PARTIES THAT REALE AND UTLEY ADMITTED TO HAVING THE ABOVE STATED EQUIPMENT AND ASKED 3RD PARTIES FOR ASSISTANCE IN OPERATING IT. ROSS HAS A SUSPICION THAT THE EQUIPMENT MAY BE USED TO START A BUSINESS FOR REALE AND UTLEY.

ON 06-20-2001 AT 12:28 HOURS, I CONTACTED UTLEY AT 561-750-6876, WHO ADVISED ME THAT HE DID HAVE THE EQUIPMENT, BUT ADVISED THAT THE DEAL WAS STRAIGHT FORWARD AND HE POINTED OUT TO KASSER EXACTLY WHAT COMPUTERS HE WOULD BE TAKING AND ALL WAS AGREED ON. UTLEY ADVISED THAT HE PAID \$1,000.00 PER COMPUTER AND THAT IT WAS A GENEROUS OFFER. UTLEY BELIEVES THAT KASSER MUST HAVE DECIDED AFTER THE FACT THAT HE DID NOT RECEIVE ENOUGH MONEY FOR THESE COMPUTERS AND IS EXAGGERATING ABOUT THEIR \$40,000.00 VALUE.

ON 06-20-2001 AT 13:00 HOURS, I SPOKE WITH REALE AT 561-499-8850, WHO ADVISED ME THAT HE DID NOT HAVE ANY INVOLVEMENT IN ANY COMPUTER THEFT. REALE ADVISED



Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

**REPORTING OFFICER NARRATIVE**

<i>Boca Raton Police Department</i>		CCA
Victim <i>IVIEWIT.COM, INC.</i>	Offense <i>EMBEZZLEMENT</i>	<i>2001-034580</i>
		Date / Time Reported <i>Wed 06/20/2001 10:12</i>

ME THAT UTLEY HAD POINTED OUT THE COMPUTERS THAT HE WAS GOING TO PURCHASE FOR \$1,000.00 EACH AND THAT IS WHAT WAS TAKEN WHEN THEY LEFT THE COMPANY. REALE STATED THAT PAYING \$1,000.00 FOR EACH OF THE COMPUTERS THAT THEY TOOK WAS A VERY GENEROUS OFFER, DUE TO THEIR AGE AND VINTAGE. REALE STATED THAT THE COMPUTERS HAD STANDARD HARDWARE, SO THE VALUE THAT WAS GIVEN BY KASSER WAS WAY ABOVE IT'S FAIR MARKET VALUE. REALE STATED THAT HE HAS MANY YEARS OF EXPERIENCE WITH COMPUTERS AND KNOWS WHAT THEY ARE WORTH. REALE FEELS THAT KASSER'S COMPLAINT IS MOTIVATED BY EMOTIONS AND NOT MONEY.

I ADVISED THE COMPLAINANT TO CONTACT THE P.D. IF THERE IS ANY ADDITIONAL INFORMATION, AND I WAS ASKED BY KASSER TO PLEASE HAVE SOMEONE CONTACT HIM REGARDING AN INVESTIGATION INTO THIS MATTER.



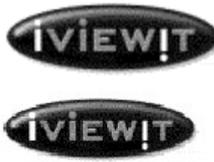
Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

**Incident Report Suspect List**

*Boca Raton Police Department*

OCRA: 2001-054580

1	Name (Last, First, Middle) <i>Viley, Brian</i>				Also Known As				Home Address <i>1930 SW 8TH ST BOCA RATON, FL 33486 561-730-6876</i>			
	Business Address <i>561-289-8145</i>											
DOB	Age	Race	Sex	Hgt	Wgt	Hair	Eye	Scars, Marks, Tattoos, or other distinguishing features				
<i>10/27/1932</i>	<i>68</i>	<i>W</i>	<i>M</i>									
<i>Reported Suspect Detail</i>		Suspect Age		Race	Sex	Height	Weight	SSN <i>528-40-3812</i>				
Weapon, Type	Feature	Make	Model		Color	Caliber	Dir of Travel		Mode of Travel			
Veh Yr/Make/Model		Drs	Style	Color	Lie/St	VIN						
Notes											Physical Char	



Lorraine Christine Hoffman, Esq.  
Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

**CASE SUPPLEMENTAL REPORT**  
NOT SUPERVISOR APPROVED

Printed: 02/27/2002 10:35

Boca Raton Police Department

OCA: 2001054580

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status:	Exceptionally Cleared	Offense:	EMBEZZLEMENT
Case Mng Status:	Exceptionally Cleared	Occurred:	04/27/2001
Investigator:	MEYER, S. P. (528)	Date / Time:	08/08/2001 16:17:26, Wednesday
Supervisor:	(0)	Supervisor Review Date / Time:	NOT REVIEWED
Contact:		Reference:	Follow Up

06/26/2001 at 14:00 hours I spoke to William Kasser concerning the theft of computers from Iviewit.Com. William Kasser, who is the Controller for Iviewit.Com, verified that all of the information on the original report was accurate. Kasser advised that the Ex-President of the Boca branch of Iviewit.Com, Brian Utley, stole two Hi-tech computers from the Company after he was terminated from his position.

Kasser found out that the hi-tech computers, the "Nitro" and the "Bomber", were missing when he received a phone call from Eliot Bernstein in California. Kasser was told later by Michael Reale that Brian Utley had the Bomber and the Nitro. Kasser feels that Reale assisted Utley in stealing the computers from the Company when he was packaging the computers.

When Kasser called Utley Kasser asked Utley if he had the bomber and the Nitro. Utley told Kasser that he had the Nitro and Bomber and that he legally purchased the computers from the company for \$1000.00 each. Kasser was present when Utley asked Ross Miller if he could purchase two of the computers from the Company for \$1,000.00 each. Kasser told Utley that the deal was for two of the generic computers, not the Nitro and the Bomber. Kasser told me that Utley knew that the Nitro and the Bomber were worth \$40,000.00. Utley told Kasser that he was not going to return the computers to the Company.

06/27/2001 at 10:30 hours I went to Iviewit.Com and I spoke to Ross Miller concerning this case. According to Miller, Utley approached him on May 3rd while Utley was cleaning out his office. Utley asked Miller if he could purchase his desktop computer and another generic computer from the business. Miller pointed to the generic computers in the general office area and he stated, "your computer and one of those computers". Utley confirmed that he wanted to purchase his office computer and one of the computers Miller was pointing to.

Miller told me that there was no way that Utley could have confused the Bomber and Nitro for two of the generic computers. First of all, the generic computers were still not boxed and sitting on the desks in the general area of the business. The Bomber and Nitro were already boxed and sitting in the hi-tech room, which is separate from the general office area. Second of all, Utley knows that the Bomber and the Nitro are the two most hi-tech computers in the business. Being President of the Company Utley knew that the computers were worth \$40,000.00. Even if Utley grabbed the wrong computers from the Company he was well aware of what he had when he opened the boxes.

06/29/2001 at 11:30 A.M. Detective Ganci and I drove to Utley's house, which is located at 1930 SW 8th Street in Boca Raton. According to Utley he had possession of the Nitro and the Bomber. Utley told me that he purchased the computers from Ross Miller for \$1,000.00 each. Utley told me that the Nitro and the Bomber were only worth \$1,000.00 each. Utley told me that the software on the Bomber and the Nitro was outdated and no longer worth \$40,000.00. Utley told me that the software on the computer might have been worth \$40,000.00 at one point.

When I asked Utley where the computers were he told me that they were out of the state. Utley then stated, "if the Company gives me \$40,000.00 for the computers I will subtract that from the lawsuit I am filing against them". I told Utley that I would be filing charges against him for grand theft if he did not return the computers to Miller or Kasser. Utley told me that he would speak to his lawyer and then called me with his decision.

r\_supp2

Page 1



**EXHIBIT D**

**STATEMENT OF BOARD MEMBER DONALD KANE II, FORMER  
MANAGING DIRECTOR OF GOLDMAN SACHS REGARDING THE ILLEGAL  
TRANSFER OF CORPORATE SECURITIES**

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

From: Donald Kane [mailto:dg\_kane@msn.com]

Sent: Sunday, March 18, 2001 6:39 AM

To: Eliot I. Bernstein

Subject: RE: Board meeting on the 3rd

Elliot,

I spoke to Hank yesterday and will do so again today. The company is in a difficult position and the common shareholders risk losing the company to the preferred investors. Here are my thoughts:

**2. The company has supposedly accepted money from a new investor group without proper documentation/approval on the terms and conditions with Hank or the board. You need to talk to Alan Epstein about this process. I am very uncomfortable with what I am hearing about management.**



**EXHIBIT E**

**FINAL BELIEVED COPY OF SUBSCRIPTION AGREEMENT, CONVERTIBLE  
NOTE, WARRANT AND WIRE COPY SUPPLIED BY TIEDEMANN/PROLOW**

EXECUTED ON VARIOUS DATES AFTER THE TRANSACTION DATE  
PURPORTED TO BE 2/23/01

THE DATES ON THE DOCUMENTS  
NOTE – 3/20/01 – NO SIGNATURES AND THE DOCUMENT WAS NEVER  
SIGNED

WARRANT – 4/27/01 EXECUTED BY A FORMER EMPLOYEE AND NOT  
PROKSAUER ROSE

SUBSCRIPTION AGREEMENT – 4/18/01 EXECUTED BY A FIRED EMPLOYEE –  
BRIAN G. UTLEY

SUPPOSED WIRE CONFIRMATION DATED 2/23/01 – PROVIDED BY  
TIEDEMANN/PROLOW



**Exhibit B – Tiedemann/Prolow Loan Documents**  
 Unsigned at time of transaction Convertible Promissory Note

THIS CONVERTIBLE PROMISSORY NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THIS CONVERTIBLE PROMISSORY NOTE NOR ANY INTEREST THEREIN (INCLUDING THE SHARES OF CLASS B NON-VOTING COMMON STOCK INTO WHICH THIS NOTE IS CONVERTIBLE) MAY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS THIS CONVERTIBLE PROMISSORY NOTE IS FIRST REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR QUALIFIED UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR UNTIL THE COMPANY SHALL HAVE RECEIVED AN OPINION OF LEGAL COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT THIS CONVERTIBLE PROMISSORY NOTE MAY LAWFULLY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT SUCH REGISTRATION AND/OR QUALIFICATION IN RELIANCE UPON AN APPLICABLE EXEMPTION.

**iviewit HOLDINGS, INC.**  
**CONVERTIBLE PROMISSORY NOTE**

Interest Rate: 10% per year

Convertible into shares of Class B Non-Voting Common Stock of iviewit HOLDINGS, INC.  
 at \$387.59 per Share, subject to adjustment

Boca Raton, Florida

Amount: \$345,000

Dated: \_\_\_\_\_, 2001

For value received, iviewit HOLDINGS, INC., a Delaware corporation, whose address is 2255 Glades Road, Suite 317W, Boca Raton, Florida 33431 ("Company"), promises to pay to Tiedemann Prolow, LLC, a New York limited liability company having an address of 535 Madison Avenue, 37<sup>th</sup> Floor, New York, NY 10022 ("Payee"), the principal amount of Three Hundred Forty Five Thousand Dollars (\$345,000), together with interest from the date hereof at the rate of ten percent (10%) per year.

This Convertible Promissory Note ("Note") is issued pursuant to a Subscription Agreement (the "Subscription Agreement") between the Company and the Payee, in connection with an offering of a Unit consisting of (i) a \$345,000 principal amount convertible promissory note and (ii) warrants to purchase up to 1,780 shares of the Class B Non-Voting Common Stock of the Company (the "Offering") of which this Note is a part.

This Note is subject to the following terms and conditions:

**1. Principal and Interest Payments.**

a. This Note bears interest from the date hereof at a rate of ten (10%) per year, which will accrue daily from the date of this Note and be payable on the Due Date (as herein defined), which interest payments may be made in the form of cash, shares of the Company's Class B Non-Voting Common Stock, \$.01 par value ("Class B Common Stock") or a combination of cash and shares, in the Payee's sole discretion.

b. The entire unpaid principal, together with any accrued but unpaid interest, shall be due and payable in full on \_\_\_\_\_, 2004 [the third anniversary of the date of this Note] (the "Due Date").

c. All computations of interest made or called for herein shall be made on the basis of a 366-day year for the actual number of days elapsed.

d. All payments due on this Note shall be applied first to accrued interest, and second, to any remainder in payment of principal.



e. Except as otherwise provided in this Note, all payments of principal and interest on this Note shall be paid in the legal currency of the United States of America.

f. The Company shall be responsible for all applicable Florida documentary stamp taxes, and similar taxes, on this Note.

2. Optional Prepayments. The Company may, without penalty, prepay this Note in whole or in part, at any time upon thirty (30) days prior written notice to the Payee (the "Company Notice"). Payee shall have twenty (20) days after receipt of the Company Notice to provide the Company with written notice of Payee's intent to convert this Note into fully paid and non-assessable shares of Class B Common Stock, in accordance with, and based upon the applicable conversion rate in effect at any time as, described in Section 3 below, subject to adjustments in accordance with Section 4 below.

3. Conversion of Note

a. At any time from the date hereof until eighteen (18) months following the date hereof, the Payee has the right, at the Payee's option (and subject to prepayment in full of the principal balance of this Note pursuant to Section 2 above) to convert the then outstanding principal under this Note, in accordance with provisions hereof, in whole or in part, into fully paid and non-assessable shares of Class B Common Stock, based upon the applicable conversion rate ("Applicable Conversion Rate") as follows: (i) The principal amount plus any accrued but unpaid interest amount of the Note, divided by (ii) Three Hundred Eighty-Seven and 59/100 Dollars (\$387.59), subject to adjustment in accordance with Section 4 below.

b. Before the Payee shall be entitled to convert this Note into shares of Class B Common Stock, the Payee shall surrender this Note at the office of the Company and shall give written notice by mail, postage prepaid, to the Company at its principal corporate office, of the election to convert the same in the form attached hereto as Exhibit A. The Company shall, as soon as practicable thereafter, issue and deliver at such office to the Payee of this Note a certificate or certificates (bearing such legends as are required by the Subscription Agreement and applicable state and federal securities laws in the opinion of counsel to the Company) for the number of shares of Class B Common Stock to which the Payee of this Note shall be entitled as aforesaid. Upon a partial conversion of this Note, there shall be countersigned and issued to the Payee hereof a replacement Note in respect of the shares of Class B Common Stock as to which this Note shall not have been converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of this Note, and the Payee shall be treated for all purposes as the record Payee of such shares of Class B Common Stock as of such date.

c. As promptly as practicable after the conversion of this Note, the Company at its expense will issue and deliver to the Payee of this Note a certificate or certificates for the number of full shares of Class B Common Stock issuable upon such conversion. Payee acknowledges that such shares will not be registered under applicable state and federal securities laws, will constitute restricted securities under such laws and will bear a restrictive legend as to their transferability as more particularly described in the Subscription Agreement.

4. Adjustment to Applicable Conversion Rate.

a. Adjustment for Stock Splits and Subdivisions. In the event the Company should at any time or from time to time after the date of issuance hereof fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of this Note shall be appropriately decreased so that the number of shares of Common Stock issuable upon conversion of this Note shall be increased in proportion to such increase of outstanding shares.



e. Except as otherwise provided in this Note, all payments of principal and interest on this Note shall be paid in the legal currency of the United States of America.

f. The Company shall be responsible for all applicable Florida documentary stamp taxes, and similar taxes, on this Note.

2. Optional Prepayments. The Company may, without penalty, prepay this Note in whole or in part, at any time upon thirty (30) days prior written notice to the Payee (the "Company Notice"). Payee shall have twenty (20) days after receipt of the Company Notice to provide the Company with written notice of Payee's intent to convert this Note into fully paid and non-assessable shares of Class B Common Stock, in accordance with, and based upon the applicable conversion rate in effect at any time as, described in Section 3 below, subject to adjustments in accordance with Section 4 below.

3. Conversion of Note

a. At any time from the date hereof until eighteen (18) months following the date hereof, the Payee has the right, at the Payee's option (and subject to prepayment in full of the principal balance of this Note pursuant to Section 2 above) to convert the then outstanding principal under this Note, in accordance with provisions hereof, in whole or in part, into fully paid and non-assessable shares of Class B Common Stock, based upon the applicable conversion rate ("Applicable Conversion Rate") as follows: (i) The principal amount plus any accrued but unpaid interest amount of the Note, divided by (ii) Three Hundred Eighty-Seven and 59/100 Dollars (\$387.59), subject to adjustment in accordance with Section 4 below.

b. Before the Payee shall be entitled to convert this Note into shares of Class B Common Stock, the Payee shall surrender this Note at the office of the Company and shall give written notice by mail, postage prepaid, to the Company at its principal corporate office, of the election to convert the same in the form attached hereto as Exhibit A. The Company shall, as soon as practicable thereafter, issue and deliver at such office to the Payee of this Note a certificate or certificates (bearing such legends as are required by the Subscription Agreement and applicable state and federal securities laws in the opinion of counsel to the Company) for the number of shares of Class B Common Stock to which the Payee of this Note shall be entitled as aforesaid. Upon a partial conversion of this Note, there shall be countersigned and issued to the Payee hereof a replacement Note in respect of the shares of Class B Common Stock as to which this Note shall not have been converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of this Note, and the Payee shall be treated for all purposes as the record Payee of such shares of Class B Common Stock as of such date.

c. As promptly as practicable after the conversion of this Note, the Company at its expense will issue and deliver to the Payee of this Note a certificate or certificates for the number of full shares of Class B Common Stock issuable upon such conversion. Payee acknowledges that such shares will not be registered under applicable state and federal securities laws, will constitute restricted securities under such laws and will bear a restrictive legend as to their transferability as more particularly described in the Subscription Agreement.

4. Adjustment to Applicable Conversion Rate.

a. Adjustment for Stock Splits and Subdivisions. In the event the Company should at any time or from time to time after the date of issuance hereof fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of this Note shall be appropriately decreased so that the number of shares of Common Stock issuable upon conversion of this Note shall be increased in proportion to such increase of outstanding shares.



11. WAIVER OF JURY TRIAL. THE COMPANY, BY EXECUTION HEREOF, AND THE PAYEE, BY ACCEPTANCE HEREOF, MUTUALLY AND WILLINGLY WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY AND ALL CLAIMS MADE BETWEEN THEM WHETHER NOW EXISTING OR ARISING IN THE FUTURE, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS, DEFENSES, COUNTERCLAIMS, CROSS CLAIMS, THIRD PARTY CLAIMS AND INTERVENERS'S CLAIMS WHETHER ARISING FROM OR RELATED TO THE NEGOTIATION, EXECUTION AND PERFORMANCE OF THE TRANSACTIONS TO WHICH THIS NOTE RELATES.

IN WITNESS WHEREOF, the Company has caused this Note to be executed on the day and year first above written.

iviewit HOLDINGS, INC.

By: \_\_\_\_\_  
Brian G. Utley, President



**EXHIBIT 'A'**

**INSTRUCTIONS TO CONVERT**

The undersigned hereby surrenders the attached 10% Convertible Promissory Note due \_\_\_\_\_, 2004 (the "Note") of iVIEWIT Holdings, Inc., a Delaware corporation ("iVIEWIT"), in the principal amount of \$345,000 for conversion into shares of iVIEWIT's Class B Non-Voting Common Stock ("Class B Common Stock") in accordance with Section 3 of the Note relating to voluntary conversion, as noted below. Such Note was issued pursuant to that certain Subscription Agreement dated \_\_\_\_\_, 2001 with iVIEWIT (the "Subscription Agreement"). The undersigned represents that he/she/it is the beneficial owner and Payee of record of the Note, and that no other person has any lien, security interest or interest of any kind in the Note and that he/she/it has full and legal right to surrender the Note for conversion. The undersigned further renounces as to the shares of Class B Common Stock to be issued to the undersigned pursuant to these instructions the representations and warranties set forth in subsections 6.2 (a), (b), (e), (f), (g) and (h) of the Subscription Agreement.

The Undersigned elects to convert the Note in full including the remaining principal of \$ \_\_\_\_\_ and accrued interest of \$ \_\_\_\_\_, which equals a conversion of \$ \_\_\_\_\_.

The Undersigned elects to convert the Note in part equal to a principal amount of \$ \_\_\_\_\_ and accrued interest of \$ \_\_\_\_\_, which equals a conversion of \$ \_\_\_\_\_. An identical Note shall be reissued for the amount of remaining principal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Note Payee

Signature guarantee:

Signature must be guaranteed by a commercial bank or member firm of the New York Stock Exchange.



**EXHIBIT "B"**  
**Form of Warrant**

1708/40017-001 8RL181/287673 v6

B-I

03/20/01 09:43 AM (11111)



## Warrant Certificate

**Note that the warrant although part of the Proskauer Rose documents for this transaction, is never completed with their documents and instead is signed by Raymond Hersh a month after the transaction and sent 2 months later to the investor.**



"I view it!"

[www.iviewit.com](http://www.iviewit.com)

2255 Glades Road  
One Boca Place - Suite 337W  
Boca Raton, FL 33431  
Voice: 561.999.8899  
Fax: 561.999.8810  
Toll: 877.484.8444

Via Mail

April 27, 2001

Tiedemann Investment Group  
Attn: Bruce Prolow  
535 Madison Avenue, 36th Floor  
New York, NY 10022

Dear Bruce:

Relative to your investment of \$345,000 in iviewit Holdings Inc. I am pleased to enclose the Warrant which supplements the actual Convertible Promissory Note issued for the investment itself. This Warrant is consistent with the Term Sheet which we presented to you last November, and the \$345,000 translates to 1880 Warrant Shares described in the Warrant itself.

Thank you for your confidence in us, and I hope and trust that this will result in a mutually profitable investment.

Kindest regards.

Sincerely,

Raymond Hersh  
Vice President of Finance

encl. Warrant Certificate for Purchase of Class A Voting Common Stock  
Private Placement Offering Term Sheet

RH/bb



WARRANT No. 01/04/Q

**WARRANT CERTIFICATE FOR PURCHASE OF  
CLASS A VOTING COMMON STOCK**

THIS WARRANT AND THE CLASS A VOTING COMMON STOCK PURCHASABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY STATE SECURITIES LAW. NEITHER THIS WARRANT NOR THE CLASS A VOTING COMMON STOCK PURCHASABLE HEREUNDER MAY BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO SUCH SECURITIES UNDER SUCH ACT AND ANY STATE APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

**Iviewit Holdings, Inc.**

**Purchase Warrant for  
Class A Voting Common Stock**

THIS WARRANT CERTIFICATE certifies that, FOR VALUE RECEIVED Tiedemann/Prolow II LLC (the "Holder"), 535 Madison Avenue, 36<sup>th</sup> Floor, New York, New York 10022, is entitled, subject to the terms and conditions set forth in this Warrant Certificate for Purchase of Class A Voting Common Stock (this "Warrant"), to purchase from Iviewit Holdings, Inc., a Delaware corporation (the "Company"), one thousand eight hundred eighty (1,880) shares ("Warrant Shares") of Class A Voting Common Stock, \$.01 par value, of the Company ("Class A Common Stock"), commencing on March 21, 2001, and ending at 5:00 p.m., New York time, on March 20, 2006 (the "Expiration Date"), at an exercise price of one hundred fifty-five dollars (\$155) per Warrant Share (the "Warrant Exercise Price"), such number of Warrant Shares and Warrant Exercise Price being subject to adjustment from time to time as set forth in Section 3 below. This Warrant may not be exercised after 5:00 p.m., NYC time, on the Expiration Date, at which time this Warrant, unless exercised prior thereto, shall thereafter be void.

**This Warrant is subject to the following provisions, terms and conditions:**



**SECTION 1. *Warrant Exercise.*** Except as treated by the Holder under the Cashless Exercise Provision of Paragraph 7 herein, this Warrant may be exercised by the Holder hereof, in whole or in part, by the presentation and surrender of this Warrant with the form of the Election to Purchase Form attached hereto as SCHEDULE A, duly executed, at the principal office of the Company, and upon payment to the Company of the applicable Warrant Exercise Price in cash or by cashier's check payable to the order of the Company. The Warrant Shares so purchased shall be deemed to be issued to the Holder hereof as the record owner of such Warrant Shares as of the close of business on the date on which this Warrant shall have been surrendered and the Warrant Exercise Price per each Warrant Share shall have been paid by the Holder to and received by the Company. Upon the exercise of this Warrant, the issuance of certificates for Warrant Shares shall be made forthwith without charge to the Holder hereof including, without limitation, any tax which may be payable in respect of the issuance thereof, and such certificates shall be issued in the name of, or in such names as may be directed by, the Holder hereof; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificates in a name other than that of the Holder and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. Upon any partial exercise of this Warrant, there shall be countersigned and issued to the Holder hereof a new Warrant in respect of the Warrant Shares as to which this Warrant shall not have been exercised.

**SECTION 2. *Reservation of Warrant Shares.*** The Company covenants and agrees:

- (i) That all Warrant Shares which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof; and
- (ii) That during the period within which the rights represented by this Warrant may be exercised, the Company will at all times have authorized, and reserved for the purpose of issue and delivery upon exercise of the rights evidenced by this Warrant, a sufficient number of shares of Class A Common Stock to provide for the exercise of the rights represented by this Warrant.

**SECTION 3. *Reorganization, Reclassification, Consolidation, Merger or Sale.***

**A. *Capital Events.*** If any reorganization or reclassification of the capital stock of the Company, or any consolidation or merger of the Company with or into a corporation or other entity, or the sale, transfer or other disposition of all or substantially all of its assets to a corporation or other entity (in any instance, a "Capital Event") shall be effected in such a way that holders of any shares of Class A Common Stock shall be entitled to receive shares of stock, securities or assets or cash or other consideration of value with respect to or in exchange for their shares of Class A Common Stock, then,



as a condition of such Capital Event, lawful and adequate provisions shall be made whereby the Holder hereof shall thereafter have the right to purchase and receive upon the basis and upon the terms and conditions specified in this Warrant and in lieu of the Warrant Shares immediately theretofore purchasable and receivable upon the exercise of the rights represented hereby, an amount of the same or similar shares of stock, securities or assets as may have been issued or payable with respect to or in exchange for a number of outstanding shares of Class A Common Stock equal to the number of Warrant Shares immediately theretofore purchasable and receivable upon the exercise of the rights represented hereby as if such exercise occurred immediately prior to the Capital Event.

B. *Preservation of Value.* In the case of any Capital Event, appropriate provision shall be made with respect to the rights and interests of the Holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for adjustment of the number of Warrant Shares purchasable and receivable upon the exercise of this Warrant and the Warrant Exercise Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of the rights represented hereby.

C. *Subdivision or Combination of Shares.* If the Company shall at any time (i) subdivide or split its outstanding shares of Class A Common Stock into a greater number of shares or (ii) make a distribution to all holders of Class A Common Stock payable in additional shares of Class A Common Stock or other securities or rights convertible into, or which entitle the holder thereof to receive, directly or indirectly, additional shares of Class A Common Stock without payment of any consideration by such holder therefore, then the number of Warrant Shares subject to issuance upon exercise of this Warrant shall be proportionately increased. If the outstanding shares of Class A Common Stock of the Company shall be combined into a smaller number of shares, the number of Warrant Shares subject to issuance upon exercise of this Warrant shall be proportionately decreased. In any such event, the Warrant Exercise Price in effect immediately prior to such event shall be proportionately adjusted by multiplying it by a fraction, the numerator of which shall be the number of shares of Class A Common Stock outstanding immediately prior to such event and the denominator of which shall be the number of shares of Class A Common Stock outstanding immediately after such event.

D. *Dividends.* The Company may declare a dividend or make any other distribution upon any class or series of its capital stock without consideration to the Holder hereof.

SECTION 4. *Fractional Interests.* If any fraction of a Warrant Share is issuable on the exercise of this Warrant, the Company shall be required to and shall issue such fractional Warrant Share on the exercise of this Warrant.

SECTION 5. *No Rights as Stockholder.* Nothing contained in this Warrant shall be construed as conferring upon the Holder hereof or his transferees any rights as a stockholder of the Company.



**SECTION 6. Registration Rights.**

6.1 *Piggyback Rights.* If at any time prior to the Expiration Date, the Company shall propose to register any of its common stock under the Securities Act of 1933, as amended (the "Securities Act") (other than pursuant to a transaction described under Rule 145 of the Securities Act or registration statements on forms S-4 or S-8 (or their successor forms)), the Company will include in such registration statement such information as is required, and such number of Warrant Shares held by the Holder as may be requested by him, to permit a public offering of the Warrant Shares so requested; provided, however, that in the case of an underwritten offering, if, in the written opinion of the Company's managing underwriter for such offering, the inclusion of the Warrant Shares requested to be registered, when added to the securities being registered by the Company or any other selling security holder(s), would exceed the maximum amount of the Company's securities that can be marketed without otherwise materially and adversely affecting the entire offering, then such managing underwriter may exclude from such offering that portion of the Warrant Shares requested to be so registered, so that the total number of securities to be registered is within the maximum number of shares that, in the opinion of the managing underwriter, may be marketed without otherwise materially and adversely affecting the entire offering. In the event of such a proposed registration, the Company shall furnish the Holder of Warrant Shares with not less than twenty (20) days' written notice prior to the proposed date of filing of such registration statement. Such notice shall continue to be given by the Company to the Holder of Warrant Shares, with respect to subsequent registration statements, until such time as all of the Warrant Shares have been registered or may be sold without registration under the Securities Act or applicable state securities laws and regulations, and without limitation as to volume, pursuant to Rule 144 of the Securities Act. The Holder of Warrant Shares shall exercise the rights provided for in this Section 6.1 by giving written notice to the Company, within fifteen (15) days of receipt of the Company's notice of its intention to file a registration statement. In the event the offering involves an underwritten offering, the Holder shall also execute, and be a party to, the underwriting agreement of the Company.

6.2 *Covenants of the Company With Respect to Registration.* In connection with any registration under Section 6.1 hereof, the Company covenants and agrees as follows:

(a) The Company shall pay all costs (excluding fees and expenses of counsel to the Holder and any underwriting or selling commissions or other charges of any broker-dealer acting on behalf of the Holder and except to the extent persons other than the Holder have agreed to pay such costs), fees and expenses in connection with all registration statements filed pursuant to Section 6.1 hereof.



(b) The Company will take all necessary action which may be required in qualifying or registering the Warrant Shares included in a registration statement for offering and sale under the securities or blue sky laws of such states as is reasonably requested by the Holder, provided that the Company shall not be obligated to execute or file any general consent to service of process or to qualify as a foreign corporation to do business under the laws of any such jurisdiction.

(c) Nothing contained in this Agreement shall be construed as requiring the Holder to exercise this Warrant prior to the initial filing of any registration statement or the effectiveness thereof; provided that the provisions of Section 6.1 shall be applicable only for Warrant Shares held by the Holder and not with respect to any shares of Class A Common Stock underlying any Warrants not yet exercised.

(d) The Company shall deliver promptly to the Holder who shall have requested in writing the correspondence and memoranda described below and to the managing underwriters, if any, copies of all correspondence between the SEC and the Company, its counsel or auditors and all memoranda relating to discussions with the SEC or its staff with respect to the registration statement and permit the Holder and underwriter to do such investigation, upon reasonable advance notice, with respect to information contained in or omitted from the registration statement as it deems reasonably necessary to comply with applicable securities laws or rules of the NASD. Such investigation shall include access to books, records and properties and opportunities to discuss the business of the Company with its officers and independent auditors, all to such reasonable extent and at such reasonable times and as often as the Holder or underwriter shall reasonably request.

(e) The Company agrees that until all the Warrant Shares have been sold under a registration statement or pursuant to Rule 144 under the Securities Act, it shall use reasonable efforts to keep current in filing all reports, statements and other materials required to be filed with the SEC to permit the Holder of the Warrant Shares to sell such securities under Rule 144.

**6.3 Black-Out Periods.** The Holder agrees that, upon receipt of any notice from the Company of an "Amendment Event" (as defined below), the Holder will discontinue disposition of Warrant Shares pursuant to the registration statement until the Holder receives copies of the supplemented or amended prospectus which reflects the Amendment Event. If directed by the Company, the Holder will also deliver to the Company all copies, other than any permanent file copies then in the Holder's possession, of the most recent prospectus covering such Warrant Shares. An "Amendment Event" shall mean an event requiring the preparation of a supplement or amendment to the prospectus so that, as thereafter delivered to a purchaser of Warrant Shares, such prospectus would not contain an untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made.



**6.4 Survival.** The rights and obligations set forth in this Section 6 shall survive the exercise and surrender of this Warrant.

**SECTION 7. Cashless Exercise.** The Holder may, at its election exercised in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Class A Common Stock determined according to the following formula (a "Cashless Exercise"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

**A** = the total number of shares with respect to which this Warrant is then being exercised.

**B** = the fair market value of the Class A Common Stock on the date immediately preceding the date of the subscription notice.

**C** = Warrant Exercise Price then in effect at the time of such exercise.

The "fair market value" of the Common Stock shall be the last closing trade price for such security on the Principal Market (as defined below) as reported by Bloomberg Financial Markets ("Bloomberg"), or if the Principal Market begins to operate on an extended hours basis, and does not designate the closing trade price, then the last trade price at 4:00 p.m. Eastern Time as reported by Bloomberg, or, if the foregoing do not apply, the last closing trade price of such security on a National Securities Exchange, in the Over-the-Counter market, on the electronic Bulletin Board for such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the last closing ask price of such security as reported by Bloomberg, the average of the lowest ask price and lowest bid price of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc. If the "fair market value" cannot be calculated for such security on such date on any of the foregoing bases, the "fair market value" of such security on such date shall be the fair market value as mutually determined by the Company and the Holder.

**SECTION 8. Successors.** All the covenants and provisions of this Warrant by or for the benefit of the Company or the Holder hereof shall bind and inure to the benefit of their respective permitted successors and assigns hereunder.



**SECTION 9. *Applicable Law.*** This Warrant shall be deemed to be a contract made under and construed in accordance with the laws of the State of Florida, without giving effect to any conflicts of laws principles thereof.

**SECTION 10. *Benefits.*** This Warrant shall not be construed to give to any person or corporation other than the Company and the Holder hereof any legal or equitable right, remedy or claim under this Warrant, and this Warrant shall be for the sole and exclusive benefit of the Company and the Holder hereof.

**SECTION 11. *Transferability.*** No transfer of this Warrant shall be effective unless and until registered on the books of the Company maintained for such purpose, and the Company may treat the registered Holder as the absolute owner of this Warrant for all purposes and the person entitled to exercise the rights represented hereby. No such transfer of this Warrant shall be effective unless the Warrant Shares issuable upon exercise of this Warrant have been registered under the Securities Act or unless the Holder requesting such transfer provides the Company with an opinion of counsel in form reasonably satisfactory to the Company that no such registration statement in respect of such transfer is required under the Securities Act or any rule or regulation promulgated thereunder or any applicable state securities laws. Any transferee of this Warrant, by acceptance thereof, agrees to be bound by all of the terms and conditions of this Warrant.

**SECTION 11. *Investment Representation and Legend.*** The Holder, by acceptance of this Warrant, represents and warrants to the Company that the Holder is acquiring this Warrant, and unless at the time of exercise a registration statement under the Securities Act is effective with respect to such shares, upon the exercise hereof the Holder will acquire the Warrant Shares issuable upon such exercise, for investment purposes only and not with a view towards the resale or other distribution thereof.

The Holder, by acceptance of this Warrant, agrees that the Company may affix, unless the Warrant Shares issuable upon exercise of this Warrant are registered at the time of exercise, the following legend to certificates for Warrant Shares upon the exercise of this Warrant:

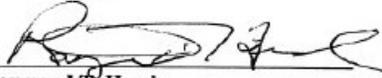
**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND HAVE NOT BEEN REGISTERED UNDER ANY STATE SECURITIES LAW, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, ENCUMBERED OR OTHERWISE DISPOSED OF UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS RELATING THERETO OR UNLESS, IN THE OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS NOT REQUIRED.**

- 7 -



IN WITNESS WHEREOF, the Company has duly authorized the issuance of this Warrant as of March 21, 2001.

Iviewit Holdings, Inc.

By: 

Raymond T. Hersh  
Vice President Finance/CFO



**SCHEDULE A**

**Iviewit Holdings, Inc.**

**ELECTION TO PURCHASE FORM**

**Iviewit Holdings, Inc.  
2255 Glades Road  
Suite 337 West  
Boca Raton, Florida 33431**

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the attached Warrant for, and to purchase thereunder, \_\_\_\_ of the Warrant Shares provided for therein (originally, \_\_\_\_ of the \_\_\_\_ Warrant Shares, and as presently adjusted pursuant to Section 3 thereof, \_\_\_\_\_ Warrant Shares). The undersigned requests that a certificate for such Warrant Shares be issued in the name of:

(Please Print Name, Address, and  
Social Security or Tax Identification Number)

and that such certificate be delivered to \_\_\_\_\_, whose  
address is \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Name of Holder: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_  
(signature must conform in  
all respects to the name of the  
Holder as specified on the face  
of the Warrant Certificate)

Holder's Social  
Security/Tax ID Number: \_\_\_\_\_



### **Tiedemann/Prolow Subscription Agreement**

This document authored by Proskauer Rose's Donald "Rocky" Thompson has problems in that none of the documents that appear to be sent to Mr. Craig Smith were ever sent and the Company has no records or the investor. The subscription agreement is executed days before Mr. Utley was fired when all his signatory powers had been revoked by the Board. The prior documents you can see were dated by other people at various times and did not truly accompany Mr. Thompson's letter. The letter is dated March 2001 and it has a signature from Mr. Utley that is dated April 2001 that was sent with it?



PROSKAUER ROSE LLP

2255 Glades Road  
Suite 340 West  
Boca Raton, FL 33431-7360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.432.7745  
Fax 561.241.7145

NEW YORK  
LOS ANGELES  
WASHINGTON  
NEWARK  
PARIS

Donald E. "Rocky" Thompson, II  
Attorney at Law

dthompson@proskauer.com

March 20, 2001

**VIA FED EX**

Mr. Craig Smith  
Tiedemann/Prolow, LLC  
535 Madison Avenue  
37<sup>th</sup> Floor  
New York, NY 10022

**Re: Subscription Documentation**

Dear Craig:

At Ray Hersh's request, please find enclosed a complete set of the Subscription Documentation, including the form of Warrant and form of Promissory Note, relating to your firm's investment of \$345,000 in iviewit. Please sign the Subscription Agreement and fill out the questionnaire, which is included as Exhibit "D", and return the materials to Ray Hersh's attention at iviewit. Ray will coordinate countersignature by iviewit and the issuance of the actual Note and Warrants relating to your investment. Please call either me or Ray if you have any questions with regard to the enclosed or the foregoing.

Best regards,

Donald E. Thompson, II

DET/jjm  
Enclosure

cc: Mr. Ray Hersh  
Christopher C. Wheeler, Esq.

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03/20/01 05:18 PM (111111)



**iviewit HOLDINGS, INC.**  
**SUBSCRIPTION AGREEMENT**

iviewit Holdings, Inc., a Delaware corporation (the "Company/iviewit"), and Tiedemann/Prowell LLC (the "Purchaser") hereby agree as follows: *est*

1. **Offering.** The Company is offering (the "Offering") to Purchaser one (1) Unit consisting of (i) a \$345,000 principal amount convertible promissory note (the "Investor Note") and (ii) warrants to purchase One Thousand Seven Hundred Eighty (1,780) shares of the Company's Class B Non-Voting Common Stock at \$155.00 per share ("Warrants" and together with the Investor Note and the Class B Non-Voting Common Stock (the "Class B Common Stock") issuable upon conversion of the Investor Note or upon exercise of any Warrants, the "Unit"). All terms not otherwise defined herein shall have the same meaning as defined in the Form of Convertible Investor Note and the Form of Warrant, attached to this Subscription Agreement (this "Agreement") as Exhibit "A" (Form of Convertible Investor Note) and Exhibit "B" (Form of Warrant), respectively.

2. **Sale and Purchase of the Unit.** Subject to the terms and conditions hereof, the Purchaser irrevocably subscribes for one (1) Unit consisting of (i) a \$345,000 principal amount convertible promissory note and (ii) warrants to purchase up to 1,780 shares of the Class B Non-Voting Common Stock of the Company at \$155.00 per share, for a total purchase price of \$345,000 (the "Purchase Price"). The Purchaser acknowledges that prior to the execution hereof, the books and records of the Company, including financial information, have been made available and continue to be available for inspection by the Purchaser at the office of the Company.

3. **Payment by Purchaser.** Simultaneous with the execution of this Agreement, the Purchaser shall make payment for the Unit by delivering to the Company the Purchase Price in the form of a cashier's check, money order or other immediately available funds (made payable to ["iviewit Holdings, Inc."]), along with a fully executed Subscription Agreement.

4. **Acceptance of Subscription.** It is understood and agreed that the Company shall have the right, in its sole discretion, to accept or reject this subscription, in whole or in part, and that same shall be deemed to be accepted by the Company only when it is signed by the Company. This subscription may not be terminated or revoked by the Purchaser, except as provided hereafter. In the event this subscription is rejected by the Company, the consideration for this subscription will be returned promptly to the Purchaser without interest and without deduction for any expenses.

5. **Closing.** Subject to any rights of rescission, the closing of the sale and purchase described in Section 2 hereof (the "Closing") shall occur upon the Company's acceptance of Purchaser's subscription to purchase the Unit. The Company may reject Purchaser's subscription, in whole or in part, in its sole discretion and for any reason (or for no reason). Investments are not



binding on the Company until accepted by the Company. The Company will refuse any subscriptions by giving written notice to the Purchaser by personal delivery or first-class mail.

6. Representations and Warranties by the Company and Purchaser.

6.1 The Company represents and warrants that it is a corporation validly existing and in good standing under the laws of the State of Delaware with the authority to issue and sell the Unit and to carry out the provisions hereof.

6.2 Purchaser represents, warrants and covenants with the Company and to each officer, director, principal, member, controlling person, employee and agent of the Company that Purchaser is a "accredited investor" as such term is defined in Rule 501 of the Securities Act of 1993, as amended (the "Act") and that:

(a) Investment Suitability. The Purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Unit;

(b) Degree of Risk. The Purchaser recognizes that the Purchaser's investment in the Unit involves a high degree of risk which may result in the loss of a portion of or the total amount of the Purchaser's investment. The Purchaser acknowledges that the Purchaser has carefully considered all risks incident to the purchase of the Unit, including without limitation, those risks set forth on Exhibit "C" attached hereto, and that the Purchaser has been advised and is fully aware that the business of the Company is highly speculative and involves a high degree of risk.

(c) Information True and Correct. All the information that the Purchaser has furnished to the Company, including without limitation, the information set forth in the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D" hereto, or which is set forth in this Agreement, is correct and complete as of the date of this Agreement and, if there should be any material change in such information prior to the Closing, Purchaser will immediately furnish the revised and corrected information to the Company.

(d) Applicable Securities Laws. The Purchaser intends that only the state securities laws of the state listed in the residential address of the Purchaser below, together with the federal securities laws, govern this transaction.

(e) Relationship to the Company. Purchaser or its affiliates has a preexisting personal or business relationship with the Company or its respective officers, directors or controlling persons. By reason of Purchaser's business or financial experience, or the business or financial experience of his or her professional advisor who is unaffiliated with and who is not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, Purchaser has the capacity and has taken all steps necessary to protect his, her or its own interests in connection with an investment in the Unit. Purchaser has had access to and has been provided with all information, including financial information as the Purchaser may require, has had the



opportunity to obtain any additional information necessary to verify the accuracy of the information contained in such documents and to evaluate the merits and risks of the investment, and has been given the opportunity to meet with officials of the Company and to have said officials answer any questions and the terms and conditions of this particular investment, and all such questions have been answered to the Purchaser's full satisfaction. In reaching the conclusion that the Purchaser desires to acquire the Unit, the Purchaser has carefully evaluated the Purchaser's financial resources and investments and acknowledges that the Purchaser is able to bear the economic risks of this investment.

(f) Purchaser's Liquidity. The Purchaser has adequate means of providing for his, her or its current needs and contingencies and has no need for liquidity in connection with the investment contemplated herein. Purchaser acknowledges that he, she or it must bear the economic risk of investment in the Unit for an indefinite period of time, and that he, she or it could bear a loss of his, her or its entire investment in the Unit without materially impairing his, her or its financial wherewithal. Purchaser's overall commitment to investments which are not readily marketable is not disproportionate to the net worth of the Purchaser, and the Purchaser's investment in the Unit will not cause such overall commitment to become excessive.

(g) Restrictions on Transfer. Purchaser acknowledges and understands that neither the Unit nor any component thereof has been registered under the Act or under any state securities laws and agrees that neither the Unit nor any component thereof can be resold unless it is subsequently registered under the Act and pertinent state securities acts unless an exemption from such registration is available; that the Purchaser agrees not to resell or otherwise dispose of all or any part of the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable), except as permitted by law; and that there is no assurance and it is unlikely that Rule 144 under the Act will be available as a basis for exemption from registration of the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable) in the foreseeable future.

(h) Nondistributive Intent. Purchaser understands that the exemption from registration under the Act upon which the Unit is being offered depends upon, among other things, the bona fide nature of Purchaser's nondistributive intent with respect to the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable) as expressed herein. The Purchaser is purchasing the Unit for investment for the account of the Purchaser, not for the account of any other person, and not with any present intention to resell or otherwise distribute the Unit (or any securities into which the Investor Note may be convertible or the Warrants may be exercisable).

(i) Information. The information contained on the signature page hereof and in the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D" hereto is true and correct. The Purchaser will provide to the Company such additional information as may be reasonably requested by the Company to enable it to satisfy itself as to the knowledge and experience of the Purchaser and the Purchaser's ability to bear the economic risk of an investment in the Unit.



(j) Residency. The Purchaser is incorporated in the state set forth on page 7 hereof and its business is conducted in the state set forth on page 7 hereof.

(k) Rescission Right for Florida Residents. Purchaser hereby intends that his, her or its signature hereon shall constitute an irrevocable subscription for the dollar amount of Unit specified herein. Notwithstanding Section 2 and the prior sentence, the Purchaser, if a Florida resident, shall have the right, pursuant to Section 517.061(11)(a)(5) of the Florida Statutes, at any time within three (3) days after the Purchaser first tenders the Purchase Price or the date of Purchaser's execution of this Agreement, whichever is later, to notify the Company, pursuant to the provisions of Section 9, of the Purchaser's intent to cancel this Agreement. In such event, this Agreement shall be canceled and of no further force or effect, and the Company shall promptly cause to be refunded to the Purchaser the Purchase Price paid by the Purchaser for the Unit, without interest or deduction.

(l) Organization; Authorization. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York. Purchaser has the power and authority to execute this Agreement and perform Purchaser's obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement and the transactions contemplated hereby have been approved by all requisite action on the part of Purchaser. This Agreement and the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D", along with the other documents, instruments and agreements of Purchaser executed in connection herewith have been duly executed and delivered by Purchaser and constitute valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application affecting creditors' rights and except as enforcement may be limited by general equitable principles.

#### 7. Transfer of Unit.

7.1 Legend. Until the occurrence of one of the events specified in Section 7.3, any certificates representing any component of the Unit (including without limitation, the Class B Common Stock issuable upon conversion of the convertible Investor Note or upon the exercise of a Warrant) shall be stamped or otherwise imprinted with a legend substantially in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS THESE SECURITIES ARE FIRST REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR QUALIFIED UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR UNTIL THE COMPANY SHALL HAVE RECEIVED AN OPINION OF LEGAL



(j) Residency. The Purchaser is incorporated in the state set forth on page 7 hereof and its business is conducted in the state set forth on page 7 hereof.

(k) Rescission Right for Florida Residents. Purchaser hereby intends that his, her or its signature hereon shall constitute an irrevocable subscription for the dollar amount of Unit specified herein. Notwithstanding Section 2 and the prior sentence, the Purchaser, if a Florida resident, shall have the right, pursuant to Section 517.061(11)(a)(5) of the Florida Statutes, at any time within three (3) days after the Purchaser first tenders the Purchase Price or the date of Purchaser's execution of this Agreement, whichever is later, to notify the Company, pursuant to the provisions of Section 9, of the Purchaser's intent to cancel this Agreement. In such event, this Agreement shall be canceled and of no further force or effect, and the Company shall promptly cause to be refunded to the Purchaser the Purchase Price paid by the Purchaser for the Unit, without interest or deduction.

(l) Organization; Authorization. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York. Purchaser has the power and authority to execute this Agreement and perform Purchaser's obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement and the transactions contemplated hereby have been approved by all requisite action on the part of Purchaser. This Agreement and the Confidential Offeree-Purchaser Questionnaire attached as Exhibit "D", along with the other documents, instruments and agreements of Purchaser executed in connection herewith have been duly executed and delivered by Purchaser and constitute valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application affecting creditors' rights and except as enforcement may be limited by general equitable principles.

#### 7. Transfer of Unit.

7.1 Legend. Until the occurrence of one of the events specified in Section 7.3, any certificates representing any component of the Unit (including without limitation, the Class B Common Stock issuable upon conversion of the convertible Investor Note or upon the exercise of a Warrant) shall be stamped or otherwise imprinted with a legend substantially in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS THESE SECURITIES ARE FIRST REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR QUALIFIED UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR UNTIL THE COMPANY SHALL HAVE RECEIVED AN OPINION OF LEGAL



satisfy such indemnity obligation as a set-off, without limiting the right of the Company to proceed in any other legal, equitable or contractual remedy directly against Purchaser for the indemnity obligation.

9. **Notices.** All notices, requests, consents and other communications hereunder shall be in writing (including telex, telefax and other telegraphic communication) and shall be (as elected by the person giving such notice) delivered by messenger or courier service, or mailed first-class postage prepaid registered or certified mail:

(a) If to any holder of the Unit, addressed to such holder at the address set forth below or at the Purchaser or holder's address as shown on the books of the Company or the Purchaser or holder's agent or to such other address as may from time to time be furnished to the Company in writing by any such holder.

(b) If to the Company, addressed to the Company at 2255 Glades Road, Suite 337W, Boca Raton, Florida 33431, Attn: Brian G. Utley, President, or at such other address as may from time to time be furnished to the Purchaser in writing by the Company.

Each such notice shall be deemed delivered and received: (i) on the date delivered if by personal delivery; (ii) on the date of transmission with confirmed answer back if by telex, telefax or other telegraphic method; and (iii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

10. **Miscellaneous Provisions.** This Agreement represents the entire subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective administrators, personal and other legal representatives, heirs, successors and permitted assigns.

The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. All agreements, covenants, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. It is expressly understood that Sections 6, 7, 8, 9 and 10 shall survive the Closing and any subsequent sale or other transfer by the Purchaser of any portion of the Unit (or any securities underlying the Unit).



This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally: (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the District Court of the United States, Southern District of Florida; (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which that party may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Print or Type Below

Amount Subscribed for by Purchaser:

Tiedemann Proton, LLC  
Name of Purchaser

\$345,000.00

535 Madison Avenue  
NY, NY 10022  
Business Address of Purchaser

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the Purchaser hereby executes this Agreement this 21<sup>st</sup> day of March, 2001.

Purchaser:  
TIEDEMANN/PROLOW ~~LLC~~ *LLC*

By: *Craig L. Smith*  
Name: Craig L. Smith  
Its: Member

AGREED as to \$345,000 for the Unit this 18<sup>th</sup> day of April, 2001.

iViewit Holdings, Inc.

By: *[Signature]*  
Name: Brian G. Utley  
Its: President



[INSERT COPY OF TP WIRE TRANSFER CONFIRMATION]



C4/25/02 09:55:18

BROWSE/REPRINT

ACCOUNT	DATE TIME	STATUS	TYPE	AMOUNT	MMKT
<del>XXXXXXXXXX</del>	0605 14:38	AUTH	WIRE	<del>345,000.00</del>	*
<del>XXXXXXXXXX</del>	0223 15:23	AUTH	WIRE		

PAGES 4 SCROLL  
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L/101, ~~XXXXXXXXXX~~ page 1 of 2  
 shows Amount | DATE | TIME  
 shows BANK | DATE | TIME | FED REF #

15:26





**EXHIBIT F**

STATEMENT OF FRENDEL & TAPE FROM SHIRAJEE



**Eliot I Bernstein**

---

**From:** Tony Frenden [t.rex@sbcglobal.net]  
**Sent:** Thursday, May 15, 2003 10:21 PM  
**To:** [iviewit@bellsouth.net](mailto:iviewit@bellsouth.net)  
**Subject:** Fw: statement

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

**From:** [Tony Frenden](mailto:Tony.Frenden)  
**To:** [iviewit@worldnet.att.net](mailto:iviewit@worldnet.att.net)  
**Sent:** Wednesday, May 14, 2003 11:38 PM  
**Subject:** statement

May 14, 2003

I swear the following to be true:

Upon the closure of the Iviewit office in Boca Raton FL, I was retained for about an extra week by Brian Utley and Mike Reale, assisting in shutting down operations. It was during this time in which Mike Reale entered the video encoding lab, where I was present along with Tammy Raymond, (former Head of IT) and Zakirul Shirajee (former Systems Developer). Reale was smiling broadly as he set down a large silver suitcase onto my computer desk. Upon opening it, he revealed rows and rows of one hundred dollar (\$100) bills in U.S. currency, going down as deep as the case. I would estimate the amount to be near a half million dollars. Upon my inquiry of where the cash came from, Reale said it was from Bruce Prolow. He implied that the money was entrusted to he and Utley to continue Iviewit operations, but to me, it seemed Reale was careful to never explicitly state that Prolow authorized this transaction or not.

It is my belief that the suitcase of money was presented to me, in front of Tammy and Zakirul, to convince us that Utley and Reale were the ones reaping benefits from the Iviewit core processes, and if we were smart, we should join them.

A day or two prior to this incident, Mike Reale called me into a private office. He spoke of a new operation he and Utley wanted to embark on which utilizes Iviewit's core processes. The plan consisted of encoding video porn at an ambiguous island location in Puerto Rico. It was known that Eliot Bernstein had made available the option for me to work at the newly forming Iviewit in Glendale, CA. Reale wanted to steer me from going to the West coast operation, and spoke of me receiving a title and large pay raise should I go along with the Puerto Rico porn plan, instead.

Also, on one of these last closure days at the Boca Raton offices, Mike Reale approached me in the lab regarding another issue. He inquired which computers would be best to use, if one were to have the need to process Iviewit's core technologies. He asked me which 3 were the strongest computers to do the job. I had a feeling that he wanted to make off with whichever units I spoke of. I had already begun to make up my mind that I wanted no part of the Puerto Rico porn operation, so I told him about 3 computers I didn't care for. They were called, THE BOMBER, THE REALTIME NITRO, and one more unnamed computer. These were all very powerful and expensive units, but were not necessarily suited to encode video. As expected, these 3 units turned out to be the same ones found in Brian Utley's possession, months later. When the cops returned the items to us, the units

5/31/2003



contained several new media files, mostly long distance learning applications which were created well after the Boca offices were closed down.

Anthony Rex Frenden  
859 Hollywood Way #374  
Burbank CA 91505

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Incoming mail is certified Virus Free.  
Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.480 / Virus Database: 276 - Release Date: 5/12/2003

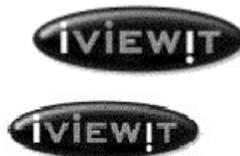
5/31/2003

69 of 81  
8/28/2003



**EXHIBIT G**

**DEPOSITION TESTIMONY OF WHEELER & PPROSKAUER ROSE BILLINGS  
FOR TRANSACTION**



Lorraine Christine Hoffman, Esq.  
Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

207

1 business plan that was produced or that you were  
2 involved with, did it contain representations  
3 concerning intellectual properties?

4 A. We weren't intimately involved in the  
5 business plan, so I really don't recall the latest  
6 reiteration. No.

7 Q. Do you know if Ken Rubenstein was ever  
8 listed as an advisor to the board of directors or an  
9 advisor to iviewit in any documents?

10 MR. TRIGGS: Object to the form. By whom?

11 Q. (By Mr. Selz) Do you know if Ken  
12 Rubenstein was listed --

13 A. In any documents?

14 Q. -- by iviewit or - in any documents that  
15 were submitted to any third parties as an advisor or  
16 was represented as an advisor to the board?

17 A. Not - not that I'm aware of.

18 Q. What was the last business plan for  
19 iviewit that you can recall seeing?

20 A. Well, I don't recall. I don't -- I  
21 actually don't recall the last business plan. I mean,  
22 the reason is, everything kept on changing so much.

23 Q. Was there ever any problem with  
24 ~~erroneously issued stock or anything of that nature~~  
25 ~~that you're familiar with?~~

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 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

208

1 A. I don't - I have no recollection of it.  
 p.207-208 Wheeler Deposition

17 shareholders themselves. And I don't know what the  
 18 final ProLow money was. I think the final ProLow  
 19 money was perhaps 200 to \$500,000 or something else.  
 20 Q. Well, I don't mean we've addressed ProLow  
 21 yet, so --  
 22 A. Well, you did ask me the question.  
 23 Q. Yeah. I did. You're right. So you don't  
 24 really have a total that you figured between these  
 25 amounts?  
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94

1 A. No, I didn't focus on it.  
 p.93-94 Deposition Christopher Wheeler

And further from his deposition



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File No. 2003-51, 109(15C)

95

1 Q. Okay.  
2 A. And I'm not so sure everyone participated,  
3 but to a great extent, many did.  
4 Q. Now, Bruce Prolow was another individual  
5 who you indicated - Prolow, rather, was an individual  
6 you indicated also invested?  
7 A. Well, he had a group. I mean, he was a  
8 person introduced to the company, but he - he -- I  
9 don't know how his money came in. I don't know how it  
10 was -- Don't know if it came in from one or two  
11 investors or whatever.  
12 MR. TRIGGS: Just do this. If this will  
13 speed us up, the question was asked I think is  
14 something about whether Bruce Prolow put money  
15 in. Just - he wants you to answer the question  
16 that he's asking, and it will speed us up if you  
17 just answer the question he's asking.  
18 A. I don't know.  
19 Q. Okay. Do you know how much money came in  
20 from Mr. Prolow?  
21 A. No.  
22 Q. Were you involved in preparing the  
23 transactional documents with regard to any funding  
24 that Mr. Prolow provided to iViewit?  
25 A. I can't remember.

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Now the Company will submit evidence that Mr. Wheeler was fully aware of the Tiedemann/Prolow investment and further that he had without Board approval drafted documentation regarding a proposed merger/acquisition regarding a Tiedemann/Prolow Company with iViewit. These are the billings from Proskauer regarding these transactions and all overseen by Mr. Wheeler over a several month period and only represent a sample of the total billings for these transactions.



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Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

09/14/00 C WHEELER	.75	Arrange for presentation to Mr. Prolow
09/22/00 C WHEELER	1.00	Arrange for follow up with potential investor Applestein
09/25/00 C WHEELER	.50	Follow up on prospective investors
09/26/00 C WHEELER	1.50	Attend Board meeting; follow up on question of recapitalization; arrange for transmittal to new investors
09/27/00 C WHEELER	1.50	Conf with Mr. Assaf; conf with Mr. Bernstein; Conf with Mr. Prolow; conf with Mr. Utley
09/28/00 C WHEELER	1.00	Call to Mr. Prolow; conf with Mr. Utley
09/28/00 C WHEELER	.50	Conf with Mr. Prolow
09/28/00 C WHEELER	.25	Arrange conf call as to financing
09/29/00 C WHEELER	2.50	Conf with Mr. Prolow and Mr. Utley; conf. with Prolow, Utley, Hersch, Buschbaum, et al re technology;
09/29/00 C WHEELER	.25	Call from Mr. Prolow
09/29/00 C WHEELER	.50	Meeting with Mr. Utley; review of status of potential investment
10/02/00 C WHEELER	.50	Follow up on conference call; call to Mr. Prolow
10/03/00 C WHEELER	1.00	Conf with Mr. Utley; conf with Mr. Utley; call to Mr. Prolow
10/03/00 C WHEELER	2.00	Conf call with Mr. Applestein, Mr. Prolow, Mr. Utley, Mr. Hersch, et. al.; conf with Mr. Hersch
10/03/00 C WHEELER	.50	Conf with auditors
10/03/00 C WHEELER	.25	Set up conf with investors
10/11/00 C WHEELER	.50	Conf with Mr. Prolow
10/12/00 C WHEELER	.50	Conf with Mr. Utley
10/12/00 C WHEELER	.25	Conf with Mr. Utley
10/13/00 C WHEELER	.50	Conf with Mr. Utley re investors and confidentiality agreement



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File No. 2003-51, 109(15C)

10/19/00 C WHEELER	1.25	Conf with Mr. Prolow re offer; conf with Mr. Utley; conf with Mr. Utley; conf with Mr. Prolow
10/23/00 C WHEELER	.50	Conf with Mr. Prolow re proposed investor
10/23/00 C WHEELER	.50	Conference w/B.Utley
10/26/00 C WHEELER	1.00	Conf with Mr. Prolow; conf with Mr. Utley; conf with Mr. Reed re trademark and copyright matters
10/31/00 C WHEELER	.50	Conf with Mr. Utley; conf with Mr. Rubenstein; Conf with Mr. Utley re financing
11/01/00 C WHEELER	.25	Conf with Mr. Utley re financing and re Mr. Rubenstein
11/03/00 C WHEELER	.50	Call to Mr. Utley; conf with Mr. Utley re funding;
11/03/00 C WHEELER	.50	Review of stock grant requests
11/05/00 C WHEELER	1.00	Conf with Mr. Utley; conf with Mr. Prolow re investors
11/06/00 C WHEELER	.50	Conf with Mr. Utley re investors
11/07/00 C WHEELER	.75	Conf with Mr. Utley re financing; call to Mr. Assaf; conf with Mr. Utley re Mr. Rubenstein
11/08/00 J ZAMMAS	.50	Preparation of receipt for iviewit minute books to be loaned to company; compile minute books for pickup.
11/09/00 C WHEELER	.75	Conf with Mr. Utley re funding ; conf with Mr. Assaf re funds; call to Mr. Prolow
11/09/00 C WHEELER	.50	Conf with Mr. Prolow; conf with Mr. Utley
11/10/00 D THOMPSON II	.50	Telephone conference with Attorney C. Wheeler re bridge financing; Follow-up re same.
11/10/00 C WHEELER	.50	Conf with Mr. Utley re financing
11/21/00 C WHEELER	.25	Call from Mr. Prolow
11/22/00 C WHEELER	.25	Call to Mr. Prolow
11/28/00 C WHEELER	.50	Conf with Mr. Utley re financing
12/01/00 C WHEELER	.50	Conf with Mr. Hersh; arrange transmittal of business plan to prospective investors



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12/01/00 C WHEELER	.25	Review of correspondence and documents
12/01/00 C WHEELER	.50	Additional review of documents and correspondence
12/08/00 C WHEELER	.25	Conf as to opinion and bridge loan
12/15/00 C WHEELER	.25	Conf with Mr. Prolow re financing
12/19/00 C WHEELER	.25	Call to Mr. Prolow
12/21/00 C WHEELER	.50	Conf with Mr. Utley
12/22/00 C WHEELER	.25	Conf with Mr. Utley
12/29/00 C WHEELER	.50	Conf with Mr. Prolow re financing
-----		
01/05/01 C WHEELER	.50	Conf with Mr. Prolow re status of new financing
01/09/01 D THOMPSON II	.25	Conference with Attorney Mara Lerner Robbins re offering.
-----		
01/10/01 C WHEELER	1.00	Follow up on term sheet for Tiedemann investment
01/11/01 C WHEELER	.50	Conf with Mr. Hersh; arrange for follow up on investment by Prolow
-----		
01/11/01 M ROBBINS	1.75	Inter-office conference with C. Wheeler re: Prolow term sheet. Meeting with D. Thompson re: contents of term sheet; preemptive rights; anti-dilution rights. Telephone conference with R. Hersh re: Prolow note and warrant offering. Review Alpine documentation re: anti-dilution and preemptive rights.
01/12/01 C WHEELER	.50	Arrange for follow up on investigation; check on status of documentation for Prolow loan
01/12/01 M ROBBINS	1.25	Review certificate of designation re: anti-dilution provisions. Review investor rights agreement re: preemptive rights. Meeting with R. Hersh re: \$600,000 private offering. E-mail to D. Thompson re: term sheet.
01/15/01 D THOMPSON II	.50	Conference with Attorney Mara Lerner Robbins re investment issues.
01/15/01 C WHEELER	.50	Follow up on status



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01/16/01 M ROBBINS 2.50 Preparation of Tiedemann Prolow subscription documents. Telephone conferences with R. Hersh.

01/17/01 D THOMPSON II 2.00 Review and revise Subscription Booklet, Convertible Note and Warrant for Tiedemann offering.

01/17/01 M ROBBINS 3.50 Draft and preparation of Warrant Agreement. Draft and preparation of Convertible Promissory Note. Modifications to Subscription Documents. Memo to D. Thompson. Telephone conferences with R. Hersh.

01/18/01 D THOMPSON II .75 Conference with Attorney Mara Lerner Robbins re reorganization and stock issuances.

01/18/01 M ROBBINS 3.50 Preparation of subscription agreement, convertible note and warrant. Meeting with D. Thompson re: comments to Tiedemann investment documents. Inter-office conferences with G. Coleman re: risk factors. Meeting with Rocky Thompson re: stock split. Inter-office conference with A. Levy re: stock split.

01/23/01 C WHEELER .50 Meeting with principals of Internet train

01/23/01 C WHEELER 1.00 Meeting with Mr. Utley and Gayle Coleman

01/23/01 C WHEELER .50 Conf with Mr. Utley re follow up

01/23/01 M ROBBINS 1.75 Review file re: share exchange with minority iviewit Technologies stockholders. Telephone conference with R. Hersh re: Tiedemann Prolow offering. Meeting with R. Hersh re: same. Modifications to offering documents.

01/23/01 G COLEMAN 2.00 Conference with B. Utley and C. Wheeler. Draft letter of intent. Telephone conferences with B. Utley. Revise letter of intent. Forward same.

01/24/01 C WHEELER 1.00 Conf with Mr. Utley; revise letter of intent

01/24/01 C WHEELER 1.00 Revision of document

01/24/01 M ROBBINS 1.50 Modifications to Tiedemann Prolow investment documents. Telephone conferences with R. Hersh. Correspondence to B. Utley re: draft investment documents. Review file re: share exchange with minority iviewit Technologies stockholders. Review memoranda re: same.



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01/29/01 M ROBBINS 1.00 Meeting with Rocky Thompson re: tax matters relative to share exchange options. Review file re: form of Share Exchange Option Agreement. Review form of Share Exchange Option Agreement.

01/30/01 D THOMPSON II .25 Review Exchange Agreement.

01/30/01 M ROBBINS 3.25 Draft and preparation of form of Share Exchange Agreement for minority subsidiary shareholders. Inter-office conference with Jill Zammass re: previous execution of share exchange option agreement. Correspondence to Brian Utley re: execution of Share Exchange Option Agreements. Meeting with Chris Wheeler re: Tiedemann subscription documents. Call to Craig Smith.

01/30/01 J ZAMMAS .75 Review files regarding Share Exchange Agreement for M. Robbins.

02/02/01 D THOMPSON II .75 Meeting with Brian Utley re pending projects.

02/02/01 C WHEELER .50 Conf with Mr. Prolow

02/02/01 M ROBBINS .75 Inter-office conference with Rocky Thompson re: Share Exchange Agreement. Inter-office conference with A. Levy re: stock split; short-form merger; gift of E. Bernstein shares. Inter-office conference with J. Zammass re: Iantoni notes.

02/05/01 C WHEELER 2.50 Meeting as to structure of Internet train acquisition

02/05/01 C WHEELER .50 Correspondence re intellectual property follow up

02/07/01 D THOMPSON II 1.75 Review Tiedemann documents; Follow-up re same; Telephone conference with Craig Smith.

02/07/01 A LEVY .50 General corporate matters; OC with DET re stock split.

02/09/01 D THOMPSON II 1.25 Telephone conference with Ray Hersh re Tiedemann Prolow investment; revise docs.

02/09/01 A LEVY .50 General corporate matters.

02/11/01 D THOMPSON II .50 Review and revise Tiedemann documents.

02/12/01 D THOMPSON II 1.75 Review and analysis of anti-dilution protection in connection with Tiedemann purchase.



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03/14/01 D THOMPSON II 4.25 Prepare Acquisition Agreements; Telephone conference with Ray Hersh re same.

03/14/01 C WHEELER 1.00 Follow up on acquisition status; conf with Mr. Utley; receipt of note

03/14/01 A LEVY 1.00 Mtng with B. Utley and R. Hersh and preparation therefor.

03/15/01 S KAPP .75 Conf. with CCW re: rvw of note, rvw note and mark comments for CCW

03/15/01 S KAPP .25 T/c with B. Utley re: modifications and differences btwn executed note and current note

03/15/01 D THOMPSON II 5.75 Prepare Asset Purchase Agreement and begin Plan of Exchange.

03/15/01 D THOMPSON II .25 Conference re promissory note with Attorney Stuart Kapp.

03/16/01 D THOMPSON II 4.75 Prepare ITrain Agreements for Agreement and Plan of Exchange.

03/16/01 C WHEELER 1.00 Conf with Mr. Thompson re preparation of contracts; conf with Mr. Utley re same; conf as to promissory note and transmittal of funds

03/19/01 D THOMPSON II 2.25 Meeting with Brian Utley and Ray Hersh re OP and Internet Train.

03/19/01 D THOMPSON II 2.75 Review OP and Internet Train documentation.

03/19/01 D THOMPSON II .25 Revise Tiedemann Prolow documentation.

03/19/01 C WHEELER 1.00 Review of agreement

03/19/01 J ZAMMAS 6.00 Work on closing checklist, resolutions and Bills of Sale.



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03/20/01 D THOMPSON II 1.50 Prepare Exhibits to Purchase and Exchange Agreements with paralegal Jill Zammas re closing checklist and documentation.

03/20/01 D THOMPSON II .25 Send out Tiedemann/Prolow documentation.

03/20/01 C WHEELER .50 Review of status of acquisition documents

03/20/01 C WHEELER .50 Review of Agreement and Plan of Exchange; Review of Agreement for Purchase and Sale of Assets

03/20/01 J ZAMMAS 3.00 Work on closing checklist and preparation of Assignment and Assumption Agreement.

03/21/01 D THOMPSON II .75 Follow-up on ITrain and Original Productions deals.

03/21/01 C WHEELER .25 Review of Subscription correspondence to Tiedemann/Prolow

03/27/01 J ZAMMAS .25 Have Greg Reed in the NY office perform a federal trademark search on iLearnit.

03/29/01 J ZAMMAS .25 Contact Greg Reed in NY office regarding preliminary trademark search on iLearnit, Inc.

03/30/01 J ZAMMAS .25 Follow up with Gregg Reed regarding trademark search.

03/30/01 S GORDON .75 Preliminary trademark search for ILEARNIT.

Then later from his deposition we find that he does have knowledge and in fact performed an opinion for Mr. Prolow of course the opinions for investors in Mr. Wheeler's opinions did not need review from patent counsel regarding the patents:

14           A.     Must be dealing with additional money from  
15     Alpine. Or - or it could be a combination thereof,  
16     because on the next page there is discussion of Prolow  
17     and financing. So some of the parties investing money  
18     needed opinions from us. They would be opinions on  
19     the corporate status.

p.200 Christopher Wheeler deposition



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File No. 2003-51, 109(15C)

95

1 Q. Okay.

2 A. And I'm not so sure everyone participated,  
3 but to a great extent, many did.

4 Q. Now, Bruce Prolow was another individual  
5 who you indicated - Prolow, rather, was an individual  
6 you indicated also invested?

7 A. Well, he had a group. I mean, he was a  
8 person introduced to the company, but he - he -- I  
9 don't know how his money came in. I don't know how it  
10 was -- Don't know if it came in from one or two  
11 investors or whatever.

12 MR. TRIGGS: Just do this. If this will  
13 speed us up, the question was asked I think is  
14 something about whether Bruce Prolow put money  
15 in. Just - he wants you to answer the question  
16 that he's asking, and it will speed us up if you  
17 just answer the question he's asking.

18 A. I don't know.

19 Q. Okay. Do you know how much money came in  
20 from Mr. Prolow?

21 A. No. 

22 Q. Were you involved in preparing the  
23 transactional documents with regard to any funding  
24 that Mr. Prolow provided to iviewit?

25 A. I can't remember. 

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## WRITTEN STATEMENT NO. 2 – THEFT OF IVIEWIT INTELLECTUAL PROPERTIES

### Basic Allegation

Iviewit Holdings, Inc. (“Company”) alleges the **THEFT OF AND MISAPPROPRIATION OF MULTIMEDIA INVENTIONS THAT THEREBY FURTHER CONSISTS OF FRAUD OF THE UNITED STATES PATENT AND TRADEMARK OFFICE (“USPTO”) AND THAT THEREBY CONSISTS OF FRAUD OF THE UNITED STATES POSTAL OFFICE AND THAT THEREBY CONSISTS OF A FRAUD OF THE UNITED STATES FEDERAL BANKING REGULATORY BODY BY THE FOLLOWING INDIVIDUALS: BRIAN UTLEY, CHRISTOPHER WHEELER, KENNETH RUBENSTEIN, WILLIAM DICK, DOUGLAS BOEHM & STEPHEN BECKER.**

All witnesses and perpetrators are collectively identified by name, address, and telephone number attached herein as Exhibit A.

### Material Facts

On our about August 2000, the Company discovers a one Brian G. Utley (“Utley”), then President & Chief Operating Officer of the Company, adding his name to and directing Company counsel, under the director and oversight of Kenneth Rubenstein a partner of Proskauer Rose, to add his name to a variety of the Company’s inventions, wherein, in addition to the fraudulently inserted name of Brian Utley’s, non-provisional patent applications were being written and filed with the true inventors missing from the patent applications and pertinent disclosures missing, all to the detriment of the Company and its shareholders. Further, it is found that Mr. Utley with the help of Iviewit counsel steals off with several inventions of Iviewit and writes them in his own name and fails to assign or disclose these inventions to the Company or it’s investors, the patents are attached herein as Exhibit B.

Moreover, it should be clear to Bureau of Investigative Operations of Boca Raton Police Department (“BOI”) that by virtue of Section 115 of U.S.C. Title 15 (more commonly known as Patent Act) that the violation of the oath of applicant, under the direction and oversight of Rubenstein, in this section, can render the patent invalid at the date of issuance, thereby materially damaging a patent portfolio estimated to be worth billions of dollars in royalties annually. The Company claims that knowingly filing false statements to the patent office constitutes a fraud not only to the Company but the US Patent and Trademark offices, and it is the Company’s contention that Mr. Utley acted with patent counsel from Foley and Lardner and Proskauer Rose whom all knowingly acted to deceive the shareholders and the government.



Factually, said inventions were first made in mid 1998, provisional<sup>1</sup> patent applications were filed in early to mid 1999, and Utley later joined the Company commencing in mid1999. Moreover, to further complete the picture, BOI should note that the Company had prior problems with its patent counsel, Kenneth Rubenstein of Proskauer Rose LLP (“Proskauer”) as overseer of Raymond A. Joao formerly of counsel to Meltzer Lippe Goldstein & Schlissel LLP of Mineola, N.Y., who were found removing some inventors and switching content of the original applications; these allegations, among others, are the subject of criminal conspiracy discussions currently pending in the West Palm Beach office of the Federal Bureau of Investigation.

Furthermore, upon learning of Company’s problems with Joao’s work, under the direction and oversight of Rubenstein, Utley and the Company’s then counsel, a one Christopher C. Wheeler, Esq. (“Wheeler”) a Partner in the Boca Raton office of Proskauer recommend a one William J. Dick, Esq. (“Dick”) of Foley & Lardner of Milwaukee, Wis. Still further, to his new task, Dick assembled a team composed of Steven Becker, Esq. (“Becker”) and Douglas Boehm, Esq. (“Boehm”) to correct the mistakes of Joao and move the patent prosecution process from provisional status to non-provisional, patent pending status.

Additionally, Foley & Lardner, under the direction and oversight of Rubenstein, after several meetings with all the inventors wherein said inventors make full disclosures of the technologies, soon complete non-provisional filings, and send those patents for review and signatures. Unfortunately for the Company, and hours before the one-year time deadline for the filing of non-provisional patent applications from provisional filings, Utley presents to the Company’s main inventor, Eliot I. Bernstein, only signature pages for the filings scheduled to occur in a few short hours.

Moreover, Bernstein refused the requested signature until which time that he had an opportunity to review and authorize the whole filings. When Utley refused Bernstein’s request to review the entire filing, a struggle ensued wherein Bernstein and a one James F. Armstrong physically removed the patent documents from Utley’s possession and gave the documents to an executive assistant, a one Jennifer Kluge, to secure copies.

Furthermore, upon receiving the copies from Kluge, Bernstein and Armstrong retire to a local restaurant, and begin their review of the documents; the findings were mind-boggling. Mind-boggling in that, the filings completed by Foley & Lardner, and under the direction and oversight of Rubenstein, and demanded signatures of by Utley, were replete with: (i) different inventors than what was told to the Foley & Lardner attorneys, Dick, Becker, and Boehm; (ii) incorrect math; (iii) changing of the embodiment of the inventions that severely hamper the value upon subsequent issuance; and (iv) a narrowing of the claimed environments of the inventions. Most notably, Utley adds himself or directs Foley & Lardner to add his name as an inventor to all the applications, although, even more remarkably, the Company did not employ Utley at such time as they were

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<sup>1</sup> BOI should be apprised that provisional filings are a low cost way to “time stamp” an invention in the US patent system, and that a more formal non-provisional filing with claims attached are what those in the industry commonly refer to as a patent application.



invented, and in each instance he factually drops an inventor or directs Foley & Lardner, under the oversight of Rubenstein, to drop an inventor to add Utley's name.

Subsequent to discovering these problems, meetings were arranged with the members of Foley & Lardner, James Armstrong, Christopher Wheeler, William Dick, Simon L. Bernstein, a then director of the Company, and one Maurice Buchsbaum, a then representative of the Company's lead investor, Crossbow Ventures ("Crossbow") of West Palm Beach, Fla., as a means to determine what exactly occurred and how much damage had been caused (Appendix II); investigations were to be handled by Wheeler and Rubenstein as to how to again repair these major errors. While two days of discussions proceed with Foley & Lardner to correct the patents, they are filed wrongly nonetheless, thereby constituting another alleged fraud on the USPTO by both Foley & Lardner, as overseen by Rubenstein and Utley.

Still further, in January 2001, Utley flies to California and threatens Bernstein to both destroy the Company and to kill Bernstein should the Company proceed with more investigations of the dealings by and between Utley and Foley & Lardner with respect to the Company's intellectual property portfolio, further stating that Wheeler and Dick are both members of extremely powerful law firms and that Bernstein should "watch his back" upon returning to his family in Boca Raton, Fla. Mr. Bernstein does not return to Boca Raton and instead is forced by these threats to move his family to a hotel located in Los Angeles, CA for safety, at the advice of investors, management and others aware of the threats made upon his life. Mr. Bernstein does not return for almost 2 years to Boca Raton while he built a case against the perpetrators of these crimes

Moreover, at about this time, May 2001, Iviewit and Crossbow engaged the intellectual property law firm of Blakely Sokoloff Taylor & Zafman LLP ("BSTZ") of Los Angeles, California and its of counsel a one Norman Zafman to analyze the status of the Company's intellectual property portfolio, as Buchsbaum had informed the Company that Utley might be trying to misappropriate patents for his own gains and that due to the missing inventors, bad math and changed content that investor fraud could and might be claimed by Iviewit's investors, see Buchsbaum comments in the taped transcript call in Appendix II. BSTZ, upon securing the patent files from Foley & Lardner, began their review, finding Utley had in fact been writing or had directed Foley & Lardner, under the direction and oversight of Rubenstein, to write patents into his own name, without assignment to the Company, without notifying the Company of their existence thereby perpetrating a fraud on the USPTO through the US Postal services thereby constituting a fraud on the US Post Office and finally constituting theft against the Company and it's investors. The two patents Utley wrote into his own name and sent to his home are the main allegation regarding theft of Company inventions and property, he was aided and abetted in these crimes by; William Dick, Kenneth Rubenstein, Christopher Wheeler, Douglas Boehm and Steven Becker. Once stolen, considerable expenses were incurred by the Company to find such stolen patents and then have them returned to the Company's possession and the Company is still uncertain if this represents all patents misappropriated by Utley, et. al. In fact, Utley denied even these patents when questioned in his deposition.



Further, BSTZ found a clause in the employment agreement of Utley granting the company powers of attorney to assign the misappropriated inventions to the Company, a true copy of those reassignments attached herein as Exhibit D. Further, Foley & Lardner and Proskauer Rose were fully aware that Mr. Utley was not the inventor of any Iviewit technologies and further was in possession of his employment contract and thereby it is clear that they aided and abetted Mr. Utley in absconding and stealing Iviewit patent inventions, similar to the crime perpetrated against Diamond Turf Lawnmower at Utley's prior employ again with Mr. William Dick of Foley & Lardner acting as his patent attorney.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that Crossbow Ventures through a one H. Hickman Powell III and Stephen J. Warner begin to cast suspicion over what was occurring in the Boca Raton office and it was apparent that Utley and his management team were beginning to destroy records and steal computers<sup>2</sup>. Crossbow Ventures and the Board then institutes the firing of all Christopher Wheeler referred management, Utley, Reale and Hersh and closes the entire Boca Raton offices.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that, after Utley was introduced to the Company by Wheeler, the Company finds numerous materially false statements in the resume provided by Wheeler and presented to the Board of Directors ("Board") of the Company, including but not limited to, the fact that Utley was terminated by his last employer, a one Monte Friedkin of Diamond Turf Lawnmower for intellectual property misappropriations, wherein the Utley resume presented to the Board is attached herein as Exhibit E.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that regarding a proposed private placement of Company stock by Wachovia Securities, a unit of Wachovia Corp. of Charlotte, N.C., Utley and Wheeler knowingly and willfully insert false statements regarding the background of Utley and the status of the Company's intellectual property portfolio into a private placement memorandum drafted by Wachovia and reviewed, billed for and approved by Proskauer Rose thereby perpetrating a fraud upon a registered financial holding company of the NASD and perpetrating a fraud upon a registered bank holding company of the United States Federal Reserve system.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that in an unrelated litigation by and between the Company and Proskauer, and in the deposition statements of Utley, not only does Utley admit to the problem at Freidkin's company, but claims that Wheeler was fully cognizant of the crimes committed; in diametric opposition to Utley's deposition statements, Wheeler's deposition statement states that he was not aware of Utley's background and past patent malfeasances, all statements of which are attached herein as Exhibit F.

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<sup>2</sup> At this juncture, the Company encourages BOI to cross reference Boca Raton Police Department Case No. 2001-054580 pertaining to the theft proprietary equipment by Utley and others.



Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that Rubenstein as overseer of the company's patent portfolio and member of the Advisory Board of the Company noticeably distances himself from the Company and Bernstein upon questioning in his deposition in an unrelated litigation by and between the Company and Proskauer, attached herein as Exhibit G; factually, Rubenstein later walks out of his deposition in the midst of questioning after being confronted with evidence contrary to his statements, further the judge orders Rubenstein back to complete his deposition, which is still pending. Rubenstein, later tries to deny any involvement with the Iviewit companies and patents of which Exhibits contained in Exhibit G will show to be ludicrous and untrue.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that Dick had been the patent attorney involved in the past crimes against Friedkin's company, wherein the Company only learned of this at Utley's deposition statement wherein Utley claimed it was Dick that had been involved in the patent disputes at Diamond Turf Lawnmower, but this never disclosed to the Company by Wheeler, Dick and Utley, perpetrating yet another fraud on investors in Iviewit and Banking institutions underwriting Iviewit's private placement.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that former employees of the Company, ones Anthony R. Frenden and Matthew Mink provide statements that pointedly show that Utley was stealing not only computers but highly proprietary Company intellectual property processes contained on those computers and attempting to bribe Frenden and Mink with the alleged stolen cash of Written Statement No. 1 to give processes to Utley and one Michael A. Reale, former Vice President of Operations of the Company for use with Wheeler and a referred Wheeler investor of the Company, a one Bruce Prolow of Tiedemann Prolow LLC of New York; statements of Frenden and Mink are attached herein as Exhibit H.

Additionally, the Company removes reasonable doubt pertaining to its allegations by stating that with regard to the circumstances surrounding the recent events at Florida Atlantic University, Utley and Wheeler were both members of that Foundation and further that Wheeler has been represented as non-cooperative to a KPMG audit of the Foundation which it is noted that the audit may have been impacted by his refusal to cooperate and that further Mr. Wheeler tried to take a tax deduction on an item he knew as a Board member had never been approved or voted on, pending current investigation by the Florida Law Enforcement Department. Appendix III

Lastly, the Company removes reasonable doubt pertaining to its allegations by stating that with regard to the circumstances surrounding the bankruptcy filing by the Florida Philharmonic organization, Utley and Wheeler were both members of that Board.

Finally, the most concise statement of the entire events surrounding the status of the patent portfolio of the Company is contained in 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), the Defendant's Motion for Leave to Amend to Assert Counterclaim for Damages, which is, attached herein as Appendix I. Also enclosed with this complaint is a CD ROM containing the following:

NY Bar complaints; Kenneth Rubenstein and Raymond Joao  
FL Bar complaint; Christopher Wheeler  
Full Deposition statements in the Florida Litigation referenced above for:  
Christopher Wheeler  
Brian Utley  
Kenneth Rubenstein  
Eliot Bernstein  
Simon Bernstein  
Gerald Lewin  
William Kasser  
Taped testimony of Zakirul Shirajee  
Taped meetings regarding patent errors with Foley and Lardner

**IVIEWIT HOLDINGS, INC.**

I swear to the best of my knowledge that the information contained herein is true and correct and that the events described herein are based on the evidence currently in the Companies possession. This statement may be used as evidence in the investigation of the above-mentioned crimes.

Very truly yours,

A handwritten signature in black ink, appearing to read "E.I. Bernstein", written in a cursive style.

Eliot I Bernstein  
Founder  
I View It Technologies, Inc.



**EXHIBIT A**



**a**

**AIM  
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**Vulcan Ventures**



**EXHIBIT B**

[Insert Utley patents]



The two patents found stolen from Iviewit by Mr. Utley are listed below, these are clear attempts of Fraud on the Company and the US Patent and Trademark offices by the listed perpetrators.

05707

**VIEWIT.COM PATENT STATUS REPORT**

TITLE	MATTER	INVENTOR/ PATENTEE	COUNTRY	SERIAL NO./ PATENT NO.	FILED/ISSUE DATE	ASSIGNEE
<u>Zoom and Pan Imaging Using a Digital Camera</u>	P020 (fka 122)	<u>Brian Utley</u>	United States	Serial No. 60/223,344	Filed 09/18/00	<u>Not assigned.</u>
<u>Zoom and Pan Imaging Design Tool</u>	P021 (fka 123)	<u>Brian Utley</u>	United States	Serial No. 60/233,341	Filed 09/18/00	<u>Not assigned.</u>

Blakely, Sokoloff, Taylor & Zafman

3

Note that Zoom and Pan Using a Digital Camera does not contain Eliot Bernstein as an inventor but that the document provided herein by Foley and Lardner attempts to insert Mr. Bernstein, although no signature of Mr. Bernstein is provided and he has no knowledge that this was ever presented to him. Note that although this document shows no assignment of the patents, that Mr. Utley claims to have assigned them to Iviewit in his deposition statements.

The following patent applications in Mr. Utley's name were stolen from the Company and were recaptured through assigning them back to the Company. These two patents were neither disclosed by Mr. Utley or the law firms of Proskauer Rose and Foley and Lardner to the Company, investors and were not disclosed to banks seeking to raise funds for the Company. These patents also represent Fraud on the USPTO and were facilitated through the US Postal Services constituting Mail fraud and were sent via fax to Mr. Utley constituting Wire Fraud.



Atty. D. No. 57103/123

**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
DESIGN TOOL**

Inventors:



Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.



FOLEY & LARDNER  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

In this next invention, Utley claimed in his deposition that he was unaware of camera applications of the Iviewit processes and this further shows intent to lie and cover up his thefts. Also, Eliot Bernstein was never aware of this patent filing and never signed for this patent, although records recovered are minimal provided by Foley and Lardner, the Company alleges that Mr. Bernstein's name was disingenuously inserted to attempt to cover up their part in the crime. We respectfully request the Boca Raton PD to attempt to gather the true documents submitted for this application from the patent office.



Atty. No. 57103/122

*COPY*

**U.S. PROVISIONAL PATENT APPLICATION**

for

**ZOOM AND PAN IMAGING  
USING A DIGITAL CAMERA**

**Inventors:**

Brian G. Utley  
1930 SW 8<sup>th</sup> Street  
Boca Raton, FLORIDA 33486  
Citizenship: U.S.

Eliot I. Bernstein  
500 S.E. Mizner Boulevard  
Boca Raton, FLORIDA 33432  
Citizenship: U.S.

**FOLEY & LARDNER**  
Attorneys at Law  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 271-2400

Other Inventions Claimed by Utley and signed by Utley that were property of Iviewit and not invented by Utley that he attempted to claim as his inventions. The signatures on the following notarized documents are those of Mr. Utley and Martha Mantecon, a former



employee that Mr. Utley had used at his prior employ of Diamond Turf Lawnmower were they (Martha and Utley) attempted to abscond with patent ideas and were fired for these actions.

**Invention of Controllable Image Presentation with Audio and/or text Accompaniment**

**Object:** To control a presentation image by a program within the computer or remotely over a network such that when the program is initiated it will control the presentation image by selecting panoramic and/or zoom parameters in order to focus the attention of the viewer on particular elements of the image. The program may also control an audio track or text box to explain to the viewer details of the image.

The program may be initiated by the viewer or automatically upon selection of the image.

Martha Marteen  
**Witness**  
Date: 3/8/00

[Signature]  
**Inventor**  
Date: 3/8/2000



Invention of Image Overlay Over the Web  
To Facilitate Expanded Presentation Facilities

**Object:** To create an image overlay for the purpose of further defining the image, superimposing graphics and superimposing text. The overlay is controlled by software on the computer hosting the display device or over a network. The software may be initiated by the operator/viewer or automatically upon selection of the first level image.

This invention also contemplates multiple layers of overlay for complex presentation purposes.

Maura Marticono  
Witness  
Date: 3/8/00

[Signature]  
Inventor  
Date: 3/8/2000

The following deposition statements from Mr. Utley clearly show him to be lying and committing perjury in regards to these issues.



that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as



1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?  
17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.



1 Q. Okay. And the correlation was for 115

2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork



1 on, it was a result of some work I did with IBM 117

2 that relates to the ability to digitally

3 recognize writing by a stylus on a surface. You

4 may recognize it in palm devices.

5 Q. Okay. With regard to that, that was

6 obviously prior to your employment with Iviewit;

7 is that correct?

8 A. Yes.

9 Q. Has there ever been any things that

10 you've either sought a patent for or applied for

11 a patent since your employment with Iviewit?

12 A. No.

13 Q. Are you aware of any copyright,

14 trademark or patent applications for either cable

15 system, set top boxes or anything related that

16 are similar to those of the technology that

17 Iviewit owned or made application for?

18 A. No.

19 Q. Do you have any knowledge of any

20 other patent or patent application, intellectual

21 property that might infringe upon patents or

22 applied for patents for Iviewit?

23 A. No. And just to parenthetically

24 state, I have studiously avoided anything which

25 might appear to be or be in any way connected



1       with that work. 118

2               Q.       Have you had any discussions or had

3       any meetings with Mr. Wheeler after your

4       cessation of employment with Iviewit?

5               A.       Only of a personal nature.

6               Q.       And when was the last time you met

7       with him?

8               A.       About three weeks ago?

9               Q.       And where was that? Was that here

10       down in south Florida?

11              A.       Yes.

12              Q.       And what was the purpose for your

13       trip down here?

14              A.       Is that, is that -- I have to ask

15       this question, I'm not trying avoid it, but is

16       that anything to do with this interrogatory?

17              Q.       Well, it does have to do with the

18       person who introduced you to the company so

19       certainly it's relevant to find out what your

20       relationship is.

21              A.       Well, let me just say this, that my

22       visit to Boca Raton had nothing to do with

23       Mr. Wheeler in any event. It was, we got

24       together on a social basis as a circumstantial

25       opportunity based on being there.



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described in other context?

A. No.

Q. How about with regard to Mr. Wheeler?

A. None.

Q. How about with regard to Raymond?

A. There was some deficiencies in his provisional product descriptions.

Q. Okay. How about with regard to Foley & Lardner?

A. I'm not aware of any deficiencies of Foley & Lardner.

Q. Other than what you -- was that the deficiencies in the sense of the weakness of the descriptions that you described earlier?

A. No. No. In fact, Foley & Lardner worked very hard to overcome those and construct the best case possible.

Q. How about a situation where they provided patent or patent applications to your home address rather than the corporation's address?

A. As a matter convenience in order to obtain signatures.

Q. Okay. So you're saying that was



1 done as a matter of convenience; that wasn't an 152  
2 error?  
3 A. No. If that happened. I don't  
4 recall it happening, but if it did, that would be  
5 the only circumstance under which that would  
6 happen.  
7 Q. Well, but you're speculating because  
8 you don't recall the situation?  
9 A. I do not recall ever receiving  
10 anything at home, but if it happened, it would be  
11 as a point of convenience and not as a point of  
12 procedure.

And Later from his deposition regarding William Dick's involvement with past patent malfeasances at Diamond Turf Lawnmower



we're talking about them because you said billing statements, which could be something totally different, I don't know.

MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

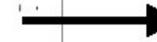


A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?



A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.



THE WITNESS: There was a

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is



that what it is?

267

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as



## EXHIBIT C

### STATEMENT OF BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

The second patent Utley has in his own name with no assignment to the Company is **ZOOM & PAN IMAGING USING A DIGITAL CAMERA**. This summary page was provided to Iviewit's investor Crossbow Ventures by Blakely Sokoloff Zafman and Taylor, and Crossbow then pulled funding on the Company in what appeared to be related to the discovery of such information, investigation pending. As you can see Utley is sole inventor of ideas that were created prior to his employment at iviewit.

Please refer to the footnote in the following document from Blakely Sokoloff Zafman & Taylor after finding such stolen patents and having to try and re-assign them to the Company.



# BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATION

TELEPHONE (310) 207-3600

FACSIMILE (310) 820-4988  
(310) 820-5270

ESTZ\_MAIL@BSTZ.COM  
WWW.BSTZ.COM

INTELLECTUAL PROPERTY LAW

12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1025

OTHER OFFICES

AUSTIN, TX  
SUNNYVALE, CA  
COSTA MESA, CA  
SAN DIEGO / LA JOLLA, CA  
PORTLAND / WILSONVILLE, OR  
SEATTLE / KIRKLAND, WA  
DENVER / ENGLEWOOD, CO

**Confirmation  
Copy**

August 4, 2001

**CONFIDENTIAL COMMUNICATION  
ATTORNEY-CLIENT PRIVILEGED**

Via E-MAIL

(And Confirmation By Mail)

Eliot Bernstein  
IVIEWIT.COM, INC.  
505 North Brand Boulevard, Suite 1420  
Glendale, California 91203

Re: Powers of Attorney for Six PCT Applications:

<b>Apparatus and Method for Producing Enhanced Digital Images</b> Serial No. PCT/US00/07772 Our File No. 005707.P009PCT Foley's Reference No. 110	<b>System and Method for Playing a Digital Video File</b> Serial No. PCT/US00/15406 Our File No. 005707.P012PCT Foley's Reference No. 113
<b>System and Method for Streaming an Enhanced Digital Video File</b> Serial No. PCT/US00/15408 Our File No. 005707.P010PCT Foley's Reference No. 111	<b>System and Method for Video Playback Over a Network</b> Serial No. PCT/US00/15602 Our File No. 005707.P016PCT Foley's Reference No. 118
<b>System and Method for Providing an Enhanced Digital Video File</b> Serial No. PCT/US00/15405 Our File No. 005707.P011PCT Foley's Reference No. 112	<b>System and Method for Providing an Enhanced Digital Image File</b> Serial No. PCT/US00/21211 Our File No. 005707.P018PCT Foley's Reference No. 120

Dear Eliot:

Being e-mailed (and enclosed herewith) are six (6) Powers of Attorney for the subject PCT Patent Applications, one Power for each inventor named in any one or more of the PCT patent applications, and one Power for the corporation, Iviewit Holdings, Inc. Three of the Powers require your signature, as follows: (i) one by you in your individual capacity; (ii) a second by you in your capacity as designee of the corporation to sign on behalf of Brian Utley (we hope the PCT Office will recognize Utley's having granted a Power of Attorney to his corporate employer); and (iii) a third by you for the corporation in your capacity as its Secretary. Kindly sign where your





**BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP**

A LIMITED LIABILITY PARTNERSHIP  
INCLUDING LAW CORPORATIONS

Eliot Bernstein  
IVIEWIT.COM, INC.  
August 4, 2001  
Page 2 of 2

signature is indicated on the three Powers of Attorney and return the original executed Powers to our office via mail (we need to have each Power with an original signature). Also fax each Power to us at (310) 820-5988, to expedite the process.

As we discussed, we request that you also forward each of the three remaining Powers to Jude R. Rosario, Jeffrey S. Friedstein and Zakirul A. Shirajee, respectively, for their signatures. Kindly instruct each of them to execute the Powers and to return the originals to our office by mail. In order to expedite the matter, request each of them to fax a copy to us, if possible.

If you have any questions, please feel free to contact my Assistant, Jan Cass. We appreciate your attention to getting the subject Powers executed and returned to us. We will then attend to their filing with the PCT Office.

Best personal regards,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Digitized Signature

Norman Zafman

NZ/jg  
Enclosures

cc: Ross Miller (w/Enclosures via E-Mail) ✓

P.S. to Ross Miller:



Ross, please attend to getting a Board Resolution appointing Eliot as the corporation's designee for signing the subject Power on behalf of Brian Utley. We talked about this in the context of giving Eliot comfort; however, the PCT Office may well request such a Resolution (in addition to a copy of Utley's Employment Agreement, which we already have).



**EXHIBIT D**

**REASSIGNMENT OF UTLEY PATENTS TO THE COMPANY**

[Insert reassignment document]



Our Ref.: 005707.P019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	)	
Eliot I. Bernstein and Brian Utley	)	
Serial No.: 09/630,939	)	Art Unit:
Filed: 08/02/00	)	Examiner:
For: SYSTEM AND METHOD FOR PROVIDING AN ENHANCED DIGITAL IMAGE FILE	)	

REVOCATION AND POWER OF ATTORNEY

The Hon. Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

The Applicant of the above-identified Application, hereby revokes all previous powers of attorney given in this Application, and appoints the firm of:

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, a firm including: William E. Alford, Reg. No. 37,764; Farzad E. Amini, Reg. No. 42,261; William Thomas Babbitt, Reg. No. 39,591; Carol F. Barry, Reg. No. 41,600; Jordan Michael Becker, Reg. No. 39,602; Lisa N. Benado, Reg. No. 39,995; Bradley J. Berezna, Reg. No. 33,474; Michael A. Bernadico, Reg. No. 35,934; Roger W. Blakely, Jr., Reg. No. 25,831; R. Alan Burnett, Reg. No. 46,149; Gregory D. Caldwell, Reg. No. 39,926; Andrew C. Chen, Reg. No. 43,544; Jae-Hee Choi, Reg. No. 45,288; Thomas M. Coester, Reg. No. 39,637; Robert P. Cogan, Reg. No. 25,049; Donna Jo Coningsby, Reg. No. 41,684; Florin A. Corie, Reg. No. 46,244; Dennis M. deGuzman, Reg. No. 41,702; Stephen M. De Klerk, Reg. No. P46,503; Michael Anthony DeSanctis, Reg. No. 39,957; Daniel M. De Vos, Reg. No. 37,813; Justin M. Dillon, Reg. No. 42,486; Sanjeet Dutta, Reg. No. P46,145; Matthew C. Fagan, Reg. No. 37,542; Tarek N. Fahmi, Reg. No. 41,402; Mark C. Farrell, Reg. No. 45,988; George Fountain, Reg. No. 36,374; James Y. Go, Reg. No. 40,621; James A. Henry, Reg. No. 41,064; Willmore F. Holbrow III, Reg. No. 41,845; Sheryl Sue Holloway, Reg. No. 37,850; George W Hoover II, Reg. No. 32,992; Eric S. Hyman, Reg. No. 30,139; William W. Kidd, Reg. No. 31,772; Sang Hui Kim, Reg. No. 40,450; Walter T. Kim, Reg. No. 42,731; Eric T. King,

005707.P019

-1-

NZ/TMC/jg



Reg. No. 44,188; Steven Laut, Reg. No. 47,736; George Brian Leavell, Reg. No. 45,436; Samuel S. Lee, Reg. No. 42,791; Gordon R. Lindeen III, Reg. No. 33,192; Jan Carol Little, Reg. No. 41,181; Robert G. Litts, Reg. No. 46,876; Julio Loza, Reg. No. 47,758; Joseph Lutz, Reg. No. 43,765; Lawrence Lycke, Reg. No. 38,540; Michael J. Mallie, Reg. No. 36,591; Andre L. Marais, under 37 C.F.R. § 10.9(b); Raul D. Martinez, Reg. No. 46,904; Paul A. Mendonsa, Reg. No. 42,879; Clive D. Menezes, Reg. No. 45,493; Chun M. Ng, Reg. No. 36,878; Thien T. Nguyen, Reg. No. 43,835; Thinh V. Nguyen, Reg. No. 42,034; Daniel E. Ovanezian, Reg. No. 41,236; Kenneth B. Paley, Reg. No. 38,989; Gregg A. Peacock, Reg. No. 45,001; Marina Portnova, Reg. No. P45,750; Michael A. Proksch, Reg. No. 43,021; Randol W. Read, Reg. No. 43,876; William F. Ryann, Reg. 44,313; James H. Salter, Reg. No. 35,668; William W. Schaal, Reg. No. 39,018; James C. Scheller, Reg. No. 31,195; Jeffrey S. Schubert, Reg. No. 43,098; George Simion, Reg. No. P47,089; Maria McCormack Sobrino, Reg. No. 31,639; Stanley W. Sokoloff, Reg. No. 25,128; Edwin H. Taylor, Reg. No. 25,129; Lance A. Termes, Reg. No. 43,184; John F. Travis, Reg. No. 43,203; Joseph A. Twarowski, Reg. No. 42,191; Kerry D. Tweet, Reg. No. 45,959; Mark C. Van Ness, Reg. No. 39,865; Thomas A. Van Zandt, Reg. No. 43,219; Lester J. Vincent, Reg. No. 31,460; Gleun E. Von Tersch, Reg. No. 41,364; John Patrick Ward, Reg. No. 40,216; Mark L. Watson, Reg. No. P46,322; Thomas C. Webster, Reg. No. P46,154; and Norman Zafman, Reg. No. 26,250; my patent attorneys, and Firasat Ali, Reg. No. 45,715; and Richard A. Nakashima, Reg. No. 42,023; my patent agents, of BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP, with offices located at 12400 Wilshire Boulevard, 7th Floor, Los Angeles, California 90025, telephone (310) 207-3800, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Please direct all communications concerning this Application to:

Thomas M. Coester, Esq.  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 12400 Wilshire Boulevard, Seventh Floor  
 Los Angeles, CA 90025  
 (310) 207-3800

Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Eliot I. Bernstein

Date: \_\_\_\_\_

By: \_\_\_\_\_



*[Handwritten signature]*  
Brian Utley, by Eliot Bernstein, his attorney-in-fact  
*[Handwritten signature]*  
Attorney  
in fact



**EXHIBIT E**  
**RESUME OF BRIAN G. UTLEY**

[insert Utley resume]



1930 SW 8<sup>th</sup> Street  
Boca Raton, FL 33486

*Personal Resume*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.  
In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

Per Friedkin he was fired for patent theft and the company was closed

President, Premier Connections, Inc., November, 1991 to present.  
Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.  
Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton. Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.  
In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported back to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.  
Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/38 and AS400, one of IBM's most technology aggressive development programs ever and still one off IBM's most popular systems.  
Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. As a result of this he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.  
From his start in October 1955 to the time he entered the laboratories Brian was a customer engineer responsible for maintaining IBM equipment on customer premises. During this time he self taught computer technology and transistor theory and developed the first IBM field course in transistors. This is the accomplishment which led to his assignment in the laboratories.

*Education:*

Having been born in England, he attended Beverley Grammar School and graduated in 1948 at 16. In 1949 he emigrated to the United States and completed his senior year at Ogden High School, Ogden, Utah.  
He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

*Hobbies:*

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.



1930 SW 8th Street  
Boca Raton, FL 33485

*Personal Resume*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999.  
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Truth was per Monte Friedkin that Utley was that he was fired for patent theft and Company was shut down!

Wheeler sets up Premier no COI, Utley lies in depo saying Wheeler never did work for him. Wheeler depo says he did it and did not disclose this to Company, lies to Bar of Florida and says he did????

President, Premier Connections, Inc., November, 1991 to present.  
Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.  
Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton. Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.

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Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/38 and AS400, one of IBM's most technology aggressive development programs ever and still one of IBM's most popular systems.

No formal engineering degree ever obtained.

Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. As a result of this he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.

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He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

*Hobbies:*

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.

Wachovia PPM says he was graduate, in his own deposition he says he was not!!



Utley – Confused about his past

- (11) Q. In New York. Okay. Now, going back
- (12) to something that Mr. Prusaski started but I
- (13) don't think he completed with was some of your
- (14) background information about your education. If
- (15) you can just tell me from undergraduate onward
- (16) what your educational background is, Sir, schools
- (17) you attended, years of attendance and degree.
- (18) A. I don't have a degree.
- (19) Q. Okay.
- (20) A. I attended Weaver State University,
- (21) which was then Weaver College, 1950.
- (22) Q. Okay.
- (23) A. San Fransisco City College, 1957,
- (24) 1958.
- (25) Q. Okay. And you graduated from San

Page 95

- (1) Francisco College or did not?
- (2) → A. I don't have a degree.
- (3) Q. Okay. So you never completed your
- (4) course at San Fransisco then?
- (5) → A. Right.

Here, Utley suddenly becomes graduate of San Francisco college in resume submitted for Wachovia bank OM – Private Placement offer. Here he claims he is a graduate of SF City college!!!

**Brian G. Utley, President (67)** - For over 30 years, Mr. Utley was responsible for the development and world-wide management of many of IBM's most successful products such as the AS400 and the PC. Entering IBM's executive ranks in the early 1980s, Mr. Utley's impact was felt in all areas of IBM's advanced technology product development, including Biomedical Systems, European Operations, and most importantly, IBM's launch of the Personal Computer. Following the introduction of the PC in the United States, Mr. Utley moved to Europe where he was responsible for a number of IBM's overseas activities including managing the launch of the PC across Europe and the Middle East. His career with IBM culminated with his responsibility as Vice President and General Manager of IBM Boca Raton with a work force of over 6,000 professionals. **He is a graduate of San Francisco City College. WHAT IS DEGREE??**



**Management**

Whereas the Company has retained Korn / Ferry to assist in the identification and recruitment of a high impact Chief Executive Officer (preferably from the media or entertainment industry) and Chief Technical Officer, iviewit has assembled a complementary and seasoned, management team with Fortune 100 and early-stage, entrepreneurial experience. This team consists of the following personnel:

**Brian G. Utley, President (67)** — For over 30 years, Mr. Utley was responsible for the development and world-wide management of many of IBM's most successful products such as the AS400 and the PC. His career with IBM culminated with his responsibility as Vice President and General Manager of IBM Boca Raton with a work force of over 6,000 professionals. He is a graduate of San Francisco City College.

**Eliot I. Bernstein, Founder and Vice Chairman (37)** — Prior to founding iviewit, Mr. Bernstein spent 15 years with SB Lexington where he was President of the West Coast Division creating and developing many innovative, computer-based multi-media marketing tools which remain in use supporting multi-billion dollar service industries. Mr. Bernstein is a graduate of the University of Wisconsin.

**Michael A. Reale, Vice President of Operations (60)** — Mr. Reale has over 20 years of operations experience, including P&L, quality, and delivery performance accountability. Most recently, Mr. Reale was the Chief Operating Officer for Boca Research (Nasdaq:BOCI), a manufacturer of personal computer enhancement and Internet thin client products. Mr. Reale received his BA and MBA from Pace University.

**Raymond T. Hersh, Vice President of Finance (58)** — Mr. Hersh has over 35 years of successful business and operating experience involving financial services, telecommunications, manufacturing, and corporate strategic planning. For over 20 years, Mr. Hersh has operated and grown companies in Florida, and most recently, he was co-founder and President/CEO of New Medical Concepts, Inc., a telecom company specializing in providing healthcare information. Earlier, he spent five years as an Enforcement Attorney with the U. S. Securities and Exchange Commission in New York City where he exited as a Branch Chief. He is a member of the New Jersey and New York Bars. Mr. Hersh received his BA from Lafayette College and his LLB/JD from the University of Pennsylvania.

**Kevin J. Lockwood, Vice President of Sales and Business Development (40)** — Mr. Lockwood joins iviewit from Cylex Systems where he held the position of Executive Vice President of Sales and assisted in securing three rounds of funding exceeding \$20 million. He also held the position of Head of Sales for Acer America, Inc. where he increased sales from a run rate of \$150 million annually to over \$1.5 billion annually in only a 17-month time. In addition, Mr. Lockwood successfully launched the Fujitsu P.C. into the U.S. and in the first year amassed revenues of over \$200 million. He is a graduate of the University of Maryland with a Bachelor of Science degree in Business Administration.

**Guy Iantoni, Vice President of Sales (35)** — Prior to joining iviewit in 1999, Mr. Iantoni was Senior Financial Representative with Fidelity Investments. From 1995 to 1997, he served as an Investment Management Consultant to the private client group of Morgan Stanley Dean Witter & Company, Inc. Mr. Iantoni has developed computer databases and systems to effectively market and target segments in both the financial markets and the healthcare industries. Mr. Iantoni is a graduate of the University of Wisconsin with an advanced degree in Pharmacy.

**Strategic Alliances**

iviewit is creating a stable of strategic partners in the areas of technology, R&D, applications development, and video hosting and delivery. The Company has partnered with key industry leaders to develop precedence in the market. Partners include Greg Manning Auctions, Atlas Entertainment, Medical Online, Digital Island, Burst.com, and Versifi.



## **EXHIBIT F**

### **DEPOSITION STATEMENTS OF UTLEY & EVIDENCES OF PERJURED DEPOSITION STATEMENTS**

The first exhibit of statements will illustrate that Mr. Utley and Mr. Wheeler try to deny the involvement of Kenneth Rubenstein and Proskauer Rose in the handling of the patent matters. In this first series it will become apparent that Mr. Utley and Mr. Wheeler perjure themselves in denying that Mr. Rubenstein was an Advisory Board member.

From Utley's deposition we cite:



1 engagement agreement refers to the parent company 138  
2 of Iviewit.  
3 Q. Well, let's go to my next question  
4 on this whole thing, and that is, with regard to,  
5 with regard to the approval by the board of  
6 directors, we've talked prior about the board of  
7 directors and Ken Rubenstein, was Ken  
8 Rubenstein -- you've previously stated that he  
9 didn't have any role with regard to the company,  
10 no active role?  
11 A. That's correct.  
12 Q. And I hate to bounce back and forth  
13 to you about this, he was never, like, an advisor  
14 or consultant or anything like that; he was just  
15 someone who was Proskauer Rose's person who did  
16 work on IP?  
17 A. Yeah, I can't speak to the  
18 discussions that may have taken place between  
19 Mr. Wheeler and Mr. Rubenstein, but --  
20 Q. I'm not asking you to. I'm just  
21 saying from what you know because obviously this  
22 deposition testimony is given on your own  
23 personal knowledge.  
24 A. Yes. He played no active role in  
25 the company other than having directed the



1 company to work with Meltzer and this gentleman 139  
 2 Rolf as the patent attorney.  
 3 Q. And that was his totality of his  
 4 role from what you know?  
 5 A. Yes.  
 6 Now, let me parenthetically add,  
 7 that I do understand and know that it was Eliot's  
 8 desire to see him involved in an advisory role.  
 9 Q. Okay.  
 10 A. But that was never, that was never  
 11 consummated.  
 12 Q. Okay. Did you ever want him to act  
 13 in an advisory role?  
 14 A. I did not take any position on that.  
 15 Q. Okay. Did you ever represent that  
 16 he should be in an advisory role?  
 17 A. No.  
 18 Q. Okay. So you really didn't have any  
 19 opinion on what Mr. Rubenstein should or should  
 20 not be doing with Iviewit?  
 21 A. Right.  
 22 Q. Okay. Did you have any discussions  
 23 or correspondence at all with Rubenstein and  
 24 Raymond Joao, I think it is? Is that how you  
 25 pronounce it, J-O-A-O?

Now in direct contradiction to this statement from Mr. Utley's deposition you will find in the next correspondence that Mr. Utley sends to Mr. Wheeler and the ENTIRE Board of Directors that he refers to Mr. Rubenstein as an Advisor to the Company.



**Subject:** FW: Minutes of the Board Meeting of April 14, 2001

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

**From:** Brian G. Utley [mailto:brian@iviewit.com]

**Sent:** Wednesday, April 18, 2001 11:17 AM

**To:** Eliot I. Bernstein; 'simon@adelphia.net'; 'kanderson@myCFO.com'; 'dg\_kane@msn.com'; 'glewin@goldsteinlewin.com'; 'hankpow@gate.net'; 'bprolow@tiedemannfunds.com'; Maurice Buchsbaum

**Cc:** 'Christopher C. Wheeler (E-mail)'

**Subject:** RE: Minutes of the Board Meeting of April 14, 2001

I was advised by Proskauer Rose that anyone who was in an active due diligence stage and who was reviewing our intellectual property as part of that due diligence should receive a copy of the examiners opinion. Therefore the opinion was forwarded to the same people who have received copies of the patent filings namely, Warner Brothers and Irell & Manella. Ken Rubenstein, as our advisor, was also copied. Your father suggested that, because of the importance of our intellectual property, our own Board of Directors should be aware of the current status of our applications. With respect to Irell & Manella, it is quite likely that we will need to engage them or some other alternative counsel in order to respond to the opinion. I have a copy of Alvear's book if you need it.

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

**From:** Eliot I. Bernstein

**Sent:** Tuesday, April 17, 2001 7:07 PM

**To:** 'simon@adelphia.net'; 'kanderson@myCFO.com'; 'dg\_kane@msn.com'; 'glewin@goldsteinlewin.com'; 'hankpow@gate.net'; 'bprolow@tiedemannfunds.com'; Maurice Buchsbaum

**Cc:** Brian G. Utley; Christopher C. Wheeler (E-mail)

**Subject:** RE: Minutes of the Board Meeting of April 14, 2001

Brian - several board members asked that you specify which of our attorneys advised you and on what legal references you were cited to disseminate the PCT report. Also, was there some reason that you have recently decided to share patent news of any nature with those involved, prior you had never disclosed to the Board or potential clients anything that was regarding the patents?

I had already discussed with David the examiners report and we had begun to research the reference to Jose Alveraz's book, it does not look particularly relevant to our process.

Also, I find it in poor taste that you are encoding pornography with a 17 year old girl present in the room, this could potentially be a risk to the company, so I ask that all further business relating to pornography be handled outside the office and without iviewit personnel or equipment. Could you please have our attorney's advise on the risks you may be subjecting us to in this matter. These matters were brought to my attention by several of our employees who were offended.

Best,  
Eliot

Again, contrary to this Board letter by Mr. Utley he perjures himself in his deposition:



6 Q. Okay. So Rubenstein's sole role,  
 7 from what you understand, is he referred Iviewit  
 8 to the Meltzer Law Firm in New York?  
 9 A. Yes.  
 10 Q. Was he ever part of an advisory  
 11 board member or was he an advisory board member  
 12 to Iviewit? And we're talking about  
 13 Mr. Rubenstein.  
 14 A. I have never used him as an advisory  
 15 board member?

And again, in a letter to Mr. Wheeler before placing Mr. Rubenstein in the business plans as an Advisory Board member, we find the following letter sent by Mr. Utley to Mr. Wheeler:

**MR. UTLEY, REVERSING COURSE AGAIN, ASKING WHAT ROLE TO PROVIDE FOR RESPONDENT**

-----Original Message-----  
 From: Brian G. Utley [mailto:brian@iviewit.com] On Behalf Of Brian  
 Sent: Thursday, January 13, 2000 9:33 AM  
 To: 'cwheeler@proskauer.com'; 'cwhlaw@aol.com'  
 Subject: Business Plan

Your name and Ken Rubenstein's name are proposed as members of an iviewit advisory board. Does this give you a problem?  
 Brian

And here again in the Wachovia Private Placement Memorandum authored and disseminated by Wheeler and Utley, we find he has again perjured his deposition statements in regards to Rubenstein and either is guilty of committing fraud on bank or perjuring his deposition as Rubenstein is clearly listed as an Advisory Board member.



Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)



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**II. INVESTMENT HIGHLIGHTS**

◆ **Unique processing technologies for video and imaging**

iviewit's patent pending processing technologies can create high-definition images with "scan, pan, and zoom" capabilities, high-fidelity audio streams, and full-screen, full-frame rate video for streaming over the Internet. The iviewit video technology is a highly scalable process. The resulting files are approximately 25% less than comparable quality files. iviewit 220Kps streams are equivalent to competitive 300Kbps streams. The Company's imaging process delivers images that are photo-quality, resistant to pixelation even at magnification levels of 30+:1. Images produced by iviewit's proprietary process are identical in quality regardless of the end-user's Internet connection speed. File size options are tailored to minimize download times and optimize the end-user's experience.

◆ **Complementary and Seasoned Fortune 100 and Entrepreneurial Management Team**

iviewit has assembled a complementary and seasoned management team with Fortune 100 and early-stage, entrepreneurial experience. Management consists of former IBM operations executives who have experience in building video delivery capabilities and of marketing talent from successful venture-backed technology companies. The Company recognizes its strength in operations and product development and recognizes the need to attract a capable, experienced CEO and CTO to accelerate the Company's development. iviewit has retained Korn / Ferry to assist in the identification and recruitment of this talent.

◆ **Strong and Experienced Board of Directors and Advisory Board**

iviewit's Board of Directors and Advisors consist of several well-established individuals from the technology, entertainment, and financial community. Directors have extensive backgrounds with top-tier firms such as Goldman Sachs, Kidder Peabody, and McKinsey & Co. Crossbow Ventures has provided \$3.0 million in funding and sits on the Board. Technology and entertainment guidance comes from a partner at Armstrong Hirsch Jackoway & Wertheimer and from Kenneth Rubenstein, the head of the MPEG-2 patent pool.

◆ **Significant Intellectual Property Position and Strategy**

iviewit has protected its enabling technologies by filing 6 patent pending applications in both the United States and abroad for its video streaming and imaging capabilities, covering a wide array of enabling technologies. The Company also has two remaining provisional patent pending applications that will be converted to patent pending status within the allowable period. The Company has retained Foley & Lardner to shepherd its patent development and procurement. In addition, the Company has retained Kenneth Rubenstein of Proskauer Rose, LLP to oversee its entire patent portfolio. The Company's strategy is to establish market precedence through licensing of trade secrets and know-how.

◆ **Substantial Market Penetration and Growing Customer Acceptance**

The Company commercialized its products in May 2000. In just 5 months, iviewit has experienced a 75% success rate in obtaining service and licensing customers, securing 17 customers to date – primarily in the entertainment, advertising, and hotel markets. The Company expects to realize approximately \$400,000 in revenues by year-end from these customers. High profile customers include Ellen DeGeneres, Z.com (Alanis Morissette), Hyatt Hotels, Gear Magazine, and Hollywood.com. Highly probable for closing by year-end 2000 include Warner Brothers and Greg Manning Collectibles.

◆ **Focused on Media Rich Target Markets – Unlocking the Value of Content**

The Company's business strategy is to first target high-profile content owners and distributors as clients to process video and images and to brand those images with iviewit's logo. Secondly, iviewit plans to co-brand with famous celebrities and



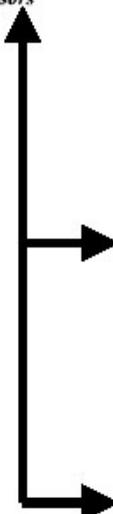
And further from that certain Private Placement Memorandum:



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Investment Management, both based in London. Among his primary areas of expertise are technology research and economic research, including electronics, telecommunications and computer software. Most recently, he was Senior Technology Analyst and Vice President of Southeast Research Partners, Inc. where he worked with leading technology companies. He earned a bachelor of arts degree at Yale University and a master of business administration degree at Stanford University.

**Advisors**



**Alan J. Epstein**

**Partner, Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.**

Mr. Epstein's law practice consists of advising Internet companies on various issues pertaining to the entertainment and sports industries, including the creation, licensing and acquisition of content, the introduction and negotiation of strategic partner relationships, and various other matters relating to the convergence of technology and content. Mr. Epstein also advises his firm's numerous celebrity clients on the exploitation and protection of their name and likeness rights and content on the Internet, as well as merchandising, endorsement and sponsorship deals. Prior to entering the UCLA School of Law, Mr. Epstein was a certified public accountant at Deloitte Haskins & Sells in Dallas, Texas.

**Kenneth Rubenstein**

**Partner, Proskauer Rose LLP**

Mr. Rubenstein is a partner at Proskauer Rose LLP law firm and is the patent attorney for iViewit. He is a registered patent attorney before the U.S. Patent & Trademark Office. Mr. Rubenstein counsels his clients with respect to the validity and infringement of competitors' patents, as well as prosecutes patent applications. For the past several years he has worked on the formation of a patent pool, for MPEG-2 technology, involving large consumer electronics and entertainment companies. He is also a former member of the legal staff at Bell Laboratories. Mr. Rubenstein received his law degree, cum laude, from New York Law School, and his Ph.D. in physics from the Massachusetts Institute of Technology where he also graduated with a B.S. Degree.

**Christopher C. Wheeler**

**Partner, Proskauer Rose LLP**

Mr. Wheeler is a member of Proskauer Rose LLP's Corporate Department and as a partner in the Florida office has a versatile transactional practice. He has had extensive experience in real estate and corporate law, institutional lending and workouts, administrative law and industrial revenue bond financing. Moreover, he serves as a strategist and counselor to many clients in handling their other legal and business matters. Mr. Wheeler is well-versed in general corporate law as well as mergers and acquisitions and securities matters. He has guided companies from startup through initial private placements to public offerings. A graduate of Hamilton College and Cornell Law School, Mr. Wheeler was a member of the managing Board of Editor of the Cornell Law Review.

**Legal & Accounting Counsel**



**Arthur Andersen, LLP**

Arthur Andersen's vision is to be the partner for success in the New Economy. The firm helps clients find new ways to create, manage and measure value in the rapidly changing global economy. With world-class skills in assurance, tax, consulting and corporate finance, Arthur Andersen has more than 70,000 people in 83 countries that are united by a single worldwide operating structure that fosters inventiveness, knowledge sharing and a focus on client success. Since its beginning in 1913, Arthur Andersen has realized 86 years of uninterrupted growth, with 1999 revenues over \$7 billion. Arthur Andersen is a business unit of Andersen Worldwide.

**Proskauer Rose, LLP**

This law firm is one of the nation's largest law firms, providing a wide variety of legal services to major corporations and other clients through the United States and around the





**DEPOSITION STATEMENTS OF WHEELER & EVIDENCES OF PERJURED DEPOSITION STATEMENTS**

The first exhibit is a statement circulated by Proskauer Rose for investment to several investment groups, followed by his denial of such claims in his deposition.



**Christopher C. Wheeler**  
Member of the Firm  
Direct Dial 561.995.4702  
cwheeler@proskauer.com

April 26, 1999

Mr. Richard Rossman  
Lewinter and Rossman  
16255 Ventura Blvd., Suite 600  
Encino, CA 91436

Re: iviewit, Inc.

Dear Richard:

Under separate cover I have forwarded you a revised Confidentiality Agreement.

As you know we have undertaken representation of iviewit, Inc. ("iviewit") and are helping them coordinate their corporate and intellectual property matters. In that regard, we have reviewed their technology and procured patent counsel for them. We believe the iviewit technology is far superior to anything presently available with which we are familiar. Iviewit has filed a provisional patent application on a method for providing enhanced digital images on telecommunications networks. We are advised by patent counsel that the process appears novel and may be protected by the patent laws. While in all matters of this sort, it is far to early to make any final pronouncements, we do believe that there is an extremely good prospect that iviewit will protect their process which is novel and superior to any other format which we have seen.

Very truly yours,

Christopher C. Wheeler

CCW/gb

1 Company Certificate as Exhibit to opinion, et cetera,  
 2 et cetera. There were more - I would imagine they  
 3 were corporate matters. We wouldn't have opined - we  
 4 never opined to the intellectual property.

Wheeler's deposition p.200:

20 Q. So you never made any representation to  
 21 any party with regard to anything concerning the  
 22 invention or the process or however we're going to  
 23 describe this particular zoom and pan or enlargement  
 24 without pixilation?  
 25 A. No, no. I mean, what would I have said?

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1 What you see is what you get. Look at - this is what  
 2 we have, and this is what the company intends to do.  
 3 Q. Was there ever any representation made  
 4 that you can recall that the technology, to the extent  
 5 that it was going to be protected or was in a soon to  
 6 be protected form, would be compensated by royalties  
 7 almost immediately?  
 8 A. No.



Wheeler's deposition p.102-103:

Further in a letter to secure investment from Wayne Huizenga, Mr. Wheeler again completely contradicts his deposition statements.



JUL 23 1999 17:17 FR PROSKAUER ROSE

561 241 7145 TO 0894H40017001H41 P.03/09

**PROSKAUER ROSE LLP**

2255 Glades Road  
Suite 140 West  
Boca Raton, FL 33431-2360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.402.7740  
Fax 561.241.7145

NEW YORK  
LOS ANGELES  
WASHINGTON  
DENVER  
PAULS

**Christopher C. Wheeler**  
Member of the Firm

Direct: Dial 561.995.4702  
cwheeler@proskauer.com

July 23, 1999

VIA FAX

Mr. Cris V. Branden  
Huizenga Holdings, Inc  
450 East Las Olas Blvd., Suite 1500  
Ft. Lauderdale, FL 33301

Dear Cris:

Per our discussion, enclosed please find Evaluation Feedback and proposed Confidential Term Sheet. Please note the last sentence of the Evaluation Feedback. We view this as a validation of our technology and an indication of Rea 3D's intent to move forward.

Best regards,

Cordially,

  
Christopher C. Wheeler

CCW/gb

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And finally, Mr. Wheeler drafts the following letter for circulation to his Partners at Proskauer Rose regarding the impact of the Iviewit technologies.



Dear Colleagues,

As a firm, we are in a unique position to impact the effectiveness of the Internet and to profit from the same. The firm of iviewit.com, Inc. is one of my clients and Proskauer, Rose, LLP, is a 2.5% shareholder. I have worked closely with iviewit, for the past 18 months, establishing and fine-tuning their corporate structure. My objective with this letter is to introduce you to this forward-thinking company and to ask for your support and assistance.

The Internet is quickly evolving from a text-based medium that users have been forced to read, into a multimedia platform that users can begin to *experience*. The importance that this evolution has to e-commerce has been likened to the impact felt by television when it was embraced as a marketing and communications tool. iviewit's intellectual property positions them as a leader in the streaming video, streaming audio and virtual imaging online markets. Their technologies have broad ranging applications for many different industries including: entertainment, auctions, education, healthcare and retail.

Because of the extensive applicability of iviewit's products, the vast majority of Proskauer's client relationships represent potential clients for iviewit. Please join me as I endeavor to introduce my clients to iviewit and, in the process, help those clients to gain a competitive advantage through the utilization of iviewit's technologies. Please contact me with any opportunities that you identify and I will arrange an introduction to a member of iviewit's management team. I have enclosed a descriptive flyer from iviewit and a multimedia CD-ROM that will serve as an introduction to iviewit. Additional information can be found at their website, [www.iviewit.com](http://www.iviewit.com).

Thank you for your time and attention. I look forward to working together to help this valued client and to further enhance the value of our equity position in iviewit.

Sincerely,

Christopher C. Wheeler

The next set of deposition and Florida Bar statements by Mr. Wheeler concern his recommendation of Brian Utley, his "best" friend to Iviewit, without disclosing his past patent malfeasances and his prior work for Mr. Utley. What is interesting to note is that first Mr. Wheeler claims to the Florida Bar that he fully disclosed his past dealings with Mr. Utley and then later claims in another statement to the Florida Bar that he did not. His first statement contradicts his deposition testimony.

**IV. Misrepresentation of Mr. Utley's background by Mr. Wheeler on a false resume where Utley lies about termination from his prior employer, Monte Friedkin of Diamond Turf, failing to inform the Company that he was involved in patent disputes that led to closure of the Company and his being fired. More shocking is that Utley testifies that Wheeler was "fully cognizant" of such termination and reasons surrounding such termination.**

From the response filed by Mr. Wheeler we quote:

**B. Misrepresentations:** Mr. Bernstein alleges that Mr. Wheeler misrepresented: (i) Brian Utley's background while recommending him for a position with Iviewit; (ii) patent attorney William Dick's background; (iii) that Raymond Joao was a Proskauer attorney, and (iii) that Kenneth

**C. Conflicts of Interest:** Mr. Bernstein alleges that Proskauer: (i) represented other clients with a conflict of interest to Iviewit; (ii) failed to disclose the prior representation of Brian Utley; and

**IV. No Misrepresentations Were Made To Eliot Bernstein**

In his complaint, Mr. Bernstein alleges that Mr. Wheeler somehow misrepresented the credentials of several people to Iviewit, most notably Brian Utley, Iviewit's former President and COO. According to Mr. Bernstein, Mr. Wheeler misrepresented the background of Mr. Utley in order to induce Iviewit to hire him.

It is worth noting that, at the time of his hiring as the President of Iviewit, Mr. Utley was retired from a thirty-seven year career with IBM, serving as the Vice-President and General Manager in charge of the Boca Raton, Florida operations. Contrary to Mr. Bernstein's allegations, Mr. Wheeler merely introduced Mr. Utley to Simon Bernstein and advised him that he first met Mr. Utley in 1990 on a social level and subsequently served with him on the Florida Philharmonic and Florida Atlantic University Foundation Boards. (Deposition of Christopher Wheeler ("Wheeler dep.") at 113-18, 131-20). The introduction was made because Simon Bernstein was looking for someone to run Iviewit and asked Mr. Wheeler for a recommendation. Mr. Wheeler disclosed his social relationship with Mr. Utley to Simon Bernstein and told him that Mr. Utley was the site manager of IBM's Boca Raton office when they first met in 1990. *Id.* at 115-12, 117-1. Mr. Wheeler advised Mr. Bernstein to explore with Mr. Utley whether he was a good fit for Iviewit. *Id.* at 115-12. At no point did Mr. Wheeler submit any "false resumes" on behalf of Mr. Utley and he is unaware of the existence of any such document.

We respectfully submit Mr. Utley's resume as given to Iviewit by Mr. Wheeler for circulation to approve Mr. Utley to the Board and Investors and a confirmation email that Mr. Wheeler was in receipt of Mr. Utley's resume. Further in every business plan that was authored, reviewed, billed for by Proskauer Rose and disseminated by Mr. Wheeler to investors, potential investors, clients, shareholders, potential clients and Wachovia Securities for a Private Placement of 12-20M, Mr. Utley's background was included, with false statements. We ask that the Florida Bar contact Mr. Monte Friedkin ((954) 972-3222 x310) for testimony that Mr. Utley's statements are false in regard to his past employment. When contacted by Iviewit after Mr. Utley's termination we got a far different story on what happened at Diamond Turf Lawnmower, which is that Mr. Utley had attempted to steal patents which led to his being fired and the Company being closed. Since Mr. Wheeler, Mr. Utley and Mr. Friedkin all sat on the FAU Board together, Mr. Friedkin was confident that Wheeler had full knowledge of the situation, but more telling is that in Mr. Utley's deposition



Lorraine Christine Hoffman, Esq.  
Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

he claims that Mr. Wheeler was fully "cognizant" of the reasons surrounding his departure. Mr. Wheeler in his deposition is unclear of his knowledge and in the letter submitted to the Bar of Florida he is in complete denial.

1990 SW 8<sup>th</sup> Street  
Boca Raton, FL 33485

*Personal Resume*

*Professional History:*

President, Diamond Turf Equipment, Inc. July, 1995 to July 1999

In 1995 the company was engaged in refurbishing obsolete and run-out golf course maintenance equipment and had annual sales of \$250K. Since that time the company has been transformed into a manufacturer of new machines which compete favorably with the best of the market leaders and an expected revenue for 1999 of \$6M. The design of the machines was by Brian and was accomplished while putting together a manufacturing and marketing team capable of supporting the rapid growth of the company.

Truth was per Monte Friedkin that Utley was that he was fired for patent theft and Company was shut down!

Wheeler sets up Premier no COI, Utley lies in depo saying Wheeler never did work for him. Wheeler depo says he did it and did not disclose this to Company, lies to Bar of Florida and says he did?????

President, Premier Connections, Inc., November, 1991 to present.

Premier Connections provides consultation and support services in computer and related business management. Customers have included IBM and other small businesses.

IBM, October, 1955 to October, 1991.

Brian retired from IBM as Vice-President and General Manager, IBM Boca Raton. Prior to his assignment in Boca Raton Brian spent 5 years in Europe as Group Director for PC's and small systems. This responsibility covered all aspects of product management for all European, Middle East and African countries.

In 1983 Brian was appointed General Manager, IBM Biomedical Systems and asked by the IBM President, John Opel, to evaluate develop the long range strategy for this business unit. Brian subsequently reported back to the President that the Business Unit, while quite viable, should be sold to a related business in the medical community. Having received approval to do so, he negotiated a profitable sale for IBM.

Between 1965 and 1983 Brian was the project and systems manager for many major IBM computer systems which earned IBM billions of dollars in revenue. The most notable of these was the S/38 and AS400, one of IBM's most technology aggressive development programs ever and still one of IBM's most popular systems.

No formal engineering degree ever obtained.

Brian entered the IBM laboratories in 1959 and immediately became the most prominent engineer on his first project with many innovative designs. As a result of this he was assigned to the German IBM laboratories to train German engineers in computer technology. He has been awarded a number of patents the most recent of which was granted in 1998.

From his start in October 1955 to the time he entered the laboratories Brian was a customer engineer responsible for maintaining IBM equipment on customer premises. During this time he self taught computer technology and transistor theory and developed the first IBM field course in transistors. This is the accomplishment which led to his assignment in the laboratories.

*Education:*

Having been born in England, he attended Beverley Grammar School and graduated in 1948 at 16. In 1949 he emigrated to the United States and completed his senior year at Ogden High School, Ogden, Utah.

He attended college at Weber College, Ogden, Utah and San Francisco City College completing two years of study.

Wachovia PPM says he was graduate, in his own deposition he says he was not!!

*Hobbies:*

Brian is a jogger and for 40 years has been an avid glider pilot with many competitive successes.

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Page 81 of 722

4/30/2003

And now from Mr. Wheeler's deposition he denies that he knew why Utley was fired from Diamond Turf over patent disputes which Utley claims Wheeler was fully aware of such situation, one of them has perjured themselves. It is further interesting to note that Wheeler again feigns confusion when he knows the owner of Diamond Turf well and sits on the Board of Florida Atlantic University with him and Mr. Utley.

1 A. Uh-huh. He was the site manager, or the  
2 equivalent of the title.

3 Q. And when you introduced him to Sy and  
4 Eliot Bernstein, do you know what he was doing at that  
5 point in time?

6 A. He was working at a - and running a - a -  
7 what could we call it, a company that was  
8 manufacturing - developing and manufacturing greens  
9 cutting equipment. It's called Diamond Turf, I think.  
10 Or something like that.

11 Q. Do you know if he was terminated from his  
12 job at Diamond Turf or did he leave voluntarily?

13 A. I don't know which.

14 Q. At the time that he took the job with  
15 iViewit, do you know if he was gainfully employed at  
16 that point or not?

17 A. No. I don't know if he was still employed  
18 by Diamond Turf or not.

19 Q. Did you ever see Mr. Utley's resume?

20 A. I don't recall if he was -- Did I ever see  
21 his resume? Not to my recollection.

22 Q. Did he ever provide you with any  
23 background information?

24 A. He could have, but I don't recall it.

25 Q. C.V. or anything of that nature to give to

1 the Bernsteins?  
2 A. I don't recall.  
3 Q. Are you aware of any patents that  
4 Mr. Utley holds?  
5 A. No. No, I'm not.  
6 Q. Have you ever -- I'm sorry, go ahead.  
7 A. I'm not aware of anything other than if he  
8 referenced patents in his own deposition, but I  
9 didn't - I didn't follow that closely in his  
10 deposition.  
11 Q. So you - you read a transcript of his  
12 deposition?  
13 A. Yes.  
14 Q. Now, with regard to his - I'll take  
15 Mr. Utley's employment by iViewit, have you ever  
16 represented Mr. Utley personally in any matters?  
17 A. We formed a corporation for him in - I  
18 believe in 1993.  
19 Q. Do you recall the entity, the corporation?  
20 A. I think it was a consulting corporation.  
21 We just formed it. I mean, we just formed it. That's  
22 all we did.  
23 Q. Right.  
24 A. We didn't do any more work for him.  
25 Q. Just formed the consulting corporation?

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We respectfully submit the following evidence from Mr. Utley's deposition whereby he claims that Mr. Wheeler was fully cognizant of his being fired and the circumstances surrounding them from Diamond Turf:

**The Company will now show that Mr. Wheeler was fully aware of the reasons surrounding Mr. Utley departure from his prior employer and failed to disclose this information not only to the Company but to investors and banks, perpetrating a fraud on all parties, in that had anyone known of Utley's past patent problems he would have never been hired. The fraud is material in that it ends up causing similar patent theft problems and the destruction of the Iviewit companies. Once Wachovia and other investors became aware of the patent problems and patent thefts it caused catastrophic damages to the Company, leaving the current patents in a state of unknown damages.**



A. We shared nondisclosure agreements and communicated as required in order to construct the business plan.

Q. And did they require or request that you provide them with a CV as part of the business plan to evidence your expertise.

A. I believe so.

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll restate the question.

By MR. SELZ:

Q. Did Wachovia Bank request that you provide personal information to them as part of that business plan?

A. Yes.

Q. And did you provide that personal information in the form of a curriculum vitae or CV?

A. It was integrated in prior editions of the business plan and flowed into the one that was developed with Wachovia.

→ Q. Now, when Chris Wheeler first introduced you to Iviewit, was he aware of the situation at Diamond Turf and yourself and



101 kauer Rose vs. Iviewit.com, et al. 8/23/02  
 102 Mr. Monte Freedkin or what was Mr. Wheeler's 244  
 103 knowledge of your position at Diamond Turf, to  
 104 the best of your knowledge?  
 105 MR. PRUSASKI: Objection to form.  
 106 MR. SELZ: Okay. I'll restate the  
 107 question. I'm sorry. Getting a little tired.  
 108 MR. PRUSASKI: I'm just objecting to  
 109 the extent that you're asking him what Chris  
 110 Wheeler's personal knowledge was.  
 111 MR. SELZ: Okay.  
 112 By MR. SELZ:  
 113 Q. To the extent that you know, what  
 114 was Chris Wheeler's personal knowledge of that  
 115 situation?  
 116 MR. PRUSASKI: Objection to form.  
 117 → THE WITNESS: I believe Chris,  
 118 Mr. Wheeler was fully cognizant of my  
 119 relationship to Diamond Turf Equipment and to  
 120 Mr. Freedkin.  
 121 By MR. SELZ:  
 122 → Q. And he was aware about your  
 123 departure from that company and that situation?  
 124 A. Yes.  
 125 Q. Involving your employed and your  
 126 change of employment when you left Diamond Turf?

101 Carl & Associates (763)591-0535 or (800)591-9PCA (722)

101 kauer Rose vs. Iviewit.com, et al. 8/23/02  
 102 A. Yes. 245  
 103 Q. Other than your retirement at IBM,  
 104

Now after reading that Utley claims in his deposition that Wheeler was “fully cognizant” of the reasons for his departure, Mr. Wheeler then claims in his deposition:

1 MR. TRIGGS: Object to form.  
2 Q. Did Proskauer assist Mr. Utley in  
3 prosecuting any patents or having any other  
4 intellectual properties protected by copyright or  
5 trademark?  
6 A. No.  
7 Q. Are you aware of any claims by Diamond  
8 Turf that Mr. Utley improperly received intellectual  
9 properties or patented them that belonged to Diamond  
10 Turf?  
11 A. Aware that --  
12 Q. Mr. Utley is alleged to have improperly  
13 received or taken intellectual properties of Diamond  
14 Turf.  
15 A. By Diamond Turf? No.  
16 Q. Okay. On the amended deposition

Now this next set of deposition and Florida Bar statements by Wheeler and Utley, again exhibit a pattern of lies and deceit, that end up forcing Mr. Wheeler to apologize to the Florida Bar that he lied to them, making his deposition statements perjured. This relates to the fact that Mr. Wheeler failed to disclose his past representations of Utley and that Mr. Utley again lies under deposition stating Wheeler never represented him.

**V. Conflicts of interest in representing Mr. Utley to Iviewit and failure to disclose to the Company that a conflict existed between Mr. Utley being represented by Mr. Wheeler and Proskauer Rose in the past and not disclosing such information upon referral of Mr. Utley. Mr. Wheeler had**



**started a computer consulting business (Premier Consulting Inc.) that is still in existence and had conflicting clients, i.e. IBM, that was not properly disclosed to Iviewit. Mr. Wheeler's deposition testimony will contradict his statements to the Bar of Florida and represents yet another perjured statement.**

**IV. No Misrepresentations Were Made To Elliot Bernstein**

In his complaint, Mr. Bernstein alleges that Mr. Wheeler somehow misrepresented the credentials of several people to Iviewit, most notably Brian Utley, Iviewit's former President and COO. According to Mr. Bernstein, Mr. Wheeler misrepresented the background of Mr. Utley in order to induce Iviewit to hire him.

C. Conflicts of Interest: Mr. Bernstein alleges that Proskauer: (i) represented other clients with a conflict of interest to Iviewit; (ii) failed to disclose the prior representation of Brian Utley; and

**V. No Conflicts Of Interest Existed In Proskauer's Representation Of Iviewit**

Mr. Bernstein also alleges the existence of a conflict of interest on the part of Mr. Wheeler based on his prior representation of Mr. Utley in other matters. At the time Mr. Wheeler introduced Mr. Utley to Mr. Bernstein, Mr. Wheeler disclosed that Proskauer had previously formed a corporation for Mr. Utley in approximately 1993. At the time the introduction was made, Mr. Utley was not a current client of the firm. In short, there was no conflict of interest arising out of Mr. Wheeler merely

And this next part of Mr. Wheeler's deposition is in direct contradiction to his statements to the Florida Bar in this matter, in that he has claimed to the bar that he notified Iviewit of his involvement with Mr. Utley on a professional basis and in his deposition testimony contrarily denies such, thus constituting perjury.

Lorraine Christine Hoffman, Esq.  
Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

118

1 the Bernsteins?

2 A. I don't recall.

3 Q. Are you aware of any patents that  
4 Mr. Utley holds?

5 A. No. No, I'm not.

6 Q. Have you ever -- I'm sorry, go ahead.

7 A. I'm not aware of anything other than if he  
8 referenced patents in his own deposition, but I  
9 didn't - I didn't follow that closely in his  
10 deposition.

11 Q. So you - you read a transcript of his  
12 deposition?

13 A. Yes.

14 Q. Now, with regard to his - I'll take  
15 Mr. Utley's employment by iviewit, have you ever  
16 represented Mr. Utley personally in any matters?

17 A. We formed a corporation for him in - I  
18 believe in 1993.

19 Q. Do you recall the entity, the corporation?

20 A. I think it was a consulting corporation.  
21 We just formed it. I mean, we just formed it. That's  
22 all we did.

23 Q. Right.

24 A. We didn't do any more work for him.

25 Q. Just formed the consulting corporation?

KEN SCHANZER & ASSOCIATES, INC. (954) 922-2660



Lorraine Christine Hoffman, Esq.  
 Assistant Staff Counsel  
 The Florida Bar  
 File No. 2003-51, 109(15C)

119

1           A.    Right.

2           Q.    Did you ever advise anyone at iviewit

3           ~~other than, obviously, Mr. Utley, who knew that you~~

4           ~~had represented him in the past, that you had~~

5           ~~represented Mr. Utley at one point?~~

6           A.    No.

7           Q.    Was there any - any question of any

8           conflict?

9           A.    No.

10          Q.    Was there any employment agreement signed

11          by Mr. Utley between Mr. Utley and iviewit?

12          A.    Yes.

13          Q.    And who prepared the employment agreement?

14          A.    Proskauer.

15          Q.    And did you not think that potentially

16          posed a conflict?

17          A.    No.

18          Q.    And who did you represent in the

19          preparation of that employment agreement?

20          A.    The company. We did not represent

21          Mr. Utley.

22          Q.    So there was no waiver of conflict, no

23          conflict letter, nothing went out with regard to

24          Mr. Utley and iviewit?

25          A.    No.

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And further evidence from Mr. Utley's deposition as contrasted to Mr. Wheeler's will further show they both commit perjury. From Utley's deposition we submit deposition in which he clearly perjures himself in that Wheeler in the previous testimony says that he did represent Utley:

From Utley's deposition we submit the following contradictory evidence to Wheeler's statements.

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Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

Proskauer Rose, et al. vs Iviewit.Com, Inc., et al. 8/22/02

1 least nine years before you were introduced to 108

2 Iviewit then?

3 A. Yes.

4 Q. Did you keep up any communications  
5 with him or talk to him on a regular basis?

6 A. Well, we had a mutual friend, as it  
7 turned out, and we were involved in local  
8 philanthropic activities together, so we, yes, we  
9 had fairly frequent contact.

10 Q. Okay. Could you say, then, that you  
11 developed a friendship of sorts with Mr. Wheeler?

12 A. Yes.

13 Q. Other than socially and through your  
14 immediate contact through IBM, did you know  
15 Mr. Wheeler in any other setting?

16 A. No.

17 Q. No other business dealings, no other  
18 representation by yourself of Mr. Wheeler,  
19 nothing of that sort?

20 A. Well, I don't know how you want to  
21 classify being on the same board. We were both  
22 on the philharmonic board. We were both involved  
23 with Community Hospital. I recruited him to  
24 Florida Atlantic University Foundation Board,  
25 which I chaired.

Pat Carl & Associates (763)591-0535 or (800)591-9PCA (722)

Lorraine Christine Hoffman, Esq.  
Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

Proskauer Rose, et al. vs Iviewit.Com, Inc., et al. 8/22/02

Q. Okay. Other than that, he never represented you as an attorney; he never represented you in any case, nothing of that sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

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Finally, on this set of perjured statements by Mr. Wheeler and Mr. Utley, Mr. Wheeler upon being confronted with his contradictions to the Florida Bar, footnotes in his response the following statement that shows clearly that he perjured himself.



<sup>2</sup> We do note that Iviewit has pointed out a misstatement in our April 7, 2003 submission to you, based on the deposition testimony of Mr. Wheeler taken in the litigation between Proskauer and Iviewit. In his deposition, Mr. Wheeler stated that he did not advise Iviewit of the fact that he assisted Mr. Utley, years prior, in forming a corporation for him prior to Mr. Utley's employment with Iviewit. In my letter to you dated April 7, 2003, I erroneously advised you that Mr. Wheeler discussed this representation with Iviewit. Having had a chance to discuss the issue with Mr. Wheeler, I can confirm that his deposition testimony as to that issue is correct. He did not discuss the issue with Iviewit. I apologize for this oversight. Importantly, however, we are unaware of any ethical obligation that would have required Mr. Wheeler to volunteer such information.

These next sets of deposition statements show Mr. Wheeler again committing perjury regarding his knowledge of the Iviewit patent processes in an attempt to claim ignorance and deny his involvement in the patent theft by Mr. Utley and others.

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Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)

1 doing nothing more than harassing at this point.

2 MR. SELZ: Well, with all due respect to  
3 your objection, obviously, speaking objections  
4 aren't appropriate, certainly in a deposition,  
5 but with regard to that, I think it's actually  
6 something that's referenced in Mr. Wheeler's own  
7 letter.

8 So I think I certainly have an ability to  
9 inquire as to what this process was that he was  
10 referencing.

11 MR. TRIGGS: You're wasting time, is what  
12 you're doing.

13 MR. SELZ: Well, you're certainly entitled  
14 to your opinion.

15 Q. Okay. Now, with regard to this image, was  
16 there something also, pan and zoom, or something of  
17 that nature, that was demonstrated to you?

18 A. I'm not familiar with that.

19 Q. How about something called -- I'm sorry.

20 A. It wasn't demonstrated at all at this  
21 stage.

22 Q. I'm talking about at any time during your  
23 representation of iviewit?

24 A. Okay. I'm not familiar with the terms,  
25 pan and zoom.

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1 Q. How about - how about full-screen video?

2 MR. TRIGGS: Object to form. What about  
3 full screen video?

4 Q. Are you familiar with the term?

5 A. Not in any technical sense.

6 Q. Okay. It isn't in your opinion or your  
7 knowledge any way related to the process that  
8 Mr. Bernstein was involved with?

9 MR. TRIGGS: Object to the form,  
10 foundation.

11 A. The process was larger pictures than  
12 available on - presently available on the Internet, as  
13 I understood it.

14 Q. So it was basically an enlargement of a  
15 picture without pixilation. That was your  
16 understanding of the process.

17 A. Right.

18 Q. That you referred to in your letter.

19 A. Correct.

20 Q. Was there any other technology that you  
21 were aware of that iviewit had developed?

22 A. No.

23 Q. Were there any specific applications that  
24 were discussed between iviewit and yourself in the  
25 sense of the purpose of these corporations?

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Next in Wheeler's own hand notes of meeting he attended regarding the errors in the Zoom & Pan technology, you can see at the top of the sheet the words "Zooming & Panning" clearly written and the meeting was completely about this technology.

March - Zooming + Panning

March - Zooming + Panning  
told Elliott and Ray

told Elliott and Ray -

Discovered in March -

Elliott never sat down + reviewed in detail - assumed patent attorney

Discovered in March -  
Elliott never sat down and reviewed in detail -  
assumed (assured) patent attorney

Ray did not have complete understanding as to how it worked - never focused on intrinsics of invention

Ray did not have complete understanding as to how it worked - never focused on intrinsics of invention -

September - meeting with Ray  
  
(WD) didn't raise level of understanding superficial (WD) -

Sept → meeting with Ray

Hinjins didn't raise level of understanding superficial -

March → can't get in now - pick up next time - Ray didn't have enough time - what he was filing - exactly provisional  
what he was filing → exactly provisional

March - Can't get in now - pick up next time - Ray didn't have (enough time) - what he was filing - exactly provisional

Brain didn't spend lot of time trying to figure out if complete

Brain didn't spend lot of time trying to figure out if complete

PROSK000533

Also, you will find in Appendix II many references to Zoom and Panning technology and Mr. Wheeler using the terms quite liberally and with full knowledge, contrary to his deposition statements.

Further contradiction to his deposition statements regarding knowing of the video technology are more hand written notes by Mr. Wheeler, again referencing patent meetings held at Proskauer's New York offices.

Wells  
 Meeting of Proskauer in NY  
 Ray + Bryan met at Tilgher -  
 copy of non-disclosure coming

Document 4.1  
 + Document 1

5 + 6 are intensions -

Steve - "my concerns, issues" - very  
 uncomfortable with what I have read -  
 Brian leaves  
 Ray says walked to train + no issues

Brian calls Chris K. -  
 "everything OK"  
 "on video side - could not give  
 response to video question"

"did not feel comfortable with video -"  
 - couldn't explain how it worked -  
 Steve taken aback by question -  
 they asked - "what is your view about  
 quality of video + how it works"  
 didn't get into how it works -

that is important and needs to be covered -

video - working - not recently → locked 7 -  
 not filed → very important that we complete -



Now from a Private Placement memorandum wherein Mr. Wheeler lists himself as an advisor to the Board, bills for review of the plan, and joint authors and disseminates it with Mr. Utley, you will see that Mr. Wheeler was fully aware of the Iviewit technologies.



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Assistant Staff Counsel  
The Florida Bar  
File No. 2003-51, 109(15C)



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**I. EXECUTIVE SUMMARY**

**Transaction Overview**

Wachovia Securities, Inc. ("WSI") has been engaged by iViewit Holdings, Inc. ("iViewit" or the "Company") as its exclusive agent to assist the Company in raising up to \$12 million in preferred equity capital to become a leading end-to-end solutions provider of video and imaging products for delivery over the Internet. The Company is a developer and provider of proprietary, leading-edge visual and audio enabling, processing technologies supporting rich media streaming and imaging over the Internet. The Company can process and encode (digitize and compress) virtually all types of audio and video media into a variety of Internet-enabled formats while also optimizing the content for distribution across a variety of bandwidths. Using its technology, iViewit can provide multimedia solutions for Internet and CD-based applications. Also, iViewit can store, host, and distribute media content at its data centers or through multiple hosting partners.

iViewit is the leadership company providing video streaming technologies that deliver a rich video experience with virtually distortion-free, full screen capability at normal, TV-equivalent frame rates of 29.97 fps (frames per second) and providing imaging technologies that deliver rich images over the Internet. Similarly, iViewit is the first and only company to provide virtual imaging that preserves and delivers full image quality and detail of the original image - without distortion - not only during compression (up to 100:1), but also through high resolution zooming and panning.

The Company's revenue model is based primarily on encoding, serving, and licensing revenues. The Company commercialized its products in May 2000. Within a short period of time, iViewit has secured 17 customers - primarily in the entertainment, advertising, and hotel markets and many are high profile industry customers. The Company expects to realize approximately \$400,000 in revenue by year-end from these customers.

The Company has developed and launched the following three breakthrough video/audio streaming and image enhancement technologies that enable:

- ➔ 1. full-screen, full-frame rate video (including CD quality audio) at 150-300 Kbps, and at lesser bandwidths, a markedly improved video quality over current industry standards, as depicted below:
- | Bandwidth Range | iViewit Frame Rate | Industry Typical Frame Rate |
|-----------------|--------------------|-----------------------------|
| 28-56 Kbps      | 8-13 frames/sec.   | 4-8 frames/sec.             |
| 56-150 Kbps     | 15-30 fps          | 12-20 fps                   |
| 150-300 Kbps    | 30 fps             | 12-24 fps                   |
- ➔ 2. full-screen, high definition pictures that have "scan, pan and zoom, and virtual tour" capabilities at all bandwidths
  - ➔ 3. high fidelity, audio streams at bandwidths as low as 56 Kbps and mono streams at bandwidths as low as 28.8 Kbps.

iViewit, located in Boca Raton, Florida, was formed in 1999 under the laws of the state of Delaware. Over the past year, iViewit has confirmed the efficacy and reliability of its technologies, initiated digital imaging production, established a demonstration website, developed an initial key management infrastructure, and hired an initial sales and production staff.

The Company continues to pursue an aggressive intellectual property strategy. iViewit has protected its enabling technologies by filing 6 patent pending applications in both the United States and abroad for its video streaming and imaging capabilities, covering a wide array of enabling technologies. The Company also has two remaining provisional patent pending applications that will be converted to patent pending status within the allowable period. The



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File No. 2003-51, 109(15C)

And other evidences throughout the plan of the applications of the technologies:

iViewit plans to leverage its imaging and video technologies into three primary markets: Entertainment, E-commerce, Distance Learning/E-Learning. For intellectual property owners, including film studios, record companies, independent film producers, television networks, sports leagues, etc., iViewit's technologies mean that video streaming can finally become a revenue source. Most of these firms have already begun to stream promotional clips over the Internet. Few, if any, have monetized their content.

p.5 Wachovia BP

Currently, the Company is in negotiations with several large, video-content providers regarding licensing its video streaming technologies. iViewit is moving aggressively towards executing two or three landmark licensing agreements in order to facilitate the broader market adoption of its video streaming technology as the industry standard. As the Company continues these negotiations, it anticipates honing its pricing strategy for other comparable, large-content providers.

p.6 Wachovia BP

And as late as 12/2000 we are still "retaining" Kenneth Rubenstein per the Wachovia Private Placement. It is interesting to note that in Mr. Rubenstein's statements to the Bar of New York, he denies knowledge of being an advisor to the Board and claims it was done without his knowledge. The plan was sent to Mr. Rubenstein repeatedly and was authored under sworn statements as to the accuracy by Mr. Utley and reviewed and billed for by Proskauer Rose.

From Mr. Rubenstein's response to the New York Bar we submit the following statements, which try and minimize the role he played and somehow state that Mr. Bernstein listed Mr. Rubenstein without his permission as an advisor. We submit the entire content of Mr. Rubenstein's response as Exhibit H:



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The Florida Bar  
File No. 2003-51, 109(15C)

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.

Page 9 – Rubenstein response to New York Bar.

From the Wachovia Private Placement that was distributed again and again by Mr. Wheeler to potential clients and was billed for over and over again by Proskauer, we submit in direct contradiction to Mr. Rubenstein's and Wheeler's bogus claims:



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 File No. 2003-51, 109(15C)



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**II. INVESTMENT HIGHLIGHTS**

• **Unique processing technologies for video and imaging**

iViewit's patent pending processing technologies can create high-definition images with "scua, pan, and zoom" capabilities, high-fidelity audio streams, and full-screen, full-frame rate video for streaming over the Internet. The iViewit video technology is a highly scalable process. The resulting files are approximately 25% less than comparable quality files. iViewit 220Kps streams are equivalent to competitive 300Kbps streams. The Company's imaging process delivers images that are photo-quality, resistant to pixelation even at magnification levels of 30:1. Images produced by iViewit's proprietary process are identical in quality regardless of the end-user's Internet connection speed. File size options are tailored to minimize download times and optimize the end-user's experience.

• **Complementary and Seasoned Fortune 100 and Entrepreneurial Management Team**

iViewit has assembled a complementary and seasoned management team with Fortune 100 and early-stage, entrepreneurial experience. Management consists of former IBM operations executives who have experience in building video delivery capabilities and of marketing talent from successful venture-backed technology companies. The Company recognizes its strength in operations and product development and recognizes the need to attract a capable, experienced CEO and CTO to accelerate the Company's development. iViewit has retained Korn / Ferry to assist in the identification and recruitment of this talent.

• **Strong and Experienced Board of Directors and Advisory Board**

iViewit's Board of Directors and Advisors consist of several well-established individuals from the technology, entertainment, and financial community. Directors have extensive backgrounds with top-tier firms such as Goldman Sachs, Kidder Peabody, and McKinsey & Co. Crossbow Ventures has provided \$3.0 million in funding and sits on the Board. Technology and entertainment guidance comes from a partner at Armstrong Hirsch Jackoway & Wertheimer and from Kenneth Rubenstein, the head of the MPEG-2 patent pool.

• **Significant Intellectual Property Position and Strategy**

iViewit has protected its enabling technologies by filing 6 patent pending applications in both the United States and abroad for its video streaming and imaging capabilities, covering a wide array of enabling technologies. The Company also has two remaining provisional patent pending applications that will be converted to patent pending status within the allowable period. The Company has retained Foley & Lardner to shepherd its patent development and procurement. In addition, the Company has retained Kenneth Rubenstein of Proskauer Rose, LLP to oversee its entire patent portfolio. The Company's strategy is to establish market precedence through licensing of trade secrets and know-how.

• **Substantial Market Penetration and Growing Customer Acceptance**

The Company commercialized its products in May 2000. In just 5 months, iViewit has experienced a 75% success rate in obtaining service and licensing customers, securing 17 customers to date - primarily in the entertainment, advertising, and hotel markets. The Company expects to realize approximately \$400,000 in revenues by year-end from these customers. High profile customers include Ellen DeGeneres, Z.com (Alanis Morissette), Hyatt Hotels, Gear Magazine, and Hollywood.com. Highly probable for closing by year-end 2000 include Warner Brothers and Greg Marring Collectibles.

• **Focused on Media Rich Target Markets - Unlocking the Value of Content**

The Company's business strategy is to first target high-profile content owners and distributors as clients to process video and images and to brand those images with iViewit's logo. Secondly, iViewit plans to co-brand with famous celebrities and



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 File No. 2003-51, 109(15C)

And further from that certain Private Placement Memorandum:



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Investment Management, both based in London. Among his primary areas of expertise are technology research and economic research, including electronics, telecommunications and computer software. Most recently, he was Senior Technology Analyst and Vice President of Southeast Research Partners, Inc. where he worked with leading technology companies. He earned a bachelor of arts degree at Yale University and a master of business administration degree at Stanford University.

**Advisors**

**Alan J. Epstein**

Partner, **Armstrong Hirsch Jackway Tyerman & Werthelmer, P.C.**

Mr. Epstein's law practice consists of advising Internet companies on various issues pertaining to the entertainment and sports industries, including the creation, licensing and acquisition of content, the introduction and negotiation of strategic partner relationships, and various other matters relating to the convergence of technology and content. Mr. Epstein also advises his firm's numerous celebrity clients on the exploitation and protection of their name and likeness rights and content on the Internet, as well as merchandising, endorsement and sponsorship deals. Prior to entering the UCLA School of Law, Mr. Epstein was a certified public accountant at Deloitte Haskins & Sells in Dallas, Texas.

**Kenneth Rubenstein**

Partner, **Proskauer Rose LLP**

Mr. Rubenstein is a partner at Proskauer Rose LLP law firm and is the patent attorney for iViewit. He is a registered patent attorney before the U.S. Patent & Trademark Office. Mr. Rubenstein counsels his clients with respect to the validity and infringement of competitors' patents, as well as prosecutes patent applications. For the past several years he has worked on the formation of a patent pool, for MPEG-2 technology, involving large consumer electronics and entertainment companies. He is also a former member of the legal staff at Bell Laboratories. Mr. Rubenstein received his law degree, cum laude, from New York Law School, and his Ph.D. in physics from the Massachusetts Institute of Technology where he also graduated with a B.S. Degree.

**Christopher C. Wheeler**

Partner, **Proskauer Rose LLP**

Mr. Wheeler is a member of Proskauer Rose LLP's Corporate Department and as a partner in the Florida office has a versatile transactional practice. He has had extensive experience in real estate and corporate law, institutional lending and workouts, administrative law and industrial revenue bond financing. Moreover, he serves as a strategist and counselor to many clients in handling their other legal and business matters. Mr. Wheeler is well-versed in general corporate law as well as mergers and acquisitions and securities matters. He has guided companies from startup through initial private placements to public offerings. A graduate of Hamilton College and Cornell Law School, Mr. Wheeler was a member of the managing Board of Editor of the Cornell Law Review.

**Legal & Accounting Counsel**

**Arthur Andersen, LLP**

Arthur Andersen's vision is to be the partner for success in the New Economy. The firm helps clients find new ways to create, manage and measure value in the rapidly changing global economy. With world-class skills in assurance, tax, consulting and corporate finance, Arthur Andersen has more than 70,000 people in 83 countries that are united by a single worldwide operating structure that fosters inventiveness, knowledge sharing and a focus on client success. Since its beginning in 1913, Arthur Andersen has realized 86 years of uninterrupted growth, with 1999 revenues over \$7 billion. Arthur Andersen is a business unit of Andersen Worldwide.

**Proskauer Rose, LLP**

This law firm is one of the nation's largest law firms, providing a wide variety of legal services to major corporations and other clients through the United States and around the



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Assistant Staff Counsel  
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File No. 2003-51, 109(15C)

◆ ***Significant Intellectual Property Position and Strategy***

iviewit has protected its enabling technologies by filing 6 patent pending applications in both the United States and abroad for its video streaming and imaging capabilities, covering a wide array of enabling technologies. The Company also has two remaining provisional patent pending applications that will be converted to patent pending status within the allowable period. The Company has retained Foley & Lardner to shepherd its patent development and procurement. In addition, the Company has retained Kenneth Rubenstein of Proskauer Rose, LLP to oversee its entire patent portfolio. The Company's strategy is to establish market precedence through licensing of trade secrets and know-how.

◆ ***Unique processing technologies for video and imaging***

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p.11 Wachovia BP

And this business plan referenced a new technology, a new era for camera's and imaging devices with out pixilation and now commonly referred to as "digital zoom" available on almost every digital camera being produced.



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File No. 2003-51, 109(15C)

**3. Digital Cameras and Instrumentation**

The broadness of iviewit's technologies and its applications outside an Internet based environment depict the scope of the pending patents and their uses in other markets. One such application is in the huge and growing market for digitization, instrumentation, and consumer products such as the digital camera market. Recently, iviewit and Eastman Kodak began a series of discussions that are now formative, and an agreement could provide significant revenue as early as summer 2001.

The applications for Kodak would follow a logical path to create a value added option that would initially be available on its "high end" digital cameras, and then be led downstream to the broad and sizeable moderately priced digital camera lines. In each case the following would be the applications provided to Eastman Kodak for its new and future camera entries:

p.22 Wachovia BP

Mr. Wheeler is also listed as an advisor to the Board in the Wachovia Private Placement which as will be evidenced he also billed for such review of the plan prior to dissemination.

We cite as evidence:

Finally, Wheeler again under deposition perjures himself, claiming he had no idea of the camera applications for Iviewit's technology.



We submit from Wheeler's deposition:

3 || Q. Was there ever any representation made-  
 3 Q. Was there ever any representation made  
 4 that you can recall that the technology, to the extent  
 5 that it was going to be protected or was in a soon to  
 6 be protected form, would be compensated by royalties  
 7 almost immediately?  
 8 A. No.  
 9 Q. Was there any discussion with regard to  
 10 any kind of digital camera usage for the technology  
 11 that you can recall?  
 12 A. Digital camera usage? Not to my  
 13 knowledge.  
 14 Q. Was there ever anything with a Nikon  
 15 camera that was presented at any board meeting or any  
 16 meeting with investors?  
 17



## EXHIBIT G

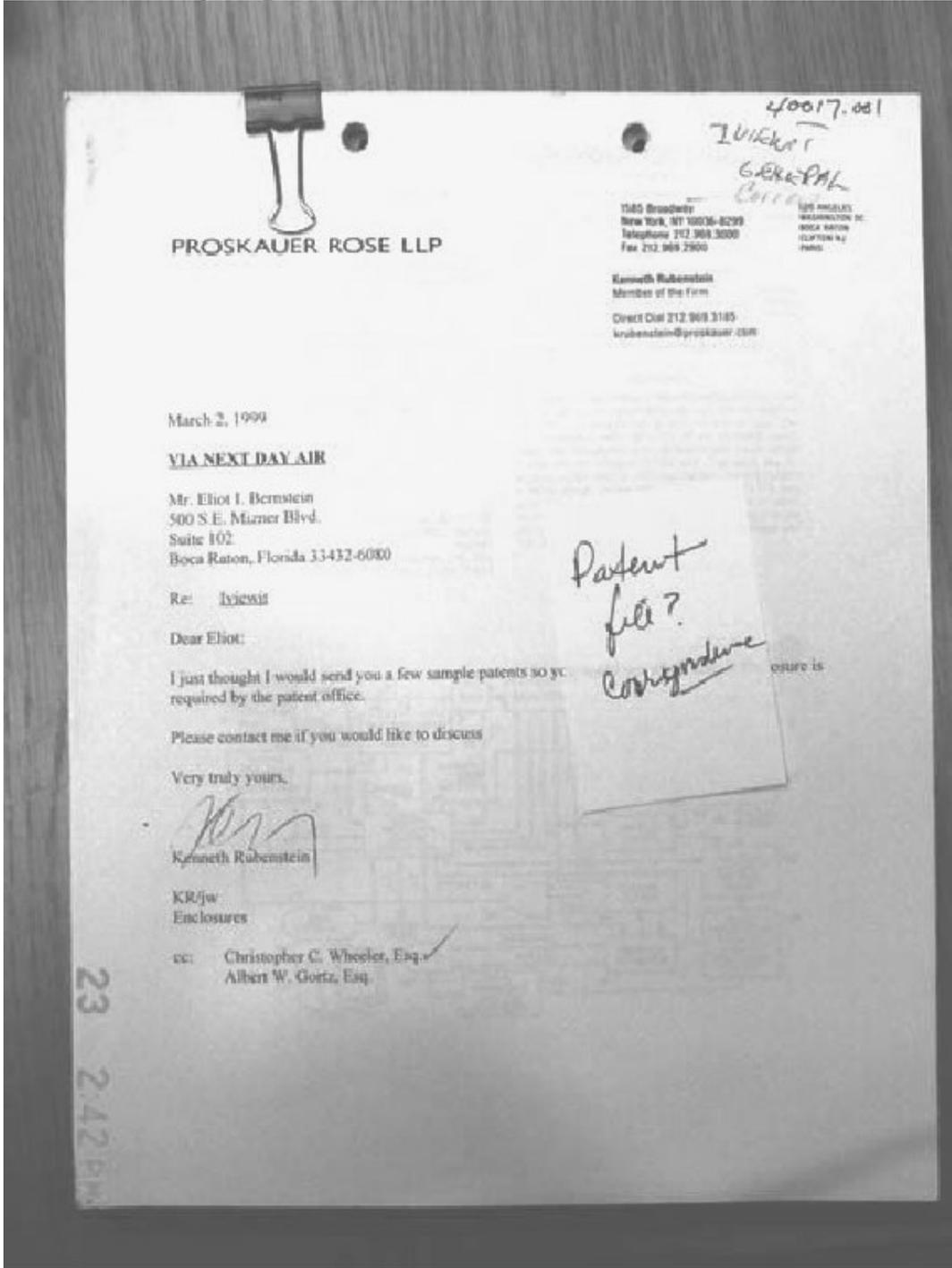
### DEPOSITION STATEMENTS OF RUBENSTEIN & EVIDENCES OF PERJURED DEPOSITION STATEMENTS

**In the opening statement of Mr. Rubenstein he flatly denies any knowledge or involvement with Iviewit and Eliot Bernstein. The denial comes from the fact that upon being requested for deposition, Proskauer Rose stated to Judge Jorge Labarga that he had never heard of or had dealings with Iviewit and thus had no idea why he was being deposed other than harassment.**

2 Q. Do you have any information at all  
3 with regard to any of the IViewIt entities?  
4 A. Not at this time, no.  
5 Q. "Not at this time." Did you have  
6 any information at any time in the past, sir?  
7 A. Not that I know of right now.  
8 Q. Do you have any files or records  
9 indicating that you had any dealings with -- [  
10 and I will go through a list here --  
11 IViewIt.com, Inc.?  
12 A. Not that I know of.  
13 Q. IViewIt, LLC?  
14 A. Not that I know of.  
15 Q. UViewIt?  
16 A. Not that I know of.  
17 Q. IViewIt, Inc.?  
18 A. Not that I know of.  
19 Q. Have you ever heard of an  
20 individual named Eliot Bernstein?  
21 A. I might have.  
22 Q. Well, sir, that's either a "Yes"  
23 or "No" question.  
24 A. Like I said, I think he works for  
25 IViewIt, and I may have heard his name.



Here Mr. Rubenstein pens a letter to Eliot Bernstein whom he denies knowing above, enclosing several hundred pages of patent applications for Mr. Bernstein to review in writing the patents for Iviewit.



PROSKAUER ROSE LLP

1345 Broadway  
New York, NY 10016-6299  
Telephone 212 968 3000  
Fax 212 968 2900

Kenneth Rubenstein  
Member of the Firm  
Direct Dial 212 968 3145  
krubenstein@proskauer.com

March 2, 1999

VIA NEXT DAY AIR

Mr. Eliot I. Bernstein  
500 S.E. Mizner Blvd.  
Suite 102  
Boca Raton, Florida 33432-6000

Re: Iyessit

Dear Eliot:

I just thought I would send you a few sample patents so you  
required by the patent office.

Please contact me if you would like to discuss

Very truly yours,

*KR*  
Kenneth Rubenstein

KR/jw  
Enclosures

cc: Christopher C. Wheeler, Esq.  
Albert W. Gortz, Esq.

Patent  
file?  
Correspondence

enclosure is

23 2:42 PM



**Next Mr. Rubenstein denies knowing of any of the Iviewit inventions and following his statements will come hosts of contradictory evidence to his statements.**



Rubenstein Lies About Involvement

8 Q. well, sir, this is your testimony  
9 at your deposition.

10 A. That's right, which you are making  
11 me do. I consider the deposition nothing but  
12 harassment, considering that I had nothing to  
13 do with the company. It's just a form of  
14 harassment.

page 15

12 Q. Are you familiar with something  
13 that's called "pan and zoom technology"?

14 A. I am not sure what you mean by  
15 that.

16 Q. well, let me start very simply,  
17 and say this. Are you familiar with a concept  
18 that an image can be enlarged while being  
19 transmitted on a narrow bandwidth?

20 A. I don't know what you are talking  
21 about.

22 Q. Okay. well, let me go back to  
23 this, then, sir. Are you familiar at all with  
24 the technology involved with IViewIt.com?

25 A. No.

**HE CLEARLY STATES AND LIES AND SAYS HE IS NOT FAMILIAR!**



page 75 we see Ken switch stories in direct contradiction of his own testimony as evidence has begun falling,

10 Q. You previously testified that you  
11 had never reviewed any of IViewIt's  
12 technologies; is that correct?

13 A. I never testified to that. what I  
14 told you is, I don't have any knowledge of it  
15 right now.

16 Q. Okay.

17 A. I don't know whether I reviewed it  
18 or not.



p. 75

This is in direct contradiction to his prior dep.

KEN RUBENSTEIN DEPOSITION

3 A. Not that I recall.



4 Q. Did you ever opine with regard to  
5 the validity of any patent applied for or  
6 received by IViewIt.com?

7 A. Like I say, I was not in any way  
8 involved with getting patents for IViewIt.

9 Q. what were you involved with, if  
10 you were, with IViewIt?

11 A. The only thing I did for IViewIt  
12 is I referred them to another patent lawyer.



3           Q.     Okay, if you don't have a  
4     recollection of reviewing it, but then it's  
5     possible that you had; is that correct?

6           MR. PRUSASKI:  Anything's  
7     possible.  I think we could stipulate to  
8     that.

9           A.     Right, I don't think it's possible  
10    but -- and I don't think it happened.

11          Q.     Do you have any clearer  
12    recollection of it because of this letter?

13          A.     No, I don't have a detailed  
14    recollection or any recollection of it at this  
15    point in time.

**Now a letter from an executive at AOLTW/WB regarding Mr. Rubenstein's opining on the technologies for them.**



## LETTER OF MR. COLTER RELYING ON RESPONDENT'S OPINION

Subj:iviewit  
Date:1/14/2002 9:51:08 PM Pacific Standard Time  
From:David.Colter@warnerbros.com (DColter0264)  
To:John.calkins@warnerbros.com  
CC:Chuck.dages@warnerbros.com, Alan.Bell@warnerbros.com (ABell0648)  
Sent on: AOL 6.0 for Windows US sub 10551

John,

In all the review we have done with iviewit it seems to boil down to the status of the patents and their inherent value. At that point it is a risk-reward evaluation -- without awarded patents it is difficult to completely assess the value. I would suggest that we consider one other perspective...

Prior to iviewit (approx Feb 2000) the video we (WB Online) delivered on the web was QCIF (160x120) or smaller and was below full frame rate. At the time of our first meeting we also identified On2 along with iviewit as two solid players who could deliver full screen full frame rate web video. All who saw it were impressed. Greg and I visited iviewit in August and reported back that they had filed patents on scaling techniques that hinged upon a visual 'trick' which allowed the human eye to accept 320x240 video scaled to 640x480 at 30 fps as close to VHS quality. We checked with Ken Rubenstein and others who provided some solid support for iviewit, and Chris Cookson asked Greg and I to continue to work with iviewit in an R&D capacity.

In the fall of 2000 iviewit also met with a number of folks at WB Online (in September and October) and demonstrated their process and techniques to Sam Smith, Houston, Joe Annino and others. Sam contacted iviewit a number of times and requested the patents, along with specifics of the iviewit process to evaluate what they were doing. I was not part of these meetings, but was aware they had occurred, as Jack Scanlon kept me up to date.

When I sat down with Morgan and Houston in March 2001 to see what technology they were using to encode video, it was clear that they were using some of the techniques that would overlap with iviewit's filed process patents (still pending), but it is not clear that these were all learned from iviewit -- we may wish to explore this a little. This meeting was to determine what equipment we would get for our lab at 611 Brand. This same information was also provided to iviewit by Morgan as they were establishing the company as an outsourcing facility for encoding our content.

I am aware of several meeting held between iviewit and WB Online to share information of techniques and process, and was invited to a few of them.

We all signed iviewit's confidentiality agreement. So to the other perspective....

We have an opportunity to establish a license with iviewit for a modest fee at this time, and establish a MFN. In good faith we signed the confidentiality agreement, iviewit revealed their processes and techniques, and we now use those techniques in encoding. As we have discussed on a few occasions, these techniques now appear in the public domain to some extent in documentation for Real Producer, WMP Developer Guides, Media Cleaner Pro, etc, but they were not available in 2000. I would not suggest we learned the techniques completely from iviewit (I actually do not know the answer), but a modest licensing fee may be appropriate and honorable considering our good faith relationship in signing the confidentiality doc.

If we choose to pass at this time the risk is primarily from iviewit's main investor, Crossbow Ventures, gaining control of the IP and approaching WB later for a license -- I do not believe they will be as friendly considering their dealings with iviewit and it's employees since Feb of 2001. It is estimated that the patents will be completed in 8-12 months.



As you are all aware I have a personal relationship with Eliot Bernstein, the founder of iviewit, and as a result, I left the evaluations and decisions to Greg, and others, and only assisted iviewit to get to the correct people in WB and AOLTW. I wanted to add this perspective as we consider if there is an option to pursue with iviewit -- they are facing continued financial pressure right now. There are many other threads to our interaction with iviewit and I would be happy to discuss.

Thank,  
David

**And yet another letter regarding Rubenstein opining on the technologies is sent to the AOLTW Venture fund to secure investment for Iviewit.**



## LETTER OF MR. COLTER DESCRIBING RESPONDENT'S INVOLVEMENT

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

From: David.Colter@warnerbros.com [mailto:David.Colter@warnerbros.com]

Sent: Wednesday, August 01, 2001 10:28 PM

To: HeidiKrauel@aol.com

Cc: HPowell@cb-ventures.com; Eliot@iviewit.com

Subject: Re: Today -- iviewit

Heidi,

Here is the info for Hank Powell from Crossbow Ventures. I have copied him above to make the introduction.

iviewit has undergone a restructuring of their business from an encoding focused business to a technology licensing business focus over the past 4-5 months. They are in the process of establishing a new executive team to handle this 'new' direction and have been working on the new business plan. They have indicated that we should have the revised plan next week.

They currently are finalizing a contract with WB Online to provide encoding services as a hold over from our original collaboration, and as a showcase for the technologies and patents.

Their site [www.iviewit.com](http://www.iviewit.com) contains good demonstrations of the zooming and video encoding technologies. I have also copied the inventor/founder Eliot Bernstein, who I will ask to provide some specific links on the site to see the best representation of their work and technical capabilities.

Their patents are pending, but have received favorable opinions from people such as Ken Rubenstein on the merit of the patents, as well as thorough review by Greg Thagard and myself.

Let's talk further after you see the business plan and connect with Hank.

Thanx,  
David

**Then from Mr. Rubenstein's deposition he states regarding the above letters and conversations leading to them:**



Ken Rubenstein Deposition

6 ever seen that E-mail before?

7 A. Is this an E-mail from David  
8 Colter to Heidi Krauel?

9 Q. Correct.

10 MR. PRUSASKI: The one dated  
11 August 1, 2001?

12 MR. SELZ: Correct.

13 A. Right, I see the E-mail.

14 Q. Okay.

15 MR. SELZ: Let's get it marked as  
16 2.

17 (Deposition Exhibit Defendants' 2,  
18 fax transmittal cover sheet and E-mails,  
19 was marked for identification, as of  
20 this date.)

21 Q. Sir, do you have any reason to  
22 know why your name is mentioned in that  
23 E-mail?

24 A. No, because I don't recall giving  
25 any opinions about the patents.

□

88

1 Rubenstein

2 Q. And you never, to the best of your  
3 recollection, had any discussions with  
4 Mr. Thagard with regard to same, either?

5 A. Like I say, any discussion I might  
6 have or might not have had with Mr. Thagard  
7 would be privileged.

8 Q. I am going to put you on hold for  
Page 79



Next we find Mr. Wheeler sending over the entire Iviewit patent portfolio for Mr. Rubenstein to review, although, Rubenstein, Wheeler and Utley all deny in their depositions his having ANY involvement with Iviewit.

PROSKAUER ROSE LLP

NEW YORK  
LOS ANGELES  
WASHINGTON DC  
BOCA RATON  
CLIFTON NJ  
PARIS

**Intraoffice Memo**

**Re:** iviewit.com, Inc.  
**To:** Kenneth Rubenstein  
**From:** Christopher C. Wheeler  
**Date:** August 25, 2000  
**Client-Matter:** 40017.001

Enclosed is a copy of iviewit's Patent Portfolio binder.

PROSK000536

0894/40017-001 BRLIB1/274961 v1

08/25/00 05:37 PM (11402)

Next Rubenstein is seen attending patent meetings.



**Eliot I Bernstein**

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**From:** Eliot I. Bernstein [res0bf4a@verizon.net]  
**Sent:** Monday, July 09, 2001 3:38 PM  
**To:** H. Hickman "Hank" Powell (E-mail); H. Hickman "Hank" Powell (E-mail 2)  
**Subject:** FW: Tuesday Meeting

-----Original Message-----  
From: Christopher Wheeler [mailto:CWHEELER@proskauer.com]  
Sent: Friday, May 28, 1999 6:26 AM  
To: alps@netline.net  
Subject: Tuesday Meeting

**\*\* High Priority \*\***

Eliot,

Ken Rubenstein will be available on Tuesday morning sometime between 8:30 and 9 to discuss the patents. We can conference him in after we start with Joao and ourselves. Have you already made sure that Joao will be available? Please advise immediately.

Best regards,

Chris

1

**Next Mr. Rubenstein and Proskauer Rose deny Mr. Rubenstein's involvement and that he is not involved in the Iviewit billings.**

**From Mr. Rubenstein's response to the New York Bar:**



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.

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

Proksauer 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.

**And from Mr. Rubenstein’s deposition we find:**

16            Q.    Are you aware, sir, that your name  
 17            is referenced in billing statements from  
 18            Proskauer Rose to IViewIt more than a dozen  
 19            times?  
 20            A.    No, I am not.

**From the Proksauer Rose billings we find quite a different story:**



**BILLINGS OF MR. WHEELER FROM PROSKAUER BOCA RATON, FLA.  
OFFICE**

02/18/99 C WHEELER .25 Conf with Mr. Rubenstein

01/14/99 C WHEELER .50 Follow up on status on intellectual property review and new incorporation

01/28/99 A GORTZ .75 Ken Rubenstein call, cf call Eliot Bernstein & Ken Rubenstein, cf Mara Robbins re confidentiality agreement

02/01/99 C WHEELER .25 Conf as to status of intellectual property work

02/16/99 C WHEELER .25 Conf with Mr. Bernstein; call to Mr. Rubenstein

02/17/99 C WHEELER .25 Call to Mr. Rubenstein re patent advice; call with Ms. Coleman re financial advisor

02/18/99 C WHEELER .25 Conf with Mr. Rubenstein

03/16/99 M ROBBINS .50 Inter-office conference with Wheeler re: intellectual property matters.

03/29/99 K HEALY 1.25 Tc w/C. Wheeler; tcs w/Eliot Bernstein re intellectual property protections; tc w/Raymond Joao re patent pending; tcs w/E. Bernstein and Jerry Levin re license business models; review protectability of web-sites

03/31/99 K HEALY .25 Tc w/K. Rubenstein re Patent advice

04/22/99 K HEALY .25 Tc w/R. Joao; e-mail to E. Bernstein

05/12/99 C WHEELER 1.00 Conf with Messrs Bernstein and Lewin; call to R. Joao; transmittal of agreement

05/12/99 C WHEELER .50 Conf with Mr. Joao re stock ownership, subsidiary and patent protection

05/12/99 C WHEELER 2.00 Conf with Joao; meeting with Thompson to arrange for confid. agreements and generic agreements



05/20/99 C WHEELER .75 Conf with Mr. Joao

05/20/99 C WHEELER 2.00 Call to Mr. Lewin; conf with Ken Rubenstein;  
conf with Mara Lerner; numerous conf with  
Elliot Bernstein

05/20/99 C WHEELER 1.00 Conf with Mr. Joao

05/25/99 C WHEELER 11.00 Trip to Orlando for meeting with Real 3D  
technology staff

05/26/99 C WHEELER 1.00 Review of patent; set up patent conference;  
arrange follow up on shares;

05/27/99 C WHEELER .50 Conf with Mr. Rubenstein

05/27/99 C WHEELER 1.50 Overview of Iviewit patent matters and  
corporate matters

05/28/99 C WHEELER .50 Confirmation on Joao meeting

05/28/99 C WHEELER 2.00 Meeting as to patent issues and management  
matters

05/28/99 C WHEELER .50 Conf. w/K.Rubenstein

05/28/99 K HEALY .50 Tcs w/C. Wheeler re IP Issues; review web-site

05/31/99 C WHEELER 1.00 Review of patent and other materials

05/01/99 C WHEELER 4.00 Conf with Mr. Rubenstein; conf with Mr. Lewin;  
conf with Mr. Healy; conf with Mr. Joao; conf  
with Mr. Akselrod re patents, tax  
ramifications, copyright work;

05/01/99 K HEALY 1.50 Conference call w/E. Bernstein, R. Joao, K.  
Rubenstein, C. Wheeler, and others re iviewit  
I.P. issues; review cd.rom

06/03/99 C WHEELER 2.00 Call to Mr. Joao; call to Mr. Healy; conf with  
Mr. Bernstein; review of numerous  
correspondence; conf with Mr. Lewin

06/04/99 C WHEELER 2.00 Prep of revised confidentiality agreement; call  
to Ms. Bibona; conf with Mr. Joao;

06/11/99 C WHEELER .25 Call to R.Joao

06/16/99 C WHEELER 4.00 Meeting with Mr. Joao and Messrs. Bernstein re patent and other matters

06/23/99 S KAPP .50 Conf. with CCW regarding various matters pertaining to structure, patents, confidentiality agreements

06/18/99 C WHEELER 3.50 Review of patents with Mr. Joao; conf with Mr. Lewin re status; conf with Mr. Bernstein; Check of status of new corporate documents

06/23/99 S KAPP .50 Conf. with CCW regarding various matters pertaining to structure, patents, confidentiality agreements

07/28/99 C WHEELER 3.50 Conf with Mr. Lewin; conf with Mr. Buchsbaum; review of corporate status; conf with Mr. Thompson; review of corres. from Mr. Epstein; call to Mr. Joao; conf with Mr. Wilson; conf with Mr. Joao; call to Mr. Lewin

07/31/99 C WHEELER 1.50 Review and organization of various matters involving meetings, venture capital, patents and prospects

08/04/99 S KAPP .25 T/c with Ray Joao

09/09/99 K HEALY .50 Review files to prepare IP Materials for E. Bernstein and B. Utley

09/10/99 C WHEELER .25 Arrange for patents

09/10/99 C WHEELER 2.00 Conf with Mr. Brandon; conf with Mr. Brandon; conf with Mr. Rubenstein; transmittal of materials to Mr. Rubenstein; Call to Mr. Joao

09/13/99 C WHEELER 1.00 Conf with Mr. Brandon; conf with Mr. Joao;

09/13/99 J ZAMMAS 1.25 Discuss patents with C. Wheeler's secretary;

09/21/99 C WHEELER .25 Call to Mr. Utley re patent meeting

09/21/99 C WHEELER 1.00 Conf with Mr. Utley re patent meeting and status of negotiations; call to Mr. Brandon



09/22/99 J ZAMMAS 3.00 Work on patent binders and trademark binders for C. Wheeler; telephone Raymond Joao regarding all patents; compile all documents by shareholder/notcholder

09/23/99 J ZAMMAS .25 Telephone Raymond Joao regarding patents.

09/24/99 C WHEELER 1.00 Call on utilities; follow up on space requirements; conf on patent questions

09/24/99 J ZAMMAS .50 Update shareholder list; telephone Raymond Joao's secretary regarding patents; advise C. Wheeler.

09/27/99 J ZAMMAS 2.50 Revise consents to indicate that Brian Utley is elected as Chief Operating Officer of the three entities; telephone calls from Mr. Joao's office regarding patents; complete work on patent binders for C. Wheeler; send stock certificate of uview.com, Inc. to Patricia Daniels; send iviewit.com LLC subscription letters to James Armstrong, Andrew Dietz, Lisa Friedstein and James Osterling.

11/29/99 J ZAMMAS .25 Copy official filing receipts for two patents, insert in patent binders and give two copies to Brian Utley to insert in his binders.

01/11/00 C WHEELER 1.00 Conf with Mr. Bernstein re patents and infringement

01/11/00 C WHEELER 1.00 Conf with Mr. Joao re patents

01/11/00 C WHEELER .50 Conf with Mr. Lewin re patents

10/11/00 C WHEELER 1.50 Conf with Mr. Utley re Ken Rubenstein and Time Warner; conf with Mr. Rubenstein

**Finally, with regard to Mr. Rubenstein's involvement are several statements from Ivieuit investors regarding Mr. Rubenstein's involvement with Ivieuit that completely contradict his denials of involvement.**



**ELECTRONIC MAIL MESSAGE FROM SIMON L. BERNSTEIN, FORMER  
CHAIRMAN OF THE BOARD OF DIRECTORS OF THE COMPANY**

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

From: Alyssa Zeiger [mailto:alyssa@lifeinsuranceconcepts.com]  
Sent: Friday, May 16, 2003 10:33 AM  
To: 'iviewit@worldnet.att.net'  
Cc: 'simon@lifeinsuranceconcepts.com'  
Subject: FW: response to your letter

Eliot,

Here is my account of those questions you of asked for regarding  
iviewit Technologies, Inc.

1. Not having Wheeler's testimony it's difficult for me to respond to the 1st question. However, Real 3d (Jerry Stanley) was introduced to us and their opinion including the opinion of their engineering staff was that the patents that we showed them were outstanding and extremely valuable. Mr. Stanley told myself, Eliot, Jerry Lewin and Chris Wheeler that we were onto something big.
2. The problems that were encountered by Ray Joao's work were that is seemed to be incomplete, sloppy and certainly not in a professional manner for which the billings indicated it were. With regard to Foley and Lardner's work, there work also seemed to be incomplete with regard to accomplishing the patent approvals. It was also noted that including work with Mr. Utley they were writing patents in his name.
3. In the same regard Mr. Utley told me when I confronted him with this that it was common for the writer to put new patents in his name but assured me that all patents were assigned to iviewit Technologies, Inc. This was passed on to one of the partners at Proskauer Rose and I was assured that this with in proper conduct.
4. With regard to Ken Rubenstein, I was told by Brian Utley and Chris Wheeler that he was a partner of Proskauer Rose and that he was in fact overseeing our patent work and it also was mentioned that he advised the board of directors with regard to raising capital.
5. It is my opinion that Hank Powell a partner of Crossbow Ventures and also a member of the board of iviewit Technologies, Inc. violated his fiduciary responsibility as said board member to iviewit Technologies, Inc. by recommending iviewit Technologies, Inc. move forward and securing additional loans from Crossbow Ventures. He also told me that Crossbow had no intention of ever collecting on the notes but in fact it gave further protection of iviewit Technologies, Inc. from any other creditors. It is my opinion that this convinced the board of directors to vote on such loans.



6. With regard to Chris Wheeler's recommendation of Bryan Utley it's my opinion that he knew of the past problems Mr. Utley had with Monte Friedkin and withheld this information to myself and to Eliot.
7. My understanding of the relationship between Mr. Utley and Mr. Wheeler is that they are good friends both socially and professionally. Also they served on many boards together.

I believe this covers the pertinent questions you asked me for. I hope this helps.



## STATEMENT OF GUY IANTONI, FORMER VICE PRESIDENT OF SALES OF THE COMPANY

June 13, 2003

The following information may be used as my sworn testimony in describing the history and events relating to iviewit (The Company) and its affiliated management and advisors.

As an existing shareholder and personal investor in the Company, I am appalled by the fraud and mismanagement demonstrated by the former President, Brian Utley and legal counsel including: Raymond Joao, Kenneth Rubenstein, Christopher Wheeler and others. I was an employee of the Company since its inception in 1998 to February 2001. I was personally in meetings where Christopher Wheeler recommended Brian Utley as a strong candidate for the President position at iviewit with his experience at IBM. I was one of the first individuals to witness iviewit's zoom and pan technology as well as full-screen, full-frame rate video streaming. I recall viewing iviewit's technologies as early as February of 1998. I attended many meetings with the technologies inventors: Eliot Bernstein, Jude Rosario and Zakirul Shirajee at iviewit's Florida office and witnessed several meetings between the inventors and Raymond Joao. I had discussions with Eliot Bernstein in late 1999 when Eliot expressed his reservations and concerns that the patent work of Raymond Joao, Kenneth Rubenstein and Brian Utley was both incomplete and not representative of the inventors' true findings. I was also present later 1999-2000 as William Dick and Foley and Lardner continued the errors in the patents caused by Raymond Joao and Kenneth Rubenstein.

My personal investment into the Company was largely due to the remarks of attorney Kenneth Rubenstein on a conference call with Eliot Bernstein stating "iviewit's technology will be extremely valuable as part of the MPEG patent pool." I helped author many business plans with Eliot Bernstein, Jim Armstrong, Wachovia Securities and others including Kenneth Rubenstein as a key Company advisor. I attended many face-to-face meetings where Christopher Wheeler both witnessed iviewit's technology and introduced potential clients and investors to the management team. Mr. Wheeler had hand picked the management team and controlled their actions.

It was abusive the amount of unnecessary legal services generated by Christopher Wheeler and Proskauer Rose at such an early stage in the Company's development as we were mislead to believe that these costs would offset revenue by Wheeler/Rubenstein/PR clients and patent pool royalties. I recall the company going through several legal changes including: C-corp, several LLCs, Holding companies, name changes etc. I was stunned to hear that the Company had hundreds of thousands of payables due Proskauer Rose. Brian Utley had primary fiduciary responsibility (or more like irresponsibility) for the use of all investment proceeds, legal services and vendor contracts.

I welcome the opportunity to be personally involved in defending the Company and its assets

Sincerely,

Guy T. Iantoni



**STATEMENT OF JAMES F. ARMSTRONG, FORMER VICE PRESIDENT OF  
SALES & MARKETING OF THE COMPANY**

Wednesday, April 30, 2003

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

Dear Eliot,

I have spent the past several evenings reviewing the depositions taken from Wheeler, Utley and Rubenstein and I am stunned. The extent of their lies and their orchestrated obfuscation compels me to reduce to writing some of the experiences that I had with these men. Please use this letter and the statements contained herein as my sworn statement of fact in your continuing effort to expose the truth, punish the evil and reward the deserving.

As a friend of Eliot's, since childhood, I was aware of iviewit from its beginnings but it was only after learning from Chris Wheeler about Ken Rubenstein's favorable opinion regarding iviewit's video and imaging technologies that I became seriously interested in the company. I resigned from a lucrative senior management position with Prudential Securities to help Eliot with his "project". Ultimately, I invested over \$20,000 and declined significant career opportunities in order to begin formally working for iviewit in the fall of 1999. Amongst the most egregious of the statements contained in the depositions is that made by Ken Rubenstein when he claims he does not know iviewit or anything about its technologies or processes. Ken is one of the primary reasons why I and many others invested their time and resources in the company. It was the extremely positive opinions of this highly respected attorney, who has direct links to the MPEG patent pool, which compelled so many of us to make the commitments that we made. Mr. Rubenstein is lying in his deposition.

Similarly, Chris Wheeler denies having any role in the patent work performed for iviewit other than referring us to patent counsel that ultimately ripped us off (but that's a different issue). Eliot, you have done a fine job putting together the billing evidence which is irrefutable. Not only did Wheeler play an instrumental and ongoing role in the handling of the patents, he was the primary contact point with Ken Rubenstein. I also remember Chris, in a meeting held at Real 3D, espousing the novelty of iviewit's inventions and discussing the apparent absence of any prior art in this area. In addition, Chris publicly shared Ken Rubenstein's opinion that the iviewit technologies were "novel". It was during this meeting of Intel and Lockheed engineers that a member of Real 3D's senior management, Rosalie Bibona, stated that iviewit's inventions could be worth billions of dollars. Wheeler states in his deposition that he was unfamiliar with any video inventions until sometime after the Real 3D meeting. Mr Wheeler is lying and everyone present at that meeting can testify to that fact. I was at a meeting held at Si Bernstein's house where Eliot Bernstein, Gerry Lewin, Chris Wheeler, Si Bernstein and Hassan Mia were in attendance. This meeting took place prior to the Real 3D meeting and its purpose was to show Hassan the video streams. It was at this meeting that



Hassan Mia stated "... if what I'm seeing is true, you've found the Holy Grail". The term "Holy Grail" can be found in many early versions of iviewit's business plans.

Let's talk about Brian Utley. This man is a stammering buffoon. Were it not for his resume full of accomplishments and the glowing recommendation of our trusted counsel, he probably never would have passed an initial candidate screening. Unfortunately, we learned too late that many of Brian's accomplishments were fabricated and our trusted advisor, Chris Wheeler, was a liar. I remember a meeting of Eliot, Guy Iantoni, Brian Utley, Mike Reale, Si Bernstein, Chris Wheeler and two investment bankers from Wachovia, Mr. Joe Lee and his associate (I forget his name). Guy and I had prepared a detailed sales forecast that Joe Lee later referred to as the most complete and detailed he'd ever seen. Brian's task was to complete the financials for Joe's review. The work that he presented to Joe Lee was pitiful; it was incomplete, inaccurate and inadequately referenced. In short, it was a disastrous embarrassment. We soon learned that that was the best Utley could deliver. Joe Lee insisted that I complete the financial projections for the business plan and that Utley be removed from the project. This is the sort of talent that our trusted advisor, Chris Wheeler, brought to his client!

From unauthorized patent disclosure to Danny Sokoloff without the protection of an NDA to outright patent sabotage through the use of bad math in patent applications, Utley never failed to disappoint. He was equally inept in corporate matters. I notified Brian on numerous occasions of the firm's responsibility to communicate to shareholders at least once per year and that iviewit was in default on its notes for not having made an interest payment. Like a child, he chose to bury his head in the sand instead of addressing the problem. His exorbitant use of T&E monies is legend and is only exceeded by his inability to complete a sentence without the excessive use of the word "um".

As they say, "hindsight is 20/20". In this case, it's now clear that Wheeler never had iviewit's interests in mind. He was positioning himself and his friends to benefit from iviewit's inventions and creativity. What makes his crime so heinous is that he masqueraded as our friend.

Sincerely,

James F. Armstrong  
126 Buttonwood Drive  
Fair Haven, NJ, 07704  
732-747-4353  
email: [jimarmstrong@comcast.net](mailto:jimarmstrong@comcast.net)



## STATEMENT OF SHAREHOLDER MITCHELL A. WELSCH, CFP

Date: 12/11/02

Dear Eliot;

I wanted you to know how I feel about all that I have read recently. As a shareholder and someone that has been around this company since the beginning, I don't know how lawyers like Chris Wheeler and law firms like Proskower Rose could allow statements in a business plan that are not true. Therefore, if the business plan were correct then Mr. Utley would have to be lying under oath. In today's world of fair disclosure, this kind of inconsistency makes me outraged. As a shareholder I encourage and would support action taken to bring any wrongdoing to justice. If nothing else, I am unwilling to allow these deceptions to continue. We should pursue action and be compensated for wrongdoing. I know that if Mr. Rubinstein had not been involved with Iviewit it would have significantly affected my decision to contribute funds when I did. His involvement was communicated to me by Mr. Utley, Mr. Wheeler as well as other involved with the company but as legal representation and president of the company they carried the greatest weight. These inconsistencies are unacceptable and criminal in my opinion. What can we do to bring resolution to this situation and whom do we hold accountable?

Sincerely;

**Mitchell A. Welsch, CFP**

Mitchell A. Welsch CFP

**PASSAGES FROM DEPOSITION OF JERRY LEWIN A PRINCIPAL OF  
GOLDSTEIN LEWIN, AND THE COMPANY'S FORMER OUTSIDE  
AUDITOR<sup>51</sup>**

17       Q.    Do you recall ever having discussions or  
18   hearing discussions among principals of iViewit that  
19   they weren't happy with Proskauer's services?

20       A.    The only discussions related was -- Was  
21   it Ken Attelman, the one that -- Who was --

22       Q.    I can't - I can't answer that.

23       A.    You can't answer. There was an attorney  
24   in New York that was supposed to oversee the - or  
25   involved somehow with the patent. And the

KEN SCHANZER & ASSOCIATES, INC. (954) 922-2660

17

1   discussions were related to was he doing a good  
2   enough job overseeing Foley's firm, you know,  
3   handling the patent or he supposed --

4       Q.    Is this Ken Rubenstein?

5       A.    Ken Rubenstein. That's the guy, yes.  
6   There were discussions related to Ken Rubenstein and  
7   the patents. That was it.

8       Q.    Who had those discussions? Who were the



...STILL MORE MR. LEWIN<sup>52</sup>

5 Q. Did Proskauer do patent work for iViewit?

6 A. I'm trying to remember. They did consult  
7 an attorney in New York, one of Proskauer's attorneys  
8 in New York. I don't recall his name. And I do have  
9 to tell you I'm not very good with names.

7 Q. Were there any disagreements concerning  
8 the manner in which the patents had been filed or the  
9 names under which the patents had been filed?

0 A. I don't recall on the names. I recall  
1 there were maybe disagreements of - you know, which I  
2 don't understand - I do not understand patents - of  
3 whether papers were prepared this way or that way or  
4 properly or improperly or -- You know, maybe those  
5 were discussions.



## STATEMENT OF CEO LAMONT

I met with Mr. Rubenstein in the New York offices of Proskauer Rose LLP on Monday January 7, 2002 at 11:30 A.M. Moreover, the purpose of my visit was three fold: (I) to invite him to **REJOIN** the Advisory Board along with David Colter, Vice President of Advanced Technology of Warner Bros. and Greg Thagard, formerly of Warner Bros. and left with him a copy of the Company's January 2002 Business Plan, an Advisory Board Member Agreement, and a Warrant Grant to purchase 450 share of the Company as compensation; (II) to begin a series of discussions pointing to the essentiality of the Iviewit patents pending in his role as patent evaluator of the multimedia patent pools known as MPEG 2 and MPEG 4; and (III) to have a face to face discussion as a means to allow me to ask him to speak to Wayne M. Smith, Vice President & Senior Litigation and Patent Counsel at Warner Bros. to reiterate his prior statements to Warner Bros. executives and overcome his purported conflict that was previously waived. Much to my surprise, during our discussion, Mr. Rubenstein disavowed any knowledge of the Company's patents pending, at which time I felt a bit of embarrassment. Embarrassed, because, once assuming the CEO position, I had prior knowledge of his speaking to people at Warner Bros., such as, but not limited to David Colter, Greg Thagard, and Chris Cookson, and thought I might have interpreted an incorrect picture of those prior discussions. Lastly, I advised him of my discussions with Warner Bros. pertaining to an Advanced Royalty Agreement ("ARA").

Moreover, in reviewing Company documentation, I came across more instances of business plans naming him as an Advisory Board Member, multiple emails of investors and potential licensees naming Mr. Rubenstein as an individual entirely familiar with the Company's technologies, and parole evidence stating that Mr. Rubenstein, when initially the recipient of the Company's disclosures claimed the technologies were "novel," and that "he had missed that," and that "we had never thought of that," and finally that "this changes everything."

Furthermore, although I became a bit suspicious after the meeting with Mr. Rubenstein, and as the Warner Bros. discussions began to break down due to Mr. Rubenstein's reticence at speaking to Warner Bros., I felt comfortable enough in asking Mr. Rubenstein to place a phone call to Mr. Smith of Warner Bros., for what amounts to the third time, who was the patent attorney assigned the task of reviewing the Company filings for purposes of evaluating the ARA and the AOL Time Warner investment. Mr. Smith had been requesting a conversation with Mr. Rubenstein dating back to December 20, 2001, for the purposes of describing for good or bad his aforementioned knowledge of the Company's patents pending, and that he had formerly described as "novel," on varied occasions to Mr. Colter, Mr. Thagard, and others at Warner Bros. At this point, and based on nearly ten years experience as a technology executive, I suspected that something was wrong in the Company's patent filings, as in my prior experiences, the patent applications or patents issued usually had spoken for themselves, but in this instance, Mr. Smith was seemingly interested in a check of his reading and view of the Company's filings.

Much to my surprise, **AGAIN**, Mr. Rubenstein, not now disavowing knowledge of the Company's patents pending, refused said request based on conflicts of interest as Warner Bros "is a big client here." Surprised, **YET AGAIN**, as I was aware of his prior representations to Warner Bros, where no conflicts of interests were stated, at least not to my knowledge and in my review of Company documentation, I may have advised Mr. Rubenstein in still another phone conversation, that his purported conflicts of interest were waived on both sides, but that at least "could Mr. Smith call you [Mr. Rubenstein]," to which he agreed, however, paraphrasing, "he would not be positive or negative" in that regard. Moreover, he refused to place calls himself much in the same way as he had previously, only this time with anxiety and/or anger in his voice. Subsequent to his refusal, Warner Bros. declined the ARA and AOL Time Warner declined an investment in the Company, based on their confusion surrounding the lack of critical elements of the inventions in the Company's patents pending.

Additionally, it appears that Mr. Rubenstein's refusal to again speak affected not only the Warner Bros ARA, the AOL Time Warner investment, but had direct impact on the next discussions with, including but not limited to, SONY Corporation and what was to become Movielink, LLC (a five studio digital download movie service that was to generate licensing revenue for the Company as envisioned by the Company's business plans).

Still further, as my suspicions grew, I consulted with the Company's founder and main inventor, Mr. Bernstein, who contacted Caroline P. Rogers, Esq. to enlist her help in finding a law firm to conduct an independent review of the Company's patents pending. As of April 2002, the Chicago office of Greenberg Traurig LLP submitted their review at the behest of Ms. Rogers, and advised the Company of the missing critical elements of the Company's inventions that would materially not support the claims in said filings.

Lastly, much to my dismay, and when viewing the Company's inventions as a direct, competitive threat to, including but not limited to Mr. Rubenstein's MPEG 2 and MPEG 4 patent pools of which Mr. Rubenstein who, by his own admission is counsel to the MPEGLA LLC entity that functions as licensor of those pools, and is, to the best of the Company's knowledge, the patent evaluator who decides the "essentiality" of any patent with a view to admission to those pools, my suspicions grew even stronger.

As a result of discussions on the events with Mr. Bernstein, and by my own hand, I drafted the following letter to Mr. Rubenstein on April 25, 2002, and as evidenced by right clicking the document and choosing "Properties" wherein it evidences the date of creation and the date of modification (despite the WORD document's "update automatically" function), not so much, as it appears as an invitation to engage, but as a mechanism to allow Mr. Rubenstein to "save his soul," as my suspicions of the events surrounding the Company's patent prosecution process from 1998 to 2001, were grave indeed; I have knowledge that this letter, in draft form, was submitted to Mr. Rubenstein in his deposition in the Litigation, where he was given time to read and comment upon its contents:



## IVIEWIT HOLDINGS, INC.

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

By Electronic Mail and Facsimile

June 18, 2003

Kenneth Rubenstein  
Partner  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036

Re: Iviewit Patents Pending

Dear Ken:

Last we spoke, Wayne Smith of Warner Bros. requested a conversation with you pertaining to Iviewit patents pending, of which you denied indepth knowledge of same and, additionally, stated conflict of interest issues. Sadly, Iviewit has submitted Return of Property papers and a soon to be issued Cease and Desist letter to Warner Bros. for breach of a Confidentiality Agreement executed in August 2000, and ignorance of a reasonable license agreement to remedy said breach.

In any event, I am writing for another reason as I came across a piece of perplexing information earlier today. I stumbled upon some documentation that named you as an Advisory Board member of the company somewhere between the fall of 1999 and the spring of 2000.

Moreover, recalling your own words, as I sat in your office earlier in the year, of your present unfamiliarity with the Iviewit techniques and unwillingness to speak on behalf of what I have since heard you describe as "novel" approaches to video perplexes me to a certain extent when I view you as a former Advisory Board member, if you ever held such a designation.

Further, and I should not be relaying this to you, but there are rumors swirling around the company with finger pointing and all from Florida to Los Angeles wherein it catches the jet stream and arrives very soon in New York of alleged breaches of confidentiality pertaining to Iviewit technology, transfers of trade secrets, and, even in certain circumstances, knowing and willful invention fraud by the outright switching of signature



Kenneth Rubenstein  
June 18, 2003  
Page 2

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pages of patent filings by some earlier patent counsels appointed by the company, including, but not limited to one Mr. Ray Joao, formerly, it is my understanding, of Meltzer, Lippe, Goldstein & Schlissel, P.C., and an individual that, it is also my understanding, you have worked closely with in the past pertaining to Iviewit and other matters. Moreover, it is also my understanding, that you were the first individual to be presented with the Iviewit proprietary techniques, and passed along the work to your past associate, Mr. Joao, and "reviewed" same prior to, during, and, perhaps, after your transition from the Meltzer firm to Proskauer, and in whatever capacity "reviewed" refers to.

At this juncture in my tenure as Iviewit CEO, I have ordered a full legal audit of the company both from a business perspective and an intellectual property perspective. With the results of said audit nearly complete, the preliminary intellectual property conclusions relayed astound me to the point that I have been told that the Iviewit patents pending are akin to patenting "peanut butter."

Furthermore, I have been told of your past involvement with the Iviewit proprietary techniques, of your conversations about the Iviewit techniques with, including, but not limited to, Greg Thagard, Greg Cookson, and David Colter among others, and your initial conclusion of the novelty of the Iviewit techniques, and I ask myself, "Why, why has past patent counsel failed to patent the inventions as specified by our inventor?" Moreover, I ask myself "Why do the description of the inventions fail to lead one to believe that Iviewit had invented anything at all?"

Still further, I think back to the comments I have heard of your initial reaction to the Iviewit techniques and describing them as "novel," which leads me to the conclusion that in your role as overseer of many patent pools, combined with your description of the novelty of the Iviewit techniques, you had not seen scaling in your review of patents pertaining to the essentiality of any given pool, and I ask my self further, "Why is the Iviewit scaling method now so far reaching and ubiquitous in many, varied patent pools overseen by yourself and others of similar stature?"

As such, I would like to enlist your assistance, if available, 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 our choosing, whether it be by a petition by what process is available at the United States Patent and Trademark Office, or any administrative, state, or federal court of appropriate jurisdiction armed with executed



Kenneth Rubenstein  
June 18, 2003  
Page 3

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documents, memos, emails, and parole evidence all pointing to fraudulent, or at the least entirely malpractical occurrences regarding the filings of the past Iviewit patents pending.

Lastly, as I mentioned above, I have ordered a full legal and accounting audit of the company many weeks ago, and I expect the completion of same shortly, and I would appreciate a response at your earliest convenience.

Best regards,

P. Stephen Lamont  
Chief Executive Officer

## **EXHIBIT H**

### **STATEMENTS OF FORMER EMPLOYEES FRENDEEN AND MINK**



**Eliot I Bernstein**

---

**From:** Tony Frenden [t.rex@sbcglobal.net]  
**Sent:** Thursday, May 15, 2003 10:21 PM  
**To:** iviewit@bellsouth.net  
**Subject:** Fw: statement

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

**From:** [Tony Frenden](mailto:Tony.Frenden)  
**To:** [iviewit@worldnet.att.net](mailto:iviewit@worldnet.att.net)  
**Sent:** Wednesday, May 14, 2003 11:38 PM  
**Subject:** statement

May 14, 2003

I swear the following to be true:

Upon the closure of the Iviewit office in Boca Raton FL, I was retained for about an extra week by Brian Utley and Mike Reale, assisting in shutting down operations. It was during this time in which Mike Reale entered the video encoding lab, where I was present along with Tammy Raymond, (former Head of IT) and Zakirul Shirajee (former Systems Developer). Reale was smiling broadly as he set down a large silver suitcase onto my computer desk. Upon opening it, he revealed rows and rows of one hundred dollar (\$100) bills in U.S. currency, going down as deep as the case. I would estimate the amount to be near a half million dollars. Upon my inquiry of where the cash came from, Reale said it was from Bruce Prolow. He implied that the money was entrusted to he and Utley to continue Iviewit operations, but to me, it seemed Reale was careful to never explicitly state that Prolow authorized this transaction or not.

It is my belief that the suitcase of money was presented to me, in front of Tammy and Zakirul, to convince us that Utley and Reale were the ones reaping benefits from the Iviewit core processes, and if we were smart, we should join them.

A day or two prior to this incident, Mike Reale called me into a private office. He spoke of a new operation he and Utley wanted to embark on which utilizes Iviewit's core processes. The plan consisted of encoding video porn at an ambiguous island location in Puerto Rico. It was known that Eliot Bernstein had made available the option for me to work at the newly forming Iviewit in Glendale, CA. Reale wanted to steer me from going to the West coast operation, and spoke of me receiving a title and large pay raise should I go along with the Puerto Rico porn plan, instead.

Also, on one of these last closure days at the Boca Raton offices, Mike Reale approached me in the lab regarding another issue. He inquired which computers would be best to use, if one were to have the need to process Iviewit's core technologies. He asked me which 3 were the strongest computers to do the job. I had a feeling that he wanted to make off with whichever units I spoke of. I had already begun to make up my mind that I wanted no part of the Puerto Rico porn operation, so I told him about 3 computers I didn't care for. They were called, THE BOMBER, THE REALTIME NITRO, and one more unnamed computer. These were all very powerful and expensive units, but were not necessarily suited to encode video. As expected, these 3 units turned out to be the same ones found in Brian Utley's possession, months later. When the cops returned the items to us, the units

5/31/2003



contained several new media files, mostly long distance learning applications which were created well after the Boca offices were closed down.

Anthony Rex Frenden  
859 Hollywood Way #374  
Burbank CA 91505

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Incoming mail is certified Virus Free.  
Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.480 / Virus Database: 276 - Release Date: 5/12/2003

5/31/2003



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

**From:** Eliot I. Bernstein [mailto:res0bf4a@verizon.net]  
**Sent:** Wednesday, June 13, 2001 9:21 PM  
**To:** Ross Miller (E-mail); Ross Miller (E-mail 2); William R. Kasser (E-mail); William R. Kasser (E-mail 2); Simon L. Bernstein (E-mail)  
**Subject:** Missing Boca Equipment

Please read this email from Matt Mink it clearly indicates that Mike and Brian have iviewit equipment.

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

**From:** Minkvideo@aol.com [mailto:Minkvideo@aol.com]  
**Sent:** Wednesday, June 13, 2001 4:50 AM  
**To:** tyrexden@yahoo.com  
**Subject:** Re:

Tony,

Everything is good. I finally have my computer back and I am editing again. I am trying a little marketing right now. I have an ad going into a local vendors magazine and I have been meeting and contacting other video companies in my field to let them know that I am available to shoot and edit. I met with Zakirul one day at his school and everything seems to be going well with him too. Mike Reale has contacted me twice too. I guess he has the bomber and the computer I worked on and there is an administration password he can't get by. I couldn't help him there. I guess Tammy won't help him out.

When my computer went down I lost Dreamweaver, Fireworks and my encoders. I didn't have any backups for them. I know better this time. I am backing up everything.

Take care and I'll talk to you soon.

**Matt**

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

**From:** Minkvideo@aol.com [mailto:Minkvideo@aol.com]  
**Sent:** Wednesday, May 01, 2002 5:15 PM  
**To:** t.rex3@verizon.net  
**Subject:** Re: from Tony!

speaking of New Jersey....Mike Reale called me after i was let go....could have been a few weeks to a month about passcodes to computers and if I wanted to go to New Jersey to help set up their new operation with the distance learning because I knew the iviewit processes. If you mean stuff like that let me know

Matthew



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

**From:** Tony Frenden [mailto:tyrex.den@verizon.net]

**Sent:** Thursday, July 19, 2001 1:39 AM

**To:** 'Bill Kasser'

**Subject:** RE: Encoding Machines

Bill,

Both machines were accessed, and used during the time they weren't in our hands. On the Bomber, i didn't find any streaming media files, but it was indicated that the encoding software (to create streaming files) had been used frequently. On the Nitro, i have not yet searched for streaming files, but i did find many images that pertain to the InternetTrane product. These images were to appear as pages within InternetTrane's software. These files were created by someone using the Nitro in early June.

It was shown that both machines were part of a network environment together, while in our absence. The drives of each computer was 'shared' or accessible to the other computer. Bomber's drive was called 'Production', while the Nitro was named "Video". Furthermore, the Bomber recieved an upgrade of its 'operating system' (from Windows NT to Windows 2000) to facillitate its network environment. I don't believe the Windows 2000 upgrade to be legitimate.

A side note reveals that both computers had pirated software installed on them in June or July, and files resulting from them were created as late as July 11, 2001.

If you require further details, let me know.

Tony Frenden





**APPENDIX I**



[INSERT COUNTERCLAIM]

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

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

CA 01-04671 AB

Plaintiff,

v.

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

COPY / ORIGINAL  
RECEIVED FOR FILING

JAN 28 2003

DOROTHY H. WILKEN  
CLERK OF CIRCUIT COURT  
CIRCUIT CIVIL DIVISION

Defendants.

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

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

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



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

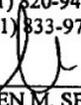
2. That as a result of fact that additional evidence in support of the Defendants' counterclaims is found in the Plaintiff's own files and records, the Plaintiff will not be prejudiced by the amendment of the Defendants' answer in this matter, nor will this matter be delayed as to the trial of same.

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

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

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

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

By:   
STEVEN M. SELZ  
FBN: 777420



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

PROSKAUER ROSE, LLP, a New York  
limited partnership,

CASE NO.: CA 01-04671 AB

Plaintiff,

vs.

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

Defendants,

\_\_\_\_\_ /

**COUNTERCLAIM FOR DAMAGES**

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

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

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



of interest, taxable costs and attorneys fees.

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

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

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

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

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



Boca Raton, Palm Beach County, Florida.

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

e) By knowingly representing and agreeing to accept representation of



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

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

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

**COUNT II- CIVIL CONSPIRACY**

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

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

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

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



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

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

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

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

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



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

**COUNT III- BREACH OF CONTRACT**

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

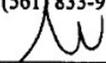


damage and detriment of Counter Plaintiffs.

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 10<sup>th</sup> day of January, 2003 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
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Tel: (561) 820-9409  
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By:   
STEVEN M. SELZ  
FBN: 777420



## APPENDIX II

CORRECTED VERSION - CORRECTED ON 5/14/2003  
Transcription of Telephone Conference  
Conducted July 31, 2000

### Participants:

Simon Bernstein, Eliot Bernstein, Maurice Buchsbaum,  
Brian Utley, Doug Boehm, Chris Wheeler

**Note:** Square brackets [ ] are used to indicate inaudible or indecipherable text. Text found inside brackets indicates transcriptionist's best guess. Since speaker names are not specifically identified, transcriptionist has made an attempt to identify based upon comments made in conversation but cannot guarantee that each speaker has been accurately identified. Note also that this recording has numerous instances of participants speaking at once or carrying on simultaneous side conversations that make it difficult to follow and transcribe the entire line of discussion.

Utley: <begins midstream>...status of the original digital image filings, and basically the fact that the original filings do not cover the full subject matter of the imaging technology; and to wit, one of the omissions, in particular in reading the claims section of the provisional and the formal filing, relates to the zooming and panning capability that is inherent in the technology. This has become a topic due to the fact that we are currently in the second phase of filing imaging patent protection which is driven by the provisionals that were filed later last year, between August and December of last year. So the concern that were expressed by Eliot in reviewing this is that this omission of the zooming and panning capability was attributable to a failure, for whatever reason, on the part of Ray Joao, the patent attorney of record, in constructing and putting together the provisional and formal filing<tape cuts out here> did I say it is that right Eliot

E Bernstein I believe so

Utley Is that your understanding

E Bernstein Correct

Utley The purpose of this meeting is to review the facts and I think there are two particular points that are

...that are important to moving ahead. The first is: "Given that the filings are what they are, and given what we know about the filing which is scheduled to take place this week on Wednesday, what means do we have to correct the situation; and given whatever corrections we find, what then is the impact or exposure to iviewit based upon what actions we can take. Then, lastly, what, if any, recourse might iviewit have vi sa vi the omissions in the original filings Are there any other issues, Doug?

Bernstein: Yeah, just correcting back to Ray Joao's work of the formal filing that he filed. Do we have a copy of that?

Utley: I do have that.

Bernstein: I don't. I've got the provisional and I've got...

Boehm: Everything is on the table



Utley: you should have...the formal.

Bernstein: This one?

Utley: Yes, that's the formal.

Bernstein: Okay.

Simon Bernstein: I just have one question. Does anybody have, or are we allowed to get, the files of Ray Joao?

Boehm: I have them.

Wheeler: Do you have all of the work that he had?

Bernstein: No, not all of it.

Utley: What was purported to be in the files?

Bernstein: And he also claimed to us that he destroyed part of his files.

Boehm: And I have some of his files. I have what was purported to be all of the firms' files.

<Inaudible comment.>

Utley: Well, there's a whole history, then, because I tried to get complete copies of the files originally, and found out later that not only did he not send us all the files, he didn't even mention that there was an extra filing out there that we didn't even know about.

Bernstein: This one that's in question.

Boehm: Yep

Simon Bernstein: You have no notes, no data on...?

Boehm: No, I have the application. I have things that you could get from the US patent office—that I could get from the US patent office. I have very few notes. I do have some scribbled Ray Joao's notes, but I think you gave me those notes.

Utley: I did. I gave you Bill Dick after Bill yourself[ ] the notes that I had.

Bernstein: And Ray's made disclosures to us that he destroyed the documents to protect us, which I don't know what he was thinking.

Simon Bernstein: Destroyed what documents?

Bernstein: Whatever he had in his files. Other patent copies, copies of the drafts as they proceeded...all that he destroyed to protect us from something I asked him to explain, and his reasoning...because I said to him, you know, usually you destroy documents when you are protecting somebody from something illegal or something. Have I done something that would force you to hurt me possibly? He said it was typical, normal, that all lawyers destroy their records.

Simon Bernstein: If that, in fact, is the case—I've never heard of a lawyer you know other than Nixon destroying anything the



work is ours. Am I right Chris when we pay for a lawyer and we pay for the work, the work is ours.

Wheeler: The work product is yours. He may maintain copies of his files and everything; or his confidential notes to himself are not necessarily yours. But the work "product" is...

Simon Bernstein: Would you say that anything germane to the issue belongs to him?

Wheeler: Well, I mean if he wrote notes...in sidebars...yeah.

Bernstein: How about revised patents[ ]. How about copies? Works in progress

Wheeler: But things which would reinforce your patent, obviously, that is germane to the strength of your patent yes, you would be entitled to copies I don't think we disagree.

Bernstein: He's claiming He destroyed all faxes.

Wheeler: Can I ask you a question?

Bernstein: Yes.

Wheeler: Just so both of us understand...was this patent done prior to his flying down here, or was this patent done as a result of his flying down here and having discussions with you? I was under the impression that when he flew down here--this was before Brian came--I was under the impression that followed our meeting with Reel 3-D. I was under the impression that he was coming down to discuss, at the very least, the video aspect so that you could complete that; but were you also completing the imaging patent?

Bernstein: Correct.

Wheeler: So he went to your [kitchen]?

Bernstein: Right. And we spent days there

Wheeler: And the two of you spent all the days...

Bernstein: Correct.

Wheeler: And did he, in front of you, write notes?

Bernstein: Tons. Hundreds

Wheeler: And did he then produce them on his computer and type out certain things?

Bernstein: Yes.

Wheeler: I was under the impression he was doing that with you.

Bernstein: He did.

Wheeler: And did you read those?

Bernstein: I did. I did - now going to that same nature, that's the provisional I think we're talking about...

Wheeler: Right.



Bernstein: But he flew out here again with me and Brian and went through this as he went to file this--this is a 3/23/2000 file--that also fails to make mention of.

Wheeler: So that's the formal file...the formal one?

Bernstein: The formal file. So both also missed the point.

Wheeler: I just wanted to know and to put things in proportion, when you read the provisionals, because Brian wasn't with the company right now and then, and when there were all those drafts, because obviously we didn't see them...

Bernstein: Well, you saw because we gave you all the documents. I'd get a document from Ray and bring it to you so you would have records of everything up to that point because I didn't want to keep them at my house.

Wheeler: The final...the final...but I'm not reviewing the patent. I was keep maintaining it as...

Bernstein: Okay, but you have every record...

Wheeler: Everything you gave me we maintain. We don't...

Simon Bernstein: Any notes should be produced...

Wheeler: We don't throw away anything.

Bernstein: Yeah, I know.

Simon Bernstein: I know you don't you're very thorough.

Wheeler: So, I'd file it away; so if you gave it to me, it's in our archives.

Bernstein: Right.

Wheeler: I wanted to know, when you read those drafts...

Bernstein: Oh, it was...it was clear

Wheeler: Answer my question...when you read the drafts, did you see the panning and scanning elements?

Bernstein: Yeah, and zooming, up to 1,000 times we thought it was. That was the big...you know, we had it in there...as a matter of fact, he just said it...somewhere it's in there up to 1,000 times, isn't it?

Utley: 1,700.

Bernstein: Right. That was our old mistaken a number of times. So, yeah, for him to miss that, Chris, would be the essence of stupidity.

Wheeler: So it was in there?

Bernstein: Absolutely.

Utley: The zooming, it was in the body, but not in the claim.

Boehm: But a provisional doesn't really...doesn't have to have claims.



Utley: It doesn't have claims.

Bernstein: But then in our claims of our patent, it's not there. This is what you're representing, correct?

Wheeler: So you're saying that it wasn't put in the file, but it was put in the provisional.

Boehm: No, I could see where he's going to argue that it's there.

Bernstein: Let's see. Let's take a look.

Wheeler: ...what the language of the patent claims are that he filed.

Bernstein: Okay, let's see what he...

Wheeler: And this isn't the final decision because I can go back right now and amend those claims.

Bernstein: Wow, yes, but we have elements of exposure that creep in correct?

Wheeler: I'm just telling you the whole thing, then we'll go back. So you did look it over, and there are no claims in the provisional?

Boehm: There are no claims in a provisional. You can file them, but they are never examined.

Wheeler: But the zooming and the panning and the scanning element was incorporated in that?

Boehm: Go ahead, Brian.

Utley: Let me make sure that we say that properly. The provisional filing had a claims section which migrated into the final filing, but Eliot is correct in saying that the provisional does not need a claims section.

Boehm: The provisional never gets examined, so it doesn't need the claims. It just holds your place in line for one year.

Bernstein: But then when I look through this...

Simon Bernstein: Hold on, Eliot, I need to understand this. What you're saying, then, is assuming any negligence on his part, to that point the negligence doesn't become realistically damaging to the company until since he actually made a claim...since he actually made a provisional filing. Which took our place in line.

Boehm: If the provisional filing covered the invention, your place in line is only as good as the subject matter described in accordance with the law.

Simon: Obviously, it should have had the panning and zooming in there.

Boehm: Well, the word "zoom" is in there.

Bernstein: But not really to describe what we're doing.

Boehm: But do you see what I'm saying? It's only to the amount of subject matter that and attested where the average person skilled in the art could make and use an invention as it's



described in this document, and without "undue" experimentation, without inventing it himself.

Simon Bernstein: Right.

Boehm: Now, this provisional application, you throw it...different patent attorneys do different things with it. On one end of the spectrum, you do an invention disclosure. Most big corporations have invention disclosure forms which leads the inventor to write out good disclosures and figures and things, and I've seen people actually file that invention disclosure because if you're coming up on a bar date, you don't have time to write an application or think about what your invention is. All you've got to do is get something on file, and then hope that it will protect...that whatever you had on file covered your invention.

Simon Bernstein: Is that what we've done so far?

Bernstein: No.

Boehm: I don't want to answer that, but that's the line.

Boehm: It's a grey question, it's a grey area, I think.

Wheeler: That's what we're aiming to do, that's what we're hoping to do.

Boehm: But on one end of the spectrum, you file very minimal work, and that's what Ray did on some of the applications, like on the one...

Wheeler: He was trying to do it in a broad...

Wheeler: He did say conceptually that his method was to do a broad stroke of it.

Boehm: Right. Well, a broad stroke on drafting the claims.

Wheeler: Okay. Right.

Eliot Bernstein: He's got to put the invention in!

Boehm: That doesn't happen in a provisional at all, generally. If you want to, you can write the provisional claims just so you know what you're doing, and it's actually used as subject matter; but the claims are never examined. It doesn't matter if it's in proper format or anything, it just sits there. Now, if you pick up the provisional a year later—it has to be within that year—if it's a real well done application, you just file it. There's no money involved in turning the provisional into a regular filing. Oftentimes, with these one-page disclosures, there's a substantial amount of money involved in taking that from there to there. The problem is you cannot add subject matter to the patent application later on once it's filed.

Bernstein: Unless it's really the patent application, correct?

Boehm: No, the subject matter has to be supported—has to be described—

Simon Bernstein: In the provisional.



Boehm: Uhhuh To that text, or you lose your filing date.

Wheeler: But the zooming element, then, is not in addition.

Boehm: Is not in addition? You mean...

E. Bernstein: It's not even in there.

Wheeler: You can't add subject matter. So if he did describe zooming, then it's not in addition.

Bernstein: Did he, ?

Wheeler: I am asking you whether he did or not?

Boehm: I'm not clear on what you mean. You can't add additional subject matter after the filing date of an application or you'll lose the right to that filing date.

Wheeler: The provisional? You can't add subject matter to the provisional?

Boehm: To any application...any patent.

Wheeler: But if he did describe the zooming, then the zooming element is not an addition in the formal.

Boehm: Right. It's supported. If he described it in the original, you can base claims on it later.

Wheeler: And have we said that the zooming is in the provisional?

Bernstein: Nowhere that I can see.

Simon Bernstein: Wait. You're the lawyer reading another lawyer's work. Is it in there?

Boehm: Do you have a copy of it?

Bernstein: Yeah, right here. It isn't in there if it bites you.

E. Bernstein: It's not in the filing either.

Simon Bernstein: It's obviously not in the filing if it's not in the provisional.

Bernstein: No.

Simon Bernstein: Can you make reference to something...let's say he uses the word "zoom".

Boehm: Exactly. I'm pretty sure the word "zoom" is in there, isn't it Eliot?

Bernstein: But what Doug's saying is that had you written the patent, you would have described the invention as the ability to do this cool zoom that we all...and just said this is the cool part of what we're doing. What Ray's missing in the outline is the ability for you to put a picture on a Web page.

Wheeler: He did know that an important element was the fact that when we went in and made it bigger, we didn't pixelate.



Bernstein: It didn't pixelate. Not in here at all.

E. Bernstein: Not even mention to that concept.

Bernstein: Complete failure. It's not.

Wheeler: But if said it doesn't distort when we zoom...

Bernstein: Nope. Nothing like that.

Wheeler: That's the same thing, isn't it?

Bernstein: Yeah, but he hasn't said anything...he doesn't even tell you ...

Wheeler: What about the panning element, or is that element not patentable?

Bernstein: No, that's part of the whole process is to be able to zoom while panning.

Wheeler: Here it is. "The above process can be utilized in order to create higher zoom capabilities with each new depth layer of an image..."

Bernstein: No, but that's a new depth layer which is bringing in another hotspot image, so it's really a completely different subject.

Boehm: Oh. Okay.

Boehm: Okay. Where is that?

E. Bernstein: I read it to, he's very crafty you know.

Boehm: "Where the zoom capacity of up to 1700 times or greater may be easily obtained with the [present conventions.]" Are they talking about the hotspot now?

Bernstein: No.

Boehm: No, it's the general zooming capability.

Wheeler: So it's not in addition.

Bernstein: Well, explain to him where it's missing.

Wheeler: You guys didn't put it in the formal...I don't mean you...he didn't put it in the formal one in the depth in that what we want to do it but he could have without it being construed as an addition.

Boehm: Yes.

Boehm: Well play lawyer on you now<Laughs; cannot understand his comment.>

Wheeler: Right - sorry

Boehm: Whether or not it's supported is a question that's going to be determined either between you and the examiner...probably not, it's between you and another lawyer someday when the case is litigated. The question is And again, the test is: Can the average person skilled in the art—the average



designer of this type of software—can he read this document and make and use of your invention without inventing it? That's the test. Now, whether he uses the word "zoom" in here and "magnification" later, that doesn't matter as long as he would have gotten it. If it is so simple to build by reading this, you don't need any subject matter. If you're combining three elements A, B, and C, and A, B, and C are standard in the art, and you tell them these are standard in the art, go combine A, B, and C, that could be a one-page application. The average person will pick it up and he could. It's a patent test. Are you with me? The more complex it is, the more you want it supported in this text.

Simon Bernstein:                   What if it is basically simple, and he just wrote it as basically simple, does that support our position anyway though?

Boehm:                   Does that support our...Sure...

Simon Bernstein:                   I mean, if we were to litigate against another person that infringes on our...

Boehm:                   An infringer.

Simon Bernstein:                   Supportable for the sake of argument?

Boehm:                   Right. Yes. That is a fair argument

Simon Bernstein:                   OK so then I don't know that, at least from first blush

Bernstein:                   That's the provisional you're reading though, right?

Boehm:                   Aren't they the same? I think they're identical, aren't they?

Boehm:                   You can check in his notebook.

Boehm:                   Are there differences?

Bernstein:                   Where did you find that piece that you just read?

Wheeler:                   Is the reason...now continue answering my question...is the reason we came to the formal in March of this year, which I didn't realize that Joao. I thought that we had agreements for doing everything, but apparently Joao filed...

Boehm:                   For that one, yes.

Wheeler:                   But he didn't bother telling anybody.

Boehm:                   That's the one that we didn't find out until way late.

Wheeler:                   Okay, perhaps the reason that he did that was that was the easiest way to do it and the course of least resistance, and he thought he could go back...is there an amendment procedure?

Boehm:                   Yeah, there's an amendment procedure.

Wheeler:                   That he could do it a few months later or something like that?

Utley:                   We had a conversation before the formal filing, and, in fact, I have my notes here from that conversation.



Wheeler: Okay.

Bernstein: And you mentioned that there was no zoom.

Utley: Yeah, I said...

Bernstein: Claim one.

Utley: Yeah, Here are my notes. This is my original copy. Claims do not reference stitching. The patent app does not cover providing enhanced digital image with zoom and pan controls. It covers for creating enhanced images to show zoom and pan functionality without distortion." Those are my notes.

Bernstein: And you told him that.

Simon Bernstein: Here's a man that was cognizant of what was necessary to be in there. How did a guy to file a patent without any of us—obviously, not me, but Eliot, Brian.?

Boehm: Jim wasn't around yet.

Simon Bernstein: Okay, but Chris was and so on and so forth—how did they get through the crack that he did this?

Wheeler: It didn't get through the crack. Brian addressed it with him.

Bernstein: And everything is shredded now, too. Everything else is shredded.

Utley: Kind of what he was going to do—his time factor—he was going to...he didn't think he would get this in. He would submit it and then would turn right around and amend it.

Boehm: Did he really say that?

Bernstein: Yeah.

Utley: I wouldn't say amended, it was because of the stuff that was coming...

Bernstein: It was supposed to be in there.

Utley: ...he was going to smash that all together and file it.

Simon Bernstein: Was that the same time, Brian, that he was leaving the firm?

Bernstein: Yeah.

Simon Bernstein: So would you say that probably...

Utley: he knew at the time that he probably would be leaving?

Utley: Right.

Simon: But he wanted to get all of this in place so he could do the billing and get that part of it in...

Utley: I don't know that.



Boehm: Just speculating.

Eliot Bernstein: What day did you give him those notes?

Simon Bernstein: I don't ever have to speculate on billing

Utley: I don't have my address book with me...I didn't write the date down, but it was the date that he was here. He came.

Wheeler: He wanted to get it done to take care of you, make sure it was filed for you.

Simon Bernstein: That could be too. One other reason is...

Wheeler: We're just speculating.

Wheeler: And I'm not trying to... <Everyone talking at once.> I thought he was trying to work on our best behalf, but one time or two times that I met him, it seems like he was earnestly trying to help. Who knows? Maybe he was incompetent. I mean we're only suggesting that it would have been incompetence

Bernstein: Well, the fact that it's not in your patents, right up front, this is the invention, is a gross neglect. And the fact that it doesn't say, "this is what the invention is trying to do. This is the feature..."

Simon Bernstein: The point is not whether it's gross neglect or not, it's what the damage is if there is...if, one, gross neglect is of any import; and two, what is the damage? it has caused iVIEWIT. That's what I think we need to ascertain here, and if we can ascertain it.

Utley: How do we fix it?

Simon Bernstein: Of course lets try to fix it, if we can't fix it then we'll worry about...

Eliot Bernstein: Well 1<sup>st</sup> lets fix it

<Everyone talking at once.>

Boehm: Let me go over the procedures so everybody's clear. Again, on one end of the spectrum you file a very sparse, like a one-page provisional application, and it's cheap, and the purpose of the provisional is to get you in line...it is to protect your date. What you're trying to do is get the benefit of your priority date. When you invented it. When you're in line in terms of whose the next guy that invented it. Whose the first inventor?

Simon Bernstein: Someone comes after you the second day after...

Boehm: Who's the first inventor, that's what you're after.

Simon: I understand. I really understand...you don't physically stand...

Boehm: Not physically in line in the patent office is right, not or even in physically in line in order as well. Okay. One-year letter, the provisional expires and you have to file a non-provisional patent application, okay? Many times it's identical. If you do a good job up front, you just file



that, but you need to put claims on at this time. When I do a provisional, I try, if there is money and time up front, to do it once up front. I even write the claims. As a matter of fact, I don't even like to file provisionals because there's not much of an advantage. If you've got the time and the money up front to do a good job, well then, just file it as a regular application.

Simon: Understand that at the beginning, the time and the money...I mean, the time was certainly available, but the money was a short substance. So it was obvious that Ray would be working in a most expeditious way.

Boehm: Well, that's why the..

Simon: Which might have short-circuited us because of all of the lack of funds.

Wheeler: Well, that's true because the filing date is 3/24/99 to endorse that...that was very early in the game.

Simon: We did it in your office Chris in your library...in your conference room. The only meeting I had with him was while we were going to file the patent and that was in your office.

Boehm: Okay, 3/24/99 is the provisional application.

Bernstein: That's what I'm saying. Well, Chris,

Boehm: So even at a year, he filed the second one with claims.

Buchsbaum: Yeah two things happened during the year. One, the Company was doing other things, even though they knew that was coming up, and two, I guess there wasn't a whole lot of money to allocate towards doing that much.

Simon: Here's what we did. We hired Ray Joao on the monies that were raised by the investors; and then when Huizenga was coming in with their money, and when that money came in, we made a company decision that the first and foremost thing was to get the patent filed properly. So the fact that we were going to spend more money and get them completed at that point had already been made.

Simon: Okay, but prior to that, we were working on short forms. Then after that, we started to raise capital, and we always knew that the priority was intellectual property, so were going to make sure that those got done right. Brian's been working on it ever since, and I felt comfortable...I never did feel comfortable with Ray Joao...just an observation.

Boehm: Hmm...is it all patent attorneys? <Laughter>

Simon: No, no, there's nothing wrong. He came in, he's a nice guy, he tried hard, you know, all the nice things, but his work always appeared sloppy, okay? And that's the only thing I can say. You're a patent attorney, you see what he did. If I'm wrong, then let me know; but to me, it looked like it was a little slipshod. And then he made some statements that really bothered me, too, that I don't think he should have made to a client, and that is that he was filing his own patent. <Chuckling.> I mean, horseshit personally, I haven't heard of a patent attorney in my life telling me



that he's an inventor filing his own patent. It really did bother me.

<Everyone talking at once.>

Bernstein: Transmitting video files on a communication network for airlines and...

Simon: It probably meant nothing because I don't think the guy was of the nature to be stealing from us, but I don't know! But I'll tell you this, it did ring a bell. From a pure novice, it made me a little nervous. I asked Eliot why he was dealing with somebody, but we were assured that this was a good firm...

Boehm: Let me look back in my own spiel...here with the provisional. You file a provisional, then within one year, you file a regular application with the claims. You can add claims to it; but if you add subject matter to it—in other words, if the zoom and pan concept wasn't well described, you have lost the benefit of that first phase. Right. Now why is that going to hurt you? Two main reasons. One is if you put it on sale—offered it for sale— or you publicly disclosed it, there are certain regulations that say you've got to get something on file, so if you had publicly disclosed it, that would protect...getting the application on file will protect you from losing your date because of public disclosure and offer for sale. I think that's what he was trying to get the earlier dates for.

Simon: Sure.

Boehm: I spoke with Ray when I was trying to get all of these files, and his comments to me were...when we were on the phone—you remember, we were asking him where was this stuff, and he said, well, he kept building on and he learned more it got in there. After I reviewed these applications, I agree that you're learning more as you go along. I'm doing the same thing. So it's kind of a learning curve.

Bernstein: If they ever find a zoom description that adequately makes...especially in the claims...I mean, if you're reading the claims...

Boehm: But Eliot, he's going to say that the claims are of no import right now. All you have to do...

Bernstein: In the filings?

Boehm: In the filings. I can go amend those right now. We can sit down today and re-write them.

Simon: If it can be amended amend it. There's no problems.

Boehm: There's no problems.

Simon Bernstein: There's always maybe a little money that's been duplicated and that's it.

Boehm: Here's the problem, and that's what I want to get across about that. If he's trying to claim zoom and pan and I rewrite the claims to claim zoom and pan, and the examiner says, that's great, but it's new matter



Bernstein: But it's in the provisional that you can zoom up to 1700 times.

Boehm: If my claim is supported by the spec on that date, then you're fine.

Bernstein: Isn't it?

Boehm: I can't answer that without going into the...

Bernstein: But when we read the provisional and we see that, it says...

Simon Bernstein: Before this meeting took place, before we called this meeting, aren't you privy to everything that's been done?

Boehm: Oh, sure. I have everything.

Simon Bernstein: So when Eliot asked you that question, why can't you answer it?

Boehm: Because there's no...in my opinion, there's no clear-cut answer, yes or no, on the quality of the work product. It's a judgment call.

Bernstein: So that's an exposure, and what if the judgment is against us?

Wheeler: It's [an examiner] judgment call is what we're saying.

Boehm: The damage?

Wheeler: No, the examiner. <Everyone talking at once.>

Wheeler: Whether the subject matter is new or not.

Boehm: The examiner would...hold on...it's...

Wheeler: whose judgment call is it?

Boehm: It could be the examiner's, if he catches it. If it's not caught, and you get it to patent and you litigate the patent, ... at court. Or if the examiner catches it and I want to appeal it to the board of appeals in the patent office, it's their judgment call

Wheeler: Okay, so we go to court and we're fighting over the patent, we would argue that it's supported by the zoom 1700 in our language, and the other side would, say that's baloney that's too broad you didn't describe it enough

Boehm: You didn't have your invention...

Bernstein: Then you lose.

Boehm: We would lose only if you had a bar date come in there if somebody else invented before you, or if you put something on sale...or if we offered something up for sale.

Bernstein: Which we did.

Boehm: But the offer-for-sale date from our first meeting is not until September.

Bernstein: Right.



Boehm: So the offers for sale won't normally kick off a foreign...

Simon Bernstein: Could you explain to me what offer for sale means?

Boehm: Sure. As soon as you...you can't get a patent on a product after you've been using it for more than a year. As soon as you publicly disclose your invention, you've got one year in the United States to get a patent on file, okay? Even if you don't publicly disclose it...let's say I've got a method of making [ ] in my factory, but it never gets outside. I'm starting to commercialize it, I'm making money off my invention...the commercialization date a year later is you can't patent it in the U.S. So that's that one-year grace period.

Simon Bernstein: Aren't we within that period?

Boehm: Yes. As far as we know, yeah. As far as we know.

Utley: Yes-yes we are within that grace period

Simon: Okay, somebody explain to me, what am I doing here? Why am I sitting here? Are we saying that Ray Joao, other than being sloppy, but there's not much damage that could have been done or can be done because we can fix it, which really would make me the happiest to hear that.

[not in transcript: PSL look at change above although minor it indicates perhaps the change in text to match new text]

Utley: Can I jump in? Let's just say there are two steps. We're going to make a filing this week; and to the best of our knowledge, we have swept up all this in this filing, and that will be within the commercialization period. The second thing that we're going to do is we're going to look at filing an addendum to the original formal filing to strengthen the claims - broaden the claims ... to the maximum extent that we can.

Boehm: if we need it...if we need it.

Boehm: It'll be a lot of this was swept up into the application.

Utley: What we're trying to do is protect the date day of March 24

Boehm: The original...

Utley: The original date as March the 24<sup>th</sup>, but filing should remain an objective.

Simon Bernstein: Brian, if you broadened the language now, would that be a red flag to the commissioner that you should have done it earlier? Or should we just say that this has always been there?

Buchsbaum: You mean the examiner of the commission

Bernstein: We're not going to be able to say it was in the claim.

Simon Bernstein: What happens when you start those amendments or broaden them is you start to admit that you didn't do it.

Boehm: Um, yes and no. We...I do that all the time.



Simon Bernstein: It's common then?

Bernstein: If they do it all the time, then we have to do it.

Simon Bernstein: But not until I feel more comfortable with it.

Boehm: We normally have a search done. The patent examiner will do a patentability search, and he will come back and reject it. The problem is if the claims are too narrow to begin with, he will not come back and reject it, he'll allow it, and boom! Now I can't amend it he's in. [ ], we're done. But I can file a continuation on it. I can keep dragging this out and get broader claims as long as the subject matter is...

Wheeler: So that's why he stated it broadly versus narrowly?

Boehm: No.

<Somebody comes into the room to take food/and or drink orders.>

Boehm: No, but as far as, doing it broadly, if you're saying to claim it broadly it's our job to claim... as prior art which I doubt the claim is as broad as the [ ] allows...

Wheeler: Right. That's what I'm saying.

Boehm: And this is claimed broadly.

Wheeler: Right.

Boehm: And that's the normal tactic, to claim things broadly, and then wait for the examiner to come back and say, "Oh, you can't get it that broad," and then narrow down your claim.

Wheeler: Okay, so isn't that what he was in part trying to do? That's what he's been saying, yeah.

Boehm: Yeah.

Wheeler: Well, would that not be consistent with how patent attorneys try to do things?

Bernstein: Well, claim one, if you look at their claim one, Chris, that they've written, it identifies...

Wheeler: Who's they?

Bernstein: Foley & Lardner. It identifies what you're trying to do.  
[not in transcript: Stephen note how Dicks name is deleted and Foley's name is screwed up, may indicate who was changing this transcript]

Wheeler: Okay, so maybe it should have been written differently.

Boehm: You won't get two patent attorneys to write the same claims.

Bernstein: Well, no, but you try to write the claim, and that's the teaching you and Steve both represented us here, to describe in its broadest term...

Boehm: Right.

Bernstein: ...the invention.



Boehm: Well, I can't say that this isn't broad. This is very broad. This might be rejected for indefiniteness...I don't know what it is...but now he's got the opportunity to go back and...

Bernstein: And Brian, you know, there's print film image in here, it's all supposed to be out of here.

Wheeler: What you're telling me is that in your forum of law there's always going back and refining and refining and refining that was wrong.

<Everyone talking at once; two different conversations going on at once.>

Bernstein: This is like he just completely ignored what we said over a year. He didn't do a thing. Nothing. No comments, nothing.

Utley: Almost nothing between the provisional and the formal process.

Boehm: And some people intentionally file narrow just to get something on file. Then they can come back and repair it without damage to it.

Bernstein: But you don't know that because an examiner...

Simon Bernstein: You'll never know that until you have a litigation.

Bernstein: And then the question is what potential damage does that...

Simon: That damage potential and that remedy will be then taking place at that time, not now.

Boehm: That I agree with. Even if we decide something now, you won't know what the outcome is for five and a half months.

Simon Bernstein: ...wouldn't happen anyway. You wouldn't even know that.

Utley: Let me come back where I was. We are going to file on the 7<sup>th</sup>, Wednesday. As far as we know, that will cover every element of this invention that we have our arms around at this point in time.

Boehm: I believe so, yes.

Utley: And we should go back and address what amendments we can make to the claims in the filing of March this year and determine within the spec of the filing how broad those claims can be. I mean, that's going to be the test. Within the spec of that filing, how much leverage have we got to broaden those claims so that we do have a priority date which is back about a year ago last March.

Bernstein: So we want to insert everything going into this one into that one?

Utley: No, it'll be...

Utley: It'll be based upon the preamble, if you will, of what's in here.

Boehm: We do reference it. As a matter of fact, this is the cover page, Brian, of the application we're going to file.

Utley: Yeah, you reference it right there.



Bernstein: But you can add claims to that one that you're referencing that would encompass what we have in today's filing, which is really...we do want it in there.

Boehm: Yes, I can claims to the zoom and pan to get you back to the original date in this one since I claim to this onto his.

Bernstein: Well, we should do both.

Boehm: Well, you can't get two patents on the same invention, so it depends on where we want to go.

Bernstein: Well, we want to definitely get it in on his because it gets us an earlier date. Correct?

Boehm: No. It's a mess with these dates. What will happen is...nobody will worry about the date unless there's an occurrence, and that occurrence might... it's a major problem. You won't find out about that occurrence until you sue somebody, and then they go search in Australia, and they find a reference that somebody's done this before in the library, and then you worry about the date. Were you before him?

Bernstein: Well, that's what I'm worried about. I'd like to go back to our earliest date.

Wheeler: Can I point out one other thing? I know we look for the word...Eliot looks for the word...I know we look for the word "zoom," but there's also other language in here too. Sometimes we get caught up in a word "zoom," when what is zooming other than enlarging or reducing? And he does have language in here, "when enlarged or reduced, these pixels of the digital image becoming distorted a feature which typically results in the digital image being fixed to an original size or being available at low magnification, such as, for example, magnification from 200 to 300 times. These digital images are also difficult to enlarge to a full screen without a tremendous amount of distortion present in the end product."

Wheeler: I mean, he's describing I mean that's zooming. Reducing and enlarging is zooming.

Bernstein: But he's not putting it in your claims, that's what he's saying. You see, this is different.

Boehm: But it doesn't matter right now

Wheeler: But it doesn't have to be if you've made mention. The opinion is that it doesn't have to be as long as he's ...if you made mention...if you've gone on record of having described this

Boehm: This is the background that's...problem. He's got...

Boehm: That kind of invention, right, it's got to state...

Wheeler: Well, I didn't get to that either.

Bernstein: Right. And that's where it's not.

Boehm: I pointed out a couple of things. It's not as...

Bernstein: Within the claims, the claims I'm reading, you could not...



Boehm: The claims really don't matter.

Bernstein: In the patent?

Boehm: The patent claims on a pending application basically don't matter.

Bernstein: No, the ones he filed.

Boehm: Yeah, they basically don't matter. I can go back and change them.

Bernstein: Okay. Why? So we want to change back to the original one he's filed, put as much language as we can that we have today...oh, it's all supported. Everything you wrote in that new one is supported in this one because it's the same process.

Boehm: That's the ultimate problem that Steve and I—Steve is Becker, the other patent attorney that actually wrote these patents <in audible>—but that's the ultimate problem that we're worried about, and that's the problem that you always worry about unless you first of all have a handle on the invention, inside and outside, and second of all, unless you really have a handle on Prior Art so you know where you want to go with this. Then you spend the time and the money to do a good original provisional filing. You've got a pretty good shot that it's supported then. But when you file as, oh, I've got to try and cover this base, and when you do this kind of stuff, there's always going to be a question of what was supported when.

Bernstein: But that's fine. It is supported.

Simon Bernstein: We're off the subject matter.

Bernstein: So we should definitely claim back to the earlier date?

Boehm: We may get a rejection, or you may find out in litigation five years from now, that none of this was supported. Some court may say that you never talked how to do this because your software wasn't in the patent application.

Bernstein: It is, though.

Boehm: Well, the code isn't. They might say that these broad diagrams and these flowcharts aren't good enough. There's always that risk.

Bernstein: But we're trying to say that if they accept it, we want it to be to the furthest filing date that we can, which is March 3, 2000, and that's where it should lie; and if it's going to get argued let it live or die at that date.

Boehm: That's what we're trying to do right now.

Bernstein: Okay, good. So I'm under the impression from this point that we're going to encompass what we've learned what we're filing even in this other one even into the original one so we can claim back to a March 3 filing date that claims back to our original March patent...

Boehm: March 24<sup>th</sup>, yeah, all of that will go back toward what is supported in here, in the original. Not supported in ours.



Bernstein: Okay. And it's all going to be supportable because you're going to be able to pull up an image of the nature that we are discussing, and anybody with an eye can see that you've now done this.

Boehm: <Inaudible comment.>

Bernstein: Well, you're going to be able to show your invention, aren't you?

Boehm: No, no.

Bernstein: You can't?

Boehm: You live or die on what's in the specs. That's why...

Bernstein: Then get it in there.

Boehm: Yeah.

Bernstein: You can't bring it in as evidence what the invention is?

Boehm: Only outside evidence of what the average level of skill in the art is, okay? If somebody says that the flowchart isn't detailed enough, I'm going to go, "Oh, yes it is. Here's 29 programmers who are going to testify and say yeah, I can do that in my sleep with this document." So, there's always going to be a battle about the level of support.

Simon: Maurice and I—that's why I asked him to come in—Maurice and I were talking because neither one of us understands patents or how you file them or invention actually. What we do understand a little bit about is the theory in business; and now that we know that Ray Joao was somewhat sloppy—I'm not suggesting that he's not a fine attorney or anything else—you have been...you have reviewed all these patents that we have, whether there are eight or ten of them...

Boehm: There were eight original filings, and then...eight original filings.

Utley: Okay. And then how many do we have now?

Boehm: Let's look at the chart right now, but it's basically. We've got 17 applications that have been filed. These old ones are dead now because they were provisionals, and we've basically covered all...we pointed out basically covering two, maybe three inventions, so there's not...I mean, if we were to start over, maybe you'd do this with two patents, maybe one patent. So.

Simon Bernstein: Who owns them?

Boehm: Who owns it? iviewit Holdings, Inc.

Utley: Owns all of them?

Boehm: Except for...<Pause, and then text comes in that doesn't seem to be answering this open question.>

? Video playback over a network

Wheeler: How did he get in? [not in transcript but this refers to Jeff Friedstein on an invention]



Bernstein: He's part of the invention.

Boehm: An inventor - inventorship.

Boehm: So I've so I've got a document right here for him to sign. If he signs, then I do a couple of things.

Bernstein: He signed that when you faxed it to him originally.

Wheeler: I have copies of each one of these. Can I get a copy of your [ ]?

Boehm: of this? Sure.

Wheeler: I have a copy of each one of these, I believe, or most of them...

Buchsbaum: Can I ask you a question? Your saying everybody that has an obligation to sign is on the list of names in these patents?

Boehm: You preferably don't...well, unless you have the new ones...

Wheeler: I don't have the new ones, but...

Bernstein: That's an old one. That's old.

Buchsbaum: You're saying everybody that has an obligation to sign is on the list of names in these patents right, because the company was part because the Company was doing, is that what you're saying? Because I don't even know if everybody has signed because you may due corporate due diligence for financial reasons or if...and they will say has everybody signed off on these patents, and if three people don't...if one person hasn't, he has an obligation to sign?

Boehm: Brian, have you signed?

Buchsbaum: Has everybody signed off on these? Brian?

Boehm: See these tabs [refers to tabs for inventors Bernstein, Shirajee, Friedstein and Rosario to sign] right here? That's what I'm trying to do today. As soon as...I'm going to have people sign, me sign...all the inventors sign. I've got to get a hold of Jeff

Bernstein: I thought we did that when we filed.

Boehm: You only signed one real document, didn't you? Did you actually a declaration? I know you didn't sign an assignment over but you're real clean on it because these are all based on the original filing, which is assigned to iviewit holding already

Bernstein: What's that mean?

Boehm: So all of the other inventors would have a helluva problem trying to say they owned anything.

Simon: Again, this is a little off the subject matter, but I have asked Chris about it before. If something were to happen to iviewit, and it were it went into bankruptcy, what would happen to those patents? How would those patents [ ]?



Wheeler: It depends on which at iviewit you're talking about.

Simon Bernstein: The one that they are held in.

Wheeler: Well, first of all, holdings is held separately versus...we're operating the company out of a separate entity, correct? iviewit.com. So, let me think there...

Buchsbaum: The operating company is iviewit.com.

Simon Bernstein: All I'm concerned about is, for example, that the largest creditor...it wouldn't be a creditor, it would actually be an investor...would then...

Bernstein: They're not a creditor.

Buchsbaum: Okay, then the largest creditor could come in and pierce the corporate veil of iviewit.com and say that this is just a way of protecting the only valuable asset of the company away from creditors. Is there a possibility of that?

Boehm: Obviously there is.

Wheeler: There is a possibility, but that's one of the main reasons... But the loan, they made the company who wrote the patent, join in as a guarantor anyway on it.

Bernstein: Well, that would be all of us. All of those would be all of the investors getting a piece back?

Wheeler: No, no, no. On the \$800,000 loan, those people, it's secured by the patent.

Simon Bernstein: What about the \$600,000...or the other \$800,000 loan?

Wheeler: The others weren't loans. The others were equity, as I recall.

Simon Bernstein: No, no, they have claims.

Bernstein: Well, they're supposed to be converted to equity, which is another issue.

Utley: But there where note holders

Wheeler: No, because there was no quid pro quo at that time. The note holders I mean you can't go back and do it, we had that talk Si

Wheeler: I mean, you can't go back...

Bernstein: The note? I believe they're not final, even though we told people they would be by this time.

Wheeler: The note holders took their money in without taking security. Now you...<Indecipherable. Everyone talking at once.> ...new considerations...I said now you can't ... back to a failure to the corporation

Simon Bernstein: ...Board if everybody that was a creditor found, everybody that was a note holder at that point there was no what would you call it - problem



Buchsbaum: and that would be protected by the courts anyway usually. The court would see this probably as a you know a fraud

Wheeler: You could have two frauds: fraud of creditors and fraud of shareholders.

Simon: No, Chris I'm not worried about fraud. I'm really concerned with the fact that what we did here, the last loan that we took in, from...

Bernstein: Crossbow.

Simon: No, not from Crossbar...

Bernstein: Crossbow.

Wheeler: Crossbow

Simon: ...is secured by the...

Wheeler: ...the term of the deal, right.

Simon: And that's perfectly acceptable to me except that everybody else that had loans prior to that at that time should have been considered with the same equity because ...posses able and Chris told me that that was the perfect time to get it done

Bernstein: Yeah, but would Huizenga lose his?

Bernstein: Would Huizenga lose his stake in it to Crossbow?

Wheeler: No, no, no, it wasn't...I said that if there was going to be new considerations from those people, we all could of...??

Simon: We all could have put in another \$10. I mean, at the time we did it with Crossbow, we should have made sure that our other people...

Bernstein: Are protected.

Utley: No, no, no. We would have had to issue new contracts out for everyone.

Wheeler: There would have had to have been some material consideration, not just \$10. It would have been...

Simon: So it would have been \$10,000...

Wheeler: Well, then, you could have...Crossbow, we didn't even talk about Crossbow at that moment, and I said you couldn't go back and just collateralize. You couldn't go back for money that you already put in. But if you put in new considerations that you could demand as a condition to be collateral.

Simon: What we should have done, or what we maybe we still should do to protect our original group of investors, is to have them pony up a few more thousand or whatever you think is legitimate, and amend the contracts to protect them as well.

Utley: That's new subject matter.

Simon: Well, I only brought it up because it had to do with the patents.



Utley: I know but can we finish the patent discussions before we bring up new subject matter.

Simon: You can, but I want to make sure that we do finish.

Utley: No, I agree with you Si.

Si: The problem is that I made claims to certain people like Don Kane, who put up \$100,000, who thinks...

Bernstein: Let's get back to that. No, let's get back to it. It's a definite point. There are people.

Buchsbaum: This is a business issue for later.

Bernstein: No, we're asked by these very people these questions.

Boehm: Did you get your question answered on the...

Buchsbaum: Yeah, I just wanted to understand...you know, I got an answer. It had to do with the obligations Si I was trying to understand if somebody does due diligence now with regards to understanding what is there and what has to be done, like those yellow tabs. [Yellow tabs indicate signatures of missing inventors]

Boehm: Yeah, but after...I find everybody, we can get guys to sign.

Buchsbaum: We aren't that many. I don't know on that sheet what you have, but I don't think there are that many names. There's what about five names?

Buchsbaum: There aren't that many...you don't have that many. I don't know on that sheet you have, I don't think there's that many names.

Boehm: No, there's not.

Boehm: So we have everybody but Jeff, if we can get Jude and Zak.

Buchsbaum: You just have to get people around and sign.

Boehm: No, that should not be an issue.

Buchsbaum: That might be questions brought up when people do due diligence. Is everybody else on these?

Bernstein: That's why we're closing it. Right?

Boehm: We'll record what was in the patent office(...???) can do.

Utley: The other piece that's not in any part of the original filings, which is the reduction of the technology to a disciplined process—the mathematical representations of what's in and how it works and stuff like that.

Wheeler: (...???)

Buchsbaum: That will also be included in there, right?

Utley: We'll put it in the new filing...one of the new filings.

Wheeler: I form my opinion of everything, and we can talk about post solutions but I think Brian wants to get this back on track, but to me there's bad news and there's good news in this. The bad news is, just like anything in life, perhaps



we would have liked to have tidied up some things better, like to have had Mr. Joao tidy them up. The good news is considering the state that the corporation was in in the early stages and the variable limited resources that it had, I'm glad that we have an awful lot on record that we do have on record, to be honest with you.

Simon: As long as it's not to the detriment of what we thought we were filing, I have no...I couldn't agree with you more.

Wheeler: But I think I like your approach, and I assume it's your approach, too, in that I assume that you're doing a fairly comprehensive new one, but then you're going to probably...

Utley: Claim priority back to the old one.

Wheeler: Right, but you're also going to do your amendment because now we're finding out that it's not an uncommon procedure and it's not a red flag.

Utley: Two things: the new filing on Wednesday will claim priority all the way back for as much as possible back to March 24<sup>th</sup> last year. Second, we will look at the March 24<sup>th</sup> year 2000 filing and determine how we should amend that to include additional claims and broaden that filing so that it more fully represents the knowledge of the invention as of that time.

Bernstein: Does it claim all the way back?

Wheeler: It'll go all the way back...

Boehm: as long as you don't go outside what was described.

Bernstein: No, the math is just describing the original invention.

Boehm: We'll, I'll never know the answer to that until it's litigated.

Utley: Due diligence.

Bernstein: Right, but from your perspective here, that's what we're setting up. Correct?

Boehm: We're going to try.

Bernstein: Okay.

Boehm: The question never even gets answered half the time in the real world. I will claim priority back on the document, and then if the examiner doesn't care, nobody cares

Bernstein: It gets through.

Boehm: It gets through.

Wheeler: Would it be a fair assessment—I'm posing this more as a novice, not as an attorney here—since we're not at IBM and we don't sit down at the very beginning and work out all these equations and all that, that in an invention such as this by a Ma-and-Pa type of inventor, and now since we're getting into the nuts and bolts and really uncovering, in essence, what's behind it, as Brian dissected it as we moved along, but that's all we're doing? I mean, that Ma-



and-Pa inventors do that as they go along? They add the flesh to the bones as they go along?

Boehm: Boy, that happens, and we try not...we try to minimize the amount because if the flesh that you have to add is new subject matter and you've already sold your invention a year ago, you're dead.

Wheeler: Well no, Let me at it a different way. It does this, but I can't describe how it does this. But now we find out...we tell you what it does, now we're telling you in detail how it does it.

Boehm: Yeah, in terms of we claimed it properly.

Wheeler: So I'm not adding flesh in defense...

Simon: New flesh.

Wheeler: ...new flesh. I've got the box, now I'm disclosing what's in the box including the gears and how it works.

Bernstein: No.

Utley: No. Here's what the big difference is. The original filing claims a process for print film imaging.

Bernstein: Well, that was all stricken, by the way. That's why I'm having a big problem. I was going to get to that next, Brian.

Utley: Okay, good.

Bernstein: But we have discussed with Ray Joao numerous times to take out the references to print images out of this right here. Over the course of the year in the 59,000 modifications back and forth, we continuously pushed him away from the words that I see in this filing, and that's what's so disturbing to me because we sat here when...

<End Side 1; begin Side 2>

Buchsbaum: That would be conditional, probably.

Simon: Right, they probably will.

Wheeler: Their not going to want in fact their going to say take it off aren't they

Utley: No Crossbow notes would be converted to equity when someone else comes in.

Si? Of course, and that's gone. And those issues are gone.

Wheeler: Well, Yeah, so that it was the ...it was intelligent way to do it...and I'm not...

Buchsbaum: Crossbow would probably manage the million dollars anyway

Wheeler: By the way, if we did do a deal by which we tried to collateralize it even further, then we'd have to have some sort of provisions as well to get rid of your collateral.

Simon: Yes, of course. As soon as it converts to equity, it's gone.



Wheeler: But I mean, what if you didn't convert yours to equity[ ]?

Simon: Then you'd have to lose it anyway.

Wheeler: But at a point.

Utley: It just becomes a normal stockholder...

Simon: Right.

Wheeler: It would have to drop away or something. For instance, it would drop away when theirs drops away.

Utley: The stockholders, in the event of a default, the stockholders, the distribution that takes place, includes all the stockholders according to the rank of the preference. So the preferred get first cut, and the common stockholders get the second cut, whatever is left for distribution. But of that amount[ ] unless there's nothing to distribute.

Simon: Not if one of the preferred stockholders has a collateralized position and the others don't. If one of these preferred stockholders...

Utley: There's no stockholders that have a collateralized position.

Simon: That's true.

Buchsbaum: You're talking about the small amount of money, that have any value, it should be reasonable value, and those would be taken out anyway.

Simon: Except that we seem to feel that we have an obligation to those, to protect the other stockholders who...had all good...I think its prudent anybody to ask permission

Buchsbaum: A good way to do it is the way he said to do it, and that's to [?].

Utley: Will you look it up and see what it's going to take to do it?

Wheeler: I'll coordinate that

Utley: I'm not clear. What are we trying to do? Are we trying to provide for collateral for new money coming in, or are we trying to...? We're not trying to collateralize money which has already been...

Simon: I don't know. Can you handle the old money the same way? I don't think so.

Wheeler: We have to see. We might be able to consider it for the full amount in the view of the fact that if you had enough substantial new consideration, ...

Buchsbaum: The problem is that you may have to go back to Crossbow to do that, and you may be better off just to do it on subsequent money.

Simon: Well, but to ask Don Kane to put up \$10,000 when he's got \$160,000 in the...\$135,000 in the company, and then he only gets 10%...\$10,000 worth of consideration...I'd like to protect his whole \$165,000, which is what he has.



Buchsbaum: The answer is you go back and ...

Utley: I don't think you can do that because that's equity. It's in common stock.

Bernstein: It's not equity. It's a loan.

Bernstein: Don had the stock prior to his putting up the money. These are loans. There's \$400,000 that's on the books. Then there's another \$100,000 besides what he put in originally. Sal has a loan on the books of \$25,000. Your guy should have had a loan on the books for \$250,000.

Utley: No, that's equity. Okay.

Simon: At any rate, <tape cuts out[tape does not cut out on my tape]>...While I got Chris here I'm going to take advantage of his being here.

Simon: One of the issues we tried to do when we raised the last \$80,000 that came from Eliot's two friends Anderson and Mitch Welsch. [ ]

Bernstein: Ken Anderson.

Simon: It was my knowledge, according to Jerry, that those monies were to go to Eliot, and then Eliot was theoretically to loan the money to the company so that Eliot would have a loan on the books and he would have sold his stock because Eliot has some personal needs that he needs to accomplish as soon as we get funded or we get some money in here. I'm under the understanding again. It could be way off.

Bernstein: How do we work that out, Brian? The 10? A loan?

Utley: Yeah, that's better because otherwise you will get taxed.

Bernstein: Will they loan me \$10,000 to pay the taxes?

Simon: Who loaned you?

Bernstein: The company just today?

Utley: So I took that as a loan?

Utley: Yes.

Bernstein: The money went to the company, which spent the money already—the stock money—from Ken and Mitch.

Simon: You haven't sold any of your stock?

Bernstein: No.

Simon: You just made an officer's loan.

Wheeler: Right.

Simon: Is that how you handle it?

Simon: You loan the loan back by some method at some point.

Bernstein: Right. Correct.



Buchsbaum: That's the way to do that?

Utley: Well, there's no tax impact...

Simon: but he would have had a [ ] gain.

Bernstein: Right. And there were other things at the time...right, things. At the time, the company needed the money and I didn't...not that I didn't

Simon: Sure, I just wanted to make sure that it was done. I didn't even know ...???that bank account

Bernstein: Not that I didn't.

Simon: Let's finish up.

Utley: Eliot, let me summarize. I want to make sure we have an agreement of this meeting. Let me interject two final two points that we kind of skimmed over. One is you said that we want to go ahead and change the claims to go all the way back on this US, but we have sort of got covered on the one we're filing? The one we're filing is a PCT. It won't pop to the US for 18 or 30 months. Or we could file another PCT and a US, then the claims would hit the US. In other words what I'm saying is it would matter if we do the claims here. We could either fix up the claims here or file a PCT and a parallel US if you want US patent protection sooner. The PCT will split out to US, but not until later. You can file a US anytime...

Simon: Let me ask you. You're not a lawyer, what do you recommend?

Boehm: Well, it's more money up front.

Simon: How much money? A great sum of money?

Boehm: No, it's another grand to file.

Simon: For what we've spent already, let's do it.

Bernstein: And that protects us better?

Boehm: Quicker. You'll get a quicker US patent. It'll get you in line quicker.

Utley: The other point that you're making because in this week's filing we are going to claim all the way back...

Boehm: We're going to claim all the way back but this is what is supported

Utley: Right. So if we claim all the way back to March of last year, do we need to touch the filing that's already in motion?

Boehm: The one that's out there?

Utley: Yes the PCT. Do we need to touch that?

Boehm: No, no. There's a PCT and a US.

Utley: Right.



Boehm: The PCT, we will get a search back. In fact, we should get it in a month or so, and then you'll decide what you want to do with that, what foreign country and possibly the US, but he files the same thing basically in the US, and now it's in line in the US.

Utley: Right, right. But what I'm saying is if the new filing that we make this week creates priority all the way back and embraces all of the teachings of the prior...

Boehm: Zoom and pan stuff.

Utley: Zoom and pan stuff, filings, do we need to go and modify and update and amend those earlier filings?

Boehm: Those other two.

Buchsbaum: That's a good question would there be new recommendation?

Boehm: It depends on two things. One is how quickly do you want to get the US for the new filing? This is a PCT that we're preparing right now. If we file the US right away with it, then it makes less difference.

Bernstein: Less?

Boehm: Less difference because he's in line sooner. That's all. It just depends on how soon you want to get your patent.

Bernstein: Well, we want to go for the sooner.

Utley: The sooner the better.

Boehm: The sooner the better then let me play with this

Bernstein: Right.

Boehm: Plus you're gonna get an office action back from the patent office on him...

Bernstein: On that.

Boehm: For free. There's nothing involved.

Bernstein: Right, but it doesn't claim anything.

Boehm: I don't know yet. It claims...he'll get this blasted. It will will be rejected.

Bernstein: Yeah.

Boehm: It will be rejected. The question is do we want to fix this, or where are we with the other things? So there's no decisions to be made now on this, it's just that do you want to file a US and a PCT?

Utley: The answers yes

Boehm: Yes

Bernstein: And we do want to fix the original work?

Boehm: We can decide that later.

Bernstein: Well, why would we leave it unfixed?



Boehm: Because you can't get two patents on the same thing. So if we fix this, you're not going to get it over here.

Bernstein: But then we lose the date.

Buchsbaum: No we don't.

Simon: That's what he's saying.

Buchsbaum: You really don't lose the date.

Wheeler: So were not going to...???

Utley: Because he's claiming all the way back.

Boehm: We may not. It depends on...

Bernstein: May and less, these are words that scare me.

Boehm: You don't like that, do you?

Bernstein: No, I do not.

Boehm: But I don't think this is the right time to make that decision now.

Utley: What is the right time?

Boehm: When we get some office action back on this patent. And when we hear from the patent office, we'll sit down say do we want to fix this, or do we want to fix this, or have we uncovered some killer Prior Art that blows this whole thing out of the water? You don't want to spend money right now if you can avoid it.

Wheeler: We've never done a search, have we?

Boehm: We did a search...I've done a search on...<Everyone talking at once.> on a dozen patents that really weren't on point. We didn't find any close Prior Art; and all I can tell these...

Wheeler: This was on imaging and video?

Boehm: Yeah.

Wheeler: That's incredible.

Buchsbaum: Yeah, it was huge.

Bernstein: If it is found impossible to do these things, why would people be doing them?

Boehm: I want to make...the tape recorders off, right? <Recorder turned off>

Buchsbaum: What does PCT mean?

Boehm: Patent Cooperation Treaty. It's a formal filing process for filing foreign patents.

Buchsbaum: Oh, that's the thing with the different countries?



Boehm: Yeah. So we file one application that splits out later to different countries.

Buchsbaum: Two years?

Boehm: Yes, but we'll get indicators before that. Our search comes in nine months, which is three months from now for the first one. But, Brian, they're searching this claim; this claim is crap. You're not going to get a good search on it.

Buchsbaum: So what? In six months or nine months, we'll start hearing from them?

Boehm: Yeah.

Bernstein: Well then we should do an alternate search on what you have.

Boehm: It's a judgment call. I mean, you asked me this question a while ago, and you said what would it take to get me comfortable because I'm kind of a pessimist and I'm an engineer, so I have that background where I look at it that it's half empty. It would take more searching, and it would take more searching inside the technical articles. And it would take quite a bit of work. I mean, I guess \$5,000, I don't know. It depends on what happens. Then, again, that will only raise you to a different level of comfort, that's all.

Bernstein: And then they'll say the same thing, and for another five grand, well get Rays to another indiscriminate level of comfort.

Boehm: Exactly. But we don't have to do that because we will be getting an article...

Bernstein: Right, from the searches.

Boehm: And from your investors because if I was working for them...

Buchsbaum: Let me put it another way. If you have somebody that will take this company and auction off the technology, okay? As it is existing...as it is unfolding, okay? And as the licenses come along. It's strategy. Some of these people bid on that. What are they really bidding on? It's potentials, right? Basically?

Boehm: Well, no, there's a present value of the technology. If you...

Buchsbaum: Well, not if you don't have patents issued on it.

Boehm: Well, sure there is. Sure there is. If he can get a royalty based on 2% of their products—or whatever it is—per minute, whether or not it is patented, absolutely.

Buchsbaum: My question is at what point does it become...is the efficacy there significantly enough from the standpoint of others now that would be doing their own review. You know, like, say a firm that would do the option. They'd have their patent lawyers take a look at what you're doing to see if they think it has a real good value. At what point does that come along? Is it six or nine months from now, basically? Is that when that probably would start to unfold as far as having a real relevant potential value? I've been trying to get a general..



Boehm: I understand your question. I guess I would answer...

Buchsbaum: General idea.

Boehm: If your licensees are spending a lot of money...

Buchsbaum: On your technology.

Boehm: On your technology, they're going to have their patent attorneys right now, today, go do a search, and they will have a good indication. They may come up with Prior Art that blows you out of the water. They may find nothing. They may not search it. They may say, we don't care about patents; it's the technology.

Buchsbaum: Reality, though, this is not the...more likely six to nine months as some licenses start to unfold here and as things start to come back, and that's when this thing will start to have some relevance more than it does right now? From the standpoint of the...

Boehm: That the patent will have relevance?

Buchsbaum: No, no. The technology has a value that can be created in the marketplace and turned to bidding.

Wheeler: Well, you can look at the technology as almost value added to the company. I mean, the company has worth because of the process and what we can provide and we can build it up. But it'll even astronomical more worth assuming that we have...that it's totally proprietary to ourselves. Now some companies have great technology that's proprietary to themselves, and it doesn't earn them money. For instance, Wang Laboratories went down the tubes. They had the best word processing, and they had the best of everything else. And, of course, a lot of their technology is licensed out there, as I understand it, to VisionAire and to...they did the true ones, and...

Buchsbaum: It's was also to get to the possible strategy for the company's investors, okay?

Utley: Right.

Buchsbaum: Or it may be at some point a window of huge value placed on this technology where you may take advantage of it.

Wheeler: Well, and to our investors, we have said, and we can continue to say, we are attempting to create a pool of intellectual property and protect it.

Buchsbaum: Okay.

Wheeler: But there can be no assurances that this will withstand the test of time.

Boehm: That is exactly it. And you never want even when it issues. You will get a good comfort level when you have a US patent issued in your hands.

Bernstein: Why?

Boehm: Because you've had an examination.



Buchsbaum: Because you've got some review.

Boehm: Because you have a presumption of validity.

Bernstein: That's why I'd like to get that first one corrected because that's the first one that's going to be examined.

Boehm: No, we've got one...oh, yeah, it is. It's the US.

Bernstein: And therefore I want that to be approved. The investors are going to say...

Buchsbaum: The first one that we're going to be issued will be issued in May.

Bernstein: And the investors are going to say what happened to patent one.

Boehm: 3/10 of 2000 was when it was filed. Typically a year...they'll get around to it within a year. Maybe it'll issue in 18 months to two years

Buchsbaum: From right now or from then?

Boehm: From 3/10.

Bernstein: What is the process speed up? If you can show...

Boehm: If you can show somebody's infringing, you can have an expedited examination; but that doesn't always buy you much time, and you really have to get into the patent office the first time, and I'm not sure we can do that.

Wheeler: Wouldn't a good example of one way be that Apple had really great patents, and Microsoft was still able to come in and duplicate it, even though everyone knows they violated the hell out of the patent of Apple.

Boehm: Um, hum.

Wheeler: So I mean you could have a good patent and it could still go down the tubes. But another one I'm thinking of that did stand up was Polaroid had patents and Kodak tried to come in and do everything to distinguish, and wasn't able to and got clobbered, right? And there's probably a lot of every variation in between.

Boehm: Yeah. Wheeler: [Not in transcript this is strange here]

Wheeler: Are those the two extremes?

Boehm: Yeah,

Wheeler: those would be the two extremes.

Utley: Especially when it comes to method patents and software patents.

Wheeler: Yeah, what was the first thing that Brian

Boehm: ...and the more patents you have, the less chances. It's like putting out mine fields...less chances people to get around



you. But if the original concept is broad enough and claimed right, Yeah, we can be okay.

- Boehm: But what, the test - I guess what you're asking for is when we have that first claim promised, probably within two years of when you filed, which is March 10, 2000, I would probably say
- Utley Doug come back, close it out again.  
<Inaudible comment.>
- Boehm: There were two points. One was the PCT and I got that in correct.
- Buchsbaum: Right.
- Boehm: The second point was everybody was saying you don't destroy documents. Lawyers do destroy documents; and in the patent realm, it is common practice to get rid of all of our attorney notes, but it depends on what the practice is in your law firm and your corporation. Most patent attorneys who use this practice that I've seen, it happens after it issues. You never do it before. I don't even like to do it then. I like to do it after all the...
- Bernstein: I don't even understand why you're destroying it. If you've got nothing to hide and everything's on the up-and-up.
- Boehm: But throw in the concept that I'm leaving the law firm. Let's say I'm leaving the law firm, my notes, who's going to follow up and destroy my notes to benefit you, because I do want them six months from now. Maybe that's what he's doing.
- Wheeler: Yeah, he could have done it to protect you. He didn't want them around in the other office.
- Bernstein: I don't know. I don't know. I don't even know if he knew he was leaving then.
- Boehm: Now it's intentional!
- Utley: But I want to comeback were going to file PCT and US on the new one. We're going to wait for the old one to get kicked back; and when it gets kicked back by the examiners, we'll then determine how we want to amend it. Is that what you said?
- Boehm: No, I want to say something on that again. I think if you want a patent to pop quickly-if that's the goal, which sounds like it's a good goal-then, no, I think we should amend the claims with a preliminary amendment before the examination.
- Utley: A preliminary amendment?
- Boehm: A preliminary amendment.
- Bernstein: Encompassing everything we can throw in there?
- Boehm: Yeah, whatever support there is. But a preliminary amendment on whatever it is on the...
- Bernstein: So we're going back to the original
- Boehm: So I'll fix the 119 case yeah



Bernstein: March 3, 2000, to encompass what we've embraced.

Utley: When will you be in a position to recommend what that amendment will look like?

Bernstein: It should look a lot like the one we just did.

Boehm: Yeah, that's...

Bernstein: That's my guess.

Utley: When will you be in a position to...

Boehm: I'd have to...a few days...

Utley: About a week or so?

Boehm: Oh, Yeah, within a week, sure.

Bernstein: Okay. That's good.

<End of meeting.>



## APPENDIX III

Updated on August 14, 2003

Today: Thunderstorms with a high of

80

### LOCAL NEWS

Audit clears FAU Foundation in Corvette scandal despite lack of cooperation  
Gimelstob chides Guggenheim for not talking to auditors, misstating involvement to authorities

Published Thursday, August 14, 2003  
by Brian Bandell

Florida Atlantic University's fund-raising arm didn't approve giving former FAU President Anthony Catanese a Corvette with donated funds, but several people were cited for not participating in an audit conducted by KPMG that was released Wednesday.

FAU officials agreed to audit the \$42,000 that former Foundation head Carla Coleman gave to Catanese for the car under the guise of a payment for his wife's interior decorating services, the capital campaign Coleman used to justify her raise and the use of donated funds at the DeSantis Center. KPMG was hired to conduct the reviews.

The results came with a disclaimer from the auditor. While KPMG reviewed law enforcement documents that led to Coleman being charged with official misconduct, the auditing firm had "significant limitations" that could have affected their conclusion.

**KPMG didn't receive cooperation from Coleman, Catanese, former FAU Foundation Chairman Howard Guggenheim, interior designers Stephen and Rita Lloyd, or foundation executive committee members William French and Chris Wheeler.**

**"The above-mentioned individuals may have provided KPMG with pertinent information regarding the circumstances surrounding the alleged gift," KPMG wrote in the report.**

The auditor was given the minutes of an April 4, 2002 Foundation meeting where Coleman mentioned a non-specific gift for Catanese, but it wasn't given a copy of the minutes of an April 11, 2002 Foundation executive board meeting where, according to a law enforcement investigation, Catanese said he'd like a Corvette as a gift. FAU President Frank Brogan said that if KPMG had more access to information and individuals, it wouldn't have changed the conclusion that the FAU Foundation didn't approve the car.

However, the foundation's new chairman, Herb Gimelstob, criticized former chairman Guggenheim for not telling law enforcement officials about his involvement in the Corvette deal and not talking to auditors despite agreeing to the audit. Guggenheim told a Florida Department of Law Enforcement investigator that



he didn't hear anything about the gift after the foundation meeting where Catanese brought it up, but documents and testimony show Guggenheim solicited donations and made his own contribution toward the car.

"The executive board [of the FAU Foundation] will be meeting shortly and if we don't get further cooperation from the former chairman [Guggenheim], we will take the appropriate legal actions," Gimelstob said.

Guggenheim has refused comment to the press on the advice of his lawyer.

Kenneth Lipman, Coleman's attorney, said his client didn't talk to auditors because of the criminal investigation that was taking place at the time. While the FAU Foundation Board didn't formally approve of the Corvette gift, members of the executive committee donated toward it and Guggenheim made calls to find donors, Lipman said.

"Guggenheim is quite happy with the blame being laid at Carla Coleman's feet," he said.

A deposition was scheduled for Sept. 22. in her criminal case after Coleman pled not guilty.

#### Capital campaign overstated by \$21 million

KPMG's audit also found that the FAU Foundation's capital campaign was overstated by \$21.1 million due to faulty accounting.

Coleman told FAU's Board of Trustees that her fund-raising campaign, which ran from July 1994 to November 2001, raised \$220.3 million. She cited that figure when she requested a raise from \$141,000 to \$185,000 a year for herself and large raises for several of her co-workers. It was approved despite the concerns of some trustees. The audit determined that the actual total from the capital campaign was \$199.1 million.

"We are forever grateful and indebted to the foundation for delivering double what the original goal was," said George Zoley, chairman of the Board of Trustees, noting that the bar was originally set at \$100 million. "The adjusted \$20 million was from accounting issues related to the designation and appropriation of state funds."

Most of the adjusted figure came from state matching funds that were included in the campaign but not received from the Florida Legislature because of a budget shortfall. The largest misstatement was a \$6 million state match for a payment to be received upon death of the donor, who died after the capital campaign ended.

Mistakes involving smaller amounts were attributed to errors ranging from a lack of evidence for reported donations to over- or understatements of donation amounts. KPMG didn't find enough documentation to verify 11 deferred gifts worth \$3.1 million, a deferred \$1.5 gift from an anonymous donor, and a \$100,000 gift. In several cases, the auditor determined pledges shouldn't be listed because the estates of the donors couldn't afford to make them.

However, KPMG had no explanation for a \$6.1 million "variance" between the original campaign estimate and the revised total. The firm said it wasn't provided with any information or documentation regarding the difference.

FAU President Brogan characterized the problem as "just accounting issues."

"The categorization should have been determined prior to beginning the capital



campaign," Brogan said.

FAU Trustee Dr. Frederick Hoffman, a math professor, said the actual shortfalls were "really insignificant." Hoffman thought Coleman's raise was too big, but he doesn't feel that she inflated the results of the capital campaign to generate the raises.

"If you're bragging about your fundraising, you're not going to be conservative. I think it was just normal to make it look as good as you can," Hoffman said. "That's enough of an error to say you have to do better, but not enough to accuse them of wrongdoing."

#### DeSantis Center cleared

The audit determined that funds from the DeSantis Center, a film study center started with a donation from Boca Raton businessman, Carl DeSantis, were used appropriately. It was the center's third audit in just over a year.

Anonymous letters accused Zoley, Business Dean Bruce Mallen and FAU General Council Ondina Felipe of misusing funds for trips to the Cannes Film Festival in France, but the audit found that Zoley and Felipe paid most of their expenses. KPMG also determined that other uses of donated funds were consistent with the center's mission.

That wasn't enough for some officials. Gimelstob said he'd put strict controls in place that would require future expenses to be justified beforehand and afterward.

"The [FAU Foundation] executive board still believes some of the expenses were excessive and didn't do enough to benefit the university or its students," Gimelstob said, asking why limos were need for travel to Fort Lauderdale.

Trustee Bruce Warshal called for the mission of the DeSantis Center to be reviewed, but Brogan warned that a fourth audit of the center would be "whipping a dead horse."

That didn't stop trustees Llywd Eccestone and Norman Tripp from demanding that Zoley and Felipe prove that they paid back the university for their trips to France.

"It's like a fox in a hen house," Eccelstone said.

Zoley said that a previous audit by FAU's inspector general adequately addressed the issue and cleared them of wrongdoing. KPMG's report showed that Felipe was credited with \$862 for lodging and Zoley \$458 for admission to the Cannes Film Festival.

Mallen said he invited Zoley to Cannes to foster relationships with local business. Zoley is the chairman and chief executive officer of Boca-based Wackenhut Corrections Corp. After he returned, Zoley donated \$10,000 to the center, Mallen said.

Felipe said she participated in legal workshops while at the festival.

"They seem to be focusing in on it over and over again. One has to wonder if something other than the issue at hand is motivating them," Mallen said.

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## Several officials warned against buying Corvette for ex-FAU president

By Jennifer Peltz and Neil Santaniello  
Staff Writers  
Posted July 11 2003

The former head of Florida Atlantic University's fund-raising foundation last summer contrived to buy her boss a sports car despite red flags from foundation and university administrators, a lawyer and one of the foundation's board members, according to investigative documents released Thursday.

The documents sketch prosecutors' case against former **FAU** foundation chief Carla Coleman, who faces a felony charge of official misconduct. She's accused of funneling the \$42,000 price of former **FAU** President Anthony Catanese's red Corvette through the foundation, which supports the university but is run separately.

The car was intended as a parting gift after Catanese left **FAU** last July for the private Florida Institute of Technology in Melbourne.

According to sworn statements released Thursday, university finance chief Kenneth Jessell expressed "strong concerns" to Coleman about having the tax-exempt charity give such a gift. After talking with an outside accountant, foundation finance head Diane Freaney suggested Coleman consult a tax lawyer before going ahead with the gift.

Edward Yevoli, an outside lawyer, told investigators he had expressed concerns to another attorney who had consulted him on the foundation's behalf.

When the idea came up at an April 2002 meeting of the foundation's decision-making committee, Freaney told investigators, treasurer Ramon A. Rodriguez vehemently opposed it.

"I didn't think it was appropriate," Rodriguez explained Thursday. "We should be supporting the students and the university."

But Coleman has said, through a lawyer, that she didn't believe she did anything wrong. Some foundation board members and Catanese knew about the arrangements, made with money donated specifically for the gift, according to Coleman's lawyer, Kenneth Lipman.

"She certainly told a number of people she was doing it," Lipman said Thursday. "Nothing was lost, and there was no money taken by her or by anyone ... She honestly believed it was all right."

[Email story](#)

[Print story](#)

### PHOTOS

Evidence  
[See larger image](#)  
(Handout)  
Jul 11, 2003

For the car  
[See larger image](#)  
(Handout)  
Jul 11, 2003

### MORE HEADLINES

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[School move smacks of we-know-best government](#)

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[Palm Beach Community College offers crime science degree](#)



Then-foundation chairman Howard Guggenheim and current chairman Herbert Gimelstob have said they were unaware of the Corvette gift, which the decision-making committee never voted to approve. And Catanese has said, through a lawyer, that he wasn't aware the gift wasn't proper, despite its circuitous delivery. The money was routed as a consulting fee to Catanese's wife, Sara, through a decorating firm that worked on **FAU's** presidential manse.

But one of Coleman's deputies, Susan Peirce, told investigators in a sworn statement that Guggenheim had told her he had solicited contributions for a gift for Catanese. According to a memo she acknowledged writing in May 2002, Guggenheim agreed to put in \$5,000 of his own. Guggenheim could not be reached Thursday, despite several attempts by phone.

Four other **FAU** supporters -- Richard Davimos, Christopher **Wheeler**, William French and William E. Morris -- agreed to put up another \$11,500 among them, according to Peirce's memo.

"All insist[ed] that their donations be gifts that go through the Foundation; want tax benefits," she wrote in the memo, which was released among the investigative documents. In an October letter also released Thursday, **Wheeler, a lawyer,** specifically asked for a "charitable deduction receipt" for his \$3,000 contribution toward Catanese's gift.

**Wheeler**, Davimos and Morris could not be reached Thursday. French declined to comment. All are members of the foundation's leadership.

As a tax-exempt charity, the foundation is not supposed to spend money for any non-charitable purpose. Internal Revenue Service officials wouldn't say this week whether the foundation could face any IRS penalties because of the Corvette gift.

Handwritten notes on the memo, which Peirce said were Coleman's, suggest then-vice chairman Gimelstob was contacted about pitching in \$5,000. But Gimelstob denied knowing anything about it.

"I never gave money for a car," Gimelstob said Thursday. " ... Maybe she thought she could get something, but it never came about."

The handwritten notes also suggest that foundation investment committee chairman Casey Gunnell was contacted about giving \$5,000, and foundation board member Monte Friedkin about \$1,000. Gunnell couldn't be reached Thursday. Friedkin has said he gave \$1,000 after receiving a letter asking for donations toward



an unspecified gift to Catanese, but didn't learn until recently what the gift was.

The documents released Thursday don't include any statements from Coleman or the Cataneses. Anthony Catanese directed inquiries Friday to lawyer Richard Lubin, who could not be reached.

Decorators Stephen and Rita Lloyd told investigators that Sara Catanese had worked closely with them -- but as a client, not a hired consultant. Nonetheless, they didn't object when Coleman asked them to pay Sara Catanese \$42,000, with the foundation reimbursing the firm.

Lloyd acknowledged that Coleman told him what the money was for. He told investigators he asked whether the transaction was legitimate, and Coleman assured him it was.

"My initial feeling about it was ... this is kind of weird," he told investigators in a sworn statement. " ... [But] I didn't question her further. I mean, we were basically working for the university. And she was like our boss."

But when **FAU** officials started asking questions in February, the designers called the Cataneses to explain that they were being asked for documentation of Sara Catanese's work.

Anthony Catanese seemed startled to hear about the payment to his wife, Rita Lloyd told investigators. Nonetheless, the Lloyds arrived in their office a few days later to find a handwritten fax from Sara Catanese, listing dates and numbers apparently intended to represent hours she had worked.

The Lloyds struck a deal with prosecutors to avoid prosecution. Coleman, released on \$4,500 bond, is awaiting court hearings.

Staff writer Jon Burstein contributed to this report.

Jennifer Peltz can be reached at 561-243-6636 or [jpeltz@sun-sentinel.com](mailto:jpeltz@sun-sentinel.com).

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Updated on August 20, 2003

[This Afternoon: Partly cloudy with a high of 85](#)

## LOCAL NEWS

Guggenheim says he was truthful to investigators, FAU officials call for his ouster  
Gimelstob wants Guggenheim off Foundation board for "lying" to investigators and



not cooperating with audit

Published Saturday, August 16, 2003

by Brian Bandell

Howard Guggenheim, the past chair of Florida Atlantic University's fund-raising foundation, said he was "100% honest" with law enforcement inquiries into the misuse of FAU Foundation funds to buy a Corvette for the school's former president. Meanwhile, FAU officials are calling for him to resign from the Foundation's board for not telling investigators that he raised money for former FAU President Anthony Catanese's car and for not cooperating with an audit ordered by the university. Former fundraising head Carla Coleman is facing charges of official misconduct for directing \$42,000 through an interior designer to Catanese so he could buy the car. Catanese has since returned the money and Coleman has pled not guilty. Guggenheim has raised more than \$10 million to benefit the university and personally donated about \$250,000, but the Boca Raton stockbroker's actions have recently come under scrutiny.

"How can we have people trust their money with someone who lies to police and doesn't cooperate with investigators?" said Herb Gimelstob, the current FAU Foundation chair. "We will chat with him and look at the legal ramifications of what we have to do if he doesn't agree."

Gimelstob said the matter would be discussed next week at a Foundation executive board meeting. FAU President Frank Brogan and Board of Trustees Chairman George Zoley are also urging Guggenheim to step down, Gimelstob said. Brogan confirmed that he spoke with Guggenheim, but he didn't reveal what was discussed.

In a statement issued through his lawyer on Thursday, Guggenheim said he'd decide about resigning at a later date and defended his actions.

"Mr. Guggenheim has fully participated in the investigation at issue and at no time lied, covered-up, or misrepresented the facts to any investigative agency," the statement from Guggenheim's lawyer read.

When a Florida Department of Law Enforcement officer asked Guggenheim whether fundraiser Coleman ever asked him to authorize FAU Foundation funds to purchase the car, Guggenheim responded: "No. That was never discussed with me."

Guggenheim said the topic of a Corvette for Catanese was brought up at a Foundation executive board meeting in April 2002 but no vote was taken. The investigator asked Guggenheim if he had any conversations about how the gift would happen after that meeting and he again said no.

That would appear to contradict what former Associate Vice President for Advancement Susan Peirce told investigators: that Guggenheim called her last year and asked her to help him raise money for a gift for Catanese but she told him she wouldn't help because she opposed the idea.

A document found on Peirce's computer showed that Guggenheim was making calls to solicit donations for a "gift" to Catanese. The May 22, 2002 note was addressed from Peirce to Coleman and cited a total of \$16,500 in contributions from foundation board members.



"Mr. Guggenheim's understanding was that the question was asking about 'how' the funds were directed to President Catanese (i.e. through Lloyd Interior Design)," Guggenheim's statement read. "Mr. Guggenheim knew nothing about the way the funds were directed to President Catanese and likewise never had a conversation with anybody about this and therefore when he answered the question 'no' he was honest and accurate."

The statement by Guggenheim admitted that he made calls to raise money for the Corvette but said he had no role in the collection, recording or allocation of the funds. FAU ordered an audit to determine whether the Foundation approved the Corvette gift. Audit firm KPMG determined it did not, but cited Guggenheim for not responding to a request to be interviewed. **The auditing firm said its investigation might have turned out differently if Guggenheim, among others, had cooperated.** Guggenheim said he didn't meet with the auditors because he was "advised that KPMG had everything they needed including the transcript from Mr. Guggenheim's voluntary interview with the FDLE."

**Selz & Muvdi Selz, P.A.**

Attorneys At Law  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480

---

Steven M. Selz  
Liliana M. Selz

Tel: (561) 820-9409  
Fax: (561) 833-9715

**FAX TRANSMITTAL COVER SHEET**  
**FAX Number: (561) 364-5502**

**Individual & Firm: ELIOT BERNSTEIN.**

**From: STEVEN M. SELZ, ESQ.**

**Date & Time: 6/4/03 10:00 A.M. File # \_\_\_\_\_**

**Total number of Pages (INCLUDING this cover sheet) 20**

**RE: IVIEWIT.COM**

**Document(s) Attached: INFORMATION ON DEPO OF RUBENSTEIN YOU REQUESTED AND COPY OF LETTER RECEIVED TODAY AS TO WHEELER DEPO.**

**Comments: AS DISCUSSED- NEED TO KNOW BY THIS FRIDAY WHAT YOU INTEND OR I WILL HAVE TO WITHDRAW- CAN'T AFFORD TO CONTINUE WORK WITHOUT PAYMENT.**

**A copy or the original of the attached document will not follow unless otherwise noted below. Copy/Original sent by:**

**Regular Mail  Federal Express  Courier**

**PLEASE NOTIFY US IMMEDIATELY OF ANY PROBLEMS WITH THE TRANSMISSION AT (561) 820-9409.**

**THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGE AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THIS OFFICE WILL REIMBURSE YOU FOR ALL COSTS ASSOCIATED WITH THE RETURN OF THIS DOCUMENT. THANK YOU.**

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

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

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

---

**DEFENDANTS' MOTION TO COMPEL TAKING OF FOREIGN  
DEPOSITION AND FOR APPOINTMENT OF A COMMISSIONER**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS, INC. and  
IVIEWIT TECHNOLOGIES, INC., by and through their undersigned counsel, hereby  
move this Court for an Order requiring Kenneth Rubenstein, Esq. as a partner of the  
Plaintiff, to submit to the taking of his deposition in New York City, New York and  
appointing Esquire Deposition Services in New York City, New York, as a  
Commissioner for the taking of the deposition of Mr. Rubenstein and in support of  
this Motion would state:

1. That based on the prior testimony of deponents to this matter and the

personal knowledge of the Defendants corporate representative, Elliot Bernstein, Kenneth Rubenstein was involved directly in the providing of services to the Defendants both prior to his employment with the Plaintiff and subsequently during his employ with the Plaintiff.

2. That Kenneth Rubenstein (“Rubenstein”) is an attorney currently employed by the Plaintiff and who works out of the Plaintiff’s New York City offices.

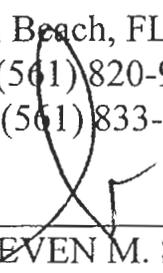
3. That the Defendants intend to take the deposition of Rubenstein in New York City, New York, prior to the trial of this matter due to the knowledge of Rubenstein as to the services provided by the Plaintiff to the Defendants; however, counsel for the Plaintiff has refused to make Rubenstein available as set forth in the attached Exhibit “A”.

4. That Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017, should be appointed Commissioner to take the deposition of Rubenstein.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order directing that Kenneth Rubenstein be submitted for deposition and permitting the Defendants to take the deposition of Rubenstein in New York and appointing Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017 as Commissioner to take the deposition of Rubenstein.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 24<sup>th</sup> day of October, 2002 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By:   
STEVEN M. SELZ  
FBN: 777420

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

v.

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

Defendants.

---

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL  
TAKING OF FOREIGN DEPOSITION AND FOR THE APPOINTMENT  
OF A COMMISSIONER AND MOTION FOR PROTECTIVE ORDER**

Plaintiff, Proskauer Rose LLP ("Proskauer"), responds to the Defendants' Motion to Compel Taking of Foreign Deposition and for Appointment of a Commissioner served under certificate of service dated October 24, 2002 (the "Motion") and further moves, pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, for a the entry of a protective order as to the taking of the deposition of Kenneth Rubenstein ("Mr. Rubenstein"), and as grounds states as follows:

1. This is an action by Proskauer to collect unpaid attorney's fees from the Defendants, all former clients of Proskauer.
2. The Defendants' have not alleged, in any pleading, that Proskauer failed to properly perform the work undertaken on their behalf. Notwithstanding Defendants' failure to plead any such allegation, Defendants are now putting forth an eleventh hour attempt to turn this

matter into a malpractice case (and delay the trial of this matter set for the week of December 16, 2002) and are attempting to harass a Proskauer attorney (who lives in New Jersey and works in New York) who never billed any time to the Iviewit matter.<sup>1</sup>

3. Specifically, Defendants are attempting to compel Mr. Rubenstein, a partner in Proskauer's New York office, to appear for a deposition. The Motion was filed because Proskauer has refused to produce Mr. Rubenstein for his deposition.

4. The Motion is misleading and misrepresents the discovery in this matter. Citing no particular deposition testimony, Defendants' motion at paragraph 1 states that prior testimony of the deponents in this matter has revealed that Rubenstein was "involved directly in the providing of services to the Defendants. . . ." Nothing could be further from the truth.

5. Contrary to the Defendants' baseless statement that Rubenstein was involved in the representation of Proskauer, Brian Utley, Defendants' former President and Chief Operating Officer, testified in his deposition as follows:

- At Elliot Bernstein's request, Rubenstein recommended another law firm to handle Defendants' patent matters (BU:70-4, 23);<sup>2</sup>
- "Rubenstein was never involved" in any of the work, and Defendants' interrogatory answers stating otherwise are a "misrepresentation." (BU:84-5, 7, 21);
- "[o]ther than referring Iviewit to [outside counsel], Rubenstein never did any work for Iviewit" (BU:121-3);

---

<sup>1</sup> Proskauer filed a motion in limine directed to the issue of whether the Defendants can put on proof of any alleged wrongdoing by Proskauer, as the defense was never pled in any of the pleadings in this matter. The motion in limine is set for hearing on November 5, 2002.

<sup>2</sup> The abbreviation "BU\_\_" followed by a page and line number refers to the transcript of the Deposition of Brian Utley dated August 22, 2002.

- Utley never met Rubenstein (BU:121-19);
- Rubenstein had no active role with Iviewit (BU:138-11, 24);
- “Rubenstein and Mr. Wheeler, I’ll repeat, had nothing to do with the patents and therefore, I object to them being included in the question.” (BU:150-9);

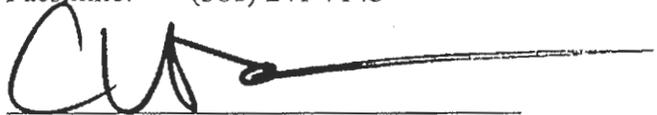
Copies of the pages of the transcript of the Deposition of Brian Utley cited above are attached hereto.

6. Defendants’ eleventh-hour desire to depose Mr. Rubenstein is nothing more than a blatantly transparent attempt to harass Mr. Rubenstein, who billed no time in the Defendants’ representation. Although Defendants plan to take the deposition of Christopher Wheeler, Proskauer’s corporate representative, the Defendants’ intent to harass Rubenstein is further made clear by the fact that the Defendants have never attempted to take the deposition of any of the myriad of Proskauer attorneys who actually did provide legal services for the Defendants.

WHEREFORE, Proskauer respectfully requests that the Court deny the Defendants’ motion to compel Mr. Rubenstein’s deposition, enter a protective order consistent with this motion, and grant any further relief that is reasonable and just.

This 25 day of October, 2002.

PROSKAUER ROSE LLP  
2255 Glades Road, Suite 340W  
Boca Raton, Florida 33431  
Telephone: (561) 241-7400  
Facsimile: (561) 241-7145



Matthew Triggs  
Florida Bar No. 0865745  
Christopher Prusaski  
Florida Bar No. 0121525

CERTIFICATE OF SERVICE

I certify that on October 25, 2002, a copy of the foregoing was furnished by U.S. Mail and facsimile to Steven Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, FL 33480.



---

Christopher W. Prusaski

**PROSKAUER ROSE LLP**

2255 Glades Road  
Suite 340 West  
Boca Raton, FL 33431-7360  
Telephone 561.241.7400  
Elsewhere in Florida  
800.432.7746  
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NEW YORK  
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NEWARK  
PARIS

**Matthew Triggs**  
Member of the Firm

Direct Dial 561.995.4736  
mtriggs@proskauer.com

June 13, 2003

**Via U.S. Mail**

Steven M. Selz, Esq.  
Selz & Muvdi Selz, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480

Re: Proskauer Rose LLP v. Iviewit.com, Inc.

Dear Steve:

Notwithstanding the Court's recent order regarding Mr. Rubenstein's deposition, I have enclosed a copy of an affidavit of Mr. Rubenstein through which he answers the questions that he previously declined to answer in his deposition.

Sincerely,



Matthew Triggs

MT/kr  
Enclosure



IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF FILING AFFIDAVIT OF KENNETH RUBENSTEIN**

Plaintiff, Proskauer Rose LLP, by and through its undersigned counsel, hereby gives  
notice of the filing of the original Affidavit of Kenneth Rubenstein dated June 10, 2003.

This 13<sup>th</sup> day of June, 2003.

PROSKAUER ROSE LLP  
Attorneys for Plaintiff  
One Boca Place, Suite 340W  
2255 Glades Road  
Boca Raton, Florida 33431  
Telephone: (561) 241-7400  
Facsimile: (561) 241-7145

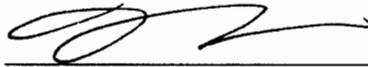


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Matthew Triggs  
Florida Bar No. 0865745  
Christopher Prusaski  
Florida Bar No. 0121525

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of June, 2003, a true and correct copy of the foregoing has been furnished by U.S. Mail to Steven M. Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, Fl 33480.



---

Matthew Triggs



3. On page 25, line 7 of that transcribed testimony, I was asked “Did you have any discussions with Warner Bros. about IViewIt?” My answer to this question is as follows:  
Answer: I had one communication with Warner Bros. related to Iviewit. Mr. Utley, former CEO of Iviewit, who knew that Proskauer did work for Warner Bros., requested that we help open a channel of communication for Iviewit. I contacted Greg Thaggard at Warner Bros. and told him that he might be interested in speaking with Iviewit. I also told him that, as both Iviewit and Warner Bros. were clients, I would not get involved in any relationship between Iviewit and Warner Bros.
4. On page 27, line 18, I was asked “Did you ever talk to anyone at Warner Bros. with regarding to IViewIt?” My answer to this question is as follows:  
Answer: See my response above contained in paragraph 3.
5. On page 29, line 22, I was asked “When did you represent Warner Bros., sir?” My answer to this question is as follows:  
Answer: I started working on projects concerning Warner Bros. starting in about 1996.
6. On page 41, line 6, I was asked “Could you tell me about the cases that you have been involved with? Just naming the cases.” [Requesting names of patent cases he has litigated.] My answer to this question is as follows:  
Answer: Some patent cases we worked on are: SMARTS v. Avesta Technologies, Inc.; Hauppauge Computer Works, Inc. v. Advanced Interactive, et al.; Nova v. Sensys and Standard Microsystems v. Datapoint.

7. On page 47, line 7, I was asked "Have you ever discussed IViewIt Technologies with him?" [Chris Cookson] My answer to this question is as follows:

Answer: No.

8. On page 57, line 6, I was asked "Does that committee ever obtain waivers of conflicts from clients?" My answer to this question is as follows:

Answer: Waivers are sometimes obtained.

9. On page 75, line 20, I was asked "So you refuse to answer whether or not you had communicated to those parties with regard to IViewIt; is that correct?" [Warner Bros. and Sony] My answer to this question is as follows:

Answer: I never communicated with Sony about Iviewit. The only communication I had with Warner Bros. related to Iviewit was identified above.

FURTHER AFFIANT SAYETH NAUGHT.

Kenneth Rubenstein  
Kenneth Rubenstein

Date: June 10, 2003

VIRGINIA V. WURTHMAN  
Notary Public, State of New York  
No. 03-9820204  
Qualified in Bronx County  
Commission Expires July 31, 2006

Before me, the undersigned notary public, appeared Kenneth Rubenstein, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

Virginia V. Wurthman  
Notary Public  
Commission No. 03-9820204

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

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

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

---

**ORDER ON DEFENDANTS' MOTION TO APPOINT FOREIGN  
COMMISSIONER AND TO COMPEL DEPOSITION OF KENNETH  
RUBENSTEIN**

This matter coming before the Court on the Defendants' Motion to Appoint Foreign Commissioner and to Compel the Taking of Deposition as to Kenneth Rubenstein, Esq. and the Court having heard argument of counsel for both Plaintiff and Defendants and otherwise being advised in the premises and having considered the grounds for the Motion and considered applicable law, it is FOUND,

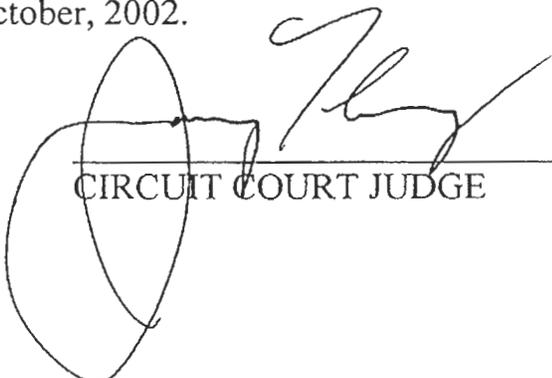
ORDERED AND ADJUDGED as follows:

1. Defendants' Motion for Appointment of Foreign Commissioner and to

compel the taking of the deposition of Kenneth Rubenstein, Esq. is hereby granted.

2. Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017, is hereby appointed Commissioner to take the deposition of Kenneth Rubenstein, Esq. in this matter, which deposition is to be conducted telephonically at a mutually convenient date for the parties prior to November 15, 2002, OR AN OTHERWISE AGREED BY THE PARTIES.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 31<sup>st</sup> day of October, 2002.



CIRCUIT COURT JUDGE

Copies to:

Steven M. Selz, Esq.  
214 Brazilian Ave., #220  
Palm Beach, FL 33480

Christopher W. Prusaski, Esq.  
Proskauer Rose, LLP  
2255 Glades Road, Suite 340 W  
Boca Raton, FL 33431

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3 IN THE CIRCUIT COURT OF THE  
4 15th JUDICIAL CIRCUIT IN AND  
5 FOR PALM BEACH COUNTY, FLORIDA

6 -----X

7 PROSKAUER ROSE L.L.P.,

8 Plaintiff,

9 vs. CA 01-04671 AB

10 IVIEWIT.COM, INC., a Delaware  
11 corporation, IVIEWIT HOLDINGS,  
12 INC., a Delaware corporation,  
13 and IVIEWIT TECHNOLOGIES,  
14 INC., a Delaware corporation,

15 Defendants.

16 -----X

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20 DEPOSITION OF KENNETH RUBENSTEIN

21 New York, New York

22 Wednesday, November 20, 2002

23

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26 Reported by:  
27 WENDY D. BOSKIND, RPR  
28 Job No. 142586

29

□

Ken Rubenstein Deposition

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November 20, 2002  
11:06 a.m.

Deposition of KENNETH RUBENSTEIN,  
held at the offices of Proskauer Rose  
LLP, 1585 Broadway, New York, New York,  
pursuant to Notice and Agreement,  
telephonically pursuant to a Court  
Order, before Wendy D. Boskind, a  
Registered Professional Reporter and  
Notary Public of the State of New York.

□

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A P P E A R A N C E S :

PROSKAUER ROSE LLP

5 Ken Rubenstein Deposition  
Attorneys for Plaintiff  
6 2255 Glades Road  
7 Suite 340 West  
8 Boca Raton, Florida 33431-7360  
9 BY: CHRISTOPHER W. PRUSASKI, ESQ.

10  
11  
12 SELZ & MUVDI SELZ, P.A.  
13 Attorneys for Defendants  
14 214 Brazilian Avenue  
15 Suite 220  
16 Palm Beach, Florida 33480  
17 BY: STEVEN M. SELZ, ESQ.  
18 (telephonically)

19  
20  
21 ALSO PRESENT:  
22 ELIOT BERNSTEIN, ESQ.  
23 (telephonically)

24  
25  
1  
2 K E N N E T H R U B E N S T E I N ,  
3 business address at Proskauer Rose  
4 LLP, 1585 Broadway, New York, New York,  
5 having first affirmed before the Notary  
6 Public, (Wendy D. Boskind), was examined  
7 and testified as follows:

Ken Rubenstein Deposition

8

9 EXAMINATION BY

10 MR. SELZ:

11 Q. Mr. Rubenstein, my name is  
12 Attorney Steve Selz, I represent the  
13 Defendants in the case of Proskauer Rose  
14 versus IViewIt.com.

15 I am going to ask you a series of  
16 questions in this deposition, and the first  
17 thing I need to know is whether or not you  
18 have had your deposition taken previously.

19 A. I have had my deposition taken  
20 previously.

21 Q. On how many occasions has that  
22 taken place, sir?

23 A. Several.

24 Q. "Several", more than a dozen?

25 A. No.

□

5

1 Rubenstein

2 Q. More than five?

3 A. No.

4 Q. Can you give me an approximate  
5 number? Two or three?

6 A. I would say three or four.

7 Q. Okay, three or four. So you are  
8 familiar with the way a deposition works; is  
9 that correct, sir?

10 A. Yes.

11 Q. So if I ask you a question, unless  
12 you ask me to rephrase it or somehow revise  
13 the structure of the question, I will presume  
14 then that you have understood what I have  
15 asked you as it is posed.

16 A. If I think your question is of  
17 improper form, unclear, or harassment, I am  
18 going to object.

19 Q. Okay, I believe that would be not  
20 for you to do but Mr. Prusaski, as your  
21 counsel.

22 A. I will put any objection I want on  
23 the record, in addition to Mr. Prusaski.

24 Q. So, you are representing yourself?

25 A. No, I am not, he is representing

□

6

1 Rubenstein  
2 me, but I am going to put objections on the  
3 record, if I want to.

4 Q. That's fine.

5 Now, starting off with, sir, could  
6 you please state your full name?

7 A. Kenneth Rubenstein.

8 Q. "Kenneth Rubenstein." And where  
9 is your place of employment currently,  
10 Mr. Rubenstein?

11 A. Proskauer Rose.

12 Q. Where is that located?

13 A. 1585 Broadway, New York.

14 Q. And how long have you been  
15 employed with Proskauer Rose?  
16 A. About four, four-and-a-half years.  
17 Q. Somewhere between 1997 and 1998  
18 was your first date of employment?  
19 A. I think it was in 1998.  
20 Q. Do you remember a month?  
21 A. Possibly June.  
22 Q. June. Where were you employed  
23 prior to your employment with Proskauer Rose?  
24 A. I was with a law firm, Meltzer,  
25 M-E-L-T-Z-E-R, Lippe, L-I-P-P-E.

□

7

1 Rubenstein  
2 Q. Meltzer Lippe is located where?  
3 A. Mineola, New York.  
4 Q. Do you have an address that you  
5 can recall?  
6 A. On Willis Avenue, but I don't have  
7 the address right now.  
8 Q. Prior to Meltzer Lippe -- and  
9 approximately what were the dates of your  
10 employment at Meltzer Lippe?  
11 A. About 1993 to 1998.  
12 Q. And what did you do at Meltzer  
13 Lippe?  
14 A. I was an attorney.  
15 Q. Did you have any specialization?  
16 A. I was a patent attorney.

- 17 Q. Are you still a patent attorney?  
18 A. Yes.  
19 Q. Is that your role at Proskauer  
20 Rose currently, is a patent attorney?  
21 A. Yes.  
22 Q. Are you a partner of Proskauer  
23 Rose?  
24 A. Yes.  
25 Q. Are you a shareholder of Proskauer

□

8

- 1 Rubenstein  
2 Rose?  
3 A. One or the other, either partner  
4 or shareholder.  
5 I think it's a partnership.  
6 Q. It's a partnership. Do you have  
7 any ownership interest in the partnership in  
8 the sense of obligations that go beyond what  
9 some of the other partners have? In other  
10 words, do you have an equity share? Do you  
11 have any other claims with regard to an  
12 interest in Proskauer Rose?  
13 A. I have no idea.  
14 Q. Prior to Meltzer Lippe, where were  
15 you employed, sir?  
16 A. Another law firm.  
17 Q. Do you remember the name of that  
18 law firm?  
19 A. Marmorek, M-A-R-M-O-R-E-K,

Ken Rubenstein Deposition  
20 Guttman, G-U-T-T-M-A-N, & Rubenstein.

21 Q. Were you the "Rubenstein" in the  
22 name of the firm?

23 A. Yes.

24 Q. And you were a partner in that  
25 firm?

9

1 Rubenstein

2 A. Yes.

3 Q. What were the dates of your  
4 employment in that firm --

5 A. Oh --

6 Q. -- Marmorek Guttman & Rubenstein.

7 A. -- probably starting in the  
8 Eighties, mid-Eighties, until 1993.

9 Q. And what was the area of your  
10 practice, when you were with Marmorek --

11 A. M-A-R-M-O-R-E-K.

12 Patent law.

13 Q. Patent law. And your dates -- you  
14 say you left Marmorek Guttman & Rubenstein and  
15 went to Meltzer Lippe and then to Proskauer  
16 Rose, but at all times you were a patent  
17 lawyer --

18 A. Yes.

19 Q. -- is that a correct statement?

20 A. Yes.

21 Q. Is that a correct statement, sir?

22 A. Yes.

23 Q. You have to wait until I finish  
Page 8

Ken Rubenstein Deposition

24 the question.

25 A. No, you are not getting the

□

10

1 Rubenstein

2 answers clearly in your head. You should take  
3 better notes.

4 MR. SELZ: Move to strike as  
5 non-responsive.

6 (MOTION TO STRIKE.)

7 A. That's fine, move to strike it.

8 Q. Sir, during that entire period of  
9 time, then, you were a patent lawyer; is that  
10 a correct statement of fact?

11 A. Yes.

12 Q. Are you familiar with something  
13 that's called "pan and zoom technology"?

14 A. I am not sure what you mean by  
15 that.

16 Q. Well, let me start very simply,  
17 and say this. Are you familiar with a concept  
18 that an image can be enlarged while being  
19 transmitted on a narrow bandwidth?

20 A. I don't know what you are talking  
21 about.

22 Q. Okay. Well, let me go back to  
23 this, then, sir. Are you familiar at all with  
24 the technology involved with IViewIt.com?

25 A. No.

□

1 Rubenstein

2 Q. Do you have any information at all  
3 with regard to any of the IViewIt entities?

4 A. Not at this time, no.

5 Q. "Not at this time." Did you have  
6 any information at any time in the past, sir?

7 A. Not that I know of right now.

8 Q. Do you have any files or records  
9 indicating that you had any dealings with --  
10 and I will go through a list here --  
11 IViewIt.com, Inc.?

12 A. Not that I know of.

13 Q. IViewIt, LLC?

14 A. Not that I know of.

15 Q. UViewIt?

16 A. Not that I know of.

17 Q. IViewIt, Inc.?

18 A. Not that I know of.

19 Q. Have you ever heard of an  
20 individual named Eliot Bernstein?

21 A. I might have.

22 Q. Well, sir, that's either a "Yes"  
23 or "No" question.

24 A. Like I said, I think he works for  
25 IViewIt, and I may have heard his name.

□

Ken Rubenstein Deposition  
Rubenstein

1

2 Q. How about what is called the MPEG  
3 Patent Pool, have you heard of that?

4 A. Yes, I have.

5 Q. Why don't you tell me what that  
6 is.

7 A. Decline to answer at this time.

8 Q. Why do you decline to answer?

9 A. Irrelevant to this deposition.

10 Q. I'm sorry, irrelevancy is not an  
11 objection that would allow you not to answer,  
12 sir.

13 A. Make a motion to the judge. If he  
14 orders me to tell you about it, I will tell  
15 you.

16 MR. SELZ: Chris, are you  
17 instructing your client not to answer?

18 MR. PRUSASKI: I am going to put  
19 an question for relevancy based on the  
20 court's granting of the motion and  
21 limiting on the record, and if  
22 Mr. Rubenstein declines to answer then  
23 he is declining to answer.

24 And, just so I don't have to keep  
25 objecting, Mr. Selz, to make this

□

13

1

Rubenstein

2 easier, my objection is continuing in  
3 nature as to any questions regarding any

4 Ken Rubenstein Deposition  
5 transactions for IViewIt that you are  
6 going to ask Mr. Rubenstein if he was  
7 involved in based on the court's  
8 granting of the motion and limiting.

8 MR. SELZ: Let me go on the record  
9 and say the discovery documents that  
10 have been produced by the Defendants --  
11 Plaintiff in this matter indicate  
12 various dealings in which Proskauer Rose  
13 was affiliated including dealings with  
14 H. Wayne Huizenga, CrossBow Ventures,  
15 Wachovia, a number of other entities  
16 which are part of the discovery and have  
17 been produced by the Plaintiffs pursuant  
18 to a valid request for production, so to  
19 the extent you are claiming it's subject  
20 to any motion and limited, that's fine  
21 with regard to the trial, and the  
22 discovery you produced on your own  
23 pursuant to a request for production  
24 which has not been held invalid includes  
25 these very matters.

□

14

1 Rubenstein  
2 A. So why don't you tell me more  
3 particularly what you want to know.

4 MR. PRUSASKI: Mr. Selz, let me  
5 just respond to that.

6 There were never any affirmative

7 Ken Rubenstein Deposition  
8 defenses asserted by the Defendants in  
9 this matter that have anything to do  
10 with particular transactions, the  
11 defenses involved whether the bills  
12 were --

13 MR. SELZ: Let's go --

14 MR. PRUSASKI: I get to finish  
15 because --

16 MR. SELZ: Go ahead and finish.

17 MR. PRUSASKI: Thank you.

18 There were never any affirmative  
19 defenses asserted by the Defendants in  
20 this matter relating to anything other  
21 than the amount of the bills. And, so,  
22 to the extent that the court granted our  
23 motion limiting it, the Defendants can't  
24 put any evidence of any particular  
25 transactions or alleged wrongdoing by  
Proskauer on at trial, but to that

□

15

1 Rubenstein  
2 extent I am going to ask Mr. Rubenstein  
3 to answer your questions. If I feel  
4 that they are becoming overreaching, I  
5 will make -- or if you are extending too  
6 far into what I think is a violation of  
7 the court's granting of the motion of  
8 limiting, I will make another objection.

9 MR. SELZ: And let me go on the

10 Ken Rubenstein Deposition  
record, the motion of limiting is fine  
11 with regard to anything presented at  
12 trial. It certainly does not preclude  
13 the scope of discovery from including,  
14 in a deposition, questions which may  
15 lead to discoverable evidence concerning  
16 the bills and the services that were  
17 provided, which is the basis for the  
18 affirmative defenses.

19 MR. PRUSASKI: And I am aware that  
20 you have some latitude with respect to  
21 discovery under the rules.

22 MR. SELZ: And I think we have  
23 pretty significant latitude under the  
24 rules.

25 And with regard to your client,

□

16

1 Rubenstein  
2 Mr. Rubenstein, indicating he is  
3 refusing to answer, I believe you should  
4 instruct him right now, under Florida  
5 law, he doesn't have the right to refuse  
6 to answer.

7 A. All right, I will answer the  
8 question.

9 MR. PRUSASKI: I just said a  
10 minute ago we will go ahead.

11 A. Anything you want to know about  
12 the MPEGLA patent pool, that's public

13 information, it's is on a web site,  
14 MPEGLA.com. You should go look at that  
15 web site. Any public information that I am  
16 entitled to tell you is on that web site.

17 Q. Well, I am going to ask you, sir,  
18 in this deposition to give me that  
19 information.

20 A. And I am just telling you to go  
21 look at the web site.

22 MR. SELZ: Let the record show the  
23 witness is refusing to respond to a  
24 direct question.

25 A. That is an incorrect

□

17

1 Rubenstein  
2 characterization of the record.

3 The record shows that I told you a  
4 place where you can get the answer very  
5 easily. There is no reason for you to make me  
6 sit here and waste my time repeating to you  
7 things you can easily read about.

8 Q. Well, sir, this is your testimony  
9 at your deposition.

10 A. That's right, which you are making  
11 me do. I consider the deposition nothing but  
12 harassment, considering that I had nothing to  
13 do with the company. It's just a form of  
14 harassment.

15 You go read the web site, if you

16 want to know about it.

17 Q. Okay, so you are refusing to  
18 answer?

19 A. I am not refusing.

20 Q. Other than advising me to go to a  
21 web site --

22 A. I am not refusing to answer. I  
23 did answer. Please stop characterizing my  
24 testimony. I told you the answer. I told you  
25 all publicly-available information about the

□

18

1 Rubenstein

2 MPEG patent pool can be found at  
3 [www.MPEGLA.com](http://www.MPEGLA.com). You are free to go read it.  
4 Please go read it and you will learn all you  
5 need to know about it.

6 Q. So you are not going to tell me  
7 what the "MPEG patent pool" is?

8 A. I told you you could go read it.

9 Q. Okay.

10 MR. SELZ: Chris, do you want to  
11 instruct your witness, or deponent, or  
12 client, at all in that matter?

13 MR. PRUSASKI: Do you have any  
14 specific questions with respect to  
15 IViewIt in the MPEG patent pool?

16 MR. SELZ: Yes.

17 A. All right, so why don't you ask me  
18 those questions.

19 MR. SELZ: I want Mr. Rubenstein  
20 to first explain to me what the "MPEG  
21 patent pool" is, and then I will ask him  
22 questions concerning exactly how it  
23 relates to IViewIt.  
24 In other words --  
25 A. Okay, I will answer both your

□

19

1 Rubenstein  
2 questions.  
3 Q. Go ahead.  
4 A. The "MPEG patent pool" is a  
5 collection of patents owned by a group of  
6 companies related to the MPEG 2 video  
7 compression standard and, as far as I know, it  
8 has nothing whatsoever to do with IViewIt.  
9 Q. So it has no technology -- the  
10 MPEG patent pool uses no technology in any way  
11 related to any of the IViewIt entities or  
12 their intellectual properties; is that your  
13 testimony?  
14 A. No, it's not my testimony.  
15 Q. Okay.  
16 A. My testimony is, it's a group of  
17 patents chosen according to very specific  
18 criteria related to the MPEG 2 standard and,  
19 to my knowledge, has nothing to do with  
20 IViewIt.  
21 And please do not characterize my

22 words. Please do not rephrase them. If you  
23 don't know what I said, you can ask the  
24 reporter to read it back. But do not  
25 characterize my testimony.

□

20

1 Rubenstein

2 MR. SELZ: Again, let the record  
3 reflect the deponent is not being  
4 responsive.

5 A. I am being very responsive.  
6 Please stop characterizing my testimony. And  
7 please stop putting things on the record that  
8 are incorrect.

9 Q. Mr. Rubenstein, I am asking you  
10 questions, and I am asking --

11 A. And you are not listening to the  
12 answers very carefully, so -- I don't know how  
13 much experience you have taking depositions --

14 MR. SELZ: Again, let the record  
15 reflect that --

16 A. Stop interrupting my answers. Do  
17 not interrupt me.

18 Q. Mr. --

19 A. Do not interrupt me.

20 Q. Mr. Rubenstein --

21 A. Let me finish.

22 Are you going to proceed to  
23 continue to interrupt me or not?

24 Q. If you want to answer the

Ken Rubenstein Deposition  
25 questions, I have no problem.

□

21

1 Rubenstein

2 A. Look, I answered your questions.

3 You are unable to keep track of what I am

4 saying.

5 So, please, if you don't know what

6 I said, ask the reporter to read it back, but

7 please do not characterize my testimony in

8 your own words.

9 Q. Okay --

10 A. Just don't do it.

11 Q. What I am asking you is this. Do  
12 any of the members of the MPEG patent pool use  
13 any of the technologies of IViewIt?

14 A. I would have no idea.

15 Q. Who is the person in charge of the  
16 MPEG patent pool, sir?

17 A. Like I say, I advise you to check  
18 their web site if you want to know information  
19 about that patent pool.

20 Q. Well, again --

21 A. It's not me.

22 Q. Are you involved with the MPEG  
23 patent pool, sir?

24 A. Yes.

25 Q. What is your position --

□

22

Ken Rubenstein Deposition

1 Rubenstein

2 A. I am counsel to MPEG, LLC.

3 Q. Do you advise the MPEG patent pool  
4 with regard to legal issues?

5 A. That's privileged information.

6 Q. Not whether or not you advised  
7 them on legal issues.

8 A. You are asking me -- I am not  
9 going to discuss with you anything about  
10 anything I do with any other client in this  
11 law firm.

12 Q. Well, sir, I am not asking you the  
13 substance of what you have advised them, I am  
14 simply asking you whether or not you advised  
15 them.

16 A. I told you, I am their counsel.

17 Q. Okay. Have you ever seen any of  
18 the intellectual properties or technologies  
19 that IViewIt has developed for scaled video?

20 A. Not that I recall at this time.

21 Q. Were you ever involved in any  
22 patent applications for scaled video  
23 technologies for IViewIt.com?

24 A. No.

25 Q. Did you ever review any patent

□

23

1 Rubenstein

2 application at all for IViewIt --  
Page 20

Ken Rubenstein Deposition

3 A. Not that I recall.

4 Q. Did you ever opine with regard to  
5 the validity of any patent applied for or  
6 received by IViewIt.com?

7 A. Like I say, I was not in any way  
8 involved with getting patents for IViewIt.

9 Q. What were you involved with, if  
10 you were, with IViewIt?

11 A. The only thing I did for IViewIt  
12 is I referred them to another patent lawyer.

13 Q. And who is that?

14 A. A guy named Ray Joao.

15 Q. And where did Mr. Joao work?

16 A. I believe he was working at the  
17 time at my former law firm, Meltzer Lippe.

18 Q. And what date was this?

19 A. I don't recall.

20 Q. So, you were employed by Proskauer  
21 Rose at this time?

22 A. Yes.

23 Q. And you referred IViewIt to  
24 Meltzer Lippe?

25 A. I referred IViewIt to Ray Joao,

□

24

1 Rubenstein  
2 who I believe was working at Meltzer Lippe at  
3 that time.

4 Q. Who did you speak to at IViewIt,  
5 sir?

Ken Rubenstein Deposition

6 A. I don't recall.

7 Q. Did you keep any notes of your  
8 conversation with regard to this referral?

9 A. No.

10 Q. Did you speak to Mr. Joao with  
11 regard to this referral?

12 A. I don't recall.

13 Q. Why did you refer this matter to  
14 Meltzer Lippe?

15 A. Because it wasn't work I wanted to  
16 undertake myself.

17 Q. And why was that?

18 A. Because I am not generally in the  
19 patent prosecution business, in most cases.

20 Q. Did you ever meet with any members  
21 of the board of directors of IViewIt.com?

22 A. Not that I know of.

23 Q. Were you ever involved in any  
24 meetings with anyone concerning IViewIt.com?

25 A. No, not that I know of.

□

25

1 Rubenstein

2 Q. How about any representative from  
3 Real 3 D?

4 A. Never heard of it.

5 Q. How about Warner Bros.?

6 A. Warner Bros. is a client here.

7 Q. Okay. Did you have any  
8 discussions with Warner Bros. about IViewIt?

Ken Rubenstein Deposition

9 MR. PRUSASKI: Objection.  
10 A. Any --  
11 MR. PRUSASKI: Instruct him not to  
12 answer.  
13 (DIRECTION NOT TO ANSWER.)  
14 A. Any conversation I made or had  
15 with Warner Bros. would be confidential. I am  
16 not saying there was or was not such a  
17 conversation, it would be privileged.  
18 Q. I am not asking you for the  
19 contents of the conversation, I want to know  
20 if there was one.  
21 A. I am not saying -- I don't know if  
22 there was one.  
23 And if there was, I wouldn't tell  
24 you about it, anyway.  
25 Q. How about Hollywood.com?

□

26

1 Rubenstein  
2 A. Never heard of it.  
3 Q. Did you ever have any discussions  
4 with anyone at Proskauer Rose concerning the  
5 IViewIt Technologies?  
6 A. Not that I recall.  
7 Q. Did you have any discussions with  
8 anyone -- let's say Chris Wheeler,  
9 particularly, at Proskauer Rose with regard to  
10 anything at IViewIt?  
11 A. I might have, but I don't recall

Ken Rubenstein Deposition

12 anything about it at this time, if I did.

13 Q. Did you ever counsel anyone at  
14 IViewIt concerning any matters regarding the  
15 patent or patent applications?

16 A. Not that I recall.

17 Q. Did you keep any files yourself  
18 with regard to IViewIt and any communications  
19 with IViewIt?

20 A. I don't think so, no.

21 MR. PRUSASKI: Objection, asked  
22 and answered.

23 Q. Did you ever play a role as an  
24 advisory board member for IViewIt?

25 A. Not that I know of, no.

□

27

1 Rubenstein

2 Q. Well, sir, I am a little  
3 confused. You normally would recall that you  
4 would be on a board of directors --

5 A. I don't think I was on any such  
6 board.

7 To my knowledge, I was on no such  
8 board.

9 Q. And you never had any  
10 communications with any board member from  
11 IViewIt; is that a correct characterization --

12 A. I had a -- probably a phone call  
13 or two with Brian Utley. I am not sure if  
14 he's a board member or not.

Ken Rubenstein Deposition

15 Q. And what were the contents of your  
16 conversation with Mr. Utley?

17 A. I don't recall.

18 Q. Did you ever talk to anyone at  
19 Warner Bros. with regard to IViewIt?

20 A. You are asking for privileged  
21 information, sorry.

22 Q. Well, whether or not you had  
23 communications --

24 A. No, you are asking for the content  
25 of communications.

□

28

1 Rubenstein

2 Q. No, I am not asking for the  
3 content.

4 A. Yes, you are.

5 Q. Please listen to my question.

6 MR. PRUSASKI: Mr. --

7 Q. The question was, did you ever  
8 discuss any matters concerning IViewIt with  
9 anyone from Warner Bros., period. I am not  
10 asking you for the content because, clearly,  
11 if you want to assert a claim of privilege on  
12 that, and Warner Bros. is a client of yours,  
13 then you can assert it, but I am asking you  
14 whether or not you had any discussions at  
15 all. I am not asking you for the contents.

16 A. I am --

17 MR. PRUSASKI: Mr. Selz, I am  
Page 25

Ken Rubenstein Deposition

18 going to object. I am instructing  
19 Mr. Rubenstein not to answer. It's  
20 privileged attorney/client  
21 communication.

22 (DIRECTION NOT TO ANSWER.)

23 MR. SELZ: Not the fact of whether  
24 or not he had any discussions --

25 MR. PRUSASKI: I am not arguing.

□

29

1 Rubenstein  
2 We are not allowed, under the Florida  
3 rules, to argue objections. I am  
4 instructing him not to answer.

5 MR. SELZ: I understand.

6 MR. PRUSASKI: And I can't argue  
7 with you.

8 MR. SELZ: Just so the record is  
9 clear, your objection is it's  
10 privileged, whether or not he even spoke  
11 to Warner Bros.

12 MR. PRUSASKI: Yes, about IViewIt.

13 MR. SELZ: About IViewIt.

14 MR. PRUSASKI: Yes.

15 Q. Do you know who Greg Thagard is?

16 A. Yes, I do.

17 Q. Who is he?

18 A. He used to work at Warner Bros.

19 Q. He doesn't work with Warner Bros.  
20 anymore; is that correct?

Ken Rubenstein Deposition

21 A. Correct.  
22 Q. When did you represent Warner  
23 Bros., sir?  
24 A. Oh, that's not -- that's  
25 privileged information, sorry.

□

30

1 Rubenstein  
2 MR. PRUSASKI: I am going to  
3 object for relevancy, and instruct the  
4 witness not to answer. It's also  
5 privileged.  
6 (DIRECTION NOT TO ANSWER.)  
7 MR. SELZ: I don't think case law  
8 supports the position that when he  
9 represented a client --  
10 MR. PRUSASKI: Are we going to  
11 argue every time there is an objection?  
12 MR. SELZ: No, no, no.  
13 A. We will litigate out the issue.  
14 We will litigate it out. You know, make a  
15 motion. We will fight it. We will see who  
16 wins.  
17 Q. Mr. Rubenstein again, you know,  
18 this is your deposition --  
19 A. I don't --  
20 Q. -- I appreciate the fact that you  
21 want to express your opinion. However,  
22 Mr. Prusaski can tell you, this is not how  
23 depositions are conducted in the state of

Ken Rubenstein Deposition

24 Florida.

25 A. Fine. I am not discussing

□

31

1 Rubenstein  
2 anything about Warner Bros. The objection has  
3 been put on the record. Let's move on.

4 MR. PRUSASKI: And, Mr. Selz, just  
5 to make it clear, I am going to instruct  
6 the client not to answer any questions  
7 about any Proskauer clients under claim  
8 of privilege and under claim of  
9 harassment and under claim of the fact  
10 that you are not allowed to put any of  
11 this on at trial.

12 MR. SELZ: Well --

13 MR. PRUSASKI: And we can litigate  
14 that with Judge Labarga.

15 Q. Now, I am asking you specifically,  
16 sir, with regard to any specific meetings, how  
17 about Real 3 D?

18 A. I never heard of Real 3 D.

19 Q. You never heard of them, okay.  
20 That's what I was going to say.

21 Are you aware of any meeting that  
22 happened between yourself and any  
23 representatives of IViewIt, other than you  
24 have already described?

25 A. Not that I recall. I may have

□

1 Rubenstein  
2 also had a conversation with Lamont, but I am  
3 not sure.  
4 Q. Lamont, you spoke to Stephen  
5 Lamont?  
6 A. Possibly, yes.  
7 Q. And that was concerning IViewIt?  
8 A. Maybe, yes.  
9 Q. Do you recall what the contents of  
10 that conversation were?  
11 A. No.  
12 Q. How about Zackirul Shirajee, do  
13 you know who he is?  
14 A. No.  
15 Q. How about Jude Rosario?  
16 A. Don't know who he is.  
17 Q. How about any awareness on your  
18 part of any IViewIt inventions regarding zoom  
19 imaging?  
20 A. I have no knowledge at this point  
21 in time of IViewIt technology.  
22 Q. So you have no knowledge of scaled  
23 video?  
24 A. I didn't say that. I said I have  
25 no knowledge of what IViewIt technology is at

□

Ken Rubenstein Deposition  
Rubenstein

1

2 this point in time.

3

Q. Okay, why don't you explain to me  
4 "scaled video", to the best of your  
5 knowledge.

6

A. I don't know what you mean by  
7 "scaled video".

8

why don't you explain to me what  
9 you are talking about.

10

Q. well, what does that mean to you?  
11 You seemed to indicate earlier in your answer  
12 that you had some idea of what I was talking  
13 about.

14

A. well, "scaled video" might refer  
15 to changing the sizes of video images.

16

Q. And how is that accomplished?

17

A. I don't know. At this point in  
18 time, I am sure there is a variety of  
19 techniques to do it.

20

Q. Are you aware of any such  
21 techniques that IViewIt was using?

22

A. No.

23

Q. Are you aware of any camera zoom  
24 applications used in the IViewIt technology?

25

A. No.

□

34

1

Rubenstein

2

Q. How about combined scaled video  
3 zooming video applications?

4           A.     Not that I know of.  
5                     I am not saying they don't or do  
6 exist, I am saying I don't know.  
7           Q.     Of course, it's to the best of  
8 your knowledge, sir, I am not expecting you to  
9 be on omniscient.  
10                    How about game applications?  
11           A.     I have no knowledge of what  
12 IViewIt's doing.  
13           Q.     How about what they have done in  
14 the past?  
15           A.     I have no knowledge of what they  
16 have done in the past at this point in time.  
17           Q.     Is it that you have no knowledge  
18 or you can't recall?  
19           A.     I don't know if I knew in the past  
20 or didn't know in the past, I don't know now.  
21           Q.     So, in other words, sir, you have  
22 no knowledge as to any technology that IViewIt  
23 uses; is that correct?  
24           A.     At this point in time, that is  
25 correct.

□

35

1                    Rubenstein  
2           Q.     Did you have such knowledge in the  
3 past?  
4           A.     I don't know whether I did or did  
5 not, I don't know now.  
6           Q.     So, then, sir, you wouldn't have

7 any ability to know whether or not any of your  
8 clients are using IViewIt technology; is that  
9 correct?

10 A. I would have no idea.

11 Q. So it is possible, then, they  
12 might be infringing on IViewIt's technologies?

13 MR. PRUSASKI: Object to the form.

14 A. What do you mean by "infringing"?

15 Q. Well, making use of IViewIt  
16 technologies without the benefit of royalties  
17 or some other kind of licensing.

18 A. I have no knowledge that IViewIt  
19 has any proprietary rights in anything. And I  
20 have no knowledge about what IViewIt's  
21 technology is. So I have no knowledge about  
22 who could be doing what.

23 Q. If IViewIt had technologies  
24 concerning scaled video, let's say, and there  
25 was some legally-protected interest in that

□

36

1 Rubenstein  
2 technology, as a patent lawyer, would you  
3 opine that the use of that by any other third  
4 party would require either a licensing or  
5 payment of a royalty?

6 A. I --

7 MR. PRUSASKI: Object to the form.

8 Q. You may answer the question.

9 A. I will answer the question. I

10 would not have an answer to that question in  
11 the abstract, you are asking for complex legal  
12 analysis of a situation where you are only  
13 giving a vague hypothetical fact pattern, so  
14 it's not possible to give an answer to that  
15 question.

16 Q. well, let me restate it, then,  
17 maybe I can make it clearer for you, sir.

18 Let's say that IViewIt has  
19 technology for camera zoom applications and  
20 that technology is patented, and a client of  
21 yours is making use of that technology without  
22 the benefit of paying either a royalty or a  
23 licensing agreement. would there be legal  
24 liability?

25 MR. PRUSASKI: Object to the

□

37

1 Rubenstein

2 form.

3 A. why don't you explain more clearly  
4 what you are trying to say.

5 Q. I thought I was trying to be  
6 clear. Okay, let me try again.

7 Let's say specifically, and I  
8 don't know if this particular entity is a  
9 client of yours or not, but Sony used camera  
10 zoom applications which were subject to a  
11 patent or a patent pending by IViewIt.com, and  
12 Sony made use of these technologies without

13 either a licensing agreement or without paying  
14 a royalty. Would Sony be liable for damages  
15 for use of this patented technology to  
16 IViewIt?

17 A. Well, Sony's a client of the firm,  
18 so I am not going to discuss what kind of  
19 advice I might or might not give to Sony in  
20 particular circumstances, you are asking for  
21 privileged information.

22 Q. Okay. Then, instead of Sony we  
23 will make it company X.

24 A. Like I say, you are asking for a  
25 legal conclusion of mine, how I might advise a

□

38

1 Rubenstein  
2 client in a particular fact pattern without  
3 knowing the details. In order to answer that  
4 question, I would have to study the patent in  
5 question, the file history of the patent  
6 before The Patent Office, the prior art of  
7 record. I might have to look for other prior  
8 art. I would also have to study what the  
9 particular client is doing. I might have to  
10 study what other proprietary rights the  
11 company in question who owns those rights  
12 might have before I would even conceive and  
13 think about answering a question like that.  
14 Q. We are doing this -- obviously,  
15 you have the right to object if it's Sony.

16 what I am saying assuming, arguendo, this is a  
17 valid and binding patent intellectual  
18 property, that it is only enforceable under  
19 the patent that's in place, and that there is  
20 a clear case of infringement.

21 A. I answered the question to the  
22 best of my ability already. It's on the  
23 record.

24 If you want, we can ask the  
25 reporter to read it back.

□

39

1 Rubenstein

2 Q. Your statement to me in response,  
3 sir, was that you needed more specifics and  
4 that you were unclear, and that you would have  
5 to --

6 A. No, I told you that in order for  
7 me -- I am going to repeat this once, just so  
8 we are understanding it -- I told you in order  
9 to advise a client in a particular situation,  
10 I would have to study the patents in question,  
11 the file histories of the patents before the  
12 U.S. Patent Office, I would have to study the  
13 prior art of record, I might study other prior  
14 art, I would have to study the claims of the  
15 patent, I would have to try to understand  
16 their scope, I would have to try to understand  
17 the technology that someone was trying to  
18 apply the patents to, I would try to

19 understand whether there were other  
20 proprietary rights besides patents in  
21 question, and before I could answer the  
22 question. I can't answer your question in the  
23 abstract, it doesn't have a simple  
24 straightforward "Yes" or "No" answer.

25 Q. well, assuming that all your

□

40

1 Rubenstein  
2 review of the prior art and your review of the  
3 application of the Patent Office and your  
4 review of all those other documents that you  
5 just mentioned indicated that it was a valid  
6 and duly-enforceable patented right with  
7 regard to a technology that was clearly  
8 infringing on that patent right, would your  
9 answer remain the same?

10 A. I answered the question to the  
11 best of my ability.

12 Q. How long have you been a patent  
13 lawyer, sir?

14 A. You know how long, at least --

15 Q. Go back --

16 A. -- more than 20 years.

17 Q. And how many patent cases have you  
18 litigated?

19 A. I have litigated a number of them.

20 Q. How many is "a number of them"?

21 A. Quite a few.

22 Q. More than 50?  
23 A. Probably not.  
24 Q. More than 20?  
25 A. Maybe.

□

41

1 Rubenstein

2 Q. Have any of those patent cases  
3 dealt with an infringement claim?

4 A. They generally deal with  
5 infringement claims.

6 Q. Could you tell me about the cases  
7 that you have been involved with? Just naming  
8 the cases.

9 MR. PRUSASKI: Objection.

10 Don't answer the question, it's  
11 privileged.

12 (DIRECTION NOT TO ANSWER.)

13 MR. SELZ: The name of the cases  
14 are privileged?

15 MR. PRUSASKI: Yes. And it's  
16 harassment. He is a 20-year patent  
17 lawyer at one of the largest law firms.  
18 Why don't we need to go over this?

19 MR. SELZ: It seems to me he is  
20 being very evasive about a lot of these  
21 things.

22 MR. PRUSASKI: I don't think so.  
23 You are asking a really simple  
24 question that doesn't have a simple

25 answer.

□

42

1 Rubenstein

2 A. Yes, you are asking a question  
3 that doesn't have a simple "Yes" or "No"  
4 answer.

5 MR. PRUSASKI: And it is a  
6 hypothetical, and he is not an expert.

7 Q. Have you ever met with Mr. Chris  
8 wheeler?

9 A. I don't think I ever met him, no.

10 Q. Did you ever speak with him?

11 A. Possibly, yes.

12 Q. Do you have any specific  
13 recollection as to when you spoke with him?

14 A. No.

15 Q. Have you ever billed any services  
16 to IViewIt or any of the IViewIt entities?

17 A. As far as I know, I have not.

18 Q. Have you been included on a  
19 billing statement for IViewIt --

20 A. As far as --

21 Q. -- on Proskauer Rose.

22 A. As far as I know, I have not.

23 Q. Did Mr. wheeler ever consult with  
24 you, to the best of your recollection, with  
25 regard to any issues concerning IViewIt?

□

43

Ken Rubenstein Deposition

1 Rubenstein

2 A. He might have, but I would not  
3 recall the details at this time.

4 Q. would you have taken any  
5 contemporaneous notes of those conversations?

6 A. Probably not.

7 Q. would you keep any other records  
8 of those conversations?

9 A. I am not a big note taker of phone  
10 conversations, so the answer would be no.

11 Q. would those conversations have  
12 been reflected in any billing records that you  
13 might keep?

14 A. Like I say, to my knowledge, I  
15 never billed any services to IViewIt.

16 Q. well, I don't think that was my  
17 question.

18 My question was, sir, if you did  
19 have a conversation with Christopher wheeler  
20 with regard to IViewIt, would it have been  
21 reflected on your billing records?

22 A. Probably not, because it would  
23 have been a minor short conversation.

24 Q. Did you ever come down to Florida  
25 to meet with anyone from IViewIt?

□

44

1 Rubenstein

2 A. No.

Ken Rubenstein Deposition

3 Q. Did you ever make any  
4 representation to any party that you can  
5 recall with regard to IViewIt or its  
6 technologies?

7 A. Not that I recall.

8 MR. PRUSASKI: Object to the form.

9 Q. Let me rephrase that. Have you  
10 ever spoken to any third party with regard to  
11 IViewIt's technologies?

12 A. Not that I recall at this time.

13 Q. Did you ever meet with anyone  
14 named Stephen Filipek?

15 A. I don't know who he is.

16 Q. Were you ever included in any  
17 business plan of IViewIt as a consultant or  
18 any other representation as being involved  
19 with the company?

20 A. Not that I know of at this time.

21 Q. If you were included on that  
22 business plan as a consultant or advisor to  
23 IViewIt, would you have consented to that or  
24 would you have had to have consented to that?

25 A. I don't know whether I would have

□

45

1 Rubenstein  
2 had to consent to it or not, and I don't know  
3 if I would have consented or not.

4 Q. Have you ever seen a business plan  
5 for IViewIt?

Ken Rubenstein Deposition

6 A. I don't know, I might have. I  
7 might not have, I don't know.

8 Q. How about, did you ever speak to  
9 anyone at Brian Utley?

10 A. I did have one or two phone  
11 conversations with him.

12 Q. With regard to IViewIt?

13 A. Yes.

14 Q. And what were the contents of  
15 those conversations?

16 A. I --

17 MR. PRUSASKI: Asked and answered.

18 MR. SELZ: I'm sorry.

19 A. And I will just answer it again,  
20 for convenience, I don't know the details at  
21 this point in time.

22 Q. How about Gerald Stanley?

23 A. I don't know who he is.

24 Q. Wayne Smith?

25 A. I don't think I ever had a

□

46

1 Rubenstein  
2 conversation with Wayne Smith about IViewIt.  
3 And Wayne Smith is a Warner Bros. in-house  
4 attorney and, therefore, any conversation I  
5 did have with him would be privileged.

6 Q. How about David Colter?

7 A. I am not sure who he is. I am  
8 just not sure.

Ken Rubenstein Deposition

9                   You might refresh my recollection  
10 and tell me who he is. I am not sure who he  
11 is.

12           Q.     If you are not sure who he is, I  
13 will not go any further.

14                   How about a Hassan Miah?

15           A.     I don't know who he is.

16           Q.     How about Doug Che, with Sony?

17           A.     I don't know who he is.

18           Q.     Jerry Pierce, from Paramount  
19 Viacom?

20           A.     I don't know who he is.

21           Q.     How about Aden Foley?

22           A.     Don't know who he is.

23           Q.     Chris Cook?

24           A.     I don't know who Chris Cook is.

25           Q.     It's Chris Cookson.

□

47

1                   Rubenstein

2           A.     Any conversation I have had with  
3 Chris Cookson would be privileged.

4           Q.     Okay. well, you know who Chris  
5 Cookson is?

6           A.     Yes, I do.

7           Q.     Have you ever discussed IViewIt  
8 Technologies with him?

9                   MR. PRUSASKI: Don't answer the  
10 question.

11                   I am instructing him not to  
                                  Page 42

Ken Rubenstein Deposition

12 answer.

13 (DIRECTION NOT TO ANSWER.)

14 Q. Did you ever become aware of any  
15 problems with Raymond Joao's work as with  
16 regard to patents for IViewIt?

17 A. Not that I recall at this time.

18 Q. Does Proskauer Rose maintain  
19 patent counsel, other than yourself?

20 A. There are a number of patent  
21 people in the law firm.

22 Q. Was there any particular reason  
23 why IViewIt's patent applications were not  
24 handled by Proskauer Rose?

25 A. Well, like I said, generally, I

□

48

1 Rubenstein

2 don't do patent prosecution work, as a general  
3 matter.

4 Q. Did you see anything wrong or  
5 faulty with Mr. Joao's work?

6 A. Like I say, I have no knowledge of  
7 his work at this time, and don't recall ever  
8 seeing anything faulty with it.

9 Q. Was there ever a time when  
10 Mr. Joao was no longer employed by Meltzer  
11 Lippe, to the best of your knowledge?

12 A. I think he did leave after a  
13 certain period of time.

14 Q. And where did he go to work?

Ken Rubenstein Deposition

15           A.     I have no idea.  
16           Q.     Do you have any knowledge as to  
17 why Mr. Joao left or --  
18           A.     No.  
19           Q.     If you would just let me finish my  
20 question, I would appreciate it.  
21                   MR. PRUSASKI:  What was the  
22 question?  
23                   MR. SELZ:  I was going to finish  
24 the question.  
25           Q.     Did you have any knowledge as to

□

49

1                   Rubenstein  
2 why Mr. Joao left or whether or not he was  
3 terminated?  
4           A.     No.  
5           Q.     Okay.  So you have no knowledge,  
6 sir, then, of any of the patent applications  
7 for IViewIt.com?  
8           A.     Not at this time, no.  
9           Q.     How about with regard to any of  
10 the trademark or copyright applications?  
11           A.     No, none whatsoever.  
12           Q.     Have you ever heard of a company  
13 called Zeosync, Z-E-O-S-Y-N-C?  
14           A.     I am not sure at this time.  
15           Q.     You are not sure whether or not  
16 you have ever heard of it?  
17           A.     Yeah.  Yeah, I don't think I know

Ken Rubenstein Deposition

18 at this time. I am not sure. What do they  
19 do?

20 Q. Well, if you don't know what they  
21 do and you don't know who they are, then  
22 that's your answer.

23 A. All right, that's fine.

24 Q. Who recommended that IViewIt go to  
25 Meltzer Lippe for their patent work?

□

50

1 Rubenstein

2 A. I probably suggested it.

3 Q. And was that suggestion  
4 communicated in writing?

5 A. Probably not.

6 Q. And, if you can recall, who did  
7 you communicate with at IViewIt concerning  
8 your recommendation?

9 A. I don't recall.

10 Q. Did you ever meet with Eliot  
11 Bernstein?

12 I think you might have said that  
13 you never met with him before.

14 A. I don't think I ever met with him.

15 Q. Okay, and you said you don't know  
16 who Jude Rosario is; correct?

17 A. Correct.

18 Q. And you don't know who Zackirul  
19 Shirajee is; correct?

20 A. Correct.

Ken Rubenstein Deposition

21 Q. How about Jeffrey Friedstein?  
22 A. I don't know who he is.  
23 Q. Are you aware of whether or not  
24 Proskauer Rose accepted any stock from  
25 IViewIt?

□

51

1 Rubenstein  
2 A. I would have no knowledge of that.  
3 Q. Were you ever asked to evaluate  
4 for Proskauer Rose the inventions that IViewIt  
5 had?  
6 A. Not that I recall, no.  
7 Q. Did you ever see a video that led  
8 you to believe that a company called Visual  
9 Data was infringing upon IViewIt?  
10 A. I never heard of Visual Data.  
11 Q. Are you aware of any of the  
12 billings that Proskauer Rose presented to  
13 IViewIt for services?  
14 A. To my knowledge, I have never seen  
15 any such bill.  
16 Q. Did you have any discussions with  
17 any other partner or associate at Proskauer  
18 Rose concerning the billings to IViewIt?  
19 A. Not that I could recall.  
20 Q. Okay. When I refer to "IViewIt",  
21 I mean --  
22 A. You mean all of those entities.  
23 Q. Correct.

Ken Rubenstein Deposition

24 A. And the answer is, not that I  
25 could recall.

□

52

1 Rubenstein

2 Q. Did Mr. Wheeler talk with you at  
3 all about any infringement problems or patent  
4 rights at IViewIt?

5 A. Not that I recall.

6 Q. And you earlier testified you have  
7 never heard of a company called Visual Data;  
8 is that correct?

9 A. Not that I can recall at this  
10 time.

11 Q. Do you know an individual named  
12 Gerald Lewin?

13 A. Gerald Lewin?

14 Q. Yes.

15 A. You mean the former CEO of Time  
16 Warner?

17 Q. Yes.

18 A. Well, I know the name, but I don't  
19 know him personally.

20 Q. How about Brian Utley?

21 A. Well, I told you already I had a  
22 few telephone conversations with him.

23 Q. Other than those telephone  
24 conversations, do you know anything of  
25 Mr. Utley?

1 Rubenstein

2 A. No.

3 Q. How about Gerald Stanley, of  
4 Real 3 D?

5 A. I never heard of him and never  
6 heard of Real 3 D.

7 Q. You said that earlier.

8 How about Boca Research?

9 A. Never heard of Boca Research.

10 Q. How about Wayne Huizenga Jr. or  
11 Sr.?

12 A. Well, I know the name, I don't  
13 know them personally.

14 Q. How about Chris Brandon?

15 A. Never heard of him.

16 Q. Robert Henniger?

17 A. Never heard of him.

18 Q. Sportsline?

19 A. Sportsline, S-P-O-R-T-L-I-N-E?

20 Q. Correct.

21 A. I never heard of it.

22 Q. Hollywood.com, I think you  
23 testified to earlier.

24 A. You asked me about that, and I  
25 answered it already.

Ken Rubenstein Deposition  
Rubenstein

1

2 Q. Correct.

3 How about Big E?

4 A. I never heard of it.

5 Q. Sensormatic?

6 A. S-E-N-S-O-R-M-A-T-I-C?

7 Q. Right.

8 A. I never heard of it.

9 Q. How about Sensormatics? I'm  
10 sorry.

11 A. I don't think I heard of it,  
12 either way, to my knowledge right now.

13 Q. How about CrossBow Ventures?

14 A. Well, I only know about it because  
15 it was mentioned in some conversation to me  
16 prior to this deposition, but I don't have any  
17 knowledge of them, never met with them, never  
18 had any dealing with them.

19 Q. And what conversation was this,  
20 prior --

21 A. In preparation for this  
22 deposition.

23 Q. Okay. Do you have any idea who  
24 they are?

25 A. I know they are a venture

□

55

1 Rubenstein

2 capitalist, something like that.

3 Q. Are they a client of Proskauer

Ken Rubenstein Deposition

4 Rose?

5 A. I don't know.

6 Q. When Proskauer Rose would  
7 represent a new client, would a conflict check  
8 be run?

9 A. I think that's the normal  
10 procedure of this and most other law firms.

11 Q. When you were contacted or spoke  
12 to Mr. Wheeler with regard to IViewIt.com, did  
13 you either request that Mr. Wheeler confirm  
14 the conflict check had been run or did you  
15 conduct one yourself?

16 A. I did not conduct one myself  
17 because the client came in through Mr. Wheeler  
18 and he -- in the normal procedure, it would be  
19 up to him to do the conflict check.

20 Q. Okay, so you relied on the fact  
21 that Mr. Wheeler had done one?

22 A. I relied on the fact that it would  
23 be the normal procedure in this law firm for  
24 him to have done it.

25 Q. But you can't tell me whether or

□

56

1 Rubenstein

2 not today, as you sit here, whether or not one  
3 was done.

4 A. I would say it would be the normal  
5 procedure in this law firm for it to be done.

6 Q. But do you have any personal

7 knowledge which would indicate to you directly  
8 that a conflict check had been run with regard  
9 to IViewIt?

10 A. Well, the fact is, in this law  
11 firm they would not assign a client billing  
12 number to the client without a conflict check  
13 being done, and I understand the client  
14 billing number was assigned, so that means a  
15 conflict check was done --

16 Q. And --

17 A. -- or would normally have been  
18 done.

19 Q. Normally, but what I am asking you  
20 very specifically is, sir, you do not know for  
21 a fact whether or not a conflict check was  
22 run?

23 A. Not at this point in time, I do  
24 not know.

25 Q. And if there was a conflict found,

□

57

1 Rubenstein  
2 what would be the normal procedure?

3 A. It would go to the -- there is a  
4 committee that -- in this law firm, that deals  
5 with those issues.

6 Q. Does that committees ever obtain  
7 waivers of conflicts from clients?

8 A. They might.

9 MR. PRUSASKI: Don't answer the

10 Ken Rubenstein Deposition  
question, it's privileged.

11 (DIRECTION NOT TO ANSWER.)

12 Q. Do you maintain any files or any  
13 documents concerning IViewIt?

14 MR. PRUSASKI: Him personally?

15 MR. SELZ: In his business records  
16 or in his records for Proskauer Rose at  
17 the offices in New York.

18 A. Not that I know of, no.

19 Q. Do you know of any patenting of  
20 inventions for IViewIt?

21 A. Like I say, I was not involved as  
22 their patent counsel, other people served as  
23 their patent counsel.

24 Q. Are you aware of any of the  
25 particulars of any of those patents?

□

58

1 Rubenstein

2 A. I was not --

3 MR. PRUSASKI: This --

4 A. I will repeat it again, I was not  
5 involved as their patent counsel, other people  
6 were. And, at this point in time, I have no  
7 knowledge of their patent applications.

8 MR. PRUSASKI: Mr. Selz, you are  
9 repeating yourself now.

10 MR. SELZ: I'm sorry, Chris.

11 MR. PRUSASKI: Eliot needs to type  
12 some new questions.

13 A. Maybe he didn't get a good night's  
14 sleep.

15 (Pause.)

16 MR. PRUSASKI: Do you have  
17 anything else?

18 MR. SELZ: Yes, I do. Just give  
19 me a minute. (Pause.)

20 Q. Sir, do you have any knowledge or  
21 have you reviewed any of the billing  
22 statements that Proskauer Rose provided to  
23 IViewIt in this matter?

24 A. No.

25 MR. PRUSASKI: Objection, asked

□

59

1 Rubenstein

2 and answered.

3 Q. Are you aware of any of the  
4 services provided by Proskauer Rose to IViewIt  
5 in this matter?

6 A. I have no idea.

7 Q. (Pause.)

8 MR. PRUSASKI: Do you have  
9 anything else?

10 MR. SELZ: Yes. Just give me a  
11 couple of minutes, I am just thinking  
12 through this stuff.

13 MR. PRUSASKI: Nothing personal,  
14 Mr. Selz, but you are really repeating  
15 yourself at this point.

Ken Rubenstein Deposition

16 MR. SELZ: I am trying not to.  
17 MR. PRUSASKI: I mean, you asked  
18 him twice if he has seen the bills  
19 within like three minutes.  
20 MR. SELZ: (Pause.)  
21 Q. Are you aware of any individuals  
22 involved in the MIT Multimedia Lab?  
23 A. Personally, no, not at this point.  
24 Q. When was the last time you spoke  
25 to Brian Utley? You indicated you had a

□

60

1 Rubenstein  
2 couple of conversations with him. When was  
3 the last discussion held, that you can recall?  
4 A. I am not sure.  
5 Q. Was it more than a year ago?  
6 A. Probably.  
7 Q. Do you remember the contents of  
8 that conversation at all?  
9 A. No. And you asked me that  
10 already.  
11 Q. I know I did. I am trying to help  
12 to refresh your recollection.  
13 A. You asked me at least three times  
14 that question, so now you are at the point of  
15 wasting my time, so I would appreciate it, if  
16 you want to ask me some questions, please ask  
17 me questions you did not ask me already.  
18 Q. Is there anyone else, other than

19 Brian Utley at IViewIt, that you ever had any  
20 discussions with?

21 MR. PRUSASKI: You have asked  
22 that, about five times.

23 A. You asked me that already.

24 MR. PRUSASKI: And he said no.

25 A. And I answered it already. You

□

61

1 Rubenstein  
2 will see the transcript, and you will see the  
3 answer.

4 Q. Okay, fine.

5 MR. PRUSASKI: Mr. Selz, is your  
6 client sending you questions over the  
7 computer?

8 MR. SELZ: No, no, I have got my  
9 notes that I have made to ask questions,  
10 and I am just trying to correspond  
11 Mr. Rubenstein's answers with my  
12 questions.

13 MR. PRUSASKI: Are you  
14 communicating with him electronically?

15 MR. SELZ: No, I am not.

16 MR. PRUSASKI: Has he been on the  
17 phone the whole time?

18 MR. SELZ: Yes.

19 MR. PRUSASKI: He is in  
20 San Diego?

21 MR. SELZ: Yes.

22 Ken Rubenstein Deposition  
MR. PRUSASKI: Let the record  
23 reflect he is taking out time --  
24 MR. SELZ: He is sitting in the  
25 room next to his wife, waiting for his

□

62

1 Rubenstein  
2 wife to go into labor and go into the  
3 hospital and --  
4 MR. PRUSASKI: And he could have  
5 sat in the same room a week-and-a-half  
6 ago to have his deposition taken. If he  
7 is able to appear at depositions on the  
8 telephone, he could have had a  
9 deposition taken at his house.  
10 MR. SELZ: He can cut out any  
11 minute he wants with me, but he can't do  
12 it with you, if you have a deposition  
13 scheduled.  
14 MR. PRUSASKI: We could have  
15 accommodated him just fine.  
16 MR. SELZ: I am going to put you  
17 on hold for a minute.  
18 (Pause in proceedings.)  
19 MR. SELZ: Okay, Chris, I have  
20 been talking to Eliot, he is going to  
21 check on his wife, who is in the next  
22 room. Let's take a ten-minute break and  
23 come right back.  
24 MR. PRUSASKI: Okay. I expect you

25 Ken Rubenstein Deposition  
both to have some new questions or I

□

63

1 Rubenstein  
2 need to go, because we are both very  
3 busy.

4 MR. SELZ: I understand, so is  
5 everyone.

6 MR. PRUSASKI: So, it's 12:02, we  
7 will see you promptly at 12:12 with new  
8 questions.

9 Do you want to call us back at  
10 this number?

11 MR. SELZ: I will call you back at  
12 this number.

13 (Recess taken: 12:04 p.m.-  
14 12:16 p.m.)

15 Q. Did you ever receive a letter from  
16 Stephen Lamont with regard to IViewIt  
17 technology?

18 A. A letter from Stephen Lamont?

19 Q. Yes.

20 A. Not that I know of at this time.

21 Q. Okay.

22 MR. SELZ: Chris, can you give me  
23 the fax number there? I will fax you a  
24 copy of this letter, for the witness --  
25 for the deponent to review.

□

64

Ken Rubenstein Deposition

1 Rubenstein

2 A. I don't know how we are going to  
3 orchestrate that.

4 Q. You have got a fax up there?

5 A. We do. We've just got to --

6 MR. PRUSASKI: It's not something  
7 that can be delivered immediately?

8 THE WITNESS: Right.

9 MR. SELZ: What I will do is, I  
10 will continue with other questions until  
11 it's delivered.

12 MR. PRUSASKI: The fax number is  
13 969-2900. And you will need to have it  
14 delivered to Mr. Rubenstein's office  
15 immediately.

16 A. It will probably come out in my  
17 E-mail, so we will have to have someone print  
18 it out.

19 MR. SELZ: Let me just go and take  
20 care of that.

21 Hold on for a moment.

22 (Pause in proceedings: 12:17 p.m.-  
23 12:25 p.m.)

24 MR. SELZ: Okay, we are back on.

25 A. Okay.

□

65

1 Rubenstein

2 Q. Okay.

Ken Rubenstein Deposition

3                   Now, Mr. Rubenstein, have you  
4 looked at any of the billing statements that  
5 Proskauer Rose produced to IViewIt in this  
6 matter at all?

7           A.     Okay, so, number one, you asked me  
8 that, I answered it already.

9                   Number two, I would like to note,  
10 for the record, that we took a break at 12:02,  
11 you were supposed to come back at 12:12, you  
12 were late, and the first thing you did, upon  
13 coming back, was take another break of about  
14 nine or ten minutes so you could send me a  
15 fax, which could have been sent here in  
16 advance. And you are wasting my time by  
17 asking me questions that I have already  
18 answered.

19          Q.     What did you do to prepare for  
20 this deposition?

21          A.     I met with my attorney.

22          Q.     Did you review any documents?

23          A.     I reviewed answers to  
24 interrogatories briefly that were prepared by  
25 Mr. Bernstein.

□

66

1                   Rubenstein

2          Q.     Did you review any other  
3 documents?

4          A.     I reviewed a brief segment of  
5 Mr. Utley's deposition -- actually, I did not

Ken Rubenstein Deposition

6 review anything from Mr. Utley's deposition,  
7 that's a mistake. I may have discussed it  
8 with my attorney, but you are getting into  
9 privileged information, so I cannot answer it  
10 any further.

11 Q. So those are the only things that  
12 you reviewed?

13 A. The only thing I looked at was  
14 Mr. Bernstein's answers to interrogatories,  
15 and I did meet with my attorney.

16 Q. Are you aware, sir, that your name  
17 is referenced in billing statements from  
18 Proskauer Rose to IViewIt more than a dozen  
19 times?

20 A. No, I am not.

21 MR. PRUSASKI: Object to the form.

22 Q. Can you think of any reason, sir,  
23 why your name would be mentioned more than a  
24 dozen times in billing statements from  
25 Proskauer Rose to IViewIt?

□

67

1 Rubenstein

2 A. I had a few conversations with  
3 different people about the company over time,  
4 as I have testified.

5 Q. And you testified that the  
6 conversations took place between you and Chris  
7 wheeler and you and Brian Utley.

8 A. Right.

Ken Rubenstein Deposition

9 Q. Correct?  
10 A. Possibly -- I don't know if there  
11 was anyone else.  
12 Q. Do you have any recollection now  
13 as to any other conversations?  
14 A. No.  
15 Q. Now, with regard to E-mails, were  
16 you aware of any E-mails that you received  
17 from anyone concerning IViewIt?  
18 A. I don't know at this point in  
19 time.  
20 Q. Do you have records of E-mails  
21 that you received?  
22 A. I would not know at this point in  
23 time.  
24 Q. Are they normally kept as part of  
25 your files?

□

68

1 Rubenstein  
2 A. I don't know at this point in  
3 time.  
4 Q. I had asked you previously, sir,  
5 whether or not you had any information on  
6 Mr. David Colter.  
7 Do you recall that?  
8 A. Yes, and I said I wasn't sure who  
9 he was, and I suggested you might want to  
10 refresh my recollection, and you declined to  
11 do so.

Ken Rubenstein Deposition

12 Q. Okay. would it refresh your  
13 recollection, sir, if I tell you that  
14 Mr. Colter was with Warner Bros.?

15 A. You know, I may have heard the  
16 name, but I don't think I ever had any  
17 dealings with him, although I am not sure.

18 Q. But you do have dealings with  
19 Warner Bros.; is that correct?

20 A. Like I said, Warner Bros. is a  
21 client.

22 Q. Right. would there be any reason  
23 why your name would be mentioned in E-mails,  
24 that you can think of, from Warner Bros. to  
25 someone at AOL?

□

69

1 Rubenstein

2 A. I don't know.

3 I mean, I do work -- they are part  
4 of the same company, they are clients of the  
5 firm, and so, I can't really discuss it  
6 because of privilege.

7 Q. Sir, you had indicated earlier you  
8 had no idea with regard to any of the  
9 intellectual properties or patents for  
10 IViewIt; is that correct?

11 A. Not at this point in time.

12 Q. Did you ever issue any opinion to  
13 anyone as to the validity of those patents?

14 A. Not that I know of.

Ken Rubenstein Deposition

15 Q. Did you ever provide any  
16 information at all with regard to the validity  
17 of any of these patents?

18 A. Not that I know of.

19 Q. So it's possible that you have in  
20 the past but you don't recall?

21 A. I don't recall having involvement  
22 with these patents. I was not the patent  
23 counsel.

24 Q. Now, sir, we have faxed you a copy  
25 of a letter. I don't know if you have

□

70

1 Rubenstein  
2 received it.

3 A. We don't have it yet.

4 Q. Okay, could you find out if that's  
5 available?

6 A. All right. We will put you on  
7 hold.

8 Q. Thank you.

9 (Pause in proceedings.)

10 Q. Okay, are you with me?

11 A. Yes.

12 Q. Do you have the fax?

13 A. No, I do not. Like I say, you  
14 should have sent it up here yesterday or in  
15 advance.

16 Q. That's fine, that's fine. I was  
17 expecting that maybe you would have a better

Ken Rubenstein Deposition

18 recollection of some of these events, and  
19 maybe that was my incorrect presumption,  
20 considering that I guess the communication  
21 from Stephen Lamont occurred relatively  
22 recently --

23 A. Well, when did it occur?

24 Q. Well, that's what I was going to  
25 ask you, first of all, if you can recall.

□

71

1 Rubenstein

2 A. Well, you asked me about that, and  
3 I told you I may have spoken to him once, but  
4 I don't recall the details right now.

5 Q. Now, with regard to what we talked  
6 about earlier was the conflict of interest and  
7 whether or not Proskauer Rose's position in  
8 representing IViewIt constituted a conflict  
9 with other clients, I think you mentioned that  
10 you expected Mr. Wheeler to do the conflict  
11 check; is that correct?

12 A. Yes.

13 Q. Are you aware of any conflict of  
14 interest between IViewIt and any of your own  
15 clients?

16 A. No.

17 MR. PRUSASKI: What's the  
18 relevancy of that, Mr. Selz?

19 MR. SELZ: I think it goes to  
20 whether or not IViewIt should have been

Ken Rubenstein Deposition

21 represented by Proskauer Rose in the  
22 first place.

23 MR. PRUSASKI: Oh, is that a new  
24 theory that you haven't pled?

25 MR. SELZ: Is that an objection?

□

72

1 Rubenstein

2 MR. PRUSASKI: Yes, it's objection  
3 to relevance.

4 MR. SELZ: Okay, so noted for the  
5 record.

6 Q. Mr. Rubenstein, you had indicated  
7 that you are not aware of any conflicts  
8 between IViewIt and any of your other clients;  
9 is that correct?

10 A. Not at this point in time, no.

11 Q. Were you aware of any conflicts in  
12 the past?

13 A. Not that I know of.

14 Q. Would there be any records kept of  
15 any conflict check that was run by Mr. Wheeler  
16 or any other --

17 A. I don't know.

18 Q. Would you let me finish my  
19 question, please.

20 -- Mr. Wheeler or any other  
21 partner or associate of your firm.

22 A. I don't know what records there  
23 might be.

Ken Rubenstein Deposition

24 Q. You indicated there was a conflict  
25 committee. Does that conflict committee meet

□

73

1 Rubenstein  
2 in New York or do they meet in Florida or is  
3 there any particular location for their  
4 meetings?

5 MR. PRUSASKI: Objection,  
6 relevance.

7 You can answer this question, but  
8 it's not going to get much further.

9 A. I assume they meet in New York.

10 Q. Is there any particular reason for  
11 that assumption?

12 A. Most of the law firm is in  
13 New York.

14 Q. Sir, I am a little confused about  
15 some of your earlier testimony. I had asked  
16 you whether or not you had spoken with any of  
17 your clients concerning IViewIt and its  
18 technology, and your response was to claim  
19 privilege. Is that still the case, you are  
20 claiming privilege with regard to any of those  
21 communications?

22 MR. PRUSASKI: Yes.

23 A. Yes.

24 Q. Okay. I am going to just say at  
25 this point that you testified that there were

1 Rubenstein  
2 only two occasions that you had spoken with  
3 third parties Mr. Utley and Mr. Wheeler that  
4 you can recall with regard to IViewIt; is that  
5 correct?

6 MR. PRUSASKI: I don't recall that  
7 being his testimony.

8 A. That's not my testimony.

9 Q. What was your testimony?

10 A. We will have to have it read  
11 back. I don't remember exactly what I said --

12 Q. Okay.

13 A. -- in response to which particular  
14 question right now.

15 Q. Well, let me pose a new question,  
16 sir, and I think I have asked you this before,  
17 and I am going to pose it again because I am  
18 unclear now.

19 You have communicated with third  
20 parties with regard to IViewIt; is that  
21 correct?

22 A. Well, what do you mean by "third  
23 parties"?

24 Q. People or entities other than  
25 IViewIt.

Ken Rubenstein Deposition  
Rubenstein

1

2 A. Uh -- I might have, I might not  
3 have, I am not sure right now.

4 Q. And those third parties you are  
5 saying are clients of yours, is that why you  
6 are asserting a privilege?

7 A. Well, it depends who you mean by a  
8 "third party". You know, "third party" is a  
9 vague term.

10 why don't you name some particular  
11 third parties and I will answer the question,  
12 if I have haven't answered it already.

13 Q. I think you said that you were  
14 asserting a privilege with regard to Warner  
15 Bros., I think you said --

16 A. Well, Warner Bros. is a client  
17 here.

18 Q. Right. And Sony.

19 A. Sony is a client here.

20 Q. Right. So you refuse to answer  
21 whether or not you had communicated to those  
22 parties with regard to IViewIt; is that  
23 correct?

24 A. Correct, or anything else I might  
25 have communicated to them.

□

76

1 Rubenstein

2 Q. Well, I am not asking you about  
3 anything else, because, really, frankly, sir,

4 that's not only not relevant but, clearly,  
5 that would be privileged, but I am asking you  
6 with regard to simply IViewIt --

7 A. Well, you know, that's our  
8 position, our position is that any  
9 conversation with those entities is  
10 privileged.

11 Q. Okay, and if there was a  
12 discussion -- are you saying there was no  
13 discussion or are you saying there was a  
14 discussion that was privileged?

15 A. I am not saying there was a  
16 discussion, I am not saying there was not a  
17 discussion, I am saying it's privileged.

18 Q. So you can't simply answer no,  
19 there was no discussion --

20 A. I am not saying there was, I am  
21 not saying there was not, I am saying it's  
22 privileged.

23 MR. SELZ: I am going to certify  
24 that question, we will take it up with  
25 Judge Labarga and see what his

□

77

1 Rubenstein  
2 determination is about that.

3 (RULING SOUGHT.)

4 Q. Now, with regard to any other  
5 issues concerning IViewIt.com or any IViewIt  
6 entities, have you had any communications

7 since the filing of this lawsuit with anyone  
8 concerning IViewIt?

9 A. Well, I don't know when the  
10 lawsuit was filed.

11 Q. Since 2001, have you had any  
12 communications with anyone concerning IViewIt  
13 Technologies or any of the IViewIt entities?

14 A. Not that I recall at this time.

15 Q. Have you spoken to Ray Joao with  
16 regard to it?

17 MR. PRUSASKI: Asked and  
18 answered.

19 A. You asked me about Ray Joao  
20 already.

21 Q. Since 2001.

22 A. Not that I know of at this time.

23 Q. Sir, have you ever been involved  
24 in setting up corporations for clients?

25 A. No.

□

78

1 Rubenstein

2 Q. Have you ever made any  
3 representations to any company or any entity  
4 with regard to the advisability of setting up  
5 corporations for them?

6 A. Not that I know of.

7 Q. Who would you refer that to at  
8 Proskauer Rose if there was --

9 A. I am not sure, it would depend on

10 the particular situation.  
11 Q. Do you have any idea what  
12 Mr. Wheeler's specialization is?  
13 A. No.  
14 Q. Have you ever spoken with him with  
15 regard to the legal services he was providing  
16 to IViewIt?  
17 A. You asked me that --  
18 MR. PRUSASKI: Asked and  
19 answered.  
20 A. -- already and I answered it.  
21 Q. And what was your answer again,  
22 sir, "No"?  
23 A. I don't remember the exact  
24 question you asked, so I don't remember the  
25 exact wording of my answer, what the question

□

79

1 Rubenstein  
2 was -- but the question was asked and  
3 answered.  
4 Q. Do you have that fax yet?  
5 A. No. We will call my secretary  
6 again.  
7 I will put you on hold.  
8 Q. Okay.  
9 (Pause in proceedings.)  
10 A. Okay, the fax is coming, so we are  
11 just going to put you on hold for a minute.  
12 Q. Thank you?

13 Ken Rubenstein Deposition  
(Pause in proceedings: 12:35 p.m.-  
14 12:41 p.m.)  
15 A. All right. We have your letter.  
16 Q. Do you ever recall seeing this  
17 letter?  
18 MR. SELZ: Let's get it marked,  
19 first of all, by the court reporter as  
20 Defendants' 1.  
21 A. The letter is dated today, and I  
22 never saw it before.  
23 Q. Have you ever seen the contents of  
24 this letter?  
25 A. No. I haven't read the letter

□

80

1 Rubenstein  
2 yet.  
3 Q. Okay.  
4 A. I note that the letter is two-plus  
5 pages long, I haven't read it. The letter is  
6 dated today, November 20, 2002, and it's  
7 unsigned, so this is a letter you guys,  
8 IViewIt, created today.  
9 Q. Well, I think that's a presumption  
10 that you are putting into the record, sir.  
11 A. Well, the letter I have in front  
12 of me is dated today.  
13 Q. Let me go ahead.  
14 First of all, let's get it marked  
15 as Number 1, Defendants' 1.

Ken Rubenstein Deposition

16 MR. PRUSASKI: Objection to the  
17 predicate, he has never seen it before.  
18 MR. SELZ: Let me ask him a  
19 question about it first. I haven't even  
20 examined him on it. Let me -- Chris,  
21 this is my deposition of him, and I  
22 appreciate the fact that he wants to get  
23 this over, but that isn't an excuse for  
24 him to jump the gun.  
25 MR. PRUSASKI: I have a right to

□

81

1 Rubenstein  
2 make objections as I see fit, and I am  
3 not taking instructions out of practice  
4 law from you.  
5 MR. SELZ: That's fine. I am just  
6 saying, let me get it marked first.  
7 (Deposition Exhibit Defendants' 1,  
8 letter dated, November 20, 2002, with  
9 fax transmittal cover sheet, was marked  
10 for identification, as of this date.)  
11 Q. Mr. Rubenstein, do you have in  
12 front of you what's been marked as Defendants'  
13 Number 1? Is that correct?  
14 A. Yes.  
15 Q. Okay, could you please read it for  
16 me?  
17 MR. PRUSASKI: Out loud?  
18 Q. No, to yourself.

19           A.     well, I will scan it, but I want  
20 to note it's a two-page letter, I have not had  
21 an opportunity to study it. So if you ask me  
22 questions about the letter, I am going to tell  
23 you I have not had an opportunity to study it.  
24           Q.     Okay, then I will go through the  
25 letter paragraph by paragraph with you to see

□

82

1                   Rubenstein  
2 if you recall any of it.  
3                   Do you ever recall receiving a  
4 correspondence from Stephen Lamont?  
5           A.     Like I say, I haven't had a chance  
6 to study your letter.  
7           Q.     I am not talking about this  
8 particular --  
9           A.     I don't recall any correspondence  
10 from Stephen Lamont at this point in time.  
11          Q.     Do you ever recall a request by  
12 Wayne Smith of Warner Bros. as to IViewIt's  
13 pending patents?  
14          A.     No. It might be that somebody at  
15 IViewIt asked me to talk to Warner Bros. and I  
16 declined. That might be the fact.  
17          Q.     Are you aware of any  
18 confidentiality agreement executed by Warner  
19 Bros. with regard to IViewIt?  
20          A.     No.  
21          Q.     Have you ever seen any such

22 agreement?

23 A. Not that I could recall.

24 Q. Again, sir, this letter refers to  
25 you being on the advisory board of IViewIt

□

83

1 Rubenstein

2 between fall of 1999/spring of 2000.

3 A. I was never on any advisory board  
4 of IViewIt.

5 Q. Did Stephen Lamont ever meet with  
6 you in person?

7 A. I think I -- as I testified, I may  
8 have had a conversation with him, I don't know  
9 if it was in person or not.

10 Q. You previously testified that you  
11 had never reviewed any of IViewIt's  
12 technologies; is that correct?

13 A. I never testified to that. What I  
14 told you is, I don't have any knowledge of it  
15 right now.

16 Q. Okay.

17 A. I don't know whether I reviewed it  
18 or not.

19 Q. So it's possible, then, sir, that  
20 you did review it.

21 A. Like I said, I answered the  
22 question. You asked me, I answered it. I  
23 don't know whether I reviewed it or not. I  
24 have no knowledge of it right now. I was not

Ken Rubenstein Deposition  
25 their patent attorney, I was not involved with

□

84

1 Rubenstein

2 their patents.

3 Q. Okay, if you don't have a  
4 recollection of reviewing it, but then it's  
5 possible that you had; is that correct?

6 MR. PRUSASKI: Anything's  
7 possible. I think we could stipulate to  
8 that.

9 A. Right, I don't think it's possible  
10 but -- and I don't think it happened.

11 Q. Do you have any clearer  
12 recollection of it because of this letter?

13 A. No, I don't have a detailed  
14 recollection or any recollection of it at this  
15 point in time.

16 Q. And, again, I think you had  
17 testified that you don't know anyone -- Greg  
18 Thagard, you don't know Greg Thagard?

19 A. I do know Greg Thagard.

20 Q. Who is Greg Thagard?

21 A. He used to work at Warner Bros.

22 Q. Does Mr. Thagard, to the best of  
23 your knowledge, have any information  
24 concerning IViewIt?

25 A. I don't know at this point in

□

85

Ken Rubenstein Deposition

1 Rubenstein

2 time.

3 Q. What, to the best of your  
4 recollection, was Greg Thagard's role with  
5 regard to IViewIt?

6 A. I don't know what he might or  
7 might not have done with respect to IViewIt.

8 Q. Who is Greg Thagard?

9 A. He is a person who worked at  
10 Warner Bros.

11 Q. Well, what was his position --

12 A. He was in technical -- in the  
13 technology side of the company.

14 Q. Do you have any idea where  
15 Mr. Thagard is currently?

16 A. No. I believe he left the  
17 company.

18 Q. How about Chris Cookson, did you  
19 ever have any conversations with Chris Cookson  
20 concerning IViewIt Technologies?

21 A. Like I say, Chris Cookson works  
22 for Warner Bros., and any conversations I had  
23 with Warner Bros. are privileged. So, I am  
24 not saying I had a conversation, I am not  
25 saying I did not have a conversation, I am

□

86

1 Rubenstein

2 saying you are asking for privileged material.

Ken Rubenstein Deposition

3 Q. And David Colter?

4 A. I am not sure I ever had any  
5 dealings with him.

6 Q. And who is David Colter?

7 A. You asked and I answered that  
8 question already.

9 Q. So you have never seen this  
10 correspondence, you don't recall seeing this  
11 correspondence from Mr. Lamont; is that  
12 correct?

13 MR. PRUSASKI: It's dated today.

14 A. It's dated today.

15 MR. PRUSASKI: It's marked  
16 "Draft". It's impossible for us to  
17 have seen it before. And the return  
18 address is an empty house in Los Angeles  
19 County.

20 Q. Have you ever seen the contents of  
21 this letter before?

22 A. I have never --

23 MR. PRUSASKI: He answered these  
24 questions, no?

25 A. I have never seen the letter

□

87

1 Rubenstein

2 before.

3 Q. How about the E-mails that were  
4 faxed over to you, as well? There is an  
5 E-mail that's dated August 6, 2001. Have you

Ken Rubenstein Deposition

6 ever seen that E-mail before?

7 A. Is this an E-mail from David  
8 Colter to Heidi Krauel?

9 Q. Correct.

10 MR. PRUSASKI: The one dated  
11 August 1, 2001?

12 MR. SELZ: Correct.

13 A. Right, I see the E-mail.

14 Q. Okay.

15 MR. SELZ: Let's get it marked as  
16 2.

17 (Deposition Exhibit Defendants' 2,  
18 fax transmittal cover sheet and E-mails,  
19 was marked for identification, as of  
20 this date.)

21 Q. Sir, do you have any reason to  
22 know why your name is mentioned in that  
23 E-mail?

24 A. No, because I don't recall giving  
25 any opinions about the patents.

□

88

1 Rubenstein

2 Q. And you never, to the best of your  
3 recollection, had any discussions with  
4 Mr. Thagard with regard to same, either?

5 A. Like I say, any discussion I might  
6 have or might not have had with Mr. Thagard  
7 would be privileged.

8 Q. I am going to put you on hold for  
Page 79

Ken Rubenstein Deposition

9 just a minute.

10 (Pause.)

11 MR. SELZ: Okay, we are back on.

12 Okay, I have got nothing further  
13 at this time. However, we are going to  
14 have to go to Judge Labarga with regard  
15 to your refusal to answer on some of  
16 these issues with your claim of  
17 privilege, so we may have to come back  
18 and conclude with those questions at a  
19 later date.

20 MR. PRUSASKI: Fine.

21 THE WITNESS: We will take it  
22 under advisement.

23 We are not committing to come back  
24 or not.

25 MR. SELZ: That's fine.

□

89

1

2 (Time noted: 12:48 p.m.)

3

4

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\_\_\_\_\_

KENNETH RUBENSTEIN

7

8 subscribed and affirmed

9 before me this \_\_\_\_ day

10 of \_\_\_\_\_, 2002.

11 \_\_\_\_\_

Ken Rubenstein Deposition

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C E R T I F I C A T E

STATE OF NEW YORK     )  
  : ss.  
COUNTY OF NEW YORK    )

I, WENDY D. BOSKIND, a Registered  
Professional Reporter and Notary Public  
within and for the State of New York,  
do hereby certify:

That KENNETH RUBENSTEIN, the  
witness whose deposition is hereinbefore  
set forth, affirmed before me, and  
that such deposition is a true and  
accurate record of the testimony given

Ken Rubenstein Deposition

15 by the witness.

16 I further certify that I am not  
17 related to any of the parties to this  
18 action by blood or marriage, and that  
19 I am in no way interested in the  
20 outcome of this matter.

21 IN WITNESS WHEREOF, I have  
22 hereunto set my hand this 26th day  
23 of November, 2002.

24  
25 \_\_\_\_\_  
WENDY D. BOSKIND, RPR

□

1  
2 November 20, 2002

3 I N D E X

4 WITNESS	EXAMINATION BY	PAGE
5 Kenneth Rubenstein	Mr. Selz	4
6		
7 -----	EXHIBITS-----	
8 Defendants' 1, letter dated, November 20,		
9 2002, with fax transmittal cover sheet.....		81
10 Defendants' 2, fax transmittal cover		
11 sheet and E-mails.....		87
12		
13		
14 (DIRECTION NOT TO ANSWER.).....		25
15 (DIRECTION NOT TO ANSWER.).....		28
16 (DIRECTION NOT TO ANSWER.).....		30
17 (DIRECTION NOT TO ANSWER.).....		41

Ken Rubenstein Deposition

18 (DIRECTION NOT TO ANSWER.)..... 47  
19 (DIRECTION NOT TO ANSWER.)..... 57  
20  
21 (MOTION TO STRIKE.) ..... 10  
22  
23 (RULING SOUGHT.)..... 77  
24  
25

□

1  
2 STATE OF NEW YORK ) Pg\_\_of\_\_Pgs  
3 ss:  
4 COUNTY OF NEW YORK )  
5 I wish to make the following changes,  
6 for the following reasons:  
7 PAGE LINE  
8 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
9 REASON: \_\_\_\_\_  
10 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
11 REASON: \_\_\_\_\_  
12 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
13 REASON: \_\_\_\_\_  
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19 REASON: \_\_\_\_\_  
20 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_

Ken Rubenstein Deposition

21 REASON: \_\_\_\_\_  
22 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
23 REASON: \_\_\_\_\_  
24 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
25 REASON: \_\_\_\_\_

□

PROSKAUER ROSE LLP

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Christopher W. Prusaski  
Attorney at Law

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June 2, 2003

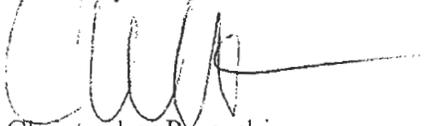
Mr. Kenneth A. Schanzer  
Ken Schanzer & Associates, Inc.  
209 N. 20th Avenue  
Hollywood, FL 33020

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

Dear Mr. Schanzer:

Please find enclosed an Errata Sheet executed by Christopher C. Wheeler for the transcript of his deposition taken on November 21, 2002.

Sincerely,



Christopher Prusaski

CWP:km

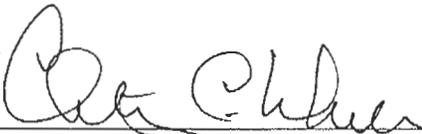
Enclosure

cc: Steven Selz, Esq. (w/enclosure)

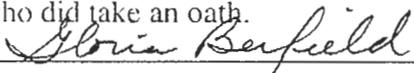
I, **Christopher C. Wheeler**, do hereby declare under the penalties of perjury that the foregoing testimony is true and correct (with the exception of the following changes listed below):

**ERRATA SHEET**

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>	<u>REASON</u>
40	11	Were not pixilated and which were not distorted.	error in transcription
70	23	Rick Rochon.	spelling
71	7	Cris Brandon.	full name
96	16-17	Should be "many" of the confidentiality agreements.	clarification
118-119	23-1	There was also a matter of giving advice regarding a credit card account guaranteed by Mr. Utley that was unrelated to Iviewit and billed separately to Mr. Utley.	additional recollection
124	11-18	I do not have a recollection of when companies were formed without reviewing the exact history of each company.	clarification
135	3	Eliot should be Utley.	typo
197	15	Reference to J. Zammas is incorrect, although I do not, at this time, recall who I referenced.	typo
205	19-21	From that standpoint, it is my understanding that the patent work had not been completed regarding the video product, but that I did not know if the copyright and trademark work had or had not been completed regarding the video product.	clarification

  
 \_\_\_\_\_  
 Christopher C. Wheeler

Sworn to and subscribed before me this 2<sup>ND</sup> day of JUNE ~~May~~, 2003 by Christopher C. Wheeler, who is personally known to me and who did take an oath.

  
 \_\_\_\_\_  
 Notary Public -- State of Florida  
 My commission expires:



Gloria Berfield  
 MY COMMISSION # DD179765 EXPIRES  
 February 21, 2007  
 BONDED THRU TROY FAIR INSURANCE, INC.

KEN SCHANZER AND ASSOCIATES, INC.  
209 N 26TH AVENUE  
HOLLYWOOD, FL 33020

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IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

---

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

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

Defendants.

---

Palm Beach, Florida  
November 21, 2002  
10:26 o'clock a.m.

DEPOSITION

OF

CHRISTOPHER C. WHEELER

-----

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE LLP

By: MATTHEW TRIGGS, ESQ.

3 Appearing on behalf of the Plaintiff.

4 SELZ & MUVDI SELZ, P.A.

By: STEVEN M. SELZ, ESQ.

5 Appearing on behalf of the Defendants.

6 Also Present:

7 Eliot I. Bernstein (by telephone)

8

9

-----

10

11

12

Deposition of CHRISTOPHER C. WHEELER, a witness

13

of lawful age, taken by the Defendants, for purposes

14

of discovery and for use as evidence in the

15

above-entitled cause, pursuant to notice heretofore

16

filed, before KENNETH A. SCHANZER, Registered

17

Diplomate Reporter and Notary Public, in and for the

18

State of Florida at Large, at 214 Brazilian Avenue,

19

Palm Beach, Florida.

20

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22

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## INDEX

1		
2	WITNESS:	PAGE
3	CHRISTOPHER C. WHEELER	
4	Direct Examination By Mr. Selz	6
5	EXHIBITS:	FOR I.D.
6	Defendant's No. 1	33
7	Defendant's No. 2	48
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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1 Thereupon:

2 CHRISTOPHER C. WHEELER

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5 MR. TRIGGS: Before we get going, I do  
6 want to put on the record that Mr. Bernstein is  
7 attending this deposition by telephone. It's my  
8 understanding that he also attended the  
9 deposition that we had yesterday by telephone,  
10 notwithstanding what was represented to the  
11 court, whenever it was, we were in front of the  
12 judge last week?

13 MR. SELZ: Actually --

14 MR. TRIGGS: Week before. Just want to  
15 make sure that it's clear so that we can at the  
16 appropriate time deal with the fact that -- And  
17 I'm pleased that he's able to spend the time on  
18 the phone, pleased he's able to participate in  
19 the deposition.

20 One other thing I'd just like to make  
21 clear for the record, and that is,  
22 Mr. Bernstein, you are not taping this  
23 deposition, are you?

24 MR. SELZ: Can you hear us?

25 MR. BERNSTEIN: No, I can't hear anything.

1 Can you guys speak up?

2 MR. TRIGGS: Mr. Bernstein, you are not  
3 taping this deposition, are you?

4 MR. BERNSTEIN: No.

5 MR. TRIGGS: All right.

6 MR. SELZ: Are you still there?

7 MR. BERNSTEIN: Yeah. Is the court taping  
8 the deposition?

9 MR. SELZ: Yeah, the court reporter is  
10 recording the deposition on transcription.

11 MR. BERNSTEIN: Okay.

12 MR. SELZ: Okay. Can you hear us better  
13 now?

14 MR. BERNSTEIN: Yeah. A little bit.

15 MR. SELZ: While we're going on the record  
16 with regard to that particular issue, let me  
17 likewise state that we have offered the  
18 Plaintiff an opportunity to depose Mr. Bernstein  
19 telephonically, and Mr. Prusaski indicated that  
20 he was unwilling to do so, and we offered that  
21 Mr. Bernstein is at his home on the phone and  
22 awaiting the imminent birth of his child. His  
23 wife is in the other room, and because of that,  
24 as was stated before we went on the record, it  
25 may be necessary for him to take breaks on a

1 regular basis to check on his wife's condition  
2 and to make sure that she doesn't need anything.

3 So with all that in mind, let's move  
4 forward.

5 MR. TRIGGS: And to be clear, absolutely,  
6 should we take his deposition, in San Diego or  
7 wherever he resides now, if he needed to take a  
8 break for his wife's condition, we would have no  
9 objection whatsoever to him doing that.

10 MR. SELZ: I don't think - I don't think  
11 that was the concern. It was expressly the  
12 OB-GYNs letter, but given all that, let's go  
13 forward.

14 MR. TRIGGS: Yes, we do want to be there  
15 and be in the same room with Mr. Bernstein when  
16 his deposition is taken.

17 MR. SELZ: Okay. With all that in mind,  
18 let's see if we can proceed.

19 DIRECT EXAMINATION

20 Q. (By Mr. Selz) Okay. Mr. Wheeler, could  
21 you please state your full name for the record?

22 A. Christopher C. Wheeler.

23 Q. And Mr. Wheeler, what is your current  
24 occupation?

25 A. I'm an attorney.

1 Q. And do you practice on your own or do you  
2 practice with a firm?

3 A. I practice with Proskauer Rose.

4 Q. Do you have a separate P.A. or do you  
5 practice as a partner of that?

6 A. No, I am a partner there.

7 Q. And which office do you practice out of?

8 A. I practice -- My office is in the Boca  
9 Raton office.

10 Q. And what's the address of that office?

11 A. 2255 Glades Road, Boca Raton, Florida.

12 Q. And how long have you been practicing as  
13 an attorney with Proskauer Rose?

14 A. Since November of 1990.

15 MR. BERNSTEIN: Can you have him speak up  
16 or closer to the phone?

17 MR. SELZ: Let's see if I can move this as  
18 close as I can. Put it in the center of the  
19 table. That's about as good as I can do.

20 Q. Okay. So prior to your employment with  
21 Proskauer Rose, where were you employed?

22 A. I was a partner at Gunster Yoakley.

23 Q. Gunster Yoakley's offices located in Palm  
24 Beach or located some place else?

25 A. Well, I was - I was in both -- For

1 sometime I was in their Boca Raton office and for  
2 sometime I was in their West Palm office.

3 Q. And prior to Gunster Yoakley?

4 A. Prior to Gunster Yoakley I was with - I  
5 was - I was with Fleming, O'Bryan and Fleming. Then  
6 there was a hiatus of one month until we joined  
7 Gunster Yoakley, I was with Wheeler and Kanouse.

8 Q. When was that with regard to Fleming,  
9 O'Bryan and Fleming?

10 A. From 1972 to 1983.

11 Q. And then your employment with Gunster  
12 Yoakley was from 1983 to --

13 A. Right. A month at Wheeler and Kanouse's.  
14 It was a changeover. And then we went immediately  
15 into Gunster Yoakley from 1983 to 1990.

16 Q. Okay. Prior to Fleming, O'Bryan and  
17 Fleming?

18 A. I graduated from law school.

19 Q. Okay. Are you admitted to practice in any  
20 other state other than the State of Florida?

21 A. No.

22 Q. Have you taken any specialization or  
23 certification?

24 A. No.

25 Q. How would you characterize the principal

1 practice that you have, what type?

2 A. Transactional.

3 Q. Real estate transactional, business  
4 transactional?

5 A. Both.

6 Q. Do you do any corporate work?

7 A. Yes.

8 Q. Establishing corporations, setting up  
9 corporations for clients?

10 A. Yes.

11 Q. Is that part of your transactional  
12 practice?

13 A. Yes.

14 Q. Do you do any intellectual properties  
15 work?

16 A. No.

17 Q. Do you do any work advising clients with  
18 regard to patents or patent rights?

19 A. No. Only directing them to the -- When  
20 they come in, when our corporate clients come in, we  
21 direct them to the proper people.

22 Q. Now, when you say the proper people, you  
23 mean the proper people within Proskauer Rose?

24 A. Sometimes.

25 Q. And if a client came in with an

1 intellectual property question, such as iviewit  
2 situation, who would you refer them to?

3 MR. TRIGGS: Object to the form.

4 THE WITNESS: Can I answer that?

5 MR. TRIGGS: Sure. If you can answer the  
6 question, fine.

7 A. I -- It would depend on the -- Normally we  
8 would contact our IP people, either in Washington or  
9 in New York, and ask their advice as to how it should  
10 be handled.

11 Q. Now, when a new client comes into  
12 Proskauer, is there a procedure that you have for  
13 establishing a new client file?

14 A. Yes.

15 Q. Okay. What is that procedure, sir?

16 A. We have a business intake file and a - and  
17 that's submitted, together with a conflict check.

18 Q. Okay. Was that done, to the best of your  
19 knowledge, with regard to iviewit?

20 A. To the best of my knowledge, it was.

21 Q. Okay. When I say iviewit, in this case  
22 there are about, I believe, about eight or nine  
23 iviewit entities and a uview entity as well. So when  
24 I refer to iviewit, generally I'm going to refer to  
25 all of those entities consolidated and combined.

1           A.     And to answer your question, in view of it you  
2 have to understand, an interview didn't exist when it  
3 came into our office. The Bernsteins existed, so it  
4 was done with respect to the Bernsteins.

5           Q.     So a conflict check was done with  
6 regard --

7           A.     Well, to the best of my knowledge, it was.  
8 But that would be our procedure.

9           Q.     Okay. Do you know if a conflict check was  
10 actually run with regard to the Bernsteins?

11          A.     I don't know exactly, but it would be  
12 difficult to open a file in our firm without a  
13 conflict check, if not impossible.

14          Q.     Now, as part of the conflict check  
15 procedure, is - is an interview conducted to find out  
16 what the type of business is going to be operated and  
17 potential transactions are going to be involved or is  
18 it simply a name conflict that's run?

19                 MR. TRIGGS: Object to the form.

20          A.     It's --

21          Q.     Let me restate it. How does a conflict  
22 check work at your offices?

23          A.     The new matter sheet -- A conflict check  
24 generally is a check of names.

25          Q.     So it would be more for whether there was

1 a transaction involving an existing client and that  
2 party previously?

3 A. It's - it's a complex procedure, but there  
4 are a series of questions, and they're answered both  
5 with respect -- If it was a corporate entity coming  
6 in, you'd view it and you'd take the principals, you'd  
7 try to identify the principals, you'd try to identify  
8 potential adverse parties in the transaction, and you  
9 would list them all in the sheet. But - so it's not  
10 solely names.

11 If you came in and you were a corporation  
12 and you wanted me to negotiate a contract with John  
13 Doe or John Doe, Inc., across the street, we would try  
14 to fill it out as comprehensively as possible.

15 Q. Okay. Now, with regard to the retainer of  
16 Proskauer Rose by iviewit in this particular matter,  
17 do you recall when Proskauer Rose started doing work  
18 for iviewit?

19 A. Approximately --

20 MR. TRIGGS: Just object to form. How are  
21 you going to clarify the various iviewit  
22 entities, or are you? Are you just going to  
23 sump sort of lump it all --

24 Q. Well, I'm just going to say, when did they  
25 start representing any, and that was my statement.

1 And that's why, unless I specify a certain entity,  
2 what I want you to do is answer as if I'm asking with  
3 regard to each one of those various entities rather  
4 than running through the litany of each one.

5 A. That's fine. I think approximately  
6 January of '99.

7 Q. And how did iviewit first come to  
8 Proskauer, if you recall?

9 A. They were referred to us, I believe, by  
10 Jerry Lewin to my partner, Al Gortz.

11 Q. And what is Mr. Gortz's area of practice?

12 A. He's a - what we call personal planning  
13 lawyer. Estate planning.

14 Q. Had he done any work that you know of for  
15 any of the principals of iviewit?

16 A. Now or prior to that time?

17 Q. Prior to that time.

18 A. I don't know whether he had done it prior.

19 Q. How about now?

20 A. I believe he did -- Well, he did work  
21 subsequent for them.

22 Q. Do you know who he did any work for?

23 A. He did it for Sy and -- I don't know if he  
24 did it for Eliot or not.

25 Q. Okay. So to the best of your

1 recollection, who came in to meet with you the first  
2 time from iviewit? The first time you met any  
3 representative.

4 A. To the - to the best of my knowledge, in  
5 January I met with Mr. Gortz and both Mr. Bernsteins,  
6 and I believe Mr. Lewin as well.

7 Q. And at that time, what was discussed?

8 A. The preliminary discussion as to the  
9 nature of what their work was going to be,  
10 establishment of a corporation, and they were going to  
11 prepare a business plan and send it over to us.

12 Q. Was there any discussion as to Proskauer  
13 Rose attempting to assist them in any way with regard  
14 to obtaining financing or funding that you can recall?

15 A. I don't recall that.

16 Q. How about with regard to any intellectual  
17 properties matters?

18 A. I don't recall that in that meeting.

19 Q. Was there any discussion as to what the  
20 principal product or service that iviewit was going to  
21 provide would be?

22 A. It was a -- There was a discussion. I'm  
23 not so sure we - we got our arms around it until a  
24 subsequent meeting, but it was a system, a portal --  
25 It seemed that Mr. Bernstein was going to set up a

1 portal, and he had - he had - he had an idea how to  
2 set up a better portal, and - by which to present  
3 products and - and --

4 Now, this was a - this was the first  
5 discussion, preliminary.

6 Q. Right.

7 A. Right.

8 Q. So the portal --

9 A. It wasn't - I mean, it wasn't a long  
10 discussion that we had, to my recollection.

11 Q. Okay. And this portal, what was its  
12 purpose again?

13 A. Well, they were going to use  
14 Mr. Bernstein's techniques to demonstrate products on  
15 it.

16 Q. Okay. What was the technique that  
17 Mr. Bernstein was going to --

18 MR. TRIGGS: Let me just object to the  
19 form. I think your question was aimed at asking  
20 him what was discussed in the meeting. It's not  
21 quite coming out that way, but I'll just object  
22 to the form.

23 MR. SELZ: Okay. I think I already asked  
24 him that question.

25 A. He had a - he believed - a technique by

1 which he was going to use on this portal and market it  
2 to various potential customers to display on his - on  
3 his portal.

4 Q. Okay. And this technique involved what in  
5 particular?

6 MR. TRIGGS: Object to the form.

7 Q. What was the technique -- I'll rephrase  
8 it. What was the technique that Mr. Bernstein  
9 discussed with you?

10 A. Well, he didn't discuss it at length at  
11 that time. So, I mean, we - that remained to be seen.

12 Q. That was in January of 1999.

13 A. Right.

14 Q. Now, subsequent to that initial meeting,  
15 was there ever any retainer agreement signed by  
16 iviewit?

17 A. Yes.

18 Q. Do you know when that took place?

19 A. It took place a few months later.

20 Perhaps - perhaps by midyear.

21 Q. By July or thereabouts as you --

22 A. A written agreement you're talking about?

23 Q. Right.

24 A. Right.

25 Q. Now, at the time this meeting took

1 place --

2 A. I mean, you're saying, was there a  
3 retainer, a written fee agreement signed.

4 Q. Yes.

5 A. And that was not signed till months later.

6 Q. Now, what's the --

7 A. We undertook services earlier.

8 Q. Okay. Now, you earlier talked about the  
9 fact that your firm has a strict policy with regard to  
10 conflict checks. Is that correct?

11 A. As to opening files and conflict checks,  
12 yes.

13 Q. Do they also have a policy with regard to  
14 retainer agreements?

15 A. They do now.

16 Q. Did they in 1999?

17 A. I don't recall, but I don't think it was  
18 the same policy.

19 Q. Are there any policies and procedures  
20 manuals from that date, around January of 1999, which  
21 would cover that topic?

22 A. I don't know.

23 Q. Are you -- You're a partner in that law  
24 firm, is that correct?

25 A. Right.

1 Q. Are you part of the - or are you privy to  
2 shareholders meetings at which internal policies of  
3 the firm are discussed?

4 A. Absolutely. And there may be a policy  
5 letter on it. I just don't recall seeing it. I mean,  
6 we definitely have a policy as to it.

7 Q. Would you characterize that in your  
8 experience at Proskauer Rose as usual or unusual that  
9 a client was brought in with services without a  
10 written retainer agreement?

11 MR. TRIGGS: Object to form.

12 A. Presently it would be unusual. At that  
13 time it would not be as unusual, and the explanation  
14 is, we've tightened up our procedures over the years  
15 since that time. So it could have been perfectly  
16 conceivable, just by way of clarification, to submit a  
17 letter saying we were going to get a written fee  
18 agreement and - and there not be proper follow-up,  
19 internal follow-up on it for a matter of months at  
20 that time, but now there are systems in place where  
21 there is follow-up on it.

22 Q. Okay. Now, the corporate offices of  
23 iviewit that we're talking about, where were they  
24 located at this point in time?

25 A. They didn't exist, but --

1 Q. Subsequent to your meeting. Subsequent to  
2 your meeting with the Bernsteins.

3 A. They didn't exist either. Most of the --  
4 I don't know where -- I know Eliot was operating out  
5 of his home, and then when they had any serious  
6 meetings, it seemed to be out of our offices. They  
7 borrowed our conference room or whatever. And I don't  
8 know where else they had meetings.

9 Q. Now, after that initial meeting in  
10 January, was there any agreement reached with regard  
11 to representation of Proskauer Rose for iviewit?

12 MR. TRIGGS: Object to the form.

13 A. After the initial meeting?

14 Q. Yes.

15 A. Well, we agreed to undertake certain  
16 matters on their behalf and they agreed to pay for  
17 them.

18 Q. Okay. What were the certain matters you  
19 agreed to represent them in?

20 MR. TRIGGS: Object to form. At what  
21 point in time?

22 MR. SELZ: At the initial meeting.

23 A. Well, they were going to start a business,  
24 and as they brought in their business questions and  
25 the formation of their corporation and all the other

1 ancillary matters as they developed we would undertake  
2 to represent them or help them find the proper  
3 representation.

4 Q. And that first step, was that something  
5 that you were chiefly responsible for in setting up  
6 these corporations?

7 A. It was not done under my supervision.

8 Q. Okay. Who exactly did the work?

9 A. Well, we had combination of lawyers. But  
10 I would - and I'd have to go back and look at exactly  
11 who did that. But I believe either Mara Lerner or  
12 Rocky Thompson. Rocky -- Probably most of it was  
13 charged to Rock - the - the charge to Rocky Thompson  
14 to oversee the work. He may have had subordinates  
15 that handled legwork for him.

16 Q. Now, who advised the client, in this case,  
17 iviewit, or the individuals who were establishing  
18 iviewit as to the structuring of these corporations?

19 MR. TRIGGS: Object to the form.

20 A. The structuring, I don't know. I would  
21 imagine most of the structuring was designed by  
22 Mr. Thompson.

23 Q. You had stated earlier in testimony that  
24 part of your work is corporate work.

25 A. Right.

1 Q. Setting up corporations. Is it in  
2 your opinion -- Strike that. Can you opine to me  
3 today why iviewit has approximately eight or nine  
4 different entities rather than one corporation in this  
5 particular matter?

6 A. Not without reviewing it, but I can -- I  
7 can't opine to it, but I can speculate, but --

8 MR. TRIGGS: Wait. You are not supposed  
9 to be speculating.

10 THE WITNESS: We're not supposed to  
11 speculate. Okay.

12 MR. TRIGGS: Answer the questions he's  
13 asking you.

14 THE WITNESS: Okay. That's fine.

15 A. I can't opine to why they have it without  
16 having to examine the record closely.

17 Q. Okay. Now, were you the attorney chiefly  
18 responsible for the relations between this client,  
19 this particular client, iviewit, the iviewit entities,  
20 and Proskauer Rose?

21 A. On the transactional matters.

22 Q. On transactional matters.

23 A. Right.

24 Q. What other matters was Proskauer Rose  
25 representing iviewit with respect to?

1           A.     Well, on the Bernsteins as a whole, it  
2 would be Al Gortz on their - on their estate plans and  
3 their trusts and everything else.

4           Q.     Okay. Excepting that, because that's  
5 dealing with the Bernsteins individually. I'm talking  
6 about iviewit and the iviewit entities.

7           A.     Okay. Well, the transactional and all the  
8 ancillary matters to the transactional matters I was  
9 in charge of, yes.

10          Q.     Were there any other matters that you're  
11 aware of that Proskauer Rose represented iviewit in,  
12 other than transactional matters?

13          A.     No. But transactional is pretty  
14 comprehensive.

15          Q.     Okay. What does transactional matters  
16 include, in your definition of that word?

17          A.     Well, as I mentioned at the beginning,  
18 when a corporation comes in, they have a whole realm  
19 of activities that they - they deal with, and in the  
20 case of iviewit, it ran in everything from setting up  
21 the corporation to the license agreements, to setting  
22 up the web site, to negotiating employment agreements,  
23 to - to doing real estate leases, to doing subleases,  
24 to helping them in connection with borrowing money. I  
25 mean, any - what every business does.

1           If you're -- In our case, it also  
2 involved, when a corporation comes in, they - they do  
3 want to take care of some of their intellectual  
4 property work, and there was copyright and trademark  
5 work that had to be dealt with, which we contacted our  
6 trademark and copyright people, and it became clear  
7 that - that there was a technology that - that Eliot  
8 thought he was developing that had to be addressed,  
9 and the question of how to help - how to handle the  
10 patent had to be addressed.

11           Q.     And how was the trademark, copyright and  
12 patent questions addressed?

13           A.     Well, our counsels were contacted, various  
14 counsels who handle various matters like that were  
15 contacted in New York, and certain of the matters, the  
16 copyright and trademark, were handled internally,  
17 which we routinely do. And other matters, in this  
18 case the patent matter was referred out to another  
19 patent counsel.

20           Q.     And do you remember who that patent  
21 counsel was?

22           A.     It was a gentleman named Ray Joao at a  
23 firm, Meltzer, et cetera.

24           Q.     Meltzer Lippy?

25           A.     I believe so.

1 Q. At the time that matter was referred out,  
2 was there another individual who worked on the patent  
3 matter as well as Meltzer Lippy, if you're aware of  
4 that person? Anyone other than Ray Joao?

5 A. No, I - by the time I was in the process,  
6 the only one I knew of was Ray Joao.

7 Q. How about Ken Rubenstein?

8 A. I don't believe Ken --

9 MR. TRIGGS: Object to form. What's your  
10 question about Ken Rubenstein?

11 Q. Was he involved in the patent process or  
12 any of the proceedings or services provided with  
13 regard to the patents?

14 MR. TRIGGS: Object to the form.

15 A. No. He - he was -- First of all, I don't  
16 believe he worked -- I believe he worked at Proskauer  
17 at the time and not at Meltzer - Meltzer Lippy. Is  
18 that the name of the firm? And secondly, he - his  
19 involvement was only to -- He - he - he obviously is  
20 a - one of our patent contacts and his - his --

21 Q. Now, when you mean he, you mean Ken  
22 Rubenstein?

23 A. Ken Rubenstein.

24 MR. TRIGGS: Let him answer the question.  
25 You can ask any clarifying questions after he's

1 done. And Chris, if you can answer the question  
2 he's asking you.

3 A. Okay. So the answer is no, Rubenstein  
4 didn't do any patent work on it.

5 Q. Now, with regard to the services provided  
6 to the iviewit entities, you stated previously there  
7 is no written retainer agreement for the first part of  
8 the relationship, is that correct?

9 A. Correct.

10 Q. And you said that went on until about  
11 midyear you thought? Midyear 1999. Is that correct?

12 A. That's correct.

13 Q. So from January through approximately July  
14 there was no written retainer agreement?

15 A. No written agreement.

16 Q. Okay. What was the oral agreement, to the  
17 best of your recollection?

18 A. The oral agreement was we - they would  
19 come in and request services, we would provide the  
20 services, and they would pay for them at our normal  
21 hourly rates.

22 Q. And what was the normal hourly rates?

23 A. I don't know what they were at that time.

24 Q. Was there any discussion at that point in  
25 time as to what the hourly rates were?

1           A.     I don't recall a discussion, but I'm  
2 relatively certain there was.

3           Q.     Did you keep any contemporaneous notes of  
4 that meeting?

5           A.     I don't know. I would have to check.

6           Q.     Was there ever any confirming letter sent  
7 to the Bernsteins with regard to the initial meeting  
8 to set up the iviewit entities?

9           MR. TRIGGS: Object to form. Confirming  
10 letter regarding what?

11          MR. SELZ: Regarding the meeting which I  
12 think was part of my question with the  
13 Bernsteins.

14          A.     I don't know.

15          Q.     If that letter existed, would it be in  
16 your files?

17          A.     If that letter existed, I presume it would  
18 be in my file.

19          Q.     And do you make it a habit of keeping  
20 contemporaneous notes when you have a meeting with a  
21 new client?

22          A.     In some cases yes, and in some cases no.  
23 It depends on the nature of the meeting.

24          MR. BERNSTEIN: Can everybody speak up? I  
25 can't hear a thing.

1 MR. SELZ: Okay.

2 MR. BERNSTEIN: So if you could enunciate,  
3 it would be greatly appreciated.

4 Q. So, with regard to that oral agreement,  
5 you said it was that you were providing services at  
6 whatever your rates were at that time.

7 A. Correct.

8 Q. Was there any discussion, to the best of  
9 your recollection, as to a flat fee or a fee of a  
10 certain figure to set up a corporation?

11 A. No.

12 Q. It was just going to be charged on an  
13 hourly basis?

14 A. Correct.

15 Q. Is there any policy with regard to  
16 Proskauer or with regard to the transactions that  
17 you're involved with of charging a flat fee for  
18 establishing a corporation?

19 A. No.

20 Q. That's always on an hourly basis?

21 A. No. That's not what you asked. You asked  
22 if there is any policy, and the answer is no, there is  
23 no policy. It - I don't know if anyone has ever  
24 quoted a fixed fee for the establishment of a  
25 corporation. It's not our usual practice.

1 Q. Do you know how much time was spent  
2 establishing the corporations for iviewit, the  
3 entities?

4 MR. TRIGGS: Object to the form.

5 A. No.

6 Q. How much time do you think would be a  
7 reasonable amount of time to establish a corporation  
8 in the State of Florida?

9 MR. TRIGGS: Object to form. What do you  
10 mean by establishing a corporation?

11 MR. SELZ: Okay. Let me be more specific.

12 Q. What do you think a reasonable time spent,  
13 sir, would be for drafting and preparing Articles of  
14 Incorporation for a new corporation?

15 A. It would depend on the complexity of the  
16 corporation and what you were doing and how it was  
17 being handled.

18 So I mean, as you and I know, a  
19 corporation can be set up for - you can just set up a  
20 dummy corporation for a few hundred dollars or less  
21 than a thousand dollars. But if you're setting up a  
22 complex structure and there is more involved, it could  
23 run into many, many thousands of dollars.

24 Q. Okay. In this particular situation with  
25 iviewit --

1           A.     But you're presuming that all we were  
2 doing was just setting up a corporation, and I mean,  
3 the bills speak for themselves and you have copies, so  
4 you can see that there is much more involved than just  
5 setting up a corporation.

6           Q.     We'll go through the bills, but in the  
7 meantime, my question to you goes back to the point of  
8 you had answered, said that there was a range,  
9 depending on the complexity of the corporation to be  
10 set up.

11          A.     Right. I can't give you a ceiling because  
12 it could be a highly complex matter for - for a  
13 corporation, it could be - there could be a lot more  
14 involved, and it would be trying to establish a range  
15 in litigation.

16          Q.     Well, let's go back to this particular  
17 situation involving iviewit. Were those complex  
18 corporations?

19          A.     They weren't supposed to be.

20          Q.     They were supposed to be simple  
21 corporations to set up.

22          A.     Right.

23          Q.     Okay. Was that communicated with you at  
24 the first meeting with the Bernsteins or was that  
25 communicated with you at some other time?

1 A. In the initial meeting we anticipated  
2 setting up a fairly simplified structure. It's just  
3 going to be a portal and we'd go from there.

4 Q. Okay. And the portal was to consist of  
5 what entity, if you recall?

6 A. I don't recall. Probably iviewit  
7 Corporation.

8 Q. And the other entities that were set up,  
9 what was the purpose for those, if you know?

10 A. I don't recall at that time. That  
11 developed at a subsequent time. It was not at the  
12 initial meeting.

13 Q. Do you recall what the purpose was for  
14 those additional corporations to be formed?

15 MR. TRIGGS: Object to form.

16 A. Well, at one --

17 Q. I'll rephrase it. Were there additional  
18 corporations formed after the initial one?

19 A. Yes.

20 Q. Do you know what the purpose of those  
21 additional corporations was?

22 MR. TRIGGS: Object to form.

23 A. Not each and every one.

24 Q. Okay. Were you advising iviewit with  
25 regard to the formation of those corporations?

1 A. Only in part.

2 Q. And your advice was to form additional  
3 corporations?

4 A. We reviewed it. Sometimes his advice came  
5 from other advisors and sometimes it came from his  
6 accountant, so --

7 MR. TRIGGS: All right. We're going to do  
8 this. Let's actually let Chris answer the  
9 question before you jump in with the next one  
10 and raise your hand and chop him off. And  
11 Chris, just do me favor and just listen to the  
12 question he's asking you, and just answer that  
13 question.

14 THE WITNESS: Okay. Fine.

15 MR. SELZ: That was really a yes or no on  
16 that.

17 Q. So the question was, with regard to the  
18 formation of these other corporations, did you give  
19 iviewit advice as to the formation of these other  
20 corporations? Yes or no.

21 A. Yes.

22 Q. And did you advise them to form these  
23 other corporations?

24 A. In some situations, yes; in some  
25 situations, no.

1 Q. Okay. Why don't we be more specific,  
2 then. In what situations did you advise them to form  
3 new corporations?

4 A. I don't recall.

5 Q. Okay. In what situations did you advise  
6 them not to form corporations?

7 A. It wasn't a question of advising them not.  
8 It was a question of advising them or talking to them  
9 about the advice of other counsel.

10 So the other counsel or - may have given  
11 them advice and we would have been giving them our  
12 advice on top of them by way of clarification, whether  
13 it was an appropriate thing to do or not.

14 Q. Okay. This other counsel was internal  
15 within Proskauer Rose or outside Proskauer Rose?

16 A. No, outside Proskauer Rose.

17 Q. Now, with regard to --

18 MR. TRIGGS: Hold on a second. Eliot,  
19 Mr. Bernstein, do you have the ability to mute  
20 on your end? I can hear the typing over the  
21 phone. You will be able to hear us and you  
22 won't be chopping in and out. You'd probably be  
23 able to hear us better if you've got a mute on  
24 that end.

25 MR. SELZ: Can you hear it, Eliot?

1 MR. TRIGGS: He might have muted it.

2 MR. SELZ: I think he probably did.

3 Q. Okay. Going back to these corporations,  
4 so the corporate structure involved was partly based  
5 on your advice, is that correct?

6 A. Yes. The firm's advice.

7 Q. The firm's advise. And you were  
8 effectively the lead counsel on this client file?

9 A. Absolutely.

10 Q. Now, sir, you were --

11 MR. SELZ: Let's get this marked as one.

12 (Thereupon, said document was marked as  
13 Defendant's Exhibit Number 1 for identification  
14 by the reporter.)

15 Q. Okay. Here, I'll give you this marked  
16 copy. That way Matt can take a look at the additional  
17 copy I made for him.

18 Okay, sir. I have shown you --

19 A. Let me read it.

20 Q. Sure.

21 MR. BERNSTEIN: Hey, hello, Steve?

22 MR. SELZ: Yeah.

23 MR. BERNSTEIN: Can we take a break?

24 MR. SELZ: Sure.

25 MR. BERNSTEIN: Okay. My wife's going to

1 use the phone real quick.

2 MR. SELZ: Okay. So we'll take -- Want  
3 to take a ten-minute break?

4 MR. TRIGGS: Sure.

5 MR. BERNSTEIN: Can we give her legs 15  
6 minutes would probably be --

7 MR. SELZ: Why don't we make it 20 to be  
8 on the safe side. Give you a chance to take  
9 care of whatever you have to do. We'll come  
10 back on at like 11:22 or so.

11 MR. BERNSTEIN: Great.

12 MR. SELZ: Okay?

13 MR. BERNSTEIN: Thanks so much.

14 MR. SELZ: Thank you. So we'll take a  
15 break.

16 (Brief recess, after which the proceedings  
17 resumed at 11:22 A.M.)

18 MR. SELZ: Okay. We're back on.

19 MR. TRIGGS: And Steve, as I mentioned I  
20 think when we were on break, perhaps as we were  
21 going off break, I have no problem if Eliot  
22 takes as long as he needs for any family issues  
23 while the deposition is ongoing, but I can't be  
24 having these, as it turned out to be a 25-minute  
25 break repeatedly.

1 MR. BERNSTEIN: Matter of fact, we left a  
2 message, and if she calls back, I might have to  
3 break off and have my wife talk to her. The  
4 doctor.

5 MR. SELZ: This was just for the OB-GYN.

6 MR. BERNSTEIN: Correct.

7 MR. TRIGGS: Yeah, I'm just saying, I'm  
8 here for a deposition. Let's go forward with  
9 the deposition.

10 MR. SELZ: I understand.

11 MR. TRIGGS: If Eliot needs to do  
12 something with his family, I understand that,  
13 but that shouldn't stop us from moving forward  
14 here.

15 Q. (By Mr. Selz) Okay. With that noted,  
16 let's go back on to what we started with, and that is,  
17 I handed you a letter that you were reading. Is that  
18 correct, Mr. Wheeler?

19 A. Right. I read it.

20 Q. Okay. It's been marked as Defendant's  
21 Number 1 for purposes of this deposition. Is this a  
22 letter that you penned?

23 A. Yes.

24 Q. Okay. That's your signature at the end of  
25 the letter?

1 A. Yes.

2 Q. And it's dated February 18th, 1999.

3 A. Right.

4 Q. Now, there is fax transmittal information  
5 on the top of that letter, too?

6 A. Right.

7 Q. Do you recognize that fax transmittal  
8 information?

9 A. Yes.

10 Q. And is that fax transmittal information  
11 from Proskauer Rose's office in Boca Raton?

12 A. It's from our office.

13 Q. And that letter is addressed to?

14 A. Eliot.

15 Q. Eliot Bernstein?

16 A. Bernstein. Right.

17 Q. Okay. Now, I want to direct your  
18 attention more specifically, sir, to paragraph three.

19 It's actually numbered three --

20 A. Right.

21 Q. -- on that first page?

22 A. Right.

23 Q. And it talks about a discussion with a  
24 Mr. Ken Rubenstein? You -- I'm sorry. Go ahead.

25 A. You mean a potential discussion.

1 Q. Okay.

2 A. Okay.

3 Q. So you were contacting Ken Rubenstein?

4 A. I was trying to.

5 Q. Did you ever contact Mr. Rubenstein?

6 A. I can't tell you I did or didn't. I'd  
7 have to see the follow-up.

8 Q. Would that be reflected in the billing  
9 statements that you provided to iviewit?

10 A. Yes.

11 Q. Do you know if Mr. Rubenstein's name is  
12 mentioned in the billing statements to iviewit --

13 A. Yes.

14 Q. -- from Proskauer Rose?

15 A. Yes. They might answer it -- Right.

16 Q. Are you aware of whether or not the  
17 conference call referenced in that paragraph number  
18 three ever took place?

19 A. No, I'm not.

20 Q. And it says specifically, and I quote,  
21 since there seems to be some confusion as to what Ken  
22 needs in order to determine the patentability of your  
23 process?

24 A. Right.

25 Q. I'm arranging a conference call between

1 you, me and Ken in which we can discuss it.

2 A. Right.

3 Q. So was that statement on your part in this  
4 letter precipitated by some specific discussion with  
5 Mr. Bernstein?

6 A. I don't recall.

7 Q. Did you ever have a discussion with  
8 Mr. Bernstein about Proskauer Rose providing an  
9 opinion with regard to the patentability of any of  
10 these processes?

11 A. No.

12 Q. What was the process that was being  
13 discussed or was mentioned in your letter or reference  
14 to Eliot?

15 MR. TRIGGS: Object to form.

16 Q. Let me rephrase it. What process were you  
17 referring to in your letter?

18 A. We were referring to Eliot's technology.  
19 Whatever that technology was.

20 Q. Okay. Well, let's go back to that, to the  
21 technology issue, because I think you had provided a  
22 little testimony about that before, saying it was a  
23 portal?

24 A. Right.

25 Q. Okay. Was there anything more specific on

1 that portal that you can recall?

2 A. You mean at this stage?

3 Q. Or at any point now. What he's referring  
4 to.

5 A. It had been described to me as his imaging  
6 were large images versus small images.

7 Q. Okay. And what was unique about that?

8 MR. TRIGGS: Object to the form.

9 A. It was what was available on the Internet.  
10 It was represented to me that what was available on  
11 the Internet at that time was small pictures and they  
12 couldn't be enlarged without pixilation.

13 Q. And what is pixilation?

14 MR. TRIGGS: Object to form.

15 A. Well, I'm not an expert on this. So I  
16 mean, you should ask an expert. But I was told,  
17 pixilation was some form of distortion.

18 Q. So it's your understanding that pixilation  
19 is that when an image is enlarged, it distorts?

20 A. Correct.

21 Q. And this process, I'm going to use the  
22 words that you used, the process that Mr. Bernstein  
23 had presented --

24 A. Right.

25 Q. -- somehow avoided this problem?

1 A. Right. Purportedly it avoided the  
2 problem.

3 Q. Was it demonstrated to you at any point in  
4 time?

5 A. Not at that time.

6 Q. How about subsequently?

7 A. Oh, absolutely.

8 Q. Okay. And did the process, as  
9 demonstrated, do what it purported to do?

10 A. I saw large pictures on a screen which  
11 were pixilated which were not distorted

Line 11 - p 40 Were not pixilated and which were not distorted - reason=error in transcription

12 Q. Which were not distorted. And they had  
13 been enlarged from a small picture or a small --

14 A. I don't know what they had been enlarged  
15 from.

16 MR. TRIGGS: And, Steve, I'm not going to  
17 shut down your line of examination because to do  
18 that I'd need to terminate the deposition, but  
19 quite frankly, I can't see the relevance at all  
20 on this line of inquiry.

21 MR. SELZ: That's fine.

22 MR. TRIGGS: I mean, all I'm telling you  
23 is, at some point I will have to terminate the  
24 deposition and file an appropriate motion if we  
25 continue to hit on areas that just appear to be

1 doing nothing more than harassing at this point.

2 MR. SELZ: Well, with all due respect to  
3 your objection, obviously, speaking objections  
4 aren't appropriate, certainly in a deposition,  
5 but with regard to that, I think it's actually  
6 something that's referenced in Mr. Wheeler's own  
7 letter.

8 So I think I certainly have an ability to  
9 inquire as to what this process was that he was  
10 referencing.

11 MR. TRIGGS: You're wasting time, is what  
12 you're doing.

13 MR. SELZ: Well, you're certainly entitled  
14 to your opinion.

15 Q. Okay. Now, with regard to this image, was  
16 there something also, pan and zoom, or something of  
17 that nature, that was demonstrated to you?

18 A. I'm not familiar with that.

19 Q. How about something called -- I'm sorry.

20 A. It wasn't demonstrated at all at this  
21 stage.

22 Q. I'm talking about at any time during your  
23 representation of iviewit?

24 A. Okay. I'm not familiar with the terms,  
25 pan and zoom.

1 Q. How about - how about full-screen video?

2 MR. TRIGGS: Object to form. What about  
3 full screen video?

4 Q. Are you familiar with the term?

5 A. Not in any technical sense.

6 Q. Okay. It isn't in your opinion or your  
7 knowledge any way related to the process that  
8 Mr. Bernstein was involved with?

9 MR. TRIGGS: Object to the form,  
10 foundation.

11 A. The process was larger pictures than  
12 available on - presently available on the Internet, as  
13 I understood it.

14 Q. So it was basically an enlargement of a  
15 picture without pixilation. That was your  
16 understanding of the process.

17 A. Right.

18 Q. That you referred to in your letter.

19 A. Correct.

20 Q. Was there any other technology that you  
21 were aware of that iviewit had developed?

22 A. No.

23 Q. Were there any specific applications that  
24 were discussed between iviewit and yourself in the  
25 sense of the purpose of these corporations?

1 MR. TRIGGS: Object to the form.

2 Q. Let me rephrase it. Were there any  
3 specific applications that were discussed with you as  
4 to this technology?

5 MR. TRIGGS: Object to the form. At what  
6 point in time?

7 Q. During your representation of iviewit.

8 A. Yes. During our representation, there  
9 were suggestions that it could be used in various  
10 industries or in - in - that - various industries  
11 could take advantage of it.

12 Q. Okay. And when was the first time that  
13 was discussed?

14 A. I don't recall.

15 Q. Was it prior to the signed retainer  
16 agreement, prior to July?

17 A. Yes, it was prior to the signed retainer  
18 agreement.

19 Q. Was it -- It was after the first meeting  
20 is what you're saying.

21 A. Oh, yes.

22 Q. Okay.

23 A. Well, I don't recall -- Yes, it was  
24 probab -- I don't know if it was at -- Maybe perhaps  
25 examples were thrown out at the first meeting. I

1 don't recall.

2 Q. Now, that same paragraph three talks  
3 about -- And I'll refer you to the last sentence of  
4 that paragraph? Well, actually, let's go to the next  
5 sentence after the one I referred you to previously  
6 which was, after that discussion, I will also provide  
7 you with a proposal as to how we should proceed and  
8 what fees and costs will be involved? Do you know if  
9 this was ever done?

10 A. I don't know if it was done.

11 Q. Where would that proposal have come from,  
12 if it was prepared?

13 MR. TRIGGS: Object to the form.

14 A. It could have come from me or it could  
15 have come from our IP people.

16 Q. IP meaning intellectual property?

17 A. Right. Or it could not have come.

18 Q. Okay. If it - if it was produced in any  
19 kind of form, that would exist in the files of  
20 Proskauer Rose?

21 A. I'm sure it would.

22 Q. How about the last sentence of that same  
23 paragraph?

24 A. What would you like to know?

25 Q. Well, we will need to give you a more

1 definite answer and thereafter receive authorization  
2 from you as to the expenditure of these monies?

3 A. Right.

4 Q. Do you know if that was ever done with  
5 regard to the --

6 MR. TRIGGS: Object to the form. If what  
7 was ever done?

8 Q. (By Mr. Selz) If there was a definite  
9 answer?

10 MR. TRIGGS: As to what?

11 MR. SELZ: As to whether or not or what  
12 the expenses would be of the patent, which is  
13 what was referenced I believe earlier on.

14 A. I'd have to check the file.

15 Q. Okay. Now, it also references an  
16 authorization for expenditures?

17 A. Right.

18 Q. Okay. Was that same kind of procedure  
19 done with any of the other work for iviewit?

20 MR. TRIGGS: Object to form.

21 Q. Well, let me strike the question. I'll  
22 rephrase it.

23 Did you ever seek authorization from  
24 iviewit for any corporate expenditures?

25 A. Yes.

1 Q. Okay. And when was that done?

2 A. Well, this is a long-term of - from time  
3 to time when on certain of the copyright expenses I  
4 believe we received - called up and said, is it all  
5 right to go ahead and spend money on this. That's my  
6 recollection. On - because they were - as the letter  
7 says, they were watching their dollars.

8 On the -- And there may have been  
9 subsequently, years - years later as - there may have  
10 been times where we wanted to make sure that we were  
11 authorized to proceed on certain projects where there  
12 was a question.

13 Q. Okay. When you say where there was a  
14 question, when would that take place? Do you have any  
15 specific examples to give me?

16 A. No, I don't.

17 MR. TRIGGS: Object to form.

18 Q. Do you ever recall personally receiving  
19 any authorization from any individual at iviewit or  
20 any corporate representative of iviewit for  
21 expenditures?

22 MR. TRIGGS: Object to form. Just by  
23 expenditures, are you talking about  
24 out-of-pockets or are you talking about  
25 performing legal services?

1 MR. SELZ: Either one.

2 A. I received requests all the time for legal  
3 services.

4 Q. Okay. How about with regard to --

5 A. From many representatives.

6 Q. Okay. And were there any discussions at  
7 those various points of time as to costs of those  
8 legal services, how they would be provided?

9 A. I'm sure at times there were, at times  
10 there weren't.

11 Q. And who specifically did you talk to?

12 MR. TRIGGS: Object to form. At what  
13 point in time and for what services?

14 Q. For any legal services provided for  
15 iviewit, from the beginning of your representation to  
16 the date you terminated services.

17 A. Numerous officers.

18 Q. And could you name those officers for me,  
19 please?

20 A. I can give you - name some.

21 Q. Okay.

22 A. Sy Bernstein, Eliot Bernstein, Brian  
23 Utley, Raymond Hersh, Guy Iatona, Tony. Even, I  
24 believe, Jim Armstrong, was he from New Jersey?

25 Q. Sir, have you ever seen the complaint that

1 has been filed in this action by Proskauer Rose?

2 A. Yes.

3 MR. SELZ: Let's get this marked as number  
4 two, if we could.

5 (Thereupon, said document was marked as  
6 Defendant's Exhibit Number 2 for identification  
7 by the reporter.)

8 Q. Have you ever seen this document before?

9 A. Yes.

10 Q. Did you work on the preparation of this  
11 document at all?

12 A. I don't recall.

13 Q. When was the first time you saw the  
14 complaint?

15 A. Before it was filed.

16 Q. That was on or about May 2nd of 2001?

17 A. Right.

18 Q. I'd reference you to what's been attached  
19 to that complaint as Exhibit Number 1.

20 A. Right.

21 Q. Do you recognize that correspondence?

22 A. Yes.

23 Q. Is that the retainer, the written retainer  
24 agreement you testified to earlier in the deposition?

25 A. Our engagement agreement.

1 Q. Okay. Prior to this, you said there was  
2 an oral agreement?

3 A. Yes.

4 Q. And this engagement agreement is with what  
5 entity?

6 A. Iviewit LLC.

7 Q. Are there any other engagement agreements  
8 or retainer agreements of any sort other than this one  
9 that's in writing?

10 A. Not to my knowledge.

11 Q. So this is the only one that references  
12 hourly billing rates for services to be provided?

13 MR. TRIGGS: Object to form. You're  
14 talking about in writing, correct?

15 MR. SELZ: Correct.

16 A. Right. I should -- Right. The  
17 confirmation letters as to subsequent agreements  
18 served to supplement this, however.

19 Q. Well, I guess that's your - your position  
20 as plaintiff in this case.

21 MR. TRIGGS: Let's not argue. If you've  
22 got a question to ask --

23 MR. SELZ: I will.

24 MR. TRIGGS: -- ask a question.

25 MR. SELZ: I will.

1 Q. With regard to this agreement, sir, it's  
2 limited strictly to iviewit LLC, is that correct?

3 A. It's addressed to iviewit LLC, yes.

4 Q. Was Brian Utley the president of iviewit  
5 LLC at that time, to the best of your knowledge?

6 A. Yes.

7 Q. And above the signature line it says  
8 iviewit LLC?

9 A. Right.

10 Q. Now, at the time that this complaint was  
11 filed, sir, were there more entities than iviewit.com,  
12 Inc., iviewit Holdings, Inc., and iviewit  
13 Technologies, Inc., for which Proskauer Rose had  
14 provided services?

15 MR. TRIGGS: Object to the form. At what  
16 point in time?

17 MR. SELZ: At the time the complaint was  
18 filed.

19 MR. TRIGGS: Still providing at that time  
20 or --

21 MR. SELZ: No.

22 MR. TRIGGS: Let me just get my objection  
23 out. Are you talking about had they ever  
24 provided work for those - for those companies or  
25 were there amounts owed still outstanding?

1 MR. SELZ: I think your objection would  
2 properly be an objection to form of the  
3 question.

4 MR. TRIGGS: Yes.

5 MR. SELZ: Because as you're aware, we're  
6 not supposed to have speaking objections in the  
7 depositions. At least in theory.

8 Q. Okay. With regard to --

9 MR. SELZ: So I'll take it as an objection  
10 to form.

11 MR. TRIGGS: Which is what it was.

12 Q. With regard to the three named entities in  
13 the complaint, at the time this complaint had been  
14 filed, which was May of 2002 or 2001, rather, I'm  
15 sorry, May of 2001, had Proskauer Rose provided  
16 services to any other entities, iviewit entities,  
17 other than iviewit.com, Inc., iviewit Holdings, Inc.,  
18 and iviewit Technologies, Inc.?

19 MR. TRIGGS: Object to the form.

20 A. Prior to this time? Yes.

21 Q. Could you show me where in the attached  
22 exhibit to that complaint, which is Exhibit B, it  
23 delineates services provided to any of the other  
24 entities?

25 MR. TRIGGS: Object to the form.

1 A. Can I show you without examining all this?  
2 I don't have - I mean --

3 Q. I want --

4 A. Can I show you? No, I can not show you.

5 Q. Well, is there anything in that Exhibit B  
6 that you can point out to me that would show or  
7 indicate that the services that are being sued on  
8 apply to any other entity other than -- They're all  
9 titled client name, iviewit.com, Inc., from what I  
10 see.

11 MR. TRIGGS: Object to the form. Same  
12 objection as stated previously in terms of basis  
13 for it.

14 THE WITNESS: Do you want me to answer  
15 this question?

16 MR. TRIGGS: Yeah. If you can answer the  
17 question, absolutely.

18 A. Well, I don't have the detail provided  
19 beyond this. I mean, I have the - I have the cover  
20 pages, but I - I don't have - the detail is not on  
21 there.

22 Q. Okay. So this is not actually a bill,  
23 then. Is that what you're telling me?

24 A. No, it was a bill, but there were also  
25 detailed pages, as you know, well know.

1 Q. So this was what, a summary sheet of a  
2 bill?

3 A. This was the face page of the bill.

4 MR. TRIGGS: For the record, the reason  
5 for attaching the face page rather than the  
6 entire bill --

7 MR. SELZ: Well, it's actually --

8 MR. TRIGGS: -- is to preserve  
9 attorney-client privilege issues when you are  
10 filing a complaint against a client.

11 MR. SELZ: With regard to that, sir, and  
12 obviously, you know, if you've got an objection,  
13 Matt --

14 MR. TRIGGS: All I'm saying is, any  
15 suggestion that the entire bill is not being put  
16 out there for some purpose is just - it's flat  
17 out wrong, and I just want to establish why it  
18 was the way it was done.

19 MR. SELZ: You've got an opportunity on  
20 cross to elicit whatever testimony you want from  
21 him as to whatever was done.

22 MR. TRIGGS: Thanks, Steve.

23 MR. SELZ: Appreciate it.

24 Q. So with regard to this, sir, there is  
25 nothing that you can show me on the face of any of

1 these statements that's attached as an exhibit to the  
2 complaint, Exhibit B to the complaint, which would  
3 indicate services provided to any particular entity  
4 other than it says client name, iviewit.com, Inc. Is  
5 that a true and correct statement?

6 MR. TRIGGS: Object to form.

7 A. Yeah.

8 Q. Now, looking at Count I of the complaint,  
9 breach of contract --

10 A. Okay.

11 Q. -- okay, it references what's been called  
12 the agreement, which is attached as -- And that's the  
13 engagement agreement that's attached?

14 MR. TRIGGS: Object to the form.

15 Q. Is that correct?

16 A. Yes.

17 Q. And that's the agreement which is between  
18 Proskauer Rose iviewit and iviewit LL --

19 A. Wait, let me read this here.

20 Q. I apologize. I thought you were done with  
21 your answer.

22 A. Yes, you are correct.

23 Q. The complaint references -- And I'll refer  
24 you to paragraph eight of the complaint?

25 A. All right.

1 Q. It says, Proskauer entered into an  
2 agreement with defendants, iviewit.com, Inc., iviewit  
3 Holdings, Inc., and iviewit Technologies, Inc.?

4 A. Right.

5 Q. Collectively referred to as iviewit?

6 A. Right. Correct.

7 Q. But we've already established, sir, isn't  
8 it true, that this engagement agreement was only with  
9 regard to iviewit LLC?

10 A. Right. But we entered into an agreement.  
11 We didn't say a written agreement.

12 Q. Okay. You prepare corporate documents all  
13 the time. Is that correct, sir?

14 A. Yes.

15 Q. You prepare transactional documents all  
16 the time. Is that correct?

17 A. Correct.

18 Q. And you're familiar with the use of what's  
19 called a defined term.

20 A. Correct.

21 Q. Where within the agreement it's  
22 capitalized so that people can identify what's been  
23 referenced?

24 A. Correct.

25 Q. I would reference you then to paragraph

1 18. We're going back to Count I of the complaint.  
2 You'll notice that the word agreement is capitalized?  
3 And iviewit is another defined term using all three  
4 entities?

5 A. All right.

6 Q. So, isn't it true, sir, that this exhibit  
7 is contrary to the allegations in the complaint on  
8 Count I?

9 MR. TRIGGS: Object to form.

10 A. I don't know. I'd have to study it.

11 Q. Well, let's do it right now. The  
12 agreement that you have already testified to is  
13 between Proskauer Rose and iviewit LLC, is that  
14 correct?

15 MR. TRIGGS: Object to form. What  
16 agreement?

17 MR. SELZ: The agreement as defined in the  
18 complaint.

19 MR. TRIGGS: Object to form.

20 Q. I'll restate the question. The agreement  
21 as defined in the complaint and attached to the  
22 complaint as an exhibit, sir, is between Proskauer  
23 Rose LLP and iviewit LLC. Is that a correct  
24 statement?

25 MR. TRIGGS: Object to the form.

1           A.     Let me answer your original question. I  
2 don't think it's contrary to the form because we said  
3 we entered into a small cap agreement in paragraph  
4 eight similar to the one in large initial cap  
5 agreement.

6                     So iviewit does refer to the three  
7 corporations, but what we're saying is there is an  
8 agreement that's similar to the - to the initial cap  
9 agreement.

10           Q.     Okay. Show me where in the complaint it  
11 says that, sir, because maybe I'm a little confused.

12           A.     On page 8 it says, provided legal  
13 services, retained Proskauer on the same terms and  
14 conditions as those in engagement agreement between  
15 Proskauer and iviewit, LLC herein referred.

16                     So it's the same terms. We're simply  
17 referring to the terms and conditions as provided in  
18 that agreement.

19           Q.     Okay. Was there ever any writing --

20           A.     No.

21           Q.     Between -- Let me finish my question, if I  
22 could.

23                     Was there ever any writing in which any of  
24 these other entities, the iviewit.com, Inc., iviewit  
25 Holdings, Inc., or iviewit Technologies, Inc., assumed

1 the obligations under the agreement between Proskauer  
2 Rose LLP and iviewit LLC?

3 A. I don't know.

4 MR. TRIGGS: Object to the form.

5 A. I don't know.

6 Q. So then your understanding of the  
7 allegations in the complaint, sir, is that the iviewit  
8 entities as referred to in the complaint assumed the  
9 obligations under the agreement with iviewit LLC?

10 MR. TRIGGS: Object to form. Misconstrues  
11 testimony.

12 MR. SELZ: He can correct me if I'm wrong.

13 A. You'll have to repeat that.

14 Q. Okay.

15 A. Let me tell you what my understanding is.

16 It's my understanding that paragraph 18 does not  
17 contradict on its face what we had recited in  
18 paragraph eight, and that's essentially what you asked  
19 me.

20 Now, as to your question about writings --

21 Q. Well, actually there are -- I'm sorry, go  
22 ahead.

23 A. As to your question about writings,  
24 there - there is, by virtue of the numerous  
25 confirmation agreements between myself and - and other

1 officers of the company, there is reference to I  
2 believe at least iviewit.com, Inc., because all future  
3 bills were sent - were - and all future bills were  
4 sent to them as well, as referenced by this bill. Not  
5 that they were improper. The company could have told  
6 us they were improper.

7 Q. Well, how about iviewit Holdings, Inc.,  
8 and iviewit Technologies, Inc.?

9 MR. TRIGGS: Object to form. What's the  
10 question?

11 MR. SELZ: With regard to the assumption  
12 he's talking about right now. Let me rephrase  
13 it.

14 Q. With regard to the assumption that you  
15 just talked about in your testimony, sir, does that  
16 also apply to iviewit Holdings, Inc., and iviewit  
17 Technologies, Inc.?

18 MR. TRIGGS: Object to form.

19 A. Well, I'm not -- I haven't - I don't know  
20 of exact writings. I'd have to check our files to see  
21 if there are ones by which there are references to  
22 Holdings and Technology.

23 Q. Well, let's go back to the invoices or the  
24 face sheets that are attached to the complaint. Are  
25 any of those addressed to either iviewit Holdings,

1 Inc., or iviewit Technologies, Inc.?

2 A. No, but they're only face sheets.

3 Q. And what is the address that's on the top  
4 of each one of those sheets, sir?

5 A. Address of the operational company that  
6 took care of the affairs for all of these companies.

7 Q. Were there other entities that services  
8 were provided for besides iviewit.com, Inc., iviewit  
9 Holdings, Inc., and iviewit Technologies, Inc.?

10 MR. TRIGGS: Object to form. At what  
11 point in time?

12 Q. From the beginning of Proskauer Rose's  
13 representation to the date services were terminated?

14 A. I believe there were, but I couldn't tell  
15 you the exact dates.

16 Q. Are you familiar with any of the other  
17 names of any other entities that were performed by  
18 your law firm?

19 A. Not precisely.

20 Q. How about uviewit?

21 A. Well, I could say the word uviewit, but I  
22 don't know if it was uviewit.com, Inc., or -- But I  
23 mean, that's what I mean by not precisely.

24 Q. Okay. Are you aware that there are more  
25 than three entities, though?

1           A.     I am aware that there - there - through  
2 the history there were a number of entities and there  
3 were mergers and consolidations, and some went out of  
4 existence and some still exist.

5           Q.     Were there Florida corporations formed as  
6 well?

7           A.     Not to my knowledge. Or not to my  
8 recollection. I don't know.

9           Q.     How about an entity, iviewit Technologies,  
10 Inc., a Florida corporation?

11          A.     I would have to go back and refresh  
12 myself.

13          Q.     And that would have been formed by either  
14 Rocky Thompson or Mara Lerner, if it was?

15                   MR. TRIGGS: Object to form. Speculation.

16          A.     It would probably have been formed under  
17 the supervision of Rocky Thompson.

18          Q.     Now, Mr. Wheeler, was there ever an  
19 agreement at any point in time that Proskauer Rose  
20 would receive or take ownership of stock in iviewit?

21          A.     An agreement?

22          Q.     Yes.

23          A.     No.

24          Q.     Did Proskauer Rose ever take any ownership  
25 or stock in iviewit?

1 A. Yes.

2 Q. And when did that take place?

3 A. I'm - I believe in the early months,  
4 sometime perhaps in February or March, although it  
5 could have been any time before June of '99.

6 Q. Okay. At any time before June of '99?

7 A. Right.

8 Q. And why would it be -- Why would it be  
9 before June of 1999?

10 A. Well, I'm familiar with some  
11 reorganizations, and I'm familiar with some papers in  
12 that time, and it showed the Proskauer ownership. So  
13 I know it occurred before that time.

14 Q. So was it -- It was close to the  
15 inception of the relationship between Proskauer Rose  
16 and iviewit?

17 A. I don't think it was -- I think it was  
18 perhaps midway between January and June, but I'd have  
19 to check my records to tell you exactly when.

20 Q. And what was the purpose of Proskauer  
21 holding an ownership interest or shares in the  
22 corporation?

23 MR. TRIGGS: Object to form.

24 A. Eliot wanted to - wanted us to own shares  
25 in the corporation. He felt that - that - that

1 everyone should - that all members of his team should  
2 be stakeholders in his company.

3 Q. Okay. There was no discussion as to  
4 whether or not there was any value to those shares?

5 A. Well, he was hoping there would be value.

6 Q. There was no discussion as to whether or  
7 not those shares had any value at the time?

8 A. No. I mean, they - I don't think they  
9 could be valued at that time. I mean, everyone could  
10 try to value something, but no, there was no  
11 discussion as to what they were valued at at that  
12 time.

13 Q. And how much interest does Proskauer Rose  
14 still hold in the iviewit --

15 A. We hold what we had at that time, but I  
16 don't know what that amounts to because I don't know  
17 what transpired in the corporation.

18 Q. Did you ever receive any communication  
19 from anyone at iviewit concerning the billing  
20 statements provided by Proskauer to iviewit, at any  
21 time during the representation?

22 A. Yes.

23 Q. Were there any objections ever raised by  
24 anyone to the billing statements?

25 A. There were questions once raised on one

1 statement by Brian Utley. We addressed them and  
2 clarified them, made some adjustments, and that was  
3 it. And that was one occasion. And there was a  
4 second occasion by which when we handled the - the -  
5 the transaction involving - when Alpine - the Alpine  
6 Fund came in and we handled that transaction, there  
7 was - there was a request by - on - request made more  
8 than once to review that bill to - because of the size  
9 of the bill.

10 Q. Do you recall how big the bill was?

11 A. I think it was in the range of between  
12 sixty and \$70,000, but I don't recall the exact  
13 amount.

14 Q. Okay. This was with regard to the work  
15 done for the Alpine Fund?

16 A. With regard to the capital coming in from  
17 the Alpine Group.

18 Q. Was there ever any discussion concerning  
19 the fact that the payment of bills to Proskauer was  
20 contingent on the ability to get funding from outside  
21 sources for iviewit?

22 A. No.

23 Q. When did iviewit generally pay the bills  
24 to Proskauer Rose?

25 MR. TRIGGS: Object to form. At what

1 point in time?

2 MR. SELZ: At any time during the  
3 relationship.

4 MR. TRIGGS: Object to form. Assumes  
5 there is some uniformity.

6 A. I don't know what you mean.

7 Q. Did they pay their bills on a monthly  
8 basis?

9 A. Well, at - through the relationship?  
10 Sometimes yes. Sometimes no.

11 Q. Well, the reason why I'm asking is because  
12 the allegation of the complaint said payments were  
13 made sporadically, or infrequently, I should say.

14 A. Well, I guess that would be consistent  
15 with sometimes yes and sometimes no.

16 Q. Now, the times when bills were paid, was  
17 that related directly to funding being received from  
18 third parties?

19 A. It was related to their ability -- Well,  
20 I - I mean, I wasn't controlling the checkbook, so it  
21 was related to -- It would be speculation on my part  
22 to say when they were paying.

23 Q. Well, let me see if I understand it, sir.  
24 You are the principal attorney on this file, is that  
25 correct?

1 A. That's correct.

2 Q. Okay. You were the one who was engaging  
3 in representing iviewit with regard to transactional  
4 matters, is that correct?

5 A. Correct.

6 Q. You were the one who was engaged in  
7 transactional matters involving funding of the  
8 corporation. Is that also a correct statement?

9 A. Correct.

10 Q. So were you or were you not aware of when  
11 the corporation received funding from third parties?

12 A. In the instances where we were handling  
13 the transactions, I was aware of it.

14 Q. Are you aware of any transactions that  
15 iviewit engaged in to obtain funding that you were not  
16 involved in?

17 A. No.

18 Q. Do you have any reason to believe there  
19 were any transactions outside those that you were  
20 involved with in which iviewit received funding from  
21 third parties?

22 A. I don't have any reason to believe it, no.

23 Q. Okay. So, sir, what I'm asking you is,  
24 when iviewit received funding from third parties, did  
25 they pay your bill?

1 MR. TRIGGS: Objection, asked and  
2 answered.

3 A. When the company had money, they paid -  
4 they paid some bills. Not my - my bill. There were  
5 many bills outstanding. Proskauer's bill.

6 Q. I'm asking specifically with regard to  
7 Proskauer's bill.

8 A. Would they make payments towards the bill?  
9 Yes.

10 Q. Was that discussed or was that part of a  
11 closing statement or any other documentation  
12 concerning obtaining financing or funding?

13 A. I'd have to check the records. I would -  
14 I would suppose, generally not. You mean, did we  
15 deduct it from the proceeds and that type of thing?

16 Q. Was it reflected -- Right. Was it  
17 reflected on the closing statement?

18 A. I have no recollection of that, but I  
19 sincerely doubt it.

20 Q. Were these funds paid -- Strike that. The  
21 funding from third parties, was that paid directly to  
22 iviewit or did it go directly to Proskauer's trust  
23 account?

24 A. It would depend on the transaction and  
25 what the funding sources required.

1 Q. Let's go to the funding sources. What  
2 transactions do you recall in which funds were  
3 received by iviewit from third parties?

4 A. Well, we received funds from an affiliate  
5 of the Huizenga Holdings people. We received funding  
6 from Alpine, the Alpine Group, and its affiliates on  
7 more than one occasion. We received funding from  
8 internal sources. The company would go to their  
9 shareholders and request additional funds, and they  
10 were paid in. And we received - received funding from  
11 a group that had - a group that we could characterize  
12 of the Bruce Prolow group. They were affiliated in  
13 some way with Bruce Prolow. And then we received --

14 And there were probably other small - I  
15 cannot remember if there were separate transactions  
16 where they would sell off in private placements stock  
17 to certain individuals that those individuals would  
18 buy in a portion or something. But I have some  
19 recollection that there may have been a few  
20 transactions like that where Eliot wanted to sell  
21 some - or some friend of the family was buying in for  
22 someone else. But I could be wrong about that.

23 Q. Anything else?

24 A. Not to - not to my recollection.

25 Q. Okay. With regard to Huizenga Holdings,

1 when did that transaction take place?

2 A. In - late in 1999. Probably around  
3 October. I'd have to look. I'd have to look, but  
4 approximately October, November.

5 Q. Okay. And that was shortly after the  
6 engagement agreement was signed?

7 A. Correct.

8 Q. Now, was that transaction being worked on  
9 by your offices on or about the date the engagement  
10 agreement was signed?

11 A. I don't know. I believe -- Let me see.  
12 We were - we were in discussions on or about that  
13 time.

14 Q. Okay. Would it be fair to say that the  
15 agreement was executed in anticipation of the  
16 transaction with Huizenga?

17 A. No.

18 Q. So your testimony here is that it was  
19 totally independent of any anticipated transaction  
20 with Huizenga Holdings?

21 A. Correct.

22 Q. At the time that Mr. Utley signed this  
23 agreement, were you aware of whether or not he had  
24 approval from the Board of Directors of iviewit to  
25 enter into this agreement?

1 A. No.

2 Q. Did you ever attend any Board of Directors  
3 meetings?

4 A. Yes.

5 Q. We'll get back to that in a little bit. I  
6 want to focus on this funding issue right now, but  
7 Huizenga Holdings, how much did they invest, if you  
8 could recall?

9 A. Approximately 500,000.

10 Q. And that transaction closed on or about  
11 October of 1999?

12 A. Somewhere between September and November,  
13 I believe.

14 Q. Do you recall any meetings with the  
15 principals or representatives of Huizenga Holdings  
16 with regard to the transaction?

17 A. Yes.

18 Q. And when did those meetings take place?

19 A. Between September and November.

20 Q. Do you recall who was present as a  
21 representative of Huizenga Holdings?

22 A. Well, there were a series of meetings, so  
23 at some times we had Rick Rashon, we had - we had - at  
24 one time we had Wayne Huizenga, Jr. At one time we  
25 had -- At all meetings I believe we had Chris, and his

Page 70 Line 23 Rick Rochon

1 last name escapes me. But he was -- And Ray  
2 Monteleon also we had at least one or two meetings.  
3 And then --

4 You're talking about representatives of  
5 Huizenga Holdings, right?

6 Q. Correct.

7 A. Right. I can't remember Chris' last name  
8 right now. P 71 line 7 Branden - Wheeler bro good friend

9 Q. Okay. Who else was present at those  
10 meetings?

11 A. Well, there were all different ones, but  
12 at one meeting, Eliot, Jerry Lewin and Sy, and I'm not  
13 saying -- At various meetings these people were all --  
14 Eliot was at at least one, maybe two. Sy was at at  
15 least one, maybe two. Jerry Lewin was at least one.  
16 And Brian Utley was I believe at two.

17 Q. And you were present as well?

18 A. And they may have had meetings without me.  
19 Yes, I was present.

20 Q. Okay.

21 A. They may have had other meetings without  
22 me.

23 Q. At those meetings that you attended with  
24 Huizenga Holdings and the representatives from  
25 iviewit, to the best of your recollection, what was

1 discussed?

2 A. Well, at the first one they showed - they  
3 showed the technology, and at the subsequent meetings  
4 we discussed possible ways of getting ownership or  
5 Huizenga investing in it. Actually, it was an  
6 affiliate of Huizenga Holdings.

7 Q. Okay. Now, the first meeting where the  
8 technology process was demonstrated, what exactly  
9 occurred, to the best of your recollection?

10 A. Eliot took out the - set up his - his  
11 screen and whatever and showed them - he had a disc,  
12 and it didn't connect directly to the Internet, but it  
13 was to be representative of that, and he ran the disc  
14 and showed them his product on the screen.

15 Q. Okay. Did you have any discussions with  
16 any of the representatives from Huizenga Holdings as  
17 to the process or the product that was demonstrated?

18 MR. TRIGGS: Object to the form. When?

19 MR. SELZ: At this meeting.

20 A. Well, I'm not so sure. What do you mean,  
21 as the process?

22 Q. Well, did you discuss anything concerning  
23 the, for lack of a better term I'll call it the  
24 invention that Eliot had demonstrated at that meeting?

25 A. Well, we said this is a technique that

1 Eliot had developed, a process, that we're in - that  
2 we're interested in getting investors to invest in  
3 this project and pursue it. And, yes. So I mean, we  
4 showed him what it was, but we didn't go into all the  
5 details. Eliot's the one who knew all the details.

6 Q. Was any - excuse me. Was any -- I'm  
7 sorry, go ahead.

8 A. Actually -- Right. We showed them.  
9 Right.

10 Q. Was any representation made as to whether  
11 or not the process was patented at that point?

12 A. No. There was - there was - there was  
13 discussion as to what process it was going through at  
14 that point, in the patent process.

15 Q. And what was that discussion?

16 A. That it was going through Ray Joao and -  
17 and that certain patents were going through a  
18 provisional patent process.

19 Q. Okay. Was Ken Rubenstein ever mentioned?

20 A. I don't recall.

21 Q. Or the MPEG patent pool --

22 A. I don't recall.

23 Q. -- or DVD usage or --

24 A. I don't recall.

25 Q. Nothing along those lines that you can

1 recall?

2 A. No.

3 Q. Now, with regard to the procedure at this  
4 particular meeting, were there minutes kept of that  
5 meeting? Was it a meeting of the Board of Directors  
6 or was it just an informational meeting? We'll start  
7 from the beginning.

8 MR. TRIGGS: Which question do you want  
9 him to answer?

10 MR. SELZ: That's what I'm going to start  
11 with.

12 Q. Was this a Board of Directors meeting or  
13 was it just an informational meeting with Huizenga  
14 Holdings?

15 A. It was just an informational meeting.

16 Q. Was there any Board of Directors meetings  
17 at which the discussions and the outcome of the  
18 meeting with Huizenga Holdings was discussed among the  
19 board?

20 A. I don't recall.

21 Q. Were there any minutes kept of the board  
22 meetings, to the best of your recollection?

23 A. Well, to my recollection, meetings were  
24 kept once Brian Utley arrived. Minutes were kept once  
25 Brian Utley arrived.

1 Q. Prior to that?

2 A. I don't believe so, but I don't know.

3 Q. If there are services billed in Proskauer  
4 Rose's statements for minutes of meetings and  
5 preparation of those, would you presume that minutes  
6 were prepared?

7 MR. TRIGGS: Object to form. Are you  
8 going to show him the statement?

9 MR. SELZ: I'm just asking him the  
10 question if there's bills --

11 A. If there's bills, we prepared minutes,  
12 yes.

13 Q. So the bills accurately reflect the  
14 services provided?

15 A. Right. But the minutes -- Yes.

16 Q. Do you know if there is any  
17 memorialization of that meeting with Huizenga  
18 Holdings? If there is any memo that you wrote or any  
19 letter that you wrote to any representatives of  
20 Huizenga Holdings?

21 A. I don't know.

22 Q. Were they represented by counsel at that  
23 point?

24 A. No. Well, they were represented, but  
25 counsel wasn't there.

1 Q. Did you have any communication with any  
2 counsel for Huizenga Holdings?

3 A. Ultimately, we did.

4 Q. And who was that?

5 A. I don't recall. I think it may have been  
6 internal counsel right there on the premises.

7 Q. So they were in-house counsel?

8 A. I believe that's who we talked with.

9 MR. TRIGGS: Steve, again, it's your depo,  
10 but this is the day that you got Mr. Wheeler's  
11 deposition without an order from the court  
12 prolonging the process. I just don't see how  
13 this issue is covering anything remotely close  
14 to being relevant to the case.

15 MR. SELZ: Well, I think all services  
16 provided by Proskauer Rose to iviewit are  
17 relevant to the case.

18 MR. TRIGGS: I agree that we're billing  
19 for certain work and you're entitled to inquire  
20 into that, but that does not give you the right  
21 to pull a filibuster in the deposition. You're  
22 entitled to ask him questions that are relevant  
23 to the case.

24 All I'm saying is, we are here today. I  
25 will not give up Mr. Wheeler again for

1 deposition without an order from the court. We  
2 will take it before Judge Labarga if it gets to  
3 that. I'm just giving you notice now so that  
4 you can plan your time however you want to plan  
5 your time.

6 MR. SELZ: Well, I can tell you right now,  
7 obviously this is covering approximately  
8 \$400,000 worth of billing by Proskauer Rose over  
9 a period of in excess of two years. So there is  
10 certainly a substantial amount of information to  
11 be gleaned not only from the billing statements,  
12 but also from the transactions, the events that  
13 occurred in this whole relationship.

14 So to the extent that you're attempting to  
15 limit me to one day of deposition time, I think  
16 the notice is pretty clear, continues from  
17 day-to-day until completed, and I think that's  
18 the way it's proposed under the Rules of Civil  
19 Procedure.

20 MR. TRIGGS: I'm just telling you, you  
21 will have a day's worth of time with  
22 Mr. Wheeler, absent a ruling from Judge Labarga  
23 that gives you more time in what is essentially  
24 a collection case.

25 So you can just plan your time however you

1 want to plan your time. We'll take it before  
2 the judge if it gets to that, and I am  
3 absolutely willing to live with whatever Judge  
4 Labarga rules.

5 MR. SELZ: That's fine. And I appreciate  
6 everything you are saying now, Matt. I mean,  
7 you are certainly entitled to take your  
8 position.

9 Q. So going back to moving this deposition  
10 forward, now that - after that first meeting with  
11 Huizenga Holdings, was there any contact or  
12 communication that you can recall between yourself and  
13 Ken Rubenstein concerning the meeting or the outcome  
14 of the meeting?

15 A. No. Not that I recall.

16 Q. Do you recall how many times you spoke to  
17 Ken Rubenstein specifically with regard to iviewit or  
18 the process or technology that Mr. Bernstein had  
19 developed?

20 A. How many times?

21 Q. Yes.

22 A. Very few.

23 Q. Now, with regard to Huizenga Holdings,  
24 after that first meeting, when did the second meeting  
25 take place, the best of your recollection?

1 A. On Huizenga Holdings?

2 Q. Yes.

3 A. Well, to the best of my recollection, it  
4 was moved ahead. Perhaps within a week or two weeks.

5 Q. And you prepared the transactional  
6 documents for that?

7 A. Well, there were negotiations. They -  
8 they had not - they had not decided, but ultimately,  
9 yes. Yes, we prepared the documentation.

10 Q. And you previously -- I'm sorry, go ahead.

11 A. It changed a number of times, at the  
12 request of Huizenga Holdings.

13 Q. Did it change as to the amount of funding  
14 or only as to the terms of the agreement?

15 A. Well, the amount was never set till the  
16 end, so - but it changed as to the format and how they  
17 wanted to approach it.

18 I can't tell you exactly how, but I can  
19 recall there being changes from what we had originally  
20 started.

21 Q. Were there ever any - were there any  
22 representations made by either yourself or anyone else  
23 at any of the meetings you attended with regard to the  
24 applications of the process or technology in the  
25 meetings with Huizenga Holdings?

1 A. With regard to the what?

2 Q. The meetings, the process or technology at  
3 the meetings with Huizenga Holdings?

4 A. The process or technology. Oh, I see what  
5 you're saying.

6 Well, I mean, they were inquiring. They  
7 were doing their own due diligence, so they asked  
8 questions of Eliot, and Eliot would respond to them.

9 Q. Are you aware of any specific inquiries  
10 they made to anyone else other than Eliot?

11 A. I believe they sent a team up. They  
12 engaged a patent counsel. My recollection is they  
13 engaged a patent counsel who went up - who inquired  
14 into the process. And I think the way they inquired  
15 was they reviewed it. You know, I don't know what  
16 else they did, but they - they did engage someone.

17 Q. Do you recall who that was?

18 A. No, but they did their own review.

19 MR. SELZ: I suggest we take a lunch break  
20 in about another 10 minutes till about 12:30, 1  
21 o'clock. Half an hour lunch break?

22 MR. TRIGGS: If you can eat that fast here  
23 in Palm Beach, that's fine.

24 MR. SELZ: If you want to take longer, I  
25 mean --

1 THE WITNESS: No, I'd rather do it  
2 shorter. You show us where the fast food is.

3 MR. TRIGGS: It's Chris' show.

4 MR. SELZ: Yeah, you just go -- There is a  
5 place just across the street. Actually,  
6 Hamburger Heaven.

7 MR. TRIGGS: It's Palm Beach's equivalent  
8 of fast food?

9 MR. SELZ: Yes, that or the sub shop down  
10 the street. It's the choice of places.

11 Q. (By Mr. Selz) So the funding for Huizenga  
12 came through sometime in October you said; October,  
13 November?

14 A. I'd have to go back to check, but some --  
15 It came in the fall of that year.

16 Q. What was the first payment that iviewit or  
17 any of the iviewit companies made for those services,  
18 prior to - rendered prior to that date? If you can  
19 recall.

20 A. I don't recall. Payment to us?

21 Q. Payment to Proskauer.

22 A. I don't know. I don't know if there was  
23 one. I'd have to check.

24 Q. Well, let's go back to the complaint real  
25 quick. The first summary sheet that you're showing

1 attached to the complaint is dated January 31st, 2000.

2 Looking at Exhibit B.

3 A. Okay. So what is the nature of your  
4 question? I'm sorry.

5 Q. The nature of my question was --

6 A. I mean, there were bills before this.  
7 There were - there were ones starting in June, I  
8 believe, of 1999, and then you will have one of  
9 August.

10 We didn't -- We commenced services in  
11 January. We didn't bill them until June. So I mean,  
12 our ledger sheets would show when they made payments.

13 Q. Okay. Because I'm looking at the same  
14 statements again.

15 A. Okay.

16 Q. So you got that sheet that shows January  
17 31st, 2000, invoice for eighty-five thousand three  
18 fifteen fifty-four?

19 A. Okay.

20 Q. And the same date for an additional  
21 \$1,300? Looks like disbursements and charges?

22 A. Right. Then the February statement.

23 Q. Then the February statement. And that  
24 includes prior invoices for -- It's referencing  
25 invoice dates from August --

1 A. August.

2 Q. -- September, October, December.

3 A. Right.

4 Q. The question I have is, do you know why  
5 those invoices or summary sheets are not attached to  
6 the complaint in this matter?

7 A. No.

8 Q. Do you know if Proskauer Rose is not  
9 making any claims for sums due or sums due under those  
10 prior invoices?

11 A. No. I don't know why they're not  
12 attached.

13 Q. Now, the next funding that we talked about  
14 was the Alpine Fund?

15 A. Correct.

16 Q. When did that take place?

17 A. Well, I - I think it was in the spring of  
18 2000.

19 Q. And do you recall the amount of that  
20 funding?

21 A. No, I don't. I think -- I don't.

22 Q. Did you prepare the transactional  
23 documents for that?

24 A. Well, they were prepared under my  
25 supervision, but we had specific - I mean, it would

1 have been prepared under Mr. Thompson's supervision as  
2 well. So I don't - I don't recall the exact amount.  
3 It was more than Huizenga's 500,000. But I can't  
4 remember what amount we essentially ended up with.

5 Q. Okay. There were meetings that you  
6 attended with Alpine Fund's representatives? Is that  
7 a true and correct statement?

8 A. I can recall a meeting, but there were not  
9 a lot of meetings that I attended with their  
10 representative, no.

11 Q. Do you recall who was present at those  
12 meetings?

13 A. Well, I recall Hank Powell on one, maybe  
14 two, or could have been three occasions or something.  
15 But a meeting would be a misnomer. Maybe I was in a  
16 meeting with him on one occasion, maybe I met him and  
17 then he continued on with other people on the others.

18 Q. When these - when these meetings took  
19 place with iviewit with these prospective investors,  
20 where did the meeting take place?

21 A. Well, it depends what period of time  
22 you're talking about.

23 Q. Let's go to Huizenga Holdings.

24 A. In their offices.

25 Q. In Huizenga's offices?

1 A. Right.

2 Q. And how about with regard to Alpine?

3 A. I believe iviewit had - by the spring they  
4 had leased their offices, so they were in the iviewit  
5 offices. And I don't -- Since I didn't attend them,  
6 I don't know if any were held in the Alpine offices.

7 Q. You didn't attend any of the meetings with  
8 Alpine?

9 A. I - I don't recall attending -- I mean, I  
10 recall an initial meeting with Hank Powell, but I  
11 don't recall attending meetings with Alpine.

12 Q. And Iviewit's offices are directly across  
13 the hall from Proskauer Rose's office?

14 A. Right.

15 Q. Or they were during that time, is that  
16 correct?

17 A. They were from late 1999.

18 Q. Do you know when they ceased being a  
19 tenant in the building where you guys are located?

20 A. No. It was sometime after this complaint  
21 was filed. It was after - it was after May 2nd, 2001.

22 Q. Now, with regard to Alpine Fund, was there  
23 any payment that you can recall that was made to  
24 Proskauer by iviewit immediately after the funding of  
25 the Alpine transaction?

1 A. I believe so.

2 Q. Was it a substantial payment?

3 MR. TRIGGS: Object to form.

4 Q. How much of a payment was it?

5 A. I don't know.

6 Q. Was it more than \$50,000?

7 A. I don't know.

8 Q. Was it more than a hundred thousand  
9 dollars?

10 A. I don't know. It may have been a lump sum  
11 payment, it may have been in installments. I don't  
12 know.

13 Q. And you say this was approximately the  
14 spring - the spring of 2000 you said. Can you show me  
15 anywhere in the billing statements where it shows a  
16 payment in approximately the spring of 2000?

17 A. I mean, without the ledgers, I can't tell  
18 you what the payments are from.

19 Q. Okay. Well --

20 A. I mean, I couldn't tell you even with the  
21 ledgers, but I guess we can put two and two together  
22 by seeing the dates and whatever. But I can't tell  
23 you by looking at this. I could be --

24 I mean, bills -- You need like a forensic  
25 accountant because bills disappear, so those bills

1 disappearing could have been attributable to payments  
2 made from this or any other way.

3 Q. Okay. But my question to you, sir, was --

4 A. I don't recall. I recall funds being  
5 available, and I recall receiving a payment.

6 Q. Okay. But you don't find them reflected  
7 that you see anywhere in those billing statements?

8 A. Well, I can't identify them, if you're  
9 asking me that, no.

10 Q. The reason for my question, sir, is really  
11 because you recall a payment being made, but it  
12 appears, at least from the face of these statements,  
13 which are summaries, and which apparently do show some  
14 payments being made, that a payment isn't reflected in  
15 the spring of 2000.

16 A. What these show are outstanding invoices  
17 at the bottom. So if an invoice disappears, the  
18 presumption would be - in reading this, the  
19 presumption would be that the bill was paid. And then  
20 if it doesn't disappear, a partial payment was made  
21 against the amount. That's where you show the  
22 payment.

23 For instance, on the 10 - on the bill  
24 for - of 10/12/99, which would be presumably for the  
25 September services, it shows an amount, \$42,000 owing,

1 but 28,000 had been paid from some source, so 13,000  
2 is still owing on that.

3 But obviously if you go back to the  
4 statement that you looked at first, let's go back to  
5 your one in January - not January, February - as to  
6 past due invoices, you show a statement from - you  
7 show a statement of 8/24 where still 40,000 was owing  
8 and a statement of 9/25. By the time you get to this  
9 one down in May, you see those have disappeared. So  
10 apparently payments had been made.

11 Q. Was there ever an understanding that bills  
12 due and owing Proskauer by iviewit would be paid when  
13 funds were received by third parties?

14 A. No.

15 MR. TRIGGS: Objection. It's already been  
16 asked and answered. Try it again.

17 MR. SELZ: Well, let's break. It's 12:32.

18 MR. TRIGGS: Let's see if we can get back  
19 by 1 o'clock-ish, if possible.

20 MR. SELZ: Okay.

21 THE WITNESS: We'll be here.

22 (Thereupon, a lunch recess was had at  
23 12:32 P.M.)

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

---

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

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

Defendants.

---

Palm Beach, Florida  
November 21, 2002  
1:21 o'clock p.m.

DEPOSITION

OF

CHRISTOPHER C. WHEELER

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**Certified Copy**

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APPEARANCES:

PROSKAUER ROSE LLP  
By: MATTHEW TRIGGS, ESQ.  
Appearing on behalf of the Plaintiff.

SELZ & MUVDI SELZ, P.A.  
By: STEVEN M. SELZ, ESQ.  
Appearing on behalf of the Defendants.

Also Present:

Eliot I. Bernstein (by telephone)

-----

Deposition of CHRISTOPHER C. WHEELER, a witness  
of lawful age, taken by the Defendants, for purposes  
of discovery and for use as evidence in the  
above-entitled cause, pursuant to notice heretofore  
filed, before KENNETH A. SCHANZER, Registered  
Diplomate Reporter and Notary Public, in and for the  
State of Florida at Large, at 214 Brazilian Avenue,  
Palm Beach, Florida.

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## INDEX

		PAGE
1		
2	WITNESS:	
3	CHRISTOPHER C. WHEELER	
4	Direct Examination By Mr. Selz	92
5	Cross Examination By Mr. Triggs	216
6	EXHIBITS:	FOR I.D.
7	Defendant's No 3	120
8	Defendant's No. 4	140
9	Defendant's No. 5	143
10	Defendant's No. 6	172
11	Defendant's No. 7	185
12	Defendant's No. 8	192
13	Defendant's No. 9	197
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

## 1 DIRECT EXAMINATION (Continued)

2 Q. (By Mr. Selz) Okay. Let's go back on.  
3 Okay. Mr. Wheeler, I think we finished off going  
4 over some of the applications of payments. The  
5 questions were dealing with whether or not iviewit  
6 made payments when funding was received from  
7 third-party sources, and you were referencing me to  
8 payments that were reflected on here, and  
9 disappearing invoices, ones that went away?

10 A. Right.

11 Q. Do you have any idea what the total dollar  
12 figure between the statement which shows allegedly  
13 unpaid amounts and the total amounts paid by iviewit  
14 to Proskauer Rose were?

15 A. No.

16 Q. If I told you it was approximately  
17 \$867,000, would you think that was excessive or do you  
18 think that was about right?

19 A. You're suggesting that's what our total  
20 billings were to the client?

21 Q. Paid and unpaid, according to the  
22 allegation.

23 A. Fees and costs?

24 Q. Correct.

25 A. I'd say that could probably be accurate.

1 Q. And to your knowledge, how much did  
2 iviewit raise in total from third parties for  
3 investment purposes?

4 A. I - I don't - I have not totaled it.

5 Q. Okay. You said that Huizenga came up with  
6 half a million dollars.

7 A. Right.

8 Q. And Alpine came up with some number  
9 greater than half a million dollars?

10 A. Well, I don't know. I think that Alpine  
11 came through with money two or three times, as I  
12 recall.

13 Q. Okay.

14 A. So I mean, I don't know if they were up to  
15 two million or three million or -- And I don't - I  
16 can't recall the amounts that were put in by the  
17 shareholders themselves. And I don't know what the  
18 final Prolow money was. I think the final Prolow  
19 money was perhaps 200 to \$500,000 or something else.

20 Q. Well, I don't mean we've addressed Prolow  
21 yet, so --

22 A. Well, you did ask me the question.

23 Q. Yeah. I did. You're right. So you don't  
24 really have a total that you figured between these  
25 amounts?

1 A. No, I didn't focus on it.

2 Q. Okay. Now, the third source of funding  
3 that you talked about was internal sources? That was  
4 from within, current shareholders of iviewit, is that  
5 correct?

6 A. Right.

7 Q. What transactional documents or what  
8 transactions did you work on for internal purposes?

9 A. Well, I think additional stock was sold to  
10 those people, I believe, or -- I know they all made -  
11 they were all asked to make loans, so I think  
12 debentures, some form of note, some form of  
13 Subscription Agreement. So they all -- But I'd have  
14 to go back and check the exact details. But they -  
15 they, quote, loaned money to the company and - and I  
16 think a substantial sum came in that way, too.

17 Q. Okay. When you talked about they, who  
18 exactly are you referring to?

19 A. The existing shareholders.

20 Q. Who were they, if you can recall at that  
21 time?

22 A. They were - I mean, they were Jerry Lewin  
23 and they were Sy Bernstein and they were the other  
24 shareholders. You'll have to look at a  
25 shareholder's --

1 Q. Okay.

2 A. And I'm not so sure everyone participated,  
3 but to a great extent, many did.

4 Q. Now, Bruce Prolow was another individual  
5 who you indicated - Prolow, rather, was an individual  
6 you indicated also invested?

7 A. Well, he had a group. I mean, he was a  
8 person introduced to the company, but he - he -- I  
9 don't know how his money came in. I don't know how it  
10 was -- Don't know if it came in from one or two  
11 investors or whatever.

12 MR. TRIGGS: Just do this. If this will  
13 speed us up, the question was asked I think is  
14 something about whether Bruce Prolow put money  
15 in. Just - he wants you to answer the question  
16 that he's asking, and it will speed us up if you  
17 just answer the question he's asking.

18 A. I don't know.

19 Q. Okay. Do you know how much money came in  
20 from Mr. Prolow?

21 A. No.

22 Q. Were you involved in preparing the  
23 transactional documents with regard to any funding  
24 that Mr. Prolow provided to iviewit?

25 A. I can't remember.

1 Q. And you also indicate, I think there was  
2 another source of funding, private placements, that  
3 you thought had taken place, is that correct?

4 A. There may have been some money sold to  
5 some individuals. Some - some stock sold to some  
6 individuals. Correct.

7 Q. Were there any transactional documents  
8 that your offices prepared with regard to those sales?

9 A. Oh, yes. I assume we prepared all of them  
10 or most of them. Anyone that was properly done. I  
11 mean, we'd certainly want to know about it.

12 Q. How about confidentiality agreements, were  
13 those prepared by your offices?

14 A. Yes. p 96 Line 16-17 Should be "many" of the confidentiality agreements - reason =  
clarification

15 Q. And were those prepared --

16 A. To my - to the best of my knowledge, most  
17 of them that were signed was prepared by my office.

18 Q. Now, with regard to the confidentiality  
19 agreements, those were prepared and signed prior to  
20 the initial presentation to these potential investors  
21 or is it after the initial presentation, as you  
22 recall?

23 MR. TRIGGS: Object to form.

24 A. Instructions were - they were to be signed  
25 prior to any initial presentation. Now, I'm not - how

1 the company or its - what the company or its people  
2 did, I didn't control. But in most cases, I believe  
3 before there was any discussion, any documentation  
4 sent out or any presentation, I believe the agreements  
5 were secured.

6 Q. Okay. And you were present at the initial  
7 meeting with Alpine. Was there any -- You said there  
8 was subsequent funding?

9 A. I don't know if it was the initial  
10 meeting.

11 Q. I take it back.

12 A. I said one meeting.

13 Q. You were at one meeting you said, Hank  
14 Powell was at three meetings?

15 A. I don't know how many they had with  
16 Alpine.

17 Q. Okay.

18 A. But I can remember on three occasions, on  
19 approximately three occasions, meeting Hank Powell.  
20 One being a longer meeting, the other two being -- I  
21 don't remember them having any substance to them.  
22 Although I don't think I was present for the entire  
23 meeting.

24 Q. Did you bill iviewit for your attendance  
25 at Board of Directors meetings?

1 A. Yes.

2 Q. Did you discuss with them beforehand there  
3 would be a charge for your attendance at Board of  
4 Directors meetings?

5 A. I was asked to attend the Board of  
6 Directors meeting as an attorney, just like I was  
7 asked to do all the other things as an attorney.

8 Q. Now, who would make that request to you?

9 A. Sy Bernstein.

10 Q. Okay. Sy Bernstein made all these  
11 requests to you to appear as attorney for --

12 A. Well, he wasn't there at every meeting,  
13 but he made it clear from the very meeting that he  
14 wanted me at all meetings, including those, and they  
15 called me over, and he made it clear that he wanted me  
16 to try to be with Eliot at all meetings where Eliot  
17 was making presentations.

18 Q. Okay. And this was --

19 A. At the outset -- Go ahead. Started  
20 anticipating your question.

21 Q. No. That's okay. These meetings that you  
22 attended, was it from the very outset of interview?

23 A. Well, my - my participation was minimal up  
24 to the time of where it started really ramping up. So  
25 for the first two months, January, February. But

1 maybe in March it started really ramping up, and  
2 then - and then that's - it's probably in that time  
3 where Sy made it very clear that he wanted the best of  
4 the best and he wanted people to be with Eliot at all  
5 times and not to be left alone and whatever.

6 Q. So this was March 2000 is what we're  
7 talking about, or thereabouts?

8 A. Guessing. Right.

9 Q. But it wasn't back in September or October  
10 of 19 --

11 A. Oh, no, not at all.

12 Q. Now, at those -- I'm sorry, go ahead.

13 A. He set the tone in the Spring.

14 Q. Okay. So March, April of 2000 is when  
15 things started ramping up, according to your  
16 recollection?

17 A. Right. And he set the tone as to how he  
18 wanted to be represented on what he considered were  
19 very important matters at the time.

20 Q. Okay. Do you receive billing summaries on  
21 a client-by-client basis as part of Proskauer Rose's  
22 billing structure?

23 MR. TRIGGS: Object to the form. What do  
24 you mean?

25 Q. Generally, do you receive payables and

1 receivables journals on each client that you are  
2 providing services to as a means of tracking your  
3 billable time and the progress of a client in payable?

4 A. We have a series of reports, but I receive  
5 a ledger sheet showing work-in-progress, past dues,  
6 accounts receivable for all - for - cumulative - for  
7 all clients. I mean, on a line by line item. I can  
8 get more detail, if I want. I can ask for more  
9 detail, but it's not broken out -- It's not a  
10 singular client. It's sheets that come in.

11 Q. Right. I understand what you're saying.  
12 So it's a computerized printout showing your entire -  
13 if I understand this correctly - your entire client  
14 list?

15 A. Right.

16 Q. And then showing aging reports --

17 A. Right.

18 Q. -- on receivables that are due?

19 A. Right. And we have one for  
20 work-in-progress as well, and aged as well.

21 Q. With the iviewit billing statements, were  
22 there ever any discussions about the balances that  
23 were due on those clients, since you were - since you  
24 were the principal partner in charge of that file?

25 MR. TRIGGS: Object to the form. What do

1           you mean?

2           Q.     Were there any internal discussions within  
3     Proskauer about how to handle the past due amounts on  
4     the iviewit matters?

5           MR. TRIGGS:  And just to be clear, I'm  
6     assuming you're only asking prior to any  
7     discussions regarding pursuing a claim --

8           MR. SELZ:  Correct.

9           MR. TRIGGS:  -- against --

10          MR. SELZ:  Correct.

11          MR. TRIGGS:  Iviewit-- iviewit, because  
12     that would be covered by --

13          MR. SELZ:  I don't want him to disclose  
14     any attorney-client or work product.

15          MR. TRIGGS:  Do you understand the time  
16     frame that he's talking about here?  Prior to  
17     where any decision was made to pursue a claim  
18     against iviewit is the way Steve is limiting  
19     question.

20          A.     Of course.  Yes.

21          Q.     Okay.  And what were those discussions  
22     involving?

23          A.     Discussion says they - we've generated  
24     this much in work-in-progress, we better bill it.  
25     We've generated this much in accounts receivable,

1 we're going to have to discuss with them how they're  
2 going to make arrangements to pay it.

3 Q. Okay. Were there any specific  
4 recommendations that were made that you ever  
5 memorialized in any kind of way to iviewit?

6 A. Well, you have my correspondence and you  
7 see that there were many things that we proposed and  
8 many agreements that is we had that they felt that  
9 they could fulfill. But the --

10 Q. Now, I'm sorry, I missed this question  
11 before. I think I've just got to reach one last -  
12 come back to these meetings with Alpine and Huizenga,  
13 Prolow.

14 Do you recall the meetings that you were  
15 present involving those parties that you made any  
16 representations to anyone concerning the product or  
17 invention or its viability or economic feasibility or  
18 the potential for profit?

19 A. No.

20 Q. So you never made any representation to  
21 any party with regard to anything concerning the  
22 invention or the process or however we're going to  
23 describe this particular zoom and pan or enlargement  
24 without pixilation?

25 A. No, no. I mean, what would I have said?

1 What you see is what you get. Look at - this is what  
2 we have, and this is what the company intends to do.

3 Q. Was there ever any representation made  
4 that you can recall that the technology, to the extent  
5 that it was going to be protected or was in a soon to  
6 be protected form, would be compensated by royalties  
7 almost immediately?

8 A. No.

9 Q. Was there any discussion with regard to  
10 any kind of digital camera usage for the technology  
11 that you can recall?

12 A. Digital camera usage? Not to my  
13 knowledge.

14 Q. Was there ever anything with a Nikon  
15 camera that was presented at any board meeting or any  
16 meeting with investors?

17 A. Never heard of it.

18 MR. TRIGGS: Steve, I'm not -- Again, I'm  
19 not going to shut down this line, but how - do  
20 me a favor and explain to me how this line of  
21 questioning has anything to do with the claims  
22 that we've got out there.

23 MR. SELZ: Well, I think it --

24 MR. TRIGGS: Whether there was a  
25 presentation regarding a Nikon camera? How does

1 that have anything to do with what we're here  
2 about?

3 MR. SELZ: His involvement with the  
4 conduct of the business of the board of  
5 directors. If there was a presentation made and  
6 he was assisting the company, that's something I  
7 guess you're claiming compensation for.

8 I'm just trying to narrow down times when  
9 he was actually there and the times when he was  
10 actually making or assisting, I should say, the  
11 Board of Directors or the representatives of  
12 iviewit with regard to a presentation to  
13 potential investors.

14 MR. TRIGGS: With all due respect, I think  
15 you're just pulling a filibuster on topics such  
16 as that. I want to just see if we can advance  
17 it regarding issues that are relevant to the  
18 case.

19 Q. Now, your earlier testimony, sir, was that  
20 the agreement of the iviewit entities, as far as you  
21 were concerned, was traveling under this September  
22 8th, 1999, engagement letter, engagement agreement, is  
23 that correct?

24 MR. TRIGGS: Object to the form.

25 A. I'm not so sure I understand your

1 question.

2 Q. Okay. I believe your earlier testimony  
3 was that the iviewit entities were responsible for  
4 payment to Proskauer Rose pursuant to the terms of the  
5 September 8th, 1999, engagement agreement with iviewit  
6 LLC.

7 A. Well, I believe they're pursuant to our  
8 oral agreements as well, but I believe that - I  
9 believe that the oral agreements are - are  
10 comprehended by that as well. In other words, I think  
11 you can flush out the oral agreements by that  
12 agreement as well.

13 Q. Okay. So what was the -- Then I'm  
14 confused. What were the terms of the oral agreements  
15 that you testified to earlier?

16 A. The terms of the oral agreements is we  
17 would perform services on an hourly basis as we were  
18 asked to perform them.

19 Q. Okay. And that was --

20 A. And we started that way, and everyone  
21 acted under those agreements.

22 Q. And that was your understanding? And  
23 those preceded this agreement or they came subsequent  
24 to? And when I mean the agreement --

25 A. Well, this memorialized some of the terms

1 of our agreement. It happened to be addressed to one  
2 of the entities, but these memorialized the agreements  
3 that we were acting under with all the parties.

4 Q. Was Brian Utley involved with iviewit or  
5 any - or the Bernsteins or any of the other parties  
6 prior to September --

7 A. No, but he was in charge then.

8 Q. So let me finish the question, if you  
9 could.

10 MR. TRIGGS: No.

11 A. I thought that was the finish. I'm sorry.

12 Q. Prior to his signing this agreement on -  
13 apparently on behalf of iviewit LLC?

14 A. Well, I don't know when Brian started --

15 MR. TRIGGS: Let him get the whole  
16 question out.

17 THE WITNESS: I thought that was the whole  
18 question.

19 Q. That is the whole question. Okay. Go  
20 ahead.

21 A. Was Brian Utley -- Prior to him signing  
22 this agreement, was Brian Utley active with the  
23 corporation is what you're saying. Before September  
24 8th, 1999.

25 Q. Correct.

1           A.     I believe so. I'd have to go back and  
2 look and see when he started. The company would know  
3 that better than I would.

4           Q.     Who were the oral agreements entered into  
5 with? Specifically, what individuals did you meet  
6 with to discuss these other oral agreements?

7           A.     With the other representatives and members  
8 of the directors, and the Bernsteins primarily because  
9 they were the primary shareholders.

10          Q.     Okay. So you met with the Bernsteins, you  
11 had an oral agreement with them, and then this - this  
12 agreement came subsequently?

13          A.     Yeah. I don't think the Bernsteins deny  
14 that we had any agreement with them. The - I mean, Sy  
15 has said to me many times that his problem was not -  
16 his fees weren't the problem; his problem was, he  
17 didn't have the cash to pay them and he didn't want to  
18 pay our agreements until he had the cash to pay them.

19          Q.     Well, with regard to this, what I'm trying  
20 to ascertain is, because part of this complaint has  
21 alleged quantum meruit, so the value of the services  
22 provided.

23          A.     Right.

24          Q.     And generally quantum meruit in a written  
25 contract are mutually exclusive. You can't get one if

Need whole page - here is where Selz nails him for trying to double bill the Company and he claims there is some amendment. They are trying to sue us for breach and quantum merit.

1 you've got the other. You either have a c  
2 that's been breached or quantum meruit, bu

3 So what I'm trying to ascertain  
4 portion of the claims that are being asser  
5 complaint deal with the quantum meruit cou  
6 portion of the claims deal with the contra  
7 because --

8 MR. TRIGGS: Tell me when you'

9 Q. Okay. Because, sir, they both  
10 unfortunately, state a total sum of 369,460  
11 being due and owing, and I just need to know  
12 which.

13 MR. TRIGGS: Let me object to t  
14 And also, just for the record, you are  
15 under the complaint, when as you know  
16 an amended complaint that's out there

17 I don't think quantum meruit-wi  
18

1 with regard to this written agreement which was  
2 attached to the prior form of the complaint.

3           So it's your position from my  
4 understanding, sir, that this - these prior oral  
5 agreements with the Bernsteins were merged into this  
6 1999 agreement signed by Brian Utley?

7           A.    I didn't say they were merged in.

8           Q.    Okay.

9           A.    I said that I believed we always had the  
10 oral agreements, and I expected to be paid, and we had  
11 an understanding with them that we were going to be  
12 paid. They requested, we continued to render  
13 services. And that was far past the September date.  
14 I mean, into October, November, December. They didn't  
15 stop asking for services on all of their items.

16                   What I am saying is, we attempted to flush  
17 out more and memorialize on what basis, at least as to  
18 one of the entities, and that's all that - all that  
19 was, as to one of the entities, so that everyone  
20 understood the basic terms and conditions.

21                   It was signed at that time because a lot  
22 of housekeeping items were being taken care of because  
23 they finally had management in there. Sy wasn't  
24 attending the management day-to-day. Eliot was  
25 inventing day-to-day.

1           So I mean, the great happenstance that  
2 they signed some agreement at that time just when  
3 Mr. Eliot came, he was attending to a lot of  
4 housekeeping details. Not just with us, but many,  
5 many, many of them that had been left because they  
6 didn't have management until that time.

7           Q.     Okay. Well, I'm just - again --

8           A.     I leave it up to my lawyer to talk  
9 whether - pleading in the alternative as to quantum  
10 merit or contract.

11          Q.     That's fine. I'm just curious, though,  
12 did Proskauer Rose consider this an enforceable  
13 agreement?

14          MR. TRIGGS: Object to form. What are you  
15 referring to as this?

16          MR. SELZ: The Exhibit 1 to the - or  
17 Exhibit A to the initial complaint filed in this  
18 matter.

19          MR. TRIGGS: Object to form.

20          Q.     Let me put it this way. When you signed  
21 this engagement agreement on behalf of Proskauer  
22 Rose -- And let me strike that. Let me go.

23                 Back. Were you authorized on behalf of  
24 Proskauer Rose LLP to sign an engagement agreement  
25 with iviewit?

1 A. Yes.

2 Q. And is that authorization the basis for  
3 your authoring this letter to Brian Utley of iviewit  
4 LLC dated September 8th, 1999, and attached to the  
5 initial complaint filed in this matter as Exhibit A?

6 MR. TRIGGS: Object to form. You just  
7 lost me there, Steve.

8 MR. SELZ: Okay.

9 THE WITNESS: Yeah, I lost him, too.

10 Q. Was your authorization to engage -- Was  
11 your authorization by Proskauer Rose to sign a  
12 retainer agreement or engagement letter on behalf of  
13 Proskauer Rose the basis for you sending this letter  
14 to Mr. Brian G. Utley at iviewit LLC?

15 MR. TRIGGS: Object to form.

16 Q. Again, which is attached to the complaint  
17 as Exhibit A.

18 A. I'm still not sure I understand.

19 Q. Want me to break it down for you?

20 A. I still don't understand your question.

21 Q. My first question to you was were you  
22 authorized.

23 A. I am.

24 Q. And you said yes. And then I said, was  
25 that the reason why or was that the basis for your

1 being able to send out this letter.

2 A. Well, it's certainly not the reason why  
3 because I'm authorized. Was it the basis for sending  
4 out the letter?

5 Q. You were acting --

6 A. I can't tell you what the basis was for  
7 sending out the letter.

8 Q. Is it a fair statement then, sir, that  
9 when you sent this September 8th, 1999, engagement  
10 agreement to Brian Utley, that you had been authorized  
11 to do so by Proskauer Rose?

12 A. Yes.

13 Q. And that that engagement letter or  
14 engagement agreement contained the terms upon which  
15 Proskauer Rose was willing to accept representation of  
16 iviewit LLC?

17 A. Yes.

18 Q. And that it was sent to Mr. Brian G. Utley  
19 with the intent that he execute it on behalf of  
20 iviewit LLC?

21 A. Yes.

22 Q. Now, were there other entities other than  
23 iviewit LLC that existed at that time?

24 A. I don't know. I'd have to go back and see  
25 when they existed and when they didn't. Some other

1 entities did exist at that time.

2 Q. Can you explain to me, sir, why none of  
3 those other entities were listed on this engagement  
4 agreement?

5 A. No.

6 Q. Was Mr. Utley your sole contact at this  
7 point in time, September 8th, 1999, for this kind of,  
8 as you said, housekeeping matters at iviewit?

9 A. For housekeeping matters. But, no, not  
10 sole. We still talked to Sy and Eliot about certain  
11 things.

12 Q. Were any correspondence or engagement  
13 agreements similar to this - strike the  
14 correspondence - engagement agreements similar to this  
15 sent to either Sy Bernstein or Eliot Bernstein at the  
16 same time?

17 A. I don't know.

18 Q. How long have you known Brian Utley, sir?

19 A. Known him since approximately 1990.

20 Q. 1990? And --

21 A. I mean, around there.

22 Q. And how do you know Mr. Utley?

23 A. I knew him socially first. I knew him  
24 primarily through a mutual friend, and we sat on some  
25 philanthropic organizations' boards. That's how I

1 know him --

2 Q. Okay.

3 A. -- primarily.

4 Q. And who recommended Mr. Utley to iviewit?

5 MR. TRIGGS: Object to form.

6 THE WITNESS: Shall I answer that  
7 question?

8 MR. TRIGGS: Sure. If you can.

9 Q. Let me rephrase it first. Did you  
10 recommend to Sy Bernstein or Eliot Bernstein that they  
11 engage Mr. Utley as an employee of iviewit?

12 A. No, I introduced him.

13 Q. Okay.

14 A. And I said -- I introduced him.

15 Q. And how did you introduce Mr. Utley?

16 A. Well, Sy was - was saying that he had to  
17 get someone to run his company, and as was Jerry Lewin  
18 and as was, I think, everyone, although I didn't  
19 recall talking to everyone, but - and so he - he had  
20 said, if you know anybody, and he didn't say it I'm  
21 sure to just me, we're out looking for someone to run  
22 the company. Eliot's got to do what he does best over  
23 here and we need someone to run the day-to-day  
24 affairs, and I think he may have considered even other  
25 alternatives. People from his family or whatever.

1 Q. Okay.

2 A. So --

3 Q. So you introduced Mr. Utley to Sy and  
4 Eliot?

5 A. I said to -- I happened to run into  
6 Mr. Utley and I said, gee, there's this company run by  
7 these nice folks and they have what appears to be  
8 something unique, at least as you look at it in - in  
9 its field, and would you have any interest, and he  
10 said he may, but he'd have to examine it closely and  
11 talk to the people and the principals and that.

12 And I went to Sy Bernstein and I said, I  
13 know of a person. I don't know whether he'd have  
14 interest or not. He said he may if he meets and  
15 discusses it with you. But he'd have to review the  
16 technology very closely, and - and I said, do you have  
17 any interest. This is who he is. He's a social  
18 friend. And he is a - he is a - he - he's well - well  
19 respected in town and he's a - he was former site  
20 manager of IBM.

21 So he's an older gentleman, has depth of  
22 experience. I know he's had other big jobs at IBM,  
23 but I don't know exactly what they have been. You  
24 know, you'd have to see if he's a good fit for you and  
25 scrutinize him and go from there. He said, yes, I'd

1 have -- They said, yeah, we'd like to meet him.

2 MR. TRIGGS: All right. Just to be clear,  
3 I think the question that was asked is whether  
4 you introduced Brian Utley to Sy Bernstein.  
5 That -- So all I'm saying is if you can --

6 THE WITNESS: The answer is yes.

7 MR. TRIGGS: -- focus on the question he's  
8 asking --

9 THE WITNESS: Okay. The answer --

10 MR. TRIGGS: If he wants to ask you a  
11 follow-up, he will ask you a follow-up.

12 MR. SELZ: Exactly. So I don't get blamed  
13 for this one, I mean, I understand obviously  
14 I've got a - you know, if your client wants to  
15 explain, he's entitled to explain.

16 THE WITNESS: Okay. The answer is yes.

17 MR. TRIGGS: I think Chris, in all  
18 fairness, is trying to speed up the process by  
19 anticipating your follow-up, but just focus on  
20 what he's asking you.

21 MR. SELZ: Thank you.

22 Q. (By Mr. Selz) Now, when you first knew  
23 Mr. Utley back in 1990 he was working for --

24 A. IBM.

25 Q. -- IBM in Boca Raton?

1 A. Uh-huh. He was the site manager, or the  
2 equivalent of the title.

3 Q. And when you introduced him to Sy and  
4 Eliot Bernstein, do you know what he was doing at that  
5 point in time?

6 A. He was working at a - and running a - a -  
7 what could we call it, a company that was  
8 manufacturing - developing and manufacturing greens  
9 cutting equipment. It's called Diamond Turf, I think.  
10 Or something like that.

11 Q. Do you know if he was terminated from his  
12 job at Diamond Turf or did he leave voluntarily?

13 A. I don't know which.

14 Q. At the time that he took the job with  
15 iviewit, do you know if he was gainfully employed at  
16 that point or not?

17 A. No. I don't know if he was still employed  
18 by Diamond Turf or not.

19 Q. Did you ever see Mr. Utley's resume?

20 A. I don't recall if he was -- Did I ever see  
21 his resume? Not to my recollection.

22 Q. Did he ever provide you with any  
23 background information?

24 A. He could have, but I don't recall it.

25 Q. C.V. or anything of that nature to give to

1 the Bernsteins?

2 A. I don't recall.

3 Q. Are you aware of any patents that  
4 Mr. Utley holds?

5 A. No. No, I'm not.

6 Q. Have you ever -- I'm sorry, go ahead.

7 A. I'm not aware of anything other than if he  
8 referenced patents in his own deposition, but I  
9 didn't - I didn't follow that closely in his  
10 deposition.

11 Q. So you - you read a transcript of his  
12 deposition?

13 A. Yes.

14 Q. Now, with regard to his - I'll take  
15 Mr. Utley's employment by iviewit, have you ever  
16 represented Mr. Utley personally in any matters?

17 A. We formed a corporation for him in - I  
18 believe in 1993.

19 Q. Do you recall the entity, the corporation?

20 A. I think it was a consulting corporation.

21 We just formed it. I mean, we just formed it. That's  
22 all we did.

23 Q. Right.

p 188-119 line 23-1 There was also a matter of giving advice regarding a credit card account guaranteed by Utley that was unrelated to iviewit and billed separately to Utley - additional recollection

24 A. We didn't do any more work for him.

25 Q. Just formed the consulting corporation?

1 A. Right.

2 Q. Did you ever advise anyone at iviewit  
3 other than, obviously, Mr. Utley, who knew that you  
4 had represented him in the past, that you had  
5 represented Mr. Utley at one point?

6 A. No.

7 Q. Was there any - any question of any  
8 conflict?

9 A. No.

10 Q. Was there any employment agreement signed  
11 by Mr. Utley between Mr. Utley and iviewit?

12 A. Yes.

13 Q. And who prepared the employment agreement?

14 A. Proskauer.

15 Q. And did you not think that potentially  
16 posed a conflict?

17 A. No.

18 Q. And who did you represent in the  
19 preparation of that employment agreement?

20 A. The company. We did not represent  
21 Mr. Utley.

22 Q. So there was no waiver of conflict, no  
23 conflict letter, nothing went out with regard to  
24 Mr. Utley and iviewit?

25 A. No.

1 MR. TRIGGS: Object to form.

2 Q. Did Proskauer assist Mr. Utley in  
3 prosecuting any patents or having any other  
4 intellectual properties protected by copyright or  
5 trademark?

6 A. No.

7 Q. Are you aware of any claims by Diamond  
8 Turf that Mr. Utley improperly received intellectual  
9 properties or patented them that belonged to Diamond  
10 Turf?

11 A. Aware that --

12 Q. Mr. Utley is alleged to have improperly  
13 received or taken intellectual properties of Diamond  
14 Turf.

15 A. By Diamond Turf? No.

16 Q. Okay. On the amended complaint --

Why are exhibits missing??

17 MR. SELZ: Let's get this marked.

18 (Thereupon, said document was marked as  
19 Defendant's Exhibit Number 3 for identification  
20 by the reporter.)

21 Q. All right, sir. We had an earlier  
22 discussion regarding the original complaint filed in  
23 this action. You now have before you what's been  
24 marked as Defendant's Exhibit Number 3, which is  
25 docket entry number nine in the court file. It's the

1 amended complaint. I'm going to reference you to  
2 paragraph 15, which is Count I. And paragraph seven,  
3 which is the factual background.

4 Now, the allegations of paragraph seven  
5 say prior to the commencement of this action,  
6 Proskauer entered into an oral agreement with  
7 defendants --

8 A. Right.

9 Q. -- to provide legal services on their  
10 behalf.

11 Who were these oral agreements entered  
12 into, and which entities were they entered into for?

13 MR. TRIGGS: Object to the form.

14 Q. Well, let's break it down. With whom did  
15 Proskauer enter the oral agreements for services?

16 A. With officers of - of - of each of the  
17 companies.

18 Q. Okay. Which officers and which companies?

19 A. Well, whatever officer came in and said I  
20 need this work done. I mean, when they requested  
21 work, we said, fine, we'll do the work.

22 I mean, from the very beginning we had an  
23 understanding with the Bernsteins that they would be  
24 coming in, they would be having work. No one knew  
25 what the structures were going to be, but whatever

1 those structures would be, they'd pay for it.

2 Q. So it was --

3 A. I suppose you'd say the Bernsteins,  
4 technically.

5 Q. So my understanding from your testimony  
6 just now is that someone came into your office, it was  
7 an officer of the corporation --

8 A. Well, they gave us work. But at the  
9 inception of the project, the Bernsteins engaged us,  
10 said, fine, let's commence work. We started work.  
11 They brought in projects. We accepted the work. We  
12 did them. We didn't differentiate between - because  
13 of we were changing things to protect them or because  
14 certain corporations were set up for tax purposes or  
15 for others, we didn't differentiate between them.  
16 We - we - when a project had to be done and - and that  
17 project came in, we did it.

18 Q. Did you open up separate files for each  
19 one of these separate entities?

20 A. I'd have to look and see what we did.

21 You mean, a separate file for iviewit  
22 Holdings, Inc., a separate file for iviewit  
23 Technologies, Inc.?

24 Q. Yes.

25 A. The files may have been opened for - for

1 organizational purposes, but not for billing purposes.

2 Q. So --

3 A. To retrieve the information on a timely  
4 basis so -- But I don't know. The answer may be no.  
5 The answer may be just - they may just be all under  
6 one big file and still broken down. I'd have to see  
7 the filing system.

8 Q. Now, going back to my question, I'm just  
9 trying to get an answer on this particular point. You  
10 indicated that you had met with officers and  
11 directors, you said Sy and Eliot Bernstein, or some  
12 other officers or directors of these entities.

13 A. Well, they were the initial clients, I  
14 mean, before they delegated some of their  
15 responsibilities away.

16 Q. Okay. Now, Sy and Eliot Bernstein when  
17 they first came into your offices, you indicated none  
18 of these corporate entities had been formed, is that  
19 correct?

20 A. I believe that's correct.

21 Q. Because your offices were the offices  
22 responsible for the initial formation of the iviewit  
23 entity, is that correct?

24 A. Right.

25 Q. Do you have any idea approximately how

1 long after the initial meeting with Sy and Eliot  
2 Bernstein these corporations were formed?

3 A. These meaning these three?

4 Q. These three, which is iviewit.com, Inc.,  
5 iviewit Holdings, Inc., iviewit Technologies, Inc.

6 A. Well, it's a difficult question in that  
7 some - there were some name changes. So some of these  
8 may have been in existence by a prior name and through  
9 merger picked up this name.

10 Q. Okay.

11 A. So - but they were formed between January  
12 and June.

p124 l11-18 I do not have a recollection of when companies were formed without reviewing the exact history of each Company. - Clarification

13 Q. January and June of?

14 A. '99.

15 Q. Of '99.

16 A. Right. Now, some may not have been  
17 formed - I mean, some were formed sooner rather than  
18 later.

19 Q. So the initial discussions that were had,  
20 the oral agreement that's referenced here in Count I,  
21 and referencing back to paragraph seven, occurred  
22 prior to the formation of these entities. Is that  
23 what you're saying?

24 MR. TRIGGS: Object to form.

25 A. Yes.

1 long after the initial meeting with Sy and Eliot  
2 Bernstein these corporations were formed?

3 A. These meaning these three?

4 Q. These three, which is iviewit.com, Inc.,  
5 iviewit Holdings, Inc., iviewit Technologies, Inc.

6 A. Well, it's a difficult question in that  
7 some - there were some name changes. So some of these  
8 may have been in existence by a prior name and through  
9 merger picked up this name.

10 Q. Okay.

11 A. So - but they were formed between January  
12 and June.

13 Q. January and June of?

14 A. '99.

15 Q. Of '99.

16 A. Right. Now, some may not have been  
17 formed - I mean, some were formed sooner rather than  
18 later.

19 Q. So the initial discussions that were had,  
20 the oral agreement that's referenced here in Count I,  
21 and referencing back to paragraph seven, occurred  
22 prior to the formation of these entities. Is that  
23 what you're saying?

24 MR. TRIGGS: Object to form.

25 A. Yes.

1 Q. Okay. And that's the claim for the  
2 contractual basis for Proskauer Rose's --

3 A. A portion of the claim. But I mean, it  
4 was reinforced on a consistent basis because they  
5 continued to bring us legal work, and it was the same  
6 people who continued to come in and request that the  
7 work be done and continued to extract legal services  
8 from us, even to the point of forming these  
9 corporations. They were advised on a - on a weekly  
10 basis as to what was going on. Came in and were part  
11 of it. The bills, detailed bills, reflect that.

12 Q. The first billing statement that's  
13 attached to the amended complaint is January 31st,  
14 2000. Do you have any reason to believe there was any  
15 balance of fees due and owing prior to this statement?

16 MR. TRIGGS: Object to form. At what  
17 point in time?

18 Q. From the inception of any services  
19 provided to --

20 MR. TRIGGS: Same objection.

21 A. Could you please repeat that?

22 Q. Sure. Okay. Attached to the amended  
23 complaint as part of Exhibit B is a statement dated  
24 January 31st, 2000, invoice number 343838, showing a  
25 total due of \$85,315.54.

1 A. Right.

2 Q. Was this invoice submitted or, strike  
3 that, was this invoice attached to the amended  
4 complaint because it's the first invoice in which  
5 monies are due from or alleged to be due from  
6 iviewit.com, Inc., to Proskauer Rose?

7 A. I don't know.

8 Q. There are apparently earlier invoices,  
9 aren't there, sir?

10 A. It would appear from the February bill  
11 that there are earlier invoices.

12 Q. And the earlier invoices showing a balance  
13 or remaining balance due, is that correct?

14 A. Right. But I don't know. Our ledgers as  
15 to what bills were paid and that would speak for  
16 itself. I don't - I don't have those.

17 Q. So those ledgers would reflect how the  
18 payments were applied?

19 A. Correct. As would the correspondence to  
20 the company, because when a bill was paid, we would -  
21 it's our normal practice to send out a letter saying  
22 we received a certain amount of money and this is how  
23 it's been applied.

24 Q. And did you do that with regard to the  
25 iviewit matters?

1 A. I'd have to review my correspondence. But  
2 that would be our normal protocol.

3 Q. So if I understand your testimony, sir,  
4 your position is that this oral agreement referenced  
5 in the factual background, paragraph seven, is  
6 something that continued through the formation of  
7 these new entities?

8 A. Yes.

9 Q. Even though it was entered into prior to  
10 the formation of the entities themselves?

11 MR. TRIGGS: Object to the form.

12 A. Yes.

13 Q. If that was the case, sir, then why was it  
14 necessary for you to write or, strike that, for you to  
15 provide a written engagement letter or why did you  
16 feel it was necessary for you to provide a written  
17 engagement letter to iviewit LLC which was attached to  
18 the initial complaint?

19 A. I don't remember.

20 Q. So you felt you had an oral agreement  
21 which you felt traveled for all the entities, is that  
22 correct?

23 A. Right.

24 Q. But then sometime in September, around  
25 September 8th, 1999, you determined that it was

1 necessary to have a written engagement agreement.

2 A. Well, we determined that we were going to  
3 secure a written engagement letter. Right.

4 Q. And --

5 A. And I don't remember the exact reasoning  
6 other than the fact that perhaps -- I don't know the  
7 exact reason. I don't recall the thought process.

8 Q. So in your mind, was that written  
9 engagement agreement superseding the oral agreement?

10 A. No.

11 Q. So the oral agreement still stayed in  
12 place?

13 A. Right.

14 Q. Did the oral agreement no longer apply to  
15 iviewit LLC?

16 A. I didn't think about it.

17 Q. Well, you must be a detail guy because you  
18 do transactional work. So focus on details is  
19 important in transactions.

20 A. Absolutely.

21 Q. Is there some reason why you did not focus  
22 on that detail in this particular situation?

23 A. It was an administrative detail that I did  
24 not focus on.

25 Q. Was that your same explanation for why it

1 only included one entity?

2 A. I don't know why it only included one  
3 entity.

4 Q. Is there anyone else in your firm other  
5 than yourself who would be responsible for matters  
6 concerning the billing or payment on this particular  
7 file, the iviewit files?

8 MR. TRIGGS: Object to form.

9 Q. Let me strike the question. Did anyone  
10 direct you to get an engagement agreement from iviewit  
11 LLC?

12 A. No.

13 Q. And you undertook that on your own  
14 authority?

15 A. Yes.

16 Q. How long had Mr. Utley been engaged with  
17 iviewit at that time?

A. I don't know.

Q. Now, you had earlier testified that there  
were some questions raised in some of these billing  
statements, is that correct? One in particular I  
22 think you said?

23 MR. TRIGGS: Form.

24 A. Right.

25 Q. Was there ever any --

1 A. I think I said two in particular.

2 Q. And I think you said that had been  
3 addressed with the client?

4 A. The one - the one time that certain  
5 entries were - one statement that were raised by  
6 Mr. Utley, we sat down, went over them and addressed  
7 them and made whatever modifications we felt  
8 necessary. Yes.

9 Q. And what were those modifications that  
10 were made?

11 A. I don't recall.

12 Q. Was it an adjustment to the amount of the  
13 bill?

14 A. I'm sure it was.

15 Q. Did anyone else -- Strike that. At these  
16 board meetings that you attended for iviewit, were  
17 there ever any board members who expressed concern as  
18 to the amount of the billing statements by Proskauer?

19 A. Not in my presence.

20 Q. No one ever mentioned that they were  
21 concerned about the amount of money that was being  
22 spent with Proskauer for legal services?

23 A. You're talking about at the board  
24 meetings?

25 Q. At board meetings.

1 A. No.

2 Q. Now, you have known Mr. Utley since 1990 I  
3 think you testified to.

4 A. Right.

5 Q. Do you know him socially or how do you  
6 know him exactly?

7 MR. TRIGGS: Object to form. Asked and  
8 answered.

9 A. Socially. Well, I know him socially.  
10 Yes.

11 Q. Are you --

12 A. Primarily.

13 Q. Do you serve on any committees together,  
14 any boards together, anything of that nature?

15 MR. TRIGGS: Asked and answered.

16 A. Not any longer.

17 Q. Did you in the past?

18 A. Yeah.

19 Q. And where was that?

20 A. Well, we served on the board at the  
21 Florida Philharmonic in the early '90s together. And  
22 we served on the board of the FAU Foundation, Florida  
23 Atlantic University Foundation, in recent history.

24 Q. What's recent history?

25 A. Well, he's been on for some time. I have

1 been on, I don't know, for the last four or five  
2 years. But he doesn't serve any longer on that board.

3 Q. Why doesn't he serve any longer, if you  
4 know?

5 A. Because he's moved.

6 Q. Moved to?

7 A. Minnesota.

8 Q. Minnesota. Okay.

9 You need some more to drink?

10 A. No, I'm all set.

11 Q. Okay. Now, one of the damages alleged in  
12 the complaint is titled prejudgment interest. Is  
13 there any contractual basis that you can point out to  
14 me, any oral agreement, or in the engagement letter,  
15 that would provide for prejudgment interest?

16 A. I can't point it out.

17 MR. TRIGGS: Object to form.

18 Q. Okay. Let's restate it. Was there ever  
19 any provision in the oral agreement between Proskauer  
20 Rose and iviewit with regard to payment of prejudgment  
21 interest?

22 A. Not to my knowledge.

23 Q. Was that ever memorialized with regard to  
24 prejudgment interest in the engagement letter which  
25 you penned in September 8th, 1999?

1 A. Not to my knowledge.

2 Q. Does the engagement letter say anything  
3 about the right to recover attorney's fees, should it  
4 be necessary to bring legal action against iviewit for  
5 the fees due and owing?

6 A. No.

7 Q. Was that ever part of an oral agreement  
8 that you have alleged as a basis for the cause of  
9 action in this complaint?

10 A. No.

11 MR. TRIGGS: Steve?

12 MR. SELZ: Yeah.

13 MR. TRIGGS: On that point, I just want  
14 to -- I'll say it out of Mr. Wheeler's  
15 presence, if you prefer, I leave that to you,  
16 but on that subject, as I'm sure you're aware --

17 Do you want Chris to leave for this little  
18 piece? I leave it to you completely.

19 MR. SELZ: No, you can have him here.

20 Doesn't matter.

21 MR. TRIGGS: It's just -- I mean, I think  
22 both the complaint and the amended complaint  
23 reveal, the basis for fees is not a - by  
24 contract. It is by --

25 MR. SELZ: Right.

1 MR. TRIGGS: -- 57.105. So why spend the  
2 time going over whether it's contained in a  
3 written or oral contract. Clearly, if it was,  
4 we'd be suing you for it.

5 MR. SELZ: Well --

6 MR. TRIGGS: Relating it back to  
7 prejudgment interest, it's a legal issue. It's  
8 a -- You know.

9 MR. SELZ: Okay.

10 Q. I got to refer you back also to Exhibit 2,  
11 which is again that engagement letter, second page.  
12 I'm going to direct you to the - I guess it's going to  
13 be the third full paragraph from the top? It starts,  
14 we may from time to time? There is a one sentence  
15 paragraph effectively in the middle there.

16 A. Uh-huh.

17 Q. Okay. Were there ever any -- Based on  
18 that paragraph which says that you can - you may  
19 either request or your own initiative provide you with  
20 an estimate of fees or costs, was that ever done in  
21 any situation concerning the services provided to  
22 iviewit?

23 A. I can't remember, but there may have been  
24 in 2000, there may have been an inquiry as to how much  
25 do you think this is going to cost, and we would tell

1 them when they were trying to watch their costs.

2 Q. Was --

p135 l3 Eliot should be Utley - reason = typo

3 A. Mr. Eliot was trying to be very  
4 conscientious and watch the costs.

5 Q. Were you ever told that Mr. Utley was  
6 limited or had a legal, a monthly legal budget of  
7 \$5,000?

8 A. No.

9 Q. When you and Mr. Utley met socially, did  
10 you ever discuss the business of iviewit?

11 A. Discuss the business? Sometimes.

12 Q. Did you ever discuss the situation  
13 regarding the attorney's fees?

14 A. No.

15 Q. Did you ever discuss anything concerning  
16 any services provided by Proskauer Rose to iviewit?

17 A. Well, in the sense that all his  
18 business -- In the sense that we provided services for  
19 all of his business, it was obviously yes.

20 Q. Did anyone ever advise you that iviewit  
21 was -- Strike that.

22 All right, sir. I'm going to direct you  
23 to the same question I had with regard to the  
24 complaint in this matter, and that is the breach of  
25 contract count and the quantum meruit count. And

1 again my question relates to the fact that both  
2 sections, both quantum meruit and a breach of  
3 contract, recite the sum of \$369,460.97 being due and  
4 owing.

5 MR. TRIGGS: What's your question?

6 Q. My question is, is it your position that  
7 the oral contract or the written contract and the  
8 quantum meruit counts are for the same services?

9 MR. TRIGGS: Object to the form. Also,  
10 objection to the extent you're asking a legal  
11 conclusion of him.

12 Q. Let me rephrase it. The breach of  
13 contract count, sir, calls for damages of \$369,460.97.  
14 Is that true and correct?

15 A. Yes.

16 Q. What services are those related to? Are  
17 they related to the services set forth in Exhibit B to  
18 the amended complaint?

19 A. That was -- They relate to the services  
20 for all unpaid invoices which we have - all invoices  
21 which remain unpaid.

22 Q. Okay. And with regard to Count IV, the  
23 quantum meruit count?

24 A. They relate to the same.

25 Q. They relate to the same services?

1 A. (Witness nods.)

2 Q. Okay. Do you have any reason to believe  
3 that those services are distinguishable in any way  
4 from one another, the ones under the quantum meruit  
5 and the contract count?

6 A. I don't know the answer to that.

7 Q. Well, they both reference Exhibit B. Is  
8 that -- Is that what you're saying? I don't know.

9 MR. TRIGGS: You got a question there,  
10 Steve?

11 MR. SELZ: Yeah, I'm going to come up with  
12 one. Give me a minute while my brain fades.

13 Q. Okay, sir. So if I understand it, then,  
14 the invoices attached to Exhibit B are the basis for  
15 both the quantum meruit count and the breach of  
16 contract count, is that correct?

17 A. Yes.

18 Q. And there are no other invoices, to your  
19 knowledge, which would be claimed under either one of  
20 those two counts. Is that also correct?

21 A. Let me look. Well, I guess I'm confused.  
22 Where does it reference in the quantum meruit, Exhibit  
23 B?

24 Q. It doesn't. That's what I'm trying to  
25 find out. And maybe I misspoke earlier. I think what

1 it does is --

2 MR. TRIGGS: And again, Steve, I have a  
3 little - want to try to speed us along on this  
4 part. I'd like to do it without -- Again, I  
5 leave it to you on that point. If you want  
6 Chris here, fine, if you don't, that's fine,  
7 too, but I think I can short circuit your  
8 questions regarding quantum meruit versus breach  
9 of contract.

10 THE WITNESS: I can throw away my can  
11 here.

12 MR. TRIGGS: Yeah, why don't we do that.

13 MR. SELZ: Here.

14 THE WITNESS: I can go to the bathroom.

15 (Thereupon, the following proceedings were  
16 had out of the presence of the witness.)

17 MR. TRIGGS: Just put this on the record.  
18 I'm not taking shots at you. You know we're  
19 allowed to plead alternative pleadings.

20 MR. SELZ: Yeah, I know.

21 MR. TRIGGS: And if you look at what  
22 actually is contained within the quantum meruit  
23 claim, it does not rely on any alleged  
24 agreement. It just goes paragraphs one to six,  
25 and then it picks up with paragraph 33.

1 MR. SELZ: Right, but it's the same exact  
2 amount, 369,460.97.

3 MR. TRIGGS: All I'm saying is, you know  
4 we're allowed to plead alternative theories. We  
5 believe we have an enforceable agreement with  
6 all the three entities we sued. We also  
7 believe, if there is some conclusion to the  
8 contrary, we're entitled to be paid the value of  
9 the services rendered, and the value of those  
10 services is 369,000 and change.

11 So I'm happy that Chris has stepped out.  
12 I don't want you to think that I'm coaching him  
13 in that regard. I don't think we're really  
14 advancing the process by trying to trip him up  
15 on legal theory of --

16 MR. SELZ: No. I'm just trying to find  
17 out what the basis is to make sure there is no  
18 misunderstanding on my part, because you didn't  
19 reference the Exhibit B or the services  
20 provided.

21 MR. TRIGGS: I think if you would just  
22 look at the - what we proposed as the pretrial  
23 stipulation that we were due to have filed  
24 yesterday that that would make it clear that  
25 we're not trying to double dip and we're not

1 seeking a total of seven hundred some odd  
2 thousand, if that's the question. We're just  
3 not doing that. We have no intention of doing  
4 that.

5 MR. SELZ: Okay.

6 MR. TRIGGS: So -- Let's see if we can  
7 grab him here.

8 (Informal discussions off the record.)

9 Q. (By Mr. Selz) Okay. Now, the --

10 MR. SELZ: This is number five I think  
11 we're up to?

12 (Thereupon, said document was marked as  
13 Defendant's Exhibit Number 4 for identification  
14 by the reporter.)

15 Q. (By Mr. Selz) Okay? Mr. Wheeler, with  
16 regard to the engagement agreement, that was with  
17 iviewit LLC, is that correct?

18 A. The written engagement agreement.

19 Q. Correct.

20 A. Right.

21 Q. And there was - your earlier testimony was  
22 there was no other written engagement agreement with  
23 any other entity, is that correct?

24 A. Not that I'm aware of.

25 MR. TRIGGS: Object to the form.

1 Q. Was there any other written engagement  
2 agreement with any other iviewit entity?

3 A. Not that I can recall.

4 MR. SELZ: See? We can avoid that.

5 MR. TRIGGS: If you want me to clarify,  
6 I'll clarify, but I don't think that's right.

7 Q. Okay. So, at this point in time, are you  
8 aware of the status of iviewit LLC?

9 A. No.

10 Q. Do you have any files or records as to the  
11 current status of iviewit LLC?

12 A. No.

13 Q. Okay. Are you aware that iviewit LLC has  
14 been dissolved?

15 A. Am I aware of that? No, I'm not.

16 Q. Okay. What's been presented to you as  
17 Defendant's Number 4 is a printout from the Florida  
18 Department of State showing a revocation for annual  
19 report on iviewit LLC.

20 Have you seen annual report notices like  
21 this or, rather, printouts from the Florida Department  
22 of State before?

23 A. Not in this exact format, but, yes.

24 Q. Do you have any reason to believe that  
25 this is not a true and accurate reflection of the

1 current status of iviewit LLC?

2 A. I have no reason to believe that.

3 MR. BERNSTEIN: Excuse me, what exhibit is  
4 that?

5 MR. SELZ: That's number four.

6 MR. BERNSTEIN: In which, the complaint?

7 MR. SELZ: No, no. This is a separate  
8 sheet. It's a separate sheet pulled off from  
9 the Florida Department of State.

10 MR. BERNSTEIN: Okay. On the iviewit LLC?

11 MR. SELZ: LLC. Correct.

12 MR. BERNSTEIN: No dot-com LLC?

13 MR. SELZ: Correct.

14 MR. BERNSTEIN: Okay. Thank you.

15 Q. So, sir, assuming that this statement is  
16 correct and that iviewit LLC is no longer an active  
17 and validly existing corporation under the laws of the  
18 State of Florida, the con - or the engagement letter  
19 between Proskauer Rose and that corporation, iviewit  
20 LLC, does that - does that call that into question in  
21 your mind?

22 A. Call what into question?

23 MR. TRIGGS: Objection to the form.

24 Q. The engagement agreement and the  
25 continuing validity of it. Bear with me.

1 MR. TRIGGS: Object to the form.

2 Q. Go ahead.

3 A. In our amended complaint, I'm not so sure  
4 we even are referring to this agreement anymore, are  
5 we?

6 Q. No. You're not.

7 A. So why would it - why would it change my  
8 mind about anything?

9 Q. That's what I'm asking you, if it does.  
10 If it doesn't, then you say no, it doesn't.

11 A. It doesn't.

12 Q. Okay.

13 MR. TRIGGS: Are you suggesting that the  
14 Bernsteins should be sued as last directors  
15 there?

16 MR. SELZ: It's up to you guys. Not me.  
17 You choose your causes of action. Not me.  
18 Maybe you want the trial stricken and the matter  
19 stricken to amend the --

20 MR. TRIGGS: Give me justice.

21 MR. SELZ: In one way or another.

22 Okay. Okay, now we're up to five.

23 (Thereupon, said document was marked as  
24 Defendant's Exhibit Number 5 for identification  
25 by the reporter.)

1 MR. BERNSTEIN: Can I ask that everybody  
2 speak up? It's very hard to hear.

3 MR. SELZ: Sure, Eliot.

4 MR. BERNSTEIN: Thank you.

5 THE WITNESS: Okay.

6 MR. TRIGGS: Let's just switch here so --

7 Q. (By Mr. Selz) Okay. This is an invoice  
8 or statement dated June 18th, 1999 --

9 A. Right.

10 Q. -- to iviewit Corporation.

11 A. Okay.

12 Q. Is iviewit Corporation one of the  
13 defendants in this action, sir?

14 A. I don't believe so.

15 Q. Now, you had indicated to me that when you  
16 initially met with the Bernsteins it was Al Gortz who  
17 had referred or been referred the case?

18 A. Correct.

19 Q. Okay. I'm showing - here's a - this  
20 billing statement which is dated June 18th, 1999,  
21 starts out with an entry in January of 1999. Is that  
22 the first entry of services, to the best of your  
23 recollection, in this matter?

24 A. I believe so. I can't tell if this is -  
25 is - if this is page 2 or there's another page that

1 should be in here. I suppose the face page is page 1.  
2 This is page 2. But to the best of my recollection,  
3 that's probably the first entry.

4 Q. Well, was the name of the entity formed  
5 iviewit Corporation?

6 MR. TRIGGS: Object to the form.

7 A. I'd have to be - go back and check.

8 Q. Well, let's go through the -- I don't know  
9 if the entries are going to give you any --

10 A. They don't help me.

11 Q. Don't help your recollection.

12 A. No, they don't, except they're corporation  
13 documents. Ivewit Corporation formation documents.  
14 So ivewit as ivewit.

15 Q. Well, let's go down to the entry for  
16 January 13th, 1999, entry by R. Foster. Who is R.  
17 Foster? It's on the first page.

18 A. R. Foster was a paralegal.

19 Q. Okay. So his time would be billed at what  
20 rate?

21 A. It would be billed at whatever the rate  
22 for paralegals was at that time.

23 Q. So that entry January 13th, 1999,  
24 preparation of Articles of Incorporation, bylaws and  
25 organizational minutes for ivewit Corporation --

1 A. Oh, all right.

2 Q. -- does that refresh your recollection?

3 A. Yes.

4 Q. How about the next entry? I mean, we  
5 talked about the fact that you were doing  
6 transactional work and involved with the business  
7 side. You indicated in your earlier testimony you had  
8 nothing to do with regard to the intellectual property  
9 side or the transactional side of the whole  
10 transaction.

11 A. That's correct.

12 Q. I'm looking at an entry dated January  
13 14th, 1999, for a half hour. I'm assuming .5 is a  
14 half hour billing increment time?

15 A. Right.

16 Q. Follow up on status on intellectual  
17 property review and iviewit Corporation new  
18 incorporation?

19 A. Right.

20 Q. What intellectual property review were you  
21 involved with?

22 MR. TRIGGS: Object to the form.

23 Q. What did you review in that billing  
24 statement in that particular entry, sir? What did you  
25 do in that particular entry?

1           A.     Well, I can't tell you exactly what I did  
2 a couple of years ago, but this would reflect that  
3 this was logistics. I was -- On the status of the  
4 intellectual property review. In other words, how  
5 were we going to handle the review of the intellectual  
6 property matters. And you can't tell as to what  
7 portion of this component relates to that and what  
8 portion of that relates to new incorporation. I mean,  
9 it was all built into one bundle. But obviously, I  
10 was make an inquiry as to how we were going to handle  
11 that.

12           Q.     And who were you making that inquiry to?

13           A.     It doesn't say.

14           Q.     The follow up on new corporation, would  
15 that have been internal within the firm?

16           A.     Yes.

17           Q.     Do you have any reason to believe the  
18 follow-up on the intellectual property would have been  
19 made to any other party besides within the firm?

20           A.     Well, it's internal right now because it  
21 hadn't been referred out yet.

22           Q.     How about, who is G. Goldman? Is that a  
23 member of the firm as well?

24           A.     That was an associate. I'm sorry -- Yes,  
25 that was an associate.

1 Q. Gregg Goldman?

2 A. Gregg Goldman.

3 Q. Okay. I'm referring you to the entry of  
4 January 26, 1999.

5 A. Which one?

6 Q. January 26, 1999.

7 A. Right. I don't know Mr. Goldman. I mean,  
8 I did not talk to Mr. Goldman, that I can recall.

9 MR. TRIGGS: Again, Steve, on this topic,  
10 I'm not going to instruct Mr. Wheeler not to  
11 answer based on relevancy, but you know that  
12 this June 18 statement is not an invoice that we  
13 contend is unpaid and doesn't form the basis of  
14 our claims. So you're again not covering topics  
15 that are relevant to the case.

16 MR. SELZ: Well, I think I'm covering a  
17 topic which is relevant. Based on his earlier  
18 testimony, there were no issues concerning  
19 patents and the only scope of Proskauer's work  
20 was simply transactional or with regard to  
21 trademark or copyright, which is what his  
22 earlier testimony was.

23 MR. TRIGGS: If your bottom line  
24 suggestion is that Proskauer did any improper  
25 patent related work, as you know, that subject

1 was dealt with --

2 MR. SELZ: Well, but --

3 MR. TRIGGS: -- by means of a motion in  
4 limine.

5 MR. SELZ: Wait, is this a speaking  
6 objection, then?

7 MR. TRIGGS: No.

8 MR. SELZ: Okay.

9 MR. TRIGGS: I'm pointing out the law on  
10 this piece and the status of this case.

11 MR. SELZ: I understand that. But I  
12 certainly have a right to inquire as to whether  
13 or not he was mistaken in his earlier testimony  
14 about the scope of Proskauer's representation of  
15 iviewit or not. And I'm not - I can't be  
16 limited because of his earlier testimony.

17 MR. TRIGGS: Look, and like I said, I'm  
18 not instructing him not to answer. All I'm  
19 telling you is, as I indicated earlier, that I  
20 think a day is fair with Mr. Wheeler, and choose  
21 your time wisely.

22 A. Goldman is obviously an associate who  
23 worked for us and was, I'm sure, in coordination with  
24 Ms. Robbins working on looking at the business plan to  
25 see how we should approach, whether there was

1 something we could get our arms around that could be  
2 patented. It hadn't been decided how it was going to  
3 be handled yet.

4 Q. Okay.

5 A. I mean, identifying whether it was even  
6 worthwhile. And obviously they conducted on line  
7 Internet search, even seeing if there were -- I'm not  
8 exactly familiar with how they - what they do on line  
9 on their Internet searches, but they look for  
10 conflicts and they look for - look for -- They look -  
11 they - they research and look for items whether it  
12 seems like it's been handled before. But I can't - I  
13 can't speak in detail to it because I'm not an expert  
14 in that area. So that's obviously more logistics on  
15 that.

16 Q. Okay. How about on the next page, page 3  
17 of that statement, January 28th, 1999, A. Gortz?

18 A. That's my partner.

19 Q. Okay. That's Al Gortz?

20 A. Right.

21 Q. .75?

22 A. Right.

23 Q. Ken Rubenstein call, looks like CF, call  
24 from?

25 A. Conference --

1 Q. Conference?

2 A. -- with Mara Robbins regarding the  
3 confidentiality agreement. So Mr. Gortz had a  
4 conference with Mara Robbins as to the confidentiality  
5 agreement. He also had a conference with Eliot  
6 Bernstein and Ken Rubenstein, perhaps introducing  
7 them.

8 This again was all at the initial stages,  
9 saying this is a new client, we want you to know him,  
10 we're probably going to - he's probably going to be in  
11 touch with you, and we're going to have some issues to  
12 review here.

13 Q. How about the 02/01/1999, conference as to  
14 status of intellectual property work?

15 A. Well, yeah, that --

16 MR. TRIGGS: What's the question?

17 MR. SELZ: I want him to see if he can  
18 explain the entry.

19 Q. What intellectual property work were you  
20 talking about in that particular entry?

21 A. I don't know.

22 Q. Don't have any recollection of what it was  
23 for?

24 A. No.

25 Q. Is there any place where there would be a

1 more complete description of the service provided?

2 A. No.

3 Q. How about on 2/16/99, .25, conference with  
4 Mr. Bernstein, call to Mr. Rubenstein. Is that Ken  
5 Rubenstein?

6 A. Yes.

7 Q. Can you recall what you spoke to  
8 Mr. Rubenstein about?

9 A. No.

10 Q. I didn't think so. How about the next two  
11 entries down, 2/17/99, .25, call to Mr. Rubenstein re:  
12 patent advice?

13 A. Right.

14 MR. TRIGGS: What's your question?

15 Q. Do you recall what that entry involves or  
16 what - what you would explain to Mr. Rubenstein about  
17 with regard to patent advice?

18 A. It would be logistics, once again.

19 Q. Now, by logistics you mean --

20 A. How are we going to handle this. Is -  
21 is - are you signing it, are we going to refer it out,  
22 are we going to - did you receive - did you receive  
23 the matter, did you -- But he - he would be definitely  
24 a patent person. So the IP there would be patent.  
25 Right. But it didn't mean we were dealing with

1 substantive matters.

2 Q. Well, to determine logistics, would you  
3 have to look at the substantive matters at all?

4 MR. TRIGGS: Object to form.

5 Q. If you know. I mean, I'm --

6 MR. TRIGGS: Are you asking him what he  
7 did?

8 A. I don't know. I don't do IP work.

9 Q. Sir, with regard to services provided, we  
10 talked about corporations and formation of  
11 corporations early on, and you testified that  
12 obviously the more complex the corporate setup, the  
13 more expensive the services would be in establishing a  
14 corporation.

15 Do you consider preparation of an  
16 application for an employer identification number, an  
17 SS-4, to be a complicated matter?

18 A. No.

19 Q. How about preparation of a fictitious name  
20 application?

21 A. No.

22 Q. How long do you think those should take,  
23 respectively?

24 A. I don't know, but that's a paralegal  
25 putting in that time. I don't consider those

1 unreasonable periods of time.

2 Q. How about the entry 2/23/99, .25, review  
3 of correspondence re: patent matters, do you have any  
4 recollection of who that correspondence was from?

5 A. No. I'd have to see what the  
6 correspondence was. But --

7 Q. How about with regard to the entries on  
8 the next page, 2/26/99? L. Gardner, 2.0, prepare  
9 proof of publication, file fictitious name  
10 application, obtain FEIN number, letter to E.  
11 Bernstein regarding FEI number. I understand it's a  
12 paralegal, but weren't those some of the same services  
13 billed earlier on this billing statement?

14 A. Right. But she could have been -- One's  
15 preparing -- I mean, she could continue with the  
16 preparation of it. And we don't know it's the same  
17 one.

18 Q. Now, this --

19 A. Two hours at \$75 or, let's say it was \$65.  
20 I don't know what it was at that time. It was \$60.  
21 It would be \$120.

22 MR. TRIGGS: Steve, we'll write that one  
23 off. You guys cut the check for the balance.  
24 How about that?

25 Q. How about 3/24/99? .50. Call to

1 Mr. Lewin; conference with Mr. Healy regarding  
2 copyright; conference with patent counsel.

3 A. I see it.

4 Q. Okay?

5 MR. TRIGGS: What's your question?

6 Q. Do you have any specific recollection of  
7 who that patent counsel was?

8 A. No.

9 Q. How about --

10 A. But I believe it's Ray Joao and myself. I  
11 have no recollection, but I believe that's who it is.

12 Q. How about the entry, 3/31/99?

13 A. Of?

14 Q. K. Healy.

15 A. Uh-huh.

16 Q. .25, TC with K. Rubenstein re: patent  
17 advice.

18 A. With Eliot Bernstein.

19 MR. TRIGGS: What's your question?

20 A. Oh, K. Rubenstein.

21 Q. Re: patent advice?

22 MR. TRIGGS: What's your question?

23 Q. Do you have any knowledge as to what that  
24 entry involves?

25 A. No. It's not my entry.

1 Q. Does it change your earlier testimony that  
2 Proskauer Rose was providing any patent advice or any  
3 intellectual properties advice to iviewit?

4 A. No, because if you go up to 3/29/99, the  
5 same Guy, Kevin Healy, it shows he had a telephone  
6 conference with Raymond Joao regarding patent pending.  
7 So chances are he was responding to Ken Rubenstein  
8 tell Ken Rubenstein that he got Ray Joao involved.

9 Q. Well, that's speculation, because you  
10 don't know for sure.

11 A. You're right.

12 MR. TRIGGS: Steve, you are the one who  
13 asked him a question --

14 MR. SELZ: No, I didn't.

15 MR. TRIGGS: -- about a billing entry.

16 That's not his name.

17 A. You asked me if it changed my mind, and I  
18 said no. And I'm telling you the reason why it  
19 wouldn't change my mind.

20 Q. That's fine. How about Real 3D, there is  
21 an entry here on 4/30/99, confirm appointment with  
22 Real 3D?

23 A. Right.

24 MR. TRIGGS: What's the date again?

25 MR. SELZ: It's 4/30/99.

1 A. All right.

2 Q. Who is Real 3D?

3 A. Real 3D was a corporation that was up in -  
4 near Orlando. Central Florida. And they were  
5 purported to be the - as Jerry Stanley, their  
6 president, was purported to be one of the preeminent  
7 imaging experts and imaging companies. I don't know  
8 if the company would be called imaging company, but he  
9 would certainly be called imaging expert in the world.

10 Q. And there was I guess some sort of a  
11 meeting that you were having with them, if you can  
12 recall?

13 A. Well, I can recall very definitely.

14 Q. Go ahead.

15 A. What do you want to know about the  
16 meeting?

17 Q. Well, the meeting took place, obviously.  
18 When and where did it take place?

19 A. The company, Sy and his colleagues, Eliot,  
20 were reaching out and - and trying to establish  
21 contacts that they felt would be useful in many  
22 different domains. Whether it be customers who  
23 could - they could put on their web site, whether it  
24 be financiers who could help them finance their  
25 project, or whether it be --

1           So I made some calls, and through - to  
2 some other people I thought who were important in the  
3 technology field. They referred me and had - were -  
4 and the call I made was at 4/20/99 with Mr. Ferguson.  
5 They referred me to Mr. Stanley. They were doing a  
6 very gracious thing, and said Mr. Stanley, and also  
7 opened up the introduction to Jerry Stanley. I did  
8 not know him. So I called Stanley. He agreed to come  
9 down and look at the iviewit technology.

10           He came down and set up and met with - and  
11 saw the presentation. He was impressed, and he  
12 invited Eliot and - and - to come up and make a  
13 presentation to his entire staff. And I suppose you  
14 must know the rest about Real 3D and whoever they are,  
15 so I don't need to go into that.

16           MR. TRIGGS: Just answer the questions.

17           Just open up this door a little bit.

18           Q. Did you attend that meeting with Real 3D?

19           A. I attended both the presentations since I  
20 had set it up, and I - I attended the meeting up in  
21 Orlando where we went up.

22           Q. Do you recall when that meeting took  
23 place?

24           A. Yes. Took place on - took place on -- The  
25 meeting up there took place on 5/25.

1 MR. TRIGGS: Just to be clear for the  
2 record, Steve, just so we're both on the same  
3 page, he's getting the date by reviewing the --

4 THE WITNESS: The bill.

5 MR. TRIGGS: -- the bill.

6 MR. SELZ: That's fine.

7 Q. That was the eleven hour charged trip to  
8 Orlando for meeting with Real 3D?

9 A. We left in the morning and came back in  
10 the night. Drove. By caravan.

11 Q. Do you have any idea what this 4/26/99  
12 entry is, 1.0, rewrite iviewit letter?

13 A. I don't know which one that is.

14 Q. 4/26/99?

15 A. No, I see the entry, but I don't know  
16 which letter that was.

17 Q. Now, you said you did transactional work.  
18 Do you also do any intellectual properties work at  
19 all?

20 A. No.

21 Q. Were you involved with reviewing the  
22 trademark or any of those other things?

23 A. No.

24 Q. Okay. Then I'm going to refer you to an  
25 entry on 5/4/99.

1 A. Right. It says, review status of  
2 trademark. Doesn't say review the trademark.

3 Q. So all you did was review the status?

4 A. I reviewed whether it was being followed  
5 through on, the logistics, and how it was coming, and  
6 it was a follow-up. That's my responsibility.

7 Q. Okay. I'm going to refer you to entry of  
8 5/11/99.

9 A. Uh-huh. By who?

10 Q. J. Zamas.

11 A. Okay. Paralegal.

12 MR. TRIGGS: What's your question?

13 Q. Well, do you have any knowledge with  
14 regard to what was done for that entry, the  
15 preparation of Articles of Incorporation,  
16 organizational documents for iviewit.com, Inc.?

17 A. I assume it means exactly what it says.  
18 That we were preparing Articles of Incorporation.

19 Q. Did you review any documents for  
20 iviewit.com, Inc.?

21 A. Did I review any documents?

22 Q. Yes. Organizational documents for  
23 iviewit.com, Inc.?

24 A. I don't know. I'd have to look through  
25 here. Are you talking about me individually?

1 Q. Yes.

2 A. Or are you talking about Proskauer?

3 Q. No, you individually.

4 A. I - I can't tell. And it wouldn't be -- I  
5 can't tell.

6 Q. Okay. Now, earlier in your testimony you  
7 talked about the fact that Proskauer does not do work  
8 on a fixed-fee basis or that the fixed-fee basis was  
9 not the agreement with regard to any services  
10 provided?

11 A. Well, that's --

12 MR. TRIGGS: Object to form.

13 Q. Let me go back. I'll start from the  
14 beginning, please.

15 Your earlier testimony was that the  
16 services you provided to iviewit were not on a fixed  
17 fee basis; but, rather, were on an hourly basis, is  
18 that correct?

19 A. Yes. The corporate services.

20 Q. I don't know if that was your testimony or  
21 it was just --

22 A. Well, I'm clarifying it.

23 Q. Okay. The corporate services were on a  
24 fixed-fee basis?

25 A. Right.

1 Q. Were there any services that were provided  
2 on a fixed-fee basis?

3 A. I'm not sure. Perhaps - perhaps some of  
4 the copyright stuff may have been done on a fixed-fee  
5 basis. Trademark and copyright.

6 Q. Was there a separate agreement setting  
7 forth the fixed-fee basis for that trademark and  
8 copyright work?

9 A. No, but we charged them consistent with  
10 our - our overall agreement. We certainly weren't  
11 going to charge them differently than we charged  
12 anybody else. If it was a fixed fee, we'd charge  
13 them.

14 Copyright and trademark, I'm not totally  
15 familiar with them, but they - they are - there are  
16 certain items that are charged simply on a fixed-fee  
17 basis. Certain searches and whatever.

18 Q. How about with regard to the entry on  
19 5/17/99?

20 MR. TRIGGS: What's your question?

21 MR. SELZ: Let me -- I want to direct him  
22 in the right direction first.

23 MR. TRIGGS: I just want you to ask him a  
24 question.

25 MR. SELZ: Okay.

1 THE WITNESS: Okay. Whose entry?

2 Q. Your entry.

3 A. Okay.

4 Q. There is - there's actually three entries  
5 during that day. Conference on various contracts.

6 Conference with Mr. Bernstein and review of iviewit  
7 agreements.

8 Do you have any recollection of what those  
9 services were?

10 A. No. What was your question?

11 Q. My question is, do you have any  
12 recollection as to what those services were for?

13 A. I don't have any recollection.

14 Q. Do you have any recollection of a CD-ROM  
15 licensing agreement being part of the transactions or  
16 part of the work that you did?

17 A. A CD-ROM licensing agreement.

18 Q. Licensing agreement.

19 A. I don't have any - I don't have any  
20 familiarity with it, other than the entry shown as -  
21 shown for the Silver. Chances are that was something  
22 that was handled separate and apart from me.

23 Q. I know. But you were the lead person on  
24 the iviewit files, is that correct?

25 MR. TRIGGS: Objection, argumentative.

1 MR. SELZ: No, not argumentative.

2 A. Right. But it doesn't mean I knew I every  
3 detail on everything - every file.

4 Q. And you met with the board and with the  
5 Bernsteins on a regular basis.

6 A. Not at this stage.

7 Q. Okay. This is early on.

8 A. This is early on.

9 Q. Okay. So these corporations were just  
10 being formed at this point?

11 MR. TRIGGS: Object to form.

12 A. All of this organizational work was just  
13 being done at this time.

14 Q. Do you have any recollection as to whether  
15 or not there was any transactional work that you were  
16 involved with with transferring the technology rights  
17 or any of the technology agreements from Eliot  
18 Bernstein or whoever the inventors were to the  
19 corporations?

20 A. I have - I have recollections of that  
21 being done. Correct.

22 Q. And would you look at the technology  
23 agreements to be able to determine what assets were  
24 being transferred?

25 A. I'm not sure I understand.

1 Q. Okay. Did you look at the technology  
2 agreements to determine what assets were going to be  
3 transferred from, let's say, Eliot Bernstein to the  
4 corporation?

5 MR. TRIGGS: Object to form.

6 A. Technology --

7 MR. TRIGGS: Foundation.

8 A. -- agreements. I don't know what a  
9 technology agreement is. What do you mean?

10 Q. Technology licensing agreements.

11 A. Oh.

12 MR. TRIGGS: What's the question?

13 MR. SELZ: Did he look at the technology  
14 licensing agreements to determine what assets  
15 were being transferred from the individual to  
16 the corporation.

17 MR. TRIGGS: Object to form. Foundation.

18 Whenever you get to it --

19 A. I'd have to see the technology. I'd have  
20 to see the documents that you are talking about to  
21 understand your question.

22 I'm not sure whether I understand -- Are  
23 you saying, did I look at the agreements that  
24 transferred the - Eliot's rights to the other  
25 companies and --

1 Q. Correct.

2 A. I - I may not - I may or I may have not  
3 looked at the agreements, depending upon who had  
4 reviewed them and the level of comfort that we had  
5 with the person handling it.

6 MR. TRIGGS: Steve, when you get to a  
7 breaking point, take like a five-minute break.

8 MR. SELZ: You want to take a five-minute  
9 break?

10 MR. TRIGGS: That's fine with me. Two to  
11 five minutes. Whatever you guys want. I want  
12 to be quick. I want to get the maximum  
13 deposition coverage.

14 MR. BERNSTEIN: I need about fifteen.

15 MR. SELZ: How about compromise, say, at  
16 ten?

17 MR. BERNSTEIN: Okay.

18 (Brief recess.)

19 Q. (By Mr. Selz) Okay. Who is Hassan Mia?

20 A. He was -- Hassan Mia?

21 Q. Yeah. Hassan Mia.

22 A. He was a friend of Eliot -- Is it Eliot  
23 Cohen?

24 Q. Yeah.

25 A. He was a friend of someone's. Eliot or

1 one of Eliot's contacts who flew in from the West  
2 Coast, and he had been purported to be associated  
3 with - had sold one of his first high tech companies  
4 out and - and then was involved in some way with Real  
5 Player or Real Audio or whatever, but my sole contact  
6 was when he flew in for the weekend and we met him.  
7 Or I believe that's my sole contact.

8 What date is that?

9 Q. 5/24/99. I suspect that's a weekday.

10 A. No, I think it was a weekend. They flew  
11 in on a weekend. Wait a minute. 4/24. Let me see.

12 Q. 5/24.

13 A. 5/24.

14 Q. Because you've also got a conference that  
15 day with - or, rather, D. Thompson had a conference  
16 with you regarding confidentiality issues.

17 A. Okay. Well, maybe Hassan Mia was here  
18 twice for longer periods of time. Or I could have  
19 talked to Thompson separately.

20 Q. How about this one for 5/26/99, the  
21 1.0-hour entry?

22 MR. TRIGGS: What's your question?

23 Q. It says, review of patent; set up patent  
24 conference; arrange follow-up on shares. You reviewed  
25 the patent?

1           A.     Well, I reviewed what I had. We came  
2 back -- If you noticed, we went on the trip on 5/25.  
3 At that meeting, for the first time, Eliot displayed  
4 to all of us a new product. A video product. And I  
5 was driving with his - with his father and with Jerry  
6 Lewin in one car and Eliot was in another car, and as  
7 we were driving back I said - I asked the question, I  
8 said, this new product, is this - what have you done  
9 on the patent on this? And Eliot told us all - he was  
10 on the phone, he was in another car - he told us all  
11 that they hadn't done any work on that yet.

12                   So what I did was, I - Eliot had - as he  
13 had the patents, he wanted us to lock them up, so I  
14 had them locked up. So I pulled - when we returned, I  
15 pulled up the locked up patents out to make sure I had  
16 them. So I was reviewing them, and we determined we  
17 were going to have to set up a conference to make sure  
18 he was covered with Joao and everybody to see what to  
19 do in view of this new development.

20                   So reviewing the patent -- There's  
21 reviewing the patent and reviewing the patent. If  
22 you're saying reviewing it substantively, no.  
23 Reviewing it to see that I have what was supposedly  
24 the patent in the right thing and what everyone was  
25 going to talk about in the conferences, yes.

1 Q. Okay. Well, maybe I misunderstood part of  
2 your earlier testimony. You said you looked at the  
3 patents to figure out whether or not - maybe I'm  
4 mistaken - they covered the issue and whether or not  
5 to bring it to Joao's attention?

6 A. No, I wasn't looking to see if it covered  
7 the issue. I was looking to see if -- I was looking  
8 to see what I had in my filing cabinet Eliot had been  
9 giving to me and to store away for him. And since we  
10 were going to be talking in anticipation of the  
11 conference saying I better pull this out, it was a  
12 logistical thing, because I had no idea when we  
13 started talking to Joao or whatever what he was - what  
14 they were going to be referring to, because there was  
15 not - whether it was going to be one patent, two  
16 patents, three, if some were modifications or  
17 whatever. So I was reviewing to see what I had.

18 Q. Okay. Well, let's go on to the last page,  
19 the next page of the bill, I should say.

20 A. Right.

21 Q. Which is page 18.

22 A. Right.

23 Q. And I'm going to direct you to - actually,  
24 let's see, there is 5/27/99.

25 A. Right.

1 Q. It says 1.5, entry for you: Overview of  
2 iviewit patent matters and corporate matters?

3 A. Right.

4 Q. What did that entail?

5 A. It would entail sitting down, taking a  
6 piece of paper and seeing where we are on each thing;  
7 who is doing what on corporate; who is doing -- Now  
8 that we've gone to this weekend, now that we've gone  
9 to these conferences, now that we see and really  
10 giving myself an overview of who is doing what and who  
11 is following through and on what patent matters and on  
12 what corporate matters. Again, more logistical.

13 Q. I'm sorry, that's -- The only distinction  
14 between that and the entry on 5/26 is what?

15 MR. TRIGGS: Object to the form. I think  
16 he's testified as to what the entries were. You  
17 want him to tell you again?

18 Q. What's the difference in the entry on 5/26  
19 which says, review of patents and set up patent  
20 conference, and 5/27, overview of patent matters?

21 A. Well, first of all, overview, it's  
22 overview of patent matters and corporate matters. So  
23 I was looking at -- I mean, a portion of it was the  
24 patent matters, but a portion of it was the corporate  
25 matters. So it's quite distinguishable on that. And

1 as far as review of the patent, it was actually  
2 looking at the real patent documents for the first  
3 time to sort them out in anticipation of a conference  
4 call we were going to have which resulted from Eliot  
5 telling us he had not followed up with Joao in doing  
6 the video.

7 And so, I mean, there were a bunch of  
8 documents. So it was organizing, putting them  
9 together in anticipation of the whole conference.

10 Q. Okay. And 5/28/99, D. Thompson II,  
11 conference with D. Thompson it appears, according to  
12 that?

13 A. Right. Re: patents and confidentiality  
14 agreements?

15 Q. Correct.

16 MR. TRIGGS: What's your question?

17 Q. I don't see an entry for a meeting you had  
18 with D. Thompson on that date.

19 A. I probably missed it. We don't always put  
20 down our time.

21 Q. So it's a freebee. Is that how that one  
22 works?

23 A. I would say that mine is probably subsumed  
24 by 5/28, a meeting as to patent issues and management  
25 matter.

1 Q. And how about 5/31, review of patent and  
2 other materials?

3 MR. TRIGGS: Again, what's your question?

4 Q. What did that entry entail, if you can  
5 recall?

6 A. I don't recall.

7 MR. SELZ: Number six?

8 (Thereupon, said document was marked as  
9 Defendant's Exhibit Number 6 for identification  
10 by the reporter.)

11 Q. (By Mr. Selz) During the summer, were  
12 there any other discussions that you could recall with  
13 Ken Rubenstein regarding the patents or the  
14 intellectual properties of iviewit?

15 MR. TRIGGS: Object to form. During what  
16 period of time?

17 Q. During the period of time that we've  
18 discussed for the first bill, which was January 1999  
19 through May '99.

20 A. What was the question?

21 Q. Can you recall any other conversations or  
22 discussions you had with Ken Rubenstein?

23 A. Other than as reflected in there?

24 Q. Other than as are reflected in these  
25 billing statements.

1 A. No.

2 Q. Do you recall a corporation named I.C.,  
3 Inc.?

4 A. I.C., Inc.?

5 Q. Yeah.

6 A. How do you spell that?

7 Q. Capital I capital C, Inc.?

8 A. Where is it?

9 Q. It's on page four.

10 A. No.

11 Q. Do you know if any corporation, I.C.,  
12 Inc., was ever formed?

13 A. No.

14 Q. In that same entry, it also says  
15 preparation, certificate of cancellation of iviewit  
16 LLC? Do you have any knowledge of that?

17 A. I don't have any recollection of it.

18 Q. And this is after the September 8th, 1999,  
19 engagement letter, is that correct?

20 A. Correct.

21 Q. And iviewit LLC was the party that entered  
22 that engagement letter with Proskauer Rose, is that  
23 correct?

24 MR. TRIGGS: Objection. You have now  
25 covered that issue about five, six times.

1 MR. SELZ: This is my twelfth.

2 A. Yes.

3 Q. Yes?

4 MR. TRIGGS: Date hasn't changed, Steve.

5 MR. SELZ: Time hasn't, either.

6 MR. TRIGGS: Apparently.

7 Q. Who is Mr. Assaf, A-s-s-a-f?

8 A. Mr. Assaf.

9 Q. I'm sorry, Assaf.

10 A. He was an investor.

11 Q. Any particular organization that he was  
12 with, Mr. Assaf?

13 A. He was chairman of Sensomatic Electronics  
14 Corporation. But he was al - he's also a great  
15 philanthropist in town and a - and he's invested in  
16 considerable number of corporations. So they asked -  
17 I - they were constant -- Sy and Jerry and everybody  
18 else was constantly asking for new sources, so they  
19 asked me to talk to him, so I did --

20 Q. Okay.

21 A. -- to see if he had any interest. And he  
22 actually did come over once, and I don't know if this  
23 is the first time or the second time --

24 Q. There's an entry --

25 A. -- or the third time that I talked to him.

1 Q. Okay.

2 A. But on one occasion he did come over and  
3 see the product.

4 Q. There's something here, it says 1/05/2000,  
5 C. Wheeler, .5, follow-up on status of lawsuit  
6 preparation, review of news articles? Do you recall  
7 what that was for?

8 A. Don't honestly know.

9 Q. Do you remember a lawsuit that was ever  
10 filed by any iviewit of the iviewit entities?

11 A. No, but I'd have to go back and check my  
12 notes to see whether there were.

13 Q. Would that be normally handled by the  
14 litigation department at Proskauer Rose?

15 A. But this says status of lawsuit  
16 preparation. So if one of my large clients comes in  
17 and is a corporation and we have a lawsuit, it  
18 wouldn't be unusual for me, as I - just to place a  
19 call and say, how are we coming on that lawsuit, Matt,  
20 how are we coming on that lawsuit, David, or whatever.  
21 Review of news articles could have obviously been  
22 articles relating to - to this.

23 Now, as to lawsuit, I don't - I don't - I  
24 don't know. I'd have to go back and check and see  
25 what lawsuit we had going or what litigation related

1 things we had going. It could have been -- At one  
2 time, I don't know if - I can't say whether this is  
3 the time or not, but there were occasional matters  
4 that - that came in that were threatened or whatever.

5 For instance, Jim -- For instance, the  
6 person from New Jersey, Armstrong wanted to get his  
7 money back or - and so he threatened a lawsuit, and  
8 this could have been a response letter or something  
9 else like that.

10 From time to time there were peripheral  
11 litigation matters. I don't know if any of them  
12 blasted into full-fledged lawsuits. I don't recall.

13 Q. Okay. How about on -- Let's see, we've  
14 got the ninth page of that billing statement.

15 A. All right.

16 Q. 1/11/2000, 1.0, conference with  
17 Mr. Bernstein regarding patents and infringement.  
18 That doesn't sound administrative to me. Could you  
19 describe what that activity was?

20 MR. TRIGGS: Object to the preface as  
21 argumentative.

22 MR. SELZ: I'll retract that.

23 Q. Could you describe for me what that was  
24 dealing with, sir?

25 A. I can't remember. But Eliot was disturbed

1 that - at times that people may have been trying to  
2 steal his patents. So I believe he came in and talked  
3 to me about it.

4 Q. And the same day there is another  
5 conference with Eliot Bernstein for an hour.

6 A. Right.

7 Q. And a one-hour conference with Mr. Utley.

8 A. Right.

9 Q. And a one-hour conference with Mr. Joao.

10 A. Right.

11 Q. And another one-hour conference with  
12 Mr. Thompson and Mrs. Robbins regarding work.

13 A. Right.

14 Q. Whatever that was.

15 A. Right.

16 Q. And another half hour conference with  
17 Mr. Lewin regarding patents.

18 A. Right.

19 Q. And then another half hour conference with  
20 Mr. Bernstein, Mr. Utley, regarding status of patents  
21 and corporate setup.

22 A. Right.

23 Q. And then you've got another entry for 8.75  
24 hours -- I'm sorry. That's Robbins. I'm sorry.

25 A. Robbins.

1 Q. I'm sorry.

2 A. You are going to commend me on working so  
3 hard.

4 Q. I was going to say, you got to cut back.  
5 So you have - but again, it references --  
6 Do you have anything with regard to that - those ones  
7 referencing patents, the 1/11/2000 to --

8 A. I don't recall exactly. So - I mean, it  
9 would be speculation. I would believe they're all  
10 related, to be honest with you.

11 Q. Again, I know you have answered this, but  
12 I just want to make sure, you don't have any more  
13 comprehensive notes as to the services provided, other  
14 than what's contained in these billing statements, is  
15 that correct? You don't have a handwritten billing  
16 statement that has a more complete description of the  
17 services?

18 A. No, no, no.

19 Q. Or you don't have some interim billing  
20 statement and then it's produced or redacted or  
21 whatever?

22 A. No. Here's the name of the person, Cris  
23 Branden was his last name, at Huizenga Holdings --

24 Q. Okay. Thank you.

25 A. -- that we were concerned about.

1 Q. Okay. Now, there's a - there's an entry  
2 here which is 1/12/2000 with J. Zammas.

3 A. It's a paralegal.

4 Q. Paralegal. Right.

5 A. All right.

6 Q. Okay. Fax Articles of Amendment for  
7 iviewit Holdings, Inc., uview.com, Inc., to  
8 CorpAmerica for filing, work on due diligence.

9 A. 1/11 is this?

10 Q. I'm sorry, 1/12.

11 A. Wrong page.

12 MR. TRIGGS: Page 11.

13 Q. Page 11.

14 A. Okay.

15 Q. 1/12.

16 A. 1/12.

17 Q. J. Zammas.

18 A. Fax Articles of Amendment for iviewit  
19 Holdings, Inc. and uview.com and to CorpAmerica for  
20 filing. All right.

21 Q. Okay. Those entities, uview.com, Inc.,  
22 and iviewit Holdings, Inc., aren't parties to this  
23 action, are they?

24 MR. TRIGGS: Iviewit Holdings, Inc.?

25 MR. SELZ: Iviewit -- You've got --

1 A. Iviewit Holdings, Inc., is.

2 Q. Is, but uview.com, I'm sorry, isn't.

3 A. Well, uview.com was, as I recall -- I  
4 mean, I have to go back and look at our charts and  
5 things like that. But it might have been a  
6 predecessor to one of these. That's my point. I  
7 mean, there were name changes. As we did mergers and  
8 that, just like in any corporate matters, once you  
9 effect the merger and make the transfers, then  
10 sometimes you change the name again.

11 So I don't know the answer to that  
12 question. Iviewit Holdings, Inc., is definitely a  
13 party to this. Uview.com, Inc., I think became  
14 something else. I think the name was changed.

15 Q. How about this entry, January 14th, 2000,  
16 page 12. It's under D. Thompson II. .75, conference  
17 and analysis with attorneys C. Wheeler and G. Coleman  
18 regarding securities and technology issues.

19 A. Right.

20 Q. Do you recall what that was involving?

21 MR. TRIGGS: Object to form.

22 A. Conference and analysis with attorneys  
23 regarding -- Well, I don't know if it was one  
24 conference or two. So what -- You talk to Gayle  
25 Coleman regarding securities. I don't know if it was

1 a conference with the two of us or two separate  
2 conferences. So, no, I don't recall what it is.

3 Q. How about on January 14th, 2000, it says  
4 conference with Mr. Utley and Mr. Rubenstein?

5 A. Uh-huh.

6 Q. Is that Ken Rubenstein?

7 A. Uh-huh.

8 Q. You have to say yes or no for the court  
9 reporter.

10 A. Yes. I'm sorry.

11 Q. Do you have any recollection as to what  
12 that conference was about?

13 A. No.

14 Q. Was that in person or was that telephonic?

15 A. Telephonic. I mean, Utley was probably  
16 with me in person, and Rubenstein was probably on the  
17 line.

18 Q. Do you have any recollection at all what  
19 you discussed?

20 A. No.

21 Q. And this was past the initial formation  
22 phase of the corporation? This was in January of 2000  
23 already, is that correct?

24 A. Correct.

25 Q. What was Investech, if you know?

1 MR. TRIGGS: Point him to a place in the  
2 bill.

3 A. That was Huizenga's subsidiary. That was  
4 the affiliated company. That was his - that's his  
5 high tech affiliate. I believe that's correct.

6 Q. How about - I don't know if you have any  
7 information on this, but let me ask it to you. It's  
8 on January 14th, 2000, G. Coleman.

9 A. Uh-huh.

10 Q. 3.25 entry. It's a telephone conference  
11 with Martha re: private offering memorandum; telephone  
12 conference with E. Lewin re: audited financial  
13 statements; interoffice conference with R. Thompson.  
14 Then it goes, preparation of revisions to intellectual  
15 property risk factors.

16 A. Uh-huh.

17 Q. Interoffice conference with C. Wheeler  
18 regarding potential intellectual property  
19 infringement.

20 A. Uh-huh. She was doing a Private Placement  
21 Memorandum, so she was explaining how she was  
22 approaching it.

23 Q. Would she prepare some kind of --

24 A. Well, I mean, it says the disclosure.  
25 There was a private placement they were putting

1 together. I don't think the private placement ever  
2 came to fruition. I think it was called off. I could  
3 be wrong. Maybe the document was used. I'd have to  
4 go back and check.

5 Q. When iviewit LLC was dissolved, did you  
6 ever make an attempt to get any other signed retainer  
7 agreement?

8 A. No.

9 Q. Or signed engagement agreement from any of  
10 the other entities?

11 A. No.

12 Q. Was there any particular reason why you  
13 didn't?

14 A. No.

15 Q. There's an entry on the next page, page  
16 14, 1/17/2000, G. Coleman. I don't know if you've got  
17 any information about this. But it says, conference  
18 with E. Lewin regarding financial information;  
19 telephone conference with K. Rubenstein regarding  
20 potential or possible infringement it says.

21 A. Uh-huh.

22 Q. Do you have any information about that at  
23 all?

24 A. No.

25 Q. Did you --

1           A.     But since he was doing a securities  
2 document, I - I mean, it speaks for itself. She was  
3 probably talking to him about doctrinaire matters.

4           Q.     Was there ever a Share Exchange Agreement  
5 that was executed with Investech?

6           A.     I'd have to check my files. I - I think  
7 there was a Share Exchange Agreement that was executed  
8 by virtue of the re -- There was a reorganization  
9 approximately about this time, and we needed the  
10 cooperation of all the shareholders. So I believe  
11 that that's - it was part of that - that, but I have  
12 to check to be certain.

13          Q.     How about Crate Investments?

14          A.     Where is - what page?

15          Q.     Page 17. January 26 entry. Conference  
16 with Brian Utley - it's not your entry - but regarding  
17 Alpine and Crate Investments.

18          A.     Whose entry is it?

19          Q.     D. Thompson.

20          A.     With Alpine and Crate Investments. I'm  
21 not familiar with Crate Investments. But there were  
22 numerous -- I mean, they had a list of investors they  
23 were trying to get to invest, so --

24          Q.     How about the next entry. It says - it's  
25 an entry from you, .25, conference as to follow-up on

1 our money?

2 A. Okay.

3 Q. Whose money is that?

4 MR. TRIGGS: What - what's the date there?

5 MR. SELZ: January 26, 2000.

6 A. I don't know what that means.

7 Q. Was it money for the -- Well, strike that.

8 You already said you don't know.

9 A. It doesn't sound appropriate. I think  
10 it's more of a typo. It must - handwriting. I don't  
11 know what our means, so I don't know. It might be  
12 something else.

13 I mean, it doesn't sound like in  
14 character.

15 (Thereupon, a document was marked as  
16 Defendant's Exhibit Number 7 for identification  
17 by the reporter.)

18 Q. Okay. How about the entry on - this is on  
19 the third page of this billing statement at the very  
20 bottom. It's 3/10/2000. C. Wheeler. 25, conference  
21 with B. Utley and M. Robbins regarding preparation of  
22 employment agreement.

23 Do you recall whose employment agreement  
24 that was?

25 A. I think it was -- No, I don't recall, but

1 obviously -- Oh, it was Armstrong's employment  
2 agreement. Surrounding items make it clear.

3 Q. Who is Armstrong?

4 A. He's a friend of Eliot's from New Jersey  
5 who Eliot brought into the company. Right. Jim  
6 Armstrong his name was.

7 Q. Another question with regard to an entry  
8 on 3/22/2000. It's on the next page, page 5. It's  
9 towards the bottom. .25. Arrange review of  
10 confidentiality agreement.

11 How do you arrange the review of  
12 confidentiality agreement?

13 A. Talk to the person that said you need to  
14 do a confidentiality agreement. So - and she did,  
15 because on the next entry she had a meeting with Brian  
16 Utley regarding confidentiality agreements.

17 Q. And that took a quarter of an hour, 15  
18 minutes?

19 A. Well, I had to tell her what was involved  
20 and what we were going to be doing and whatever.

21 Q. What's 3Com NDA, if you know what that is?

22 A. Where is that?

23 Q. It's on page 6 under an entry dated

1 obviously someone they were working with.

2 Q. How about under 3/27/2000, .25, follow-up  
3 on trademark matters? When you follow up on a matter  
4 like that -- Let me go back for a second. When you  
5 follow up on a matter like that, what do you do, do  
6 you call one of the other people who is working on the  
7 trademark and ask them what's going on, basically?

8 MR. TRIGGS: Object to the form. Are you  
9 talking about that particular entry or are you  
10 talking about a general policy?

11 MR. SELZ: Generally.

12 Q. When your billing statement says follow up  
13 on trademark matters, you are not actually doing the  
14 trademark matter, you are calling someone who is  
15 working on it and asking them what the status is? Is  
16 that what that is?

17 A. Yeah. You can tell from the - again, the  
18 surrounding issues. There were trademark issues, and  
19 they were talking to me about them and what it  
20 probably - I mean, we can only speculate, but there  
21 was some follow-up on -- Some question was raised on a  
22 trademark matter and I followed up to make sure it was  
23 taken care of. Whatever the proper person.

24 Sometimes it was delegated to a local  
25 person who was charged with coordinating with New York

1 and getting things done. Sometimes, if I knew the  
2 person directly in New York who was handling, I could  
3 call him directly. It's follow-up. In most cases -  
4 and in this issue, follow-up would generally mean  
5 turning to the person here in Boca Raton who was  
6 handling it.

7 Q. Now, do you know if those trademarks for  
8 the iviewit entities were ever completed?

9 A. Well, I mean, there were - trademarks -  
10 trademarks and copyrights?

11 Q. Correct.

12 A. Were always in different states of - of  
13 being processed.

14 Q. Okay. But you were following up on them  
15 to make sure they were completed, presumably, is that  
16 right?

17 MR. TRIGGS: Objection, argumentative.

18 Q. You were following up on them for what  
19 purpose, sir?

20 A. I was following up to see the status.

21 Q. Okay. And why would you follow up to  
22 check the status?

23 MR. TRIGGS: Again, are you referring to  
24 this specific entry or generally follow up in  
25 general?

1 MR. SELZ: In general.

2 Q. Follow-up in general, why would you  
3 follow-up?

4 MR. TRIGGS: Object to the form  
5 irrelevant.

6 A. There can't be a general follow-up. There  
7 has to be a follow-up to check on a specific item,  
8 where it was or --

9 Q. Let me rephrase the question, then. With  
10 regard to this particular item, what was the purpose  
11 of the follow-up?

12 A. I don't know.

13 Q. Would it be a fair characterization, sir,  
14 to make sure that you followed up to make sure things  
15 were completed?

16 A. No.

17 Q. Why else would you follow up on a matter?

18 A. We would follow up to find out what the  
19 present status of that copyright or trademark was,  
20 because they - if it had been completed, if it had  
21 been filed, if it was being challenged or --

22 I'm not totally conversant with it, but  
23 following up is at what stage of the process is it,  
24 and so we can report back to the client. You have a  
25 valid trademark, you don't have a valid trademark,

1 it's going to cost you more money to continue  
2 prosecution of this trademark being challenged.

3 I mean, there could be many different - it  
4 could be in the - its status could be in many  
5 different categories.

6 Q. Okay. So it could be at many different  
7 stages of the prosecution of a trademark or copyright?

8 A. Absolutely.

9 Q. Now --

10 A. And there seems to be quite a bit of  
11 activity with other people involved in the trademark  
12 and copyright issues at this time. So obviously  
13 something was going on.

14 Q. I'm going to refer you down to 3/30/2000,  
15 the next page.

16 A. 3/30?

17 Q. Yes.

18 A. Okay.

19 Q. There's two entries. One is .5 conference  
20 with B. Utley re: NBA?

21 A. Right.

22 Q. That's Brian Utley?

23 A. Right.

24 Q. Do you have any idea what NBA is?

25 A. Yes, National Basketball Association.

1 Q. What was the National Basketball  
2 Association with?

3 A. He wanted us to see if we could sell the  
4 product to the NBA.

5 Q. And did you undertake that?

6 A. We placed calls. We represent the NBA, or  
7 we do a lot of their work, and we placed calls, but  
8 not successfully.

9 Q. Okay. And that same day there is another  
10 entry, .25, conference with B. Utley regarding  
11 copyright?

12 A. Right.

13 Q. Do you have any recollection of what that  
14 entry was dealing with?

15 A. No. He obviously had a question.

16 Q. Okay. The last entry on that page.

17 A. You're right to pick up on that. Right.

18 Q. Preparation of memo to C. Wheeler re:  
19 copyright matters.

20 A. Right.

21 Q. Do you recall what that's dealing with?

22 A. No, but I would imagine it's all related.  
23 It flows.

24 MR. TRIGGS: While you're marking the  
25 next, I'm stepping out for two seconds.

1 MR. SELZ: Okay.

2 (Thereupon, a document was marked as  
3 Defendant's Exhibit Number 8 for identification  
4 by the reporter.)

5 MR. SELZ: I'm going to hit the bathroom,  
6 too, so I'll take a break.

7 (Brief recess.)

8 MR. SELZ: Okay. We're back on.

9 MR. BERNSTEIN: Hello?

10 MR. SELZ: Eliot, you're there?

11 MR. BERNSTEIN: Yeah.

12 MR. SELZ: Okay. Just want to make sure  
13 you're still with us.

14 MR. BERNSTEIN: Yeah.

15 Q. (By Mr. Selz) Okay. I'm going to refer  
16 you to what's been marked as number eight, defendant's  
17 number eight. It's a statement dated May 30th, 2000.  
18 At that point it shows a bunch of balances on the  
19 right-hand side. Remaining balances.

20 A. Right.

21 Q. And payment of 28,525.72.

22 A. (Witness nods.)

23 Q. Are you aware if there are any other  
24 payments to that point in time on the invoice?

25 MR. TRIGGS: Object to the form. As to

1           what invoice, the 10/12/99 invoice?

2           Q.     (By Mr. Selz) As to any of the amounts  
3 reflected on the invoice. This invoice. If there  
4 had been any other statements. Because you  
5 previously stated that some of the payments would  
6 disappear if they're paid off.

7           A.     Right, but I'd have to compare them. I  
8 can't tell what's been paid from this. I can tell a  
9 payment's been made on 10/12/99.

10                   (Thereupon, Mr. Bernstein was speaking,  
11 but was not able to be heard by the reporter.)

12                   THE REPORTER: I'm sorry, I can't hear  
13 him.

14                   MR. SELZ: Eliot, he can't -- Eliot, this  
15 is not an opportunity for you to be making  
16 comment, unfortunately, so --

17                   MR. BERNSTEIN: Oh.

18           Q.     So you said earlier, you testified earlier  
19 you got ledger sheets or some other way of  
20 ascertaining whether or not there were other payments  
21 that were made?

22           A.     Yeah. We keep ledger sheets.

23           Q.     And approximately how much was due and  
24 owing from iviewit.com, Inc., at this point to  
25 Proskauer Rose, according to this invoice?

1 MR. TRIGGS: Object to form.

2 A. According to this invoice?

3 Q. According to this invoice. The total that  
4 was due at that point in time in May of 2000.

5 A. Well, you'd have to add this 14,000 plus  
6 these other columns.

7 Q. Over \$300,000. Would that be a true  
8 statement?

9 A. One hundred, two hundred, three -- Yes,  
10 it's over \$300,000.

11 Q. Okay. And that was a year before the  
12 lawsuit was filed, approximately. Is that true and  
13 correct statement of fact?

14 A. When was the lawsuit filed?

15 Q. May of 2001.

16 A. Okay.

17 Q. May 2nd, 2001.

18 A. Okay.

19 Q. So Proskauer Rose was owed over \$300,000  
20 on May 30th, 2000. Did you ever advise iviewit that  
21 you would cease doing work for them if they didn't pay  
22 their bill?

23 A. We constantly advised iviewit that they  
24 had to make payment arrangements to - or we would  
25 cease doing the work. We would be left no choice not

1 to. We weren't interested in carrying the balances  
2 forever.

3 Q. Were those payment arrangements made?

4 A. A number of times we entered into payment  
5 agreements.

6 Q. Okay. After this invoice was submitted?

7 A. I don't know when. I'd have to see the  
8 times. It may be before or may be after. And - but  
9 it - to suggest that we were --

10 MR. TRIGGS: Just answer his question.

11 THE WITNESS: All right. Go ahead.

12 Q. Okay. Going back to the billing statement  
13 itself --

14 A. Okay.

15 Q. -- I'm looking at an entry 4/6/2000 --

16 A. Okay.

17 Q. -- for three hours; attend board meeting.

18 A. Correct.

19 Q. Do you recall what that board meeting was  
20 with reference to?

21 A. No, but there should be minutes on it,  
22 which the company prepared.

23 Q. Okay. 4/12/2000, the next page. .5.  
24 Conference with M. Robbins regarding trademark and  
25 other issues?

1 A. Right.

2 MR. TRIGGS: What's your question?

3 Q. Do you have any recollection as to what  
4 that conference with M. Robbins specifically dealt  
5 with?

6 A. It dealt with the issues on her next  
7 entry, five - for five hours and a quarter.

8 Q. That's dealing with Armstrong employment  
9 agreement?

10 A. Not all of them. But at least the  
11 trademark matter.

12 MR. TRIGGS: You want to talk to Eliot  
13 about whatever is beeping in the background  
14 there?

15 MR. SELZ: Eliot?

16 MR. BERNSTEIN: Yeah.

17 MR. SELZ: Do you have to take care of  
18 something there? Sounds like there's something  
19 beeping in the background there.

20 THE WITNESS: No, I think it's --

21 MR. BERNSTEIN: I don't hear anything.

22 MR. SELZ: Okay. It's --

23 MR. TRIGGS: Sorry.

24 THE WITNESS: It's a machine out there.  
25 It's a Xerox machine down there.

1 MR. SELZ: Okay.

2 Q. Okay. So you got - you want to mute us,  
3 Eliot, so that way we don't hear your background sound  
4 a little bit?

5 Was there a web agreement that you're  
6 familiar with? Some kind of Internet web agreement  
7 that iviewit was involved with?

8 A. I don't - I don't recall it. I don't  
9 recall the details of it.

10 (Thereupon, a document was marked as  
11 Defendant's Exhibit Number 9 for identification  
12 by the reporter.)

13 Q. What is Lineberger?

14 A. There's a wealthy investor, Jim  
15 Lineberger, who was also affiliated with J. Zammas and  
16 his sons, Jamie Lineberger, and we were trying to get  
17 them interested in this project.

18 Q. Did anything ever come of that?

19 A. No, but the materials - I believe the  
20 materials were sent to him.

21 Q. Well, we talked earlier about the  
22 dissolution of iviewit LLC, if you recall.

23 A. Right.

24 Q. Okay. And then I'm going to direct your  
25 attention to an entry 12/07/2000. It should be 2001,

p197 115 - Reference to  
J. Zammas is incorrect,  
although I do not, at  
this time, recall who I  
referenced - reason =  
typo

1 by the looks of it. No, it's 2000, I'm sorry, because  
2 it's a carryover from December. But it's by M.  
3 Robbins, last entry, 6.0? Do you recall if iviewit  
4 LLC was reinstated or restored?

5 A. I don't know what was involved in that, to  
6 be honest with you. It was more ministerial stuff  
7 that they were going through.

8 Q. Why was it ministerial? What was the --

9 A. Well, they didn't have to get me involved,  
10 obviously, whatever it was. Mara Robbins was  
11 overseeing it. It's clear that -- So I don't - I  
12 don't know what was involved in that. Rocky Thompson  
13 was overseeing it. I just don't know what was going  
14 on there.

15 Q. How about on 12/08, next page, page five,  
16 where you have - you've got three entries dealing  
17 with --

18 A. I mean, this is all part of a potential  
19 reorganization that was going on at that time and a  
20 changing of the corporation. So I don't - it had been  
21 determined for tax and other various reasons. Go  
22 ahead.

23 Q. No. 12/08. It says conference with  
24 Mr. Hersh re: capitalization; conference as to  
25 priorities on projects?

1 A. Right.

2 Q. And then it goes conference as to opinion  
3 and bridge loan. What sort of opinion, if you can  
4 recall, were you referencing in that entry?

5 A. Well, on some of the matters they needed  
6 opinions for the - from the firm on some of the loans.  
7 For instance, if you go up and look at 12/08, Rocky  
8 was dealing with that issue, so obviously we had - we  
9 had a conference about it.

10 Q. It doesn't - I guess it says conference.  
11 Then it says review - next entry - review of  
12 additional correspondence re: opinion. It was an  
13 opinion with regard to - I would ask you what the  
14 contents of the opinion were, if you knew, if you can  
15 recall.

16 A. No, but I - once again, I cannot recall,  
17 but I think you can tell by the surrounding entries  
18 what was involved and who was working on it, because  
19 they were reporting to me.

20 Q. And would that opinion have included any  
21 kind of representation with regard to the intellectual  
22 properties or the assets held by iviewit?

23 A. I doubt it, because if you look at the  
24 surrounding entries it says opinion letter provision  
25 on outstanding shares. Those types are drafts.

1 Company Certificate as Exhibit to opinion, et cetera,  
2 et cetera. There were more - I would imagine they  
3 were corporate matters. We wouldn't have opined - we  
4 never opined to the intellectual property.

5 Q. And then on the next page, 12/13/2000, it  
6 says review opinion on iviewit closing? Towards the  
7 bottom. Do you have any recollection of what that  
8 entry is involving?

9 A. Well, this was obviously related to with  
10 Mr. Bell. So it was additional financing. Mr. Bell  
11 was - was representing Alpine.

12 Q. It says, dealing with the closing with  
13 Alpine?

14 A. Must be dealing with additional money from  
15 Alpine. Or - or it could be a combination thereof,  
16 because on the next page there is discussion of Prolow  
17 and financing. So some of the parties investing money  
18 needed opinions from us. They would be opinions on  
19 the corporate status.

20 Q. So they would just be an opinion letter  
21 saying the corporation was in good standing. Is that  
22 what you're saying?

23 A. I don't think so. They would probably be  
24 more advanced than that. But they would be related to  
25 the corporate standing, outstanding shares, that sort

1 of thing.

2 Q. So representation with regard to --

3 A. I'd have to see them exactly to tell you.

4 Q. Now, we talked earlier that there were -  
5 there were intellectual properties that were involved,  
6 and let's see if I have a billing entry.

7 A. Are we done with this exhibit?

8 Q. Yeah. We are.

9 MR. BERNSTEIN: Steve?

10 MR. SELZ: Yeah.

11 MR. BERNSTEIN: What was that? I missed  
12 the last part.

13 MR. SELZ: No, I didn't finish it.

14 MR. BERNSTEIN: Okay.

15 Q. Okay. We started talking about some of  
16 these entries. We've got --

17 Okay. I think we already talked about  
18 there were some entries here dealing with intellectual  
19 property review and incorporation. We went over that.  
20 Let's see.

21 Do you know if Ken Rubenstein ever billed  
22 on any of the matters or any references that he had  
23 for any of the work for iviewit?

24 A. I don't believe he did.

25 Q. Do you know why that would be the case?

1 A. I think his time was minimal on it, and it  
2 was --

3 Q. Back in, let's see, what was this? June  
4 of 1999, was - let's see, I'm sorry, January '99 --  
5 Here. February of 1999. Was Mr. Rubenstein  
6 affiliated or associated with Proskauer Rose? Let's  
7 see, which exhibit is that?

8 A. February of 1999?

9 Q. Yes.

10 A. So we started work in January of 1999.

11 Q. Correct.

12 A. I believe so.

13 Q. Let me just double-check my notes. 2/17.

14 There is an entry here, 2/17/99, dealing with  
15 telephone call to Mr. Rubenstein regarding patent  
16 advice. I think you already said you don't have any  
17 specific recollection what was said at that  
18 conference, is that correct?

19 A. Right. But -- Right.

20 Q. Does Proskauer Rose maintain any kind of  
21 records regarding Internet web site visits in  
22 correlation to the billing provided to iviewit? In  
23 other words, did you keep any kind of log as to time  
24 spent doing - other than the billing statements  
25 themselves - any kind of log keeping track of how much

1 time was spent Internet searching for different  
2 aspects of the corporate work?

3 MR. TRIGGS: Object to the form.

4 MR. SELZ: Okay.

5 MR. TRIGGS: I have no idea where you're  
6 going with that.

7 MR. SELZ: It's going to the billing.

8 Q. When you were - the billing statements  
9 themselves were prepared, was there any kind of  
10 separate log kept for Internet time spent or anything  
11 dealing with the Internet research that I think is  
12 referenced in here as well?

13 MR. TRIGGS: Same objection.

14 A. I don't know of any separate logs. I  
15 don't know how they keep the -- The only Internet logs  
16 that I know of are -- The only services that we have  
17 are Lexis/Nexis, which is a research.

18 Q. Right.

19 A. You're as familiar with how that is kept  
20 as I am.

21 Q. Right.

22 A. I honestly don't know the mechanism by  
23 which they tie in for their searches on copyright and  
24 trademark.

25 Q. Now, with regard to Jay Joao, Ray Joao,

1 was there ever a time when it was represented that Ray  
2 Joao was involved with Proskauer, was involved with  
3 Proskauer directly, either as a partner or associate  
4 or anything of that nature?

5 A. Not to my knowledge.

6 MR. TRIGGS: Object to form.

7 A. To who?

8 Q. To anyone who attended a board meeting or  
9 anything of that nature.

10 A. Not to my knowledge.

11 Q. Do you recall any meetings with  
12 Mr. Stanley?

13 A. Jerry Stanley.

14 Q. Yes.

15 A. Yes.

16 Q. And what were those meetings dealing with,  
17 if you can recall?

18 A. He was Real 3D. He was the expert from  
19 Real 3D.

20 Q. Right. Who came down from Orlando I think  
21 you said?

22 A. Right. He had been out - I contacted him  
23 when he was out visiting Intel. Real 3D had been part  
24 of General Electric. Had been sold to -- I believe it  
25 was part of General Dynamics at that time, and so I

1 contacted him, and he was kind enough on one of his  
2 journeys in South Florida to stop and see the product.

3 Q. Okay.

4 A. I explained that.

5 Q. Right. At that point in time, can you  
6 recall if all the copyright and trademark protections  
7 for Iviewit's products were in place?

8 MR. TRIGGS: Object to form.

9 A. Well, no. Okay. The -- I'm not the right  
10 person to ask that question because I wasn't doing the  
11 trademark and copyright. But if - but I - I can tell  
12 you that I've already said on the record that when we  
13 were driving back from the meeting in Orlando --

14 Q. Right. The video product.

15 A. That we discovered that Eliot advised his  
16 dad and Jerry Lewin and myself that he had not done  
17 anything with Ray Joao on the video.

18 Q. Okay. p205 119-21 From that standpoint, it is my understanding that the patent work had not  
been completed regarding the video product, but that I did not know if the copyright and  
trademark work had or had not been completed regarding the video product. Reason -

19 A. So the answer to your question is, from  
20 that standpoint, after that meeting I knew that he had  
21 not put anything in place.

22 Q. Okay. How about with regard to any of the  
23 other aspects of U.S. products?

24 A. I was not aware.

25 Q. You were checking on the status of the

1 copyrights and the trademark?

2 MR. TRIGGS: Object to form. As to when?

3 Q. As to when this occurred, back in -- When  
4 was it?

5 MR. TRIGGS: What occurred?

6 Q. 4/21/99 or thereabouts. The meeting with  
7 Mr. Stanley.

8 A. There were certain times when it's  
9 reflected I was checking on the status of copyrights  
10 and trademarks.

11 Q. All right. Was there ever a nondisclosure  
12 agreement that you're aware of that Mr. Stanley  
13 signed?

14 A. Yes. I believe they signed -- My  
15 recollection is they signed nondisclosure agreements.  
16 They signed confidentiality agreements.

17 Q. Okay. Which is basically, obviously, the  
18 same thing, nondisclosure.

19 A. Correct.

20 Q. The business plan itself for iviewit, did  
21 that include references to the intellectual properties  
22 that iviewit held?

23 A. It depends on what stage you meant the  
24 business plan.

25 Q. Okay. The latest iteration of the

1 business plan that was produced or that you were  
2 involved with, did it contain representations  
3 concerning intellectual properties?

4 A. We weren't intimately involved in the  
5 business plan, so I really don't recall the latest  
6 reiteration. No.

7 Q. Do you know if Ken Rubenstein was ever  
8 listed as an advisor to the board of directors or an  
9 advisor to iviewit in any documents?

10 MR. TRIGGS: Object to the form. By whom?

11 Q. (By Mr. Selz) Do you know if Ken  
12 Rubenstein was listed --

13 A. In any documents?

14 Q. -- by iviewit or - in any documents that  
15 were submitted to any third parties as an advisor or  
16 was represented as an advisor to the board?

17 A. Not - not that I'm aware of.

18 Q. What was the last business plan for  
19 iviewit that you can recall seeing?

20 A. Well, I don't recall. I don't -- I  
21 actually don't recall the last business plan. I mean,  
22 the reason is, everything kept on changing so much.

23 Q. Was there ever any problem with  
24 erroneously issued stock or anything of that nature  
25 that you're familiar with?

1 A. I don't - I have no recollection of it.

2 Q. Okay. There's an entry here of 5/12/99  
3 just want to reference you to. Conference with Joao;  
4 meeting with Thompson to arrange for confidentiality  
5 agreements and generic agreements?

6 A. Uh-huh.

7 Q. Do you remember what those generic  
8 agreements were?

9 A. Yeah, they were a generic form of a  
10 confidentiality agreement so the company could use it  
11 without coming back to us each time.

12 Q. So it was basically like a  
13 fill-in-the-blank form?

14 A. As much as we could do it. Perhaps.  
15 There might have been more than one. There might have  
16 been the one that you use in this instance, the one  
17 that you use in that.

18 Q. One for a potential investor, one for an  
19 employee, one for a different situation than that? Is  
20 that what you're referring to?

21 A. Right. Right.

22 Q. Do you recall --

23 A. Well, not exactly an employee. I don't  
24 know. There would have been -- My recollection is we  
25 were looking at a couple of variations of it for

1 different type of investors. One for individual  
2 investor, one from a corporation who had employees,  
3 you know, because we wanted to cover their employees.

4 Q. Right.

5 A. That type of thing.

6 Q. So you wanted to extend it to employees?

7 A. If you're a big investor and you just  
8 had -- That would cover your accountants and your  
9 financial advisors and something. One for -- A  
10 corporation would be set up differently.

11 Q. Okay. With regard to the nondisclosure  
12 agreements, the confidentiality agreements that we  
13 talked about, was that something that went through or  
14 was the responsibility of Proskauer Rose with  
15 Mr. Utley? Let me strike that question.

16 MR. SELZ: I'll try it again.

17 MR. TRIGGS: Change your question.

18 MR. SELZ: I'll try it again.

19 Q. Okay. With regard to the confidentiality  
20 agreements, did Mr. Utley undertake to get those  
21 signed and return them to Proskauer Rose or did  
22 Proskauer Rose transmit them directly to, let's say,  
23 the employee or investor and get those back?

24 A. When?

25 MR. TRIGGS: Object to the form.

1 Q. Why don't you tell me if it was both or  
2 during --

3 A. Well, Mr. Utley wasn't there to --

4 Q. Well, in the beginning, but to the extent  
5 that Mr. Utley was there.

6 A. I don't think there was a set procedure.  
7 I think it was - it was our hope, so that we could  
8 reduce legal costs, that Mr. Utley or - or under his  
9 supervision that - that iviewit really, it wasn't  
10 really - iviewit could get their own confidentiality  
11 agreements and then would ultimately send them - us  
12 copies and we'd be a repository of them.

13 It was -- I don't think it always worked  
14 out that way. I think sometimes, because they were  
15 just shorthanded or because of the nature of what they  
16 were doing, everything was moving so quickly, they  
17 called us and said, by the way, can you get a  
18 confidentiality agreement.

19 Also, you have to understand, not everyone  
20 accepted the generic confidentiality agreement.  
21 Often - oftentimes they were altered by the other  
22 side, so they had to send them to us for our input.  
23 And oftentimes larger, more - larger companies, some  
24 of the giants, would - had their own.

25 Q. Talking about something like the NBA or

1 something like that might have their own?

2 A. Well, something like, yeah, the NBA or one  
3 of the big companies out in Hollywood or something.  
4 Or some of the high tech companies had their own very  
5 specific ones that they would substitute.

6 Q. So you'd have to review those, obviously.

7 A. Unfortunately.

8 Q. So it didn't really work out with the idea  
9 so easily with the generic form?

10 A. Well, it did for many. There - I know  
11 these bills are voluminous, but the - the number of -  
12 the number of points and contacts which iVIEWIT made  
13 in the period of time which they were very active was  
14 considerable. I mean, they - they approached a lot of  
15 people and talked to a lot of potential investors. So  
16 the generic thing served its purpose many times, but  
17 not at all times.

18 Q. Do you know if - if Mr. Thompson, D.  
19 Thompson, did anything to evaluate a software  
20 agreement or anything of that nature?

21 First of all, let's start with the more  
22 basic question. Who is D. Thompson in your firm?

23 A. He's a senior counsel in our firm.

24 Q. Okay. What is his specialization?

25 A. Corporate law.

1 Q. Corporate law. Does he have any  
2 background in software or intellectual properties?

3 A. Intellectual properties, I don't know, but  
4 software, it would depend on the nature of the  
5 agreement.

6 Q. Okay. So you think he's qualified to  
7 prepare a software agreement or a software licensing  
8 agreement?

9 A. Well, he's qualified to prepare it. It  
10 doesn't mean that he wouldn't call on other resources  
11 within our firm to help him.

12 Q. Do you have any idea how much total time  
13 was spent preparing confidentiality agreements for  
14 iviewit?

15 A. No.

16 Q. Do you have any idea or do you have any  
17 opinion as to what would be a reasonable amount of  
18 time to prepare a generic confidentiality agreement?

19 MR. TRIGGS: Object to the form.

20 A. No, I don't. I'd have to -- I mean, it  
21 would depend on the nature of the agreement and nature  
22 of the company and -- I mean, it's a lot of variables.

23 Q. Okay. Do you have a generic  
24 confidentiality agreement?

25 A. We have a lot of them.

1 Q. Okay. Have you ever prepared one  
2 yourself?

3 A. Yes.

4 Q. How long did it take you to prepare that?

5 MR. TRIGGS: Object to form. Which one?

6 Q. The range. Give me the range of time that  
7 it took to prepare the least complicated to the most  
8 complicated.

9 A. I don't even recall. The - the  
10 agreement - the generic agreement could take as long  
11 as a day, eight hours, to prepare. Depends on the  
12 nature of the company.

13 Q. And those --

14 A. You're also consulting -- I mean,  
15 oftentimes you're consulting with the patent attorney  
16 or whatever, making sure it's - suffices for him or --  
17 I mean, because it's - that it covers all the bases as  
18 far as he's concerned.

19 You know, don't forget, you're talking  
20 about the complexities of - and especially affiliates  
21 and -- I mean, have you ever seen it?

22 Q. Yeah, I have.

23 A. Okay. So I mean, there is one page ones  
24 that could take an hour to prepare and there's 15 page  
25 ones that are very complex that could take a couple of

1 days to prepare.

2 Q. Now, with regard to the confidentiality  
3 agreements that we're talking about here, did you draw  
4 from existing agreements that the firm already had,  
5 that Proskauer Rose already had in their -- I guess  
6 you keep a computer system or some kind of storage  
7 bank of preexisting forms.

8 MR. TRIGGS: Object to the form.  
9 Foundation.

10 Q. Okay. Let me start again, then.  
11 Mr. Wheeler, isn't it true that Proskauer Rose has  
12 forms from past representation of other clients that  
13 it keeps?

14 A. Sure.

15 Q. And that it -- Isn't it also true that it  
16 uses those as the basis for many times new documents  
17 that it produces for other clients?

18 A. Many times they do.

19 Q. I'm not saying always, obviously.

20 A. Right.

21 Q. But many times.

22 A. Correct.

23 Q. In this particular case, the  
24 confidentiality agreement that was prepared for  
25 iviewit, was that something that was produced from

1 wholecloth?

2 A. No.

3 Q. In other words, without reference to past  
4 agreements?

5 A. I don't recall.

6 Q. Were you personally involved in the  
7 preparation of that?

8 A. In one iteration of it, I was.

9 Q. Okay. Which iteration?

10 A. Early in the game, before -- Early in the  
11 game.

12 MR. SELZ: What time you got? Five?

13 MR. TRIGGS: Five of.

14 MR. SELZ: Five of five? I've got to go.

15 MR. TRIGGS: Let me just put on the record  
16 that we're prepared to continue on as long as it  
17 takes today, tonight, to wrap this up. I want  
18 it to be done in one day. Mr. Selz has  
19 indicated he has a commitment. I gave him fair  
20 notice that I thought that one day was the  
21 appropriate amount of time.

22 If you need to go, then what I'd like to  
23 do is operating under the assumption that a  
24 motion would be granted and that this would be  
25 limited to one day, let me just ask Mr. Wheeler

1 a couple of questions and then I think we'll --

2 MR. SELZ: Well, I've got to go. I  
3 really, really have to --

4 MR. TRIGGS: You can stay if you want to  
5 stay, if you want to go, go, but my questions  
6 are starting now.

7 MR. SELZ: Okay. Go ahead. How long are  
8 you going to be?

9 MR. TRIGGS: I think I'll be able to get  
10 you out of here in a minute or two. Mr.  
11 Wheeler --

12 MR. SELZ: Go ahead.

13 MR. BERNSTEIN: Are we done with our  
14 questions?

15 MR. SELZ: No, we're not done with our  
16 questions yet. I'm saying, I'm letting him do a  
17 limited cross.

18 CROSS EXAMINATION

19 Q. (By Mr. Triggs) Mr. Wheeler, you were  
20 asked questions about Mr. Utley and the negotiation  
21 of an employment contract with Mr. Utley. Do you  
22 recall that testimony?

23 A. Yes.

24 Q. At the time that the employment agreement  
25 was being prepared on behalf of iviewit, was Mr. Utley

1 a Proskauer, an existing Proskauer client?

2 A. No.

3 Q. You were also asked a whole series of  
4 questions about the entities that have been sued here  
5 and about oral arrangements regarding payment and one  
6 written agreement concerning payment. Do you recall  
7 generally that line of examination?

8 A. Yes.

9 Q. In the amended complaint, Proskauer has  
10 sued three different iviewit entities; iviewit.com,  
11 Inc., iviewit Holdings, Inc., and iviewit  
12 Technologies, Inc. Are you aware of that?

13 A. Yes.

14 Q. Did those entities request that Proskauer  
15 perform legal services?

16 A. Yes.

17 Q. Through representatives of those entities?

18 A. Right.

19 Q. And did Proskauer perform legal services  
20 for those entities?

21 A. Yes.

22 Q. And by and large, I understand that Mr.  
23 Selz has spent some time hitting on particular invoice  
24 entries, but by and large, are those the entities that  
25 Proskauer was performing the legal services for?

1 MR. SELZ: Objection to form.

2 Q. That's at issue in the amended complaint.

3 A. Yes.

4 Q. And also, just to cover what I think is a  
5 ministerial issue, but in terms of who was actually  
6 being billed, the legal entity that was being billed  
7 for the invoices that are attached to the complaint  
8 reflect who it was who was being billed on a monthly  
9 basis?

10 A. Iviewit.com, Inc.

11 MR. TRIGGS: That's all I have.

12 MR. SELZ: Okay. Okay, Eliot. We're done  
13 for right now. Hello?

14 MR. BERNSTEIN: Yeah. What does that  
15 entail?

16 MR. SELZ: Well, we're going to go ahead  
17 and we're going to renotice, and they're going  
18 to probably object and we're going to go in  
19 front of Judge Labarga.

20 MR. BERNSTEIN: Okay.

21 MR. SELZ: Okay? You got it.

22 THE WITNESS: Okay. Go.

23 AND FURTHER DEPONENT SAITH NOT

24 (Deposition adjourned at 5:03 p.m.)

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WITNESS CERTIFICATE

I, CHRISTOPHER C. WHEELER, do hereby  
certify that I have read the foregoing transcript of  
my deposition given on November 21, 2002; that,  
together with any additions or corrections attached  
hereto, it is true and correct.

\_\_\_\_\_  
WITNESS

STATE OF FLORIDA )  
COUNTY OF BROWARD )

SUBSCRIBED AND SWORN TO before me  
this \_\_\_ day of \_\_\_\_\_, 2002, by the witness  
who has produced a \_\_\_\_\_ as  
identification and who did not take an additional  
oath.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires:

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CERTIFICATE OF OATH

STATE OF FLORIDA )  
                                  )  
COUNTY OF BROWARD )

I, the undersigned authority, certify that  
CHRISTOPHER C. WHEELER personally appeared before me  
and was duly sworn.

WITNESS my hand and official seal this  
2nd day of January, 2003.

  
KENNETH A. SCHANZER



## 1 REPORTER'S DEPOSITION CERTIFICATE

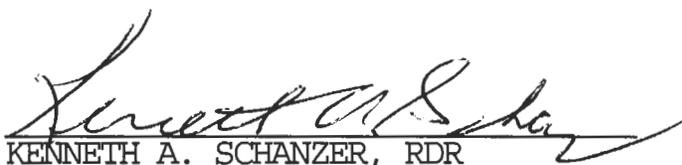
2 STATE OF FLORIDA )

3 COUNTY OF BROWARD )

4  
5 I, KENNETH A. SCHANZER, Registered Diplomate  
6 Reporter, certify that I was authorized to and did  
7 stenographically report the deposition of CHRISTOPHER  
8 C. WHEELER; that a review of the transcript was  
9 requested; and that the transcript is a true and  
10 complete record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,  
12 employee, attorney or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorney or counsel connected with the action, nor am  
15 I financially interested in the action.

16 DATED this 2nd day of January, 2003.

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KENNETH A. SCHANZER, RDR

KEN SCHANZER & ASSOCIATES, INC.  
209 N. 20th Avenue  
Hollywood, Florida 33020  
(954) 922-2660

-----  
PROSKAUER ROSE LLP, etc.,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., etc., et al.,

Defendant.  
-----/

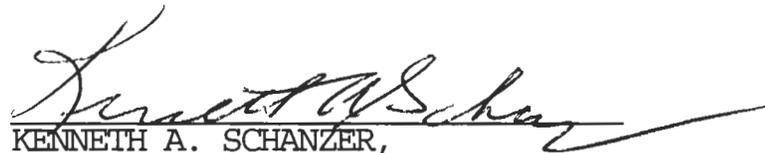
DATE: January 2, 2003

To: CHRISTOPHER C. WHEELER  
c/o MATTHEW TRIGGS, ESQ.  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431

The deposition taken in the above entitled cause is now ready for signature. Please call this office to arrange a convenient time to sign same; or if you wish to waive the signing of the deposition, please so advise.

If this deposition has not been signed by January 16, 2003, or prior to the trial of said cause, or the signature thereto waived, we shall consider such delay a waiver of signature and proceed according to the applicable Rules of Civil Procedure.

Very truly yours,



KENNETH A. SCHANZER,  
Registered Diplomate Reporter

1 IN THE CIRCUIT COURT OF THE 1  
2 FIFTEENTH JUDICIAL CIRCUIT IN AND  
3 FOR PALM BEACH COUNTY, FLORIDA

4 CASE NO. CA 01-04671 AB

5 PROSKAUER ROSE LLP, a New  
6 York limited liability partnership,

7 Plaintiff,

8 -vs-

9 IVIEWIT.COM, INC., a Delaware corporation  
10 IVIEWIT HOLDINGS, INC., a Delaware  
11 corporation, and IVIEWIT TECHNOLOGIES,  
12 INC., a Delaware corporation,

13 Defendants.

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TELEPHONIC DEPOSITION

The following is the telephonic  
deposition of BRIAN UTLEY, VOL. I, taken before  
Traci R. Sandstrom, Court Reporter, Notary  
Public, pursuant to Notice of Taking Deposition,  
at 5841 Cedar Lake Road, St. Louis Park,  
Minnesota 55416, commencing at approximately 9:00  
a.m., August 22, 2002.

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APPEARANCES:

2

On Behalf of the Plaintiff:

Christopher W. Prusaski, Esquire  
Proskauer Rose, LLP  
2255 Glades Road  
Suite 340 West  
Boca Raton, Florida 33431-7360  
Phone No. (561) 241-7400  
Email: Cprusaski@proskauer.com

On Behalf of the Defendants Via Telephone:

Steven M. Selz, Esquire  
214 Brazilian Avenue  
Suite 220  
Palm Beach, Florida 33480  
Phone No. (561) 820-9409  
Email: Selzmuvei@aol.com

DEPOSITION REFERENCE INDEX

EXAMINATIONS:

By Mr. Prusaski: 4

By Mr. Selz: 91

OBJECTIONS:

By Mr. Selz: 24, 25, 27, 29, 37, 45, 64, 79, 86

By Mr. Prusaski: 116, 119, 120, 128, 136, 144,  
146, 148, 150, 160, 161

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EXHIBITS

EXHIBIT 1, Amended Complaint.....38, 127  
EXHIBIT 2, Letter dated 10/12/99.....40, 43  
EXHIBIT 3, Letter dated 3/9/00.....42  
EXHIBIT 4, Letter dated 3/24/00.....44, 48  
EXHIBIT 5, Letter dated 3/31/00.....46, 134  
EXHIBIT 6, Letter dated 4/10/00.....47  
EXHIBIT 7, Memo dated 4/11/00.....49  
EXHIBIT 8, Letter dated 4/19/00.....51  
EXHIBIT 9, Letter dated 5/15/00.....52  
EXHIBIT 10, Letter dated 5/30/00.....53  
EXHIBIT 11, Letter dated 12/29/00.....55, 134  
EXHIBIT 12, Letter dated 1/4/01.....56  
EXHIBIT 13, Letter dated 1/18/01.....58  
EXHIBIT 14, Letter dated 3/28/01.....59, 60  
EXHIBIT 15, Letter dated 4/16/01.....59, 62  
EXHIBIT 16, Letter dated 4/16/01.....66, 67  
EXHIBIT 17, Letter dated 4/27/01.....68  
DEFENDANTS 1, Letter dated 9/8/99  
.....124, 127, 128, 131, 137

\*\*\*

P R O C E E D I N G S

1  
2 Whereupon, the deposition of BRIAN  
3 UTLEY, VOL. I was commenced at 9:00 a.m. as  
4 follows:

5 \*\*\*

6 BRIAN UTLEY,  
7 after having been first duly sworn, deposes  
8 and says under oath as follows:

9 \*\*\*

10 EXAMINATION

11 By MR. PRUSASKI:

12 Q. Mr. Utley, my name is Chris  
13 Prusaski, and I'm taking your deposition today in  
14 the matter of Proskauer Rose versus Iviewit.com,  
15 Inc., et al, which is a matter pending in Palm  
16 Beach County Circuit Court.

17 Have you ever had your deposition  
18 taken before?

19 A. Yes.

20 Q. How many times?

21 A. Oh, several. Probably four or five.

22 Q. Okay. The reason I'm asking is just  
23 to generally give you a background of how  
24 depositions, and I think you know. Briefly I'll  
25 tell you that if I ask any questions which you

1 don't understand or for any reason you'd like me 5  
2 to rephrase them or re-ask them in a way that's  
3 more understandable to you, please tell me and  
4 I'll be happy to do so.

5 If you have any need to take a break  
6 for any reason, just tell me and we'll  
7 accommodate you any way we can. If you answer a  
8 question, it's assumed that you understood the  
9 question. Do you understand that?

10 A. I do.

11 Q. Okay. Can you spell your name,  
12 please.

13 A. Brian, B-R-I-A-N, G. Utley,  
14 U-T-L-E-Y.

15 Q. What's your address, sir?

16 A. It's 9541 Virginia Avenue South,  
17 Bloomington, Minnesota, 55438.

18 Q. How old are you, Mr. Utley?

19 A. 69.

20 Q. And what is your occupation?

21 A. I'm retired from IBM.

22 Q. How long did you work with IBM?

23 A. 37 years.

24 Q. And could you give us the benefit of  
25 explaining what your role in that company was.



1 regarding this deposition. 7

2 Q. Did you review any documents?

3 A. I did not.

4 Q. When was the last time you had any  
5 contact with anyone from Iviewit? And before we  
6 get too far into the deposition, I just want to  
7 tell you that when I say Iviewit, I'm referring  
8 to any of the Iviewit entities. If I want to  
9 specify one entity in particular, I'll give you  
10 the name of the entity. So when I use the term  
11 generally Iviewit, I'm referring to Technologies,  
12 Holdings, dotcom, Inc., LLC; do you understand  
13 that?

14 A. Um-hum.

15 Q. When was the last time you had any  
16 contact with anyone from Iviewit?

17 A. I had a conversation with Bill  
18 Kasser several months ago.

19 Q. And what did you discuss?

20 A. I really -- frankly, I don't recall  
21 the context of the conversation.

22 Q. Okay. Have you spoke to Si or Eliot  
23 Bernstein lately?

24 A. I have not.

25 Q. When did you first become involved

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with Iviewit?

8

A. It was in July of 99.

Q. And could you explain how you became involved with Iviewit.

A. I was introduced to Eliot Bernstein by Chris Wheeler for the purpose of reviewing the imaging technology which Eliot had developed and with the potential or possible interest of becoming involved in the company.

Q. What was your experience in the past reviewing imaging technology?

A. Well, as a senior person at IBM and having been involved in developing many IBM products, I had experience in imaging and imaging technologies along the way.

Q. As you understood it, Sir, what was the purpose of the Iviewit companies when you became involved?

A. The purpose of the companies was to continue the evolution of the technologies, which were had provisional patents filed and to commercialize those technologies.

Q. At the time you were approached in July of 99, which of the Iviewit entities, if at all, had been formed?

1 A. I'm trying to recollect. The 9  
2 operating company was Iviewit.com, LLC.  
3 Q. Was that in existence at the time  
4 you were first approached about these companies?  
5 A. Yeah.  
6 Q. Were any of these other entities?  
7 A. Yes. It was subordinated to  
8 Iviewit, LLC, which in turn was 95 percent owned  
9 by U-View, subchapter S corporation.  
10 Q. Where was the company located when  
11 you first became involved?  
12 A. I believe the official address of  
13 the companies was Eliot Bernstein's home.  
14 Q. Where is that?  
15 A. I don't recall the exact address but  
16 in Boca Raton.  
17 Q. What were you told your role in the  
18 companies would be?  
19 A. President and COO.  
20 Q. Who made that representation to you?  
21 A. My initial discussion regarding that  
22 was with Si Bernstein.  
23 Q. What was his role in the companies  
24 to be?  
25 A. He was represented as the chairman

1 of the board. 10

2 Q. Did there come a time when you  
3 became the president and COO of the companies?

4 A. Beg your Pardon?

5 Q. Did there come a time when you  
6 actually became the president and COO of the  
7 companies?

8 A. Yes.

9 Q. When was that?

10 A. That was in August of 99.

11 Q. Did the company have any employees  
12 at that time?

13 A. There were, apart from Eliot and  
14 myself -- I was the first actual employee of the  
15 company -- there were three associates of Eliot  
16 who had been involved with him in conducting  
17 feasibility work with the technologies, but they  
18 were not formally employees of the company at  
19 that time.

20 Q. Which of the Iviewit entities were  
21 you the president and COO of?

22 A. The -- my employment agreement  
23 stated Iviewit.com, LLC, but operationally I  
24 managed all of the companies.

25 Q. As the president?

1 A. Yes. 11

2 Q. Who were the other officers?

3 A. Si Bernstein, Eliot Bernstein, Jerry

4 Lewin, Chris Wheeler was the representing

5 attorney.

6 Q. At Proskauer?

7 A. Yes.

8 Q. Who were the directors of the

9 companies?

10 A. Well, those are the board members

11 that I mentioned, the directors.

12 Q. Okay, thank you. What were your

13 day-to-day responsibilities? Could you describe

14 that, please.

15 A. Basically to run the company,

16 develop, build the company.

17 Q. And for how long did you do that?

18 A. Until April of 2001.

19 Q. Almost two years?

20 A. Yes.

21 Q. Who had decision making authority

22 with respect to the financial matters of the

23 companies?

24 A. I suppose I did subject to the board

25 approval.

1 Q. Do you still have anything to do 12

2 with the Iviewit companies today?

3 A. No.

4 Q. I'd like to turn the focus of the

5 questioning now to Proskauer Rose. When did

6 Proskauer Rose first become involved with

7 representing the Iviewit companies?

8 A. As I recall from documents, which

9 were in the company at that time, I believe it

10 was about January of 99. I could be off by a

11 month or so.

12 Q. That was prior to your coming

13 aboard?

14 A. Yes. At least six months before I

15 came on board.

16 Q. Do you know if Proskauer was still

17 representing the Iviewit entities at the time

18 when you left in April 2001?

19 A. I'm not aware that there was any

20 action to disengage from Proskauer.

21 Q. Who made the decision to hire

22 Proskauer?

23 A. I don't know.

24 Q. Were any other attorneys or law

25 firms ever used by Iviewit to your knowledge?



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for Iviewit?

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A. They filed -- I'll backup.

We had filled through the New York firm provisional patent applications. The New York, the last act of the New York law firm was to convert one of those to a formal filing. The remaining provisionals were filed, refiled as formal applications by the Milwaukee firm.

Q. Did Proskauer Rose perform patent work for Iviewit?

A. Not as such.

Q. Can you explain what you mean by that.

A. Well, Proskauer did not handle any of the actual patent paperwork, the filings or the actual development of the filing material, but acted as a consultant, if you will, in recommending the New York law firm.

Q. What type of work did Proskauer Rose do for Iviewit?

A. Corporate work.

Q. General corporate work?

A. Um-hum.

Q. Was that the purpose for which Proskauer was hired?

1 A. As far as I know, yes. 15

2 Q. What was your -- could you explain  
3 your role with respect to directing Proskauer to  
4 do certain corporate work.

5 A. Well, of course, we had, we required  
6 activity relative to equity, the equity program,  
7 the managing of the equity records; the  
8 development of the -- excuse me -- of the money  
9 raise paperwork, that kind of work was handled by  
10 Proskauer. Also Proskauer acted as the keeper,  
11 if you will, of the corporate records.

12 Q. Who at Iviewit was responsible for  
13 directing Proskauer to do work?

14 A. Well, I think the people who  
15 actually requested work of Proskauer were either  
16 myself or Si Bernstein or Eliot Bernstein.

17 Q. Do you know if Proskauer was  
18 initially paid a retainer by Iviewit?

19 A. I'm not aware that any retainer was  
20 paid.

21 Q. Do you recall the attorneys at  
22 Proskauer with whom you had dealings while they  
23 represented Iviewit?

24 A. My dealing were primarily with Chris  
25 Wheeler, although a number of staff attorneys

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were involved.

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Q. Who was the person at Iviewit that had primary responsibility to deal with Chris Wheeler?

A. From an organizational point of view, it would be myself.

Q. Could you explain what your current affiliation with the Iviewit entities is right now?

A. I have no affiliation.

Q. Do you have any idea what their current business plan is?

A. I have no idea.

Q. Okay. I would like to talk for a few minutes about the Iviewit entities separately, starting with Iviewit.com, Inc. Can you explain its role and when it was formed, please.

A. It was formed in December of 99. At that time, we went through a complete restructuring of Iviewit, converting the U-View subchapter S into a C-corp, which, as I recollect, became Iviewit, Inc.

Q. Iviewit.com, Inc.

A. No.

1 Q. Iviewit, Inc.? 17

2 A. Iviewit.com, LLC became subordinated  
3 to Iviewit.com, Inc. Operationally Iviewit.com  
4 replaced Iviewit, LLC but Iviewit, LLC held some  
5 leases in its name and so therefore we retained  
6 that company for the purpose of managing those  
7 leases.

8 Q. With respect to the reorganization  
9 that we're discussing right now, what law firm or  
10 entity was involved with handling the matters for  
11 this reorganization?

12 A. Proskauer.

13 Q. Besides this reorganization  
14 involving Iviewit.com, Inc., were there any other  
15 legal matters that Proskauer did work for this  
16 company?

17 A. Yes. When we had dealings with our,  
18 in the financial community when we raised money,  
19 Proskauer handled all of the legal matters  
20 relating to the, both the equity and the  
21 promissory note aspects of those raises.

22 Q. And this was work performed for  
23 Iviewit.com, Inc.?

24 A. It was actually performed for  
25 Iviewit, Inc.

1 Q. I'd like to focus on the work that 18  
2 was performed right now for Iviewit.com if you  
3 could.

4 A. Okay. Well, Iviewit.com, Inc. was  
5 the operational company. The money that came  
6 into Iviewit, Inc. actually flowed directly into  
7 Iviewit.com and all disbursements were from  
8 Iviewit.com, Inc.

9 Q. The disbursements for the other  
10 Iviewit entities were from Iviewit.com, Inc.; is  
11 that correct?

12 A. Yes.

13 Q. Who were the principals of  
14 Iviewit.com, Inc.?

15 A. I was the president and COO.

16 Q. With respect to the work that  
17 Proskauer performed for Iviewit.com, Inc., who  
18 from the company directed Proskauer to do the  
19 work?

20 A. Who directed Proskauer to do the  
21 work?

22 Q. Yes, sir.

23 A. For the financial matters, it was  
24 myself. On occasion, Si Bernstein would solicit  
25 work, primarily, as I recall, related to the

1 stocks. In the very early days, there was a, 19  
2 mostly before I arrived on the scene, Si and  
3 Eliot used Proskauer services to arrange for  
4 meetings with potential financial sources and  
5 also with people who would be able to establish  
6 the validity of the technology.

7 Q. Okay. We were talking about  
8 Iviewit.com Inc. I'd like to shift now to  
9 Iviewit Holdings, Inc.

10 A. Um-hum.

11 Q. And can you explain, please, what  
12 the purpose of that company is or was.

13 A. It was established as the transition  
14 to a C-corp from U-View, LLC.

15 Q. Who performed that transition work?

16 A. Proskauer.

17 Q. Do you recall when it was formed?

18 A. December of 99.

19 Q. Who were the principals of Iviewit  
20 Holdings, Inc.?

21 A. I was the president and COO.

22 Q. Besides the transition work to a  
23 C-corp from U-View, LLC, what other work did  
24 Proskauer do for Iviewit Holdings, Inc.?

25 A. Well, part of that transition

1 involved, as I mentioned earlier, 95 percent of 20  
2 the equity in Iviewit, LLC was held by U-View.  
3 The other 5 percent was outside of the S-corp.  
4 And in order to perform the transformation, it  
5 was not possible to move the other 5 percent of  
6 stock holders directly into Iviewit Holdings  
7 because of tax consequences. Therefore, a  
8 subordinate company was created, which was  
9 Iviewit Technologies, Inc.

10 Q. And we'll get to that one in just a  
11 moment.

12 A. Okay.

13 Q. Who paid the bills for the work done  
14 for Iviewit Holdings, Inc., the legal work to  
15 Proskauer?

16 A. Checks were issued by Iviewit.com.

17 Q. Inc.?

18 A. Inc.

19 Q. And the legal work performed by  
20 Proskauer for Iviewit.com, Inc., what entity paid  
21 the legal bills for that work?

22 A. Iviewit.com, Inc.

23 Q. Okay. Let's talk -- you  
24 transitioned us nicely into Iviewit Technologies,  
25 Inc., and the same line of questioning, sir, what

1 was its purpose?

21

2 A. Twofold. One, it was the point of  
3 entry, if you will, for the remaining 5 percent  
4 equity holders. Secondly, Iviewit Technologies,  
5 Inc. was assigned the intellectual property  
6 rights.

7 Q. What firm performed the legal work  
8 for Iviewit Technologies, Inc.?

9 A. For corporate matters, Proskauer  
10 Rose and for intellectual property, our patent  
11 attorneys.

12 Q. Do you remember what company that  
13 was?

14 A. Well, until April of 2000, that was  
15 the New York firm, Meltzer, Lipper & something or  
16 other.

17 Q. Was Foley & Lardner ever involved?

18 A. Foley & Lardner became involved.  
19 That's the Milwaukee firm. They became involved  
20 in April of 2000.

21 Q. After Meltzer?

22 A. Um-hum. Yes.

23 Q. Why did the company choose to switch  
24 Meltzer to Foley & Lardner?

25 A. Because Meltzer decided to

1           discontinue intellectual property representation.           22

2           Q.       In general for all its clients?

3           A.       Yes.

4           Q.       Okay. To your knowledge, did Foley  
5 & Lardner ever stop representing the Iviewit  
6 companies?

7           A.       Foley & Lardner took the position  
8 that they would no longer represent Iviewit with  
9 new intellectual property work, and eventually,  
10 as I recall, did cease doing any work whatsoever.

11          Q.       Why?

12          A.       Basically due to lack of payment.

13          Q.       Of its attorneys fee bills?

14          A.       Yes.

15          Q.       Do you know if those bills were ever  
16 resolved by the companies?

17          A.       I don't know.

18          Q.       At the time when you left in April  
19 of 2001, were those bills for Foley & Lardner  
20 still outstanding?

21          A.       Yes.

22          Q.       Who were the principals -- getting  
23 back to the Iviewit Technologies, who were the  
24 principals of that company?

25          A.       The same principals as the other

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companies.

Q. You were the president and COO?

A. Yes.

MR. PRUSASKI: Could we go off the record, please. We're going to go off the record for a minute.

(Discussion had off the record.)

(Whereupon, a break was taken from 9:31 to 9:51.)

MR. PRUSASKI: Okay, let's go on the record, please.

By MR. PRUSASKI:

Q. Mr. Utley, before the break I asked you who were the principals of Iviewit Technologies, and I believe you indicated you were the president and COO; is that correct?

A. Yes.

Q. Who at Iviewit directed Proskauer to do work for Iviewit, Technologies Incorporated?

A. I did.

Q. Do you know what the current status of Iviewit Technologies is?

A. No.

Q. And if I asked you this as far as Iviewit Technologies, Inc. before the break, I'm

1           sorry, I'm going to ask you again. What entity           24  
2           paid for the legal bills for Proskauer's work for  
3           Iviewit Technologies, Inc.?

4                       MR. SELZ: I think that was asked  
5           and answered.

6                       MR. PRUSASKI: I can't remember if I  
7           asked it as to this company or not.

8                       MR. SELZ: I think you asked it as  
9           to all the companies, so.

10          By MR. PRUSASKI:

11                      Q.        You can answer the question.

12                      A.        The bills of Iviewit Technologies,  
13           Inc. were disbursed by Iviewit.com, Inc.

14                      Q.        Do you recall what entity paid the  
15           Foley & Lardner bills for Iviewit Technologies,  
16           Inc.?

17                      A.        Iviewit.com, Inc.

18                      Q.        And the same as to the Meltzer firm?

19                      A.        Yes.

20                      Q.        Do you know if the Meltzer firm's  
21           bills were fully resolved by Iviewit?

22                      A.        I believe they were.

23                      Q.        Did Iviewit ever have any trouble  
24           paying its bills?

25                      A.        Yes.

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Q. Can you explain.

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A. Well, funding was a constant issue that I had to deal with because we, you know, we very quickly depleted the funding that we had received and therefore required careful management of the available cash.

Q. I'd like to shift our questioning now to Proskauer Rose's representation of the Iviewit entities.

How do you describe the Iviewit -- how do you describe Iviewit's satisfaction with Proskauer's services?

MR. SELZ: Object to the form of the question.

THE WITNESS: There were a number of discussions that took place, principally between Si Bernstein and Chris Wheeler over the size of the bills and the number of hours charged to Iviewit.

By MR. PRUSASKI:

Q. What was the substance of those conversations?

A. I was not involved directly in those conversations, but from my perspective, there was no outcome from those discussions.

1 Q. What was Si Bernstein's problem with 26

2 bills, if there was problem?

3 A. They were too large.

4 Q. Why were they too large?

5 A. He felt that the, both the hours

6 charged and the rates were excessive.

7 Q. Did Mr. Bernstein know what

8 Proskauer's rights were at the time Proskauer

9 became involved in representing Iviewit?

10 A. I have no knowledge.

11 Q. Did you feel that the rates were too

12 high?

13 A. I felt that the rates were

14 comparable to a Proskauer Rose type of

15 representation.

16 Q. Was there ever a time when you were

17 dissatisfied with Proskauer's representation?

18 A. There were times when I observed

19 that there appeared to be some duplicative effort

20 within the organization.

21 Q. Did you address that with Chris

22 Wheeler?

23 A. I mentioned it to Chris and Chris

24 made some changes in assignment.

25 Q. Were you satisfied with Chris

1 Wheeler's changes?

27

2 A. Yes.

3 Q. Do you recall if the bills  
4 reflecting Chris Wheeler's changes in assignment  
5 were ultimately paid?

6 A. When I left, the bills had been  
7 accruing for a very long time, and so the short  
8 answer would be, no.

9 Q. Why were the bills accruing for a  
10 long time at the time you had left?

11 A. I was directed by Si Bernstein not  
12 to disburse funds to resolve the outstanding  
13 balances.

14 Q. Why did he direct you to do that, or  
15 to not disburse funds?

16 A. To preserve cash.

17 Q. Did it have anything to do with his  
18 dissatisfaction with Proskauer's work or was it  
19 to preserve cash?

20 MR. SELZ: Objection; calls for  
21 speculation.

22 THE WITNESS: I can't answer that  
23 question.

24 By MR. PRUSASKI:

25 Q. Was the companies having financial

1 difficulties at that time? 28

2 A. Yes.

3 Q. Do you believe that's the reason why  
4 no further funds were disbursed to Proskauer?

5 A. Well, of course, since the cash  
6 situation was difficult, that was clearly a  
7 reason.

8 Q. Do you have reason to believe --

9 A. The question --

10 Q. I'm sorry.

11 A. The question really arose from the  
12 view of what priorities should be applied in  
13 disbursing funds.

14 Q. To creditors?

15 A. To creditors.

16 Q. Do you have any other reason to  
17 believe that -- I'm sorry, strike that.

18 Was there any other reason besides  
19 the companies' cash situation why funds were not  
20 disbursed to Proskauer?

21 A. There was -- Si Bernstein expressed  
22 dissatisfaction with the billings frequently.

23 Q. I believe you've stated that his  
24 dissatisfaction were what now?

25 A. With the rates charged and the hours

1 charged. 29

2 Q. Okay. Was this communicated to

3 Chris Wheeler?

4 A. He communicated that directly to

5 Chris Wheeler.

6 Q. Do you know if Chris Wheeler ever

7 did anything in response to those communications?

8 A. Chris, as I understand it, Chris

9 reviewed the billings and reviewed the charges

10 and responded that they were accurate and

11 consistent with their billing practices.

12 Q. Had you reviewed the bills?

13 A. Yes, I saw the bills.

14 Q. Did you feel that they were

15 consistent?

16 MR. SELZ: Objection to the form of

17 the question. Consistent to what?

18 THE WITNESS: I didn't understand

19 that.

20 By MR. PRUSASKI:

21 Q. Did you -- I'll re-ask the question.

22 You reviewed the bills?

23 A. Yes.

24 Q. Did you believe that they were

25 unreasonable?

1           A.       I felt that they were reasonably           30  
2       accurate.

3           Q.       Did you feel that there were  
4       services billed by Proskauer that weren't  
5       performed by Proskauer?

6           A.       No.

7           Q.       Did you feel that there were  
8       services performed by Proskauer that Proskauer  
9       did not have permission of the companies to  
10       perform?

11          A.       No.

12          Q.       Did Si Bernstein frequently complain  
13       to creditors about their bills?

14          A.       He primarily focused on Proskauer  
15       Rose.

16          Q.       Was there anyone else with Iviewit  
17       that concurs with your analysis of Proskauer's  
18       bills?

19          A.       I can't answer that.

20          Q.       Did you ever hear Si Bernstein  
21       specifically recall any instances where Proskauer  
22       billed for work that wasn't performed?

23          A.       No.

24          Q.       Do you recall Si Bernstein  
25       specifically complaining about work that

1 Proskauer billed that Proskauer didn't have 31

2 permission to do?

3 A. No.

Q. Do you agree with Si Bernstein's  
analysis of Proskauer's bills?

A. I do not.

Q. How often did Proskauer send bills  
to Iviewit?

A. Monthly.

Q. Who received them?

A. I did.

Q. Were they reviewed by you right  
away?

A. Yes.

Q. And who else reviewed them?

A. Depending on who was handling the  
books at the time, the financial analyst.

Q. If there were any problems that you  
found with the bills, what did you do?

A. I didn't find any problems with the  
bills.

Q. Okay. Do you know how much Iviewit  
paid Proskauer in total?

A. I don't.

Q. Who made the decision to pay

Proskauer's bills?

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A. I did.

Q. Was that one of your job duties?

A. Yes.

Q. Did anyone else have the duty at Iviewit to -- I'm sorry, strike that.

Did anyone else at Iviewit have the responsibility to determine whether the bills would be paid?

A. Well, it was delegated to Raymond Hersh the last few months of Iviewit.

Q. What were the months and year?

A. Well, Raymond came into the picture, we employed him, as I recall, late 2000, and he continued until the office was closed at the end of April 2001.

Q. Why was the office closed in April of 2001?

A. The business was moved to California operationally.

Q. Did Mr. Hersh ever express to you any objection with respect to Proskauer's bills?

A. He felt that the bills were high.

Q. Did he have any specific reason to feel that they were high?

A. He just felt the rates were high.

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Q. The rates charged per hour by the attorneys?

A. Yes.

Q. Do you know if the rates charged per hour by attorneys, changed at all during the time that Proskauer represented Iviewit?

A. Actually they went down because in the early phases of the company, most of the work was performed by Chris Wheeler directly, then as the work load increased, it was delegated down to staff members, associates and thereby, the rates were reduced.

Q. Did Si and Eliot Bernstein know this?

A. Yes.

Q. Were Iviewit's bills for -- strike that.

Did Iviewit normally pay its bills to Proskauer on time?

A. No.

Q. Why?

A. Preserving cash.

Q.. Did that have anything to do with Proskauer?

A. Well, as the largest creditor, it was the, the action that would have impacted cash reserves the most. And Si Bernstein, again, instructed me not to make those payments.

When we received a funding, I did make payments and we had a number of discussions, that is Si Bernstein and I had a number of discussions over how much those payments should be.

Q. Do you recall any bills specifically withheld for payment because of Iviewit's objections to the bills?

A. No.

Q. At the time when Si Bernstein was complaining to you that he felt Proskauer's bills were too high, was he still directing Proskauer to do work for the companies?

A. Yes.

Q. Same for Eliot Bernstein?

A. Yes.

Q. Do you know if there ever came a time when Proskauer ever stopped representing Iviewit?

A. No.

Q. Did Iviewit ever fire Proskauer from

representing them?

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A. I'm not aware of them ever being fired.

Q. Did Proskauer occasionally send letters to Iviewit demanding payment?

A. Yes.

Q. How often?

A. Well, at least once a month.

Q. Did you review the bills that were, that Proskauer alleged to be overdue?

A. Yes.

Q. Did you feel that the bills were owed?

A. Yes.

Q. Did Iviewit ever enter into any payment arrangements with Proskauer?

A. Yes.

Q. Why was that?

A. I made several agreements with Proskauer for scheduled payments, but my agreements were usurped by Si Bernstein.

Q. What do you mean usurped?

A. He directed me not to honor those agreements.

Q. Do you feel you bound the company in

those agreements?

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A. I did.

Q. Do you feel that Si Bernstein had a right -- did you think the companies -- strike that.

Do you think the company's not honoring the agreement at the direction of Si Bernstein was justified?

A. No.

Q. Why?

A. We had a responsibility to pay our bills.

Q. Okay.

A. And we had no basis for singling out Proskauer Rose among the creditors.

Q. Do feel Proskauer Rose was singled out?

A. I think as the bills became so large that there was clearly no path to resolving the total bill in the short term, and as the bills continued to accumulate, it became just a larger and larger burden.

Q. Okay. I'm going to ask you a couple of questions that I didn't at the beginning about Proskauer's particular work. I'm sorry to jump

back to that so bear with me, please.

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Do you feel that Proskauer ever committed a malpractice in its representation of Iviewit?

A. No.

Q. How would you respond to someone else's allegation that they did?

MR. SELZ: Objection to the form of the question. I think it calls for speculation too. Is this a hypothetical you're asking him, Chris?

By MR. PRUSASKI:

Q. How do you respond to an accusation that Proskauer Rose did bad work for Iviewit with respect to patents?

A. The only work that Proskauer Rose did was to find a, and recommend a particular patent attorney in another firm.

Q. Was that done properly?

A. That was done before I became involved with the company.

Q. Okay. Do you know what the status of Iviewit, LLC's bankruptcy is?

A. I believe it's in Chapter 7.

Q. Currently?

A. Yes.

Q. In a bankruptcy proceeding?

A. Yes.

MR. PRUSASKI: Mr. Selz, I'm going to show the witness some exhibits. The first one is the Amended Complaint, which you have a copy of.

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document that I'm going to mark Exhibit 1, which is entitled Amended Complaint. I'm going to ask you to look at it and tell me if you've ever seen it before.

(Whereupon, Exhibit No. 1 was marked for identification.)

THE WITNESS: (Witness complies.)

No.

By MR. PRUSASKI:

Q. Do you recognize the invoices that are attached to the document?

A. They appear to be familiar.

Q. Are those the invoices that Proskauer Rose sent to Iviewit?

A. As I say, they appear to be familiar, typical of the invoices that I was

receiving.

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Q. If you look on the invoices, the first one is dated January 31, 2000. It's about seven pages into the document.

A. Um-hum.

Q. It indicates that the client's name is Iviewit.com, Inc. Were most of the invoices sent to that entity?

A. I believe so. Again, this was, I assume, this was because Iviewit.com, Inc. was the operating company.

Q. If Proskauer did work for Iviewit Technologies or Iviewit Holdings, would the work for those companies be sent, the bills sent to Iviewit.com, Inc.?

A. Yes.

Q. Was that the way that the company wanted the bills to be sent?

A. We did not make any specific request in terms of how the bills should be addressed.

Q. Okay. What were the distinctions -- how do you describe the distinction between the different entities as to how they should be billed?

A. We didn't make any distinction

between the entities.

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Q. Could you elaborate on that.

A. We didn't make any distinction.

Q. Okay. How many separate bank accounts did the entities have?

A. I don't recall. There were a number of bank accounts that were held, that were in place before I joined the company and we basically used two accounts when I was there. One was the checking account and the other was a, a savings account. Both in the name of either dotcom, LLC or dotcom, Inc.

MR. PRUSASKI: Mr. Selz?

MR. SELZ: Yeah.

MR. PRUSASKI: I'm going to show Mr. Utley the document that's Exhibit 9 of the documents that I provided you a few days ago.

(Whereupon, Exhibit No. 2 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going show you a document which is a letter dated October 12th, 1999, which we'll mark as Exhibit 2, and I'll ask you to look at that and tell me if you've ever seen it before.

1 A. (Witness complies.) Yes.

41

2 Q. Can you explain what that document  
3 is.

4 A. Well, it's a request for additional  
5 payment. At that time, Iviewit had just received  
6 a \$500,000 investment from Huizenga Holdings,  
7 H-U-I-Z-E-N-G-A. And I'm not aware that any  
8 payment had been made to Proskauer since services  
9 started in, early in the year, January or so in  
10 99. We made an initial payment of 75,000 when we  
11 received the \$500,000 investment from Huizenga  
12 Holdings, and this was a request for an  
13 additional 75,000.

14 Q. Were there points in time where  
15 Proskauer didn't bill Iviewit for several months  
16 or allowed Iviewit not to pay for several months?

17 A. I recall reviewing the account prior  
18 to the time I joined the company, and if my  
19 memory serves me correctly, it had accrued to  
20 \$285,000 by the time that I joined the company.  
21 That's a recollection. I'm not aware that any  
22 payment had been made.

23 I do recall a June statement  
24 summarizing the activities over the prior several  
25 months.

Q. You're referring to June of 99?

42

A. Yes.

Q. Okay.

MR. PRUSASKI: Mr. Selz, I'm going to show Mr. Utley the Document No. 10 that I gave you a few days ago.

(Whereupon Exhibit No. 3 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit 3, which is a letter dated March 9th, 2000 and I'll ask you to look at that and tell me if you've ever seen it before.

A. (Witness complies.) Yes.

Q. Can you explain what that document is?

A. Well, it's a request for additional payment summarizing the outstanding balance and requesting a specific amount be paid to take care of specific invoices which had been received.

Q. Did you receive the document?

A. This document?

Q. Yes.

A. Yes.

Q. And I don't know if I asked the

previous document, which was Exhibit 2, did you  
receive that as well?

43

A. Yes.

Q. Okay. If you look at the second  
paragraph, it indicates that there is an  
outstanding account due of \$259,494. Do you know  
why that much in attorneys fees had accrued?

A. Well, as I mentioned, the  
outstanding amount by the time that I came,  
joined the company was approaching 300,000.  
There had been at least two separate filings for,  
corporate filings. The initial filings were for  
a C-corp, which was later modified to an S-corp.

(Whereupon, deposition interrupted  
by person entering the conference  
room.)

THE WITNESS: And in addition to  
that, Proskauer provided services to Iviewit,  
introductions, meetings, conference rooms, travel  
to Orlando to meet with the companies there for  
technology reviews; and so there was a, there was  
a lot of activity that took place in the early  
days of the company where the Proskauer was  
acting as, basically as an agent for the company.

By MR. PRUSASKI:

Q. At whose request?

A. At Bernstein's request.

Q. And the letter also indicates that we have not taken a retainer on this matter. Can you explain why Iviewit didn't pay a retainer to Proskauer?

A. I was not involved in those discussions. It was prior to my time.

MR. PRUSASKI: Mr. Selz, the next is Document 11.

(Whereupon, Exhibit No. 4 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit 4, a letter dated March 24th, 2000. I'm going to ask you to look at the document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of this letter?

A. I did.

Q. Can you describe what it is?

A. It was, it is a letter to Si Bernstein confirming that I had made an

1 arrangement to make payments on a schedule and it 45  
2 states that Si Bernstein had put a hold on the  
3 agreement that I had made to make periodic  
4 payments.

5 Q. Why was a hold put on that  
6 agreement?

7 A. Si Bernstein did not agree with  
8 disbursing those funds.

9 Q. Okay. What ultimately -- how was  
10 that ultimately resolved?

11 A. I don't recall.

12 Q. Do you know why Si Bernstein had a  
13 problem with disbursing those funds?

14 MR. SELZ: That's asked and  
15 answered.

16 By MR. PRUSASKI:

17 Q. Answer the question, please.

18 A. I think as I had stated earlier, he  
19 had a general feeling that the charges were  
20 excessive.

21 Q. Okay. Were payment arrangements  
22 ultimately made with Proskauer after this March  
23 24th, 2000 letter?

24 A. I believe there were several  
25 arrangements made.

1 Q. Okay.

46

2 MR. PRUSASKI: Mr. Selz, Document 12  
3 is next.

4 (Whereupon, Exhibit No. 5  
5 was marked for identification.)

6 By MR. PRUSASKI:

7 Q. I'm going to show you, Mr. Utley, a  
8 document marked Exhibit 5, a letter dated March  
9 31st, 2000, and I'll ask you if you've ever seen  
10 this document before?

11 A. Yes.

12 Q. Did you receive a copy of it?

13 A. I did.

14 Q. And can you describe what it is?

15 A. It's a request that -- it was a  
16 report of having reviewed past due accounts and  
17 proposals made by Si Bernstein. It responds to  
18 those in the negative and requests that a payment  
19 plan be initiated immediately.

20 Q. What were Si Bernstein's requests to  
21 Proskauer?

22 A. I don't recall. At least one of  
23 those requests, I believe, was for part of this  
24 money to be translated into equity, part of  
25 the --

1 Q. The bills?

2 A. -- the bills to be translated into  
3 equity in Iviewit.

4 Q. Shares of stock?

5 A. Yes.

6 Q. And Proskauer rejected that?

7 A. Yes. I'm not sure if that came up  
8 on this specific occasion, but I do know that  
9 that was one of Si's proposals that he made from  
10 time to time.

11 Q. Do you know if the meeting that this  
12 letter references, in that meeting Si Bernstein  
13 objected to the size of the bills?

14 A. I wasn't in the meeting.

15 Q. Okay.

16 MR. PRUSASKI: Document 13,  
17 Mr. Selz.

18 (Whereupon, Exhibit No. 6  
19 was marked for identification.)

20 By MR. PRUSASKI:

21 Q. Mr. Utley, the next document I'm  
22 going to show you is marked as Exhibit 6. I'll  
23 ask you -- it's an April 10th, 2000 letter. I'll  
24 ask you to look at the document and tell me if  
25 you've ever seen it before.

A. Yes.

Q. Did you receive a copy of that?

A. I did.

Q. Can you explain what it is, please.

A. It was thanking me for a payment of \$25,000 and requesting a confirmation that this was part of the payment plan that we previously agreed to.

Q. Had you previously agreed to a payment plan?

A. Yes.

Q. Okay. Was this a payment plan that was separate from the one referenced in the March 24th, 2000 letter, which is Exhibit 4, that states that Chris Wheeler put a hold on the arrangement?

A. You mean that Si Bernstein put a hold?

Q. Yes.

A. Yes. And the one that's also referenced in the March 31st letter that we just discussed.

Q. Okay. So at this point, there's been three separate payment arrangements?

A. It's the same payment arrangement

documented in three separate letters. It was referenced in the March 24th letter; it was referenced in the March 31st letter, and it's referenced in the April 10th letter.

Q. Okay. So this payment arrangement that Si ultimately wanted to put a hold on, was eventually agreed to?

A. Not by Si.

Q. By you?

A. By me.

Q. Okay.

A. I made the agreement in the first place.

Q. If you knew that Si had objected to the payment plan, why did you agree to it?

A. He objected to it after I made the agreement.

Q. Okay.

MR. PRUSASKI: Document No. 14,  
Mr. Selz.

(Whereupon, Exhibit No. 7  
was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit No. 7. It's a letter or

1 a memo dated April 11th, 2000. I'll ask you if 50  
2 you've ever seen it before?

3 A. Yes.

4 Q. Is that your signature on the  
5 letter?

6 A. It is.

7 Q. And did you deliver it to Chris  
8 Wheeler?

9 A. I did.

10 Q. And can you explain what it is.

11 A. I'll read it. "Regarding the  
12 proposed payment plan, it is our intent to  
13 fulfill the agreement."

14 Q. Is this referencing the \$25,000 --

15 A. Yes.

16 Q. -- every two weeks payment plan in  
17 the April 10th letter?

18 A. Yes.

19 Q. Were any payments made pursuant to  
20 that payment plan?

21 A. Okay. I don't recall.

22 Q. Do you feel that this document bound  
23 the company?

24 A. I did.

25 Q. Okay. Do you recall how much was

owing about at that time to Proskauer?

51

A. I don't.

Q. I'm going to show you a document marked Exhibit 8.

MR. PRUSASKI: Mr. Selz it's No. 15.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 8 was marked for identification.)

By MR. PRUSASKI:

Q. A letter dated April 19th, 2000. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of it?

A. I did.

Q. Does the -- what does the letter describe?

A. It confirms receipt of my letter confirming the payment plan, the fact that the first payment was made on April the 7th, and it elaborates that the remaining payments would be due every two weeks. It also expresses an understanding that in the event of a financing or capital investment, the past due balance would be paid on receipt of those funds.

Q. Was it your understanding that after April 19th, 2000 -- let me ask you that in a non-leading way.

So after the payment arrangement was entered into, what was your understanding as to Iviewit's responsibilities to Proskauer?

A. To continue with the payment plan.

Q. Was that done?

A. I don't recall what the subsequent payment was.

Q. I'm going to show you a document that's marked Exhibit No. 9.

MR. PRUSASKI: Mr. Selz, it's the next document. I'm going in order.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 9 was marked for identification.)

By MR. PRUSASKI:

Q. A letter dated May 15th, 2000. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes. It recognizes a payment received on April the 27th and details against which invoices the payment would be applied and includes a reminder that the next payment would

be due on May the 15th.

53

Q. Okay. At the time that you received that letter, did you verify that those amounts were correct?

A. They were, yes.

Q. Okay. Did you feel that they were due and owing at the time?

A. Yes.

(Whereupon, Exhibit No. 10 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 10, a letter dated May 30th, 2000. I'm going to ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you sign that document?

A. No.

Q. Who did?

A. My secretary.

Q. At your request?

A. Yes.

Q. Okay. Was the letter transcribed accurately?

A. Yes.

Q. Okay. And you delivered it to Mr. Wheeler?

A. Yes.

Q. Can you explain the substance of the letter, please.

A. Well, it says that due to our cash position, that I was only able to make a partial payment. I did make a partial payment and it reaffirms that normal payments would resume as soon as cash reserves would permit.

Q. Did Si and Eliot Bernstein know that the \$25,000 payments were being made?

A. Yes.

Q. What was their position on that?

A. Well, on several occasions I was challenged as to why I made those payments.

Q. Was that ever resolved?

A. Resolved after the fact.

Q. Let me ask what -- after they challenged the payments, were other payments made?

A. Yes. I think we have a record of at least three payments here.

Q. Okay. Since they challenged you on the first payment?

A. Yes.

Q. Why did you continue making the payments?

A. Well, I continued payments as I could and as I thought was prudent at my discretion.

Q. Did Si and Eliot Bernstein, after they objected to you making the first payment of \$25,000, did Si and Eliot Bernstein continue directing Proskauer to do work?

A. Yes.

(Whereupon, Exhibit No. 11 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 11, which is a letter dated December 29th, 2000. I'll ask you to look at the document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of it?

A. I did.

Q. Could you explain the substance of the letter, please.

A. It states that Iviewit will commence

payments of \$30,000 starting in December 2000 and on the 15th of each month thereafter, that the current monthly bills will not exceed \$5,000 a month and 5,000 of the \$30,000 payment would be applied to current bills and 25,000 to the outstanding balance.

Q. Was this a different payment arrangement than the previous one?

A. Yes.

Q. And why was this payment arrangement entered into?

A. We had received a promissory note funding from Crossbow and so we were disbursing funds because of that funding.

Q. And at this point in time, were the Bernstein's still directing Proskauer to do work for the companies?

A. Yes.

(Whereupon, Exhibit No. 12 was marked for identification.)

By MR. PRUSASKI:

Q. The next document is marked Exhibit 12, a letter dated January 4th, 2001. I'm going to ask you to look at this document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive this letter?

A. Yes.

Q. And can you explain what the letter, the substance of the letter is, please.

A. Yes. It confirms receipt of \$30,000 and identifies how it would be applied against the receivables.

Q. Was that payment made pursuant to the arrangement describe in the December 29th letter?

A. Yes.

Q. The accounts receivable balance of \$66,844.60 described in the letter, at that time you received the letter, do you know if that money was due and owing Proskauer?

A. I believe it was, yes.

THE WITNESS: Can I take a break?

MR. SELZ: Sure.

(Whereupon, a break was taken from 10:50 to 10:59.)

MR. PRUSASKI: What's my last question?

(Whereupon, the requested portion was read back.)

(Whereupon, Exhibit No. 13 was  
marked for identification.)

58

By MR. PRUSASKI:

Q. The next document I'm going to show you is marked Exhibit 13. It's a letter dated January 8th, 2001. I'll ask you to look at this document and tell me if you've ever seen it before.

A. Yes. It's a request for the January payment of \$30,000, which had not been made by January the 18th.

Q. Did you receive this letter from Chris Wheeler?

A. Yes.

Q. Okay. Why wasn't the \$30,000 payment due on the fifteenth made?

A. I could only surmise that it was because of insufficient funds.

Q. Iviewit had insufficient funds?

A. Yes.

Q. Do you believe that the payment was due and owing?

A. Yes.

Q. The letter describes in the 4th sentence, the first clause: "If the payments are

continually delinquent," do you feel that's an accurate description by Chris Wheeler of Iviewit's payment history?

59

A. Yes.

(Whereupon, Exhibit No. 15 was marked for identification.)

By MR. PRUSASKI:

Q. The next document I'll show you is being marked Exhibit 15, a letter dated March 28th, 2001 consisting of four pages total.

MR. SELZ: Chris, is that 14 or 15?

MR. PRUSASKI: It's 15. The January 18th letter was 14.

THE WITNESS: There's two January 8th letters. These are both the same, 13 and 14.

MR. PRUSASKI: Oh. I'm sorry. Steve I mismarked. This is going to be 14.

MR. SELZ: Okay. That's what I thought.

MR. PRUSASKI: Sorry. Thanks for pointing that out.

MR. SELZ: No problem.

(Whereupon, Exhibit No. 14 was marked for identification.)

By MR. PRUSASKI:

Q. Sir, I'm going to correct myself.

60

This is going to be Exhibit 14, a March 28th, 2001 letter consisting of four total pages. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive this from Chris Wheeler?

A. Yes.

Q. Could you describe what it is.

A. It's detailing about standing invoices and an acknowledgement of \$7,000 which has been paid.

Q. Did you review the invoices listed in this letter when you received the letter?

A. They were reviewed by accounts payable.

Q. Were they found to be due and owing?

A. Yes.

MR. SELZ: I didn't catch that. Who reviewed them?

THE WITNESS: Accounts payable.

By MR. PRUSASKI:

Q. Who comprised the accounts payable?

A. Bill Kasser at that time.

K-A-S-S-E-R.

61

Q. At the time this March 28th, 2001 letter was received, were Si and Eliot Bernstein still directing Proskauer to do work?

A. Yes.

Q. Were you directing Proskauer to do work?

A. I was, although I don't believe at that point in time there was very much work being done.

Q. Why was that?

A. Because of the state of the company.

Q. How do you describe the state of the company at the time of the March 28th, 2001 letter?

A. Well, the company was in the retrenchment mode and we did not -- we did not activate much work.

Q. What do you mean by retrenchment mode?

A. We were in the mode of determining how we would shrink the company and what the operational activity of the company would be between California and Boca.

Q. Was the company experiencing

financial problems at the time?

62

A. Yes.

(Whereupon, Exhibit No 15 was  
marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document  
marked Exhibit 15, a letter dated April 16th,  
2001, and ask you to tell me if you've ever seen  
that document before.

A. I don't recall it specifically but I  
assume this is a letter that I did receive.  
Yeah, I think so.

Q. Can you describe the substance of  
the letter.

A. It confirms notification of a  
\$25,000 retainer requirement for additional  
services and requests of Ross Thompson, a senior  
staff attorney, to prepare a status report of  
ongoing projects for Mr. Miller, who was brought  
in to assist in closing the Boca operation.

Q. Is this after you left the company  
that this letter was sent or before?

A. It was shortly before.

Q. And who was Mr. Miller again?

A. He is an attorney who was brought in

to basically wind down the Boca operation.

63

Q. Was he a solo practitioner or a firm attorney?

A. I believe he was an independent attorney.

Q. What was Mr. Miller's first name?

A. Ross.

Q. Did you ever have conversations with Mr. Miller about Proskauer's bills?

A. Yes.

Q. And what did you talk about?

A. I told him --

MR. PRUSASKI: Hold on a second.

Steve?

MR. SELZ: Yeah, I think my client got disconnected. I'll have to call him right back.

MR. PRUSASKI: Okay.

MR. SELZ: Okay, Eliot, you're back?

MR. BERNSTEIN: Yep.

MR. SELZ: Okay. Sorry. Okay, go ahead.

MR. PRUSASKI: I'll re-ask my last question.

MR. SELZ: Thank you.

By MR. PRUSASKI:

Q. What did you and Mr. Miller discuss pertaining to Proskauer's bills?

A. We discussed the outstanding balances.

Q. Whose idea was it to bring Mr. Miller into the company?

A. The board of directors.

Q. Eliot and Si Bernstein included?

A. Yes.

Q. They both concurred with bringing him aboard?

A. Yes.

Q. And what was Mr. Miller's position with respect to Proskauer's bills?

A. I don't recall any specific position.

Q. Do you know if Mr. Miller felt the bills weren't due and owing?

MR. SELZ: Calls for speculation.

THE WITNESS: The direction that he was given by the board, of which I was a party, was to reach a settlement of all outstanding payables.

By MR. PRUSASKI:

Q. Was the settlement because of Iviewit's financial condition?

A. Yes.

Q. Okay. Do you know if Mr. Miller ever reached a settlement with Proskauer?

A. I don't.

Q. You don't know?

A. No.

Q. Were you present at all of the meetings of the board of directors for Iviewit?

A. I was through April of 2001.

Q. Were any Proskauer attorneys ever present at any of those board meetings?

A. At many of them, but I don't specifically recall which board meetings.

Q. Do you know if Si or Eliot Bernstein ever mentioned during those board meetings that Proskauer was billing for work that they didn't have permission to perform?

A. No.

Q. You don't know or you never heard them say that?

A. I never heard them say that.

Q. Okay. Do you know if Si or Eliot Bernstein -- or let me allow my question to

encompass anyone present at the meeting. Did anyone present at the board meetings ever complain or state that Proskauer was billing for work that they didn't do?

66

A. No.

Q. Did anyone ever complain or state at any board meetings of Iviewit that Proskauer performed poorly with respect to legal work?

A. No.

(Whereupon, Exhibit No. 16 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 16, which is a letter dated April 16th, 2001, total two pages, ask you to look at this document and tell me if you've ever seen it before.

Oh, wait a second, I'm showing you the same letter as pervious. I'm sorry. I did it again.

MR. PRUSASKI: Hold on a second, Steve. I mismarked another exhibit.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 16 was re-marked for identification.)

By MR. PRUSASKI:

67

Q. The document I wanted to show you, which is going to be marked Exhibit 16 is a letter dated April 16th, 2001, attaching, with a three-page attachment, four pages in total. I'm going to show you that and ask you if you've ever seen it before?

A. Yes.

Q. Did you receive that letter and the attachment?

A. I believe so.

Q. Obviously the letter states that it's attaching a list of outstanding invoices due and owing. Did you or anyone in the company do a reconciliation as to whether these invoices were due?

A. Bill Kasser was requested to review them.

Q. Did Bill Kasser do the reconciliation?

A. As far as I know, he did.

Q. Do you know what his findings were?

A. I did not receive any notice of any discrepancies.

Q. Okay. Were you still with the

company on April 16th?

68

A. Yes.

(Whereupon, Exhibit No. 17 was  
marked for identification.)

By MR. PRUSASKI:

Q. Show you a document marked Exhibit  
17, a letter dated April 27th, 2001, consisting  
of two pages. I'm going to ask you if you've  
ever seen this document before?

A. Um-hum.

Q. That's a yes?

A. Yes.

Q. And did you receive it?

A. Yes.

Q. And what is the substance of the  
letter?

A. It says: Since no payment had been  
received, effective immediately, representation  
was going to be terminated and a request was made  
for payment in full and in the event that is not  
received or an arrangement not made, the  
litigation department would be requested to take  
action.

Q. At the time you received the letter,  
did you dispute the amount listed in Paragraph 2

of 369,460.97 as due and owing?

69

A. No.

Q. Why?

A. Well, it had been enumerated on the prior letter of April 16th.

Q. Okay. And no one in accounts -- had anyone in accounts payable given you any indication that this amount was due?

A. No.

Q. How long after you received the letter of Proskauer's terminating representation did you leave the company?

A. Three days.

Q. April 30th?

A. Yeah.

Q. Okay.

MR. PRUSASKI: Steve, I need to review my notes for a moment.

MR. SELZ: Okay.

(Whereupon, a short break was taken.)

By MR. PRUSASKI:

Q. I'm going to ask you some questions I made notes on during your previous testimony so we're going to move backwards in time and I

apologize for that.

70

A. Okay.

Q. Who is Ken Rubenstein?

A. Ken Rubenstein is an intellectual property department head at Proskauer Rose in New York, and he is the person who recommended Meltzer as the patent attorneys to take care of the Iviewit intellectual property matters.

Q. What's your background in IP?

A. Well, I hold a number of patents. I, as general manager of a major IBM facility, an intellectual property department of patent attorneys reported to me. I was involved in promoting IBM's intellectual property activities. I sold an IBM company with intellectual property attributes and a portfolio that went with the company. So I've been involved in various aspects of intellectual property for many years.

Q. Do you believe that one of the reasons why you were brought into Iviewit was because of your intellectual property background?

A. Yes.

Q. Who from Iviewit directed the firm that Rubenstein recommended to do the IP work?

A. Before I joined the company, it was

Eliot Bernstein.

71

Q. Was he satisfied with that firm's work?

A. I don't recall any complaint.

Q. Did you have any complaints?

A. No.

Q. Do you know if any intellectual property work for Iviewit was ever mishandled by any law firms?

A. No.

Q. Do you recall Proskauer ever agreeing to accept fixed fees for work, that's fixed fees for doing work for Iviewit?

A. No.

Q. Would you know if they did?

A. Subsequent to my employment, yes.

Q. I asked you if any law firms had mishandled any patent work for Iviewit. Do you know if any law firms failed to do necessary patent work for Iviewit?

A. I'm not aware of any law firms that did not complete their assignments.

Q. Did you oversee, subsequent to the beginning of your employment, the work done by the patent attorneys?

A. Yes.

Let me come back. On the provisional, the initial provisional filings, on later review, did not cover all aspects of the material that should have been covered; and that was corrected in the formal filings.

Q. By what firm was involved in that?

A. That was Meltzer.

Q. Proskauer never had anything to do with that?

A. No.

Q. Did Proskauer ever submit bills for intellectual property work that they didn't do?

A. No. Not that I'm aware of. The only billings were for trademark registration work that was done.

Q. Was that done correctly?

A. Yes.

Q. Can you explain to what extent Proskauer did trademark registration work?

A. It was handled out of the New York office and Iviewit, as a name for instance, and the graphics representing Iviewit were registered.

Q. Correctly?

A. Yes.

Q. I'm going to read a statement to you from Iviewit's interrogatory answers. It says:

"At several board meetings, the billings of Proskauer and the work products were repeatedly questioned by all board members and Chris Wheeler, who attended these meetings and was fully aware of major concerns in the total bills and incompetence of product or failing to produce work results."

Is that an accurate statement?

A. No.

Q. Okay. Based on your previous testimony?

A. Yes.

Q. Another statement I'll read to you from Iviewit's interrogatory answers.

"Gerald Lewin, Murice, Buchsbaum --  
B-U-C-H-S-B-A-U-M --

A. Buchsbaum.

Q. -- Buchsbaum, Brian Utley, Ross Miller, Aden Foley, William Kasser and Larry Mondragon -- sorry, Ms. Court Reporter -- were all commissioned by the board to investigate the billings and inferior work products, especially

in relationship to the patent pool errors and  
missing copyrights."

74

Is that an accurate statement?

A. Well, some of those names I don't  
recognize.

Q. Were these people who were  
commissioned by the board of directors to  
investigate Proskauer's billings?

A. If I can rephrase that.

Q. Sure.

A. At several meetings, the magnitude  
of the Proskauer billings was discussed, and Si  
agreed to discuss those billings with Chris  
Wheeler, but there were no, there were no details  
or specifics regarding failure to complete work  
or work completed but not requested.

Q. What about incompetence of work?

A. That was never an issue.

Q. What about patent pool errors and  
missing copyrights, was that ever an issue?

A. Patent pool errors were not within  
the scope of Proskauer work.

Q. What is a patent pool error?

A. A patent pool is something that  
industry participants will create. For instance

and specifically in the MPEG area, there is a patent pool that Ken Rubenstein is personally involved with relating to licensing the usage of MPEG based intellectual property. And the reason this pool is established is because the licensors basically formed a consortium or a pool for the purpose of granting rights so that people in the industry could practice the collection of intellectual property, which was held across a number of different companies. So they form a pool and the pool collects the royalties and then distributes the royalties across the pool members.

Q. Was there ever patent pool errors?

A. There was no such pool that Iviewit has ever been involved.

Q. So were there any patent pool errors?

A. There was no patent pool.

Q. Do you have any idea what Eliot Bernstein is referring to in his interrogatory answers?

A. No.

Q. Were there any missing copyrights?

A. No.

Q. Does Eliot Bernstein have patent or copyright experience?

A. No.

Q. Does Si?

A. No.

Q. The interrogatory answers refer to correspondence between Ross Miller and Proskauer relating to negotiating settlement to the overstated bill. It was agreed to settle at \$100,000 but the deal was never consummated. I'll ask you, Mr. Utley, are you aware of any settlement agreements like that?

A. No.

Q. Do you have any idea what Mr. Bernstein is talking about?

A. No.

Q. Do you know if Mr. Hersh ever entered into any agreements with Proskauer to settle the bills?

A. If he did, it would have been with my knowledge and approval.

Q. Do you know if -- I'm going to refer to another interrogatory answer, which I can't quote because it's not in context. It's responding to a question.

Do you know if there were any abuses

77

by Attorneys Wheeler or Rubenstein with respect to NDA's for their respective clients or patent pools that they oversaw?

A. I'm not aware of anything.

Q. Did the board ever -- well, I'm going to quote this one because it's important that I do.

We asked Iviewit in Interrogatory No. 15 if they ever complained to or otherwise notified Proskauer Rose that Proskauer allegedly failed to perform any work, and they said yes, and we asked them to explain their communicating to Proskauer about these things; do you understand?

A. I understand.

Q. Okay. The response, and I'll quote it, was there were, quote, demands by the board to limit Mr. Utley and Mr. Wheeler from running up substantial bills without board approval. Mr. Utley was limited in incurring Proskauer or other expense items, especially whereas his friends were concerned, to a maximum of \$5,000. Mr. Wheeler is aware of this and proceeds to bill far in excess for work Mr. Utley requested

without board approval, end quote. Is that an accurate statement?

78

A. No.

Q. Were there ever demands by the board to limit your authority?

A. Not my authority. There was requests to minimize the amount of work that would be allocated to Proskauer. And the problem that I had was that much of the work that was done by Proskauer was not requested by me but was requested by the Bernstein's.

Q. So how do you characterize the statement that I just read to you?

A. I think it's a misrepresentation.

Q. Did you ever allow Proskauer to perform work without board approval, proper board approval, as I'm referring to this interrogatory answer?

A. Well, day-to-day work does not require board approval.

Q. I asked Iviewit in Interrogatory 17 and 18 to list the particular invoices billed by Proskauer which they believe work was billed but not at Iviewit's request, and they specified some work and I want to run over it with you briefly.

1 They refer to Distance Learning, acquisition and  
2 merger work with New Jersey Distance Learning  
3 Company. Does that ring a bell?

79

4 A. Um-hum.

5 Q. Did Proskauer do any work with  
6 respect to that?

7 A. A small amount of work related to  
8 the potential structuring of a merger or  
9 acquisition on the part of Iviewit.

10 Q. Who requested Proskauer to do the  
11 work?

12 A. I did.

13 Q. Did the Bernstein's know that  
14 Proskauer did that work?

15 A. Yes.

16 Q. Did they ever complain about it?

17 A. Si did not. Eliot did.

18 Q. What did Eliot say about it?

19 A. Well, he didn't think that we should  
20 be involved in distance learning.

21 Q. Would you describe that as a  
22 disagreement among management?

23 A. Yes.

24 MR. SELZ: Object to the form of the  
25 question.

By MR. PRUSASKI:

80

Q. Another category is setup corporations: I-Media, I-Learnit, InternetTrain, etc., name searches and trademarks. Did Proskauer do any type of work related to that?

A. I'm not aware that they did.

Q. Trademark applications is another category listed in the interrogatory answers. Do you know if Proskauer did any work related to trademark applications?

A. Yes.

Q. And I believe you previously said the New York office did?

A. Yes.

Q. Who requested that Proskauer do this work?

A. It was started before I joined the company and it continued while I was involved with the company.

Q. So who would have requested it before you joined?

A. It was requested from the Bernstein's through Chris Wheeler.

Q. Another category where Proskauer billed for work that it alleges was not performed

at Iviewit's request was Christopher Wheeler

81

attending board meetings. Who requested Mr. Wheeler to attend Iviewit board meetings?

A. This was a practice that started before I joined the company.

Q. Was there ever a time where Christopher Wheeler was asked to stop attending board meetings?

A. No. No. The only exception to his presence was if subject matter would be discussed that he should be excluded from.

Q. Do you think it's unreasonable for him to bill his time for attending a board meeting for his client?

A. No.

Q. Another category is entire corporate organizations and reorganization were all recommended by Proskauer Rose and were to be small incorporation fees for setup of Mr. wheeler's corporate scheme, instead there are mass billings for this work. How do you respond to that statement?

A. Well, the first two occurred before I joined Iviewit, but my understanding of what transpired is that Proskauer was first directed

1 to form a C-corp. Friends of the family --

82

2 Q. Directed by whom?

3 A. By Bernstein's.

4 Q. Okay.

5 A. Friends of the family in Los  
6 Angeles, after the fact, strongly recommended  
7 that it be, the corporate structure be modified  
8 to an S-corp for tax purposes. So it was  
9 restructured into an S-corp. That was U-View  
10 fees.

11 Then after I joined the company and  
12 we began to explore the capital markets, it  
13 became evident that an S-corp was a handicap and  
14 for investment purposes, we needed to be a  
15 C-corp. And so the board made the decision late  
16 1999 to convert to a C-corp.

17 The problem that we had to deal with  
18 and that compounded Proskauer's work effort was  
19 the complexity of the structure that had to be  
20 migrated that had been created with the S-corp  
21 and the multiple investments in the S-corp and  
22 Iviewit, LLC and preserving tax status for those  
23 investors in Iviewit, LLC. So we were migrating  
24 basically three companies into three new  
25 companies and preserving one company for

accounting purposes.

83

Q. In Iviewit's answer to Interrogatory No. 20 in Subparagraph Roman Numeral X, they said that several meetings were held with Chris Wheeler and Simon Bernstein, chairman of the board, regarding excessive billings and controlling Mr. Utley and Mr. Wheeler and the billings for personal conferences they held daily. How do you respond to that statement?

A. We didn't hold personal conferences daily, and if we had personal meetings, they were not charged.

Q. Is that a misrepresentation, then?

A. That's a misrepresentation.

Q. The answer to 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.

A. Joao.

Q. Joao.

A. Yeah.

Q. Were 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

84

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

A. No.

Q. How do you respond to that statement?

A. That it's inaccurate.

Q. Did you and Mr. Wheeler suggest using, who's described as your friend, at Foley & Lardner to correct gross negligence in the Rubenstein/Joao work?

A. Well, Rubenstein, as I said, was not involved in the work.

Q. Okay. I'm sorry, I shouldn't have said that, but I'm reading again off the interrogatories.

A. But it is accurate to say that when we brought in Foley & Lardner, who was referred to me by a person who was responsible for intellectual property for IBM for the entire Far East and who worked for me as an intellectual property manager, when we brought Foley & Lardner in, it was to assume control of the portfolio and to bring it up to a level that would be necessary for formal filings. And in that process, we, you know, we discovered that there were some things that in hindsight should have been treated differently in the original filings.

Q. Was there ever an agreement by Proskauer that they wouldn't bill over \$5,000 a month or was that an estimate?

A. It was a request by Proskauer to not ask for work that would involve more than \$5,000 of charges a month.

Q. Were the Bernstein's aware of this request?

A. Yes.

Q. Did they continue to request work in excess of that amount?

A. Well, I think it's very difficult to directly attach a work request to a specific

amount since it's, there's, the \$5,000 is the  
product of a number of work elements, and no  
single work element would be identified with  
\$5,000.

Q. Did Si or Eliot Bernstein ever want  
to get rid of Proskauer's Iviewit attorneys?

MR. SELZ: Objection to form.

MR. PRUSASKI: I'll rephrase it.

I'll withdraw the question.

By MR. PRUSASKI:

Q. Who's Steven Lamont?

A. I don't know him.

Q. Have you heard his name before?

A. I've heard the name.

Q. Did he ever have anything to do with  
Iviewit at the time when you worked there?

A. No.

Q. He was never present at any board  
meetings obviously?

A. No.

MR. PRUSASKI: I'm going to review  
my notes again for a minute.

MR. SELZ: How you doing on time?

MR. PRUSASKI: I'm getting to the  
end. I'm going over my notes.

MR. SELZ: Okay. What I would

87

suggest is how about we see if we can finish you  
up, we take a lunch break and then I'll do my  
cross; how does that sound?

MR. PRUSASKI: Sure.

THE WITNESS: No, I can't do that.

MR. PRUSASKI: You're strapped for  
time?

THE WITNESS: Right.

MR. SELZ: Okay, well, then we'll  
take a five or ten minute break and then we'll  
start right into the cross.

MR. PRUSASKI: Okay.

THE WITNESS: Okay.

MR. PRUSASKI: (Looking through  
documents.)

By MR. PRUSASKI:

Q. I believe you testified earlier that  
you had had at least a conversation with Chris  
Wheeler in the past about a discrepancy on a bill  
when you received it?

A. What I discussed with him was the  
fact that it appeared that there was redundancy  
in the work effort, that is, more than one person  
involved in a particular work effort, so there

was dual billing for a particular task.

88

Q. Was that only on one bill?

A. It was, it was not on one bill, but on a particular piece of work.

Q. Okay. And was that communication that you had with Mr. Wheeler in writing or oral?

A. No, it was oral.

Q. And did Mr. Wheeler resolve it to your satisfaction?

A. Yes.

Q. You filed an involuntary bankruptcy action against Iviewit.com, LLC?

A. Um-hum.

Q. You have to answer yes or no.

A. Yes.

Q. Why is that?

A. Because I was owed substantial monies by Iviewit which were unresolved.

Q. And that action is pending?

A. That -- there was a judgment, a bankruptcy judgment putting the LLC into a Chapter 7.

Q. Are there any questions that I asked you today that you were unable to answer but you feel that Mr. Hersh could? I'm asking you that

because I'm planning to take his deposition in  
another week or so.

89

A. I think Mr. Hersh handled specific,  
handled the accounts specifically, and so I think  
he might provide more detail than I might have  
been able to provide.

Q. Did Mr. Hersh work at your  
discretion?

A. Yes.

Q. Do you know where Mr. Hersh lives?

A. He lives, he lives in Boca -- no.  
Yes, he lives in Boca.

Q. Is it on Viastel?

A. Yes.

Q. Okay. V-I-A-S-T-E-L. Do you know  
what Mr. Kasser's role in the Iviewit companies  
is?

A. Well, when I was there, he was  
employed as an accountant.

Q. Do you know what he is now?

A. No.

Q. Did Mr. Kasser ever complain to you  
that Proskauer was submitting, or Proskauer was  
claiming monies were due and owing on bills that  
weren't received by Iviewit?

A. No.

Q. And I believe you testified that he had performed reconciliations at your request of the bills claimed by Proskauer to be due?

A. That was his job.

MR. PRUSASKI: I have no further questions. Can we take a short break, Steve, for the restroom?

MR. SELZ: Yeah. I just need to -- give me, like, 15 minutes. I just need to catch something to eat before I pass out over here.

MR. PRUSASKI: Can you stick it out for 15 minutes?

THE WITNESS: Yeah, I suppose.

MR. PRUSASKI: Do you know how long your cross is going to be?

MR. SELZ: I don't know. I mean, it could be a little bit but it's not going to be huge.

MR. PRUSASKI: Okay.

MR. SELZ: And it will obviously depend on what comes up during the cross too, but I'll --

MR. PRUSASKI: We're off the record.

(Whereupon, a break was taken from

11:50 to 12:09.) --

91

EXAMINATION VIA TELEPHONE

By MR. SELZ:

Q. Mr. Utley, you're still under oath.

A. Yes.

Q. Okay. My name is Attorney Steve Selz. I represent the defendants in this action, Iviewit. And let me start out by saying that I'm going to refer to the Iviewit companies the way that Mr. Prusaski did, that is, when I say Iviewit, I mean the totality of all the companies. If I wish to break it down into a more specific entity, I'll tell you the specific entity we're talking about.

A. Okay.

Q. Great. You had indicated in your earlier testimony, Sir, you had had your deposition taken about seven or eight times before, I believe you said.

A. I said four our five.

Q. Four or five. Can you tell me what cases that was in or what that was involving, please.

A. Is that relevant to this deposition?

Q. Well, I have a right to know what

your experience is with lawsuits, if you're involved with anything personally concerning Iviewit, whether or not you've ever given a deposition or not.

A. These were cases of insurance liability.

Q. Was it personal injury actions, something for you personally or was it something else?

A. I was not personally involved in the injury, but there was an injury claim in at least two of the depositions.

Q. How about the other depositions, the four depositions, what were those involving?

A. Oh, I was deposed as a witness in an IBM suit.

Q. What was that suit involving more specifically?

A. It was involving a suit by Data General against IBM.

Q. And was it suit over a contract?

A. It was suit over patent infringement.

Q. And Data General was alleging patent infringement against IBM?

A. Yes.

Q. And were you an employee of IBM at the time that you gave that testimony?

A. No.

Q. And who were you an employee of at that time?

A. I was deposed as the person responsible for the product which was claimed to be infringing on Data General product patents.

Q. Okay. And you were the person, the IP person, the IP person responsible for that particular product that Data General was claiming was infringing?

A. I was the general manager of that product group.

Q. Okay. Were you named personally in that lawsuit also or just the corporation?

A. Just the corporation.

Q. Do you have any recollection what year that lawsuit took place?

A. Well, I was deposed, it was about five years ago.

Q. About 1997 or thereabouts?

A. Yeah, thereabouts.

Q. Okay. And do you recall what court

or where the site of that lawsuit was?

94

A. No.

Q. Was it in the federal court or state court?

A. I don't know.

Q. Was your deposition taken in the State of Florida --

A. No.

Q. -- or taken elsewhere?

A. It was taken in New York.

Q. In New York. Okay. Now, going back to something that Mr. Prusaski started but I don't think he completed with was some of your background information about your education. If you can just tell me from undergraduate onward what your educational background is, Sir, schools you attended, years of attendance and degree.

A. I don't have a degree.

Q. Okay.

A. I attended Weaver State University, which was then Weaver College, 1950.

Q. Okay.

A. San Fransisco City College, 1957, 1958.

Q. Okay. And you graduated from San

Francisco College or did not?

95

A. I don't have a degree.

Q. Okay. So you never completed your course at San Fransisco then?

A. Right.

Q. With regard to your employment experience, you had stated your employment with IBM. What years was that from, Sir?

A. 1955 through 1992.

Q. 92. And your first employment with IBM in 1955, what position was that in if you can recall?

A. I was employed as a customer engineer.

Q. All right. And after that, you were promoted to what position?

A. In 1960 I was promoted to development engineer, electrical engineer.

Q. At that point, were you supervising a staff or working with other engineers below you at that point?

A. I was involved in design of a computer.

Q. Were you the leader of any design team or were you just an individual engineer

working as part of a team?

96

A. I was part of a team.

Q. How about after your role as a design engineer, then, in 1960, what were you promoted to next?

A. I was promoted to, well, through a variety of steps, up through senior engineer.

Q. Okay.

A. And assumed management responsibility in 1965.

Q. Okay.

A. And assumed product management, product management responsibility in 1970, 1969.

Q. 1969, okay.

A. By that, product management responsibility in IBM parlance was I had worldwide development and profit responsibility for a specific product line.

Q. What product line was that in 1969?

A. That was for IBM Small Scientific and Process Control Systems.

Q. And after that, what was your next promotion or next move in IBM?

A. My next move was in 1974. I assumed responsibility for one of IBM's leading, most

advanced computer development programs.

97

Q. Okay.

A. As a systems manager.

Q. I'm sorry, after that?

A. That was, that product became the System 38, one of IBM's cornerstone products.

After that I assumed, was named director of Architecture and Technology for IBM's Systems Division, responsible for the technology direction and architecture for products in five laboratories.

Q. And how many people at that point did you supervise, Sir?

A. Well, I'm supervising the work product of five laboratories.

Q. Okay. So several hundred employees at that point?

A. That would be probably in the range of 1,500 development employees.

Q. And after that?

A. After that, I became the general manager of IBM's Biomedical Business Unit.

Q. Okay. Did you have any particular experience in the biomedical field or was it just a promotion based on your past experience within

1 the corporate structure?

98

2 A. It was based upon my past  
3 experience.

4 Q. And how about after that, Sir?

5 A. I sold that business and then I  
6 assumed responsibility for the introduction of  
7 the PC in Europe.

8 Q. Okay. So you sold the biomedical  
9 business that IBM had developed as part of some  
10 kind of purchase by another entity; is that what  
11 happened?

12 A. Yes.

13 Q. What entity was that that purchased?

14 A. I can't reveal that.

15 Q. Okay. Is there some kind of  
16 confidentiality that prevents you from disclosing  
17 that?

18 A. Yes.

19 Q. And what year about was that in?

20 A. That was in 1984.

21 Q. Okay. And after that, you said you  
22 started another project introducing the PC to  
23 Europe, was it?

24 A. Yes.

25 Q. And what position did you hold with

regard to that?

99

A. I was group director for PC programs in Europe.

Q. And how long did that position last?

A. Well, that position grew over time until 1988 when I had, at that time I had responsibility for all of IBM's medium and small systems in Europe, including manufacturing and marketing.

Q. Okay. And that was through 1988 or thereabouts, you said?

A. That was through mid 1988.

Q. After that, what was the next step in IBM?

A. Then I assumed responsibility for the personal computer development worldwide based in Boca Raton.

Q. And your employment with IBM ceased, you said, about in 1992?

A. Yes.

Q. And what was the reason for the cessation of your business relationship with IBM?

A. I retired.

Q. Okay. Now, after IBM, what was your employment or where were you employed?

A. I had a consulting business.

100

Q. What was the name of that consulting business?

A. Premier Connections.

Q. Premier Connections?

A. Um-hum.

Q. Okay. Where was that based?

A. That was based in Boca Raton.

Q. What sort of consulting did that business do?

A. Basically the application of computers in business.

Q. Did you actually sell hardware or was it software or was it a combination of that plus consulting?

A. It was consulting.

Q. Okay. So you weren't actually selling any product; you were consulting with companies about establishing their own computer systems in-house; was that what it was?

A. Yes.

Q. And what was the business location for Premier Consulting?

A. It was my home address in Boca Raton.

Q. What's that?

101

A. Beg Pardon?

Q. What was that address, sir?

A. That was 1930 Southwest Eighth Street.

Q. Okay. And how long did you operate Premier Consulting?

A. I'm still doing it.

Q. Still doing it; it's still active, okay. Are there any other employees of Premier Consulting other than yourself?

A. No.

Q. Have there ever been any other employees of Premier Consulting other than yourself?

A. No.

Q. Have you ever had any work or did any work for a company called Diamond Turf Lawn Mower?

A. I did.

Q. When was that?

A. That was about 1995 until mid 99.

Q. Were you actually employed by Diamond Turf Lawn Mower?

A. Yes.

Q. Okay. You just failed to mention that in your previous --

A. I'm sorry, yes.

Q. Okay. And what did you do at Diamond Turf Lawn Mower?

A. I was president.

Q. You were president. For the full four years?

A. Yes.

Q. Okay.

A. My recollection is a little hazy. It could have been 95, 96 when I started.

Q. Okay. So you were president of this company for approximately three to four years?

A. Yes.

Q. And what was your role at Diamond Turf Lawn Mower as president; what did you do?

A. I ran the company.

Q. Did you take on the position not only of president but also as CFO or anything of that nature, or you just did strictly like a chief operating officer; what was your role exactly?

A. I suppose you could consider it to be a cross between a chief operating officer and

the chief engineer.

103

Q. And what did Diamond Turf Law Mower do; what sort of company is that?

A. It produced maintenance equipment for golf courses.

Q. Okay. And were you working also doing engineering for the company as well?

A. Yes.

Q. And that engineering capabilities that you have, was that something you garnered through your employment with IBM or is that something that you had specific knowledge of outside of your employment with IBM?

A. Both.

Q. This was not engineering of electrical components; this was engineering of mechanical systems; is that what this was?

A. Every, virtually every mechanical system has an electrical component.

Q. Okay.

A. And a hydraulic component in this particular case.

Q. And when did you -- when you ceased worked with Diamond Turf Lawn Mower, was that an amicable leaving or was there some problem or did

1 everything work out okay with that?

104

2 A. Well, there was a, there was a  
3 dispute over intellectual property. There was no  
4 intellectual property agreement in my employment  
5 agreement and there were certain inventions that  
6 I made that we were unable to resolve ownership  
7 of.

8 Q. Okay. So these were inventions that  
9 you developed while you were employed by Diamond  
10 Turf Lawn Mower?

11 A. Yes.

12 Q. Okay. Can you describe those  
13 inventions to me.

14 A. They related to hydro-mechanical  
15 equipment.

16 Q. Okay. What exactly with hydraulic  
17 mechanical equipment?

18 A. How much detail you want me to go in  
19 to?

20 Q. Well, were they related somehow to  
21 the operations of the hydraulics of the equipment  
22 or were they strictly mechanical?

23 A. They related to a hydro-mechanical  
24 system, which means that it involves the  
25 integration of hydraulics into a mechanically

operating piece of equipment.

105

Q. Okay. And that's what all these patents, or were all these patents or were all these inventions, rather, the subject of?

A. Yes. Almost all the equipment that Diamond Turf produced or was involved with was hydro-mechanical.

Q. Are there any current patents or patents pending or applications for patents on these things that you hold?

A. No.

Q. Who holds the patent rights or if there are any patent rights, who has applied for those?

A. I'm not aware of any one.

Q. So you're not aware of any one making claim to these intellectual properties at this point?

A. No.

Q. When were you first introduced to Iviewit or its products by Mr. Wheeler? I'm assuming that Mr. Wheeler was the one who introduced you to the company.

A. Yes.

Q. And when was the first time that you

1 got introduced to Iviewit by Mr. Wheeler?

106

2 A. I believe that was July of 99.

3 Q. And what exactly did Mr. Wheeler  
4 tell you about Iviewit?

5 A. Well, he, as I recall, he told me  
6 that he had a client who had some very  
7 interesting intellectual property in the field of  
8 computer based graphics and would I have an  
9 interest, potential interest in learning more  
10 about it with the thought of potentially becoming  
11 involved with the company. He told me that he  
12 had been asked to assist in organizing the  
13 company and he was looking for someone with a  
14 technology background who could run the company.

15 Q. Okay. Did you know Mr. Wheeler  
16 prior to him contacting you about Iviewit?

17 A. I did.

18 Q. And when did you or how did you  
19 first come to know Mr. Wheeler?

20 A. He -- my first contact with  
21 Mr. Wheeler was when he came to visit me as  
22 general manager of IBM Boca Raton on a, with a  
23 client on a question of adjoining property.

24 Q. Okay. So he had a question  
25 regarding an adjoining property?

A. Right.

107

Q. Was it something dealing with some real estate that was located next to IBM's facilities; is that what you're --

A. Yes.

Q. I just want to make sure I understand your answer.

A. Yes.

Q. Okay.

A. At that time I was responsible for about \$4 million worth of office and development laboratory space.

Q. Okay. And Mr. Wheeler's, one of Mr. Wheeler's clients had some interest in some of this adjoining laboratory space or real estate that you had some kind of control over?

A. I didn't have any control over it, but he wanted to review their plans, you know, from the standpoint of would there be any issue with their plans from the standpoint of IBM.

Q. Okay. And what year was that again that you said you first met Mr. Wheeler?

A. I didn't, but I think it was in 1990.

Q. 1990, okay. So you knew him for at

least nine years before you were introduced to Iviewit then?

108

A. Yes.

Q. Did you keep up any communications with him or talk to him on a regular basis?

A. Well, we had a mutual friend, as it turned out, and we were involved in local philanthropic activities together, so we, yes, we had fairly frequent contact.

Q. Okay. Could you say, then, that you developed a friendship of sorts with Mr. Wheeler?

A. Yes.

Q. Other than socially and through your immediate contact through IBM, did you know Mr. Wheeler in any other setting?

A. No.

Q. No other business dealings, no other representation by yourself of Mr. Wheeler, nothing of that sort?

A. Well, I don't know how you want to classify being on the same board. We were both on the philharmonic board. We were both involved with Community Hospital. I recruited him to Florida Atlantic University Foundation Board, which I chaired.

Q. Okay. Other than that, he never represented you as an attorney; he never represented you in any case, nothing of that sort?

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A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

1 correct statement of fact, up until August, 111

2 during the term of your employment?

3 A. Yes.

4 Q. Okay. If you could, please describe  
5 for me those inventions or those intellectual  
6 properties for which Iviewit has filed patents or  
7 has made application for patents of which you're  
8 aware.

9 A. Well, I have not looked at those  
10 patents for a considerable period of time, but in  
11 general, the patents fall into two basic  
12 categories. One is a patent relating to images  
13 and images transmitted over the internet, and the  
14 other category is relating to videos which are  
15 compressed and transmitted over the internet.  
16 And the point of the patents is, the  
17 distinguishing characteristic of the patents is  
18 the fidelity with which those images and videos  
19 can be received over the internet.

20 Q. Now, we've got a couple of questions  
21 relating to that. So you gave me the two basic  
22 categories. How many different patents are  
23 involved or how many different applications for  
24 patents are involved in these technologies that  
25 you've described?

1 A. I think there are about seven. 112

2 Q. Seven of them. How about something  
3 to do with zoom and pan imaging; is there  
4 anything specific with regard to that, that was  
5 patented or for which a patent was sought?

6 A. Yes.

7 Q. Okay. And do you know whose name  
8 that patent or patent application is held in?

9 A. Well, there are two or three of  
10 them, as I recall. And on at least one of those,  
11 the names of the original members on the  
12 provisional applications are included, but on one  
13 or two of those, my name is included because of a  
14 material contribution which I made in terms of  
15 reducing to a mathematical formula the whole  
16 process of converting analog images to digital  
17 images and scaling those digital images for  
18 zooming and panning.

19 Q. Okay. And you came up with this  
20 mathematical formula, that's your contribution to  
21 the invention?

22 A. Yes. And that became integrated  
23 into the final formal patent application.

24 Q. And that -- was that, was that  
25 mathematical computation based on any specific

1 training that you've had or maybe you -- you did 113

2 indicate that you had any degree in mathematics.

3 Is that something that you have some experience

4 from from some other portion of your employment

5 or background?

6 A. I have training and experience in

7 mathematics.

8 Q. I'm sorry.

9 A. I say I have training and experience

10 in mathematics.

11 Q. How about in the scaling video

12 invention; is that part of what you've already

13 described?

14 A. That is readily derived from a

15 mathematical background.

16 Q. How about the remote control video

17 applications?

18 A. That's different.

19 Q. Okay. Now going back to --

20 A. What --

21 Q. -- the patent dealing specifically

22 with remote control applications.

23 A. What I did there was I established

24 the fact that the design point that Eliot had

25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115

2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork

1 with regard to Iviewit or any of the intellectual 116  
2 properties we've already discussed?

3 A. None.

4 Q. Are there any other patents that you  
5 hold in your name other than the ones that we've  
6 already discussed?

7 A. Yes.

8 Q. What would those be?

9 A. Well --

10 Q. The best of your recollection.

11 Obviously I can't have you guessing but at the  
12 same time, if you can recall them, you should be  
13 able to provide me with that information?

14 MR. PRUSASKI: Is that question  
15 asked as to him personally?

16 MR. SELZ: Yes.

17 MR. PRUSASKI: All right. Let me  
18 just interpose an objection as to relevance to  
19 that line of questioning.

20 MR. SELZ: Okay.

21 By MR. SELZ:

22 Q. You can go ahead and answer the  
23 question.

24 A. Okay. My last formal patent was  
25 issued, I believe, in 1997. It was filed by IBM

1 on, it was a result of some work I did with IBM 117  
2 that relates to the ability to digitally  
3 recognize writing by a stylus on a surface. You  
4 may recognize it in palm devices.

5 Q. Okay. With regard to that, that was  
6 obviously prior to your employment with Iviewit;  
7 is that correct?

8 A. Yes.

9 Q. Has there ever been any things that  
10 you've either sought a patent for or applied for  
11 a patent since your employment with Iviewit?

12 A. No.

13 Q. Are you aware of any copyright,  
14 trademark or patent applications for either cable  
15 system, set top boxes or anything related that  
16 are similar to those of the technology that  
17 Iviewit owned or made application for?

18 A. No.

19 Q. Do you have any knowledge of any  
20 other patent or patent application, intellectual  
21 property that might infringe upon patents or  
22 applied for patents for Iviewit?

23 A. No. And just to parenthetically  
24 state, I have studiously avoided anything which  
25 might appear to be or be in any way connected

1 with that work.

118

2 Q. Have you had any discussions or had  
3 any meetings with Mr. Wheeler after your  
4 ceasation of employment with Iviewit?

5 A. Only of a personal nature.

6 Q. And when was the last time you met  
7 with him?

8 A. About three weeks ago?

9 Q. And where was that? Was that here  
10 down it south Florida?

11 A. Yes.

12 Q. And what was the purpose for your  
13 trip down here?

14 A. Is that, is that -- I have to ask  
15 this question, I'm not trying avoid it, but is  
16 that anything to do with this interrogatory?

17 Q. Well, it does have to do with the  
18 person who introduced you to the company so  
19 certainly it's relevant to find out what your  
20 relationship is.

21 A. Well, let me just say this, that my  
22 visit to Boca Raton had nothing to do with  
23 Mr. Wheeler in any event. It was, we got  
24 together on a social basis as a circumstantial  
25 opportunity based on being there.

1 Q. Now, if you could for me, Sir, when 119  
2 you first met with Mr. Wheeler back in 1999, did  
3 you discuss corporate strategies or strategies  
4 for Iviewit from a patent perspective or  
5 trademark perspective?

6 MR. PRUSASKI: Object to the form.

7 By MR. SELZ:

8 Q. You can go ahead and answer.

9 MR. PRUSASKI: Just to let you know,  
10 you said when you first met with Mr. Wheeler in  
11 99. Is that with respect to Iviewit?

12 MR. SELZ: Yeah, it's with respect  
13 to Iviewit. That's why I said 99.

14 MR. PRUSASKI: Okay. Well, it  
15 confused me so I'm just clarifying.

16 MR. SELZ: Okay.

17 MR. PRUSASKI: I'll withdraw my  
18 objection then.

19 THE WITNESS: Mr. Wheeler has always  
20 represented himself to me on these matters as  
21 being unskilled and this not being his primary  
22 focus our line of business.

23 By MR. SELZ:

24 Q. Mr. Wheeler is a real estate  
25 attorney; he's not an intellectual property

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attorney?

A. Right. He's a corporate attorney.

Q. So he does corporate work, not intellectual property work?

A. That's my understanding.

MR. PRUSASKI: Objection.

By MR. SELZ:

Q. Is it your understanding that Mr. Wheeler primarily is not an intellectual property attorney?

A. That's my understanding.

Q. And he had indicated to you that he did not have experience in that particular area of intellectual property; is that a true and correct statement of fact.

A. That is a correct statement of fact. That is why I involved in the beginning Mr. Rubinstein as a consultant on that question.

Q. Okay. And Mr. Rubenstein was with what law firm?

A. Proskauer Rose.

Q. He was with Proskauer Rose in New York?

A. In New York.

Q. He was, during the whole term, he

1 was doing work, Mr. Rubenstein was doing work for 121  
2 Iviewit?

3 A. I'm not aware -- other than  
4 referring Iviewit to Meltzer, Rubenstein never  
5 did any work for Iviewit.

6 Q. Okay. So Rubenstein's sole role,  
7 from what you understand, is he referred Iviewit  
8 to the Meltzer Law Firm in New York?

9 A. Yes.

10 Q. Was he ever part of an advisory  
11 board member or was he an advisory board member  
12 to Iviewit? And we're talking about  
13 Mr. Rubenstein.

14 A. I have never used him as an advisory  
15 board member?

16 Q. Are you aware of whether or not he  
17 ever attended any board meetings with the  
18 directors of Iviewit?

19 A. He never attended a board meeting.  
20 I've never met the man.

21 Q. In regard to meetings with Proskauer  
22 Rose, did you have any meetings with Proskauer  
23 Rose concerning their retainer by Iviewit?

24 A. Only in the final weeks of Iviewit's  
25 presence in Boca Raton.

1 Q. You never met with them to sign any 122  
2 agreement for a retainer from Proskauer Rose?

3 A. That's correct.

4 Q. Mr. Utley, were you working with  
5 Iviewit.com on or about September 8th, 1999?

6 A. I'm sorry, would you give that date  
7 again.

8 Q. September 8th, 1999.

9 A. Yes.

10 Q. Okay. And you were in what position  
11 at that point in time?

12 A. President and COO.

13 Q. Do you ever recall receiving a  
14 letter from Proskauer Rose confirming a retainer  
15 of Proskauer Rose by Iviewit?

16 A. Uuh--

17 Q. And when say Iviewit here, I mean  
18 Iviewit, LLC. I guess that's Iviewit.com, LLC is  
19 what it was technically, wasn't it?

20 A. Yes, I believe that's right. Well,  
21 there was both an Iviewit, LLC and an  
22 Iviewit.com, LLC.

23 Q. Okay. And what was the distinction  
24 between the two?

25 A. Iviewit, LLC was the parent company

1 and Iviewit.com, LLC was the operating company. 123

2 Q. I thought Iviewit.com, Inc. was the  
3 operating company?

4 A. That was as of the end of 1999,  
5 December the 31st.

6 Q. So Iviewit, LLC was the parent  
7 company?

8 A. Yes.

9 Q. And then all these other companies,  
10 all the other Iviewit companies derived their  
11 existence from Iviewit, LLC?

12 A. There was one subsidiary company at  
13 that time which was Iviewit.com, LLC.

14 Q. Okay.

15 A. There was a holding company, U-view,  
16 which represented 95 percent of the stock holders  
17 and was an S-corp.

18 Q. Now, I'm going to try to see if I  
19 can jog your memory once. Do you ever recall  
20 having any conversations with Mr. Wheeler  
21 specifically about a retainer of Proskauer Rose  
22 by Iviewit, LLC?

23 A. Well, Chris has put in front of me  
24 a, excuse me, a letter of September the 8th from  
25 Chris Wheeler.

1 MR. PRUSASKI: Is that all right, 124  
2 Steve?  
3 MR. SELZ: That's fine.  
4 THE WITNESS: Which detailed the  
5 engagement agreement between the companies.  
6 Maybe it's my problem, but I did not consider  
7 this to be a retainer since there were no fees  
8 that were escrowed in this relationship.  
9 By MR. SELZ:  
10 Q. Okay. But it talks about, and I'll  
11 refer to you the second paragraph of that.  
12 MR. SELZ: And we might as well,  
13 since he's being examined about it, get it marked  
14 as Defendants No. 1.  
15 MR. PRUSASKI: Okay.  
16 (Whereupon, Defendant's Exhibit  
17 No. 1 was marked for identification)  
18 By MR. SELZ:  
19 Q. If you'll note the second paragraph,  
20 Sir, what does that talk about specifically; if  
21 you could read that for me?  
22 A. Well, he talks about fees.  
23 Q. Right. It talks about the rate  
24 that's going to be charged; is that --  
25 A. Yes.

1 Q. And it talks about the fact that it 125

2 will vary depending on which attorney is going to  
3 be been engaged with what particular services.

4 A. Yes.

5 Q. And you didn't consider this a  
6 retainer or engagement agreement?

7 A. Well, and I apologize, in my, in my  
8 mind, the retainer involved establishing an  
9 escrow amount, whereas this, as an engagement  
10 agreement, was an agreement to perform work, but  
11 there was no escrow involved. So I, you know, if  
12 I have an incorrect understanding of retainer, I  
13 apologize.

14 Q. I'm not going to bother you about  
15 that particular portion. What I'm more concerned  
16 with is, look on page 2, if you could for me, on  
17 the second, second paragraph; it's actually only  
18 a one-sentence paragraph.

19 A. The which one?

20 Q. The second, the second paragraph,  
21 the first complete line. It's a single line.  
22 It's on the second page.

23 A. It says we are waiving a retainer at  
24 this time?

25 Q. Correct.

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A. Yes.

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Q. Does that address your concerns about whether or not there was some discussion as to a retainer?

A. Well, it says the retainer is being waived. So, again, in my poor English, there is no retainer involved. So this is not a letter of retainment; it's a letter of engagement. But, again, if I have a misunderstanding as to what this all means, then I apologize.

Q. Okay. The engagement agreement, was this -- let me rephrase that.

In your opinion, Sir, was this the contract between Iviewit and Proskauer Rose for the providing of legal services?

A. Oh, yes, no question.

Q. An your time of signing this, you were acting on behalf of Iviewit, LLC; is that correct?

A. Yes.

Q. Okay. And the services that were provided by Proskauer Rose, which are the subject of this litigation, arose from this agreement; is that correct?

A. Well, again, pardon my ignorance,

1 but the services began in January of 1999 and 127  
2 this simply formalized the continuation of those  
3 services, but this did not represent the  
4 initiation of those services.

5 Q. Well, let's go back to --

6 MR. SELZ: If you could, Chris, if  
7 you could do me a favor and just hand him  
8 Defendant's No. 1?

9 MR. PRUSASKI: I put all the  
10 exhibits in front him now.

11 MR. SELZ: Thank you.

12 MR. PRUSASKI: Defendant's or  
13 Plaintiff's?

14 MR. SELZ: Plaintiff.

15 MR. PRUSASKI: Okay.

16 By MR. SELZ:

17 Q. I want to refer you back to what's  
18 been marked as Plaintiff's Exhibit No. 1. That's  
19 the Amended Complaint that you testified to  
20 earlier. You said you have never, you never seen  
21 the complaint, but you testified, I believe, that  
22 you had seen the invoices which are attached as  
23 Exhibit A to that Amended Complaint; is that  
24 correct?

25 A. Yes.

1 Q. Okay. And these are dated when? 128

2 These are dated starting January 31st, 2000?

3 A. Well, yes, the first invoice  
4 attached is dated January 31st, 2000.

5 Q. Right. And that postdates this  
6 document that's been marked as Defendant's  
7 Exhibit No. 1; is that correct?

8 A. I guess so.

9 Q. Okay. By about somewhere around  
10 four months; is that correct, Sir, from September  
11 99 to January 2000?

12 A. Yes. Yeah, it's closer to five  
13 months than four months I guess, but --

14 Q. In the meantime, going back to this  
15 what's been marked as Defendant's No. 1, was it  
16 the intention at the time you signed this  
17 retainer, we'll call it, or engagement, that it  
18 covered the relationship between Proskauer Rose  
19 and Iviewit for the providing of legal services?

20 MR. PRUSASKI: Object to the form.

21 THE WITNESS: There's an objection.

22 What --

23 MR. PRUSASKI: No, please answer, if  
24 you will.

25 THE WITNESS: Oh, okay. Yes, I

1 believe it fairly states my understanding of what 129  
2 the relationship would be.

3 By MR. SELZ:

4 Q. And it was intended to cover the  
5 representation, the legal representation by  
6 Proskauer Rose of the Iviewit entities, correct?

7 A. Yes.

8 Q. Now, did Proskauer Rose at any point  
9 in time receive either directly or indirectly any  
10 interest in any of the Iviewit companies?

11 A. I believe that the Bernstein's  
12 granted a certain number of shares to Proskauer  
13 Rose at some point in time I don't recall. It  
14 was prior to my involvement with the company, but  
15 I believe that there was an allocation of shares  
16 to Proskauer Rose by the Bernstein's.

17 Q. Okay. And that's -- to your  
18 knowledge, does Proskauer Rose still hold  
19 interest?

20 A. Yes. As far as I know. I,  
21 obviously I haven't been involved from some time.

22 Q. I'm just asking to the best of your  
23 knowledge.

24 A. Yes.

25 Q. With regard to the engagement

1 agreement, was that ever the subject of any  
2 meeting of the board of directors of Iviewit? In  
3 other words, was it ever discussed at any meeting  
4 of the board of directors prior to you executing  
5 it on or about September 8, 1999 or receiving it  
6 on or about September 8th, 1999 to confirm your  
7 agreement?

8 A. I can't answer that from  
9 recollection; although, I do know that copies of  
10 this agreement were available to the primary  
11 board members at that time.

12 Q. Okay. Well, that really wasn't my  
13 question. I wanted to know whether or not you  
14 had any recollection of discussions or approval  
15 of it. And you're telling me that you can't  
16 recall?

17 A. Well, let me see if I can respond in  
18 maybe a tangential way. At the Bernstein's  
19 insistence, Chris Wheeler was always invited to  
20 and expected to participate in board meetings.

21 Q. Okay. So he was always invited to  
22 board meetings.

23 A. Right. And there was a longstanding  
24 relationship between the Bernstein's and  
25 Mr. Wheeler in bringing the, in creating the

1 company and providing services to the company 131

2 prior to my joining them.

3 Q. So prior to 1999, September 1999 or  
4 August when you joined the company or  
5 thereabouts, there was a longstanding  
6 relationship between Mr. Wheeler and Iviewit; is  
7 that what you were saying?

8 A. Yes.

9 Q. How longstanding a relationship was  
10 that?

11 A. As I mentioned earlier, I believe it  
12 goes back to about January of 1999.

13 Q. Okay. So about eight months or so  
14 before you joined the company?

15 A. Yes.

16 Q. Are you aware of any other  
17 agreements that are in writing between Iviewit  
18 and Proskauer Rose for the providing of legal  
19 services?

20 A. No.

21 Q. Were there any other agreements,  
22 other than the agreement marked as Defendant's  
23 No. 1, which engaged Proskauer Rose to represent  
24 Iviewit?

25 A. I'm not aware of any agreements in

1 this form; however, I would just comment that 132  
2 clearly Proskauer Rose had been engaged by the  
3 Bernstein family to perform this work, which  
4 amounted to almost \$300,000 worth of billable  
5 work before I joined the company.

6 Q. Okay. Now, wait. Now, the  
7 companies that that work was done for, though,  
8 Sir, that was Iviewit, LLC; is that correct?

9 A. And so it was in -- and Iviewit,  
10 Inc. and U-View.LLC.

11 Q. Okay.

12 A. All of those.

13 Q. Iviewit, LLC.

14 A. Which represented the sum of all the  
15 companies involved in Iviewit.

16 Q. Okay. And these other companies,  
17 the Iviewit.com, Inc. the Iviewit Holdings, Inc.  
18 and Iviewit Technologies, Inc. were all formed  
19 subsequent to September 8th, 1999; is that  
20 correct?

21 A. They were formed subsequent to  
22 December the 30th, 1999.

23 Q. Okay. So they were all formed  
24 subsequent to this written agreement September  
25 8th?



1 A. They were also agreements that 134  
2 related to services to be performed.

3 Q. All right. Well, let's go back to  
4 those then, Sir. Which one of those are you  
5 saying relates to services to be performed?

6 A. Well, there was agreements that  
7 said, that limited the number of services to  
8 \$5,000 a month billable.

9 Q. Which one was that? That was --

10 A. That was in March of 2000.

11 Q. Okay. Well, let's go back to that  
12 one and take a look at that one specifically.  
13 That was, March 2000 was Plaintiff's No. 5, I  
14 believe. (Inaudible).

15 (Whereupon, the court reporter  
16 switches disks.)

17 By MR. PRUSASKI:

18 Q. Mr. Utley, you talked about a  
19 March --

20 A. Actually, it's December the 29th,  
21 2000.

22 Q. December the 29th, 2000, okay.

23 A. Exhibit 11.

24 Q. Okay. And you were saying something  
25 about \$5,000 being anticipated to be the billing?

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A. Yes.

Q. But, Sir, doesn't it say it's anticipated your currently monthly billings will not exceed \$5,000 a month?

A. Yes.

Q. Okay. Is that an agreement that the bills will be \$5,000 a month, or are you saying that it's anticipated?

A. Well, it says anticipated.

Q. Okay. This letter really, Sir, doesn't it deal with basically with the repayment of (inaudible) obligations.

MR. SELZ: You cut out completely you got to re-ask that. I didn't hear it.

MR. SELZ: (No response.)

MR. PRUSASKI: Steve?

MR. SELZ: Yeah.

MR. PRUSASKI: We kind of lost you right in the middle of that question.

MR. SELZ: Okay. Can we take a break for two minutes?

MR. PRUSASKI: Yeah.

MR. SELZ: Okay. I'll have to call you back in about -- actually make it five.

(Court reporter asks for question to

1 be repeated.) 136

2 MR. SELZ: Okay. Let me just repeat  
3 that last question with the answer and then I'll  
4 take a break real quick.

5 By MR. SELZ:

6 Q. Isn't it true, Sir, that this letter  
7 deals with the repayment of existing obligations  
8 between Proskauer Rose and Iviewit, not some new  
9 services, other than that line you talked about,  
10 about current bills not to exceed \$5,000 a month?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: I understood it to be  
13 an agreement to limit services to not, not to  
14 exceed \$5,000 a month.

15 By MR. SELZ:

16 Q. Was your understanding of this  
17 letter?

18 A. Yes.

19 Q. Did this specify how much legal  
20 service were going to be charged in the sense of  
21 an hourly rate?

22 A. The understanding by implication is  
23 that it's at current billing rates.

24 MR. SELZ: Well, we'll continue in  
25 just a couple of minutes. I apologize for the

1 delay and I'll be back on in -- if you could give 137  
2 me about five minutes.

3 MR. PRUSASKI: Are you calling back  
4 or what?

5 MR. SELZ: I'll call back.

6 MR. PRUSASKI: All right.

7 (Whereupon, a break was taken from  
8 1:10 to 1:22.)

9 MR. SELZ: Okay, guys. Madam Court  
10 Reporter, could you read back my last question,  
11 please.

12 (Whereupon, the requested portion  
13 was read back.)

14 MR. SELZ: Okay, thank you.

15 By MR. SELZ:

16 Q. Sir, the current billing rates that  
17 you referred to in your prior answer, that was  
18 under the agreement with Proskauer Rose that's  
19 been marked as Defendant's No. 1; is that  
20 correct?

21 A. Yes.

22 Q. So it refers back to that agreement?

23 A. Yeah, I presume, as all the billing  
24 does.

25 Now, please note that this

1 engagement agreement refers to the parent company 138  
2 of Iviewit.

3 Q. Well, let's go to my next question  
4 on this whole thing, and that is, with regard to,  
5 with regard to the approval by the board of  
6 directors, we've talked prior about the board of  
7 directors and Ken Rubenstein, was Ken  
8 Rubenstein -- you've previously stated that he  
9 didn't have any role with regard to the company,  
10 no active role?

11 A. That's correct.

12 Q. And I hate to bounce back and forth  
13 to you about this, he was never, like, an advisor  
14 or consultant or anything like that; he was just  
15 someone who was Proskauer Rose's person who did  
16 work on IP?

17 A. Yeah, I can't speak to the  
18 discussions that may have taken place between  
19 Mr. Wheeler and Mr. Rubenstein, but --

20 Q. I'm not asking you to. I'm just  
21 saying from what you know because obviously this  
22 deposition testimony is given on your own  
23 personal knowledge.

24 A. Yes. He played no active role in  
25 the company other than having directed the

1 company to work with Meltzer and this gentleman 139  
2 Rolf as the patent attorney.

3 Q. And that was his totality of his  
4 role from what you know?

5 A. Yes.

6 Now, let me parenthetically add,  
7 that I do understand and know that it was Eliot's  
8 desire to see him involved in an advisory role.

9 Q. Okay.

10 A. But that was never, that was never  
11 consummated.

12 Q. Okay. Did you ever want him to act  
13 in an advisory role?

14 A. I did not take any position on that.

15 Q. Okay. Did you ever represent that  
16 he should be in an advisory role?

17 A. No.

18 Q. Okay. So you really didn't have any  
19 opinion on what Mr. Rubenstein should or should  
20 not be doing with Iviewit?

21 A. Right.

22 Q. Okay. Did you have any discussions  
23 or correspondence at all with Rubenstein and  
24 Raymond Joao, I think it is? Is that how you  
25 pronounce it, J-O-A-O?

1 A. Did I have any discussion with him 140

2 about the patent attorney? Not about the patent  
3 attorney, no.

4 Q. Okay. With regard to Iviewit  
5 patents, how about with regard to Iviewit  
6 patents?

7 A. I do recall that I've had at least  
8 one conversation with Ken Rubenstein.

9 Q. Okay. How about with Raymond?

10 A. I had a number of conversations with  
11 Raymond.

12 Q. How do you pronounce his last name?

13 A. Frankly, I don't remember. It's  
14 been such a long time.

15 MR. PRUSASKI: Joao.

16 By MR. SELZ:

17 Q. How about Joao; is that it?

18 A. Something like that.

19 Q. Okay. Yeah.

20 A. It's a Portuguese name.

21 Q. Right.

22 MR. PRUSASKI: It's Joao.

23 THE WITNESS: But, like I say, I do  
24 recall that I had one conversation with Ken  
25 Rubenstein, but I absolutely do not recall the

1 content of the conversation. It was not anything 141  
2 that was material to what Iviewit did.  
3 By MR. SELZ:  
4 Q. How about were there any -- did you  
5 keep any notes of any of your meetings with these  
6 people at all?  
7 A. Any of my notes are in the company  
8 files.  
9 Q. And where are the company files, to  
10 the last of your recollection, now?  
11 A. They were all sent to California.  
12 Q. All sent to California. To who out  
13 in California, if you know?  
14 A. Ross Miller was responsible for  
15 doing that so I think that question should be  
16 directed towards him.  
17 Q. And so Ross Miller was the person  
18 who, according to your knowledge, had the custody  
19 of the corporate documents last?  
20 A. Yes.  
21 Q. Now, you'd said at one time in your  
22 earlier testimony that Proskauer was to act as  
23 corporate custodian of some kind. Did you mean  
24 custodian of records or custodian of the  
25 corporate books or custodian of some other

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information or documents?

142

A. Well, the, you know, corporate records, such as filings of incorporation and investor related matters, that sort of thing.

Q. Okay. Do you have any knowledge of the work product produced by, by, I'm going to call him Raymond, just for ease of reference, and Foley & Lardner and if there any problems with that?

I think you testified earlier with regard to Proskauer Rose. I think opposing counsel probably asked you with regard to that too, but I just want try to see if I can flush it out a little bit more.

A. Well, there was the, the provisional patent filings in certain cases appeared to be, I would say, skimpy.

Q. In what sense?

A. Skimpy in terms of details of the invention, descriptions of the invention.

Q. Okay. So in other words, they were not sufficient to be able to possibly protect that property interest or detail the property interest?

A. Well, it made it very important that

1 when we came, when it came time to make the 143

2 formal filings, that we made those filings as

3 robust as possible.

4 Q. Okay. Now, was Mr. Rubenstein ever

5 a member of another firm other than Proskauer

6 Rose?

7 A. I have no idea.

8 Q. Do you know whether or not he was

9 ever involved with Melter Law Firm in New York?

10 A. Meltzer? I don't know.

11 Q. Okay. When Mr. Wheeler first

12 discussed with you the possibility of being

13 engaged to act as the president and COO of

14 Iviewit, did he ever talk to you about the fact

15 that Proskauer Rose was not able or was unwilling

16 to handle the intellectual property side of the

17 possible representation of the business?

18 A. Not that I recall. But in the back

19 of my mind -- I don't remember who this was with.

20 It could have been Eliot; it could have been

21 Mr. Wheeler -- there was a discussion that the

22 matter was referred outside in order to minimize

23 the cost of processing the intellectual property.

24 Q. Okay. And so in minimizing the

25 cost -- how much, just out of curiosity, Sir, are

1 you aware of what the total billing was by 144

2 Proskauer Rose to the Iviewit entities?

3 A. Well, I saw the wrap up that was  
4 discussed earlier, which was  
5 300-and-some-odd-thousand-dollars.

6 Q. Well, that's the balance.

7 A. Yeah.

8 Q. Was there -- were you aware of what  
9 the total was?

10 A. No, I'm not.

11 Q. Would it be surprising to you that  
12 it's over a half a million dollars?

13 A. Well, there was -- no --

14 MR. PRUSASKI: I object to the form.

15 THE WITNESS: -- because it was  
16 almost \$300,000 before the company even got  
17 going.

18 By MR. SELZ:

19 Q. Now, from your experience, did you  
20 ever -- strike that.

21 In your experience with companies  
22 that you've worked with previously, Diamond Turf  
23 and with IBM, did you ever work in engaging  
24 attorneys to represent either one of those two  
25 entities?



1 approximately 500 times that amount, Sir, and you 146

2 still consider this billing to be reasonable?

3 MR. PRUSASKI: Object to the form.

4 THE WITNESS: Well, let me rephrase  
5 it. Almost \$300,000 of it was billed prior to my  
6 presence at Iviewit. So most of it was actually  
7 accrued prior to the company getting under way,  
8 prior to the first employee being employed by the  
9 company. And over the succeeding almost two  
10 years, it didn't match what was done in the,  
11 before it even got going.

12 By MR. SELZ:

13 Q. Okay. Well, let's go back to that  
14 then. That \$300,000 plus or minus that was  
15 accrued prior to you starting with Iviewit, are  
16 you familiar with the services that were provided  
17 for that \$300,000.

18 A. Well, I know that there were two  
19 levels of incorporation and there was a series of  
20 investor and technology related meetings that  
21 took place and some other ancillary services such  
22 as conference rooms and secretarial support and  
23 so on. That's the level of my understanding. I  
24 had no understanding below that level.

25 Q. Okay. So did you ever look at the

1 actual billing statements that had been provided 147  
2 to Iviewit to ascertain what services were  
3 provided for that  
4 300-and-something-thousand-dollars?

5 A. I'd only seen summary information.

6 Q. Only summary information, okay. So  
7 what you're telling me that is, Sir, really the  
8 patent work, the real intellectual property work  
9 was done by parties other than Proskauer Rose?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. And that the Proskauer Rose billings  
14 involved in this case were dated back to a time  
15 prior to your engagement for the most part, prior  
16 to your engagement with Iviewit; is that correct?

17 A. That's correct.

18 Q. So you have no way of telling  
19 whether or not these fees were reasonable, then,  
20 because you don't know what services were  
21 provided for the fees; is that a correct  
22 statement?

23 A. For those services that were  
24 provided before August of 1999, that would be  
25 correct.

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Q. Which is the

148

\$300-and-something-thousand-dollar balance; is that correct, sir?

MR. PRUSASKI: Object to the form.

THE WITNESS: I believe, my recollection, again, it was under 300,000, around 285 but --

By MR. SELZ:

Q. And the 285, just to pick the number that you recall, the \$285,000 that was a prior balance on the Proskauer Rose bill, you have no way of knowing, then, Sir, whether or not those were charged for any particular services or whether or not those fees were reasonable given the services provided; is that correct?

MR. PRUSASKI: Object to the form.

THE WITNESS: I have no knowledge of the basis of those charges.

By MR. SELZ:

Q. Right. So you can't determine, then, as you sit here today, Sir, whether or not those were reasonable charges for services; is that correct?

A. That is correct.

Q. Now, you'd earlier testified that

1 you didn't have any problems or there were no 149  
2 problems with regard to a patent pool. How about  
3 with regard to the patent, other than what you've  
4 already described, with regard to the patents of  
5 Iviewit vis-a-vis Mr. Rubenstein or Wheeler or  
6 Raymond, were there any other problems with  
7 regard to this collection of patents and patents  
8 held by Iviewit or to be held by Iviewit?

9 MR. BERNSTEIN: Foley & Lardner.

10 By MR. SELZ:

11 Q. Foley & Lardner, rather?

12 MR. BERNSTEIN: (Inaudible).

13 MR. PRUSASKI: That was  
14 Mr. Bernstein saying Foley & Lardner.

15 MR. SELZ: Yes, that's what it was.

16 MR. BERNSTEIN: No, I just wanted  
17 you to include them in the group of people with  
18 patent errors so that would include and  
19 encompass --

20 MR. SELZ: Well, no, I'm going to  
21 break it down. Don't worry, Eliot, I will take  
22 care of the questions and I'll follow up with  
23 you.

24 By MR. SELZ:

25 Q. Okay. So we're going to start first

1 with those issues. Are you aware of any other 150  
2 problem, other than what you've already  
3 described, with regard to the patents pending or  
4 granted to Iviewit as overseen by Rubenstein,  
5 Mr. Wheeler or Raymond, any other problems?

6 MR. PRUSASKI: Object to the form.  
7 It assumes facts not in evidence. Go ahead and  
8 answer.

9 THE WITNESS: Well, Rubenstein and  
10 Mr. Wheeler, I'll repeat, had nothing to do with  
11 the patents and therefore, I object to them being  
12 included in the question.

13 By MR. SELZ:

14 Q. Well --

15 A. They're not relevant to the  
16 question.

17 Q. There's no question -- then the way  
18 you answer it is by simply saying they weren't  
19 involved with any problems and that's how you can  
20 answer that. I'm not telling you how to answer;  
21 I'm trying to break the question down for you.  
22 If you want, I'll rephrase it.

23 Are you aware of any problems  
24 vis-a-vis the patents by Iviewit with regard to  
25 Mr. Rubenstein, other than what you've already

1 described in other context? 151

2 A. No.

3 Q. How about with regard to  
4 Mr. Wheeler?

5 A. None.

6 Q. How about with regard to Raymond?

7 A. There was some deficiencies in his  
8 provisional product descriptions.

9 Q. Okay. How about with regard to  
10 Foley & Lardner?

11 A. I'm not aware of any deficiencies of  
12 Foley & Lardner.

13 Q. Other than what you -- was that the  
14 deficiencies in the sense of the weakness of the  
15 descriptions that you described earlier?

16 A. No. No. In fact, Foley & Lardner  
17 worked very hard to overcome those and construct  
18 the best case possible.

19 Q. How about a situation where they  
20 provided patent or patent applications to your  
21 home address rather than the corporation's  
22 address?

23 A. As a matter convenience in order to  
24 obtain signatures.

25 Q. Okay. So you're saying that was

1 done as a matter of convenience; that wasn't an 152  
2 error?

3 A. No. If that happened. I don't  
4 recall it happening, but if it did, that would be  
5 the only circumstance under which that would  
6 happen.

7 Q. Well, but you're speculating because  
8 you don't recall the situation?

9 A. I do not recall ever receiving  
10 anything at home, but if it happened, it would be  
11 as a point of convenience and not as a point of  
12 procedure.

13 Q. How about if Foley & Lardner put  
14 your home address rather than the corporation's  
15 address on a patent application?

16 A. Well, it's normal in a patent  
17 application to put the inventor's personal  
18 address on the patent application. That's  
19 normal.

20 Q. That would be your explanation as to  
21 why that would appear on the patent application?

22 A. Absolutely. Every patent ever issue  
23 has that. Every patent I've ever had has had my  
24 personal address on it, even though it's an IBM  
25 patent.

Q. Now, are you aware of any corporation documents for Iviewit that were ever deposited or destroyed in any manner?

A. Not on my watch.

Q. And I think you had earlier testified that to the best of your knowledge, all those documents from Iviewit were sent out to California?

A. Yes.

Q. At the time when you left your employment or were going to leave your employment with Iviewit, is it a true statement that you were commissioned to transfer all the equipment and documents to the new corporate headquarters in Los Angeles?

A. Yes. We were commissioned to package everything up so that it could be shipped out there.

Q. And you obviously accepted this responsibility as part of your job at that point?

A. Yes.

Q. Are you aware of any documents or equipment or any media or anything which was not transferred to the corporate headquarters in Los Angeles and the whereabouts of those documents or

equipment, if you know?

154

A. There are no documents. I made an agreement to purchase some equipment, which I consummated and then subsequently returned because there was a dispute over the, some of the pieces of equipment.

Q. Okay. What equipment was that?

A. A couple of computers.

Q. A couple of computers. And were there any specific code names for those computers or --

A. I don't -- there were but I don't recall the names.

Q. Does the name Nitro or Bomber ring any bells?

A. Yes, it sounds familiar.

Q. Do you recall why these code names were given?

A. It's not unusual to give code names to computers in a business like that business, like the Iviewit business.

Q. And why is that?

A. It just is a very common practice.

Q. Is there any, again, I don't want to be repetitive, but was there any particular

reason that you can recall whatsoever why these two computers were given the names Nitro and Bomber?

A. Well, at their inception, they were reasonably current in the state of the art.

Q. Okay. So they were basically quick and they were high-capacity machines and they were desirable; is that what they were?

A. Well, let me position that.

Q. Okay.

A. At the time of their inception, they would be considered to be reasonably current in the state of the art. But we all know at what rate the technology moves.

Q. Okay. So about three months after they were created, they were no longer state of the art?

A. That's very often the case.

Q. Okay. With regard to William Dick and Foley & Lardner, do you have any relationship or continue a relationship with either Foley & Lardner or Mr. Dick?

A. No.

Q. Have you known Mr. Dick in any other setting other than related to Iviewit?

A. He worked for me at IBM as manager of the intellectual property department.

Q. And is that why -- or strike that.

Did you recommend that Mr. Dick be retained for the intellectual property work for Iviewit?

A. Actually, I used Mr. Dick as a reference or a consultant to determine who Iviewit should consider retaining for its intellectual property work.

Q. And Mr. Dick was subsequently, Foley & Lardner and Mr. Dick was subsequently employed for that purpose?

A. Mr. Dick was never employed by Iviewit, but Mr. Dick was retained by Foley & Lardner as a senior staff member because of his broad experience both before the bench and worldwide in intellectual property matters and, and he endorsed Foley & Lardner as a competent intellectual property company that would handle our affairs. I trusted his judgment.

Q. Now, are you aware of any relationship between Iviewit and Real 3D?

A. Real 3D were brought into the picture by Mr. Wheeler. They were a resource by

Mr. Wheeler to review the technology and to  
determine the ethicacy of the intellectual  
property.

157

Subsequently, a contract was let to  
Real 3D for the development and maintenance of  
the, of a web site for Iviewit and some  
additional work relating to the maintenance of  
the web site and material on the web site.

Q. Was there any kind of engineering  
study involved or was any other kind of  
feasibility study that was undertaken by Real 3D?

A. Nothing documented. There were --  
I -- that was, again, was before my time, but  
that was, there were one or two meetings that  
took place with presentations by Mr. Eliot,  
Mr. Bernstein.

Q. Now, was there ever any discussions  
about limiting your spending authority to \$5,000  
by the board of directors?

A. No.

Q. There was never minutes of any  
meeting or any other discussion that you're aware  
of to that fact?

A. No.

Q. How about something involving a

photocopier for Iviewit, did you sign for that or  
purchase that at any point in time that you can  
recall?

158

A. I signed a lease agreement for it  
because it was the only way that we could get one  
installed since Iviewit didn't have credit  
worthiness to make that equipment.

Q. Okay. And this was at the time that  
you became president and CFO, or COO rather, of  
Iviewit?

A. Right.

Q. Do you have any idea what happened  
to that leased machine or any of its  
replacements?

A. I really don't.

Q. Well, when you shut down the office  
in Boca, was that piece of equipment still on  
site at that time?

A. Direct that -- that question should  
be directed at Ross Miller.

Q. Okay. You weren't responsible to  
take care of that; is that what you're saying?

A. I did not fold the operation up.

Q. Are you aware of any relationship  
between Real 3D, Nikkon, Kodak or any other

camera manufacturers concerning the technology

159

we're talking about here?

A. Not of the Iviewit technology. I know that there was a relationship between Real 3D and Kodak, which never consummated in any release of product, but other than that, I'm not aware of any. Real 3D was acquired by Intel further down the road.

Q. Right. And so Nikon never utilized anything with Iviewit technology then?

A. Nikon utilizes a zoom and pan technology within its cameras.

Q. Okay. But it's not Iviewit's patented technology or anything that there's any patent pending on for Iviewit?

A. It's never been established whether that implementation might potentially infringe on any patent which may issue.

Q. Did you ever represent or discuss with anyone, including Crossbow Ventures, the fact that there might be some question as to Nikon's use of Iviewit technology?

A. I may -- I don't know. I don't recall. It's possible that I might have mentioned that the camera appeared to use a

1 technology which is very similar to Iviewit's  
2 technology.

160

3 Q. Do you own a Nikon 990 camera at  
4 all, Sir?

5 A. I do. I also own a Soni digital and  
6 I own a Cannon digital, and they all have similar  
7 technologies.

8 MR. PRUSASKI: I object to this line  
9 of questioning as to relevance.

10 By MR. SELZ:

11 Q. How about when we were talking about  
12 your employment earlier, Sir, we were talking  
13 about the fact that you're now running your own  
14 consulting business. Have you ever heard of a  
15 gentleman Bruce Prolow or a company  
16 InternetTrain?

17 A. Bruce Prolow is an investor in  
18 Iviewit and a member of the board.

19 Q. Okay. How about InternetTrain?

20 A. Yes.

21 Q. And what was -- do you have any  
22 ongoing relationship with either Mr. Prolow or  
23 InternetTrain?

24 A. Not at this time.

25 Q. When did that relationship cease?

A. Within the last 60 days.

161

Q. And what was the relationship with him prior to that?

A. I was providing management assistance to InternetTrain.

Q. And why did that relationship cease?

A. Because the company ceased operation.

Q. How about Zeosync?

A. I'm sorry.

Q. How about a company called Zeosync, Z-E-O-S-Y-N-C?

A. I'm not familiar with that company.

Q. Do you recall as part of your, the operations of Iviewit, providing a detailed audit to Crossbow, the investor?

A. I'm sorry.

Q. I'm sorry. Do you recall during your operations of Iviewit, providing a detailed audit to Crossbow, the investor?

MR. BERNSTEIN: Could you repeat the question.

MR. SELZ: Hold on a second.

MR. PRUSASKI: Objection as to relevance.

MR. SELZ: Could we take a break for

162

a couple of minutes. My client needs to have his wife call the doctor about their baby so I won't be able to keep him on the line. So we'll take, like, a five minute break.

MR. PRUSASKI: Yeah. How you doing timing wise?

MR. BERNSTEIN: It might take about 15 minutes.

MR. SELZ: It's probably going to take 10 or 15 minutes for the call. I'm going to be a while still by the looks of it.

MR. PRUSASKI: Well, I mean --

MR. SELZ: What time is it over there; it's like 2:00 over there?

MR. BERNSTEIN: It's five to two.

THE WITNESS: I think we should reconvene tomorrow afternoon.

MR. PRUSASKI: What's the earliest you can be here tomorrow because he needs a couple more hours?

THE WITNESS: 2:30.

MR. PRUSASKI: How about 2:30 Central Time tomorrow, which is 3:30 in Palm Beach?

MR. SELZ: 3:30, okay, that will

163

work out.

MR. PRUSASKI: All right. Call the same -- can we use this room?

(Court reporter responds.)

MR. SELZ: You don't usually use that room?

MR. PRUSASKI: Okay, so we'll agree on the -- get this down. We'll agree to reconvene to finish Mr. Utley's deposition tomorrow at 2:30 Central Time. We'll let Mr. Utley go now and then you and I and the court reporter, Steve, will work out the venue and try and get this conference room again and provide you with a call-in number.

MR. SELZ: Do you have a number for Mr. Utley so in case you need to contact him if there's a change in location, he'll know what's going on?

MR. PRUSASKI: Yes. And I'll give him my cell phone number and ask him to call me tomorrow afternoon to confirm everything.

MR. SELZ: Okay. I appreciate that, Chris.

MR. PRUSASKI: Okay. And I'll work

with you to get a call-in number set up for you.

164

MR. SELZ: Okay. Mr. Utley, thank you for your patience. I appreciate it.

THE WITNESS: Oh, that's quite all right, Steve.

MR. SELZ: At least we can let you go for now.

MR. PRUSASKI: Thank you very much.

THE WITNESS: Thank you.

(Whereupon, the deposition of BRIAN UTLEY, VOL. I, was adjourned at 2:07 p.m.)

STATE OF MINNESOTA:

:  
COUNTY OF DAKOTA :

CERTIFICATE

BE IT KNOWN, that I, Traci R. Sandstrom,  
Court Reporter, Notary Public, took the foregoing  
deposition of BRIAN UTLEY;

That the said witness, before testifying,  
was by me duly sworn to testify the truth, the  
whole truth and nothing but the truth relative to  
said cause;

That the testimony of said witness was  
recorded in shorthand by me and was reduced to  
typewriting under my direction;

That the foregoing transcript is a true  
record of the testimony given by said witness;

That I am not related to any of the parties  
hereto, nor an employee of them, nor interested  
in the outcome of the action;

That the cost of the original has been  
charged to the party who noticed the deposition,  
and that all parties who ordered copies have been  
charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 5th day of  
September, 2002.

TRACI SANDSTROM, NOTARY PUBLIC

CORRECTION PAGE

I, BRIAN UTLEY, VOL. I, do hereby certify that I have read the forgoing transcript and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
------	------	------------



11:19]	61:18	154:3; 158:4	10:13	129:22; 138:20
11:17; 89:6; 115:14,	<b>active</b> [3]	<b>agreements</b> [15]	<b>apologize</b> [6]	<b>asks</b> [1]
11:13; 142:22;	101:9; 138:10, 24	35:19, 21, 24; 36:1; 76:12,	70:1; 115:11; 125:7, 13;	135:25
11:162:4	<b>activities</b> [3]	18; 131:17, 21, 25; 133:6,	126:10; 136:25	<b>aspects</b> [3]
<b>board</b> [2]	41:24; 70:14; 108:8	7, 17, 23; 134:1, 6	<b>appear</b> [4]	17:21; 70:18; 72:4
11:164:12	<b>activity</b> [4]	<b>al</b> [1]	38:21, 24; 117:25; 152:21	<b>assigned</b> [1]
<b>absolutely</b> [2]	13:15; 15:6; 43:22; 61:23	4:15	<b>appeared</b> [4]	21:5
11:152:22	<b>actual</b> [4]	<b>allegation</b> [1]	26:19; 87:23; 142:16;	<b>assignment</b> [2]
<b>albums</b> [1]	10:14; 14:15, 16; 147:1	37:7	159:25	26:24; 27:4
<b>ad</b> [1]	<b>ad</b> [1]	<b>alleged</b> [1]	<b>application</b> [12]	<b>assignments</b> [1]
<b>adoption</b> [1]	114:3	35:10	100:11; 111:7; 112:8, 23;	71:22
<b>admitted</b> [1]	<b>add</b> [1]	<b>allegedly</b> [1]	114:11, 20; 117:17, 20;	<b>assist</b> [2]
<b>admitted</b> [1]	139:6	77:11	152:15, 17, 18, 21	62:20; 106:12
<b>admission</b> [1]	<b>addition</b> [2]	<b>alleges</b> [1]	<b>applications</b> [16]	<b>assistance</b> [1]
<b>accommodate</b> [1]	43:17; 166:6	80:25	14:4, 8; 80:7, 10; 105:9;	161:5
<b>accommodate</b> [1]	<b>additional</b> [5]	<b>alleging</b> [1]	111:23; 112:12; 113:17,	<b>associates</b> [2]
<b>accounting</b> [1]	41:4, 13; 42:17; 62:16;	92:24	22; 114:16, 18, 21; 115:8,	10:15; 33:12
<b>accounting</b> [1]	157:7	<b>allocated</b> [1]	9; 117:14; 151:20	<b>assume</b> [3]
<b>accountant</b> [4]	<b>address</b> [13]	78:8	<b>applied</b> [7]	39:10; 62:11; 85:7
11:11; 41:17; 43:6	5:15; 9:12, 15; 26:21;	<b>allocation</b> [1]	28:12; 52:24; 56:5; 57:7;	<b>assumed</b> [7]
<b>accountant</b> [1]	100:24; 101:3; 126:2;	129:15	105:13; 117:10, 22	5:8; 96:9, 12, 24; 97:7;
<b>accounting</b> [1]	151:21, 22; 152:14, 15,	<b>allow</b> [2]	<b>appreciate</b> [2]	98:6; 99:15
<b>accounting</b> [1]	18, 24	65:25; 78:15	163:23; 164:3	<b>assumes</b> [1]
<b>accounts</b> [11]	<b>addressed</b> [1]	<b>allowed</b> [1]	<b>approached</b> [2]	150:7
11:19; 46:16; 57:13;	39:20	41:16	8:23; 9:4	<b>assuming</b> [1]
11:22, 24; 69:6, 7;	<b>aden</b> [1]	<b>amended</b> [4]	<b>approaching</b> [1]	105:22
<b>accounting</b> [4]	73:22	38:6, 11; 127:19, 23	43:10	<b>atlantic</b> [1]
11:13; 146:7, 15	<b>adjoining</b> [3]	<b>amicable</b> [1]	<b>approval</b> [9]	108:24
<b>accounting</b> [2]	106:23, 25; 107:15	103:25	11:25; 76:21; 77:20; 78:1,	<b>attach</b> [1]
<b>accounting</b> [2]	<b>adjourned</b> [1]	<b>amount</b> [10]	16, 17, 20; 130:14; 138:5	85:25
<b>accounting</b> [1]	164:11	42:19; 43:9; 68:25; 69:8;	<b>approximately</b> [2]	<b>attached</b> [3]
<b>accounting</b> [1]	<b>advanced</b> [1]	78:7; 79:7; 85:23; 86:1;	102:14; 146:1	38:20; 127:22; 128:4
<b>accounting</b> [1]	97:1	125:9; 146:1	<b>april</b> [24]	<b>attaching</b> [2]
<b>accounting</b> [7]	<b>advisor</b> [1]	<b>amounted</b> [1]	11:18; 12:18; 21:14, 20;	67:4, 13
11:30:2; 59:2; 73:11;	138:13	132:4	22:18; 32:16, 17; 47:23;	<b>attachment</b> [2]
11:78:2; 85:1	<b>advisory</b> [6]	<b>amounts</b> [1]	49:4; 50:1, 17; 51:10, 20;	67:5, 10
<b>accounting</b> [1]	121:10, 11, 14; 139:8, 13,	53:3	52:2, 23; 62:7; 65:11;	<b>attend</b> [1]
<b>accounting</b> [1]	16	<b>analog</b> [1]	66:14; 67:4; 68:1, 7; 69:5,	81:3
<b>accounting</b> [1]	<b>affairs</b> [3]	112:16	14; 133:15	<b>attendance</b> [1]
<b>accounting</b> [1]	13:14, 17; 156:21	<b>analysis</b> [2]	<b>architecture</b> [2]	94:17
<b>acknowledgement</b>	<b>affiliation</b> [2]	30:17; 31:5	97:8, 10	<b>attended</b> [5]
<b>acknowledgement</b>	16:8, 10	<b>analyst</b> [1]	<b>area</b> [3]	73:7; 94:17, 20; 121:17,
<b>acknowledgement</b>	<b>afternoon</b> [2]	31:17	75:1; 115:19; 120:13	19
<b>acknowledgement</b>	162:18; 163:22	<b>ancillary</b> [1]	<b>arose</b> [2]	<b>attending</b> [3]
<b>acknowledgement</b>	<b>agent</b> [1]	146:21	28:11; 126:23	81:2, 7, 13
<b>acknowledgement</b>	43:24	<b>angeles</b> [4]	<b>arrange</b> [1]	<b>attorney</b> [19]
<b>acknowledgement</b>	<b>agree</b> [5]	13:3; 82:6; 153:15, 25	19:3	11:5; 13:12; 37:18; 62:18,
<b>acknowledgement</b>	31:4; 45:7; 49:15; 163:8, 9	<b>answer</b> [23]	<b>arrangement</b> [9]	25; 63:3, 5; 91:6; 109:2;
<b>acknowledgement</b>	<b>agreed</b> [7]	5:7; 24:11; 27:8, 22;	45:1; 48:16, 25; 49:5;	119:25; 120:1, 2, 10;
<b>acknowledgement</b>	48:8, 9; 49:7; 74:13; 76:9;	30:19; 45:17; 76:23;	52:4; 56:8, 10; 57:10;	125:2; 139:2; 140:2, 3;
<b>acknowledgement</b>	83:17; 110:2	78:18; 83:2, 15; 88:14, 24;	68:21	145:5, 13
<b>acknowledgement</b>	<b>agreeing</b> [1]	107:7; 116:22; 119:8;	<b>arrangements</b> [4]	<b>attorneys</b> [18]
<b>acknowledgement</b>	71:12	128:23; 130:8; 136:3;	35:16; 45:21, 25; 48:24	12:24; 13:8, 10; 15:21, 25;
<b>acknowledgement</b>	<b>agreement</b> [30]	137:17; 150:8, 18, 20	<b>arrived</b> [1]	21:11; 22:13; 33:3, 6;
<b>acknowledgement</b>	10:22; 36:7; 45:3, 6;	<b>answered</b> [2]	19:2	43:7; 65:12; 70:7, 13;
<b>acknowledgement</b>	49:12, 17; 50:13; 85:13;	24:5; 45:15	<b>art</b> [3]	71:25; 77:2; 86:6; 144:24;
<b>acknowledgement</b>	104:4, 5; 122:2; 124:5;	<b>answers</b> [5]	155:5, 13, 17	145:2
<b>acknowledgement</b>	125:6, 10; 126:11, 23;	73:3, 17; 75:22; 76:6; 80:8	<b>ascertain</b> [1]	<b>attributes</b> [1]
<b>acknowledgement</b>	130:1, 7, 10; 131:22;	<b>anticipated</b> [4]	147:2	70:16
<b>acknowledgement</b>	132:24; 133:8; 135:6;	134:25; 135:3, 8, 9	<b>asking</b> [5]	<b>audit</b> [2]
<b>acknowledgement</b>	136:13; 137:18, 22; 138:1;	<b>apart</b> [1]	4:22; 37:10; 88:25;	161:15, 20

<p><b>burst</b> [6] 10:6; 111:1; 133:12; 147:24 <b>clarity</b> [4] 8:5, 6; 157:18 <b>callable</b> [2] 10:10 <b>cause</b> [1] 14 [1] <b>ceded</b> [1] 11:1 <b>cess</b> [33] 15:19; 35:2; 41:7, 11; 72:14; 73:8; 77:5, 24; 80:6; 105:15, 16; 110:23; 117:13; 121:3, 16; 125:25; 144:1, 8; 151:23; 151:11; 153:1, 22; 157:22; 159:7</p> <hr/> <p style="text-align: center;"><b>** B **</b></p> <p><b>bernstein</b> [1] 11:1 <b>bernstein's</b> [1] 11:1 <b>background</b> [9] 9:9, 21; 94:14, 16; 109:14; 113:5, 15 <b>backup</b> [1] 11:1 <b>backwards</b> [1] 11:1 <b>balance</b> [7] 51:24; 56:6; 57:13; 148:2, 11 <b>balances</b> [2] 64:5 <b>back</b> [2] 11:1 <b>bankruptcy</b> [4] 38:2; 88:11, 21 <b>band</b> [10] 75:4; 97:25; 98:2; 100:7, 8; 106:8; 118:25 <b>bank</b> [2] 11:1, 21 <b>bankroll</b> [10] 22:12; 40:9; 43:24; 15:6; 82:24; 100:11; 155:6 <b>bank</b> [5] 108:5; 114:4; 148:18</p>	<p><b>beach</b> [2] 4:16; 162:25 <b>bear</b> [1] 37:1 <b>becoming</b> [2] 8:9; 106:10 <b>beg</b> [2] 10:4; 101:2 <b>behalf</b> [1] 126:18 <b>believe</b> [35] 9:12; 12:9; 23:15; 24:22; 28:3, 8, 17, 23; 29:24; 37:24; 39:9; 45:24; 46:23; 57:17; 58:21; 61:8; 63:4; 67:11; 70:19; 78:23; 80:12; 87:18; 90:2; 91:19; 106:2; 110:18; 116:25; 122:20; 127:21; 129:1, 11, 15; 131:11; 134:14; 148:5 <b>bell</b> [1] 79:3 <b>bells</b> [1] 154:15 <b>bench</b> [1] 156:17 <b>benefit</b> [1] 5:24 <b>bernstein</b> [56] 7:23; 8:5; 9:22; 11:3; 13:3; 15:16; 18:24; 25:17; 26:7; 27:11; 28:21; 30:12, 20, 24; 33:14; 34:3, 7, 14, 19; 35:21; 36:3, 8; 44:25; 45:2, 7, 12; 46:17; 47:12; 48:17; 54:11; 55:7, 9; 61:3; 63:20; 64:9; 65:16, 25; 71:1; 75:21; 76:1, 15; 83:5; 86:5; 109:16, 22; 132:3; 149:9, 12, 14, 16; 157:16; 161:21; 162:8, 16 <b>bernstein's</b> [15] 9:13; 26:1; 31:4; 44:2; 46:20; 56:16; 78:11; 79:13; 80:23; 82:3; 85:19; 129:11, 16; 130:18, 24 <b>besides</b> [3] 17:13; 19:22; 28:18 <b>bill</b> [16] 7:17; 36:20; 41:15; 60:25; 67:17, 19; 76:9; 77:24; 81:13; 85:14; 87:20; 88:2, 3; 145:21, 25; 148:11 <b>billable</b> [2] 132:4; 134:8 <b>billed</b> [8] 30:4, 22; 31:1; 39:24; 78:22, 23; 80:25; 146:5 <b>billing</b> [11] 29:11; 65:18; 66:3; 88:1; 134:25; 136:23; 137:16,</p>	<p>23; 144:1; 146:2; 147:1 <b>billings</b> [13] 28:22; 29:9; 72:15; 73:5, 25; 74:8, 12, 13; 81:21; 83:6, 8; 135:3; 147:13 <b>bills</b> [58] 20:13, 21; 22:13, 15, 19; 24:2, 12, 15, 21, 24; 25:18; 26:2; 27:3, 6, 9; 29:12, 13, 22; 30:13, 18; 31:5, 7, 19, 21; 32:1, 8, 22, 23; 33:17, 19; 34:10, 12, 15; 35:9, 12; 36:12, 18, 20; 39:14, 18, 20; 47:1, 2, 13; 56:3, 5; 63:9; 64:3, 15, 19; 72:12; 73:9; 76:19; 77:20; 89:24; 90:4; 135:7; 136:10 <b>biomedical</b> [3] 97:22, 24; 98:8 <b>bit</b> [2] 90:18; 142:14 <b>bloomington</b> [1] 5:17 <b>board</b> [48] 10:1; 11:10, 24; 12:15; 64:8, 22; 65:10, 13, 15, 17; 66:2, 7; 73:4, 6, 24; 74:7; 77:6, 18, 20; 78:1, 4, 16, 20; 81:2, 3, 8, 13; 82:15; 83:6; 86:18; 108:21, 22, 24; 121:11, 15, 17, 19; 130:2, 4, 11, 20, 22; 138:5, 6; 157:19; 160:18 <b>boca</b> [14] 6:2; 9:16; 61:24; 62:20; 63:1; 89:11, 12; 99:17; 100:8, 24; 106:22; 118:22; 121:25; 158:17 <b>bomber</b> [2] 154:14; 155:3 <b>books</b> [2] 31:17; 141:25 <b>bother</b> [1] 125:14 <b>bounce</b> [1] 138:12 <b>bound</b> [2] 35:25; 50:22 <b>boxes</b> [1] 117:15 <b>break</b> [19] 5:5; 23:8, 13, 25; 57:18, 20; 69:20; 87:3, 11; 90:7, 25; 91:12; 135:21; 136:4; 137:7; 149:21; 150:21; 162:1, 5 <b>brian</b> [7] 4:2, 6; 5:13; 73:21; 164:10; 165:5; 166:2</p>	<p><b>briefly</b> [2] 4:24; 78:25 <b>bringing</b> [2] 64:11; 130:25 <b>broad</b> [1] 156:17 <b>bruce</b> [2] 160:15, 17 <b>buchsbaum</b> [3] 73:18, 20, 21 <b>build</b> [1] 11:16 <b>burden</b> [1] 36:22 <b>business</b> [18] 16:12; 32:19; 97:22; 98:5, 9; 99:22; 100:1, 3, 10, 12, 22; 108:17; 119:22; 143:17; 154:20, 21; 160:14</p> <hr/> <p style="text-align: center;"><b>** C **</b></p> <hr/> <p><b>c-corp</b> [7] 16:22; 19:14, 23; 43:13; 82:1, 15, 16 <b>cable</b> [1] 117:14 <b>california</b> [6] 32:19; 61:24; 141:11, 12, 13; 153:8 <b>call</b> [9] 63:16; 128:17; 135:23; 137:5; 142:7; 162:3, 11; 163:3, 21 <b>call-in</b> [2] 163:15; 164:1 <b>calling</b> [1] 137:3 <b>calls</b> [3] 27:20; 37:9; 64:20 <b>camera</b> [7] 114:16, 17, 20; 115:5; 159:1, 25; 160:3 <b>cameras</b> [3] 114:25; 115:2; 159:12 <b>cannon</b> [1] 160:6 <b>capabilities</b> [1] 103:9 <b>capital</b> [2] 51:24; 82:12 <b>care</b> [4] 42:19; 70:7; 149:22; 158:22 <b>careful</b> [1] 25:5 <b>case</b> [6] 103:22; 109:3; 147:14; 151:18; 155:18; 163:17 <b>cases</b> [3]</p>	<p>91:22; 92:5; 142:16 <b>cash</b> [9] 25:6; 27:16, 19; 28:5, 19; 33:23; 34:2; 54:6, 10 <b>catch</b> [2] 60:20; 90:10 <b>categories</b> [2] 111:12, 22 <b>category</b> [5] 80:2, 8, 24; 81:16; 111:14 <b>ceasation</b> [2] 99:22; 118:4 <b>cease</b> [3] 22:10; 160:25; 161:6 <b>ceased</b> [3] 99:18; 103:23; 161:7 <b>cell</b> [1] 163:21 <b>central</b> [2] 162:24; 163:11 <b>ceo</b> [1] 6:13 <b>certificate</b> [1] 165:1 <b>certify</b> [1] 166:2 <b>cfo</b> [2] 102:20; 158:9 <b>chaired</b> [1] 108:25 <b>chairman</b> [2] 9:25; 83:5 <b>challenged</b> [3] 54:16, 20, 24 <b>change</b> [2] 163:18; 166:6 <b>changed</b> [1] 33:6 <b>changes</b> [3] 26:24; 27:1, 4 <b>changing</b> [2] 83:23; 84:10 <b>chapter</b> [2] 37:24; 88:22 <b>characteristic</b> [1] 111:17 <b>characterize</b> [1] 78:12 <b>charge</b> [3] 6:2; 145:15, 17 <b>charged</b> [15] 25:18; 26:6; 28:25; 29:1; 33:2, 5; 83:12; 124:24; 136:20; 145:13, 16, 19; 148:13; 165:19, 21 <b>charges</b> [8] 29:9; 45:19; 83:17; 84:9; 85:18; 145:12; 148:18, 22 <b>checking</b> [1] 40:10 <b>checks</b> [1]</p>
---	---	---	---	---

<p><b>commence</b> [1] 55:25</p> <p><b>commenced</b> [1] 4:3</p> <p><b>comment</b> [1] 132:1</p> <p><b>commercialize</b> [1] 8:22</p> <p><b>commissioned</b> [4] 73:24; 74:7; 153:13, 16</p> <p><b>committed</b> [1] 37:3</p> <p><b>common</b> [1] 154:23</p> <p><b>communicated</b> [2] 29:2, 4</p> <p><b>communicating</b> [1] 77:13</p> <p><b>communication</b> [1] 88:5</p> <p><b>communications</b> [2] 29:7; 108:4</p> <p><b>community</b> [2] 17:18; 108:23</p> <p><b>companies</b> [40] 8:17, 19; 9:4, 13, 18, 23; 10:3, 7, 24; 11:9, 23; 12:2, 7, 22:6, 16; 23:1; 24:9; 27:25; 28:19; 30:9; 34:17; 36:4; 39:14; 43:20; 56:17; 75:10; 82:24, 25; 89:16; 91:9, 12; 100:19; 123:9, 10; 124:5; 129:10; 132:7, 15, 16; 144:21</p> <p><b>company</b> [96] 5:25; 6:7, 12, 13; 8:9; 9:2, 10; 10:11, 15, 18; 11:15, 16; 12:9; 17:6, 16; 18:5, 18; 19:12; 20:8; 21:12, 23; 22:24; 24:7; 33:9; 35:25; 37:21; 39:11, 17; 40:8; 41:18, 20; 43:10, 23, 24; 50:23; 61:12, 14, 16, 22, 23, 25; 62:21; 64:7; 67:14; 68:1; 69:12; 70:15, 17, 25; 79:3; 80:18, 19; 81:5; 82:11, 25; 101:18; 102:14, 18; 103:3, 7; 105:23; 106:11, 13, 14; 109:11, 15; 110:3, 14; 118:18; 122:25; 123:1, 3, 7, 12, 15; 129:14; 131:1, 4, 14; 132:5; 133:13; 138:1, 9, 25; 139:1; 141:7, 9; 144:16; 146:7, 9; 156:20; 160:15; 161:7, 11, 13</p> <p><b>company's</b> [1] 36:6</p> <p><b>comparable</b> [1] 26:14</p> <p><b>competent</b> [1] 156:19</p> <p><b>complain</b> [5] 30:12; 66:3, 6; 79:16; 89:22</p> <p><b>complained</b> [1] 77:10</p> <p><b>complaining</b> [2] 30:25; 34:15</p> <p><b>complaint</b> [6] 38:6, 11; 71:4; 127:19, 21, 23</p> <p><b>complaints</b> [1] 71:5</p> <p><b>complete</b> [4] 16:20; 71:22; 74:15; 125:21</p> <p><b>completed</b> [3] 74:16; 94:13; 95:3</p> <p><b>completely</b> [1] 135:13</p> <p><b>complexity</b> [1] 82:19</p> <p><b>complies</b> [3] 38:16; 41:1; 42:14</p> <p><b>component</b> [2] 103:19, 21</p> <p><b>components</b> [1] 103:16</p> <p><b>compounded</b> [1] 82:18</p> <p><b>compressed</b> [1] 111:15</p> <p><b>comprised</b> [1] 60:24</p> <p><b>computation</b> [1] 112:25</p> <p><b>computer</b> [5] 95:23; 97:1; 99:16; 100:19; 106:8</p> <p><b>computers</b> [6] 100:12; 154:8, 9, 10, 20; 155:2</p> <p><b>concerned</b> [2] 77:23; 125:15</p> <p><b>concerning</b> [3] 92:2; 121:23; 159:1</p> <p><b>concerns</b> [2] 73:8; 126:2</p> <p><b>concurring</b> [1] 64:11</p> <p><b>concurs</b> [1] 30:17</p> <p><b>condition</b> [1] 65:2</p> <p><b>conducting</b> [1] 10:16</p> <p><b>conference</b> [4] 43:15, 19; 146:22; 163:14</p> <p><b>conferences</b> [2] 83:8, 10</p> <p><b>confidentially</b> [1] 98:16</p> <p><b>confirm</b> [2] 130:6; 163:22</p> <p><b>confirmation</b> [1] 48:6</p> <p><b>confirming</b> [3] 44:25; 51:19; 122:14</p> <p><b>confirms</b> [3] 51:18; 57:6; 62:15</p> <p><b>confused</b> [1] 119:15</p> <p><b>connected</b> [1] 117:25</p> <p><b>connections</b> [2] 100:4, 5</p> <p><b>consequences</b> [1] 20:7</p> <p><b>consider</b> [6] 102:24; 110:13; 124:6; 125:5; 146:2; 156:9</p> <p><b>considerable</b> [1] 111:10</p> <p><b>considered</b> [1] 155:12</p> <p><b>consistent</b> [3] 29:11, 15, 17</p> <p><b>consisting</b> [4] 59:10; 60:3; 68:7; 110:8</p> <p><b>consortium</b> [1] 75:6</p> <p><b>constant</b> [1] 25:2</p> <p><b>construct</b> [1] 151:17</p> <p><b>consultant</b> [4] 14:17; 120:18; 138:14; 156:8</p> <p><b>consulting</b> [11] 100:1, 2, 9, 15, 16, 18, 23; 101:7, 11, 14; 160:14</p> <p><b>consummated</b> [4] 76:10; 139:11; 154:4; 159:5</p> <p><b>contact</b> [6] 7:5, 16; 106:20; 108:9, 14; 163:17</p> <p><b>contacting</b> [1] 106:16</p> <p><b>content</b> [1] 141:1</p> <p><b>context</b> [3] 7:21; 76:24; 151:1</p> <p><b>continually</b> [1] 59:1</p> <p><b>continuation</b> [1] 127:2</p> <p><b>continue</b> [7] 8:20; 52:7; 55:2, 9; 85:22; 136:24; 155:21</p> <p><b>continued</b> [4] 32:15; 36:21; 55:4; 80:18</p> <p><b>contract</b> [3] 92:21; 126:14; 157:4</p> <p><b>contribution</b> [2] 112:14, 20</p> <p><b>control</b> [6] 85:7; 96:21; 107:16, 17; 113:16, 22</p> <p><b>controlling</b> [1] 83:7</p> <p><b>convenience</b> [3] 151:23; 152:1, 11</p> <p><b>conversation</b> [6] 7:17, 21; 87:19; 140:8, 24; 141:1</p> <p><b>conversations</b> [6] 6:25; 25:22, 24; 63:8; 123:20; 140:10</p> <p><b>convert</b> [2] 14:6; 82:16</p> <p><b>converting</b> [2] 16:21; 112:16</p> <p><b>coo</b> [11] 9:19; 10:3, 6, 21; 18:15; 19:21; 23:2, 16; 122:12; 143:13; 158:9</p> <p><b>copies</b> [3] 130:9; 165:20, 21</p> <p><b>copy</b> [6] 38:6; 44:20; 46:12; 48:2; 51:14; 55:21</p> <p><b>copyright</b> [2] 76:2; 117:13</p> <p><b>copyrights</b> [3] 74:2, 20; 75:24</p> <p><b>cornerstone</b> [1] 97:6</p> <p><b>corporate</b> [20] 14:21, 22; 15:4, 11; 21:9; 43:12; 81:16, 20; 82:7; 98:1; 119:3; 120:2, 3; 133:2; 141:19, 23, 25; 142:2; 153:14, 24</p> <p><b>corporation</b> [4] 9:9; 93:17, 18; 153:2</p> <p><b>corporation's</b> [2] 151:21; 152:14</p> <p><b>corporations</b> [1] 80:3</p> <p><b>corrected</b> [1] 72:6</p> <p><b>correction</b> [2] 166:1, 8</p> <p><b>correctly</b> [4] 41:19; 72:17, 25; 109:18</p> <p><b>correlation</b> [2] 114:23; 115:1</p> <p><b>correspondence</b> [2] 76:7; 139:23</p> <p><b>cost</b> [3] 143:23, 25; 165:18</p> <p><b>counsel</b> [1]</p>
---

<p>165:2</p> <p><b>data</b> [4]</p> <p>92:19, 24; 93:9, 12</p> <p><b>date</b> [2]</p> <p>122:6; 133:14</p> <p><b>dated</b> [21]</p> <p>39:3; 40:22; 42:12; 44:15;</p> <p>46:8; 50:1; 51:10; 52:19;</p> <p>53:13; 55:16; 56:23; 58:5;</p> <p>59:9; 62:7; 66:14; 67:4;</p> <p>68:7; 128:1, 2, 4; 147:14</p> <p><b>day</b> [1]</p> <p>165:22</p> <p><b>day-to-day</b> [2]</p> <p>11:13; 78:19</p> <p><b>days</b> [6]</p> <p>19:1; 40:17; 42:6; 43:23;</p> <p>69:13; 161:1</p> <p><b>deal</b> [5]</p> <p>16:3; 25:3; 76:10; 82:17;</p> <p>135:11</p> <p><b>dealing</b> [5]</p> <p>15:24; 107:2; 113:21;</p> <p>114:20; 115:8</p> <p><b>dealings</b> [3]</p> <p>15:22; 17:17; 108:17</p> <p><b>deals</b> [1]</p> <p>136:7</p> <p><b>debt</b> [1]</p> <p>133:25</p> <p><b>december</b> [9]</p> <p>16:19; 19:18; 55:17; 56:1;</p> <p>57:10; 123:5; 132:22;</p> <p>134:20, 22</p> <p><b>decided</b> [2]</p> <p>13:14; 21:25</p> <p><b>decision</b> [4]</p> <p>11:21; 12:21; 31:25; 82:15</p> <p><b>defendant's</b> [7]</p> <p>124:16; 127:8, 12; 128:6,</p> <p>15; 131:22; 137:19</p> <p><b>defendants</b> [2]</p> <p>91:7; 124:14</p> <p><b>deficiencies</b> [3]</p> <p>151:7, 11, 14</p> <p><b>degree</b> [4]</p> <p>94:17, 18; 95:2; 113:2</p> <p><b>delay</b> [1]</p> <p>137:1</p> <p><b>delegated</b> [2]</p> <p>32:10; 33:11</p> <p><b>delinquent</b> [1]</p> <p>59:1</p> <p><b>deliver</b> [1]</p> <p>50:7</p> <p><b>delivered</b> [1]</p> <p>54:1</p> <p><b>demanding</b> [1]</p> <p>35:5</p> <p><b>demands</b> [2]</p> <p>77:18; 78:4</p>	<p><b>department</b> [4]</p> <p>68:22; 70:5, 12; 156:2</p> <p><b>depend</b> [1]</p> <p>90:22</p> <p><b>depending</b> [2]</p> <p>31:16; 125:2</p> <p><b>depleted</b> [1]</p> <p>25:4</p> <p><b>deponent</b> [1]</p> <p>6:16</p> <p><b>deposed</b> [4]</p> <p>92:15; 93:7, 21; 153:3</p> <p><b>deposes</b> [1]</p> <p>4:7</p> <p><b>deposition</b> [17]</p> <p>4:2, 13, 17; 6:24; 7:1, 6;</p> <p>43:14; 89:1; 91:18, 24;</p> <p>92:4; 94:6; 138:22;</p> <p>163:10; 164:10; 165:5, 19</p> <p><b>depositions</b> [4]</p> <p>4:24; 92:12, 13, 14</p> <p><b>derived</b> [2]</p> <p>113:14; 123:10</p> <p><b>describe</b> [14]</p> <p>11:13; 25:10, 11; 39:22;</p> <p>44:23; 46:14; 51:17;</p> <p>57:10; 60:10; 61:13;</p> <p>62:13; 79:21; 104:12;</p> <p>111:4</p> <p><b>described</b> [9]</p> <p>57:14; 84:18; 109:12;</p> <p>111:25; 113:13; 149:4;</p> <p>150:3; 151:1, 15</p> <p><b>describes</b> [1]</p> <p>58:24</p> <p><b>description</b> [1]</p> <p>59:2</p> <p><b>descriptions</b> [3]</p> <p>142:20; 151:8, 15</p> <p><b>design</b> [4]</p> <p>95:22, 24; 96:4; 113:24</p> <p><b>desirable</b> [1]</p> <p>155:8</p> <p><b>desire</b> [1]</p> <p>139:8</p> <p><b>desired</b> [1]</p> <p>166:6</p> <p><b>destroyed</b> [1]</p> <p>153:3</p> <p><b>detail</b> [3]</p> <p>89:5; 104:18; 142:23</p> <p><b>detailed</b> [4]</p> <p>115:18; 124:4; 161:15, 19</p> <p><b>detailing</b> [1]</p> <p>60:11</p> <p><b>details</b> [3]</p> <p>52:23; 74:14; 142:19</p> <p><b>determine</b> [4]</p> <p>32:8; 148:20; 156:8; 157:2</p> <p><b>determined</b> [1]</p> <p>114:23</p>	<p><b>determining</b> [1]</p> <p>61:21</p> <p><b>develop</b> [1]</p> <p>11:16</p> <p><b>developed</b> [5]</p> <p>8:7; 98:9; 104:9; 108:11;</p> <p>114:24</p> <p><b>developing</b> [1]</p> <p>8:13</p> <p><b>development</b> [10]</p> <p>14:16; 15:8; 95:18; 96:17;</p> <p>97:1, 19; 99:16; 107:11;</p> <p>115:2; 157:5</p> <p><b>devices</b> [1]</p> <p>117:4</p> <p><b>diamond</b> [12]</p> <p>101:18, 24; 102:5, 16;</p> <p>103:2, 24; 104:9; 105:6;</p> <p>144:22; 145:4, 13, 15</p> <p><b>dick</b> [9]</p> <p>155:19, 22, 24; 156:4, 7,</p> <p>11, 12, 14, 15</p> <p><b>differently</b> [1]</p> <p>85:12</p> <p><b>difficult</b> [2]</p> <p>28:6; 85:24</p> <p><b>difficulties</b> [1]</p> <p>28:1</p> <p><b>digital</b> [4]</p> <p>112:16, 17; 160:5, 6</p> <p><b>digitally</b> [1]</p> <p>117:2</p> <p><b>direct</b> [2]</p> <p>27:14; 158:19</p> <p><b>directed</b> [11]</p> <p>18:18, 20; 23:18; 27:11;</p> <p>35:23; 70:23; 81:25; 82:2;</p> <p>138:25; 141:16; 158:20</p> <p><b>directing</b> [7]</p> <p>15:3, 13; 34:16; 55:10;</p> <p>56:16; 61:4, 6</p> <p><b>direction</b> [4]</p> <p>36:7; 64:21; 97:10; 165:12</p> <p><b>director</b> [2]</p> <p>97:8; 99:2</p> <p><b>directors</b> [11]</p> <p>11:8, 11; 64:8; 65:10;</p> <p>74:7; 121:18; 130:2, 4;</p> <p>138:6, 7; 157:19</p> <p><b>disagreement</b> [1]</p> <p>79:22</p> <p><b>disburse</b> [2]</p> <p>27:12, 15</p> <p><b>disbursed</b> [3]</p> <p>24:13; 28:4, 20</p> <p><b>disbursements</b> [2]</p> <p>18:7, 9</p> <p><b>disbursing</b> [4]</p> <p>28:13; 45:8, 13; 56:13</p> <p><b>disclosing</b> [1]</p> <p>98:16</p>	<p><b>disconnected</b> [1]</p> <p>63:16</p> <p><b>discontinue</b> [1]</p> <p>22:1</p> <p><b>discovered</b> [5]</p> <p>85:10; 113:25; 114:3, 4, 8</p> <p><b>discrepancies</b> [1]</p> <p>67:24</p> <p><b>discrepancy</b> [1]</p> <p>87:20</p> <p><b>discretion</b> [2]</p> <p>55:6; 89:8</p> <p><b>discuss</b> [5]</p> <p>7:19; 64:2; 74:13; 119:3;</p> <p>159:19</p> <p><b>discussed</b> [13]</p> <p>48:22; 64:4; 74:12; 81:10;</p> <p>87:22; 109:8; 115:10;</p> <p>116:2, 6; 130:3; 143:12;</p> <p>144:4; 145:9</p> <p><b>discussing</b> [1]</p> <p>17:9</p> <p><b>discussion</b> [7]</p> <p>9:21; 23:7; 115:15; 126:3;</p> <p>140:1; 143:21; 157:22</p> <p><b>discussions</b> [10]</p> <p>25:16, 25; 34:6, 8; 44:8;</p> <p>118:2; 130:14; 138:18;</p> <p>139:22; 157:17</p> <p><b>disengage</b> [1]</p> <p>12:20</p> <p><b>disks</b> [1]</p> <p>134:16</p> <p><b>dispute</b> [3]</p> <p>68:25; 104:3; 154:5</p> <p><b>dissatisfaction</b> [3]</p> <p>27:18; 28:22, 24</p> <p><b>dissatisfied</b> [1]</p> <p>26:17</p> <p><b>distance</b> [3]</p> <p>79:1, 2, 20</p> <p><b>distinction</b> [4]</p> <p>39:22, 25; 40:3; 122:23</p> <p><b>distinctions</b> [1]</p> <p>39:21</p> <p><b>distinguishing</b> [1]</p> <p>111:17</p> <p><b>distributes</b> [1]</p> <p>75:12</p> <p><b>division</b> [1]</p> <p>97:9</p> <p><b>doctor</b> [1]</p> <p>162:3</p> <p><b>document</b> [44]</p> <p>38:10, 20; 39:4; 40:16, 22;</p> <p>41:2; 42:5, 11, 15, 21, 22;</p> <p>43:1; 44:10, 15, 17; 46:2,</p> <p>8, 10; 47:16, 21, 24;</p> <p>49:19, 25; 50:22; 51:3;</p> <p>52:11, 14; 53:12, 17;</p> <p>55:15, 18; 56:22, 24; 58:4;</p>
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<b>blending</b> [1]	4:7; 7:25; 9:4, 11; 10:14; 12:6; 38:5; 39:3; 49:12;	112:15, 20	64:22; 69:7; 92:3; 114:2;	<b>hazy</b> [1]
<b>blending</b> [10]	51:20; 54:25; 55:8; 58:25;	<b>forth</b> [1]	138:22; 148:14; 154:18;	102:11
<b>blending</b> [12, 13; 81:19;	63:6; 81:23, 25; 95:10;	138:12	155:2; 165:14	<b>he'll</b> [1]
<b>blending</b> [124:7, 22; 147:19,	105:20, 25; 106:19, 20;	<b>found</b> [3]	<b>goes</b> [1]	163:18
<b>blending</b> [119:14	107:22; 109:6; 119:2, 10;	31:19; 60:18; 166:4	131:12	<b>he's</b> [3]
<b>blending</b> [1]	125:21; 128:3; 133:3;	<b>foundation</b> [1]	<b>golf</b> [1]	119:25; 120:2; 124:13
<b>blending</b> [13; 30:1; 32:23;	143:11; 146:8; 149:25	108:24	103:5	<b>head</b> [1]
<b>blending</b> [14:15; 64:18	<b>five</b> [12]	<b>four</b> [11]	<b>governmental</b> [1]	70:5
<b>blending</b> [1]	4:21; 87:11; 91:20, 21;	4:21; 59:10; 60:3; 67:5;	6:4	<b>headquarters</b> [2]
<b>blending</b> [1]	93:22; 97:10, 15; 128:12;	91:20, 21; 92:14; 102:8,	<b>graduated</b> [1]	153:14, 24
<b>blending</b> [2]	135:24; 137:2; 162:5, 16	14; 128:10, 13	94:25	<b>hear</b> [2]
<b>blending</b> [106:7	<b>fixed</b> [2]	<b>francisco</b> [1]	<b>granted</b> [2]	30:20; 135:14
<b>blending</b> [1]	71:12, 13	95:1	129:12; 150:4	<b>heard</b> [5]
<b>blending</b> [7]	<b>florida</b> [5]	<b>frankly</b> [3]	<b>granting</b> [1]	65:21, 23; 86:13, 14;
<b>blending</b> [14:2, 7; 88:11;	6:3, 4; 94:7; 108:24;	7:20; 13:20; 140:13	75:7	160:14
<b>blending</b> [111:6; 116:25	118:10	<b>fransisco</b> [2]	<b>graphics</b> [2]	<b>hearing</b> [1]
<b>blending</b> [2]	<b>flowed</b> [1]	94:23; 95:4	72:23; 106:8	6:19
<b>blending</b> [9	18:6	<b>frequent</b> [1]	<b>great</b> [2]	<b>held</b> [9]
<b>blending</b> [2]	<b>flush</b> [1]	108:9	91:16; 145:22	17:4; 20:2; 40:7; 75:9;
<b>blending</b> [16	142:13	<b>frequently</b> [2]	<b>grew</b> [1]	83:4, 8; 112:8; 149:8
<b>blending</b> [13]	<b>focus</b> [3]	28:22; 30:12	99:5	<b>hereby</b> [1]
<b>blending</b> [43:11, 12; 72:3, 6;	12:4; 18:1; 119:22	<b>friend</b> [3]	<b>gross</b> [2]	166:2
<b>blending</b> [110:20; 115:13;	<b>focused</b> [2]	83:25; 84:18; 108:6	84:2, 19	<b>hereto</b> [1]
<b>blending</b> [16; 143:2	13:5; 30:14	<b>friends</b> [3]	<b>group</b> [3]	165:16
<b>blending</b> [1]	<b>fold</b> [1]	77:23; 82:1, 5	93:15; 99:2; 149:17	<b>hersh</b> [7]
<b>blending</b> [1]	158:23	<b>friendship</b> [1]	<b>guess</b> [3]	32:11, 21; 76:17; 88:25;
<b>blending</b> [1]	<b>foley</b> [25]	108:11	122:18; 128:8, 13	89:3, 7, 10
<b>blending</b> [1]	21:17, 18, 24; 22:4, 7, 19;	<b>front</b> [2]	<b>guessing</b> [1]	<b>high</b> [5]
<b>blending</b> [2]	24:15; 73:22; 84:2, 18;	123:23; 127:10	116:11	26:12; 32:23, 25; 33:1;
<b>blending</b> [121:24	85:2, 6; 142:8; 149:9, 11,	<b>fulfill</b> [1]	<b>guys</b> [1]	34:16
<b>blending</b> [17:18; 18:23; 19:4;	14; 151:10, 12, 16;	50:13	137:9	<b>high-capacity</b> [1]
<b>blending</b> [31:17; 62:1; 65:2	152:13; 155:20, 21;	<b>full</b> [3]	<b>** H **</b>	155:7
<b>blending</b> [1]	156:11, 15, 19	13:21; 68:20; 102:7		<b>hindsight</b> [1]
<b>blending</b> [3]	<b>follow</b> [1]	24:21; 73:8	<b>h-u-i-z-e-n-g-a</b> [1]	85:11
<b>blending</b> [37:17; 118:19	149:22	<b>funding</b> [5]	41:7	<b>hire</b> [1]
<b>blending</b> [1]	<b>follows</b> [3]	25:2, 4; 34:5; 56:13, 14	<b>half</b> [1]	12:21
<b>blending</b> [1]	4:4, 8; 166:5	<b>funds</b> [11]	144:12	<b>hired</b> [2]
<b>blending</b> [163:10	<b>foregoing</b> [2]	27:12, 15; 28:4, 13, 19;	<b>hand</b> [2]	13:16; 14:25
<b>blending</b> [1]	165:4, 13	45:8, 13; 51:25; 56:14;	127:7; 165:22	<b>history</b> [1]
<b>blending</b> [1]	<b>forging</b> [2]	58:18, 19	<b>handicap</b> [1]	59:3
<b>blending</b> [24]	83:23; 84:10	<b>future</b> [1]	82:13	<b>hoc</b> [1]
<b>blending</b> [1, 14, 16, 19, 23, 25;	<b>forgoing</b> [1]	115:2	<b>handle</b> [4]	114:3
<b>blending</b> [5, 8, 18; 17:9; 21:7,	166:3	<b>** G **</b>	13:17; 14:14; 143:16;	<b>hold</b> [14]
<b>blending</b> [10; 24:18; 37:18; 63:2;	<b>form</b> [16]		156:20	45:2, 5; 48:15, 18; 49:6;
<b>blending</b> [72:7; 120:20;	25:13; 29:16; 37:8; 75:10;	<b>garnered</b> [1]	<b>handled</b> [5]	63:13; 66:21; 70:10;
<b>blending</b> [143:5, 9	79:24; 82:1; 86:7; 119:6;	103:10	15:9; 17:19; 72:21; 89:3, 4	83:10; 98:25; 105:10;
<b>blending</b> [2]	128:20; 132:1; 136:11;	<b>gave</b> [3]	<b>handling</b> [3]	116:5; 129:18; 161:23
<b>blending</b> [71:2	144:14; 146:3; 148:4, 16;	42:5; 93:3; 111:21	13:13; 17:10; 31:16	<b>holders</b> [3]
<b>blending</b> [6]	150:6	<b>gentleman</b> [2]	<b>happening</b> [1]	20:6; 21:4; 123:16
<b>blending</b> [13:7; 71:9, 17, 19,	<b>formal</b> [7]	139:1; 160:15	152:4	<b>holding</b> [1]
<b>blending</b> [1]	14:6, 8; 72:6; 85:9;	<b>gentlemen</b> [2]	<b>happy</b> [1]	123:15
<b>blending</b> [31]	112:23; 116:24; 143:2	109:22; 110:9	5:4	<b>holdings</b> [10]
	<b>formalized</b> [1]	<b>gerald</b> [1]	<b>hard</b> [1]	7:12; 19:9, 20, 24; 20:6,
	127:2	73:18	151:17	14; 39:13; 41:6, 12;
	<b>formally</b> [1]	<b>give</b> [8]	<b>hardware</b> [1]	132:17
	10:18	4:23; 5:24; 7:9; 90:10;	100:13	<b>holds</b> [1]
	<b>formed</b> [8]	122:6; 137:1; 154:19;	<b>hate</b> [1]	105:12
	8:25; 16:17, 19; 19:17;	163:20	138:12	<b>home</b> [5]
	75:6; 132:18, 21, 23	<b>given</b> [9]	<b>haven't</b> [1]	9:13; 100:24; 151:21;
	<b>formula</b> [2]		129:21	152:10, 14
				<b>honor</b> [1]



<p>19:34;23, 25; 37:4, 14, 23; 9:12, 13; 41:5, 15, 18; 44:5; 47:3; 8:19; 65:10; 66:7; 23; 71:8, 13, 18, 22, 23; 75:15; 77:9; 9:9; 81:3, 24; 3:84:10; 86:6, 16; 9:16, 25; 91:8, 9, 2; 105:21; 106:1, 4, 2; 109:7; 110:22, 6; 116:1; 117:6, 2; 118:4; 119:4, 121:2, 4, 5, 7, 12, 122:15, 17, 18, 21, 6, 10, 11, 22; 18; 128:19; 10; 130:2; 131:6, 132:8, 9, 13, 15, 133:7, 14, 18; 138:2; 139:20; 141:2; 143:14; 146:6, 15; 147:2, 5, 8; 150:4, 24; 12; 154:21; 156:6, 9, 15, 23; 158:1, 6, 10; 10, 15, 22; 160:18; 19 kasser's [14] 13:17; 34:11; 52:6; 2; 73:3, 17; 91:1; 83:2; 121:24; 160:1 kasser.com [35] 12; 9:2; 10:23; 24; 17:2, 3, 14, 23; 7, 8, 10, 14, 17; 16, 20, 22; 24:13, 10, 15; 88:12; 18, 22; 123:1, 2, 17 *** J *** kasser [2] 139:25 kasser's [14] 9:3; 41:9; 56:23; 11; 59:12, 14; 128:2, 4, 11; kasser [1] kasser [10] 20, 21; 84:3, 10, 24; 140:15, 17, 22 14</p>	<p>32:3; 90:5; 153:20 jog [1] 123:19 join [1] 110:2 joined [13] 40:8; 41:18, 20; 43:10; 70:25; 80:17, 21; 81:5, 24; 82:11; 131:4, 14; 132:5 joining [1] 131:2 jude [2] 109:17, 22 judgment [3] 88:20, 21; 156:21 july [3] 8:2, 24; 106:2 jump [1] 36:25 june [2] 41:23; 42:1 justified [1] 36:8 *** K *** k-a-s-s-e-r [1] 61:1 kasser [6] 7:18; 60:25; 67:17, 19; 73:22; 89:22 kasser's [1] 89:16 keep [4] 108:4; 114:14; 141:5; 162:4 keeper [1] 15:10 ken [7] 70:3, 4; 75:2; 138:7; 140:8, 24 knowing [1] 148:12 knowledge [14] 12:25; 22:4; 26:10; 76:21; 103:12; 117:19; 129:18, 23; 133:18; 138:23; 141:18; 142:5; 148:17; 153:6 kodak [2] 158:25; 159:5 *** L *** laboratories [2] 97:11, 15 laboratory [2] 107:12, 15 lack [1] 22:12 lamont [1]</p>	<p>86:11 lardner [24] 21:17, 18, 24; 22:5, 7, 19; 24:15; 84:2, 19; 85:2, 6; 142:8; 149:9, 11, 14; 151:10, 12, 16; 152:13; 155:20, 22; 156:12, 16, 19 large [3] 26:3, 4; 36:18 larger [2] 36:21, 22 largest [1] 34:1 larry [1] 73:22 last [18] 7:4, 15; 14:5; 32:11; 57:22; 63:23; 99:4; 109:20; 116:24; 118:6; 133:12, 14; 136:3; 137:10; 140:12; 141:10, 19; 161:1 late [3] 32:14; 82:15; 110:6 latter [1] 110:4 law [15] 12:24; 13:3, 4, 7; 14:5, 18; 17:9; 71:9, 17, 19, 21; 103:2; 120:20; 121:8; 143:9 lawn [6] 101:18, 24; 102:5, 17; 103:24; 104:10 lawsuit [3] 93:17, 20; 94:1 lawsuits [1] 92:1 leader [1] 95:24 leading [1] 96:25 learning [4] 79:1, 2, 20; 106:9 lease [1] 158:4 leased [1] 158:13 leases [2] 17:5, 7 leave [2] 69:12; 153:11 leaving [3] 83:24; 84:11; 103:25 legal [14] 17:15, 19; 20:14, 19, 21; 21:7; 24:2; 66:8; 126:15; 128:19; 129:5; 131:18; 133:19; 136:19 let's [8] 20:23; 23:10; 109:20; 127:5; 134:3, 11; 138:3;</p>	<p>146:13 letter [66] 40:22; 42:11; 44:3, 15, 21, 24; 45:23; 46:8; 47:12, 23; 48:14, 21; 49:2, 3, 4, 25; 50:5, 17; 51:10, 16, 18; 52:19; 53:3, 13, 23; 54:5; 55:16, 24; 56:23; 57:2, 4, 5, 11, 14, 15; 58:5, 12, 24; 59:9, 13; 60:3, 15; 61:3, 15; 62:7, 11, 14, 22; 66:14, 19; 67:4, 9, 12; 68:7, 16, 24; 69:5, 11; 122:14; 123:24; 126:7, 8; 135:10; 136:6, 17 letters [3] 35:5; 49:1; 59:15 level [3] 85:8; 146:23, 24 levels [1] 146:19 lewin [2] 11:4; 73:18 liability [1] 92:6 licensing [1] 75:3 licensors [1] 75:5 limit [3] 77:19; 78:5; 136:13 limited [2] 77:21; 134:7 limiting [1] 157:18 line [12] 20:25; 96:18, 19; 116:19; 119:22; 125:21; 136:9; 160:8; 162:4; 166:5, 8 lipper [1] 21:15 list [2] 67:13; 78:22 listed [3] 60:14; 68:25; 80:8 litigation [2] 68:22; 126:23 lives [4] 89:10, 11, 12 llc [28] 7:12; 9:2, 8; 10:23; 17:2, 4; 19:14, 23; 20:2; 40:12; 82:22, 23; 88:12, 21; 122:18, 21, 22, 25; 123:1, 6, 11, 13, 22; 126:18; 132:8, 13 llc's [1] 37:23 load [1] 33:11 local [1]</p>	<p>108:7 located [2] 9:10; 107:3 location [2] 100:22; 163:18 longstanding [3] 130:23; 131:5, 9 looks [2] 84:1; 162:12 los [4] 13:3; 82:5; 153:15, 24 lost [1] 135:18 lot [1] 43:22 lunch [1] 87:3 *** M *** machine [1] 158:13 machines [1] 155:7 madam [1] 137:9 magnitude [1] 74:11 maintenance [3] 103:4; 157:5, 7 major [2] 70:11; 73:8 malpractice [1] 37:3 man [1] 121:20 managed [2] 6:11; 10:24 management [7] 25:6; 79:22; 96:9, 12, 13, 15; 161:4 manager [8] 6:2; 70:11; 85:6; 93:14; 97:3, 22; 106:22; 156:1 managing [2] 15:7; 17:6 manner [1] 153:3 manufacturers [1] 159:1 manufacturing [2] 6:11; 99:8 march [15] 42:12; 44:15; 45:22; 46:8; 48:13, 21; 49:2, 3; 59:9; 60:2; 61:2, 14; 134:10, 13, 19 mark [2] 38:10; 40:23 marked [41] 38:14; 40:19; 42:8, 11;</p>
---	--	---	---	---

<p>15; 46:5, 8; 47:19; 22, 25; 51:4, 8; 17; 53:10, 13; 16; 56:20, 22; 58:2, 9, 24; 62:4, 7; 14; 67:3; 68:4, 6; 17; 127:18; 128:6, 22; 137:19</p> <p><b>marketing</b> [1]</p> <p><b>markets</b> [1]</p> <p><b>marks</b> [1]</p> <p><b>match</b> [1]</p> <p><b>material</b> [5] 72:5; 112:14; 157:8</p> <p><b>mathematical</b> [4] 20, 25; 113:15</p> <p><b>mathematics</b> [3] 7, 10</p> <p><b>matter</b> [7] 15; 44:4; 81:10; 151:23; 152:1</p> <p><b>matters</b> [10] 17:10, 15, 19; 21:9; 70:8; 119:20; 156:18</p> <p><b>maximum</b> [1]</p> <p><b>may</b> [10] 35:22; 48:17; 90:17; 91:11; 122:17; 141:23;</p> <p><b>mayor</b> [2] 126:10</p> <p><b>maytime</b> [1]</p> <p><b>mechanical</b> [4] 18; 104:17, 22</p> <p><b>mechanically</b> [1]</p> <p><b>meets</b> [1]</p> <p><b>medium</b> [1]</p> <p><b>meet</b> [1]</p> <p><b>meeting</b> [10] 12, 14; 66:1; 81:14; 121:19; 130:2, 3;</p> <p><b>meetings</b> [27] 13:19; 65:10, 13, 15, 2, 7; 73:4, 7; 74:11; 8; 83:4, 11; 86:19; 118:3; 121:17, 21, 20, 22; 141:5;</p>	<p>146:20; 157:14</p> <p><b>melter</b> [1] 143:9</p> <p><b>meltzer</b> [13] 13:20; 21:15, 21, 24, 25; 24:18, 20; 70:7; 72:8; 121:4, 8; 139:1; 143:10</p> <p><b>member</b> [6] 121:11, 15; 143:5; 156:16; 160:18</p> <p><b>members</b> [6] 11:10; 33:12; 73:6; 75:13; 112:11; 130:11</p> <p><b>memo</b> [1] 50:1</p> <p><b>memory</b> [2] 41:19; 123:19</p> <p><b>mention</b> [2] 102:1; 110:15</p> <p><b>mentioned</b> [7] 11:11; 20:1; 26:23; 43:8; 65:17; 131:11; 159:25</p> <p><b>merger</b> [2] 79:2, 8</p> <p><b>mid</b> [2] 99:12; 101:22</p> <p><b>middle</b> [2] 110:5; 135:19</p> <p><b>migrated</b> [1] 82:20</p> <p><b>migrating</b> [1] 82:23</p> <p><b>millar</b> [12] 62:19, 24; 63:9; 64:2, 7, 18; 65:4; 73:22; 76:7; 141:14, 17; 158:20</p> <p><b>millers</b> [2] 63:6; 64:14</p> <p><b>million</b> [2] 107:11; 144:12</p> <p><b>milwaukee</b> [5] 13:16, 22, 25; 14:8; 21:19</p> <p><b>mind</b> [3] 115:20; 125:8; 143:19</p> <p><b>minimize</b> [2] 78:7; 143:22</p> <p><b>minimizing</b> [1] 143:24</p> <p><b>minnesota</b> [2] 5:17; 165:1</p> <p><b>minus</b> [1] 146:14</p> <p><b>minute</b> [4] 23:6; 86:22; 87:11; 162:5</p> <p><b>minutes</b> [10] 16:15; 90:10, 13; 135:21; 136:25; 137:2; 157:21; 162:2, 9, 11</p> <p><b>mishandled</b> [2] 71:8, 18</p> <p><b>mismarked</b> [2]</p>	<p>59:17; 66:22</p> <p><b>misrepresentation</b> [5] 78:14; 83:13, 14; 84:7, 8</p> <p><b>missing</b> [3] 74:2, 20; 75:24</p> <p><b>misunderstanding</b> [1] 126:9</p> <p><b>mode</b> [3] 61:17, 20, 21</p> <p><b>modified</b> [3] 43:13; 82:7; 133:22</p> <p><b>moment</b> [2] 20:11; 69:18</p> <p><b>mondragon</b> [1] 73:23</p> <p><b>money</b> [5] 15:8; 17:18; 18:5; 46:24; 57:16</p> <p><b>monies</b> [2] 88:18; 89:24</p> <p><b>month</b> [11] 12:11; 35:8; 56:2, 4; 85:15, 18; 134:8; 135:4, 7; 136:10, 14</p> <p><b>monthly</b> [3] 31:9; 56:3; 135:3</p> <p><b>months</b> [12] 7:18; 12:14; 32:11, 12; 41:15, 16, 25; 128:10, 13; 131:13; 155:15</p> <p><b>mostly</b> [1] 19:2</p> <p><b>move</b> [5] 6:17; 20:5; 69:25; 96:23, 24</p> <p><b>moved</b> [1] 32:19</p> <p><b>moves</b> [1] 155:14</p> <p><b>mower</b> [7] 101:19, 24; 102:5, 17; 103:2, 24; 104:10</p> <p><b>mpeg</b> [2] 75:1, 4</p> <p><b>mr</b> [321] 4:11, 12; 5:18; 6:14, 17, 18, 21, 22; 23:4, 10, 12, 13; 24:4, 6, 8, 10; 25:13, 20; 26:7; 27:20, 24; 29:16, 20; 32:21; 37:8, 12; 38:4, 8, 9, 18; 40:13, 14, 15, 16, 20, 21; 42:4, 5, 9, 10; 43:25; 44:9, 13, 14; 45:14, 16; 46:2, 6, 7; 47:16, 17, 20, 21; 49:19, 20, 23, 24; 51:5, 6, 9; 52:13, 15, 18; 53:11; 54:2; 55:14; 56:21; 57:19, 22; 58:3; 59:7, 11, 12, 16, 18, 20, 22, 25;</p>	<p>60:20, 23; 62:5, 19, 24; 63:6, 9, 13, 15, 18, 19, 20, 21, 23, 25; 64:1, 2, 7, 14, 18, 20, 25; 65:4; 66:12, 21, 23; 67:1; 68:5; 69:17, 19, 22; 76:11, 15, 17; 77:19, 21, 24, 25; 79:24; 80:1; 81:3, 20; 83:7; 84:17; 86:7, 8, 10, 21, 23, 24; 87:1, 5, 7, 10, 13, 15, 17; 88:6, 8, 25; 89:3, 7, 10, 16, 22; 90:6, 9, 12, 15, 17, 20, 21, 24; 91:3, 4, 10; 94:12; 105:21, 22; 106:1, 3, 15, 19, 21; 107:13, 14, 22; 108:11, 15, 18; 109:6; 116:14, 16, 17, 20, 21; 118:3, 23; 119:2, 6, 7, 9, 10, 12, 14, 16, 17, 19, 23, 24; 120:6, 7, 9, 18, 19; 121:1, 13; 122:4; 123:20; 124:1, 3, 9, 12, 15, 18; 127:6, 9, 11, 12, 14, 15, 16; 128:20, 23; 129:3; 130:25; 131:6; 134:17, 18; 135:13, 15, 16, 17, 18, 20, 22, 23; 136:2, 5, 11, 15, 24; 137:3, 5, 6, 9, 14, 15; 138:19; 139:19; 140:15, 16, 22; 141:3; 143:4, 11, 21; 144:14, 18; 146:3, 12; 148:4, 8, 16, 19; 149:5, 9, 10, 12, 13, 14, 15, 16, 20, 24; 150:5, 6, 10, 13, 25; 151:4; 155:22, 24; 156:4, 7, 11, 12, 14, 15, 25; 157:1, 15, 16; 160:8, 10, 22; 161:21, 23, 24; 162:1, 6, 8, 10, 13, 14, 16, 19, 23; 163:1, 3, 6, 8, 10, 12, 16, 17, 20, 23, 25; 164:2, 6, 8</p> <p><b>ms</b> [1] 73:23</p> <p><b>multiple</b> [1] 82:21</p> <p><b>murice</b> [1] 73:18</p> <p><b>mutual</b> [1] 108:6</p> <p><b>myself</b> [5] 10:14; 15:16; 16:6; 18:24; 60:1</p> <p style="text-align: center;"><b>** N **</b></p> <p><b>name</b> [26] 4:12; 5:11; 7:10; 13:18, 21; 17:5; 39:6; 40:11; 63:6; 72:22; 80:4; 83:18; 86:13, 14; 91:6; 100:2;</p>	<p>109:21; 112:7, 13; 114:10, 14; 115:13; 116:5; 140:12, 20; 154:14</p> <p><b>named</b> [3] 93:16; 97:7; 110:19</p> <p><b>names</b> [7] 74:4; 112:11; 154:10, 13, 17, 19; 155:2</p> <p><b>nature</b> [2] 102:21; 118:5</p> <p><b>nda's</b> [1] 77:3</p> <p><b>needs</b> [2] 162:2, 20</p> <p><b>negative</b> [1] 46:18</p> <p><b>negligence</b> [2] 84:3, 19</p> <p><b>negotiating</b> [1] 76:8</p> <p><b>nicely</b> [1] 20:24</p> <p><b>nikkon</b> [4] 158:25; 159:9, 11; 160:3</p> <p><b>nikkon's</b> [1] 159:22</p> <p><b>nine</b> [1] 108:1</p> <p><b>nitro</b> [2] 154:14; 155:2</p> <p><b>non-leading</b> [1] 52:3</p> <p><b>normal</b> [3] 54:9; 152:16, 19</p> <p><b>normally</b> [1] 33:19</p> <p><b>notary</b> [2] 165:4, 24</p> <p><b>note</b> [4] 17:21; 56:12; 124:19; 137:25</p> <p><b>notes</b> [6] 69:18, 24; 86:22, 25; 141:5, 7</p> <p><b>notice</b> [1] 67:23</p> <p><b>noticed</b> [1] 165:19</p> <p><b>notification</b> [1] 62:15</p> <p><b>notified</b> [1] 77:11</p> <p><b>noting</b> [1] 166:5</p> <p><b>number</b> [20] 15:25; 25:15, 18; 34:6, 7; 40:6; 70:10; 75:10; 86:2; 115:13; 129:12; 133:22; 134:7; 140:10; 148:9; 163:15, 16, 21; 164:1; 166:5</p>
---	---	--	--	--

<p><b>numeral</b> [2]                  36:13, 23; 37:22; 39:21;                  40:4; 42:3; 43:4; 45:9, 21;                  46:1; 47:15; 48:12, 23;                  49:5, 11, 18; 50:21, 25;                  51:6; 52:15; 53:2, 6, 23;                  54:1, 24; 58:15; 59:18;                  63:18, 19, 21; 65:4, 24;                  66:23; 67:25; 69:6, 16, 19;                  70:2; 73:13; 77:17; 82:4;                  84:23; 87:1, 10, 13, 14;                  88:5; 89:15; 90:20; 91:6,                  15; 93:10, 16, 25; 94:11,                  19, 22, 25; 95:3; 96:8, 11,                  14; 97:2, 16, 23; 98:8, 15,                  21; 99:10, 24; 100:7, 17;                  101:6, 10; 102:1, 4, 10,                  13; 103:6, 20; 104:1, 8,                  12, 16; 105:2; 106:15, 24;                  107:9, 13, 21, 25; 108:10;                  109:1, 25; 110:4, 15;                  111:4; 112:7, 19; 113:19;                  114:6, 17; 115:1, 7, 16,                  22; 116:20, 24; 117:5;                  119:14, 16; 120:19; 121:6;                  122:10, 23; 123:14;                  124:10, 15; 126:11, 21;                  127:15; 128:1, 9, 25;                  129:17; 130:12, 21;                  131:13; 132:6, 11, 16, 23;                  133:5, 16, 24; 134:11, 22,                  24; 135:6, 10, 20, 23;                  136:2; 137:9, 14; 139:9,                  12, 15, 18, 22; 140:4, 9,                  19; 142:5, 21; 143:4, 11,                  24; 145:11; 146:13, 25;                  147:6; 149:25; 151:9, 25;                  154:7; 155:6, 10, 15, 19;                  158:8, 21; 159:13; 160:19;                  163:1, 8, 23, 25; 164:2</p> <p><b>old</b> [1]                  5:18</p> <p><b>one-sentence</b> [1]                  125:18</p> <p><b>ones</b> [1]                  116:5</p> <p><b>ongoing</b> [2]                  62:19; 160:22</p> <p><b>onward</b> [1]                  94:15</p> <p><b>operate</b> [1]                  101:6</p> <p><b>operating</b> [7]                  9:2; 39:11; 102:22, 25;                  105:1; 123:1, 3</p> <p><b>operation</b> [4]                  62:20; 63:1; 158:23; 161:8</p> <p><b>operational</b> [2]                  18:5; 61:23</p> <p><b>operationally</b> [3]                  10:23; 17:3; 32:20</p> <p><b>operations</b> [4]                  6:3; 104:21; 161:15, 19</p>	<p><b>opinion</b> [2]                  126:13; 139:19</p> <p><b>opportunity</b> [1]                  118:25</p> <p><b>opposing</b> [1]                  142:11</p> <p><b>optimization</b> [1]                  114:5</p> <p><b>optimizing</b> [1]                  113:25</p> <p><b>oral</b> [2]                  88:6, 7</p> <p><b>order</b> [4]                  20:4; 52:14; 143:22;                  151:23</p> <p><b>ordered</b> [1]                  165:20</p> <p><b>organization</b> [1]                  26:20</p> <p><b>organizational</b> [1]                  16:5</p> <p><b>organizations</b> [1]                  81:17</p> <p><b>organizing</b> [1]                  106:12</p> <p><b>original</b> [3]                  85:12; 112:11; 165:18</p> <p><b>orlando</b> [1]                  43:20</p> <p><b>outcome</b> [2]                  25:25; 165:17</p> <p><b>outside</b> [4]                  20:3; 103:13; 114:7;                  143:22</p> <p><b>outstanding</b> [9]                  22:20; 27:12; 42:18; 43:6,                  9; 56:6; 64:4, 23; 67:13</p> <p><b>overcome</b> [1]                  151:17</p> <p><b>overdue</b> [1]                  35:10</p> <p><b>oversaw</b> [1]                  77:4</p> <p><b>oversee</b> [1]                  71:23</p> <p><b>overseen</b> [1]                  150:4</p> <p><b>overstated</b> [1]                  76:9</p> <p><b>owed</b> [2]                  35:13; 88:17</p> <p><b>owing</b> [8]                  51:1; 53:7; 57:16; 60:18;                  64:19; 67:14; 69:1; 89:24</p> <p><b>owned</b> [2]                  9:8; 117:17</p> <p><b>ownership</b> [1]                  104:6</p> <p><b>owning</b> [1]                  58:22</p>	<p style="text-align: center;"><b>** P **</b></p> <p><b>p.m.</b> [1]                  164:11</p> <p><b>package</b> [1]                  153:17</p> <p><b>page</b> [5]                  125:16, 22; 166:1, 5, 8</p> <p><b>pages</b> [6]                  39:4; 59:10; 60:3; 66:15;                  67:5; 68:8</p> <p><b>paid</b> [12]                  15:18, 20; 20:13, 20; 24:2,                  14; 27:5; 31:23; 32:9;                  42:19; 51:25; 60:13</p> <p><b>palm</b> [3]                  4:15; 117:4; 162:24</p> <p><b>pan</b> [4]                  112:3; 114:24; 115:5;                  159:11</p> <p><b>panning</b> [1]                  112:18</p> <p><b>paperwork</b> [3]                  14:15; 15:9; 115:25</p> <p><b>paragraph</b> [7]                  43:5; 68:25; 124:11, 19;                  125:17, 18, 20</p> <p><b>pardon</b> [3]                  10:4; 101:2; 126:25</p> <p><b>parent</b> [3]                  122:25; 123:6; 138:1</p> <p><b>parenthetically</b> [2]                  117:23; 139:6</p> <p><b>parlance</b> [1]                  96:16</p> <p><b>part</b> [15]                  19:25; 46:23, 24; 48:7;                  79:9; 96:1, 2; 98:9; 110:5;                  113:12; 121:10; 147:15;                  153:20; 161:14</p> <p><b>partial</b> [2]                  54:7, 8</p> <p><b>participants</b> [1]                  74:25</p> <p><b>participate</b> [1]                  130:20</p> <p><b>parties</b> [3]                  147:9; 165:15, 20</p> <p><b>party</b> [2]                  64:22; 165:19</p> <p><b>pass</b> [1]                  90:11</p> <p><b>patent</b> [71]                  13:8, 9, 11, 17; 14:4, 9,                  15; 21:10; 37:18; 70:7, 12;                  71:18, 20, 25; 74:1, 19,                  21, 23, 24; 75:2, 14, 17,                  19; 76:1; 77:3; 83:23;                  84:11; 92:22, 24; 105:12,                  13; 110:19; 111:12; 112:5,</p>	<p>8, 23; 113:21; 114:10, 11,                  19; 115:7, 8, 12; 116:24;                  117:10, 11, 14, 20; 119:4;                  139:2; 140:2; 142:16;                  147:8; 149:2, 3, 18;                  151:20; 152:15, 16, 18,                  21, 22, 23, 25; 159:15, 18</p> <p><b>patented</b> [2]                  112:5; 159:14</p> <p><b>patents</b> [31]                  8:21; 37:15; 70:10; 83:24;                  84:12; 93:9; 105:3, 8, 9;                  110:25; 111:6, 7, 10, 11,                  16, 17, 22, 24; 116:4;                  117:21, 22; 140:5, 6;                  149:4, 7; 150:3, 11, 24</p> <p><b>path</b> [1]                  36:19</p> <p><b>patience</b> [1]                  164:3</p> <p><b>pay</b> [5]                  31:25; 33:19; 36:11;                  41:16; 44:5</p> <p><b>payable</b> [4]                  60:17, 22, 24; 69:7</p> <p><b>payables</b> [1]                  64:24</p> <p><b>paying</b> [1]                  24:24</p> <p><b>payment</b> [45]                  22:12; 34:11; 35:5, 16;                  41:5, 8, 10, 22; 42:18;                  45:21; 46:18; 48:5, 7, 10,                  12, 24, 25; 49:5, 15;                  50:12, 16, 20; 51:19, 20;                  52:4, 7, 10, 22, 24, 25;                  54:8, 25; 55:8; 56:4, 7, 10;                  57:9; 58:10, 16, 21; 59:3;                  68:17, 20; 133:25</p> <p><b>payments</b> [18]                  34:4, 6, 8; 35:20; 45:1, 4;                  50:19; 51:21; 54:9, 12, 16,                  20, 23; 55:3, 4; 56:1;                  58:25</p> <p><b>pc</b> [3]                  98:7, 22; 99:2</p> <p><b>pending</b> [5]                  4:15; 88:19; 105:9; 150:3;                  159:15</p> <p><b>people</b> [7]                  15:14; 19:5; 74:6; 75:7;                  97:12; 141:6; 149:17</p> <p><b>percent</b> [6]                  9:8; 20:1, 3, 5; 21:3;                  123:16</p> <p><b>perform</b> [8]                  14:9; 20:4; 30:10; 65:19;                  77:12; 78:16; 125:10;                  132:3</p> <p><b>performed</b> [16]                  17:22, 24; 18:2, 17; 19:15;</p>
--	---	---	---

<p>11:21:7; 30:5, 8, 22; 11:22:66:8; 80:25; 90:3; 11:23:5 <b>period</b> [2] 111:10; 11:24:6 <b>periodic</b> [1] 11:25:1 <b>permission</b> [3] 11:26:11:2; 65:19 <b>permit</b> [1] 11:27:19 <b>person</b> [13] 11:28:16:2; 43:15; 70:6; 11:29:97:24; 93:7, 10, 11; 11:30:19; 138:15; 141:17 <b>personal</b> [10] 11:31:93:8, 10, 11; 92:7; 11:32:118:5; 138:23; 11:33:17, 24 <b>personally</b> [8] 11:34:92:2, 8, 10; 93:16; 11:35:15; 145:16, 18 <b>perspective</b> [3] 11:36:119:4, 5 <b>pertaining</b> [1] 11:37:1 <b>pervious</b> [1] 11:38:19 <b>phases</b> [1] 11:39:1 <b>philanthropic</b> [1] 11:40:1 <b>philharmonic</b> [1] 11:41:22 <b>phone</b> [2] 11:42:163:21 <b>photocopier</b> [1] 11:43:1 <b>pick</b> [1] 11:44:19 <b>picture</b> [3] 11:45:114:1; 156:25 <b>plane</b> [3] 11:46:105:1; 158:17 <b>planes</b> [1] 11:47:1 <b>plane</b> [8] 11:48:40:8; 43:22; 49:13; 11:49:138:18; 146:21; 11:50:15 <b>plaintiff</b> [1] 11:51:11 <b>plaintiffs</b> [3] 11:52:13, 18; 134:13 <b>plan</b> [11] 11:53:46:19; 48:7, 10, 12; 11:54:50:12, 16, 20; 11:55:52:7 <b>planning</b> [1] 11:56:1 <b>plans</b> [3]</p>	<p>107:18, 20; 133:24 <b>played</b> [1] 138:24 <b>please</b> [18] 5:3, 12; 11:14; 16:18; 19:11; 23:5, 11; 37:1; 45:17; 48:4; 54:5; 55:24; 57:5; 91:23; 111:4; 128:23; 137:11, 25 <b>plus</b> [2] 100:15; 146:14 <b>point</b> [21] 16:5; 21:2; 48:23; 56:15; 61:9; 95:19, 21; 97:12, 17; 105:18; 109:24; 111:16; 113:24; 122:11; 129:8, 13; 145:24; 152:11; 153:20; 158:2 <b>pointing</b> [1] 59:21 <b>points</b> [1] 41:14 <b>pool</b> [16] 74:1, 19, 21, 23, 24; 75:2, 5, 6, 11, 12, 14, 15, 17, 19; 149:2 <b>pools</b> [1] 77:4 <b>poor</b> [1] 126:6 <b>poorly</b> [1] 66:8 <b>portfolio</b> [2] 70:16; 85:7 <b>portion</b> [4] 57:24; 113:4; 125:15; 137:12 <b>portuguese</b> [1] 140:20 <b>position</b> [15] 6:5; 22:7; 54:7, 14; 64:14, 17; 95:11, 16; 98:25; 99:4, 5; 102:19; 122:10; 139:14; 155:9 <b>possession</b> [1] 115:23 <b>possibility</b> [1] 143:12 <b>postdates</b> [1] 128:5 <b>potential</b> [6] 8:8; 13:6; 19:4; 79:8; 106:9; 109:15 <b>potentially</b> [2] 106:10; 159:17 <b>practice</b> [3] 75:8; 81:4; 154:23 <b>practices</b> [1] 29:11 <b>practitioner</b> [1] 63:2</p>	<p><b>premier</b> [6] 100:4, 5, 23; 101:7, 10, 14 <b>prepare</b> [2] 6:23; 62:18 <b>presence</b> [3] 81:10; 121:25; 146:6 <b>present</b> [5] 65:9, 13; 66:1, 2; 86:18 <b>presentations</b> [1] 157:15 <b>preserve</b> [2] 27:16, 19 <b>preserving</b> [3] 33:23; 82:22, 25 <b>president</b> [20] 6:2, 12; 9:19; 10:3, 6, 21, 25; 18:15; 19:21; 23:2, 16; 102:6, 7, 13, 17, 20; 110:22; 122:12; 143:13; 158:9 <b>presume</b> [1] 137:23 <b>presuming</b> [1] 110:23 <b>prevents</b> [1] 98:16 <b>previous</b> [5] 43:1; 56:8; 69:24; 73:13; 102:2 <b>previously</b> [5] 48:7, 9; 80:12; 138:8; 144:22 <b>primarily</b> [5] 13:5; 15:24; 18:25; 30:14; 120:9 <b>primary</b> [3] 16:3; 119:21; 130:10 <b>principally</b> [1] 25:16 <b>principals</b> [6] 18:13; 19:19; 22:22, 24, 25; 23:14 <b>prior</b> [21] 12:12; 41:17, 24; 44:8; 69:5; 106:16; 117:6; 129:14; 130:4; 131:2, 3; 137:17; 138:6; 146:5, 7, 8, 15; 147:15; 148:10; 161:3 <b>priorities</b> [1] 28:12 <b>privy</b> [1] 133:6 <b>problem</b> [9] 26:1, 2; 45:13; 59:22; 78:8; 82:17; 103:25; 124:6; 150:2 <b>problems</b> [10] 31:18, 20; 62:1; 142:8; 149:1, 2, 6; 150:5, 19, 23 <b>procedure</b> [1] 152:12</p>	<p><b>proceeding</b> [1] 38:2 <b>proceeds</b> [1] 77:24 <b>process</b> [5] 85:9; 96:21; 112:16; 114:3; 145:3 <b>processing</b> [1] 143:23 <b>produce</b> [1] 73:10 <b>produced</b> [3] 103:4; 105:6; 142:6 <b>product</b> [17] 73:9; 86:2; 93:8, 9, 12, 15; 96:12, 13, 15, 18, 19; 97:5, 15; 100:18; 142:6; 151:8; 159:6 <b>products</b> [6] 8:14; 73:5, 25; 97:6, 10; 105:21 <b>profit</b> [1] 96:17 <b>program</b> [1] 15:6 <b>programs</b> [2] 97:1; 99:2 <b>project</b> [1] 98:22 <b>projects</b> [1] 126:19 <b>prolow</b> [3] 160:15, 17, 22 <b>promissory</b> [2] 17:21; 56:12 <b>promoted</b> [4] 95:16, 17; 96:5, 6 <b>promoting</b> [1] 70:14 <b>promotion</b> [2] 96:23; 97:25 <b>pronounce</b> [2] 139:25; 140:12 <b>pronouncing</b> [1] 109:18 <b>proper</b> [1] 78:16 <b>properly</b> [1] 37:19 <b>properties</b> [4] 105:17; 110:24; 111:6; 116:2 <b>property</b> [42] 13:14, 15; 21:5, 10; 22:1, 9; 70:5, 8, 12, 14, 15, 18, 21; 71:8; 72:13; 75:4, 9; 85:4, 6; 104:3, 4; 106:7, 23, 25; 117:21; 119:25; 120:4, 10, 14; 142:23; 143:16, 23; 145:6, 8; 147:8; 156:2, 5, 10, 18,</p>	<p>20; 157:3 <b>proposals</b> [2] 46:17; 47:9 <b>proposed</b> [1] 50:12 <b>proskauer</b> [149] 4:14; 11:6; 12:5, 6, 16, 20, 22; 13:13; 14:9, 14, 19, 25; 15:3, 10, 13, 15, 17, 22; 17:12, 15, 19; 18:17, 18, 20; 19:3, 16, 24; 20:15, 20; 21:9; 23:18; 25:8; 26:8, 14; 28:4, 20; 30:4, 5, 8, 14, 21; 31:1, 7, 23; 33:7, 20, 25; 34:16, 22, 25; 35:4, 10, 16, 20; 36:15, 16; 37:2, 14, 16; 38:23; 39:12; 41:8, 15; 43:18, 23; 44:6; 45:22; 46:21; 47:6; 51:1; 52:6; 55:10; 56:16; 57:16; 61:4, 6; 65:5, 12, 18; 66:3, 7; 70:5; 71:11; 72:9, 12, 20; 73:5; 74:12, 22; 76:7, 18; 77:11, 14, 21; 78:8, 10, 15, 23; 79:5, 10, 14; 80:5, 9, 15, 24; 81:18, 25; 85:14, 16; 89:23; 90:4; 120:21, 22; 121:21, 22; 122:2, 14, 15; 123:21; 126:14, 22; 128:18; 129:6, 8, 12, 16, 18; 131:18, 23; 132:2; 133:2, 7, 18; 136:8; 137:18; 138:15; 141:22; 142:11; 143:5, 15; 144:2; 147:9, 13; 148:11 <b>proskauer's</b> [18] 24:2; 25:12; 26:8, 17; 27:18; 30:17; 31:5; 32:1, 22; 34:15; 36:25; 63:9; 64:3, 15; 69:11; 74:8; 82:18; 86:6 <b>protect</b> [1] 142:22 <b>provide</b> [4] 89:5, 6; 116:13; 163:14 <b>provided</b> [10] 40:17; 43:18; 126:22; 146:16; 147:1, 3, 21, 24; 148:15; 151:20 <b>providing</b> [8] 126:15; 128:19; 131:1, 18; 133:19; 161:4, 15, 19 <b>provisional</b> [8] 8:21; 14:4; 72:3; 110:19; 112:12; 142:15; 151:8 <b>provisionals</b> [1] 14:7 <b>prudent</b> [1] 55:5</p>
---	---	---	---	--

<p><b>pruski</b> [115]                  10:13; 6:17, 22; 23:4,                  24:6, 10; 25:20;                  29:20; 37:12; 38:4,                  10:13, 15, 20; 42:4,                  25; 44:9, 13; 45:16;                  47:16, 20; 49:19,                  5, 9; 52:13, 18;                  55:14; 56:21;                  58:3; 59:7, 12, 16,                  60:23; 62:5;                  18, 23; 64:1, 25;                  21; 67:1; 68:5;                  22; 80:1; 86:8, 10,                  87:5, 7, 13, 15, 17;                  12, 15, 20, 24;                  94:12; 116:14, 17;                  9, 14, 17; 120:6;                  15; 127:9, 12, 15;                  23; 134:17;                  18, 22; 136:11;                  6; 140:15, 22;                  146:3; 148:4, 16;                  150:6; 160:8;                  162:6, 13, 19, 23;                  8, 20, 25; 164:8</p> <p><b>public</b> [2]                  24</p> <p><b>purchase</b> [3]                  154:3; 158:2</p> <p><b>purchased</b> [1]</p> <p><b>purpose</b> [13]                  19; 13:13; 14:24;                  19:12; 21:1; 75:7;                  10; 118:12; 156:13</p> <p><b>purposes</b> [3]                  14; 83:1</p> <p><b>reagent</b> [2]                  57:9</p> <p><b>revenue</b> [1]</p> <p><b>retting</b> [1]</p> <hr/> <p style="text-align: center;">* * Q * *</p> <hr/> <p><b>quality</b> [1]</p> <p><b>question</b> [38]                  24:11; 25:14;                  28:9, 11; 29:17, 21;                  15:17; 57:23; 63:24;                  76:25; 79:25; 86:9;                  24; 116:14, 23;                  120:18; 126:16;                  135:19, 25; 136:3;                  138:3; 141:15;                  16, 17, 21;                  159:21; 161:22</p> <p><b>questioned</b> [1]</p>	<p>73:6</p> <p><b>questioning</b> [6]                  12:5; 20:25; 25:7; 115:19;                  116:19; 160:9</p> <p><b>questions</b> [7]                  4:25; 36:24; 69:23; 88:23;                  90:7; 111:20; 149:22</p> <p><b>quick</b> [2]                  136:4; 155:6</p> <p><b>quickly</b> [1]                  25:4</p> <p><b>quote</b> [5]                  76:24; 77:7, 17, 18; 78:1</p> <hr/> <p style="text-align: center;">* * R * *</p> <hr/> <p><b>raise</b> [1]                  15:9</p> <p><b>raised</b> [1]                  17:18</p> <p><b>raises</b> [1]                  17:21</p> <p><b>ran</b> [1]                  102:18</p> <p><b>range</b> [1]                  97:18</p> <p><b>rate</b> [4]                  124:23; 136:21; 155:14;                  165:21</p> <p><b>rates</b> [10]                  26:6, 11, 13; 28:25; 33:1,                  2, 5, 12; 136:23; 137:16</p> <p><b>raton</b> [8]                  6:3; 9:16; 99:17; 100:8,                  25; 106:22; 118:22;                  121:25</p> <p><b>raymond</b> [9]                  32:10, 13; 139:24; 140:9,                  11; 142:7; 149:6; 150:5;                  151:6</p> <p><b>re-ask</b> [4]                  5:2; 29:21; 63:23; 135:14</p> <p><b>re-marked</b> [1]                  66:25</p> <p><b>reach</b> [1]                  64:23</p> <p><b>read</b> [9]                  50:11; 57:25; 73:2, 16;                  78:13; 124:21; 137:10, 13;                  166:3</p> <p><b>readily</b> [1]                  113:14</p> <p><b>reading</b> [1]                  84:24</p> <p><b>reaffirms</b> [1]                  54:9</p> <p><b>real</b> [12]                  107:3, 15; 119:24; 136:4;                  147:8; 156:23, 24; 157:5,                  11; 158:25; 159:4, 7</p> <p><b>reason</b> [13]</p>	<p>4:22; 5:1, 6; 28:3, 7, 8, 16,                  18; 32:24; 75:4; 99:21;                  155:1; 166:6</p> <p><b>reasonable</b> [4]                  146:2; 147:19; 148:14, 22</p> <p><b>reasonably</b> [3]                  30:1; 155:5, 12</p> <p><b>reasons</b> [1]                  70:20</p> <p><b>recall</b> [56]                  7:20; 9:15; 12:8; 13:18,                  21; 15:21; 18:25; 19:17;                  22:10; 24:14; 27:3; 30:21,                  24; 32:14; 34:10; 40:6;                  41:17, 23; 45:11; 46:22;                  50:21, 25; 52:9; 62:10;                  64:16; 65:15; 71:4, 11;                  93:25; 95:12; 106:5;                  112:10; 114:13; 116:12;                  122:13; 123:19; 129:13;                  130:16; 133:13; 140:7,                  24, 25; 143:18; 145:12,                  22; 148:10; 152:4, 8, 9;                  154:13, 17; 155:1; 158:3;                  159:24; 161:14, 18</p> <p><b>receipt</b> [3]                  51:18, 25; 57:6</p> <p><b>receivable</b> [1]                  57:13</p> <p><b>receivables</b> [1]                  57:8</p> <p><b>receive</b> [15]                  42:21; 43:2; 44:20; 46:12;                  48:2; 51:14; 55:21; 57:2;                  58:12; 60:7; 62:11; 67:9,                  23; 68:13; 129:9</p> <p><b>received</b> [19]                  25:5; 31:10; 34:5; 41:5,                  11; 42:20; 52:23; 53:2;                  56:12; 57:15; 60:15; 61:3;                  68:18, 21, 24; 69:10;                  87:21; 89:25; 111:19</p> <p><b>receiving</b> [4]                  39:1; 122:13; 130:5; 152:9</p> <p><b>recognize</b> [4]                  38:19; 74:5; 117:3, 4</p> <p><b>recognizes</b> [1]                  52:22</p> <p><b>recollect</b> [2]                  9:1; 16:23</p> <p><b>recollection</b> [8]                  41:21; 93:19; 102:11;                  116:10; 130:9, 14; 141:10;                  148:6</p> <p><b>recommend</b> [2]                  37:17; 156:4</p> <p><b>recommended</b> [4]                  70:6, 24; 81:18; 82:6</p> <p><b>recommending</b> [1]                  14:18</p> <p><b>reconciliation</b> [2]</p>	<p>67:15, 20</p> <p><b>reconciliations</b> [1]                  90:3</p> <p><b>reconvene</b> [2]                  162:18; 163:10</p> <p><b>record</b> [8]                  23:5, 7, 11; 54:22; 90:24;                  115:21; 165:14</p> <p><b>recorded</b> [1]                  165:11</p> <p><b>records</b> [5]                  15:7, 11; 114:15; 141:24;                  142:3</p> <p><b>recruited</b> [1]                  108:23</p> <p><b>reduced</b> [2]                  33:13; 165:11</p> <p><b>reducing</b> [1]                  112:15</p> <p><b>redundancy</b> [1]                  87:23</p> <p><b>refer</b> [6]                  76:6, 22; 79:1; 91:9;                  124:11; 127:17</p> <p><b>reference</b> [2]                  142:7; 156:8</p> <p><b>referenced</b> [6]                  13:12; 48:13, 21; 49:2, 3,                  4</p> <p><b>references</b> [1]                  47:12</p> <p><b>referencing</b> [1]                  50:14</p> <p><b>referred</b> [4]                  85:2; 121:7; 137:17;                  143:22</p> <p><b>referring</b> [6]                  7:7, 11; 42:1; 75:21;                  78:17; 121:4</p> <p><b>refers</b> [2]                  137:22; 138:1</p> <p><b>refiled</b> [1]                  14:7</p> <p><b>reflecting</b> [1]                  27:4</p> <p><b>refresh</b> [1]                  115:20</p> <p><b>regard</b> [27]                  95:6; 99:1; 109:16; 112:4;                  114:11; 116:1; 117:5;                  121:21; 129:25; 133:8;                  138:4, 5, 9; 140:4, 5;                  142:11, 12; 149:2, 3, 4, 7,                  150:3, 24; 151:3, 6, 9;                  155:19</p> <p><b>regarding</b> [6]                  7:1; 9:21; 50:11; 74:15;                  83:6; 106:25</p> <p><b>registered</b> [1]                  72:24</p> <p><b>registration</b> [2]</p>	<p>72:15, 20</p> <p><b>regular</b> [1]                  108:5</p> <p><b>rejected</b> [1]                  47:6</p> <p><b>related</b> [13]                  18:25; 79:7; 80:5, 9;                  104:14, 20, 23; 117:15;                  134:2; 142:4; 146:20;                  155:25; 165:15</p> <p><b>relates</b> [2]                  117:2; 134:5</p> <p><b>relating</b> [8]                  17:20; 75:3; 76:8; 111:12,                  14, 21; 145:10; 157:7</p> <p><b>relationship</b> [20]                  13:2; 74:1; 99:22; 118:20;                  124:8; 128:18; 129:2;                  130:24; 131:6, 9; 155:20,                  21; 156:23; 158:24; 159:4;                  160:22, 25; 161:2, 6</p> <p><b>relative</b> [3]                  15:6; 110:12; 165:8</p> <p><b>release</b> [1]                  159:6</p> <p><b>relevance</b> [3]                  116:18; 160:9; 161:25</p> <p><b>relevant</b> [3]                  91:24; 118:19; 150:15</p> <p><b>remaining</b> [3]                  14:7; 21:3; 51:21</p> <p><b>remember</b> [5]                  21:12; 24:6; 109:21;                  140:13; 143:19</p> <p><b>reminder</b> [1]                  52:25</p> <p><b>remote</b> [2]                  113:16, 22</p> <p><b>reorganization</b> [4]                  17:8, 11, 13; 81:17</p> <p><b>repayment</b> [2]                  135:11; 136:7</p> <p><b>repeat</b> [3]                  136:2; 150:10; 161:21</p> <p><b>repeated</b> [1]                  136:1</p> <p><b>repeatedly</b> [1]                  73:6</p> <p><b>repetitive</b> [1]                  154:25</p> <p><b>rephrase</b> [6]                  5:2; 74:9; 86:8; 126:12;                  146:4; 150:22</p> <p><b>replaced</b> [1]                  17:4</p> <p><b>replacements</b> [1]                  158:14</p> <p><b>report</b> [2]                  46:16; 62:18</p> <p><b>reported</b> [1]                  70:13</p>
---	---	---	---	---

<p><b>center</b> [7] 134:15; 135:25; 163:5, 13; 165:4</p> <p><b>consent</b> [7] 127:3; 131:23; 144:24; 159:19</p> <p><b>representation</b> [12] 25:8; 26:15; 68:18; 69:11; 129:5; 143:17</p> <p><b>represented</b> [9] 15:23; 33:7; 119:20; 123:16;</p> <p><b>representing</b> [8] 7: 17; 22:5; 26:9; 35:1; 72:23</p> <p><b>rest</b> [17] 11:4, 12; 42:17; 46:15; 53:21; 19: 78:24; 81:1; 20, 22, 25; 90:3</p> <p><b>requested</b> [14] 57:24; 67:17; 74:16; 77:25; 79:10; 80:15, 81:2; 137:12</p> <p><b>setting</b> [2] 18:6</p> <p><b>sets</b> [5] 20, 23; 62:17; 78:7</p> <p><b>settle</b> [1]</p> <p><b>settled</b> [2] 5</p> <p><b>settlement</b> [1]</p> <p><b>settle</b> [2] 23</p> <p><b>settles</b> [2] 10</p> <p><b>settling</b> [3] 88:8; 104:6</p> <p><b>settled</b> [5] 24:21; 45:10;</p> <p>18</p> <p><b>settling</b> [1]</p> <p><b>settle</b> [1]</p> <p><b>settle</b> [12] 15:3; 17:8; 18:16; 37:15; 64:15; 66:8; 9:6; 119:11, 12</p> <p><b>settle</b> [1]</p> <p><b>settle</b> [7] 13; 81:21; 83:9; 14; 130:17</p> <p><b>settle</b> [1]</p>	<p><b>responding</b> [1] 76:25</p> <p><b>responds</b> [2] 46:17; 163:5</p> <p><b>response</b> [3] 29:7; 77:17; 135:15</p> <p><b>responsibilities</b> [2] 11:13; 52:6</p> <p><b>responsibility</b> [12] 16:3; 32:8; 36:11; 96:10, 13, 16, 17, 25; 98:6; 99:7, 15; 153:20</p> <p><b>responsible</b> [8] 15:12; 85:3; 93:8, 11; 97:9; 107:10; 141:14; 158:21</p> <p><b>restroom</b> [1] 90:8</p> <p><b>restructured</b> [1] 82:9</p> <p><b>restructuring</b> [1] 16:21</p> <p><b>result</b> [2] 13:16; 117:1</p> <p><b>results</b> [1] 73:10</p> <p><b>resume</b> [1] 54:9</p> <p><b>retained</b> [4] 17:5; 145:5; 156:5, 15</p> <p><b>retainer</b> [18] 15:18, 19; 44:4, 5; 62:16; 121:23; 122:2, 14; 123:21; 124:7; 125:6, 8, 12, 23; 126:4, 5, 7; 128:17</p> <p><b>retaining</b> [2] 145:4; 156:9</p> <p><b>retainment</b> [1] 126:8</p> <p><b>retired</b> [3] 5:21; 6:1; 99:23</p> <p><b>retrenchment</b> [2] 61:17, 19</p> <p><b>returned</b> [1] 154:4</p> <p><b>reveal</b> [1] 98:14</p> <p><b>review</b> [9] 7:2; 35:9; 60:14; 67:17; 69:18; 72:4; 86:21; 107:18; 157:1</p> <p><b>reviewed</b> [9] 29:9, 12, 22; 31:12, 15; 46:16; 60:16, 21</p> <p><b>reviewing</b> [3] 8:6, 11; 41:17</p> <p><b>reviews</b> [1] 43:21</p> <p><b>rid</b> [1] 86:6</p> <p><b>right</b> [30] 16:8; 17:9; 18:2; 31:12; 36:4; 63:16; 87:9, 12; 91:25; 95:5, 15; 107:1; 116:17; 120:2; 122:20; 124:1, 23; 128:5; 130:23; 134:3; 135:19; 137:6; 139:21; 140:21; 145:11; 148:20; 158:11; 159:9; 163:3; 164:5</p> <p><b>rights</b> [5] 21:6; 26:8; 75:7; 105:12, 13</p> <p><b>ring</b> [2] 79:3; 154:14</p> <p><b>road</b> [1] 159:8</p> <p><b>robust</b> [1] 143:3</p> <p><b>role</b> [17] 5:25; 9:17, 23; 15:3; 16:17; 89:16; 96:3; 102:16, 22; 121:6; 138:9, 10, 24; 139:4, 8, 13, 16</p> <p><b>rolf</b> [1] 139:2</p> <p><b>roman</b> [2] 83:3, 16</p> <p><b>room</b> [4] 43:16; 163:4, 7, 14</p> <p><b>rooms</b> [2] 43:19; 146:22</p> <p><b>rose</b> [47] 4:14; 12:5, 6; 14:9, 19; 21:10; 26:14; 30:15; 36:15, 16; 37:14, 16; 38:23; 70:5; 77:11; 81:18; 120:21, 22; 121:22, 23; 122:2, 14, 15; 123:21; 126:14, 22; 128:18; 129:6, 8, 13, 16, 18; 131:18, 23; 132:2; 133:3, 7, 18; 136:8; 137:18; 142:11; 143:6, 15; 144:2; 147:9, 13; 148:11</p> <p><b>rose's</b> [2] 25:8; 138:15</p> <p><b>ross</b> [7] 62:17; 63:7; 73:21; 76:7; 141:14, 17; 158:20</p> <p><b>royalties</b> [2] 75:11, 12</p> <p><b>rubenstein</b> [26] 70:3, 4, 24; 75:2; 77:2; 83:18; 84:3, 5, 20, 21; 120:19; 121:1, 4, 13; 138:7, 8, 19; 139:19, 23; 140:8, 25; 143:4; 149:5; 150:4, 9, 25</p> <p><b>rubenstein's</b> [1] 121:6</p> <p><b>rubinstein</b> [1] 120:18</p>	<p><b>run</b> [4] 11:15; 78:25; 106:14; 109:15</p> <p><b>running</b> [2] 77:19; 160:13</p> <p style="text-align: center;"><b>** S **</b></p> <p><b>s-corp</b> [8] 20:3; 43:13; 82:8, 9, 13, 20, 21; 123:17</p> <p><b>s-h-i-r-a-j-e-e</b> [1] 109:21</p> <p><b>san</b> [3] 94:23, 25; 95:4</p> <p><b>sandstrom</b> [2] 165:3, 24</p> <p><b>sate</b> [1] 94:7</p> <p><b>satisfaction</b> [2] 25:11; 88:9</p> <p><b>satisfied</b> [2] 26:25; 71:2</p> <p><b>savings</b> [1] 40:11</p> <p><b>saying</b> [10] 91:8; 131:7; 134:5, 24; 135:7; 138:21; 149:14; 150:18; 151:25; 158:22</p> <p><b>scales</b> [1] 115:8</p> <p><b>scaling</b> [2] 112:17; 113:11</p> <p><b>scene</b> [1] 19:2</p> <p><b>schedule</b> [1] 45:1</p> <p><b>scheduled</b> [1] 35:20</p> <p><b>scheme</b> [1] 81:20</p> <p><b>schools</b> [1] 94:16</p> <p><b>scientific</b> [1] 96:20</p> <p><b>scope</b> [3] 74:22; 109:10; 114:7</p> <p><b>seal</b> [1] 165:22</p> <p><b>searches</b> [1] 80:4</p> <p><b>second</b> [12] 43:4; 63:13; 66:18, 21; 124:11, 19; 125:17, 20, 22; 161:23</p> <p><b>secondly</b> [1] 21:4</p> <p><b>secretarial</b> [1] 146:22</p> <p><b>secretary</b> [1] 53:20</p>	<p><b>selection</b> [1] 145:3</p> <p><b>sell</b> [1] 100:13</p> <p><b>selling</b> [1] 100:18</p> <p><b>selz</b> [96] 6:14, 18, 21; 24:4, 8; 25:13; 27:20; 29:16; 37:8; 38:4; 40:13, 14; 42:4; 44:9; 45:14; 46:2; 47:17; 49:20; 51:5, 6; 52:13, 15; 57:19; 59:11, 18, 22; 60:20; 63:15, 19, 21, 25; 64:20; 66:23; 69:19; 79:24; 86:7, 23; 87:1, 10; 90:9, 17, 21; 91:3, 7; 116:16, 20, 21; 119:7, 12, 16, 23; 120:7; 124:3, 9, 12, 18; 127:6, 11, 14, 16; 129:3; 135:13, 15, 17, 20, 23; 136:2, 5, 15, 24; 137:5, 9, 14, 15; 140:16; 141:3; 144:18; 146:12; 148:8, 19; 149:10, 15, 20, 24; 150:13; 160:10; 161:23; 162:1, 10, 14; 163:1, 6, 16, 23; 164:2, 6</p> <p><b>send</b> [2] 31:7; 35:4</p> <p><b>sender</b> [4] 8:12; 62:17; 96:7; 156:16</p> <p><b>sense</b> [3] 136:20; 142:18; 151:14</p> <p><b>sentence</b> [1] 58:25</p> <p><b>separate</b> [5] 40:4; 43:11; 48:13, 24; 49:1</p> <p><b>separately</b> [1] 16:16</p> <p><b>september</b> [10] 122:5, 8; 123:24; 128:10; 130:5, 6; 131:3; 132:19, 24; 165:22</p> <p><b>series</b> [1] 146:19</p> <p><b>serves</b> [1] 41:19</p> <p><b>service</b> [1] 136:20</p> <p><b>services</b> [30] 19:3; 25:12; 30:4, 8; 41:8; 43:18; 62:17; 125:3; 126:15, 21; 127:1, 3, 4; 128:19; 131:1, 19; 133:19; 134:2, 5, 7; 136:9, 13; 146:16, 21; 147:2, 20, 23; 148:13, 15, 22</p> <p><b>setting</b> [2] 108:15; 155:25</p>
--	---	--	--

<p>... [2]</p> <p>... [5]</p> <p>... 5:1, 5, 76:8, 12</p> <p>... [2]</p> <p>... 19</p> <p>... [4]</p> <p>... 18; 112:1, 2</p> <p>... [3]</p> <p>... 12, 15</p> <p>... [1]</p> <p>... 7</p> <p>... [1]</p> <p>... [2]</p> <p>... 23</p> <p>... [1]</p> <p>... [2]</p> <p>... 121</p> <p>... 10:15, 21; 42:5,</p> <p>... 1; 46:7; 47:22;</p> <p>... 51:3; 52:11; 53:12;</p> <p>... 58:4; 59:8; 62:6;</p> <p>... 67:2, 6; 68:6</p> <p>... [1]</p> <p>... [1]</p> <p>... [1]</p> <p>... [1]</p> <p>... [1]</p> <p>... 2; 11:3; 15:16;</p> <p>... 19:2; 25:17; 26:1;</p> <p>... 28:21; 30:12, 20,</p> <p>... 33:14; 34:3, 7,</p> <p>... 36:3, 7; 44:24;</p> <p>... 12; 46:17, 20;</p> <p>... 18:17; 49:6, 8, 14;</p> <p>... 57; 9; 61:3; 64:9;</p> <p>... 74:12; 76:4;</p> <p>... 96:5</p> <p>... [1]</p> <p>... [3]</p> <p>... 12:1; 158:1</p> <p>... [1]</p> <p>... [1]</p> <p>... [2]</p> <p>... 158:4</p> <p>... [1]</p> <p>... [1]</p> <p>... [2]</p> <p>... 125:21</p> <p>... [1]</p> <p>... [1]</p>	<p><b>sir</b> [29]</p> <p>5:15; 8:16; 18:22; 20:25;</p> <p>60:1; 91:17; 94:16; 95:8;</p> <p>97:13; 98:4; 101:3; 119:1;</p> <p>124:20; 126:13; 128:10;</p> <p>132:8; 134:4; 135:2, 10;</p> <p>136:6; 137:16; 143:25;</p> <p>146:1; 147:7; 148:3, 12,</p> <p>21; 160:4, 12</p> <p><b>sit</b> [1]</p> <p>148:21</p> <p><b>site</b> [5]</p> <p>94:1; 157:6, 8; 158:18</p> <p><b>situation</b> [4]</p> <p>28:6, 19; 151:19; 152:8</p> <p><b>six</b> [1]</p> <p>12:14</p> <p><b>size</b> [2]</p> <p>25:17; 47:13</p> <p><b>skimpy</b> [2]</p> <p>142:17, 19</p> <p><b>social</b> [1]</p> <p>118:24</p> <p><b>socially</b> [1]</p> <p>108:13</p> <p><b>software</b> [1]</p> <p>100:14</p> <p><b>sold</b> [3]</p> <p>70:15; 98:5, 8</p> <p><b>sole</b> [1]</p> <p>121:6</p> <p><b>solicit</b> [1]</p> <p>18:24</p> <p><b>solo</b> [1]</p> <p>63:2</p> <p><b>somehow</b> [1]</p> <p>104:20</p> <p><b>someone</b> [4]</p> <p>37:6; 106:13; 109:14;</p> <p>138:15</p> <p><b>someplace</b> [1]</p> <p>115:23</p> <p><b>somewhere</b> [1]</p> <p>128:9</p> <p><b>soni</b> [1]</p> <p>160:5</p> <p><b>sorry</b> [20]</p> <p>6:8, 14; 24:1; 28:10, 17;</p> <p>32:6; 36:25; 59:16, 20;</p> <p>63:21; 66:19; 73:23;</p> <p>84:23; 97:4; 102:3; 113:8;</p> <p>122:6; 161:10, 17, 18</p> <p><b>sort</b> [7]</p> <p>100:9; 103:3; 108:19;</p> <p>109:4; 110:17; 142:4;</p> <p>145:7</p> <p><b>sorts</b> [1]</p> <p>108:11</p> <p><b>sought</b> [2]</p> <p>112:5; 117:10</p> <p><b>sound</b> [1]</p>	<p>87:4</p> <p><b>sounds</b> [1]</p> <p>154:16</p> <p><b>sources</b> [1]</p> <p>19:4</p> <p><b>south</b> [2]</p> <p>5:16; 118:10</p> <p><b>southwest</b> [1]</p> <p>101:4</p> <p><b>space</b> [2]</p> <p>107:12, 15</p> <p><b>speak</b> [3]</p> <p>6:20; 13:7; 138:17</p> <p><b>speaker</b> [1]</p> <p>6:15</p> <p><b>specific</b> [17]</p> <p>32:24; 39:19; 42:19, 20;</p> <p>47:8; 64:16; 85:25; 89:3;</p> <p>91:13; 96:18; 103:12;</p> <p>112:4, 25; 115:12, 19;</p> <p>154:10</p> <p><b>specifically</b> [13]</p> <p>30:21, 25; 34:10; 62:10;</p> <p>65:15; 75:1; 89:4; 92:18;</p> <p>113:21; 114:22; 123:21;</p> <p>124:20; 134:12</p> <p><b>specifics</b> [1]</p> <p>74:15</p> <p><b>specified</b> [1]</p> <p>78:24</p> <p><b>specify</b> [3]</p> <p>7:9; 109:7; 136:19</p> <p><b>speculating</b> [1]</p> <p>152:7</p> <p><b>speculation</b> [3]</p> <p>27:21; 37:9; 64:20</p> <p><b>speed</b> [1]</p> <p>114:2</p> <p><b>spell</b> [2]</p> <p>5:11; 109:19</p> <p><b>spending</b> [1]</p> <p>157:18</p> <p><b>spoke</b> [1]</p> <p>7:22</p> <p><b>staff</b> [6]</p> <p>15:25; 33:12; 62:18;</p> <p>95:20; 145:1; 156:16</p> <p><b>standing</b> [1]</p> <p>60:11</p> <p><b>standpoint</b> [2]</p> <p>107:19, 20</p> <p><b>start</b> [3]</p> <p>87:12; 91:8; 149:25</p> <p><b>started</b> [6]</p> <p>41:9; 80:17; 81:4; 94:12;</p> <p>98:22; 102:12</p> <p><b>starting</b> [4]</p> <p>16:16; 56:1; 128:2; 146:15</p> <p><b>state</b> [12]</p> <p>6:4; 61:12, 13; 66:3, 6;</p> <p>94:3, 20; 117:24; 155:5,</p>	<p>13, 16; 165:1</p> <p><b>stated</b> [5]</p> <p>10:23; 28:23; 45:18; 95:7;</p> <p>138:8</p> <p><b>statement</b> [17]</p> <p>41:23; 73:2, 11, 16; 74:3;</p> <p>78:2, 13; 81:22; 83:9;</p> <p>84:4, 15; 111:1; 120:15,</p> <p>16; 133:20; 147:22;</p> <p>153:12</p> <p><b>statements</b> [1]</p> <p>147:1</p> <p><b>states</b> [5]</p> <p>45:2; 48:15; 55:25; 67:12;</p> <p>129:1</p> <p><b>status</b> [5]</p> <p>23:21; 37:22; 62:18;</p> <p>82:22; 110:16</p> <p><b>step</b> [1]</p> <p>99:13</p> <p><b>steps</b> [1]</p> <p>96:7</p> <p><b>steve</b> [10]</p> <p>59:17; 63:14; 66:22;</p> <p>69:17; 90:7; 91:6; 124:2;</p> <p>135:16; 163:13; 164:5</p> <p><b>steven</b> [1]</p> <p>86:11</p> <p><b>stick</b> [1]</p> <p>90:12</p> <p><b>stock</b> [3]</p> <p>20:6; 47:4; 123:16</p> <p><b>stocks</b> [1]</p> <p>19:1</p> <p><b>stop</b> [2]</p> <p>22:5; 81:7</p> <p><b>stopped</b> [1]</p> <p>34:22</p> <p><b>strapped</b> [1]</p> <p>87:7</p> <p><b>strategies</b> [2]</p> <p>119:3</p> <p><b>street</b> [1]</p> <p>101:5</p> <p><b>strictly</b> [2]</p> <p>102:21; 104:22</p> <p><b>strike</b> [6]</p> <p>28:17; 32:6; 33:17; 36:4;</p> <p>144:20; 156:3</p> <p><b>strongly</b> [1]</p> <p>82:6</p> <p><b>structural</b> [1]</p> <p>114:4</p> <p><b>structure</b> [3]</p> <p>82:7, 19; 98:1</p> <p><b>structuring</b> [2]</p> <p>79:8; 133:2</p> <p><b>studies</b> [1]</p> <p>110:12</p> <p><b>studiously</b> [1]</p> <p>117:24</p>	<p><b>study</b> [2]</p> <p>157:10, 11</p> <p><b>stylus</b> [1]</p> <p>117:3</p> <p><b>subchapter</b> [2]</p> <p>9:9; 16:22</p> <p><b>subject</b> [5]</p> <p>11:24; 81:10; 105:4;</p> <p>126:22; 130:1</p> <p><b>submit</b> [1]</p> <p>72:12</p> <p><b>submitting</b> [1]</p> <p>89:23</p> <p><b>subordinate</b> [1]</p> <p>20:8</p> <p><b>subordinated</b> [2]</p> <p>9:7; 17:2</p> <p><b>subparagraph</b> [2]</p> <p>83:3, 16</p> <p><b>subsequent</b> [6]</p> <p>52:9; 71:16, 23; 132:19,</p> <p>21, 24</p> <p><b>subsequently</b> [4]</p> <p>154:4; 156:11, 12; 157:4</p> <p><b>subsidiary</b> [1]</p> <p>123:12</p> <p><b>substance</b> [6]</p> <p>25:21; 54:4; 55:23; 57:5;</p> <p>62:13; 68:15</p> <p><b>substantial</b> [2]</p> <p>77:20; 88:17</p> <p><b>succeeding</b> [1]</p> <p>146:9</p> <p><b>sufficient</b> [1]</p> <p>142:22</p> <p><b>suggest</b> [3]</p> <p>83:25; 84:17; 87:2</p> <p><b>suit</b> [5]</p> <p>92:16, 17, 19, 21, 22</p> <p><b>sum</b> [1]</p> <p>132:14</p> <p><b>summarizing</b> [2]</p> <p>41:24; 42:18</p> <p><b>summary</b> [2]</p> <p>147:5, 6</p> <p><b>supervise</b> [1]</p> <p>97:13</p> <p><b>supervising</b> [2]</p> <p>95:19; 97:14</p> <p><b>support</b> [1]</p> <p>146:22</p> <p><b>suppose</b> [3]</p> <p>11:24; 90:14; 102:24</p> <p><b>surface</b> [1]</p> <p>117:3</p> <p><b>surmise</b> [1]</p> <p>58:17</p> <p><b>surprising</b> [1]</p> <p>144:11</p> <p><b>switch</b> [1]</p> <p>21:23</p>
---	---	--	---	---



<p>115:14; 121:12; 125; 159:2 ve [6] 109:8; 120; 115:10; 116:2, 5; 114 nkness [1] 114 nover [2] 121:21 h [3] 118, 8 nk [1] 114 nks [4] 118; 51:22; 118:8; 114 n't [6] 111; 64:19; 89:25; 117; 150:18; 158:21 nt's [8] 115; 57:22; 70:9; 101:1; 117; 128:15; 162:19; 118 ntsoever [2] 119; 155:1 neeler [66] 111:4; 15:25; 16:4; 117; 26:22; 29:3, 5, 6; 119; 48:15; 50:8; 54:2; 113; 59:2; 60:8; 73:7; 111; 77:2, 19, 24; 114; 81:1, 3, 7; 83:5, 7, 115; 84:17; 87:20; 88:6, 115:21, 22; 106:1, 3, 119, 21; 107:22; 111, 15, 18; 109:6; 113, 23; 119:2, 10, 19, 111; 120:9; 123:20, 25; 119, 25; 131:6; 138:19; 111, 21; 149:5; 150:5, 115:4; 156:25; 157:1 neeler's [5] 111; 4; 81:20; 107:13, 14 hereabouts [1] 119:25 hereas [2] 112; 125:9 hereupon [31] 113; 23:8; 38:14; 40:18; 117; 43:14; 44:11; 46:4; 119; 49:21; 51:7; 52:16; 115; 55:12; 56:19; 57:20, 118; 58:1; 59:5, 23; 62:3; 119, 24; 68:3; 69:20; 115; 124:16; 134:15; 117, 12; 164:10 ho's [2] 118; 86:11 lle [1] 113 lliam [3]</p>	<p>73:22; 84:1; 155:19 wind [1] 63:1 wise [1] 162:7 wish [1] 91:12 withdraw [2] 86:9; 119:17 withheld [1] 34:11 witness [38] 6:20; 25:15; 27:22; 29:18; 38:5, 16; 41:1; 42:14; 43:17; 57:18; 59:14; 60:22; 64:21; 87:6, 9, 14; 90:14; 92:15; 119:19; 124:4; 128:21, 25; 136:12; 140:23; 144:15; 146:4; 148:5, 17; 150:9; 162:17, 22; 164:4, 9; 165:6, 10, 14, 22 won't [1] 162:3 words [2] 130:3; 142:21 work [130] 5:22; 10:17; 13:4; 14:10, 19, 21, 22; 15:4, 9, 13, 15; 17:15, 22; 18:1, 16, 19, 21, 25; 19:15, 22, 23; 20:13, 14, 19, 21; 21:7; 22:9, 10; 23:19; 24:2; 27:18; 30:22, 25; 33:9, 11; 34:17; 36:25; 37:14, 16; 39:12, 13; 55:10; 56:16; 61:4, 7, 9, 18; 65:18; 66:4, 8; 70:24; 71:3, 8, 12, 13, 18, 20, 24; 72:13, 16, 20; 73:5, 10, 25; 74:15, 16, 17, 22; 77:12, 25; 78:7, 9, 16, 19, 23, 25; 79:2, 5, 7, 11, 14; 80:5, 9, 16, 25; 81:21; 82:18; 84:3, 6, 20, 22; 85:17, 22, 25; 86:2, 3; 87:24, 25; 88:4; 89:7; 97:14; 101:17, 18; 104:1; 117:1; 118:1; 120:3, 4; 121:1, 5; 125:10; 132:3, 5, 7; 138:16; 139:1; 142:6; 144:23; 145:6, 8, 13; 147:8; 156:5, 10; 157:7; 163:2, 13, 25 worked [9] 6:6; 85:5; 86:16; 103:24; 110:11; 114:9; 144:22; 151:17; 156:1 working [4] 95:20; 96:1; 103:6; 122:4 worldwide [3] 96:17; 99:16; 156:18</p>	<p>worry [1] 149:21 worth [2] 107:11; 132:4 worthiness [1] 158:7 wouldn't [1] 85:14 wrap [1] 144:3 writing [3] 88:6; 117:3; 131:17 written [1] 132:24  *** X ***  xi [1] 83:16  *** Y ***  yeah [18] 9:5; 40:14; 62:12; 63:15; 69:15; 83:22; 90:9, 14; 93:24; 119:12; 128:12; 135:17, 22; 137:23; 138:17; 140:19; 144:7; 162:6 year [5] 32:12; 41:9; 93:20; 98:19; 107:21 years [11] 5:23; 6:6; 11:19; 70:18; 93:22; 94:17; 95:8; 102:8, 14; 108:1; 146:10 yep [1] 63:20 york [16] 13:12, 19; 14:3, 5, 18; 21:15; 70:6; 72:21; 80:13; 94:10, 11; 120:23, 24; 121:8; 143:9 you'd [3] 5:1; 141:21; 148:25 you'll [1] 124:19 you've [30] 28:23; 38:12; 40:24; 42:13; 44:17; 46:9; 47:25; 50:2; 51:11; 52:20; 53:15; 55:18; 56:25; 58:7; 60:4; 62:8; 66:16; 67:6; 68:8; 92:3; 109:11; 111:25; 113:1, 12; 117:10; 138:8; 144:22; 149:3; 150:2, 25 yourself [3] 101:11, 15; 108:18  *** Z ***  z-a-k-i-r-u-l [1]</p>	<p>109:20 z-e-o-s-y-n-c [1] 161:12 zakirul [2] 109:17, 23 zeosync [2] 161:9, 11 zoom [8] 112:3; 114:16, 17, 20, 24; 115:5, 9; 159:11 zooming [1] 112:18</p>
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

167

CASE NO. CA 01-04671 AB

PROSKAUER ROSE, LLP, a New  
York limited liability partnership,

Plaintiff,

-vs-

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

Defendants.

**COPY**

TELEPHONIC DEPOSITION

The following is the telephonic  
deposition of BRIAN UTLEY, VOL. II, taken before  
Traci R. Sandstrom, Court Reporter, Notary  
Public, pursuant to Notice of Taking Deposition,  
at 5841 Cedar Lake Road, St. Louis Park,  
Minnesota 55416, commencing at approximately 2:30  
p.m., August 23, 2002.

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168

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DEPOSITION REFERENCE INDEX

EXAMINATIONS:

By Mr. Prusaski: 268

By Mr. Selz: 170

OBJECTIONS:

By Mr. Selz: 269, 279, 273, 274

By Mr. Prusaski: 175, 180, 182, 186, 188, 191,  
194, 197, 199, 201, 203, 204, 206, 208, 209, 217,  
220, 222, 223, 225, 227, 229, 231, 232, 234, 235,  
237, 239, 240, 242, 243, 244, 246, 248, 249, 251,  
253, 261, 262, 264, 265, 267

PRE-MARKED EXHIBITS

EXHIBIT 1, Amended Complaint.....238, 262, 264

DEFENDANTS 1, Letter dated 9/8/99.....237

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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Whereupon, the telephonic deposition of BRIAN UTLEY, VOL. II, was continued at 2:30 p.m. as follows:

EXAMINATION VIA TELEPHONE

By MR. SELZ:

Q. Mr. Utley, you understand you're still under oath, sir, is that correct?

A. That's correct.

Q. Okay. And you understand this is the continuation of the deposition which took place yesterday, August 22nd; is that correct?

A. I understand that.

Q. Okay. Mr. Utley, since yesterday's deposition, have you spoken to anyone with regard to anything concerning Iviewit.com or any other matters which we've addressed in your previous deposition or deposition questions in this matter?

A. No.

Q. Have you consulted anyone or sought preparation from any other source since our questions yesterday?

A. Not a thing.

Q. Okay. Okay. Now, with regard to

Mr. Rubenstein, we had a series of questions we talked about yesterday with regard to him. Do you recall that?

171

A. I recall that we had some discussion.

Q. Okay. Are you aware of or did you arrange any meetings for any employees of Warner Brothers or any other company with Mr. Rubenstein?

A. No. But I believe that someone from one of the principals on the development side or the engineering side at Warner Brothers was associated with Rubenstein in the MPEG pool.

Q. Okay. And that MPEG pool you're talking about, was that something that Mr. Rubenstein was involved with?

A. Yes.

Q. Okay. And can you explain to me exactly what that MPEG pool was, to the best of your knowledge.

A. Are you going to explain it to me or do you want me to explain it to you?

Q. I want you to explain it to me, please, sir.

A. Well, the MPEG pool, just from

casual knowledge; I'm not involved with the MPEG pool, but the MPEG pool is a consortium of patent holders that have established a pooling of those patents for the purposes of licensing others to use that intellectual property. That's my understanding.

Q. Specific inventions or patents which the MPEG pool holds or is currently trying to license to other parties?

A. Yes.

Q. And what would those be?

A. I'm sorry, I don't know those specific patents.

Q. Okay. So you don't know any specific technology which the MPEG pool is attempting to license?

A. Well, I know by name, MPEG 1, MPEG 2, MPEG 3, MPEG4.

Q. But you have no idea what those technologies are.

A. I didn't say that.

Q. Okay. Well --

A. I thought your question was relative to the MPEG pool and that organization.

Q. Okay.

A. You didn't ask me the question of did I know anything about the technology.

Q. Well, let me rephrase it then. Do you know anything about the technologies MPEG pool is licensing?

A. I don't know anything about the licenses or what is underneath those licenses. I do know something about the specific technology.

Q. What do you -- tell me about that then.

A. Well, I don't want to put questions in your mouth, but I think you need to be more explicit.

Q. I will try. Go ahead if you can and answer my question.

A. What do you want to know?

Q. What technologies are involved with the MPEG pool and describe those inventions to the best of your ability.

A. I can't describe the inventions but I can describe the names of the technology and the rough dimensions of those technologies.

Q. Okay. And would that include a description of the purpose of those technologies?

A. In a commercial sense, yes.

Q. Okay, very good. Why don't you do (inaudible) then.

A. The first one was MPEG 1, was developed by a committee in about 1991, or was issued in about 1991. The purpose of that was to formulate a means of compressing video such that it could be played back on a CD ROM.

Q. Okay. So it was a compression technology?

A. They're all compression technologies.

Q. Okay.

A. The next one was MPEG 2, which was formulated to provide a more, more efficient compression technology for the purpose of compressing high-quality video.

Q. Okay.

A. The next one was MPEG 3, commonly known as MP3, which is designed to provide audio compression.

Q. Okay.

A. The last one is MPEG 4, which was designed to further increase the amount of compression which could be achieved for the purpose of transmitting video over low band

widths, primarily the internet, but not necessarily restricted to the internet.

Q. Okay. And are any of these, are any of these MPEG products or inventions currently licensed?

A. I have no knowledge of any licensing practices or whatever the situation is.

Q. Do you have any involvement with the MPEG pool at all or any of these inventions at all?

A. None at all.

Q. Going back to Rubenstein and his involvement with the MPEG pool, was he ever approached with regard to any of the technology from Iviewit?

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll try to rephrase it then.

By MR. SELZ:

Q. Did you ever have any discussions with Mr. Rubenstein with regard to the intellectual properties of Iviewit?

A. I can recall that I had discussion that briefed him on where we were in terms of filing patents covering the Iviewit IP, but it

was a general discussion.

176

Q. And what was the purpose of that discussion with Mr. Rubenstein?

A. I believe that that was to inform him of where Iviewit was relative to its IP because there was a proposed contact between the Warner Brothers representative on the patent pool and Mr. Rubenstein for the purpose of suggesting that the Iviewit technology was, had some substance.

Q. Had some what?

A. Substance.

Q. Substance, okay. But it wasn't anything more in depth than just advising him that it was in the process of --

A. It was a single phone call which I made to him.

Q. And about what date was that, if you can recall?

A. Oh, it was in late 2000, fourth quarter 2000.

Q. Did you ever have any other conversations with Mr. Rubenstein, other than the one you've already described?

A. I don't recall any other

conversations, no.

177

Q. Now, I just want to take a quick step back we had some discussion yesterday concerning the whereabouts of the documents of Iviewit, and if I recall correctly, you had indicated that you had undertaken an effort to pack those and ship them out to California; is that correct?

A. Everything I had was shipped to California, or at least it was put in boxes to be shipped.

Q. And who actually on the staff was going to be responsible for making sure those got shipped?

A. I think I indicated yesterday that those actions were under the control of Mr. Ross Miller.

Q. Okay. Mr. Miller was the one who actually was responsible for that. I think you're correct. I think you told me that yesterday, and I apologize for asking you that repetitive question.

Did you ever see anyone or witness anyone, and again, this might be repetitive, disposing of any documents, shredding any

documents over at the Iviewit offices?

178

A. No. I don't think we even had a shredder. At least, if we did, I was not aware of it.

Q. Are you familiar with two employees at Iviewit named Mary and Martha?

A. Named who?

Q. Mary --

A. Mary and Martha.

Q. Yes.

A. Yes.

Q. What's Mary's last name, if you can recall?

A. I don't recall it.

Q. What about Martha?

A. Montecon.

Q. And how do you spell that?

A. I believe it's M-A-N-T-E-C-O-N.

Q. Martha Montecon, what was her position at the Iviewit offices?

A. She was my assistant.

Q. Assistant. And how long was she your assistant, for what period of time, sir?

A. From about October of 99 until December, about December of 2000.

Q. Did you have anyone else who acted as your assistant during your tenure at Iviewit?

A. Subsequent to Martha, I had a couple of short-term people who were there. I don't even remember their names.

Q. Did you ever instruct anyone at all to shred documents or destroy documents at Iviewit?

A. Never.

Q. Did any of your -- strike that.

Did any of the employees of Iviewit ever file any legal action against the company or against you personally during your tenure there?

A. Not to my knowledge.

Q. And obviously I'm not talking about the Chapter 7 proceeding, the involuntary bankruptcy. I'm just talking about anything else you were aware of.

A. No, I'm not aware of any.

Q. Who's Mr. Monte Freedkin?

A. He was the principal owner of Diamond Turf Equipment.

Q. Do you have any current relationship with Mr. Freedkin?

A. I know him. I put him on my board

at the Florida Atlantic University.

180

Q. Do you have -- do you communicate with him on a regular basis or not?

A. No. We have a casual relationship.

Q. When was the last time you spoke with Mr. Freedkin?

A. Probably saw him two months ago.

Q. Down here in South Florida?

A. Yes.

Q. And was that during your visit in which you saw Mr. Wheeler?

A. I don't believe I saw Mr. Wheeler during that visit.

Q. Okay. And what was your purpose for coming down to Florida that time, to visit Mr. Freedkin or was it for some other purpose?

MR. PRUSASKI: Objection for relevance.

By MR. SELZ:

Q. You can go ahead and answer the question.

MR. PRUSASKI: Just to let you know, Mr. Utley, if I make objection, I'm putting it on the record for the purposes of preserving it because the court is not involved in this

deposition. You have to go ahead and answer the question.

181

THE WITNESS: It was a personal visit. I have property in Boca.

By MR. SELZ:

Q. And did you call Mr. Freedkin or did he call you or how did you communicate?

A. We happened to attend the same event.

Q. What event was that?

A. That was the dedication of the president's house at Florida Atlantic University.

Q. Are you still involved with the board of directors at Florida Atlantic University or not?

A. I am.

Q. Who is Michael Real?

A. He is an ex-employee.

Q. An ex-employee of what company?

A. Iviewit.

Q. Which Iviewit company?

A. I'm sorry.

Q. Which of the Iviewit entities?

A. I don't recall which entity was specified on his employment agreement.

Q. Well, you had earlier testified that it was Iviewit.com, Inc. that I think you said was the operating entity. I'm just trying to jog your memory here.

A. I said that.

Q. Okay. Do you have any reason to believe that he would be an employee of any of the other Iviewit entities?

A. I don't recall what was, what he specifically was identified with in his employment agreement.

Q. Are you aware of any property that was missing from Iviewit that Mr. Real was alleged to have removed improperly from the corporate headquarters?

MR. PRUSASKI: Objection; relevance.

THE WITNESS: I'm not aware of any property that was improperly removed.

By MR. SELZ:

Q. Are you aware of any property that was removed by Mr. Real from the corporate headquarters, improperly or otherwise.

A. No.

Q. We talked yesterday about, briefly, and I hate to backtrack like this but

unfortunately I think I'm going to have to, with regard to your acting as president of Diamond Turf. You had spoken to me about a patent attorney or intellectual property attorney you had hired while you were there for the hydro-mechanical systems that you had developed; is that correct?

183

A. For some portion of it, yes.

Q. Some portion of it, correct. Do you recall that attorney's name?

A. It was Bill Dick.

Q. Bill Dick, okay. And with regard to Mr. Dick, do you have any continuing relationship with him at all?

A. No. I haven't spoken with him for a long time.

Q. How long is a long time, sir?

A. I don't recall.

Q. Is it more than a year?

A. I don't recall.

Q. If you were to guess, would you say it would be more than a year or less than a year?

A. I don't recall.

Q. Now, was Mr. Dick ever at any meetings of Iviewit or was his name or any other

information used with regard to Iviewit or its technologies?

184

A. I think I mentioned yesterday that he is the person who introduced Iviewit to Foley & Lardner.

Q. Right. But my question was a little more specific. Was he ever present at any meetings at Iviewit?

A. I can't say with conviction, but I do, I do think he probably came to the offices once, perhaps twice.

Q. What was the purpose of his visits to Iviewit offices?

A. Well, in the first instance, he, he would have come at my invitation to review what our needs were and to determine if Foley & Lardner was the appropriate solution to our problem.

Q. And what was the problem that you were having? Was it Meltzer Lippy no longer providing IP support?

A. That's correct.

Q. Is that the problem you're discussing here, sir?

A. Yes.

Q. Now, Mr. Dick was attempting to ascertain whether or not Foley Lardner would be the appropriate substitute counsel for Meltzer Lippy; is that what he was attempting to do?

A. Yes.

Q. Now, with regard to employment of both Meltzer Lippy and Foley & Lardner, was there some reason why Proskauer Rose was not engaged for any intellectual properties work, to the best of your knowledge?

A. My understanding is that that question had already been raised with Proskauer Rose before I was involved with the company. It was referred to Rubenstein and Rubenstein referred the matter to Meltzer Lipper.

Q. Okay. So it was Ken Rubenstein had an involvement with IP, obviously, because he was involved with all the MPEG patent pools; is that correct?

A. I believe so.

Q. Okay. And Ken Rubenstein was working for what firm at that point in time?

A. Proskauer Rose.

Q. Okay. So Proskauer Rose had an intellectual division, or at least some

involvement with intellectual properties work?

186

A. I'm not sure what they had in intellectual property.

MR. PRUSASKI: Objection to the form.

By MR. SELZ:

Q. Did you ever make any inquiry with regard to the ability of Proskauer Rose to provide services to Iviewit for intellectual properties work?

A. I was told that Proskauer Rose had referred that matter to Meltzer Lipper.

Q. Okay. To Meltzer Lippy, okay.

A. Lippy.

Q. And you didn't make any other inquiry into that particular matter then?

A. That is correct.

Q. We had some conversations yesterday about Raymond Joao; do you recall?

A. Yes.

Q. Okay. Now, with regard to Mr. Joao, what is his position or what is his role with regard to Iviewit?

A. I'm not aware of any role that he has with Iviewit.

Q. Are you aware of any patents that he holds for any of the Iviewit technologies?

A. I'm not aware of anything about Raymond Joao.

Q. So he's not an inventor of any of these technologies; he's not in any way a contributor to any of these technologies, to the best of your knowledge, then?

A. To the best of my knowledge, that's correct.

Q. Now, you had testified to Mr. Prusaski that there was a time when Wayne Huizenga and his companies were involved to some degree making an investment in Iviewit; is that correct?

A. I'm sorry, I didn't get the beginning of your sentence.

Q. All right. Yesterday when you were under direct examination by Mr. Prusaski over there, he had asked you a question concerning Wayne Huizenga or the Huizenga, one of the Huizenga companies with regard to an investment in Iviewit; is that correct?

A. Yes.

Q. Okay. Were you ever involved in

that particular investment, I believe it was a  
half million dollars, Huizenga placed to the  
company as an investment?

MR. PRUSASKI: Object to the form.

MR. SELZ: Let me restate the form  
of the question then.

By MR. SELZ:

Q. Okay. Did Mr. Huizenga or any of  
his companies invest half a million dollars in  
Iviewit?

A. Yes.

Q. Okay. And were you present at any  
meetings at which any presentation was made to  
Mr. Huizenga or any of his representatives  
concerning that investment?

A. Yes.

Q. And what date approximately did  
those meetings take place on?

A. Those meetings most likely would  
have taken place September and October of 99.

Q. Okay. And who was present at those  
meetings?

A. It depends on which meeting.

Q. Okay. Well, let's start with the  
first meeting. You said the meeting took place

in September or October. I was under the misapprehension that there was only one. Was there more than one meeting, sir?

A. I think when someone is going to invest in a company, there will be more than one meeting.

Q. Okay. How many meetings were there?

A. I don't recall.

Q. More than two?

A. Most likely.

Q. So you don't really have a clear recollection of how many meetings there were then?

A. I don't recall precisely how many meetings there were.

Q. Do you have any recollection of who was present at any of those meetings?

A. As matter of course in those meetings, typically there would be myself, Simon Bernstein mostly, Chris Wheeler mostly, Eliot Bernstein mostly, but not necessarily all of them all the time in all the meetings.

Q. Okay. And who else, who from Huizenga's side or who else at all?

A. The principals of Huizenga Holdings,

Inc.

190

Q. Okay. And who are they?

A. I don't recall their names.

Q. Did you ever meet Mr. Huizenga?

A. Not in connection with this

transaction.

Q. How about with regard to his son?

A. I never met with Mr. Huizenga with regard to his son.

Q. No, or his son, or his son, not with regard to his son.

A. I have met his son.

Q. When was that?

A. It was in this same time frame.

Q. Okay. So it was part of these meetings that you had or a portion of these meetings that you had?

A. He would be in some of the meetings.

Q. Are you aware of any of the representatives at Huizenga Holdings being sent to New York to meet with Joao or Mr. Rubenstein regarding the Iviewit patents?

A. They hired an attorney in New York to, as part of their due diligence, to review the intellectual property status. He met with Ray

Joao and myself in New York.

191

Q. Do you remember his name?

A. I don't.

Q. And what was the outcome of those meetings?

A. I don't know. He submitted his report directly to the Huizenga organization. I did not see that report.

Q. Okay. Do you recall where the meetings took place?

A. I've been to so many meetings. I don't precisely know where the meeting took place.

Q. Okay. Are you aware of any infringements of the Iviewit technologies by any of the Huizenga companies or their affiliates?

MR. PRUSASKI: Objection to form.

THE WITNESS: I'm sorry, would you repeat the question.

By MR. SELZ:

Q. Sure. Are you aware of any infringement on Iviewit technologies by any of the Huizenga companies or their affiliates?

A. No.

MR. PRUSASKI: Same objection.

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By MR. SELZ:

192

Q. Just out of curiosity, sir, when were these Iviewit technologies developed? I mean, I'm just looking for a time frame.

A. I think that question should probably be addressed to the principal inventor.

Q. Who's that?

A. Mr. Bernstein.

Q. Okay. So was this before your time, then, at the company?

A. That's affirmative.

Q. Okay. And you weren't really present when they were inventing it; you weren't yet with the company?

A. That is correct.

Q. Now, I'm going to backtrack just a little bit. I think you had indicated previously about meeting Mr. Wheeler, knowing him socially for a number of years, and then he introduced you to the Iviewit companies; is that correct?

A. He introduced me to Eliot Bernstein and then subsequently to Simon Bernstein.

Q. Okay. And I don't want to repetitive again, but do you recall approximately when that was?

1 A. I think you asked me that yesterday. 193

2 Q. I hate to be repetitive, but I'm  
3 working from what I got.

4 A. Okay. That was, that should have  
5 been July of 1999.

6 Q. How about Jude Zach, was he one of  
7 the people involved with the development of the  
8 Iviewit technologies?

9 MR. BERNSTEIN: That's two people,  
10 Jude and Zach.

11 By MR. SELZ:

12 Q. I'm sorry, Jude and Zach?

13 A. That's what I was told.

14 Q. So, again, that's before your time  
15 at Iviewit?

16 A. Yes.

17 Q. How about Todd Kloslosy, I think  
18 K-L-O-S-L-O-S-Y, at Web Cast?

19 A. I don't recall anyone by the name of  
20 Todd at Web Cast.

21 MR. BERNSTEIN: Scott.

22 By MR. SELZ:

23 Q. Scott. It's hard with the speaker  
24 phone.

25 A. I'm sorry.

1 MR. BERNSTEIN: Scott Kloslosky. 194  
2 By MR. SELZ:  
3 Q. Scott Kloslosky, I'm sorry. I'm  
4 butchering names again.  
5 A. I recall Scott Kloslosky.  
6 Q. Do you recall having any meetings  
7 with Mr. Kloslosky?  
8 A. I did.  
9 Q. And what were those meetings in  
10 reference to?  
11 A. The possibility of licensing Iviewit  
12 technology.  
13 Q. And do you recall when those  
14 meetings took place?  
15 A. Most likely in late 99.  
16 Q. And how many meetings were there, if  
17 you can recall?  
18 A. I had one meeting.  
19 Q. One meeting. Are you aware of Web  
20 Cast utilizing any of the Iviewit technology  
21 currently?  
22 A. I am not.  
23 MR. PRUSASKI: Objection as to  
24 relevance.  
25 By MR. SELZ:

1 Q. And the other investor that you  
2 talked about yesterday was a company called  
3 Crossbow; is that correct?

4 A. Yes.

5 Q. Was there an audit by Crossbow that  
6 was done of the Iviewit companies?

7 A. Would you elaborate on what you mean  
8 by audit.

9 Q. Was there a request or actual review  
10 of the corporate finances by any representative  
11 or agent of Crossbow?

12 A. Well, that's different.

13 Q. Okay. If you could answer my  
14 question, please.

15 A. The, as part of the due diligence,  
16 the company submitted its books for review by  
17 Crossbow or their representatives.

18 Q. Were you involved in any  
19 presentation made to Crossbow as part of their  
20 due diligences or meetings prior to their  
21 investment?

22 A. I was.

23 Q.. And what was your presentation with  
24 regard to?

25 A. It -- I'm trying to recall, but most

1 likely it would have been a presentation of the 196  
2 Iviewit business plan.

3 Q. Did you ever make any presentation  
4 to Crossbow concerning current infringement on  
5 Iviewit technologies by other companies?

6 A. No.

7 Q. Did you ever make any representation  
8 that Iviewit technologies were already in use in  
9 some commercial application?

10 A. I have not made that allegation or  
11 representation.

12 Q. Not in the form of an allegation,  
13 I'm saying as a statement to any other party  
14 concerning Crossbow?

15 A. I have not made that representation.

16 Q. Do you recall who was present at  
17 these meetings with Crossbow during their due  
18 diligence?

19 A. Most likely Eliot Bernstein and  
20 Simon Bernstein and Murice Buchsbaum.

21 Q. And how about representatives of  
22 Crossbow's, whose representatives were there, if  
23 you can recall?

24 A. I don't recall.

25 Q. Did they have more than one person

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present at the meeting?

A. Depending on the meeting.

Q. Well, how many meetings were there?

We're talking about the due diligence. How many meetings did the due diligence entail?

A. Well, you know, I think there were three separate investment into Iviewit by Crossbow so I don't, I'm not quite clear as to which one you want me to talk about.

Q. Well, let's talk about the first one then.

MR. PRUSASKI: Objection; relevance.

By MR. SELZ:

Q. The first one that was done, how much of an investment was being sought at that point from Crossbow?

A. A million dollars.

Q. And the same parties you described earlier were present at the meetings, Eliot Bernstein, Simon Bernstein, Murice Buchsbaum and yourself and some representative of Crossbow who you're unable to recall?

A. Yes.

Q. Okay. And how many meetings did that entail?

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A. I don't recall.

Q. How about the second investment, how much was that second investment?

A. I don't recall exactly how much it was.

Q. And who was present at that meeting, if you could recall?

A. It would be the same people.

Q. About what date was that, if you could recall?

A. That'd be the summer of 2000.

Q. All right. And how about the third, the third investment, how much was that?

A. I believe it was under a million dollars.

Q. And if you can recall, about when did that meeting take place with regard to that third investment?

A. It would be probably in the December/January, December 2001, January 2002 time frame.

Q. January 2002?

A. Approximately.

Q. Do you ever recall having a camera with you at any of those meetings, a digital

1 camera with you at any of those meetings? 199

2 A. I didn't take a camera with me.

3 Q. Now, going back to the Iviewit  
4 technologies, the heart of the company's  
5 property, intellectual property, was there ever  
6 any concern expressed to you, as COO and  
7 president of the company, concerning the math,  
8 the poor math that was submitted to the patent  
9 office with errors? Is there anyone who  
10 expressed any concern to you about that?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: There was a dispute as  
13 to the consistency of the mathematical  
14 representation, not to accuracy.

15 By MR. SELZ:

16 Q. Okay. So it wasn't dealing with the  
17 accuracy of the math or computational errors; it  
18 was dealing with whether or not the math properly  
19 applied the processes involved?

20 A. No. It was, I said, consistency.

21 Q. Consistency, okay. Well, explain to  
22 me what you mean by consistency, then, sir, so I  
23 can understand.

24 A. Well, there may be several different  
25 ways of deriving the same number, and it could be

1 derived using one form in one place and another 200  
2 form in another place. The result is always the  
3 same and both forms are accurate.

4 Q. But they're not consistent?

5 A. They are not -- they don't show the  
6 same format, but the values and the value derived  
7 is always the same. It is mathematically  
8 correct.

9 Q. Okay. So did anyone ever express to  
10 you a concern about those particular issues?

11 A. There was a concern expressed, yes.

12 Q. By who?

13 A. By Eliot Bernstein.

14 Q. How about Murice Buchsbaum, did he  
15 ever express any concern to you about the math  
16 submitted?

17 A. Murice Buchsbaum didn't understand  
18 the math.

19 Q. Okay. So he never, he never  
20 expressed any concern to you then?

21 A. Not on that score.

22 Q. Did the board of directors ever  
23 question you about the patent materials submitted  
24 or any problems with the patent submitted to  
25 these intellectual property rights?

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A. No.

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. Did you ever discuss with the board of directors any of the problems with Foley & Lardner or Meltzer Lippy's work with regard to the patent?

A. I don't recall discussing any problem with respect to Foley & Lardner's work because I don't recall any problem with Foley & Lardner's work.

Q. Okay. How about Meltzer Lippy, I think you described yesterday, there were some concerns; were those discussed with the board of directors?

A. The work done with Meltzer Lipper, was done mostly before my time.

Q. What about the part that was done during your time, were you concerned about any of the quality of the work that was performed or any problems you felt might arise from that work?

A. I did not, during that time, discover any problems.

If I may ask the question, I'm puzzling here to understand why this form of

1 questioning is relevant to the Proskauer  
2 litigation?

3 Q. Well, actually, sir, and I don't  
4 mean to be impolite in any manner whatsoever, but  
5 the role here for you is not really to ask these  
6 questions, but rather to answer the questions  
7 that are posed. So, although I appreciate your  
8 concerns, that's not something really for you to  
9 determine, but rather for posing counsel to bring  
10 before the court, if these matters should ever be  
11 submitted.

12 So, again, I'm not attempting to be  
13 rude or impolite in any manner, but these are the  
14 questions we can pose to you and you are duty  
15 bound to answer them.

16 MR. PRUSASKI: I would just say to  
17 some extent, because he's not represented here, I  
18 think he's got the right to --

19 MR. SELZ: He doesn't have any right  
20 to object. And you know, Chris, you and I both  
21 know, that even if you object to the form of a  
22 question or relevancy, the witness still has to  
23 answer it.

24 MR. PRUSASKI: I agree, and I think  
25 Mr. Utley knows that he needs to answer the

1 questions, but I think because he's not 203  
2 represented, to some extent, he does have the  
3 right to question the relevancy.

4 MR. SELZ: Well, I mean, he can  
5 object based on the relevancy or you can object  
6 based on the relevancy, but he cannot question  
7 the validity of what I'm asking based on a  
8 relevancy objection.

9 MR. PRUSASKI: Okay. I just think  
10 that his last comment was basically just a lay  
11 person's objection to the relevance.

12 MR. SELZ: That's fine. I mean, you  
13 know --

14 MR. PRUSASKI: And I'd like to  
15 state --

16 MR. SELZ: I don't even know if he  
17 has standing to interpose an objection because  
18 he's not a party to the case. So, well, I guess  
19 whatever, but the bottom line is we'll proceed so  
20 we can hopefully get through this as quickly as  
21 possible and release Mr. Utley from his  
22 obligations here.

23 MR. PRUSASKI: Okay. And I'd like  
24 to join Mr. Utley with objecting to the relevance  
25 of the question too. Go ahead.

1 MR. SELZ: (No response.) 204  
2 MR. PRUSASKI: Steve?  
3 MR. SELZ: Yeah, I'm still here.  
4 MR. PRUSASKI: Okay. Go ahead when  
5 you're ready. I guess we're done.  
6 MR. SELZ: You're done with your  
7 objections. Okay, fine.  
8 MR. BERNSTEIN: Could somebody  
9 repeat the last question for me, please.  
10 MR. SELZ: The last question was are  
11 you, are, were you aware of any situations  
12 according to -- Madam Court Reporter, actually if  
13 you could do me a favor, if you read back that  
14 last question, I would appreciate it.  
15 (Whereupon, the requested portion  
16 was read back.)  
17 MR. SELZ: That's fine, thank you.  
18 By MR. SELZ:  
19 Q. Did Foley & Lardner ever discuss  
20 with you any potential errors in the patents and  
21 any potential liabilities that would arise from  
22 those errors?  
23 MR. PRUSASKI: Object to the form.  
24 Assumes facts not in evidence.  
25 MR. SELZ: Well, let me start off

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with the basic question then.

By MR. SELZ:

Q. Did Foley & Lardner ever advise you that there were any errors in the patents?

A. No.

Q. So, then, they never advised you of any liabilities or any errors that might arise from any errors because there weren't any; is that your testimony is today?

A. They never advised me that there were any errors in the patents.

Q. Okay. Now, with regard to the Proskauer Rose billing, you had indicated that you had authorized certain payments to be made and Mr. Prusaski had showed you a series of letters sent to you by Chris Wheeler and your responses on a couple of those.

Were those payments ever authorized by the board of directors of Iviewit?

A. The board of directors normally does not become involved in the administration of accounts receivable and accounts payable.

Q. Okay. Well, you, in your own testimony, sir, indicated that the company was in a cash poor position; is that true?

1 MR. PRUSASKI: Object to the form. 206  
2 MR. SELZ: Okay. I'll restate the  
3 form.  
4 By MR. SELZ:  
5 Q. Your testimony yesterday was that  
6 Iviewit did not have sufficient funds to meet its  
7 ongoing obligations; is that correct?  
8 A. Yes.  
9 Q. And that meant that decisions as to  
10 prioritizing the obligations would have to be  
11 made; is that also a correct statement of fact?  
12 A. Yes.  
13 Q. And who would normally, who would  
14 normally undertake those decisions?  
15 A. Either the CFO or the CFO in  
16 consultation with me.  
17 Q. Okay. And who was the CFO at that  
18 point in time?  
19 A. Raymond Hersh.  
20 Q. Now, with regard to that, sir, you  
21 never felt it advisable to discuss these matters  
22 with the board of directors prior to authorizing  
23 these substantial payments?  
24 A. I discussed it with, any specific  
25 payment which I felt warranted, I would discuss

1 with Simon Bernstein. The board was always 207  
2 updated as to the financial status of the company  
3 and we had regular board meetings by conference  
4 call where that was discussed.

5 Q. Okay. So you had regular board  
6 meetings in which you discussed accounts payable  
7 to Proskauer Rose; is that your testimony?

8 A. The Proskauer Rose accounts payable  
9 was discussed in some of those board meetings.

10 Q. Was there ever any authorization by  
11 the board to allow for some kind of payment  
12 agreement between Iviewit and Proskauer Rose?

13 A. No. The board was never involved in  
14 day-to-day operations.

15 Q. But you discussed the accounts  
16 payable at board meetings?

17 A. As part of an aggregate overall  
18 presentation on status.

19 Q. But you never discussed -- well,  
20 strike that.

21 Did you ever discuss your intentions  
22 of entering a payment agreement with Proskauer  
23 Rose at any board meeting?

24 A. I don't recall.

25 Q. Would that have been reflected in

1 any minutes of any board meetings that took 208  
2 place?

3 A. I'm not aware.

4 Q. Okay. Well, let me put it to you  
5 this way, sir. Did you ever have the opportunity  
6 to review board meetings, minutes -- I'm sorry.

7 Did you have an opportunity, sir, to  
review the minutes of any of the board of  
directors meetings that you attended?

A. Yes.

Q. Okay. And were those, to the best  
of your recollection, recorded accurately and  
fully?

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. Go ahead and answer, sir.

A. As far as I know, the minutes  
reflected the discussions that took place in the  
board meeting.

Q. So in other words, sir, if I went  
back and reviewed the minutes of the meetings of  
the board of directors and there was no mention  
of you discussing payment agreement with  
Proskauer Rose, would it be fair to say, then,  
that you never mentioned it at a board of

directors meeting?

209

MR. PRUSASKI: Object to the form.

THE WITNESS: Not necessarily.

By MR. SELZ:

Q. Okay. Well, you just indicated to me that the minutes of the board of directors meetings were accurately and fairly transcribed from what was discussed; is that correct?

A. No.

Q. Okay. Then, go ahead, why don't --

A. If you listen to my words, I said they were representative.

Q. Representative. Okay. So in other words, not everything was transcribed; is that what you're telling me?

A. I think that it's not unusual in board meetings to have a number of discussions which may or may not get transcribed.

Q. Were those meetings of the board of directors ever taped?

A. I'm not aware of any taping.

Q. Would you be surprised to know that a tape of those meetings existed?

A. Some one may have surreptitiously taped some of the meetings.

Q. Okay. So your testimony, then, is that taping the meetings wasn't something that was done in the regular course?

A. That is correct.

Q. The word surreptitiously, it would have to be someone hiding something to tape it; is that what you're implying by your answer?

A. I am.

Q. Now, during your authorization of payments to Proskauer Rose, did you ever have any further discussions as to, with either Si Bernstein or any other member of the board of directors, of mention with regard to continuing those payments?

A. I don't recall the specific conversation.

Q. Now, with regard to the accounts payable situation at Iviewit, how did you -- strike that.

Please describe for me the accounts payable team that you selected, who were they and why were they hired in particular?

A. We had a young college graduate of the business school, of an accounting school for a while.

Q. What was that person's name?

211

A. Her last name was Lewin. And she left after several months and was replaced by Mary. And --

Q. And that's Mary; what was Mary's last name?

A. I don't recall.

Q. Was it Viadaro?

A. That does not sound familiar.

Q. Okay. And who else, who else was on the team?

A. And then later Mary left and Bill Kasser came into the picture.

Q. Now, had you ever worked with Mary before at all or any of these other people before?

A. Yes.

Q. And which one of them did you work with before?

A. Mary had worked at Diamond Turf Equipment.

Q. Okay. And did you bring her over directly from Diamond Turf?

A. Yes.

Q. Was there any particular reason why

you thought she was qualified for the position at Iviewit?

212

A. Based upon her work at Diamond Turf.

Q. And what finally happened with Mary? Was she -- because Bill Kasser obviously came in afterwards. Was Mary let go at one point in time or another?

A. She became ill.

Q. Okay. She became ill in a chronic sense or just --

A. She was -- no. She became ill and was not able to attend work for some substantial period of time.

Q. Okay.

A. And at that point in time, we were cutting staff so we cut her position out.

Q. Okay. You cut her out but then you replaced her with Bill Kasser?

A. Later. There was a period where we had, where Raymond Hersh filled in.

Q. Now, so she was basically terminated because she couldn't attend work; is that what you're, the reason for her no longer, for Mary no longer working for Iviewit would have been?

A. We found that we could get along

without her at that particular point in time.

213

Q. Now, we talked earlier about, or I believe it was on direct examination that you commented that Mr. Bernstein had, Si Bernstein had indicated his concern with regard to Proskauer Rose's bills. Did Mr. Donald Cain or Ken Anderson ever indicate any concerns or complaints about Proskauer's work or their billing?

A. They commented on the magnitude of the bills.

Q. And they commented to you in particular about that fact?

A. Yes.

Q. And what were the, the basis for their statements or what was the substance of their statements to you?

A. Well, the substance of their statements was, in their experience, the magnitude of the billings were significantly larger than in their experience a company of the Iviewit size would have experienced.

Q. Okay. So you're saying that their statements were basically they thought the bills were larger than they should have been for a

company of Iviewit's size and the work being generated; is that what they were saying?

214

A. They said that in their experience, the bills were larger than their experience would indicate for a company of that size.

Q. Okay. And what was their experience, Mr. Cain's experience and Mr. Anderson's experience that they drew from, if you know?

A. I know -- I don't know. Mr. Cain had a background in the private banking and investment industry. Mr. Anderson had experience with Anderson Accounting.

Q. Okay. So these were people of backgrounds in, for businesses then?

A. I don't know exactly what they were doing.

Q. Okay. Now, what was their role in Iviewit or at Iviewit, I should say?

A. They were on the board.

Q. Okay. And they communicated these facts to you; is that correct?

A. They communicated those impressions to me.

Q. And you took that to mean, then,

that the billing by Proskauer Rose should be paid  
in full?

215

A. I did not make that representation.

Q. Okay. Well, sir, we're talking  
about your role as president and chief operating  
officer of the Iviewit entities. You had already  
indicated in your testimony that you unilaterally  
determined to make payments to Proskauer Rose on  
a payment agreement; is that correct?

A. I made a payment agreement.

Q. All right. And you made it without  
consulting the board of directors, is what you  
had indicated in your earlier testimony; is that  
still correct?

A. I made it in the normal course of my  
position as president.

Q. But you had received prior to that  
payment agreement or after that payment  
agreement, comments from Mr. Cain and  
Mr. Anderson indicating concerns about the size  
of Proskauer Rose's bill.

A. We have not discussed the timing  
when those concerns were expressed.

Q. That's what I'm asking you. Was it  
before of after your entering into the agreement

to pay Proskauer Rose's bill?

216

A. It was after.

Q. So you had already entered an agreement. About when was this, sir?

A. I believe from the exhibits that we discussed yesterday, the agreement was dated December of the year 2000. And at that time, we had received a significant infusion of cash from Crossbow, and on the basis of that infusion of cash, I prepared a budget. The budget included a, an allocation of funds that I reviewed with the board and with Mr. Si Bernstein --

Q. Okay. That wasn't --

A. -- it included -- let me finish.

Q. Go ahead.

A. It included the amount that would go to Proskauer on a monthly basis and it was prior to the time that I entered into that agreement with Mr. Chris Wheeler.

Q. Okay. Now, with regard to the information that you had, because obviously there wasn't just one agreement you had with Proskauer Rose; according to your testimony yesterday, there were at least two separate agreements that you had with them at various times about how the

payments were to be made. Were these comments by 217  
Mr. Cain and Mr. Anderson prior to that second  
agreement you made with Proskauer Rose?

A. No.

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. So these were still after that as  
well?

A. As I recall.

Q. So they were -- okay.

So about what date were those  
comments made by Mr. Cain and Mr. Anderson, if  
you can recall? Was it December of 2000?

A. No. It'd be later in the first  
quarter of 2001.

Q. First quarter of 2001. How about  
Gerald Lewin, did Mr. Lewin, ever complain about  
either the work or the billing that Proskauer  
Rose had performed for Iviewit?

A. Not to my recollection.

Q. Now, with regard to the hiring and  
retention of counsel, yesterday had you testified  
that in your role in IBM, there was staff  
attorneys and so you really never had to retain  
an attorney on behalf of the company; is that

correct?

218

A. That's correct.

Q. Okay. And that the first time you retained counsel was regard to, I believe Mr. Dick, with regard to Diamond Turf?

A. It was a, it was a -- he was retained by me personally.

Q. He was retained by you personally. How about with regard to Diamond Turf, did you ever retain counsel during the approximately three-year period you were president of Diamond Turf?

A. No.

Q. You never were involved with retaining anyone?

A. Right.

Q. Did Diamond Turf ever have any intellectual property issues or any patent work that it had done?

A. No.

Q. How about corporate work, did it have corporate work that needed to done?

A. That was taken care of by Mr. Freedkin.

Q. So, then, sir, it would be a fair

statement to say that you've never, prior to your work at Iviewit, you never hired or retained an attorney for purposes of corporation representation; would that be a true and correct statement of fact?

A. Yes.

Q. And so what was your experience and basis for concluding that the work provided by Proskauer Rose was being billed in a reasonable, prudent manner or the services provided were being charged for fairly?

A. My practice was to continue the relationship and the commitments that had already been made prior to my taking the position.

Q. Okay. But you've stated, sir, that you concluded that the billing provided by Proskauer Rose was proper, that there was nothing improper about it that you saw; is that correct?

A. What I saw was a detail under the billings which accounted for time and material expended in behalf of Iviewit on corporate matters.

Q. And so if I sent to you, then -- so under that, under that philosophy then, sir, if I sent a bill for corporate work to Diamond Turf

for \$100,000 and I had detailed the billing and I provided that to you, you would think that was a legitimate bill, regardless of the quantity of services provided; is that what you're telling me?

220

MR. PRUSASKI: Object to the form.

THE WITNESS: The billing includes the time spent and material used by each person assigned to Iviewit corporate matters.

By MR. SELZ:

Q. My question to you is, was distinctly different. That is, if I provided you with a billing statement showing a detailed breakdown -- what you've told me so far in your testimony is that you're presuming correct, without even examining whether or not it's a reasonable amount for the service provided; is that what you're telling me.

MR. PRUSASKI: Object to the form.

THE WITNESS: I'm saying that I accepted it on the same basis that was accepted prior to my taking the position.

By MR. SELZ:

Q. Okay. So you accepted it at face value that if it was on the billing statement, it

was due and it was reasonable; is that what  
you're telling me?

221

A. I said I accepted it on the same  
basis that it was accepted prior to my taking the  
position.

Q. Well, sir, you were acting as the  
president and COO of this company and you've  
already testified that you used your judgment  
entering a payment agreement with Proskauer Rose  
for the balances due and that you didn't question  
anything concerning the bills, that you thought  
they were all proper; was that a correct  
statement? All the things I just recited, are  
those correct statements of your prior testimony?

A. No.

Q. Okay. What's not correct in that  
statement?

A. The bills were reviewed for  
substance.

Q. By who?

A. By either myself or my accountant.

Q. And who was, which accountant was  
that?

A. It would be Raymond Hersh.

Q. Okay.

A. Or myself.

Q. Okay. And that's the only inaccuracy in the statement I just made?

A. And the billing rates had already been in practice before I assumed responsibility for the company. There was no change.

Q. So you didn't, you didn't undertake to determine whether or not the time spent reasonably correlated to the services provided?

A. I am not an expert in how much time an attorney spends on a particular matter.

Q. So, again, you accepted that as being a fair billing on its face; is that what you're telling me, for the amount of time that was spent?

MR. PRUSASKI: Object to the form.

THE WITNESS: I accepted Proskauer Rose as a responsible company with which to do business.

By MR. SELZ:

Q. And you correspondingly, then, determined that the entirety of the bill would be paid, or should be paid; is that correct?

A. That is correct.

Q. And you authorized the accounts

1 payable department for Iviewit to issue checks to 223

2 Proskauer Rose in partial payment of those  
3 billing statements; is that also correct?

4 A. That is correct.

5 Q. I think you probably already  
6 answered this in part of that answer you gave a  
7 couple of questions ago, but did you believe that  
8 Proskauer Rose ever inflated their billing  
9 statements to Iviewit?

10 A. I think we touched on that  
11 yesterday, but the answer is, no.

12 Q. Now, how about with regard to  
13 Crossbow Ventures and their investment, did they  
14 ever require any assignment by the inventors of  
15 the intellectual properties and the inventions as  
16 part of their negotiations?

17 MR. PRUSASKI: Objection, relevance.

18 THE WITNESS: There was no  
19 assignment made during my tenure.

20 By MR. SELZ:

21 Q. Was there ever any requests or  
22 requirement by Crossbow that they be assigned  
23 rights in these intellectual properties?

24 A. I'm not aware of any.

25 Q. Are you familiar with a gentleman

1 named William or Bill Barber? 224

2 A. Yeah, I've met Bill Barber.

3 Q. Who's Mr. Barber?

4 A. Was that a question?

5 Q. Yes, it was. Who is Mr. Barber?

6 A. He is a businessman, as I understand

7 it, who has connections in finances and in other

8 properties.

9 Q. Okay. What was his interest in

10 Iviewit and the Iviewit technology?

11 A. He was potentially interested in

12 using the technology.

13 Q. For what purpose?

14 A. I believe that he is involved with

15 some adult web sites.

16 Q. Okay. And did you contact

17 Mr. Barber or did he contact you?

18 A. Well, I did not contact him.

19 Q. Okay.

20 A. I don't recall how he came on the

21 horizon.

22 Q. Okay. Was -- did the board ever

23 express to you any attitude towards the use of

24 the Iviewit technology by either Mr. Barber or on

25 adult web sites?

1 MR. PRUSASKI: Objection, relevance. 225

2 MR. SELZ: I think it is relevant.  
3 We're talking about whether or not he followed  
4 board directions so I think it's highly relevant.

5 MR. PRUSASKI: And pursuant to the  
6 Rules of Civil Procedures, I'm not going to argue  
7 my objections.

8 MR. SELZ: Of course. I just want  
9 to make sure I got on the record why I thought it  
10 was relevant.

11 By MR. SELZ:

12 Q. Go ahead.

13 A. The board discussed it.

14 Q. Yes. And what was the outcome of  
15 their discussion?

16 A. The outcome of the discussion and my  
17 position was that we would not enter into any  
18 agreement that would compromise the credibility  
19 of the Iviewit name.

20 Q. Okay. Was there ever any encoding  
21 of any of this adult material at the Iviewit  
22 corporate offices or any other facility that  
23 Iviewit ran or operated?

24 A. There was a sample tape that was  
25 decoded. We had already done that once before.

1 Q. Okay. And who was involved in that, 226

2 if you know?

3 A. It was done in the laboratory. I'm  
4 not sure who touched it.

5 Q. Okay. So you're not, you're not  
6 aware of which employees were actually involved  
7 in encoding this --

8 A. No.

9 Q. -- information?

10 A. I'm not.

11 Q. How about I-Gallery; are you  
12 familiar with that?

13 A. I am.

14 Q. And could you explain what that  
15 company does and who that company is operated by.

16 A. I don't know who it's operated by  
17 but I believe that's another adult orientated  
18 company in California. We were referenced to it  
19 by a friend of Eliot Bernstein's. He made that  
20 introduction and Eliot decided that we should go  
21 and discuss the possibility of them using the  
22 Iviewit technology.

23 Q. Okay. Were there anything that went  
24 further than that, according to what you knew  
25 about Iviewit's involvement?

1           A.       Eliot had a number of discussions  
2 with them and I believe he brought a tape back  
3 once to be encoded and sent it back to them.

4           MR. SELZ:   Let's say we take a break  
5 for about ten minutes.

6           MR. PRUSASKI:   How you doing on  
7 time?  Let's go off.

8                       (Whereupon, a break was taken from  
9 3:51 to 4:07.)

10       By MR. SELZ:

11           Q.       We were talking about some  
12 technology used at Iviewit, Mr. Utley, and I just  
13 wanted to find out, did you ever have a meeting  
14 with Alan Epstein concerning the technology?

15           A.       I had several meetings with Alan  
16 Epstein.

17           Q.       Was at the Universal Studio premises  
18 or was that some place else?

19           A.       Several places.

20           Q.       Okay.  Why don't you describe each  
21 one of those meetings for me, if you could  
22 please, and the date and who was present.

23           MR. PRUSASKI:  Objection, relevance.

24           THE WITNESS:  Well, I don't recall  
25 all the meetings.  Some were investor related and

1           some were client related. Mr. Bernstein, 228  
2           Mr. Eliot Bernstein was involved in all of those  
3           meetings.  
4           By MR. SELZ:  
5           Q.       Okay. Did any of those take place  
6           at, you said one of them or two of them or more  
7           of them took place at Universal Studios premises  
8           or not?  
9           A.       Yes, I think there were, there was  
10          at least one meeting at Universal Studios. I  
11          think maybe there were even two meetings.  
12          Q.       How would you characterize those  
13          meetings with Mr. Epstein?  
14          A.       Well, Mr. Epstein was the person who  
15          made the introduction to the studio.  
16          Q.       Okay. Was there any problem that  
17          you ran into with Mr. Epstein or any complaint  
18          that Mr. Epstein voiced to you about anything?  
19          A.       Well, in one meeting at Universal  
20          Studios, there was a confrontation between  
21          Mr. Eliot Bernstein and the principal  
22          representing Universal Studios.  
23          Q.       Okay. And who was that principal  
24          representing Universal Studios?  
25          A.       He was the head of their advanced

1 media program. I don't recall his name. 229

2 Q. Was there ever any complaint or

3 problem with regard to yourself and Mr. Epstein?

4 A. Not that I'm aware of.

5 MR. BERNSTEIN: (Inaudible).

6 MR. SELZ: All right, Mr. Pierce.

7 By MR. SELZ:

8 Q. Mr. Pierce was the principal?

9 A. (No response.)

10 Q. Mr. Utley?

11 A. Yes.

12 Q. Was there ever complaints that

13 Mr. Epstein had, particularly against you,

14 yourself?

15 A. Not that I'm aware of.

16 Q. How about David Colter, are you

17 familiar with Mr. Colter?

18 A. Mr. Colter was involved with the

19 development side of Warner Brothers.

20 Q. Okay. Did Mr. Colter ever request

21 that you never contact anyone else at Warner

22 Brothers other than himself?

23 MR. PRUSASKI: Objection, relevance.

24 THE WITNESS: He made a request that

25 it might be simpler for everyone involved if

1 Eliot Bernstein acted as the sole interface. 230  
2 By MR. SELZ:  
3 Q. Okay. Did he ever specifically  
4 request that you not contact any other Warner  
5 Brothers' employee other than himself? I believe  
6 that was my question to you.  
7 A. No. He -- I'd have to rephrase the  
8 question to answer it accurately. He requested  
9 that he be the focal point for Warner Brothers.  
10 Q. Okay. And did you comply with his  
11 request that he be the focal point for Warner  
12 Brothers with regard to any communications  
13 between Iviewit and Warner Brothers?  
14 A. I did.  
15 Q. Did you ever try to contact any  
16 other Warner Brothers employees?  
17 A. No.  
18 Q. Do you have any reason why  
19 Mr. Colter would want you to restrict your  
20 communications directly to himself?  
21 A. My understanding was that he had  
22 been assigned the responsibility to evaluate the  
23 Iviewit technology.  
24 Q. Okay. Do you know if Mr. Colter  
25 ever talked to you about your qualifications as

1 an engineer? 231

2 A. No.

3 Q. Or a mathematician?

4 A. No.

5 MR. PRUSASKI: Object to the form.

6 By MR. SELZ:

7 Q. Are you aware of -- this is a line

8 of questioning we were talking about yesterday.

9 Are you aware of any inventions with zoom and pan

10 as part of their title, something that's similar

11 to what the Iviewit technology is.

12 A. Would you clarify that question.

13 Q. Sure. Are you aware, you personally

14 aware of any inventions that used phrases zoom

15 and pan in their title similar; in a manner which

16 is similar to the Iviewit intellectual

17 properties?

18 A. Are you speaking at large?

19 Q. At large.

20 A. Zoom and pan have been around for

21 decades.

22 Q. Okay. But I'm saying with regard to

23 digital zoom and pan the way that Iviewit

24 technologies operate?

25 A. I have heard it alleged that digital

1 zoom and pan have been around longer than the 232  
2 Iviewit technologies.

3 Q. Can you elaborate on that, please.

4 A. Kodak has taken that position.

5 Q. Okay.

6 A. There was a principal at Vulture  
7 Ventures in California, an investment company  
8 that looked at Iviewit, that made the same claim.

9 Q. And were these facts ever discussed  
10 or were these situations ever discussed with  
11 Crossbow, Huizenga or any of the other investors?

12 MR. PRUSASKI: Objection, relevance.

13 THE WITNESS: They were discussed  
14 with specific members of the board.

15 By MR. SELZ:

16 Q. How about with the investors?

17 A. Crossbow had a board member  
18 representing Crossbow.

19 Q. Prior to their investment or after?

20 A. After their investment.

21 Q. Okay. How about prior to their  
22 investment, was there ever any discussion with  
23 Crossbow with regard to the possibility that  
24 digital zoom and pan was already existent in  
25 another technological form or another IP form?



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elements of the inventions itself?

234

A. I didn't discuss any elements of the invention itself.

Q. How about commercial applications for those, for those inventions?

A. Well, that was discussed in my first meetings with Mr. Wheeler and Mr. Eliot Bernstein by them.

Q. Now, I going a little bit back to some of these funding meetings that we talked about earlier in your testimony. After the initial investment by Huizenga Holdings, did Huizenga Holdings make any other investments in Iviewit?

MR. PRUSASKI: Objection, relevance.

THE WITNESS: They did not.

By MR. SELZ:

Q. Do you know the reason why they did not make any further investment in Iviewit?

A. I'm not aware of any factual reason why they did not.

Q. Are you aware of any business reason why they did not?

A. There was an altercation between Si Bernstein and the president of Huizenga Holdings.

1 Q. Okay. An altercation, you mean a  
2 dispute of some kind?

3 A. Yes.

4 Q. And do you recall what that dispute  
5 involved?

6 A. Mr. Bernstein took the position that  
7 they didn't know what they were doing.

8 Q. And the representative from Huizenga  
9 Holdings, who was that?

10 A. It was the president at the time.

11 Q. Do you recall his name?

12 A. Not offhand.

13 Q. He took offense to that  
14 representation by Mr. Bernstein; is that correct?

15 A. You might say that."

16 Q. Now, with regard to your  
17 authorization of work or the work that was  
18 performed by Proskauer Rose during your tenure at  
19 Iviewit, what was the corporate structure when  
20 you first became affiliated with Iviewit?

21 MR. PRUSASKI: Object to the form.

22 THE WITNESS: Well, I'll repeat what  
23 we discussed yesterday.

24 By MR. SELZ:

25 Q. Okay.

1 A. The principle component of the  
2 business was Iview.LLC, or Iviewit.LLC.

236

3 Q. Right.

4 A. With a subordinate company  
5 Iviewit.com, LLC. Iviewit, LLC was 95 percent  
6 owned by U-View, LLC and 5 percent owned by  
7 individual shareholders.

8 Q. Okay. And I think you described  
9 Proskauer Rose as one of those shareholders in  
10 the entity; is the correct?

11 A. That is correct.

12 Q. Okay. Now, going back to Proskauer  
13 Rose's bills, how was that interest in U-View,  
14 LLC, that 5 percent interest I believe you said  
15 it was?

16 A. No, I didn't.

17 Q. Sorry. That interest in the  
18 company, was it 5 percent or how much was it  
19 percentage wise? Let me take that back.

20 A. U-View had a 95 percent holding.

21 Q. Okay.

22 A. U-View was an S-corp.

23 Q. All right. Which entity did  
24 Proskauer Rose hold an interest in then?

25 A. Iviewit, LLC.

1 Q. Okay. And that was the same entity  
2 that the retainer agreement was signed with that  
3 you testified to yesterday?

4 A. I believe so.

5 MR. SELZ: Madam Court Reporter, do  
6 we still have Defendant's No. 1 available?

7 (Court Reporter responds  
8 affirmatively.)

9 MR. SELZ: Okay. Can you please  
10 provide it to the deponent, I'd appreciate it.

11 (Court reporter hands documents.)

12 MR. PRUSASKI: It's on the bottom.  
13 I think it's the last document. I should have  
14 written Defendant's Exhibit 1 on the sticker.

15 THE WITNESS: Oh. This is it. I  
16 have the document.

17 By MR. SELZ:

18 Q. Okay. So that Iviewit, LLC that  
19 Proskauer Rose held an interest in, was the same  
20 entity which it signed or had entered into the  
21 agreement with Proskauer Rose for representation;  
22 is that correct?

23 MR. PRUSASKI: Object to the form.

24 MR. SELZ: Well, let me break it  
25 down. Okay.

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By MR. SELZ:

238

Q. Iviewit, LLC was the entity in which Proskauer Rose held an interest; is that correct or not, sir?

A. Yes.

Q. And how much percentage interest did they hold in Iviewit, LLC?

A. I don't recall percentages. Something over 1 percent.

Q. And that was the same entity which the September 8th letter is addressed to, Mr. Brian G. Utley, it's Exhibit No. 1 I'm referring to, Brian G. Utley Iviewit, LLC; is that correct?

A. Yes.

Q. What was your understanding as to why Proskauer Rose held an interest in Iviewit, LLC?

A. I was told by the Bernstein's that it was granted to Proskauer Rose because of the quality of the work that they had performed for the company over the prior six months.

Q. Okay. Now, when was that interest given to Proskauer Rose, do you know?

A. It was prior to my tenure.

1 Q. Okay. So you have no idea when that 239  
2 was, when that was given?  
3 A. I do not.  
4 Q. Would you consider that additional  
5 compensation to Proskauer Rose?  
6 MR. PRUSASKI: Object to the form.  
7 THE WITNESS: I have no judgment on  
8 why it was given.  
9 By MR. SELZ:  
10 Q. Was it ever raised as an issue with  
11 Proskauer Rose vis-a-vis their billing statements  
12 to Iviewit, that is, their interest in the  
13 company?  
14 A. I believe, and I am trying to  
15 recollect here, I believe it was asserted that in  
16 consideration of the equity granted to Proskauer  
17 Rose --  
18 Q. Right.  
19 A. -- that Proskauer Rose should give  
20 some consideration back to Iviewit.  
21 Q. Okay. And what consideration was  
22 that, if you recall, sir, or if there was any  
23 consideration given?  
24 A. I'm not aware of any precise quid  
25 pro quo.

1 Q. Okay. So your understanding, then, 240  
2 is that there was a consideration given because  
3 of this interest but that it never was in fact  
4 given?

5 MR. PRUSASKI: Object to the form.

6 THE WITNESS: To my knowledge,  
7 Proskauer Rose never acknowledged that there was  
8 a connection between the granting of the equities  
9 and their services.

10 By MR. SELZ:

11 Q. Okay. But to the best of your  
12 knowledge, has Proskauer Rose either relinquished  
13 that interest or somehow indicated to Iviewit  
14 that it has no further interest in retaining that  
15 ownership in Iviewit, LLC?

16 A. That is not what I tried to say.

17 Q. Okay. What did you try to say then?

18 A. What I tried to say is, the fact of  
19 Iviewit granting to Proskauer Rose an equity  
20 interest, had no bearing on the billings.

21 Q. Okay. So then it was your  
22 understanding that this equity interest had no  
23 affect on the billing that was done by Proskauer  
24 Rose?

25 A. Yes.

Q. In other words, it was some kind of bonus given to them that didn't affect the subsequent billing?

A. That's my understanding.

Q. Was that understanding ever formalized to you in any kind of written communication or any communication by the board of directors?

A. I believe that the equity granted to Proskauer Rose, actually was a personal decision made by Eliot Bernstein and came from his own holdings.

Q. Okay. That's your understanding. Do you know that for a fact or --

A. That is -- no. That is my understanding but, again, that is a recollection.

Q. Who is Jim Armstrong? Do you know Jim Armstrong?

A. Jim Armstrong was a personal friend of Eliot Bernstein's who served as head of sales for a period of time.

Q. Okay. Was there anything that Mr. Armstrong brought to your attention concerning any of the IP's or any problems with any of those, the mathematics involved or any of

that thing, anything of that nature, rather?

242

A. Mr. Armstrong took issue with the consistency which we discussed earlier.

Q. Okay. And you said that you corrected that or you took steps to correct that?

A. It was not necessary. As I mentioned earlier, there was, it was not inaccurate, there was no inaccuracy involved. The formulas were correct; they were just two expressions of the same phenomena.

Q. So they were two ways of expressing the same end result, if you will?

A. That is correct.

Q. Was there ever a business plan submitted to Iviewit to Wachovia Bank?

MR. PRUSASKI: Objection, relevance.

MR. SELZ: Wachovia.

MR. PRUSASKI: Wachovia,

W-A-C-H-O-V-I-A.

MR. SELZ: Thank you, Chris.

THE WITNESS: There was a business plan that was developed in conjunction with Wachovia.

By MR. SELZ:

Q. And did you submit documents as

A. We shared nondisclosure agreements and communicated as required in order to construct the business plan.

Q. And did they require or request that you provide them with a CV as part of the business plan to evidence your expertise.

A. I believe so.

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll restate the question.

By MR. SELZ:

Q. Did Wachovia Bank request that you provide personal information to them as part of that business plan?

A. Yes.

Q. And did you provide that personal information in the form of a curriculum vitae or CV?

A. It was integrated in prior editions of the business plan and flowed into the one that was developed with Wachovia.

Q. Now, when Chris Wheeler first introduced you to Iviewit, was he aware of the situation at Diamond Turf and yourself and

Mr. Monte Freedkin or what was Mr. Wheeler's

244

knowledge of your position at Diamond Turf, to the best of your knowledge?

MR. PRUSASKI: Objection to form.

MR. SELZ: Okay. I'll restate the question. I'm sorry. Getting a little tired.

MR. PRUSASKI: I'm just objecting to the extent that you're asking him what Chris Wheeler's personal knowledge was.

MR. SELZ: Okay.

By MR. SELZ:

Q. To the extent that you know, what was Chris Wheeler's personal knowledge of that situation?

MR. PRUSASKI: Objection to form.

THE WITNESS: I believe Chris, Mr. Wheeler was fully cognizant of my relationship to Diamond Turf Equipment and to Mr. Freedkin.

By MR. SELZ:

Q. And he was aware about your departure from that company and that situation?

A. Yes.

Q. Involving your employed and your change of employment when you left Diamond Turf?

A. Yes.

Q. Other than your retirement at IBM, was there any other reason why you left IBM's employ?

A. No.

Q. Do you have any ongoing dispute with either IBM or Diamond Turf?

A. No.

Q. Going back to the employment of an attorney when you were at Diamond Turf, was there a retainer agreement that you recall signing on behalf of Diamond Turf to employ an attorney there? Or I'll take that back. I think you said that you never employed an attorney there; is that correct?

A. That is correct.

Q. When you hired an attorney personally, did you have a retainer agreement that you signed?

A. No.

Q. Do you have any letter or any other document evidencing the rates to be charged and the services to provided by that attorney?

A. I would have to research that question.

Q. Okay. Well, when I talk about retainer, I mean a letter of an engagement, not just a payment up front of funds; do you understand that is part of the question or not?

A. I do now.

Q. Okay. So when I talk about a retainer agreement, I mean any contract to engage legal services, whether or not there's money paid initially or not. So with regard to that, have you ever signed any retainer agreement with any attorney that you can recall?

A. No.

Q. Have you had any letter of agreement presented to you by any attorney as to fees to be charged and services to be provided?

A. No. Not prior to that time. I have subsequently, but not prior to that time.

Q. And what's changed between the past and current? Why have you now -- have you requested that that be provided to you or is that something that's been provided to you at the, I guess, preemptorally(sic) by the attorney? Have they provided you with a retainer agreement up front or have you requested one?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

247

Q. You can go ahead and answer.

A. We negotiated a basis for services which was documented.

Q. Okay. And which attorney did you do that with, sir?

A. Attorney that represented me in the Chapter 7 proceeding.

Q. And that's a Chapter 7 proceeding against Iviewit?

A. Yes.

Q. And which Iviewit entity is that again?

A. I believe that was Iviewit.com, LLC.

Q. That was the entity that had signed your employment agreement I believe you testified; is that correct?

A. Yes.

Q. What's the current status of that bankruptcy proceeding?

A. A judgment, I believe, has been made.

Q. Okay. A judgment has been made by bankruptcy court?

A. I believe so.

Q. And do you know when that judgment was entered?

A. I don't know the precise date.

Q. Okay. Who prepared your employment agreement with Iviewit?

A. Mr. Wheeler.

Q. Did he ever disclose to Iviewit that he had known you personally for a number of years?

MR. PRUSASKI: Objection to form.

THE WITNESS: That was the basis on which he made the initial introduction.

By MR. SELZ:

Q. Did Mr. Wheeler ever obtain any waiver of conflict between Iviewit and yourself?

A. Mr. Wheeler never represented me.

Q. Oh. So he represented Iviewit but he never represented you?

A. That's correct.

Q. Was there any specific directions given to Proskauer Rose as to legal services to be provided by either yourself or the board of directors?

MR. PRUSASKI: Objection to form.

THE WITNESS: Would you repeat the

question.

By MR. SELZ:

Q. Sure. Were there ever any specific directions given by either yourself or the board of directors to Proskauer Rose for their legal services to be performed?

A. Yes.

Q. And why don't you tell me who gave those directions, to the best of your recollection, the date those directions were given and what the substance of those directions were.

MR. PRUSASKI: Object to form.

THE WITNESS: Well, the board gave directions to change the corporate status of Iviewit.

By MR. SELZ:

Q. And when was that, sir?

A. That was in November of 99.

Q. On whose advice?

A. The board.

Q. And the board determined by itself there was going to be a change in the corporate structure?

A. Yes. It was necessary in order to

present the company properly to the investment  
community.

250

Q. Okay. This was a change in status  
from an S-corp to a C-corp that you're  
discussing?

A. Yes.

Q. Okay. Did any legal advisor advise  
the board of directors as to the necessity of  
that change?

A. That, I believe Mr. Wheeler made  
that recommendation.

Q. Okay. So the board was following  
Mr. Wheeler's advice on that particular  
recommendation then?

A. Yes.

Q. What other directions were given  
with regard to Proskauer Rose and its  
representation of Iviewit?

A. Proskauer Rose was requested to  
development an employee stock purchase plan or  
stock option plan.

Q. Okay.

A. They were requested to serve as  
counsel during the due diligence process of all  
of the investments made in Iviewit.

Q. Okay.

A. On the part of Huizenga and Crossbow.

Q. Now, you said that the Proskauer Rose wasn't involved with the intellectual property side of Iviewit; is that correct?

A. That's correct.

Q. Have you ever seen the billing statements that Proskauer Rose provided to Iviewit that you -- you've discussed detailed billing statements. You reviewed those detailed billing statements, sir?

A. Some of them.

Q. What was the first one that you can recall reviewing?

A. I don't recall.

Q. Would it have been on or about July of 1999?

A. I really don't -- no. That was prior to my engagement.

Q. Okay. Did you ever go back and try to ascertain the source of the prior bills that were the ongoing balance that Iviewit had with Proskauer Rose?

MR. PRUSASKI: Objection to form.

MR. SELZ: Well, let me restate the

252

question.

By MR. SELZ:

Q. Did you ever go back, sir, and check billing statements prior to your employment, or dating prior to your employment with Iviewit?

A. I did see some of those records.

Q. How many of those records did you look at, if you can recall?

A. I can't recall precisely.

Q. And this was the 300-and-something-thousand-dollar previous balance that you had testified to yesterday?

A. I think I said it was less than 300,000.

Q. 289 or 298. I'm trying to recall exactly what it was. Around 300,000 or thereabouts? Is that approximately what you testified to?

A. Something under 300,000.

Q. Did you attempt, then, to reconcile or somehow substantiate those prior billings by reviewing the billing statements?

A. I did not.

Q. Why did you file a bankruptcy

proceeding against Iviewit.com, LLC?

253

MR. PRUSASKI: Objection to form.

By MR. SELZ:

Q. Can you answer that question for me, sir.

A. Iviewit owed me a substantial amount of money.

Q. How much is a substantial amount of money?

A. Approximately \$300,000 plus or minus.

Q. And how did that \$300,000 accrue?

A. It was wages not paid.

Q. Okay. Wages not paid.

A. And termination.

Q. There was termination in what sense? Terminating your employment agreement early; is that what --

A. Yes. I had a three-year contract.

Q. Okay. Anything else?

A. That was it.

Q. Now, I just want to make sure it's clear from your earlier testimony, you indicated to me that you weren't challenged or you weren't instructed that the Proskauer Rose bills might be

1 exaggerated or overinflated until after you had  
2 agreed to make those payments; is that a correct  
3 statement?

254

4 A. I never said that I believed that  
5 they were exaggerated or overstated.

6 Q. No, I didn't say that you did. That  
7 other board members or board members advised you  
8 that they felt the bills were excessive; is that  
9 a correct statement?

10 A. But that is different from  
11 exaggerated or overstated.

12 Q. Okay. I will rephrase the question,  
13 then, sir.

14 There were boards members who  
15 advised you that they were concerned that the  
16 Proskauer Rose bills were excessive; is that  
17 correct?

18 A. Yes.

19 Q. Okay. And you made payments on the  
20 Proskauer Rose bill after you were advised by  
21 those board members that they felt they payments  
22 or the bills were excessive; is that also  
23 correct?

24 A. No.

25 Q. Okay. There were no payments made

after that date?

255

A. That's correct.

Q. And were you following the instructions of those board members in ceasing to make payments?

A. The board did not instruct me not pay my bills.

Q. Then why did you cease making the payments?

A. When there was no money.

Q. Was there anyone else other than the board members we've already discussed that expressed concern about Proskauer Rose's bills to you?

A. Well, I think that several people have commented on Proskauer Rose as a premium priced organization.

Q. That's not my question. My question was more specifically orientated, sir, towards anyone who expressed concerns about the amount of billing involved in Proskauer Rose's representation of Iviewit and if any other parties, other than who we've already discussed, have indicated to you that they had concerns or they were surprised or some way expressed any

1 opinion to you concerning the amount of Proskauer  
Rose's billing to Iviewit?

256

2 A. Other than the board members?

3 Q. Other than the board members that  
we've already discussed.

6 A. Raymond Hersh has commented on the  
7 billing rates.

8 Q. Okay. Anyone else?

9 A. No.

10 Q. How about Mr. Rubenstein from  
11 Hollywood.com?

12 A. I never discussed those billing  
rates with him.

Q. Well, did he have any comment to you  
about it?

A. No.

Q. No, you never discussed anything  
with Proskauer Rose's bill with him?

A. No.

Q. You've repeatedly mentioned  
Mr. Bernstein, Simon Bernstein as being involved  
in a lot of these activities. Was he an active  
member of the company on a daily basis?

A. He maintained an office on the  
premises, which was paid for by Iviewit.

Q. Okay. But did he actively participate in the daily operations of the company?

A. Only to the extent of engaging in frequent discussions as to what the company was doing and where it stood.

Q. Was he part of the daily management team for the company?

A. I wouldn't say he was part of the daily management team, but I would say that I did consult with him, because of his availability, on a frequent basis, and we used him in meetings with outside clients or potential investors.

Q. Okay.

A. And I would take advantage of his availability to bounce ideas and thoughts on him and he would do the same with me.

Q. Okay. Are you aware of any agreement between Proskauer Rose and Iviewit concerning the fact that bills would be offset by royalties on any patent pool or royalties from any customers?

A. I am not aware of any discussions of that form of reimbursement.

Q. No one ever mentioned that to you?

A. No.

Q. Now, are you aware of any billings contained in the Proskauer Rose bill or any other billing statement for legal services in which Ken Rubenstein or Chris Wheeler are listed as providing services with regard to any of the patents or intellectual properties involved, other than trademark work?

A. No.

MR. SELZ: I think I'm almost done. Give me a couple of minutes, guys. I'll call you back in five. I'm just going to talk to Eliot, we got to finish up.

THE WITNESS: Okay.

MR. SELZ: Thanks.

(Whereupon, a break was taken from 4:59 to 5:21)

By MR. SELZ:

Q. Mr. Utley?

A. Yes.

Q. We were talking previously about, at one point in time, about Crossbow and an audit that was conducted, or that they were going to get conducted. Did that ever happen? Did Crossbow ever actually audit Iviewit's financial

books or records?

259

A. There was an extensive discovery process, due diligence process that was associated with their initial investment and they reviewed all of our books. They reviewed all of our intellectual property. They, it was a, as far as I know, it was a complete review of Iviewit.

Q. Okay. And was that -- that was the only time they audited was in relation to the due diligence prior to the initial investment?

A. Yes.

Q. There were no other audits?

A. It was not an audit.

Q. Okay. There were no other reviews of the financial records of Iviewit by Crossbow, other than the initial one done as part of their due diligence; is that a correct statement of fact?

A. It is a correct statement, but let me temporize it a little bit in that, two points, first of all, of course, they had a member of their staff sitting on the board. Secondly, we did review the status of the company in some detail each time we approached them for an

expansion of their investment.

260

Q. Okay. Did they ever express any concern about financial records not comporting with what had been represented to them or anything of that nature?

A. No.

Q. We had talked about, and I think you mentioned a company called Vulture Ventures at one point in time during your testimony?

A. Yes.

Q. What and who are Vulture Ventures?

A. It was a company or venture company that we were introduced to. I believe it was started by someone who had been involved in the original Lacomize(sic) start up and walked away with a bundle.

Q. Okay. Do you know who that particular person was?

A. No, I don't.

Q. And what happened with Vulture Ventures with regard to Iviewit; was there any involvement by that entity with Iviewit?

A. There were a couple of meetings.

Q. Do you recall who you met with from Vulture Ventures?

MR. SELZ: Objection, relevance to

261

the previous question.

By MR. SELZ:

Q. Okay. Go ahead, I'm sorry.

A. I met with their staff members who were involved with technology reviews and reviewing potential investments.

Q. Do you recall any names?

A. No.

Q. Okay. What finally happened? Why did Crossbow's representative or directors leave that position; do you recall what the circumstances were surrounding that?

A. Well, it occurred just about the same time as I left the company, and I was told it was to avoid a conflict of interest.

Q. Were you told anything other than that?

A. No.

Q. Do you have any knowledge of any other reason other than that?

A. I don't.

Q. With regard to the billing by Proskauer Rose, we had talked about the fact that you had reviewed the billing sheet. Are you

aware of any retainer agreement or engagement agreement that was signed with Proskauer Rose prior to the one that is marked as Defendant's Exhibit No. 1 in this deposition?

A. I'm not.

Q. Are you aware of the whereabouts of any of the billing predating your employment with Iviewit.com?

A. I'm not.

Q. Now, when you talked about the Iviewit inventions and the intellectual properties involved, did you ever research the prior art to try to determine whether or not these were truly unique and distinguishable inventions which were patentable?

MR. PRUSASKI: Objection, relevance.

THE WITNESS: We researched the patent office, issued patents and determined that there were no issued patents which appeared to lay over the claims of the provisional filings.

By MR. SELZ:

Q. Okay. And so you -- what was the date of those inventions then?

A. I don't recall. They would precede the filing of the provisionals. The normal

process time for patent applications through the patent office varies between two and four years.

Q. Okay. And that was obviously prior to your time at Iviewit?

A. Both before and after. I reviewed the prior art as reflected in patents issued.

Q. Okay. But with regard to these particular inventions at Iviewit, the provisional patents, was that prior to your time or was that after you had already started working with Iviewit?

A. I reviewed the prior art subsequent to my employment but I did review the provisionals prior to.

Q. Prior to your employment?

A. Yes.

Q. Now, we had spoken about Warner Brothers and Mr. Colter and his communications with you. Did you ever send any information to any Warner Brothers' employees regarding Iviewit's intellectual property or any of the products after your discussion with Mr. Colter wherein he requested you only communicate directly with him?

A. Only with him.

MR. PRUSASKI: Objection, relevance.

264

By MR. SELZ:

Q. You only sent it to him; you never sent it to anyone else?

A. No.

Q. The work that was done by Proskauer Rose, who was that billed to, if you can recall?

A. Which work that was done by Proskauer Rose?

Q. The work that was done by Proskauer Rose, which companies was it billed to or which company was it billed to?

A. Well, if I go back and look at the exhibits, the exhibits indicate that the client's name was Iviewit.com, Inc.

Q. Okay. Is there any other entity that's named on any of those billing statements?

A. I did not see any other entity.

MR. PRUSASKI: Object -- hold on, Steve. Object to the form. You're talking about invoices that are attached Exhibit 1?

MR. SELZ: He used those, yeah, the witness used those to refresh his recollection I guess.

MR. PRUSASKI: Okay. As long as

we're talking about them because you said billing statements, which could be something totally different, I don't know.

MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?

A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.

THE WITNESS: There was a

266

disagreement as to ownership of the intellectual property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in my name, other than what has been appended to patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as

I know.

Q. And that report was filed with what police agency, if you know?

A. It was Boca Raton.

Q. And did you receive the notification from the Boca Raton Police Department as to the filing of that report?

A. I did.

Q. Were you interviewed with regard to that allegation in the police report?

A. I was.

Q. And what was the outcome of that situation?

A. We resolved the dispute by returning the equipment.

MR. SELZ: Okay. I have nothing further.

MR. PRUSASKI: I have a couple of redirect questions that I wrote down during Mr. Selz's cross, Mr. Utley, and that pertain to his cross examination.

EXAMINATION

By MR. PRUSASKI:

Q. Did Proskauer Rose do work for any Iviewit entities other than Iviewit, LLC?

A. Yes. Proskauer did work for all of the entities.

Q. Okay. Yesterday during Mr. Selz's cross examination, you indicated that there was an instance of a provisional patent filing being what you referred to as skimpy. Do you recall that?

A. Yes.

Q. Did Proskauer Rose perform that patent filing?

A. No.

Q. Was it another law firm?

A. It was.

Q. Was that issue resolved?

A. That was, it was resolved in the formal filing where the formal filing basically filled in the missing blanks, if you will, in the provisional.

Q. Did that provisional patent filing cause a prejudice to the Iviewit companies at all?

MR. SELZ: Objection, calls for a legal conclusion.

THE WITNESS: Yeah, I would be reluctant to try to take a position on that.

By MR. PRUSASKI:

270

Q. All right, fair enough.

You indicated that prior to the beginning of your employment with Iviewit, Iviewit had already incurred what was estimated as just understand \$300,000 in fees; was that your testimony?

A. Yes.

Q. Now, the 300-and-some-odd-thousand-dollars that are alleged to be owing in the complaint, is that the same \$300,000 in fees that was accrued prior to your arrival?

A. I believe that that is what has accrued since my arrival.

Q. The amount alleged in the complaint?

A. Yes.

Q. There was some talk today during Mr. Selz's cross examination pertaining to the board's consent to certain accounts payable. What is your view, as the president, the former president and COO of the Iviewit companies, what is your view as to the role of the board of directors?

MR. SELZ: Objection, calls for a

legal conclusion on his part I believe.

271

By MR. PRUSASKI:

Q. As the president and COO -- I'll ask the question again.

As the president and COO, what is your understanding as to the role of the board of directors with respect to the accounts payable?

A. The role of the board of directors is policy making, and the permanent organization is responsible for the day-to-day operations of the company. The role of the board is to protect the interest of the stock holders and set policy.

Q. There was some testimony pertaining to Donald Cain and Ken Anderson discussing the magnitude of Proskauer Rose's billings; do you recall that testimony?

A. Yes.

Q. At the time when Donald Cain and Ken Anderson were commenting about the Proskauer Rose bills, were Eliot and Si Bernstein still directing Proskauer to perform work?

A. It was primarily focused in the last couple of months of operation that I was involved with, and at that point in time, I believe there was only an insignificant amount of work being

performed.

272

MR. SELZ: Can you please speak up.

I can't hear the questions or the answers.

THE WITNESS: I'm sorry.

MR. SELZ: Can you speak up a little bit.

THE WITNESS: Yes, I'll try to speak a little louder.

MR. SELZ: Thank you.

By MR. PRUSASKI:

Q. Did the board of directors delegate the authority to you to review and approve the accounts payables?

A. I believe that delegation to have been made by default.

Q. At any time did any board members opine that you should pay Proskauer's bills?

A. Yes.

Q. What board members were those?

A. Well, I received several phone calls from Eliot Bernstein to make payments to Proskauer because he wanted to get some work done with respect to the management of his own equity in Iviewit. He wanted to make some distribution.

Q. Would that be personal legal work?

A. Well, it would have been billed as part of Iviewit's bills, at least that's my understanding, but Eliot was very desirous of having this work done and was pressing on me to make payments in order to get that work done.

Q. Why did Iviewit need to make payments prior to Proskauer doing that work?

A. Because of the size of the receivable.

Q. Did some one at Proskauer inform you that it would not perform that work unless the receivable was paid down?

A. Yes.

Q. Generally what type of complaints did Donald Cain and Ken Anderson have pertaining to the Proskauer bills?

MR. SELZ: It's asked and answered already but --

MR. PRUSASKI: I didn't ask it.

MR. SELZ: No, but it's already answered. So go ahead, you can ask it anyway.

MR. PRUSASKI: Thank you.

MR. SELZ: I'm sorry. I'm getting kind of, a little tired over here.

MR. PRUSASKI: I'll ask the question

again because of --

274

MR. SELZ: I'm sorry for the  
interruption, Chris.

By MR. PRUSASKI:

Q. Donald Cain and Ken Anderson,  
generally what type of comments did they have to  
make about Proskauer's bills?

A. It was comparative in the sense of  
what their experience had been with other  
companies for what appeared to them to be similar  
work.

Q. So they were stating opinion?

A. Yes.

Q. Did they ever sit down and go over  
each of the bills in detail?

A. No.

Q. Okay. So they had no factual basis  
on which to base their opinion, correct?

A. That is correct.

MR. SELZ: Object to the form of the  
question.

By MR. PRUSASKI:

Q. Did they have any factual basis upon  
which to base their opinion?

MR. SELZ: Objection, calls for

speculation.

275

THE WITNESS: They had not reviewed and did not review in detail any of the billings received by Iviewit.

By MR. PRUSASKI:

Q. At any time during your employment with Iviewit, did Proskauer Rose's billing rates go up?

A. I'm not aware that they did.

Q. And the Bernstein's hired Proskauer Rose prior to your arrival?

A. Yes.

MR. PRUSASKI: I have no further questions. Thank you, sir. Mr. Selz?

MR. SELZ: I don't have anything on recross.

MR. PRUSASKI: Okay.

THE WITNESS: I'd just like to ask a question. I presume that the only tape recording of this examination was the one made by the court reporter?

MR. SELZ: That's correct from what I know. I mean, I don't have any tape recording device.

MR. BERNSTEIN: I do. I have a full

tape recording. I was not asked not to have a  
tape recording.

276

MR. PRUSASKI: Well, you didn't ask  
my permission and you don't have it. And you're  
recording me across a telephone line, and I think  
that's a an illegal wire tape, sir. So you do  
not have anybody's permission to record this  
conversation.

MR. SELZ: So technically, Eliot,  
you don't have any right to do that. He's right  
about that.

MR. BERNSTEIN: Oh, that's okay if  
we can obtain such tapings from the court --

MR. SELZ: Exactly, from the court  
reporter. So what you need to do is you need to  
erase those tapes so that we don't have a  
problem.

MR. BERNSTEIN: Sure.

MR. PRUSASKI: All right, if nobody  
has any further questions, the deposition is  
adjourned. Thank you.

MR. SELZ: Thank you and thank you  
for your patience.

(Court reporter gets Mr. Selz's  
information.)

MR. PRUSASKI: I want to go back on

277

the record for one second before we finish.

MR. SELZ: Sure.

MR. PRUSASKI: And say, I don't want anything that I said today to be deemed as a waiver of my right to complain that your client audiotaped this deposition without my permission. And I -- it's apparent he did it without your knowledge, Steve, and I'm sorry to have to put you in that position but I'm pretty upset hearing this at the end of the deposition that your client pretty cavalierly said, I have a full tape recording of this.

MR. SELZ: Well, I think that, you know, he understands now, obviously, that he didn't have permission. I think he misapprehended the fact that he was able to record it because the court reporter was doing so.

THE WITNESS: Well, but we discussed this very specifically at the beginning of the session.

MR. BERNSTEIN: (Inaudible) -- conversation -- (inaudible).

MR. SELZ: Let's make it clear on

the record that my client is going to -- if you want, Chris, would you rather have him send the copies to me and I can send them to you and you can destroy them; would you be more comfortable with that?

MR. PRUSASKI: I don't know what I want to do at this point, Steve, because personally I'm very upset right now and I don't even know what to do.

MR. SELZ: Okay, well --

MR. PRUSASKI: Because you and I had a conversation before the deposition started --

MR. SELZ: Right.

MR. PRUSASKI: -- were you asked permission to take a recording of the depo --

MR. SELZ: Right.

MR. PRUSASKI: -- and Mr. Utley and I both said no.

MR. SELZ: Right. And you and I were on the line but I don't think Mr. Bernstein was on the line at that point.

MR. BERNSTEIN: Nobody ever asked me those questions.

MR. SELZ: He wasn't on the line when we had that conversation, if you would

recall, but you know.

MR. PRUSASKI: Well, you know, frankly, every time you pick up the phone, if you want to record a phone call, you have to get the permission of the people on the phone. It's not assumed if they don't say you have permission you can't record it; it's the other way around.

MR. SELZ: Well, I know that, look, and obviously you and I both know the law but that doesn't necessarily mean that everyone does.

MR. PRUSASKI: No.

MR. SELZ: So I'm going to make it clear that my client is going to comply with your request. And what I'm asking you is would you rather him send the tapes to me so that you could personally make sure that they're erased, or would you rather some other means be taking place to avoid a problem?

MR. PRUSASKI: I don't know. I guess you and I will discuss it later if this becomes an issue, but I don't know. Also, is Mr. Bernstein the new corporate rep of Iviewit?

MR. SELZ: I know he's attending this deposition for purposes of representing Iviewit. I don't know if he's going to be the

new corporate representative for all purposes.

280

MR. PRUSASKI: Okay. Because I've told you several times we want to get the corporate representative's deposition.

MR. SELZ: I'm going to find out who we're going to supply you as the corporate rep with the most knowledge because obviously that's what you need.

MR. PRUSASKI: Right. But there's interrogatories from February on the record that say that Bill Kasser is the corporate representative and I think --

MR. SELZ: Mr. Bernstein was the one who answered the most recent set of interrogatories, obviously, because Mr. Kasser's no longer with the company.

MR. PRUSASKI: Okay. So Mr. Bernstein is the person with the most knowledge from the corporation?

MR. SELZ: At least with regard to that, those interrogatories that were provided, he was the person that was felt had the most knowledge to be able to answer them accurately.

MR. PRUSASKI: Okay. Is he going to present himself in Florida for the deposition

then?

281

MR. SELZ: I don't know. We're going to find out. I'm going to have to find out who they're going to -- who the corporation is going to present as the corporate rep for the depo.

MR. PRUSASKI: Okay. Can we just agree to resolve that on Monday?

MR. SELZ: Monday, unfortunately, I'm going to be probably unavailable most of the day. Probably, we could probably hook up late in the afternoon.

MR. PRUSASKI: Sounds good. I work late everyday anyway. Okay. All right, gentlemen.

MR. SELZ: Thank you.

MR. PRUSASKI: Goodbye.

MR. SELZ: Goodbye.

(Whereupon, the deposition of BRIAN UTLEY, VOL. II, was concluded at 6:00 p.m.)

STATE OF MINNESOTA:

282

:  
COUNTY OF DAKOTA :

CERTIFICATE

BE IT KNOWN, that I, Traci R. Sandstrom,  
Court Reporter, Notary Public, took the foregoing  
deposition of BRIAN UTLEY, VOL. II;

That the said witness, before testifying,  
was by me duly sworn to testify the truth, the  
whole truth and nothing but the truth relative to  
said cause;

That the testimony of said witness was  
recorded in shorthand by me and was reduced to  
typewriting under my direction;

That the foregoing transcript is a true  
record of the testimony given by said witness;

That I am not related to any of the parties  
hereto, nor an employee of them, nor interested  
in the outcome of the action;

That the cost of the original has been  
charged to the party who noticed the deposition,  
and that all parties who ordered copies have been  
charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 6th day of  
September, 2002.

TRACI SANDSTROM, NOTARY PUBLIC

CORRECTION PAGE

283

I, BRIAN UTLEY, do hereby certify that I have read the forgoing transcript and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
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BRIAN UTLEY

<p>Concordance Report                  Words: 1,365                  Occurrences: 6,072                  Words: 384                  Words In File:                  File Concordance                  Sensitive                  Word List(s):                  NOI                  Pages = 3                  ALL Text                  ON                  Pure Numbers                  ON                  \$                  000 [1]                  000 [4]                  12; 270:6, 12                  1                  174:3; 237:6, 14;                  12; 262:4; 264:21                  [2]                  5                  [2]                  251:18                  2                  174:13                  [6]                  21; 178:25;                  1; 216:7; 217:13                  [3]                  217:15, 16                  [3]                  22; 282:22                  [1]                  [1]                  [1]                  [1]                  [1]                  3                  174:18</p>	<p>300,000 [3]                  252:15, 17, 20                  300-and-some-odd-th                  [1]                  270:10                  300-and-something-th                  [1]                  252:12                  3:51 [1]                  227:9                  * * 4 * *                  4 [1]                  174:22                  4:07 [1]                  227:9                  4:59 [1]                  258:17                  * * 5 * *                  5 [3]                  236:6, 14, 18                  5:21 [1]                  258:17                  * * 6 * *                  6:00 [1]                  281:20                  6th [1]                  282:22                  * * 7 * *                  7 [3]                  179:16; 247:8, 9                  * * 8 * *                  8th [1]                  238:11                  * * 9 * *                  95 [2]                  236:5, 20                  99 [4]                  178:24; 188:20; 194:15;                  249:19                  * * A * *                  ability [2]                  173:19; 186:8                  able [3]                  212:12; 277:17; 280:23                  accepted [7]                  220:21, 24; 221:3, 4;                  222:12, 17                  according [3]                  204:12; 216:23; 226:24</p>	<p>accountant [2]                  221:21, 22                  accounted [1] s                  219:20                  accounting [2]                  210:24; 214:13 ar                  accounts [11]                  205:22; 207:6, 8, 15;                  210:17, 20; 222:25;                  270:20; 271:7; 272:13                  accrue [1]                  253:12                  accrued [2]                  270:12, 15                  accuracy [2]                  199:14, 17                  accurate [1]                  200:3                  accurately [4]                  208:12; 209:7; 230:8;                  280:23                  achieved [1]                  174:24                  acknowledged [1]                  240:7                  acted [2]                  179:1; 230:1                  acting [2]                  183:2; 221:6                  action [2]                  179:12; 282:17                  actions [1]                  177:16                  active [1]                  256:22                  actively [1]                  257:1                  activities [1]                  256:22                  actual [1]                  195:9                  addition [1]                  283:6                  additional [1]                  239:4                  addressed [3]                  170:17; 192:6; 238:11                  adjourned [1]                  276:21                  administration [1]                  205:21                  adult [4]                  224:15, 25; 225:21;                  226:17                  advanced [1]                  228:25                  advantage [1]                  257:15                  advice [2]                  249:20; 250:13                  advisable [1]</p>	<p>206:21                  advise [3]                  205:3; 250:7; 266:7                  advised [5]                  205:6, 10; 254:7, 15, 20                  advising [1]                  176:14                  advisor [1]                  250:7                  affect [2]                  240:23; 241:2                  affiliated [1]                  235:20                  affiliates [2]                  191:16, 23                  affirmative [1]                  192:11                  affirmatively [1]                  237:8                  afternoon [1]                  281:12                  afterwards [1]                  212:6                  agency [1]                  268:3                  agent [1]                  195:11                  aggregate [1]                  207:17                  agree [2]                  202:24; 281:8                  agreed [1]                  254:2                  agreement [31]                  181:25; 182:11; 207:12,                  22; 208:23; 215:9, 10, 18,                  19, 25; 216:4, 6, 18, 22;                  217:3; 221:9; 225:18;                  237:2, 21; 245:11, 18;                  246:7, 10, 13, 23; 247:16;                  248:5; 253:17; 257:19;                  262:1, 2                  agreements [2]                  216:24; 243:2                  alan [2]                  227:14, 15                  allegation [3]                  196:10, 12; 268:10                  alleged [4]                  182:14; 231:25; 270:11,                  16                  allocation [1]                  216:11                  allow [1]                  207:11                  altercation [2]                  234:24; 235:1                  amended [1]                  265:5                  amount [10]                  174:23; 216:16; 220:17;</p>	<p>222:14; 253:6, 8; 255:20;                  256:1; 270:16; 271:25                  anderson [10]                  213:7; 214:12, 13; 215:22;                  217:2, 12; 271:14, 15                  273:15; 274:5                  anderson's [1]                  214:8                  answer [18]                  173:15; 180:20; 181:7                  195:13; 202:6, 15, 23; 23                  208:16; 210:7; 223:6                  230:8; 247:2; 253:4                  267:11, 18; 280:23                  answered [4]                  223:6; 273:17, 21; 250:14                  answers [1]                  272:3                  anybody's [1]                  276:7                  anyway [2]                  273:21; 281:14                  apologize [1]                  177:21                  apparent [1]                  277:8                  appeared [2]                  262:19; 274:10                  appended [1]                  266:22                  application [2]                  196:9; 266:16                  applications [6]                  233:10, 11, 12, 16; 254:4                  263:1                  applied [1]                  199:19                  appreciate [3]                  202:7; 204:14; 237:11                  approached [2]                  175:14; 259:25                  appropriate [2]                  184:17; 185:3                  approve [1]                  272:12                  approximately [5]                  188:17; 192:24; 198:22;                  218:10; 252:18; 253:11                  argue [1]                  225:6                  arise [3]                  201:21; 204:21; 205:7                  arising [2]                  265:13, 15                  armstrong [5]                  241:17, 18, 19, 23; 252                  arrange [1]                  171:7                  arrival [3]                  270:13, 15; 275:11                  art [3]</p>
---	--	--	--	--

<p>263:6, 12  <b>ascertain</b> [2]                  251:22  <b>asking</b> [5]                  203:7; 215:24;                  279:14  <b>asserted</b> [1]                  279:14  <b>assigned</b> [6]                  223:22; 230:22;                  267:5, 6  <b>assignment</b> [2]                  19  <b>assistant</b> [4]                  22, 23; 179:2  <b>associated</b> [2]                  259:4  <b>assumed</b> [2]                  279:6  <b>assumes</b> [1]                  279:6  <b>authentic</b> [3]                  181:12, 14  <b>attached</b> [2]                  265:4  <b>attempt</b> [1]                  279:14  <b>attempting</b> [4]                  185:1, 4; 202:12  <b>attend</b> [3]                  212:12, 22  <b>attended</b> [1]                  279:14  <b>attending</b> [1]                  279:14  <b>attention</b> [1]                  279:14  <b>attitude</b> [1]                  279:14  <b>attorney</b> [16]                  190:23; 217:25;                  222:11; 245:10, 12,                  23; 246:11, 14, 22;                  279:7  <b>attorney's</b> [1]                  279:14  <b>attorneys</b> [1]                  279:14  <b>audio</b> [1]                  279:14  <b>audiotaped</b> [1]                  279:14  <b>audit</b> [5]                  8; 258:22, 25;                  279:14  <b>audited</b> [1]                  279:14  <b>audits</b> [1]                  279:14  <b>audit</b> [1]                  279:14</p>	<p><b>authority</b> [1]                  272:12  <b>authorization</b> [3]                  207:10; 210:9; 235:17  <b>authorized</b> [3]                  205:14, 18; 222:25  <b>authorizing</b> [1]                  206:22  <b>availability</b> [2]                  257:11, 16  <b>available</b> [1]                  237:6  <b>avoid</b> [2]                  261:16; 279:18  <b>aware</b> [38]                  171:6; 178:3; 179:18, 19;                  182:12, 17, 20; 186:24;                  187:1, 3; 190:19; 191:14,                  21; 194:19; 204:11; 208:3;                  209:21; 223:24; 226:6;                  229:4, 15; 231:7, 9, 13,                  14; 234:20, 22; 239:24;                  243:24; 244:21; 257:18,                  23; 258:2; 262:1, 6; 267:7,                  16; 275:9</p> <hr/> <p style="text-align: center;">* * B * *</p> <hr/> <p><b>background</b> [1]                  214:11  <b>backgrounds</b> [1]                  214:15  <b>backtrack</b> [2]                  182:25; 192:16  <b>balance</b> [2]                  251:23; 252:13  <b>balances</b> [1]                  221:10  <b>band</b> [1]                  174:25  <b>bank</b> [2]                  242:15; 243:13  <b>banking</b> [1]                  214:11  <b>bankruptcy</b> [4]                  179:17; 247:20, 24;                  252:25  <b>barber</b> [6]                  224:1, 2, 3, 5, 17, 24  <b>base</b> [2]                  274:18, 24  <b>based</b> [4]                  203:5, 6, 7; 212:3  <b>basic</b> [1]                  205:1  <b>basically</b> [4]                  203:10; 212:21; 213:24;                  269:16  <b>basis</b> [13]                  180:3; 213:15; 216:9, 17;                  219:8; 220:21; 221:4;</p>	<p>247:3; 248:11; 256:23;                  257:12; 274:17, 23  <b>bearing</b> [1]                  240:20  <b>becomes</b> [1]                  279:21  <b>behalf</b> [3]                  217:25; 219:21; 245:12  <b>believe</b> [34]                  171:10; 176:4; 178:18;                  180:12; 182:7; 185:20;                  188:1; 198:14; 213:3;                  216:5; 218:4; 223:7;                  224:14; 226:17; 227:2;                  230:5; 236:14; 237:4;                  239:14, 15; 241:9; 243:8;                  244:16; 247:14, 16, 21,                  25; 250:10; 260:13;                  267:20; 270:14; 271:1, 24;                  272:14  <b>believed</b> [1]                  254:4  <b>bernstein</b> [42]                  189:20, 21; 192:8, 21, 22;                  193:9, 21; 194:1; 196:19,                  20; 197:20; 200:13; 204:8;                  207:1; 210:12; 213:4;                  216:12; 228:1, 2, 21;                  229:5; 230:1; 234:7, 25;                  235:6, 14; 241:11; 256:21;                  271:20; 272:21; 275:25;                  276:12, 18; 277:23;                  278:20, 22; 279:22;                  280:13, 18  <b>bernstein's</b> [4]                  226:19; 238:19; 241:20;                  275:10  <b>bill</b> [16]                  183:11, 12; 211:12; 212:5,                  18; 215:21; 216:1; 219:25;                  220:3; 222:22; 224:1, 2;                  254:20; 256:18; 258:3;                  280:11  <b>billed</b> [5]                  219:9; 264:7, 11, 12;                  273:1  <b>billing</b> [32]                  205:13; 213:9; 215:1;                  217:18; 219:16; 220:1, 7,                  13, 25; 222:4, 13; 223:3,                  8; 239:11; 240:23; 241:3;                  251:8, 11, 12; 252:5, 23;                  255:21; 256:2, 7, 12;                  258:4; 261:23, 25; 262:7;                  264:17; 265:1; 275:7  <b>billings</b> [7]                  213:20; 219:20; 240:20;                  252:22; 258:2; 271:15;                  275:3  <b>bills</b> [21]                  213:6, 11, 24; 214:4;</p>	<p>221:11, 18; 236:13;                  251:22; 253:25; 254:8, 16,                  22; 255:7, 13; 257:20;                  271:20; 272:17; 273:2, 16;                  274:7, 15  <b>bit</b> [4]                  192:17; 234:9; 259:21;                  272:6  <b>blanks</b> [1]                  269:17  <b>board</b> [58]                  179:25; 181:14; 200:22;                  201:4, 14; 205:19, 20;                  206:22; 207:1, 3, 5, 9, 11,                  13, 16, 23; 208:1, 6, 8, 19,                  22, 25; 209:6, 17, 19;                  210:12; 214:20; 215:12;                  216:12; 224:22; 225:4, 13;                  232:14, 17; 241:7; 248:22;                  249:4, 14, 21, 22; 250:8,                  12; 254:7, 21; 255:4, 6,                  12; 256:3, 4; 259:23;                  270:23; 271:6, 8, 11;                  272:11, 16, 19  <b>board's</b> [1]                  270:20  <b>boards</b> [1]                  254:14  <b>boca</b> [3]                  181:4; 268:4, 6  <b>bonus</b> [1]                  241:2  <b>books</b> [3]                  195:16; 259:1, 5  <b>bought</b> [1]                  267:14  <b>bounce</b> [1]                  257:16  <b>bound</b> [1]                  202:15  <b>boxes</b> [1]                  177:10  <b>break</b> [4]                  227:4, 8; 237:24; 258:16  <b>breakdown</b> [1]                  220:14  <b>brian</b> [7]                  170:3; 238:12, 13; 281:19;                  282:5; 283:2, 24  <b>briefed</b> [1]                  175:24  <b>briefly</b> [1]                  182:24  <b>brothers</b> [12]                  171:8, 12; 176:7; 229:19,                  22; 230:5, 9, 12, 13, 16;                  263:18, 20  <b>buchsbaum</b> [4]                  196:20; 197:20; 200:14,                  17  <b>budget</b> [2]</p>	<p>216:10  <b>bundle</b> [1]                  260:16  <b>business</b> [11]                  196:2; 210:24; 222:19;                  234:22; 236:2; 242:14, 21;                  243:4, 7, 15, 21  <b>businesses</b> [1]                  214:15  <b>businessman</b> [1]                  224:6  <b>butchering</b> [1]                  194:4</p> <hr/> <p style="text-align: center;">* * C * *</p> <hr/> <p><b>c-corp</b> [1]                  250:4  <b>cain</b> [9]                  213:6; 214:10; 215:19;                  217:2, 12; 271:14, 18;                  273:15; 274:5  <b>cain's</b> [1]                  214:7  <b>california</b> [4]                  177:7, 10; 226:18; 232:7  <b>call</b> [6]                  176:16; 181:6, 7; 207:4;                  258:11; 279:4  <b>calls</b> [4]                  269:22; 270:25; 272:20;                  274:25  <b>camera</b> [3]                  198:24; 199:1, 2  <b>care</b> [1]                  218:23  <b>case</b> [1]                  203:18  <b>cash</b> [3]                  205:25; 216:8, 10  <b>cast</b> [3]                  193:18, 20; 194:20  <b>casual</b> [2]                  172:1; 180:4  <b>cavalierly</b> [1]                  277:12  <b>cd</b> [1]                  174:7  <b>cease</b> [1]                  255:8  <b>ceasing</b> [1]                  255:4  <b>certificate</b> [1]                  282:1  <b>certify</b> [1]                  283:2  <b>cfo</b> [3]                  206:15, 17  <b>challenged</b> [1]                  253:24  <b>change</b> [7]</p>
---	---	--	--	---

244:25; 249:15, 23; 249:9; 283:5 changed [1] center [3] 247:8, 9 characterize [1] change [2] changed [5] 245:22; 246:15; 249:19, 21 check [1] checks [1] chief [1] clerk [12] 202:20; 205:16; 242:20; 243:23; 13, 16; 258:5; 278:2 chronic [1] circumstances [1] civil [1] claim [1] claims [1] clarify [1] clear [5] 197:8; 253:23; 27:25; 279:13 client [5] 1; 277:6, 12; 278:1; 13 client's [1] clients [1] inventor [1] recognizant [1] college [1] colter [8] 16, 17, 18, 20; 19, 24; 263:18, 22 comfortable [1] coming [1] comment [2] 256:14	commented [5] 213:4, 10, 12; 255:16; 256:6 commenting [1] 271:19 comments [4] 215:19; 217:1, 12; 274:6 commercial [4] 173:25; 196:9; 233:24; 234:4 commitments [1] 219:13 committee [1] 174:4 commonly [1] 174:18 communicate [3] 180:2; 181:7; 263:23 communicated [3] 214:21, 23; 243:3 communication [2] 241:7 communications [3] 230:12, 20; 263:18 community [1] 250:2 companies [12] 187:13, 22; 188:9; 191:16, 23; 192:20; 195:6; 196:5; 264:11; 269:20; 270:22; 274:10 company [44] 171:8; 179:12; 181:19, 21; 185:13; 188:3; 189:5; 192:10, 14; 195:2, 16; 199:7; 205:24; 207:2; 213:21; 214:1, 5; 217:25; 221:7; 222:6, 18; 226:15, 18; 232:7; 233:14; 236:4, 18; 238:22; 239:13; 244:22; 250:1; 256:23; 257:3, 5, 8; 259:24; 260:8, 12; 261:15; 264:12; 271:11; 280:16 company's [1] 199:4 comparative [1] 274:8 compensation [1] 239:5 complain [2] 217:17; 277:6 complaint [5] 228:17; 229:2; 265:5; 270:11, 16 complaints [3] 213:8; 229:12; 273:14 complete [1] 259:7 comply [2] 230:10; 279:13	component [1] 236:1 comporting [1] 260:3 compressing [2] 174:6, 16 compression [5] 174:8, 10, 15, 20, 24 compromise [1] 225:18 computational [1] 199:17 concern [9] 199:6, 10; 200:10, 11, 15, 20; 213:5; 255:13; 260:3 concerned [2] 201:19; 254:15 concerning [12] 170:16; 177:4; 187:20; 188:15; 196:4, 14; 199:7; 221:11; 227:14; 241:24; 256:1; 257:20 concerns [7] 201:14; 202:8; 213:7; 215:20, 23; 255:20, 24 concluded [2] 219:16; 281:20 concluding [1] 219:8 conclusion [2] 269:23; 271:1 conducted [2] 258:23, 24 conference [1] 207:3 conflict [2] 248:15; 261:16 confrontation [1] 228:20 conjunction [1] 242:22 connection [2] 190:5; 240:8 connections [1] 224:7 consent [1] 270:20 consider [1] 239:4 consideration [5] 239:16, 20, 21, 23; 240:2 consistency [5] 199:13, 20, 21, 22; 242:3 consistent [1] 200:4 consortium [1] 172:2 construct [1] 243:4 consult [1] 257:11	consultation [1] 206:16 consulted [1] 170:21 consulting [1] 215:12 contact [7] 176:6; 224:16, 17, 18; 229:21; 230:4, 15 contained [2] 233:17; 258:3 continuation [1] 170:11 continue [1] 219:12 continued [1] 170:3 continuing [2] 183:13; 210:13 contract [2] 246:7; 253:19 contributor [1] 187:7 control [1] 177:16 conversation [5] 210:16; 276:8; 277:24; 278:12, 25 conversations [3] 176:23; 177:1; 186:18 conviction [1] 184:9 coo [6] 199:6; 221:7; 243:1; 270:22; 271:3, 5 copies [3] 278:3; 282:20, 21 corporate [18] 182:15, 21; 195:10; 218:21, 22; 219:21, 25; 220:9; 225:22; 235:19; 249:15, 23; 279:22; 280:1, 4, 6, 11; 281:5 corporation [3] 219:3; 280:19; 281:4 corrected [1] 242:5 correction [2] 283:1, 7 correctly [1] 177:5 correlated [1] 222:9 correspondingly [1] 222:21 cost [1] 282:18 counsel [6] 185:3; 202:9; 217:22; 218:4, 10; 250:24 county [1]	282:2 couple [7] 179:3; 205:17; 223:7; 258:11; 260:23; 268:18; 271:23 course [5] 189:18; 210:3; 215:15; 225:8; 259:22 court [13] 180:25; 202:10; 204:12; 237:5, 7, 11; 247:24; 275:20; 276:13, 14, 24; 277:18; 282:4 covering [1] 175:25 credibility [1] 225:18 cross [4] 268:20, 21; 269:4; 270:19 crossbow [23] 195:3, 5, 11, 17, 19; 196:4, 14, 17; 197:8, 16, 21; 216:9; 223:13, 22; 232:11, 17, 18, 23; 233:2; 251:3; 258:22, 25; 259:16 crossbow's [2] 196:22; 261:11 curiosity [1] 192:2 current [4] 179:23; 196:4; 246:19; 247:19 currently [3] 172:8; 175:4; 194:21 curriculum [1] 243:18 customers [1] 257:22 cut [2] 212:16, 17 cutting [1] 212:16 cv [2] 243:6, 19 <hr/> <b>** D **</b> <hr/> daily [4] 256:23; 257:2, 7, 10 dakota [1] 282:2 date [9] 176:18; 188:17; 198:9; 217:11; 227:22; 248:3; 249:10; 255:1; 262:23 dated [1] 216:6 dating [1] 252:6 david [1] 229:16
--	--	---	---	---

<p><b>day</b> [2] 282:22</p> <p><b>day-to-day</b> [2] 271:10</p> <p><b>daying</b> [2] 16, 18</p> <p><b>days</b> [1] 21</p> <p><b>December</b> [6] 198:25; 198:20; 216:7; 13</p> <p><b>decided</b> [1] 20</p> <p><b>decision</b> [1] 10</p> <p><b>decisions</b> [2] 9, 14</p> <p><b>decoded</b> [1] 25</p> <p><b>dedication</b> [1] 11</p> <p><b>defamed</b> [1] 5</p> <p><b>default</b> [1] 15</p> <p><b>defendant's</b> [3] 6, 14; 262:3</p> <p><b>degree</b> [1] 14</p> <p><b>delegate</b> [1] 11</p> <p><b>delegation</b> [1] 14</p> <p><b>department</b> [2] 1; 268:6</p> <p><b>departure</b> [1] 22</p> <p><b>depending</b> [1] 2</p> <p><b>depends</b> [1] 23</p> <p><b>depo</b> [2] 15; 281:6</p> <p><b>deponent</b> [1] 10</p> <p><b>deposition</b> [17] 2, 11, 15, 18; 181:1; 4; 276:20; 277:7, 11; 12; 279:24; 280:4, 25; 19; 282:5, 19</p> <p><b>depth</b> [1] 14</p> <p><b>derived</b> [2] 1, 6</p> <p><b>deriving</b> [1] 25</p> <p><b>describe</b> [5] 18, 20, 21; 210:20; 20</p> <p><b>described</b> [5] 24; 197:18; 201:13;</p>	<p>233:23; 236:8</p> <p><b>description</b> [1] 173:24</p> <p><b>designed</b> [2] 174:19, 23</p> <p><b>desired</b> [1] 283:6</p> <p><b>desirous</b> [1] 273:3</p> <p><b>destroy</b> [2] 179:7; 278:4</p> <p><b>detail</b> [4] 219:19; 259:25; 274:15; 275:3</p> <p><b>detailed</b> [4] 220:1, 13; 251:10, 11</p> <p><b>determine</b> [4] 184:16; 202:9; 222:8; 262:13</p> <p><b>determined</b> [4] 215:8; 222:22; 249:22; 262:18</p> <p><b>developed</b> [5] 174:4; 183:6; 192:3; 242:22; 243:22</p> <p><b>development</b> [4] 171:11; 193:7; 229:19; 250:20</p> <p><b>device</b> [1] 275:24</p> <p><b>diamond</b> [21] 179:22; 183:2; 211:20, 23; 212:3; 218:5, 9, 11, 17; 219:25; 243:25; 244:2, 18, 25; 245:7, 10, 12; 265:14, 18, 21; 266:8</p> <p><b>dick</b> [7] 183:11, 12, 13, 24; 185:1; 218:5; 265:9</p> <p><b>digital</b> [4] 198:25; 231:23, 25; 232:24</p> <p><b>diligence</b> [9] 190:24; 195:15; 196:18; 197:4, 5; 250:24; 259:3, 11, 18</p> <p><b>diligences</b> [1] 195:20</p> <p><b>dimensions</b> [1] 173:22</p> <p><b>direct</b> [2] 187:19; 213:3</p> <p><b>directing</b> [1] 271:21</p> <p><b>direction</b> [1] 282:12</p> <p><b>directions</b> [8] 225:4; 248:20; 249:4, 9, 10, 11, 15; 250:16</p> <p><b>directors</b> [23] 181:14; 200:22; 201:5, 15;</p>	<p>205:19, 20; 206:22; 208:9, 22; 209:1, 6, 20; 210:13; 215:12; 241:8; 248:23; 249:5; 250:8; 261:11; 270:24; 271:7, 8; 272:11</p> <p><b>disagreement</b> [1] 266:2</p> <p><b>disclose</b> [1] 248:7</p> <p><b>discover</b> [1] 201:23</p> <p><b>discovery</b> [1] 259:2</p> <p><b>discuss</b> [9] 201:4; 204:19; 206:21, 25; 207:21; 226:21; 233:19; 234:2; 279:20</p> <p><b>discussed</b> [24] 201:14; 206:24; 207:4, 6, 9, 15, 19; 209:8; 215:22; 216:6; 225:13; 232:9, 10, 13; 234:6; 235:23; 242:3; 251:10; 255:12, 23; 256:5, 12, 17; 277:20</p> <p><b>discussing</b> [5] 184:24; 201:8; 208:23; 250:5; 271:14</p> <p><b>discussion</b> [9] 171:5; 175:23; 176:1, 3; 177:3; 225:15, 16; 232:22; 263:22</p> <p><b>discussions</b> [7] 175:20; 208:18; 209:17; 210:11; 227:1; 257:5, 23</p> <p><b>disposing</b> [1] 177:25</p> <p><b>dispute</b> [8] 199:12; 235:2, 4; 245:6; 265:20; 266:5; 267:13; 268:14</p> <p><b>distinctly</b> [1] 220:12</p> <p><b>distinguishable</b> [1] 262:14</p> <p><b>distribution</b> [1] 272:24</p> <p><b>division</b> [1] 185:25</p> <p><b>document</b> [3] 237:13, 16; 245:22</p> <p><b>documented</b> [1] 247:4</p> <p><b>documents</b> [7] 177:4, 25; 178:1; 179:7; 237:11; 242:25</p> <p><b>doesn't</b> [2] 202:19; 279:10</p> <p><b>dollars</b> [4] 188:2, 9; 197:17; 198:15</p> <p><b>donald</b> [5] 213:6; 271:14, 18; 273:15;</p>	<p>274:5</p> <p><b>dotcom</b> [1] 266:19</p> <p><b>drew</b> [1] 214:8</p> <p><b>due</b> [12] 190:24; 195:15, 20; 196:17; 197:4, 5; 221:1, 10; 250:24; 259:3, 10, 18</p> <p><b>duly</b> [1] 282:7</p> <p><b>duty</b> [1] 202:14</p> <p style="text-align: center;">* * E * *</p> <p><b>early</b> [1] 253:17</p> <p><b>editions</b> [1] 243:20</p> <p><b>efficient</b> [1] 174:14</p> <p><b>effort</b> [1] 177:6</p> <p><b>elaborate</b> [2] 195:7; 232:3</p> <p><b>elements</b> [2] 234:1, 2</p> <p><b>eliot</b> [19] 189:20; 192:21; 196:19; 197:19; 200:13; 226:19, 20; 227:1; 228:2, 21; 230:1; 234:7; 241:11, 20; 258:12; 271:20; 272:21; 273:3; 276:9</p> <p><b>employ</b> [2] 245:4, 12</p> <p><b>employed</b> [2] 244:24; 245:14</p> <p><b>employee</b> [4] 182:7; 230:5; 250:20; 282:16</p> <p><b>employees</b> [6] 171:7; 178:5; 179:11; 226:6; 230:16; 263:20</p> <p><b>employment</b> [17] 181:25; 182:11; 185:6; 244:25; 245:9; 247:16; 248:4; 252:5, 6; 253:17; 262:7; 263:13, 15; 265:14; 266:18; 270:4; 275:6</p> <p><b>encoded</b> [1] 227:3</p> <p><b>encoding</b> [2] 225:20; 226:7</p> <p><b>end</b> [2] 242:12; 277:11</p> <p><b>engage</b> [1] 246:7</p> <p><b>engaged</b> [1] 185:8</p>	<p><b>engagement</b> [3] 246:2; 251:20; 262:1</p> <p><b>engaging</b> [1] 257:4</p> <p><b>engineer</b> [1] 231:1</p> <p><b>engineering</b> [2] 171:12; 265:16</p> <p><b>entail</b> [2] 197:5, 25</p> <p><b>enter</b> [1] 225:17</p> <p><b>entered</b> [4] 216:3, 18; 237:20; 248:2</p> <p><b>entering</b> [3] 207:22; 215:25; 221:9</p> <p><b>entirety</b> [1] 222:22</p> <p><b>entities</b> [5] 181:23; 182:8; 215:6; 268:25; 269:2</p> <p><b>entity</b> [13] 181:24; 182:3; 236:10, 23; 237:1, 20; 238:2, 10; 247:12, 15; 260:22; 264:16, 18</p> <p><b>enumerated</b> [1] 233:1</p> <p><b>epstein</b> [8] 227:14, 16; 228:13, 14, 17, 18; 229:3, 13</p> <p><b>equipment</b> [5] 179:22; 211:21; 244:18; 267:14; 268:15</p> <p><b>equities</b> [1] 240:8</p> <p><b>equity</b> [5] 239:16; 240:19, 22; 241:9; 272:23</p> <p><b>erase</b> [1] 276:16</p> <p><b>erased</b> [1] 279:16</p> <p><b>errors</b> [8] 199:9, 17; 204:20, 22; 205:4, 7, 8, 11</p> <p><b>established</b> [1] 172:3</p> <p><b>estimated</b> [1] 270:5</p> <p><b>evaluate</b> [1] 230:22</p> <p><b>event</b> [2] 181:9, 10</p> <p><b>everyday</b> [1] 281:14</p> <p><b>evidence</b> [2] 204:24; 243:7</p> <p><b>evidencing</b> [1] 245:22</p> <p><b>ex-employee</b> [2]</p>
---	--	--	--	---

<p>18, 19  <b>exactly</b> [5]                  19; 198:4; 214:16;                  17; 276:14  <b>exaggerated</b> [3]                  1, 5, 11  <b>examination</b> [8]                  5; 187:19; 213:3;                  21, 22; 269:4; 270:19;                  20  <b>examining</b> [1]                  16  <b>excerpt</b> [1]                  1  <b>expressive</b> [3]                  8, 16, 22  <b>exhibit</b> [4]                  14; 238:12; 262:4;                  21  <b>exhibits</b> [4]                  5; 264:14; 265:5  <b>existed</b> [1]                  23  <b>existent</b> [1]                  24  <b>expansion</b> [1]                  1  <b>expended</b> [1]                  21  <b>experience</b> [10]                  19, 21; 214:3, 4, 7, 8,                  219:7; 274:9  <b>experienced</b> [1]                  22  <b>expert</b> [1]                  10  <b>expertise</b> [1]                  17  <b>explain</b> [6]                  18, 21, 22, 23;                  21; 226:14  <b>explicit</b> [1]                  13  <b>express</b> [4]                  9, 15; 224:23; 260:2  <b>expressed</b> [8]                  6, 10; 200:11, 20;                  15:23; 255:13, 20, 25  <b>expressing</b> [1]                  12:11  <b>expressions</b> [1]                  12:10  <b>extensive</b> [1]                  2  <b>extent</b> [5]                  17; 203:2; 244:8, 12;                  74  <hr/> <p style="text-align: center;"><b>** F **</b></p> <hr/> <b>face</b> [2]</p>	<p>220:24; 222:13  <b>facility</b> [1]                  225:22  <b>fact</b> [10]                  206:11; 213:13; 219:5;                  240:3, 18; 241:14; 257:20;                  259:19; 261:24; 277:17  <b>facts</b> [3]                  204:24; 214:22; 232:9  <b>factual</b> [3]                  234:20; 274:17, 23  <b>fair</b> [4]                  208:24; 218:25; 222:13;                  270:2  <b>fairly</b> [2]                  209:7; 219:11  <b>familiar</b> [5]                  178:5; 211:9; 223:25;                  226:12; 229:17  <b>favor</b> [1]                  204:13  <b>february</b> [1]                  280:10  <b>fees</b> [3]                  246:14; 270:6, 12  <b>felt</b> [6]                  201:21; 206:21, 25; 254:8,                  21; 280:22  <b>file</b> [2]                  179:12; 252:25  <b>filed</b> [5]                  266:23; 267:8, 23, 25;                  268:2  <b>filing</b> [8]                  175:25; 262:25; 268:7;                  269:5, 10, 16, 19  <b>filings</b> [1]                  262:20  <b>filled</b> [2]                  212:20; 269:17  <b>finances</b> [2]                  195:10; 224:7  <b>financial</b> [4]                  207:2; 258:25; 259:16;                  260:3  <b>find</b> [4]                  227:13; 280:5; 281:3  <b>fine</b> [3]                  203:12; 204:7, 17  <b>finish</b> [3]                  216:14; 258:13; 277:2  <b>firm</b> [2]                  185:22; 269:12  <b>first</b> [13]                  174:3; 184:14; 188:25;                  197:10, 14; 217:14, 16;                  218:3; 234:6; 235:20;                  243:23; 251:14; 259:22  <b>five</b> [1]                  258:12  <b>florida</b> [6]</p>	<p>180:1, 8, 15; 181:12, 14;                  280:25  <b>flowed</b> [1]                  243:21  <b>focal</b> [2]                  230:9, 11  <b>focused</b> [1]                  271:22  <b>foley</b> [9]                  184:4, 16; 185:2, 7; 201:5,                  9, 10; 204:19; 205:3  <b>followed</b> [1]                  225:3  <b>following</b> [2]                  250:12; 255:3  <b>follows</b> [2]                  170:4; 283:4  <b>foregoing</b> [2]                  282:4, 13  <b>forgoing</b> [1]                  283:3  <b>form</b> [41]                  175:16; 186:5; 188:4, 5;                  191:17; 196:12; 199:11;                  200:1, 2; 201:2, 25;                  202:21; 204:23; 206:1, 3;                  208:14; 209:2; 217:5;                  220:6, 19; 222:16; 231:5;                  232:25; 235:21; 237:23;                  239:6; 240:5; 243:9, 18;                  244:4, 15; 248:10, 24;                  249:13; 251:25; 253:2;                  257:24; 264:20; 265:25;                  274:20  <b>format</b> [2]                  269:16  <b>formalized</b> [1]                  241:6  <b>format</b> [1]                  200:6  <b>former</b> [1]                  270:21  <b>forms</b> [1]                  200:3  <b>formulas</b> [1]                  242:9  <b>formulate</b> [1]                  174:6  <b>formulated</b> [1]                  174:14  <b>found</b> [2]                  212:25; 283:3  <b>four</b> [1]                  263:2  <b>fourth</b> [1]                  176:20  <b>frame</b> [3]                  190:14; 192:4; 198:21  <b>frankly</b> [1]                  279:3  <b>freedkin</b> [8]</p>	<p>179:20, 24; 180:6, 16;                  181:6; 218:24; 244:1, 19  <b>frequent</b> [2]                  257:5, 12  <b>friend</b> [2]                  226:19; 241:19  <b>front</b> [2]                  246:3, 24  <b>full</b> [3]                  215:2; 275:25; 277:12  <b>fully</b> [2]                  208:13; 244:17  <b>funding</b> [1]                  234:10  <b>funds</b> [3]                  206:6; 216:11; 246:3  <hr/> <p style="text-align: center;"><b>** G **</b></p> <hr/> <b>gave</b> [3]                  223:6; 249:8, 14  <b>generated</b> [1]                  214:2  <b>gentleman</b> [1]                  223:25  <b>gentlemen</b> [1]                  281:15  <b>gerald</b> [1]                  217:17  <b>gets</b> [1]                  276:24  <b>give</b> [2]                  239:19; 258:11  <b>given</b> [12]                  238:24; 239:2, 8, 23;                  240:2, 4; 241:2; 248:21;                  249:4, 11; 250:16; 282:14  <b>goodbye</b> [2]                  281:17, 18  <b>graduate</b> [1]                  210:23  <b>granted</b> [3]                  238:20; 239:16; 241:9  <b>granting</b> [2]                  240:8, 19  <b>guess</b> [6]                  183:21; 203:18; 204:5;                  246:22; 264:24; 279:20  <b>guys</b> [1]                  258:11  <hr/> <p style="text-align: center;"><b>** H **</b></p> <hr/> <b>half</b> [2]                  188:2, 9  <b>hand</b> [1]                  282:22  <b>hands</b> [1]                  237:11  <b>hard</b> [1]                  193:23</p>	<p><b>hate</b> [2]                  182:25; 193:2  <b>haven't</b> [1]                  183:15  <b>he's</b> [9]                  187:5, 6; 202:17, 18;                  203:1, 18; 276:10; 279:23,                  25  <b>head</b> [2]                  228:25; 241:20  <b>headquarters</b> [2]                  182:15, 22  <b>hear</b> [1]                  272:3  <b>heard</b> [1]                  231:25  <b>hearing</b> [1]                  277:10  <b>heart</b> [1]                  199:4  <b>held</b> [4]                  237:19; 238:3, 17; 266:24  <b>hereby</b> [1]                  283:2  <b>hereto</b> [1]                  282:16  <b>hersh</b> [4]                  206:19; 212:20; 221:24;                  256:6  <b>hiding</b> [1]                  210:6  <b>high-quality</b> [1]                  174:16  <b>highly</b> [1]                  225:4  <b>hired</b> [6]                  183:5; 190:23; 210:22;                  219:2; 245:17; 275:10  <b>hiring</b> [1]                  217:21  <b>hold</b> [3]                  236:24; 238:7; 264:19  <b>holder</b> [1]                  267:4  <b>holders</b> [2]                  172:3; 271:12  <b>holding</b> [1]                  236:20  <b>holdings</b> [7]                  189:25; 190:20; 234:12,                  13, 25; 235:9; 241:12  <b>holds</b> [2]                  172:8; 187:2  <b>hollywood.com</b> [1]                  256:11  <b>hook</b> [1]                  281:11  <b>hopefully</b> [1]                  203:20  <b>horizon</b> [1]                  224:21</p>
---	--	---	---	---

<p><b>house</b> [1] 191:12</p> <p><b>huizenga</b> [20] 197:13, 21, 22; 188:2, 8, 11; 189:25; 190:4, 8, 20; 191:7, 16, 23; 232:11; 233:12, 13, 25; 235:8; 251:2</p> <p><b>huizenga's</b> [1] 199:24</p> <p><b>hydro-mechanical</b> [1] 193:6; 265:17, 23</p> <hr/> <p style="text-align: center;">* *   * *</p>	<p><b>includes</b> [1] 220:7</p> <p><b>increase</b> [1] 174:23</p> <p><b>incurred</b> [1] 270:5</p> <p><b>indicate</b> [3] 213:7; 214:5; 264:14</p> <p><b>indicated</b> [14] 177:6, 15; 192:17; 205:13, 24; 209:5; 213:5; 215:7, 13; 240:13; 253:23; 255:24; 269:4; 270:3</p> <p><b>indicating</b> [1] 215:20</p> <p><b>individual</b> [1] 236:7</p> <p><b>industry</b> [1] 214:12</p> <p><b>inflated</b> [1] 223:8</p> <p><b>inform</b> [2] 176:4; 273:10</p> <p><b>information</b> [7] 184:1; 216:21; 226:9; 243:14, 18; 263:19; 276:25</p> <p><b>infringement</b> [2] 191:22; 196:4</p> <p><b>infringements</b> [1] 191:15</p> <p><b>infusion</b> [2] 216:8, 9</p> <p><b>initial</b> [7] 233:3, 6; 234:12; 248:12; 259:4, 11, 17</p> <p><b>initially</b> [1] 246:9</p> <p><b>inquiry</b> [2] 186:7, 16</p> <p><b>insignificant</b> [1] 271:25</p> <p><b>instance</b> [2] 184:14; 269:5</p> <p><b>instances</b> [1] 233:1</p> <p><b>instruct</b> [2] 179:6; 255:6</p> <p><b>instructed</b> [1] 253:25</p> <p><b>instructions</b> [1] 255:4</p> <p><b>integrated</b> [1] 243:20</p> <p><b>intellectual</b> [25] 172:5; 175:22; 183:4; 185:9, 25; 186:1, 3, 9; 190:25; 199:5; 200:25; 218:18; 223:15, 23; 231:16; 233:8, 20, 25; 251:5; 258:7; 259:6;</p>	<p>262:11; 263:21; 266:2, 9</p> <p><b>intentions</b> [1] 207:21</p> <p><b>interest</b> [18] 224:9; 236:13, 14, 17, 24; 237:19; 238:3, 6, 17, 23; 239:12; 240:3, 13, 14, 20, 22; 261:16; 271:12</p> <p><b>interested</b> [2] 224:11; 282:16</p> <p><b>interface</b> [1] 230:1</p> <p><b>internet</b> [2] 175:1, 2</p> <p><b>interpose</b> [1] 203:17</p> <p><b>interrogatories</b> [3] 280:10, 15, 21</p> <p><b>interruption</b> [1] 274:3</p> <p><b>interviewed</b> [1] 268:9</p> <p><b>introduced</b> [5] 184:4; 192:19, 21; 243:24; 260:13</p> <p><b>introduction</b> [3] 226:20; 228:15; 248:12</p> <p><b>inventing</b> [1] 192:13</p> <p><b>invention</b> [1] 234:3</p> <p><b>inventions</b> [14] 172:7; 173:18, 20; 175:4, 9; 223:15; 231:9, 14; 234:1, 5; 262:11, 15, 23; 263:8</p> <p><b>inventor</b> [2] 187:5; 192:6</p> <p><b>inventors</b> [1] 223:14</p> <p><b>invest</b> [2] 188:9; 189:5</p> <p><b>investment</b> [28] 187:14, 22; 188:1, 3, 15; 195:21; 197:7, 15; 198:2, 3, 13, 18; 214:12; 223:13; 232:7, 19, 20, 22; 233:2, 4, 5, 6; 234:12, 19; 250:1; 259:4, 11; 260:1</p> <p><b>investments</b> [3] 234:13; 250:25; 261:7</p> <p><b>investor</b> [2] 195:1; 227:25</p> <p><b>investors</b> [3] 232:11, 16; 257:13</p> <p><b>invitation</b> [1] 184:15</p> <p><b>invoices</b> [1] 264:21</p> <p><b>involuntary</b> [1] 179:16</p>	<p><b>involved</b> [36] 171:16; 172:1; 173:17; 180:25; 181:13; 185:13, 18; 187:13, 25; 193:7; 195:18; 199:19; 205:21; 207:13; 218:14; 224:14; 226:1, 6; 228:2; 229:18, 25; 233:8, 13, 20; 235:5; 241:25; 242:8; 251:5; 255:21; 256:21; 258:7; 260:14; 261:6; 262:12; 265:22; 271:23</p> <p><b>involvement</b> [7] 175:8, 13; 185:17; 186:1; 226:25; 233:15; 260:22</p> <p><b>involving</b> [2] 244:24; 267:8</p> <p><b>ip</b> [5] 175:25; 176:5; 184:21; 185:17; 232:25</p> <p><b>ip's</b> [1] 241:24</p> <p><b>issue</b> [5] 223:1; 239:10; 242:2; 269:14; 279:21</p> <p><b>issued</b> [4] 174:5; 262:18, 19; 263:6</p> <p><b>issues</b> [2] 200:10; 218:18</p> <p><b>it'd</b> [1] 217:14</p> <p><b>iview.llc</b> [1] 236:2</p> <p><b>iviewit</b> [142] 175:15, 22, 25; 176:5, 9; 177:5; 178:1, 6, 20; 179:2, 8, 11; 181:20, 21, 23; 182:8, 13; 183:25; 184:1, 4, 8, 13; 186:9, 23, 25; 187:2, 14, 23; 188:10; 190:22; 191:15, 22; 192:3, 20; 193:8, 15; 194:11, 20; 195:6; 196:2, 5, 8; 197:7; 199:3; 205:19; 206:6; 207:12; 210:18; 212:2, 24; 213:22; 214:19; 215:6; 217:19; 219:2, 21; 220:9; 223:1, 9; 224:10, 24; 225:19, 21, 23; 226:22; 227:12; 230:13, 23; 231:11, 16, 23; 232:2, 8; 233:21; 234:14, 19; 235:19, 20; 236:5, 25; 237:18; 238:2, 7, 13, 17; 239:12, 20; 240:13, 15, 19; 242:15; 243:1, 24; 247:10, 12; 248:5, 7, 15, 17; 249:16; 250:18, 25; 251:6, 10, 23; 252:6; 253:6; 255:22; 256:2, 25; 257:19; 259:8, 16; 260:21,</p>	<p>22; 262:11; 263:4, 8, 11; 266:19, 23, 25; 267:3, 5, 6, 14, 25; 268:25; 269:20; 270:4, 5, 22; 272:24; 273:6; 275:4, 7; 279:22, 25</p> <p><b>iviewit's</b> [5] 214:1; 226:25; 258:25; 263:21; 273:2</p> <p><b>iviewit.com</b> [8] 170:16; 182:2; 236:5; 247:14; 253:1; 262:8; 264:15; 266:19</p> <p><b>iviewit.llc</b> [1] 236:2</p> <hr/> <p style="text-align: center;">* * J * *</p> <p><b>january</b> [3] 198:20, 22</p> <p><b>jim</b> [3] 241:17, 18, 19</p> <p><b>joao</b> [5] 186:19, 21; 187:4; 190:21; 191:1</p> <p><b>jog</b> [1] 182:3</p> <p><b>join</b> [1] 203:24</p> <p><b>jude</b> [3] 193:6, 10, 12</p> <p><b>judgment</b> [5] 221:8; 239:7; 247:21, 23; 248:1</p> <p><b>july</b> [2] 193:5; 251:17</p> <hr/> <p style="text-align: center;">* * K * *</p> <p><b>k-l-o-s-l-o-s-y</b> [1] 193:18</p> <p><b>kasser</b> [4] 211:13; 212:5, 18; 280:11</p> <p><b>kasser's</b> [1] 280:15</p> <p><b>ken</b> [8] 185:16, 21; 213:7; 258:4; 271:14, 18; 273:15; 274:5</p> <p><b>kloslosky</b> [4] 194:1, 3, 5, 7</p> <p><b>kloslosy</b> [1] 193:17</p> <p><b>knowing</b> [1] 192:18</p> <p><b>knowledge</b> [18] 171:20; 172:1; 175:6; 179:14; 185:10; 187:8, 9; 240:6, 12; 244:2, 3, 9, 13; 261:20; 277:9; 280:7, 19, 21</p> <p><b>kodak</b> [1]</p>
--	---	---	---	--



<p>179:21; 179:5; 190:3; 201:4; 261:8 <b>nature</b> [3] 179:1; 260:5; 267:13 <b>necessity</b> [1] 179:8 <b>needs</b> [2] 179:16; 202:25 <b>negotiated</b> [1] 179:3 <b>negotiations</b> [1] 179:16 <b>nobody</b> [2] 179:19; 278:22 <b>non-disclosure</b> [1] 179:12 <b>normal</b> [2] 179:15; 262:25 <b>normally</b> [3] 179:20; 206:13, 14 <b>notary</b> [2] 179:4, 24 <b>noticed</b> [1] 179:19 <b>notification</b> [1] 179:5 <b>noting</b> [1] 179:5 <b>November</b> [1] 179:19 <b>number</b> [6] 179:19; 199:25; 209:17; 179:1; 248:8; 283:5 <hr/><b>** O **</b><hr/><b>path</b> [1] 179:8 <b>object</b> [24] 179:4; 199:11; 201:2; 179:20, 21; 203:5; 204:23; 179:1; 208:14; 209:2; 179:5; 220:6, 19; 222:16; 179:5; 235:21; 237:23; 179:6; 240:5; 249:13; 179:19, 20; 274:20 <b>objecting</b> [2] 179:24; 244:7 <b>objection</b> [36] 179:16; 180:17, 23; 179:16; 186:4; 191:17, 25; 179:23; 197:12; 203:8, 11, 179:223:17; 225:1; 227:23; 179:23; 232:12; 234:15; 179:16; 243:9; 244:4, 15; 179:25; 248:10, 24; 179:25; 253:2; 261:1; 179:16; 264:1; 265:24; 179:9, 19; 269:22; 270:25; 179:25 <b>objections</b> [2]</p>	<p>204:7; 225:7 <b>obligations</b> [3] 203:22; 206:7, 10 <b>obtain</b> [2] 248:14; 276:13 <b>obviously</b> [9] 179:15; 185:17; 212:5; 216:21; 263:3; 277:15; 279:9; 280:7, 15 <b>occurred</b> [1] 261:14 <b>october</b> [3] 178:24; 188:20; 189:1 <b>offense</b> [1] 235:13 <b>offhand</b> [1] 235:12 <b>office</b> [4] 199:9; 256:24; 262:18; 263:2 <b>officer</b> [1] 215:6 <b>offices</b> [5] 178:1, 20; 184:10, 13; 225:22 <b>offset</b> [1] 257:20 <b>oh</b> [4] 176:20; 237:15; 248:17; 276:12 <b>okay</b> [176] 170:10, 14, 25; 171:6, 14, 18; 172:14, 22, 25; 173:23; 174:1, 8, 12, 17, 21; 175:3; 176:13; 177:18; 180:14; 182:6; 183:12; 185:16, 21, 24; 186:13, 21; 187:25; 188:8, 12, 21, 24; 189:7, 23; 190:2, 15; 191:9, 14; 192:9, 12, 23; 193:4; 195:13; 197:24; 199:16, 21; 200:9, 19; 201:12; 203:9, 23; 204:4, 7; 205:12, 23; 206:2, 17; 207:5; 208:4, 11; 209:5, 10, 13; 210:1; 211:10, 22; 212:9, 14, 17; 213:23; 214:6, 14, 18, 21; 215:4; 216:13, 20; 217:10; 218:3; 219:15; 220:24; 221:16, 25; 222:2; 224:9, 16, 19, 22; 225:20; 226:1, 5, 23; 227:20; 228:5, 16, 23; 229:20; 230:3, 10, 24; 231:22; 232:5, 21; 233:3, 7, 15, 23; 235:1, 25; 236:8, 12, 21; 237:1, 9, 18, 25; 238:23; 239:1, 21; 240:1, 11, 17, 21; 241:13, 22; 242:4; 244:5, 10; 246:1, 6; 247:5, 23; 248:4;</p>	<p>250:3, 7, 12, 22; 251:1, 21; 253:14, 20; 254:12, 19, 25; 256:8; 257:1, 14, 18; 258:14; 259:9, 15; 260:2, 17; 261:4, 10; 262:22; 263:3, 7; 264:16, 25; 265:7; 266:15, 24; 267:23; 268:16; 269:3; 274:17; 275:17; 276:12; 278:10; 280:2, 17, 24; 281:7, 14 <b>ongoing</b> [3] 206:7; 245:6; 251:23 <b>operate</b> [1] 231:24 <b>operated</b> [3] 225:23; 226:15, 16 <b>operating</b> [2] 182:3; 215:5 <b>operation</b> [1] 271:23 <b>operations</b> [3] 207:14; 257:2; 271:10 <b>opine</b> [1] 272:17 <b>opinion</b> [4] 256:1; 274:12, 18, 24 <b>opportunity</b> [2] 208:5, 7 <b>option</b> [1] 250:21 <b>order</b> [3] 243:3; 249:25; 273:5 <b>ordered</b> [1] 282:20 <b>organization</b> [4] 172:24; 191:7; 255:17; 271:9 <b>oriented</b> [2] 226:17; 255:19 <b>original</b> [2] 260:15; 282:18 <b>outcome</b> [5] 191:4; 225:14, 16; 268:12; 282:17 <b>outside</b> [1] 257:13 <b>overall</b> [1] 207:17 <b>overinflated</b> [1] 254:1 <b>overstated</b> [2] 254:5, 11 <b>owed</b> [1] 253:6 <b>owing</b> [1] 270:11 <b>owned</b> [2] 236:6 <b>owner</b> [3] 179:21; 265:21; 266:7</p>	<p><b>ownership</b> [2] 240:15; 266:2 <hr/><b>** P **</b><hr/><b>p.m.</b> [2] 170:4; 281:20 <b>pack</b> [1] 177:7 <b>page</b> [3] 283:1, 5, 7 <b>paid</b> [8] 215:1; 222:23; 246:8; 253:13, 14; 256:25; 273:12 <b>pan</b> [6] 231:9, 15, 20, 23; 232:1, 24 <b>part</b> [18] 190:15, 24; 195:15, 19; 201:18; 207:17; 223:6, 16; 231:10; 243:6, 14; 246:4; 251:2; 257:7, 9; 259:17; 271:1; 273:2 <b>partial</b> [1] 223:2 <b>participate</b> [1] 257:2 <b>parties</b> [5] 172:9; 197:18; 255:23; 282:15, 20 <b>party</b> [3] 196:13; 203:18; 282:19 <b>patent</b> [20] 172:2; 176:7; 183:3; 185:18; 199:8; 200:23, 24; 201:7; 218:18; 257:21; 262:18; 263:1, 2; 265:10; 266:8, 16; 267:4; 269:5, 10, 19 <b>patentable</b> [1] 262:15 <b>patented</b> [2] 266:14, 15 <b>patenting</b> [1] 266:11 <b>patents</b> [20] 172:4, 7, 13; 175:25; 187:1; 190:22; 204:20; 205:4, 11; 258:7; 262:18, 19; 263:6, 9; 265:13, 22; 266:20, 21, 23, 24 <b>patience</b> [1] 276:23 <b>pay</b> [3] 216:1; 255:7; 272:17 <b>payable</b> [9] 205:22; 207:6, 8, 16; 210:18, 21; 223:1; 270:20; 271:7 <b>payables</b> [1]</p>	<p>272:13 <b>payment</b> [11] 206:25; 207:11, 22; 208:23; 215:9, 10, 18; 221:9; 223:2; 246:3 <b>payments</b> [16] 205:14, 18; 206:23; 210:10, 14; 215:8; 217:1; 254:2, 19, 21, 25; 255:5, 9; 272:21; 273:5, 7 <b>people</b> [8] 179:4; 193:7, 9; 198:8; 211:15; 214:14; 255:15; 279:5 <b>percent</b> [6] 236:5, 6, 14, 18, 20; 238:9 <b>percentage</b> [2] 236:19; 238:6 <b>percentages</b> [1] 238:8 <b>perceive</b> [1] 239:24 <b>perform</b> [3] 269:9; 271:21; 273:11 <b>performed</b> [6] 201:20; 217:19; 235:18; 238:21; 249:6; 272:1 <b>period</b> [5] 178:23; 212:13, 19; 218:11; 241:21 <b>permanent</b> [1] 271:9 <b>permission</b> [7] 276:4, 7; 277:7, 16; 278:15; 279:5, 6 <b>person</b> [7] 184:4; 196:25; 220:8; 228:14; 260:18; 280:18, 22 <b>person's</b> [2] 203:11; 211:1 <b>personal</b> [8] 181:3; 241:10, 19; 243:14, 17; 244:9, 13; 272:25 <b>personally</b> [8] 179:13; 218:7, 8; 231:13; 245:18; 248:8; 278:8; 279:16 <b>pertain</b> [1] 268:20 <b>pertaining</b> [3] 270:19; 271:13; 273:15 <b>phenomena</b> [1] 242:10 <b>philosophy</b> [1] 219:24 <b>phone</b> [6] 176:16; 193:24; 272:20; 279:3, 4, 5 <b>phrases</b> [1] 231:14</p>
--	---	--	--	---

<p><b>pick</b> [1] 261:12; 269:25; 277:10</p> <p><b>picture</b> [1] 194:11; 226:21; 232:23</p> <p><b>place</b> [2] 204:20, 21; 233:24; 257:13; 261:7</p> <p><b>place</b> [17] 188:18, 20, 25; 194:10, 13; 194:14; 200:1, 2; 208:2; 227:18; 228:5, 7; 279:17</p> <p><b>placed</b> [1] 262:24</p> <p><b>places</b> [1] 248:3</p> <p><b>plan</b> [9] 242:14, 22; 243:4; 250:21; 250:20, 21</p> <p><b>played</b> [1] 246:22</p> <p><b>plane</b> [8] 195:14; 204:9; 227:22; 232:3; 272:2</p> <p><b>plus</b> [1] 227:17; 228:7; 256:25</p> <p><b>plut</b> [13] 197:16; 206:18; 213:15; 213:1; 230:9; 258:22; 260:9; 271:24; 271:21</p> <p><b>pluts</b> [1] 184:7; 188:12, 21; 189:17; 192:13; 196:16; 197:1, 19; 198:6; 227:22; 250:1; 280:25; 281:5</p> <p><b>police</b> [5] 17; 268:3, 6, 10</p> <p><b>policy</b> [2] 12</p> <p><b>pool</b> [15] 13, 14, 19, 25; 172:2; 24; 173:5, 18; 13; 176:7; 257:21</p> <p><b>pooling</b> [1] 180:24</p> <p><b>pools</b> [1] 183:2; 199:7; 215:5, 16; 218:11; 221:7; 234:25; 235:10; 243:1; 270:21, 22; 271:3, 5</p> <p><b>poor</b> [2] 205:25</p> <p><b>portion</b> [4] 9; 190:16; 204:15</p> <p><b>pose</b> [1] 14</p> <p><b>posed</b> [1] 7</p> <p><b>posing</b> [1] 9</p> <p><b>position</b> [16] 20; 186:22; 205:25; 1, 16; 215:16; 219:14; 2; 221:5; 225:17; 1; 235:6; 244:2;</p>	<p><b>possibility</b> [3] 194:11; 226:21; 232:23</p> <p><b>potential</b> [5] 204:20, 21; 233:24; 257:13; 261:7</p> <p><b>potentially</b> [1] 224:11</p> <p><b>practice</b> [2] 219:12; 222:5</p> <p><b>practices</b> [1] 175:7</p> <p><b>precede</b> [1] 262:24</p> <p><b>precise</b> [1] 248:3</p> <p><b>precisely</b> [3] 189:14; 191:12; 252:10</p> <p><b>predating</b> [1] 262:7</p> <p><b>preemptorally</b> [1] 246:22</p> <p><b>prejudice</b> [1] 269:20</p> <p><b>premises</b> [3] 227:17; 228:7; 256:25</p> <p><b>premium</b> [1] 255:16</p> <p><b>preparation</b> [1] 170:22</p> <p><b>prepared</b> [2] 216:10; 248:4</p> <p><b>present</b> [13] 184:7; 188:12, 21; 189:17; 192:13; 196:16; 197:1, 19; 198:6; 227:22; 250:1; 280:25; 281:5</p> <p><b>presentation</b> [6] 188:13; 195:19, 23; 196:1, 3; 207:18</p> <p><b>presented</b> [1] 246:14</p> <p><b>preserving</b> [1] 180:24</p> <p><b>president</b> [13] 183:2; 199:7; 215:5, 16; 218:11; 221:7; 234:25; 235:10; 243:1; 270:21, 22; 271:3, 5</p> <p><b>president's</b> [1] 181:12</p> <p><b>pressing</b> [1] 273:4</p> <p><b>presume</b> [1] 275:19</p> <p><b>presuming</b> [1] 220:15</p> <p><b>pretty</b> [2] 277:10, 12</p> <p><b>previous</b> [3] 170:17; 252:12; 261:2</p>	<p><b>previously</b> [2] 192:17; 258:21</p> <p><b>priced</b> [1] 255:17</p> <p><b>primarily</b> [2] 175:1; 271:22</p> <p><b>primary</b> [1] 267:4</p> <p><b>principal</b> [6] 179:21; 192:6; 228:21, 23; 229:8; 232:6</p> <p><b>principals</b> [2] 171:11; 189:25</p> <p><b>principle</b> [1] 236:1</p> <p><b>prior</b> [36] 195:20; 206:22; 215:17; 216:17; 217:2; 219:1, 14; 220:22; 221:4, 14; 232:19, 21; 238:22, 25; 243:20; 246:16, 17; 251:20, 22; 252:5, 6, 22; 259:11; 262:3, 13; 263:3, 6, 9, 12, 14, 15; 266:11; 270:3, 12; 273:7; 275:11</p> <p><b>prioritizing</b> [1] 206:10</p> <p><b>private</b> [1] 214:11</p> <p><b>pro</b> [1] 239:25</p> <p><b>problem</b> [9] 184:18, 19, 23; 201:9, 10; 228:16; 229:3; 276:17; 279:18</p> <p><b>problems</b> [5] 200:24; 201:5, 21, 23; 241:24</p> <p><b>procedures</b> [1] 225:6</p> <p><b>proceed</b> [1] 203:19</p> <p><b>proceeding</b> [5] 179:16; 247:8, 9, 20; 253:1</p> <p><b>process</b> [5] 176:15; 250:24; 259:3; 263:1</p> <p><b>processes</b> [1] 199:19</p> <p><b>products</b> [2] 175:4; 263:22</p> <p><b>program</b> [1] 229:1</p> <p><b>proper</b> [2] 219:17; 221:12</p> <p><b>properly</b> [2] 199:18; 250:1</p> <p><b>properties</b> [13] 175:22; 185:9; 186:1, 10; 223:15, 23; 224:8; 231:17;</p>	<p>233:8, 20; 258:7; 262:12; 266:9</p> <p><b>property</b> [17] 172:5; 181:4; 182:12, 18, 20; 183:4; 186:3; 190:25; 199:5; 200:25; 218:18; 233:25; 251:6; 259:6; 263:21; 266:3</p> <p><b>proposed</b> [1] 176:6</p> <p><b>proskauer</b> [82] 185:8, 12, 23, 24; 186:8, 11; 202:1; 205:13; 207:7, 8, 12, 22; 208:24; 210:10; 213:6; 215:1, 8, 21; 216:1, 17, 22; 217:3, 18; 219:9, 17; 221:9; 222:17; 223:2, 8; 235:18; 236:9, 12, 24; 237:19, 21; 238:3, 17, 20, 24; 239:5, 11, 16, 19; 240:7, 12, 19, 23; 241:10; 248:21; 249:5; 250:17, 19; 251:4, 9, 24; 253:25; 254:16, 20; 255:13, 16, 21; 256:1, 18; 257:19; 258:3; 261:24; 262:2; 264:6, 9, 10; 268:24; 269:1, 9; 271:15, 19, 21; 272:22; 273:7, 10, 16; 275:7, 10</p> <p><b>proskauer's</b> [3] 213:8; 272:17; 274:7</p> <p><b>protect</b> [1] 271:11</p> <p><b>provide</b> [7] 174:14, 19; 186:9; 237:10; 243:6, 14, 17</p> <p><b>provided</b> [16] 219:8, 10, 16; 220:2, 4, 12, 17; 222:9; 245:23; 246:15, 20, 21, 23; 248:22; 251:9; 280:21</p> <p><b>providing</b> [2] 184:21; 258:6</p> <p><b>provisional</b> [9] 233:9, 11, 12, 16; 262:20; 263:8; 269:5, 18, 19</p> <p><b>provisionals</b> [2] 262:25; 263:14</p> <p><b>prudent</b> [1] 219:10</p> <p><b>prusaski</b> [95] 175:16; 180:17, 22; 182:16; 186:4; 187:12, 19; 188:4; 191:17, 25; 194:23; 197:12; 199:11; 201:2; 202:16, 24; 203:9, 14, 23; 204:2, 4, 23; 205:15; 206:1; 208:14; 209:2; 217:5; 220:6, 19; 222:16; 223:17; 225:1, 5; 227:6,</p>	<p>23; 229:23; 231:5; 232:12; 234:15; 235:21; 237:12, 23; 239:6; 240:5; 242:16, 18; 243:9; 244:4, 7, 15; 246:25; 248:10, 24; 249:13; 251:25; 253:2; 262:16; 264:1, 19, 25; 265:7, 24; 267:9, 19; 268:18, 23; 270:1; 271:2; 272:10; 273:19, 22, 25; 274:4, 22; 275:5, 13, 17; 276:3, 19; 277:1, 4; 278:6, 11, 14, 17; 279:2, 11, 19; 280:2, 9, 17, 24; 281:7, 13, 17</p> <p><b>public</b> [2] 282:4, 24</p> <p><b>purchase</b> [1] 250:20</p> <p><b>purpose</b> [10] 173:24; 174:5, 15, 25; 176:2, 8; 180:14, 16; 184:12; 224:13</p> <p><b>purposes</b> [5] 172:4; 180:24; 219:3; 279:24; 280:1</p> <p><b>pursuant</b> [1] 225:5</p> <p><b>putting</b> [1] 180:23</p> <p><b>puzzling</b> [1] 201:25</p> <hr/> <p style="text-align: center;">** Q **</p> <p><b>qualifications</b> [1] 230:25</p> <p><b>qualified</b> [1] 212:1</p> <p><b>quality</b> [2] 201:20; 238:21</p> <p><b>quantity</b> [1] 220:3</p> <p><b>quarter</b> [3] 176:21; 217:15, 16</p> <p><b>question</b> [47] 172:23; 173:1, 15; 177:22; 180:21; 181:2; 184:6; 185:12; 187:20; 188:6; 191:19; 192:5; 195:14; 200:23; 201:24; 202:22; 203:3, 6, 25; 204:9, 10, 14; 205:1; 220:11; 221:10; 224:4; 230:6, 8; 231:12; 243:11; 244:6; 245:25; 246:4; 249:1; 252:2; 253:4; 254:12; 255:18; 261:2; 267:11, 16; 271:4; 273:25; 274:21; 275:19</p> <p><b>questioning</b> [2] 202:1; 231:8</p>
--	--	--	---	---

<p><b>questions</b> [14] 18, 23; 171:1; 173:11; 6, 14; 203:1; 223:7; 19; 272:3; 275:14; 20; 278:23</p> <p><b>quick</b> [1] 2</p> <p><b>quickly</b> [1] 20</p> <p><b>quid</b> [1] 24</p> <p><b>quo</b> [1] 25</p> <hr/> <p style="text-align: center;"><b>** R **</b></p> <hr/> <p><b>raised</b> [2] 12; 239:10</p> <p><b>rain</b> [2] 23; 228:17</p> <p><b>rate</b> [1] 21</p> <p><b>rates</b> [5] 4; 245:22; 256:7, 13; 7</p> <p><b>ration</b> [2] 4, 6</p> <p><b>ray</b> [1] 25</p> <p><b>Raymond</b> [6] 19; 187:4; 206:19; 20; 221:24; 256:6</p> <p><b>read</b> [3] 13, 16; 283:3</p> <p><b>real</b> [4] 17; 182:13, 21; 267:8</p> <p><b>reason</b> [11] 6; 185:8; 211:25; 23; 230:18; 234:18; 22; 245:3; 261:21; 26</p> <p><b>reasonable</b> [3] 9; 220:17; 221:1</p> <p><b>reasonably</b> [1] 9</p> <p><b>recall</b> [65] 3, 4; 175:23; 176:19, 177:5; 178:13, 14; 24; 182:9; 183:10, 18, 23; 186:19; 189:8, 14; 3; 191:9; 192:24; 19; 194:5, 6, 13, 17; 25; 196:16, 23, 24; 22; 198:1, 4, 7, 10, 24; 201:8, 10; 207:24; 15; 211:7; 217:9, 13; 20; 227:24; 229:1; 4, 11; 238:8; 239:22; 11; 246:11; 251:15, 252:9, 10, 16; 260:24; 8, 12; 262:24; 264:7;</p>	<p>269:6; 271:16; 279:1</p> <p><b>receivable</b> [3] 205:22; 273:9, 12</p> <p><b>receive</b> [1] 268:5</p> <p><b>received</b> [4] 215:17; 216:8; 272:20; 275:4</p> <p><b>recent</b> [1] 280:14</p> <p><b>recited</b> [1] 221:13</p> <p><b>recollect</b> [1] 239:15</p> <p><b>recollection</b> [7] 89:12, 16; 208:12; 217:20; 241:16; 249:10; 264:23</p> <p><b>recommendation</b> [2] 250:11, 14</p> <p><b>reconcile</b> [1] 252:21</p> <p><b>record</b> [10] 180:24; 225:9; 276:7; 277:2, 18; 278:1; 279:4, 7; 280:10; 282:14</p> <p><b>recorded</b> [2] 208:12; 282:11</p> <p><b>recording</b> [7] 275:19, 23; 276:1, 2, 5; 277:13; 278:15</p> <p><b>records</b> [5] 252:7, 8; 259:1, 16; 260:3</p> <p><b>recross</b> [1] 275:16</p> <p><b>redirect</b> [1] 268:19</p> <p><b>reduced</b> [1] 282:11</p> <p><b>reference</b> [1] 194:10</p> <p><b>referenced</b> [2] 226:18; 265:9</p> <p><b>referred</b> [4] 185:14, 15; 186:12; 269:6</p> <p><b>referring</b> [2] 238:13; 265:6</p> <p><b>reflected</b> [3] 207:25; 208:18; 263:6</p> <p><b>refresh</b> [1] 264:23</p> <p><b>regard</b> [45] 170:15, 25; 171:2; 175:14, 21; 183:2, 12; 184:1; 185:6; 186:8, 21, 23; 187:22; 190:7, 9, 11; 195:24; 198:17; 201:6; 205:12; 206:20; 210:13, 17; 213:5; 216:20; 217:21; 218:4, 5, 9; 223:12; 229:3; 230:12; 231:22; 232:23;</p>	<p>233:7; 235:16; 246:9; 250:17; 258:6; 260:21; 261:23; 263:7; 265:22; 268:9; 280:20</p> <p><b>regarding</b> [2] 190:22; 263:20</p> <p><b>regardless</b> [1] 220:3</p> <p><b>regular</b> [4] 180:3; 207:3, 5; 210:3</p> <p><b>reimbursement</b> [1] 257:24</p> <p><b>related</b> [3] 227:25; 228:1; 282:15</p> <p><b>relation</b> [1] 259:10</p> <p><b>relationship</b> [5] 179:23; 180:4; 183:13; 219:13; 244:18</p> <p><b>relative</b> [3] 172:23; 176:5; 282:8</p> <p><b>release</b> [1] 203:21</p> <p><b>relevance</b> [20] 180:18; 182:16; 194:24; 197:12; 203:11, 24; 223:17; 225:1; 227:23; 229:23; 232:12; 234:15; 242:16; 246:25; 261:1; 262:16; 264:1; 265:24; 267:9, 19</p> <p><b>relevancy</b> [5] 202:22; 203:3, 5, 6, 8</p> <p><b>relevant</b> [4] 202:1; 225:2, 4, 10</p> <p><b>relinquished</b> [1] 240:12</p> <p><b>reluctant</b> [1] 269:25</p> <p><b>remember</b> [2] 179:5; 191:2</p> <p><b>removed</b> [3] 182:14, 18, 21</p> <p><b>rep</b> [3] 279:22; 280:6; 281:5</p> <p><b>repeat</b> [4] 191:19; 204:9; 235:22; 248:25</p> <p><b>repeatedly</b> [1] 256:20</p> <p><b>repetitive</b> [4] 177:22, 24; 192:24; 193:2</p> <p><b>rephrase</b> [4] 173:3; 175:17; 230:7; 254:12</p> <p><b>replaced</b> [2] 211:3; 212:18</p> <p><b>report</b> [10] 191:7, 8; 267:7, 17, 21, 24, 25; 268:2, 7, 10</p> <p><b>reporter</b> [9]</p>	<p>204:12; 237:5, 7, 11; 275:21; 276:15, 24; 277:18; 282:4</p> <p><b>representation</b> [10] 196:7, 11, 15; 199:14; 215:3; 219:4; 235:14; 237:21; 250:18; 255:22</p> <p><b>representative</b> [9] 176:7; 195:10; 197:21; 209:12, 13; 235:8; 261:11; 280:1, 12</p> <p><b>representative's</b> [1] 280:4</p> <p><b>representatives</b> [5] 188:14; 190:20; 195:17; 196:21, 22</p> <p><b>represented</b> [7] 202:17; 203:2; 247:7; 248:16, 17, 18; 260:4</p> <p><b>representing</b> [4] 228:22, 24; 232:18; 279:24</p> <p><b>request</b> [8] 195:9; 229:20, 24; 230:4, 11; 243:5, 13; 279:14</p> <p><b>requested</b> [7] 204:15; 230:8; 246:20, 24; 250:19, 23; 263:23</p> <p><b>requests</b> [1] 223:21</p> <p><b>require</b> [2] 223:14; 243:5</p> <p><b>required</b> [1] 243:3</p> <p><b>requirement</b> [1] 223:22</p> <p><b>research</b> [2] 245:24; 262:12</p> <p><b>researched</b> [1] 262:17</p> <p><b>resolve</b> [1] 281:8</p> <p><b>resolved</b> [3] 268:14; 269:14, 15</p> <p><b>respect</b> [3] 201:9; 271:7; 272:23</p> <p><b>responds</b> [1] 237:7</p> <p><b>response</b> [2] 204:1; 229:9</p> <p><b>responses</b> [1] 205:17</p> <p><b>responsibility</b> [2] 222:5; 230:22</p> <p><b>responsible</b> [4] 177:13, 19; 222:18; 271:10</p> <p><b>restate</b> [5] 188:5; 206:2; 243:10; 244:5; 252:1</p> <p><b>restrict</b> [1]</p>	<p>230:19</p> <p><b>restricted</b> [1] 175:2</p> <p><b>result</b> [2] 200:2; 242:12</p> <p><b>retain</b> [2] 217:24; 218:10</p> <p><b>retained</b> [4] 218:4, 7, 8; 219:2</p> <p><b>retainer</b> [8] 237:2; 245:11, 18; 246:2, 7, 10, 23; 262:1</p> <p><b>retaining</b> [2] 218:15; 240:14</p> <p><b>retention</b> [1] 217:22</p> <p><b>retirement</b> [1] 245:2</p> <p><b>returning</b> [1] 268:14</p> <p><b>review</b> [11] 184:15; 190:24; 195:9, 16; 208:6, 8; 259:7, 24; 263:13; 272:12; 275:3</p> <p><b>reviewed</b> [10] 208:21; 216:11; 221:18; 251:11; 259:5; 261:25; 263:5, 12; 275:2</p> <p><b>reviewing</b> [3] 251:15; 252:23; 261:7</p> <p><b>reviews</b> [2] 259:15; 261:6</p> <p><b>right</b> [23] 184:6; 187:18; 198:12; 202:18, 19; 203:3; 215:11; 218:16; 229:6; 236:3, 23; 239:18; 270:2; 276:10, 19; 277:6; 278:8, 13, 16, 19; 280:9; 281:14</p> <p><b>rights</b> [2] 200:25; 223:23</p> <p><b>role</b> [10] 186:22, 24; 202:5; 214:18; 215:5; 217:23; 270:23; 271:6, 8, 11</p> <p><b>rom</b> [1] 174:7</p> <p><b>rose</b> [64] 185:8, 13, 23, 24; 186:8, 11; 205:13; 207:7, 8, 12, 23; 208:24; 210:10; 215:1, 8; 216:23; 217:3, 19; 219:9, 17; 221:9; 222:18; 223:2, 8; 235:18; 236:9, 24; 237:19, 21; 238:3, 17, 20, 24; 239:5, 11, 17, 19; 240:7, 12, 19, 24; 241:10; 248:21; 249:5; 250:17, 19; 251:5, 9, 24; 253:25; 254:16, 20; 255:16; 257:19; 258:3; 261:24;</p>
--	---	---	--	---



<p>221:19; 249:11  <b>substantial</b> [4]                  23; 212:12; 253:6, 8  <b>substantiate</b> [1]                  22  <b>substitute</b> [1]                  3  <b>sufficient</b> [1]                  6  <b>suggesting</b> [1]                  8  <b>summer</b> [1]                  11  <b>supply</b> [1]                  6  <b>support</b> [1]                  21  <b>surprised</b> [2]                  22; 255:25  <b>sureptitiously</b> [2]                  24; 210:5  <b>surrounding</b> [1]                  13  <b>sworn</b> [1]                  7  <b>systems</b> [1]                  6</p> <hr/> <p style="text-align: center;"><b>** T **</b></p> <hr/> <p><b>talk</b> [6]                  9, 10; 246:1, 6;                  12; 270:18  <b>talked</b> [9]                  2; 182:24; 195:2;                  2; 230:25; 234:10;                  7; 261:24; 262:10  <b>talking</b> [11]                  15; 179:15, 17; 197:4;                  4; 225:3; 227:11;                  8; 258:21; 264:20;                  1  <b>tape</b> [10]                  23; 210:6; 225:24;                  2; 275:19, 23; 276:1,                  8; 277:12  <b>taped</b> [2]                  20, 25  <b>tapes</b> [2]                  16; 279:15  <b>taping</b> [2]                  21; 210:2  <b>tappings</b> [1]                  13  <b>team</b> [4]                  21; 211:11; 257:8, 10  <b>technically</b> [1]                  9  <b>technological</b> [1]                  25  <b>technologies</b> [19]</p>	<p>172:20; 173:4, 17, 22, 24;                  174:11; 184:2; 187:2, 6, 7;                  191:15, 22; 192:3; 193:8;                  196:5, 8; 199:4; 231:24;                  232:2  <b>technology</b> [21]                  172:15; 173:2, 8, 21;                  174:9, 15; 175:14; 176:9;                  194:12, 20; 224:10, 12,                  24; 226:22; 227:12, 14;                  230:23; 231:11; 233:21;                  261:6; 265:15  <b>telephone</b> [2]                  170:5; 276:5  <b>telephonic</b> [1]                  170:2  <b>telling</b> [5]                  209:15; 220:4, 18; 221:2;                  222:14  <b>temporize</b> [1]                  259:21  <b>ten</b> [1]                  227:5  <b>tenure</b> [5]                  179:2, 13; 223:19; 235:18;                  238:25  <b>terminated</b> [1]                  212:21  <b>terminating</b> [1]                  253:17  <b>termination</b> [2]                  253:15, 16  <b>terms</b> [1]                  175:24  <b>testified</b> [8]                  182:1; 187:11; 217:22;                  221:8; 237:3; 247:17;                  252:13, 19  <b>testify</b> [1]                  282:7  <b>testifying</b> [1]                  282:6  <b>testimony</b> [18]                  205:9, 24; 206:5; 207:7;                  210:1; 215:7, 13; 216:23;                  220:15; 221:14; 234:11;                  253:23; 260:9; 270:7;                  271:13, 16; 282:10, 14  <b>thank</b> [9]                  204:17; 242:20; 272:9;                  273:22; 275:14; 276:21,                  22; 281:16  <b>thanks</b> [2]                  258:15; 265:7  <b>that'd</b> [1]                  198:11  <b>there's</b> [2]                  246:8; 280:9  <b>thereabouts</b> [1]                  252:18  <b>they're</b> [5]</p>	<p>174:10; 200:4; 266:24;                  279:16; 281:4  <b>third</b> [4]                  198:12, 13, 18; 233:4  <b>thoughts</b> [1]                  257:16  <b>three</b> [1]                  197:7  <b>three-year</b> [2]                  218:11; 253:19  <b>times</b> [2]                  216:25; 280:3  <b>timing</b> [1]                  215:22  <b>tired</b> [2]                  244:6; 273:24  <b>title</b> [2]                  231:10, 15  <b>todd</b> [2]                  193:17, 20  <b>totally</b> [1]                  265:2  <b>touched</b> [2]                  223:10; 226:4  <b>towards</b> [2]                  224:23; 255:19  <b>traci</b> [2]                  282:3, 24  <b>trademark</b> [1]                  258:8  <b>transaction</b> [1]                  190:6  <b>transcribed</b> [3]                  209:7, 14, 18  <b>transcript</b> [2]                  282:13; 283:3  <b>transmitting</b> [1]                  174:25  <b>true</b> [4]                  205:25; 219:4; 282:13;                  283:4  <b>truly</b> [1]                  262:14  <b>truth</b> [3]                  282:7, 8  <b>turf</b> [21]                  179:22; 183:3; 211:20, 23;                  212:3; 218:5, 9, 12, 17;                  219:25; 243:25; 244:2, 18,                  25; 245:7, 10, 12; 265:14,                  18, 21; 266:8  <b>twice</b> [1]                  184:11  <b>type</b> [3]                  267:17; 273:14; 274:6  <b>typewriting</b> [1]                  282:12  <b>typically</b> [1]                  189:19</p>	<p style="text-align: center;"><b>** U **</b></p> <hr/> <p><b>u-view</b> [4]                  236:6, 13, 20, 22  <b>unable</b> [1]                  197:22  <b>unavailable</b> [1]                  281:10  <b>underneath</b> [1]                  173:7  <b>understand</b> [9]                  170:7, 10, 13; 199:23;                  200:17; 201:25; 224:6;                  246:4; 270:6  <b>understanding</b> [12]                  172:6; 185:11; 230:21;                  238:16; 240:1, 22; 241:4,                  5, 13, 16; 271:6; 273:3  <b>understands</b> [1]                  277:15  <b>undertake</b> [2]                  206:14; 222:7  <b>undertaken</b> [1]                  177:6  <b>unfortunately</b> [2]                  183:1; 281:9  <b>unilaterally</b> [1]                  215:7  <b>unique</b> [1]                  262:14  <b>universal</b> [6]                  227:17; 228:7, 10, 19, 22,                  24  <b>university</b> [3]                  180:1; 181:12, 14  <b>unusual</b> [1]                  209:16  <b>updated</b> [1]                  207:2  <b>upset</b> [2]                  277:10; 278:8  <b>utilizations</b> [1]                  233:24  <b>utilizing</b> [1]                  194:20  <b>utley</b> [18]                  170:3, 7, 14; 180:23;                  202:25; 203:21, 24;                  227:12; 229:10; 238:12,                  13; 258:19; 268:20;                  278:17; 281:20; 282:5;                  283:2, 24</p> <hr/> <p style="text-align: center;"><b>** V **</b></p> <hr/> <p><b>validity</b> [1]                  203:7  <b>value</b> [2]                  200:6; 220:25  <b>values</b> [1]</p>	<p>200:6  <b>varies</b> [1]                  263:2  <b>venture</b> [1]                  260:12  <b>ventures</b> [6]                  223:13; 232:7; 260:8, 11,                  21, 25  <b>via</b> [1]                  170:5  <b>viadaro</b> [1]                  211:8  <b>video</b> [3]                  174:6, 16, 25  <b>view</b> [2]                  270:21, 23  <b>vis-a-vis</b> [1]                  239:11  <b>visit</b> [4]                  180:10, 13, 15; 181:4  <b>visits</b> [1]                  184:12  <b>vitae</b> [1]                  243:18  <b>voiced</b> [1]                  228:18  <b>vol</b> [3]                  170:3; 281:20; 282:5  <b>vulture</b> [5]                  232:6; 260:8, 11, 20, 25</p> <hr/> <p style="text-align: center;"><b>** W **</b></p> <hr/> <p><b>w-a-c-h-o-v-i-a</b> [1]                  242:19  <b>wachovia</b> [7]                  242:15, 17, 18, 23; 243:1,                  13, 22  <b>wages</b> [2]                  253:13, 14  <b>waiver</b> [2]                  248:15; 277:6  <b>walked</b> [1]                  260:15  <b>wanted</b> [3]                  227:13; 272:22, 24  <b>warner</b> [12]                  171:7, 12; 176:7; 229:19,                  21; 230:4, 9, 11, 13, 16;                  263:17, 20  <b>warranted</b> [1]                  206:25  <b>wayne</b> [2]                  187:12, 21  <b>ways</b> [2]                  199:25; 242:11  <b>we'll</b> [1]                  203:19  <b>we're</b> [8]                  197:4; 204:5; 215:4;                  225:3; 265:1, 6; 280:6;</p>
--	--	--	---	--

191:2  
**we've** [4] 170:17;  
 195:12, 23; 256:5  
**web** [5]  
 193:18, 20; 194:19;  
 194:15, 25  
**weren't** [5]  
 192:12, 13; 205:8; 253:24  
**what's** [4]  
 178:12; 221:16; 246:18;  
 177:19  
**whatsoever** [1]  
 192:4  
**wheeler** [15]  
 190:11, 12; 189:20;  
 192:18; 205:16; 216:19;  
 193:20; 234:7; 243:23;  
 194:17; 248:6, 14, 16;  
 190:10; 258:5  
**wheeler's** [4]  
 194:1, 9, 13; 250:13  
**whereabouts** [2]  
 177:4; 262:6  
**wherein** [1]  
 193:23  
**whereupon** [5]  
 170:2; 204:15; 227:8;  
 198:16; 281:19  
**who's** [3]  
 179:20; 192:7; 224:3  
**widths** [1]  
 175:1  
**william** [1]  
 194:1  
**wire** [1]  
 196:6  
**wise** [1]  
 196:19  
**witness** [39]  
 177:23; 181:3; 182:17;  
 191:18; 199:12; 202:22;  
 199:3; 220:7, 20; 222:17;  
 193:18; 227:24; 229:24;  
 192:13; 234:16; 235:22;  
 197:15; 239:7; 240:6;  
 192:21; 244:16; 248:11,  
 195; 249:14; 258:14;  
 196:17; 264:23; 266:1;  
 196:20; 269:24; 272:4, 7;  
 197:2, 18; 277:20; 282:6,  
 199, 14, 22  
**word** [1]  
 190:5  
**words** [4]  
 198:20; 209:11, 14; 241:1  
**work** [45]  
 185:9; 186:1, 10; 201:6, 9,  
 191, 16, 20, 21; 211:18;  
 192:3, 12, 22; 213:8;  
 194:1; 217:18; 218:18, 21,  
 22; 219:2, 8, 25; 235:17;

238:21; 258:8; 264:6, 8,  
 10; 265:10, 16, 17, 23;  
 268:24; 269:1; 271:21, 25;  
 272:22, 25; 273:4, 5, 7,  
 11; 274:11; 281:13  
**worked** [2]  
 211:14, 20  
**working** [4]  
 185:22; 193:3; 212:24;  
 263:10  
**wouldn't** [1]  
 257:9  
**written** [2]  
 237:14; 241:6  
**wrote** [1]  
 268:19

**\*\* Y \*\***

**yeah** [5]  
 204:3; 224:2; 264:22;  
 266:19; 269:24  
**year** [4]  
 183:19, 22; 216:7  
**years** [3]  
 192:19; 248:9; 263:2  
**yesterday** [23]  
 170:12, 23; 171:2; 177:3,  
 15, 21; 182:24; 184:3;  
 186:18; 187:18; 193:1;  
 195:2; 201:13; 206:5;  
 216:6, 23; 217:22; 223:11;  
 231:8; 235:23; 237:3;  
 252:13; 269:3  
**yesterday's** [1]  
 170:14  
**york** [3]  
 190:21, 23; 191:1  
**you've** [7]  
 176:24; 219:1, 15; 220:14;  
 221:7; 251:10; 256:20  
**young** [1]  
 210:23  
**yourself** [10]  
 197:21; 229:3, 14; 243:25;  
 248:15, 22; 249:4; 265:10,  
 21; 267:8

**\*\* Z \*\***

**zach** [3]  
 193:6, 10, 12  
**zoom** [6]  
 231:9, 14, 20, 23; 232:1,  
 24

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

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

Defendants.

---

Boca Raton, Florida  
September 11, 2002  
11:00 o'clock a.m.

DEPOSITION  
OF  
GERALD LEWIN

---

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE  
by: CHRISTOPHER W. PRUSASKI, ESQ.  
3 Appearing on behalf of the Plaintiff.

4

5 SELZ & MUVDI SELZ, P.A.  
by: STEVEN M. SELZ, ESQ.  
6 Appearing by telephone on behalf of the Defendants.

7

- - - - -

8 Deposition of GERALD LEWIN, a witness of  
9 lawful age, taken by the Plaintiff, for purposes of  
10 discovery and for use as evidence in the  
11 above-entitled cause, pursuant to notice heretofore  
12 filed, before TAMARA EMERICK-MASCI, Registered  
13 Professional Reporter and Notary Public, in and for  
14 the State of Florida at Large, at 2255 Glades Road,  
15 Boca Raton, Florida.

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## I N D E X

1  
2  
3 WITNESS:

4 D C RD

5 RC

6 GERALD LEWIN

7  
8 BY MR. PRUSASKI

4 58

9 BY MR. SELZ

45

## E X H I B I T S

10  
11  
12 PLAINTIFF'S

PAGE

13 1

43

14 2

44

15 3

44

1 Thereupon:

2 GERALD LEWIN

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as  
5 follows:

6 DIRECT EXAMINATION

7 Q. (By Mr. Prusaski) Sir, could you state  
8 your name for the record, please?

9 A. Gerald R. Lewin - L-e-w-i-n.

10 Q. Mr. Lewin, my name is Chris Prusaski.  
11 You're here being deposed in the case of Proskauer  
12 Rose versus IVIEWIT.COM, et al. It's a lawsuit  
13 that's pending in Circuit Court in Palm Beach County  
14 over the payment of attorney's fees.

15 I'll ask you if you've ever had your  
16 deposition taken before?

17 A. I've had. Not relating to this case, but  
18 I've had my deposition taken before.

19 Q. The only reason I ask that is just to  
20 make sure you know what the ground rules for a  
21 deposition are. I think you're familiar with those.

22 Everything we say in this room gets taken  
23 down by the reporter. You can't nod your head  
24 because the reporter can't take that down accurately.  
25 So you have to answer in the affirmative or negative

1 if it's a yes or no.

2 If I ask you a question you don't  
3 understand, please just simply ask me to repeat it or  
4 reword it and I will.

5 A. Okay.

6 Q. If you answer a question, it's assumed  
7 that you understood - understood the question.

8 A. Okay.

9 Q. If you need a break or anything, please  
10 ask me.

11 A. Okay.

12 MR. PRUSASKI: Go off the record for a  
13 second. Steve, hold on. We lost him.

14 (Discussion held off the record.)

15 MR. PRUSASKI: Go back on the record. We  
16 lost Mr. Selz from the call.

17 Is Mr. Bernstein on the phone?

18 MR. SELZ: No, he isn't.

19 MR. PRUSASKI: Okay.

20 Q. (By Mr. Prusaski) Mr. Lewin, what is  
21 your address?

22 A. 7050 Ayrshire Lane - A-y-r-s-h-i-r-e.

23 Q. Boca?

24 A. Yes. 33496.

25 Q. What's your occupation, sir?

1 A. I'm a CPA.

2 Q. How long have you been doing that?

3 A. Thirty-one years.

4 Q. Do you have your own business?

5 A. I am a principal in a CPA firm.

6 Q. What's the name of that company?

7 A. Goldstein, Lewin and Company.

8 Q. Other than CPA, do you hold any other  
9 professional licenses?

10 A. No.

11 Q. Did you do anything to prepare for this  
12 deposition today other than receive my subpoena?

13 A. No.

14 Q. The reason we asked you to come in for  
15 your deposition today is because it's our  
16 understanding that you were on the board of directors  
17 for the Iviewit companies; is that correct?

18 A. That's correct.

19 Q. Now, for the purposes of this deposition,  
20 when I use the term -- I know that there were  
21 numerous Iviewit companies. So when I use the term  
22 Iviewit, I'm referring collectively to all of them.  
23 And if I want to specify a particular corporation,  
24 like Iviewit.com, Inc., I'll say that.

25 A. Okay.

1 Q. Do you understand that?

2 A. Yes.

3 Q. When did you first become involved with  
4 the Iviewit companies?

5 A. I'll give an approximate date. I would  
6 say about four years ago. Could be a little longer.  
7 I'm not -- You know, I'm not certain. Could be five  
8 years. Somewhere around four, five years ago.

9 Q. Do you recall the year being 1998?

10 A. That would make it four years ago. That  
11 sounds right.

12 Q. Could you describe the circumstances and  
13 how you got involved with the Iviewit companies?

14 A. Yes. I knew Sy Bernstein who was a  
15 neighbor of mine. Sy approached me and he said his  
16 son has developed some process for the Internet that  
17 could possibly be patented. And he asked me whether  
18 I could help them - introduce him to some - to  
19 attorneys and could possibly get involved myself from  
20 an accounting and a business point of view.

21 Q. Is Mr. Bernstein still a neighbor of  
22 yours?

23 A. Yes, he is.

24 Q. Are you social friends with him?

25 A. Yes. Not on a regular basis, but we are

1 friendly when we see each other. And we have a good  
2 relationship.

3 Q. Did you introduce Mr. Bernstein to  
4 Proskauer Rose?

5 A. Yes, I did.

6 Q. And what is your history with Proskauer  
7 Rose?

8 A. I've known Al Gortz, who is one of the  
9 partners at Proskauer Rose, for probably 21 years.  
10 And I've had business relationship and also a  
11 friendly relationship, both, business and friendly.  
12 So it's personal and business relationship.

13 Q. At the time when you became involved with  
14 Iviewit, were you a board member?

15 A. No.

16 Q. What was your role?

17 A. I would say more of a consultant and -- I  
18 would say accounting - accountant and consultant.

19 Q. Did you -- Did your firm do the  
20 accounting work for Iviewit initially?

21 A. We did some accounting work.

22 Q. What was your role with the company when  
23 Proskauer was hired to represent Iviewit?

24 A. I was not a board member yet. I was the  
25 same, consultant.

1 Q. Did you become a board member sometime  
2 thereafter?

3 A. Yes.

4 Q. Okay. Do you remember when that was?

5 A. No.

6 Q. Do you remember what year it was?

7 A. No.

8 Q. Who asked you to be a board member?

9 A. Sy Bernstein and Eliot Bernstein.

10 Q. Do you recall who the other board members  
11 were?

12 A. It was Brian Utley, once he got involved  
13 with the company; Sy Bernstein; obviously, Eliot  
14 Bernstein. And I don't remember the individual's  
15 name from Crossbow. There was somebody from Crossbow  
16 representing Crossbow, who became a board member. I  
17 don't recall who -- You know, I don't recall exactly  
18 who the other board members were at this time.

19 Q. Who was the president of the Iviewit  
20 companies?

21 A. To my knowledge, I think it was Eliot  
22 Bernstein.

23 Q. Is the president?

24 A. I think so.

25 Q. If I told you Brian Utley was, would you

1 change your answer?

2 A. Brian Utley became the president once he  
3 was engaged.

4 Q. Okay.

5 A. Originally, it was Eliot.

6 Q. What was Proskauer hired to do?

7 MR. SELZ: Objection. Form of the  
8 question.

9 MR. PRUSASKI: I'll - I'll reask it.

10 Q. (By Mr. Prusaski) What was Iviewit's  
11 intent in hiring Proskauer?

12 A. Prepare the legal work and introduce them  
13 to possible investors and perhaps clients of theirs  
14 who could use the technology that Eliot developed  
15 that Iviewit owned at that time.

Wheeler in deposition states Lewin intro'd him to set up corporations which is false

16 Q. Do you remember the attorneys from  
17 Proskauer who did work for Iviewit?

18 A. Yes. It was Chris Wheeler was the head.  
19 And I'm trying to remember. There was a --

20 Q. Does Rocky Thompson sound familiar?

21 A. Rocky Thompson. That's the one. Yes,  
22 those were the two.

23 Q. Do you know if any other law firms were  
24 used by Iviewit besides Proskauer Rose?

25 A. Yes, there was a law firm used in New.

Lewin confuses the attorneys grossly here and the reason is they are trying to hide Proskauer attorneys doing patent work or else major conflicts arise. Yet Rubenstein and Joao were represented at first as Proskauer attorneys and this is why Proskauer was hired. After we found that this was false Rubenstein did join Proskauer.

11

1 York to - I think to patent all of the technology  
2 that Eliot supposedly developed:

3 Q. Was that Foley & Lardner?

4 A. Yes.

5 Q. Did Proskauer do patent work for Iviewit?

6 A. I'm trying to remember. They did consult  
7 an attorney in New York, one of Proskauer's attorneys  
8 in New York. I don't recall his name. And I do have  
9 to tell you I'm not very good with names.

10 Q. Okay.

11 A. Okay.

12 Q. That's fine. And I appreciate your  
13 honesty. We don't want you to guess.

14 A. No.

15 Q. If you don't remember, simply say you  
16 don't remember.

17 A. No, that is not my strength.

18 There was an attorney in New York who -  
19 who was consulted. I don't recall him doing any  
20 actual work on the patent, but I know he was  
21 consulted about the patents.

22 Q. Is he the one who referred Foley &  
23 Lardner?

24 A. I think so, yes.

25 Q. When did you stop becoming a board member

Incorrect - Foley & Lardner is in Wisconsin. He refers to Ray Joao & Meltzer Lippe Goldstein & Schlissel who worked for Kenneth Rubenstein of PR to file patents. Joao was misrepresented, along with Rubenstein by Wheeler as Proskauer attorneys, yet they were both at Meltzer at the time.

He is referring to Kenneth Rubenstein and this contradicts Wheeler & Rubenstein testimony that they did no patent work at all.

Correct almost. Rubenstein was Advisor to Board and was overseer to patents and was consulted and consulted for investors. Major role.

Rubenstein referred Raymond Joao not Foley & Lardner, Lewin knows this. He was a Board member and the accountant who paid them.

1 for the Iviewit companies?

2 A. I resigned I think approximately a year  
3 ago. Could be a little longer. I'm not sure.

4 Q. Would you explain the circumstances  
5 behind your resignation?

6 A. The company was running out of funds and  
7 - and at that point it wasn't certain whether the  
8 patents were going to be approved. And therefore --  
9 And Eliot moved to California. And I felt at that  
10 point I really could, you know, could not contribute  
11 anything further, so I resigned.

12 Q. Do you remember what month and year that  
13 was?

14 A. No.

15 Q. Was it in 2001?

16 A. I think so.

17 Q. Was it before or after Brian Utley and  
18 Ray Hersh left the company?

19 A. I think it was right around the same  
20 time. Could have been a little before or a little  
21 bit after. I'm not sure. But it was around - around  
22 the same time.

23 Q. Did Brian Utley and Ray Hersh leaving the  
24 companies have anything to do with your decision to  
25 leave?

1 A. No.

2 Q. Were you aware of the fact that Proskauer  
3 Rose filed a lawsuit against the Iviewit companies in  
4 May of 2001?

5 A. Yes, I was.

6 Q. Do you recall how you heard about that?

7 A. Not really. I recall it -- By talking to  
8 somebody. Either it could have been - could have  
9 been Eliot or could have been Sy, it could have been  
10 Al. It wasn't a big discussion. It was just somehow  
11 I remember hearing that there was a lawsuit filed  
12 against Iviewit.

13 Q. Did you know it was for unpaid attorney's  
14 fees?

15 A. I - I think so.

16 Q. Did it surprise you?

17 A. No.

18 MR. SELZ: Object to the form of the  
19 question.

20 Q. (By Mr. Prusaski) Do you have any idea  
21 why Proskauer's attorney's fees haven't been paid by  
22 Iviewit?

23 A. From what I understand, there is a lack  
24 of funds. There's no funds available.

25 Q. What do you base that understanding on?

1 A. The fact that I'm told that there is no  
2 funds available to pay any bills.

3 Q. Who told you that?

4 A. Who told me that? I can't say anybody.  
5 You know - you know, it was just general discussions  
6 that were going on on the availability of funds in  
7 the company. Could have been with Brian. Could have  
8 been with Sy or Eliot. It was just general  
9 discussions and my knowledge that there was no funds  
10 available.

11 Q. Were these discussions to which you were  
12 privy as a board member?

13 A. I think it could have been after. It  
14 could have been after. It could have been before,  
15 but I was aware that the company just was running out  
16 of money.

17 Q. ~~Other than the fact that you say the~~  
18 ~~company ran out of money, is there any other reason~~  
19 ~~that you know of why Proskauer's bills weren't paid~~  
20 ~~by Iviewit?~~

21 A. No.

22 Q. Did you ever hear anyone from the company  
23 at any time object or state that Proskauer did work  
24 that it wasn't authorized to do for Iviewit?

25 MR. SELZ: Objection to form.

1 Q. (By Mr. Prusaski) You can answer.

2 A. No.

3 Q. Are you aware of or did you ever hear  
4 anyone in the company state that Proskauer did work  
5 improperly for Iviewit?

6 A. No. Let's put it that way. ~~Not to my~~  
7 recollection.

8 Q. Are you aware or did you ever hear anyone  
9 from the company state that Proskauer did work that  
10 the Iviewit companies didn't ask them to do?

11 A. No.

12 Q. Were you present at all the board  
13 meetings while you were a board member?

14 A. No.

15 Q. How often did you attend board meetings?

16 A. I would say I attended them regularly. I  
17 can't say I attended them all. I would say I  
18 attended a majority of them. At the end, there were  
19 board meetings via telephone. And I skipped a lot of  
20 those meetings.

21 Q. Was Chris Wheeler typically present at  
22 those meetings?

23 A. Yes.

24 Q. Do you recall any complaints about  
25 Proskauer's bills being discussed at board meetings

1 at which you were present?

2 A. You know, comments were made. They  
3 weren't -- You know, I don't know if you want to  
4 characterize them as complaints, but, you know,  
5 comments were made like the fees were -- You know,  
6 there's always comments made regarding attorney's  
7 fees. Not in a serious manner. I don't - I don't  
8 recall any fees being referred to in a serious  
9 manner.

10 Q. People just historically complain about  
11 attorney's bills?

12 A. It was like funny remarks, you know, like  
13 you could have been a few minutes late, it would have  
14 cost us a little less, you know, remarks like that  
15 generally. But not serious remarks and discussions  
16 that I recall.

17 Q. Do you recall ever having discussions or  
18 hearing discussions among principals of Iviewit that  
19 they weren't happy with Proskauer's services?

20 A. The only discussions related was -- Was  
21 it Ken Attelman, the one that -- Who was --

22 Q. I can't - I can't answer that.

23 A. You can't answer. There was an attorney  
24 in New York that was supposed to oversee the - or  
25 involved somehow with the patent. And the

1 discussions were related to was he doing a good  
2 enough job overseeing Foley's firm, you know,  
3 handling the patent or he supposed --

4 Q. Is this Ken Rubenstein?

5 A. Ken Rubenstein. That's the guy, yes.  
6 There were discussions related to Ken Rubenstein and  
7 the patents. That was it.

8 Q. Who had those discussions? Who were the  
9 people involved?

10 A. Sy and Eliot generally.

11 Q. Was Ken Rubenstein supposed to oversee  
12 Foley & Lardner?

13 A. I don't know.

14 Q. Or was Foley & Lardner doing the patent  
15 work?

Incorrect - At this time, Foley & Lardner was not in the picture he refers to Raymond Joao of Meltzer Lippe

16 A. Foley & Lardner was doing the patent  
17 work, but I think because they were referred by Ken  
18 Rubenstein, you know, generally that's what happens,  
19 when you refer somebody, you sort of take on an  
20 obligation, if these people fail you, then you look  
21 to the person who referred them.

22 And I think that's basically -- At the  
23 end when they were not happy with the results of the  
24 patent, I think they started questioning whether Ken  
25 Rubenstein should have maybe done the work himself,

1 not referred them.

2 To my recollection, he was not engaged to  
3 oversee them, to my recollection, but there were  
4 comments made that he referred them and there was a  
5 certain unhappiness.

This is entirely wrong and misleading. Lewin, who worked on all business plans himself knows that Rubenstein was listed as PATENT COUNSEL for Ivivit and as an Advisory Board member.

6 Q. Who wasn't happy?

7 A. Sy and -- I think mainly Eliot. I think  
8 it was mainly Eliot.

9 Q. Why wasn't Eliot happy with the Foley &  
10 Lardner work?

11 MR. SELZ: Objection. Calls for  
12 speculation.

13 A. I think --

14 Q. Well, were you -- were you present when  
15 Eliot was complaining about the patents?

16 A. Eliot was complaining about everybody.

17 Q. What specifically was he saying?

18 A. ~~Well, at one time, Eliot was saying~~  
19 ~~that...that somebody there might have been trying to~~  
20 ~~steal his patents and wasn't filing them properly.~~  
21 ~~Just general complaining.~~

22 Q. Is Eliot a complainer?

Patent theft is just general complaining especially when it could constitute fraud.

23 MR. SELZ: Objection to the form of the  
24 question.

25 Q. (By Mr. Prusaski) You can answer. You

Lewin above is stating that as a Board member he heard that patents might have been filed wrong and perhaps stolen. He is correct, this was brought to his attention because investors were concerned that not proper assignments and inventors had been listed and that their investments might be not fully backed by the whole patents. Investors were worried this could constitute fraud and this is what is currently being investigated by the United States Patent & trademark Office. The question for Lewin is what did you do when you found out to protect the shareholders and investors? How did you handle your fiduciary responsibilities once you became aware. Did you audit the patent portfolio or what????

1 said -- Well, you said generally --

2 A. Eliot felt that nobody did a - did a good  
3 job, but I'm -- You know, Eliot just felt that nobody  
4 was doing a good enough job.

Lewin had full knowledge of the technologies, he was present at all technology disclosures, designed business plans and introduced investors.

5 Q. Did you agree with him?

6 A. I did not have enough knowledge, inside  
7 knowledge of the patents and the technology to either  
8 agree or disagree with him.

9 And you know, his complaining, I can't  
10 even say whether it was rightfully complaining or  
11 wrongfully. I can't say that either because I didn't  
12 have enough knowledge to really listen to him and  
13 agree or disagree with him.

This seems to be an excuse for blowing off looking into allegations of patent theft, improper assignments and fraud upon the investors.

14 Q. Did Eliot Bernstein complain about  
15 Proskauer's bills?

16 A. Comments were made between Eliot and Sy,  
17 you know, as normal comments, as I hear every one of  
18 my clients make, complaining about attorney's fees.

19 Q. ~~But you were never personally aware of~~  
20 ~~any bona-fide problems with Proskauer's bills?~~

21 A. No.

22 Q. At the time Eliot and Sy were complaining  
23 about the bills, were they still directing Proskauer  
24 to perform work for the Iviewit companies?

25 A. Yes.

1 Q. Would you characterize their complaining  
2 as being that they were unhappy with Proskauer?

3 A. No. No. There was just basically the  
4 normal, you know, general statements, such as I can't  
5 believe how much attorneys - attorneys charge us and  
6 things like that.

A minute ago he stated that Si & Eliot were unhappy with the results of the patents that Rubenstein oversaw and that they may have been improper but that does not count for unhappy with the work??

7 Q. Did they -- You introduced Proskauer to  
8 Iviewit, correct?

9 A. Yes.

10 Q. Did the Bernsteins know going in how much  
11 Proskauer's per hour charges were?

12 A. Yes. And as a matter of fact, before I  
13 introduced them, they asked me to introduce a really  
14 quality firm. And I told them upfront, I said, if  
15 you want to deal with a really quality firm, you will  
16 have first rate attorneys and you will pay the fees  
17 accordingly. I said, if you want to go to a smaller  
18 firm, I can introduce you to some other attorneys and  
19 their fees will be less.

20 But they said, no, we insist on somebody  
21 that has a national name and who are willing -- You  
22 know, we're willing to bear the fees that this will  
23 carry. So there was a discussion about it upfront.

24 Q. They wanted Proskauer?

25 A. They want -- Absolutely.

1 Q. And they knew going in how much our fees  
2 were?

3 A. They knew the fees and they -- There was  
4 a discussion. They said, we know we're going to pay  
5 a lot of fees. We know that the hourly rate is going  
6 to be higher than - than we can get at a smaller  
7 local firm, but this is exactly what we want.

8 Q. Did you direct Proskauer to do any work  
9 for Iviewit?

10 A. I don't think so. Not that - not that I  
11 can recall.

12 Q. Who from Iviewit for the most part  
13 directed Proskauer to perform work for the companies?

14 A. I think it was Sy and Eliot to start  
15 with. And then when Brian Utley got involved,  
16 obviously he was the president, so he was dealing  
17 with them on a regular basis. But I think it was Sy  
18 and Eliot who were the - the ones that were directing  
19 the law firm mostly.

20 Q. As a director -- Have you been a director  
21 of a corporation before?

22 A. Yes.

23 Q. How many times?

24 A. Three times.

25 Q. Over the course of how many years have

1 you been a director in companies?

2 A. Ask that question again more  
3 specifically.

4 Q. How many years of experience do you have  
5 being a director of companies?

6 A. Altogether? Well, are you counting  
7 Goldstein Lewin and Company also?

8 Q. Are you a director of that company?

9 A. Yes.

10 Q. Do you have regular directors' meetings?

11 A. Yes.

12 Q. Then sure.

13 A. Okay. So you want me to add up all the  
14 years?

15 Q. Yeah, because I'm going to ask you  
16 questions pertaining to what you knew as a director  
17 of Iviewit and I want to establish that you have  
18 experience as a company director.

19 A. Okay.

20 Q. That's where I'm coming from.

21 A. Okay. Now, Goldstein, Lewin is a little  
22 different because it's a closely-held company. It  
23 does have seven partners, but it's still a closely-  
24 held company. If you count that, I have 20 years'  
25 experience with that company. If you add the other

1 companies, I have about 15 years of experience.

2 Q. As an accountant, are you familiar with  
3 Florida corporate statutes?

4 A. Familiar with them as far as?

5 Q. Have you read them?

6 A. No.

7 Q. Do you know what the corporations law in  
8 Florida is?

9 A. I know the general. I do not know the  
10 specifics.

11 Q. Do you know what Florida requires you as  
12 a director of a company to do?

13 A. Paraphrase it. I'm not certain I  
14 understand your question. To do as far as what is  
15 concerned?

16 Q. What your role is as a director of a  
17 company.

18 A. I would say I have a general knowledge of  
19 it.

20 Q. Okay. What is your understanding as a  
21 director of Iviewit as to Brian Utley's role in the  
22 company?

23 A. Brian Utley was basically in charge of -  
24 was supposed to be in charge of operations. Got  
25 involved in the technology, helping to develop the

1 companies, I have about 15 years of experience.

2 Q. As an accountant, are you familiar with  
3 Florida corporate statutes?

4 A. Familiar with them as far as?

5 Q. Have you read them?

6 A. No.

7 Q. Do you know what the corporations law in  
8 Florida is?

9 A. I know the general. I do not know the  
10 specifics.

11 Q. Do you know what Florida requires you as  
12 a director of a company to do?

13 A. Paraphrase it. I'm not certain I  
14 understand your question. To do as far as what is  
15 concerned?

16 Q. What your role is as a director of a  
17 company.

18 A. I would say I have a general knowledge of  
19 it.

20 Q. Okay. What is your understanding as a  
21 director of Iviewit as to Brian Utley's role in the  
22 company?

23 A. Brian Utley was basically in charge of -  
24 was supposed to be in charge of operations. Got  
25 involved in the technology, helping to develop the

1 technology, was involved in the patent issues, dealt  
2 with investors and also dealt with potential  
3 customers.

4 Q. What was his role with respect to  
5 accounts payable?

6 Let me ask you another way. If one of  
7 Proskauer's bills came into Iviewit, what was Brian's  
8 role with respect to paying that bill?

9 A. I would say he probably generally did not  
10 have the final say.

11 Q. Who did?

12 A. Eliot -- Probably Eliot and maybe in  
13 addition to Sy. You know, there were different  
14 periods of time where, you know, when - when --

15 I know Proskauer did get some payments.  
16 So what would happen, there was a time where there  
17 was a lot of money available because Crosbo would put  
18 in the funds. And then, probably Brian was able to  
19 make payments. But when money got tight, I would say  
20 Eliot and Sy would then - and including Brian, would  
21 all sit down and figure out who should get paid, how  
22 and when. So --

Lewin was also making these decisions as the accountant and  
as a Board member.

23 Q. Were there times that Proskauer wasn't  
24 among those entities that were paid?

25 A. Probably.

1 Q. Was it because of lack of funds?

2 A. I would say in my opinion it was because  
3 of lack of funds, yes.

4 Q. Are you aware of any instances where  
5 Eliot or Sy told Brian not to pay Proskauer because  
6 he had a actual problem with the bills?

Best deposition Freudian slip!!!

7 A. You know, I'm trying to recall events of  
8 my memory that I'm trying to erase. You know, it's  
9 hard sometimes to distinguish general complaining  
10 from specific - from specific telling somebody not to  
11 pay.

12 Was I ever present when they told him  
13 don't pay this bill? I don't recall. Was there  
14 general complaining? Yes. As I stated before, there  
15 was always general complaining. And that wasn't  
16 just -- You know, it was about everybody's bills.

17 Q. By the Bernsteins?

18 A. Yes. Yes. Not - not by - not by Brian.

19 Q. Do you know if Brian reviewed Proskauer's  
20 bills?

21 A. I think he did, yes.

22 Q. Did you ever review them?

23 A. No. Not that I recall. Let's put it

24 that way.

It sounds like he was aware of complaints with the work and the bill of his referral Proskauer and again he did nothing. Earlier he stated you are responsible for your referrals.

25 Q. What was Ray Hersh's role in the company?

1           A.       Ray Hersh was originally hired sort of a  
2 CFO, but as things developed, I think he became more  
3 of a consultant from the financial side. He wasn't  
4 serving exactly as CFO. And then he really became --  
5 I would say -- It was - it was difficult to describe  
6 his role. He did a little bit of everything.  
7 Basically helping out Brian from - from the financial  
8 side.

9           Q.       Do you know if Iviewit ever entered into  
10 a payment arrangement with Proskauer?

11          A.       I'm aware they did enter into payment  
12 arrangements.

13          Q.       Do you recall why?

14          A.       Yeah, there was no money available.

15          Q.       There was no money available?

16          A.       That's - that's what my recollection is.  
17 They were trying to, you know, to delegate the money.  
18 Even when there was money available, they would try  
19 to save it for future - for future expenses. So if  
20 they had three, four hundred thousand dollars, they  
21 knew they would need it for the next four or five  
22 months; and therefore, to try to conserve cash, so  
23 the discussion was, can we just pay a certain amount  
24 to everybody to keep them going and to continue  
25 services?

1 Q. Did there come a time when Proskauer  
2 stopped providing legal services to the Iviewit  
3 compan

Lewin is aware Proskauer sued Iviewit but not aware they stopped services, He was on the Board when they stopped services and sued us when asked about improper loan transactions they had done.

4 A. I do not recall. I don't think so.  
5 Not - not that I'm aware of. Let's put it that way.  
6 Maybe there was, but --

7 Q. Do you know if the Bernsteins fired  
8 Proskauer or did Proskauer stop representing Iviewit?

9 A. I'm not aware of either one of them.

10 Q. What is Iviewit.com, Inc.?

11 A. If you want -- It's one of the  
12 corporations. If you ask me, do I recall all the  
13 structures of all the companies right now, I do not.

14 Q. Okay. Do you know who set Iviewit --  
15 Strike that.

16 Do you know how Iviewit.com, Inc. was  
17 incorporated?

18 A. What do you mean how?

19 Q. Did Proskauer Rose incorporate that  
20 company?

21 A. I think so. I think so. I think so.

22 Q. Do you know if Proskauer Rose did work  
23 for Iviewit.com, Inc.?

24 A. Yes.

25 Q. Did Proskauer Rose do work for Iviewit

1 Holdings, Inc.?

2 A. Yes.

3 Q. Did they incorporate that company?

4 A. I think so.

5 Q. Same question for Iviewit Technologies,  
6 Inc.

7 A. Yes.

8 Q. And Proskauer did work for that company  
9 and incorporated it?

10 A. As far as I'm aware, yes.

11 Q. What was Iviewit, LLC?

12 A. It was just a different structure, you  
13 know. At that time, we were trying to figure out  
14 what - what structure to form, you know, to best  
15 serve the stockholders and share - and the owners. So  
16 we kept jumping around sort of.

17 You know, first we thought we should do  
18 an LLC so we could pass on the losses to the  
19 shareholders. Then we decided to do a C corp.  
20 Because we were getting outside investors that  
21 couldn't be members of an LLC.

This is all incorrect  
information.

22 So it was basically structure of entities  
23 that was being jumped around.

24 Q. And these decisions on restructuring were  
25 made by the Bernsteins?

1 A. With advice from myself and advice from  
2 attorneys from Proskauer Rose.

3 Q. Proskauer ultimately did perform the  
4 structuring work?

5 A. Yes, yes.

6 Q. At the board's request?

7 A. Yes.

8 Q. Do you have any current affiliation with  
9 the Iviewit entities?

NOT TRUE - HE AND HIS FAMILY HAVE 5% FOUNDERS SHARES  
IN THE COMPANIES

10 A. No, I do not.

11 Q. Do you have anything to do with the  
12 bankruptcy of Iviewit.com, LLC?

13 A. I do not.

14 Q. The three corporations I mentioned  
15 Iviewit.com, Inc., Iviewit Holdings, Inc. and Iviewit  
16 Technologies, Inc., were you a member of the board of  
17 directors for those entities?

18 A. I -- I'm not sure which one now. There  
19 were so many companies at that time floating around.  
20 I'm not sure anymore which one I was a member of.

21 Q. Well, was there a clear distinction  
22 between the companies?

There were major distinctions between the companies to protect the patents  
and clearly separate the operating companies from the patent companies.

23 A. No, no. They were just set up generally  
24 to, you know, hold the patent or bring in, or give a  
25 percentage of the - of the company to entities that

1 couldn't be part of the LLC, such as I think  
2 Proskauer Rose got a small percentage of the  
3 companies. And the only way they could come in was  
4 through a C corp. And then - and then there was  
5 another law firm in New York that was --

6 So it was all structured, but as far as  
7 I'm concerned, they were all basically one entity.

8 Q. ~~Why did Proskauer Rose get a percentage~~  
9 ~~of the companies?~~

10 A. Because Eliot -- That was Elliot's way of  
11 incentivizing the people he dealt with to pay more  
12 attention to the - to the - to his company and to  
13 possibly introduce him to sources of funding and to,  
14 you know, to generate - to introduce him to some  
15 businesses that could use his product. That was  
16 Elliot's way of incentivizing people.

17 Q. So it was a gift?

18 A. It was a gift, yes. He felt that he  
19 would -- He felt that there would be extra attention  
20 paid to his business.

21 Q. Did Proskauer solicit that gift from  
22 Eliot?

23 A. No.

24 Q. And it wasn't -- I just want to make  
25 clear. It wasn't given in consideration for a legal

1 bill?

2 A. No.

3 Q. Did you at any time ever find Proskauer's  
4 bills to be excessive?

5 A. I can't comment on that.

6 Q. Why?

This is wholly untrue. He reviewed their bills and his daughter reviewed them while working with Iviewit and while working for Goldstein Lewin.

7 A. Because I don't know. I haven't reviewed  
8 them. I can't really tell you whether they're  
9 excessive or not. I never really -- I don't recall  
10 reviewing any of them, so I can't say whether they  
11 were excessive or not. You know, if I reviewed the  
12 bills and I knew what the work was done exactly bill  
13 by bill, I could tell you. But it would only be an  
14 opinion also.

15 Q. Did you ever talk to Brian Utley about  
16 Proskauer's bills?

17 A. Yes.

18 Q. What did you talk about?

19 A. Well, sometimes Chris would call me up  
20 and say, Jerry, you know we need to get paid, you  
21 know, because we were so much behind.

22 Q. Chris Wheeler?

23 A. Yes. And we are - we are behind. Could  
24 you please talk to somebody so we can get paid?

25 I would sit down and I'd talk to Brian.

1 And Brian would say, look, this is our cash flow. We  
2 can only pay him so much or we can't pay him. I'll  
3 talk to Sy about it. We'll see how much we can pay  
4 him and see if we can come to an understanding to pay  
5 part of their bill. That's how it was discussed in  
6 that manner.

7 Q. Have you ever seen any documents --  
8 Strike that.

9 Let me - let me go back to something you  
10 just said. Did you ever hear Brian Utley complain  
11 about Proskauer's bills?

12 A. Not Brian Utley.

13 Q. Who? You qualified your answer.

14 A. No, Brian Utley did not complain, no.

15 Q. What about Ray Hersh?

16 A. You know, I don't recall Ray Hersh  
17 either. I know that Ray - Ray Hersh was involved in  
18 trying to structure, you know, a payment plan, but I  
19 do not recall him specifically saying certain bills  
20 were improper or - or -- No, I don't - I don't recall  
21 that.

22 Q. Do you recall which Iviewit entity  
23 normally paid the bills of the Iviewit entities?

24 MR. SELZ: Objection. Form of the  
25 question.

1 A. No.

2 Q. Do you know if Proskauer ever sent  
3 Iviewit letters demanding payment on its bills?

4 A. Yes.

5 Q. Have you seen them?

6 A. No.

7 Q. How do you know that they were sent?

8 A. There were discussions made. There were  
9 discussions that Pros - you know, that Proskauer --  
10 You know, Brian would come or Eliot and Sy and say,  
11 look, Proskauer's making demands. We've got to  
12 figure out how, you know, to pay them something or  
13 make an accommodation so they can continue the work.

14 Q. ~~Was it your understanding that the bills~~  
15 ~~were due and owing?~~

16 A. Yes.

17 Q. ~~Did Iviewit ever object to the payment of~~  
18 ~~any of these bills?~~

19 MR. SELZ: Objection to the form of the  
20 question.

21 A. ~~Not that I'm aware of.~~

22 Q. What was your understanding with respect  
23 to Brian Utley's experience when the company hired  
24 him?

25 A. Brian Utley worked for IBM, had good

Lewin fails to state that the Company became aware after finding Utley stealing patents, that at his las employer he was caught misappropriating inventions and was fired causing a S. Florida businessman to lose his entire Company. Lewin was made aware of this as a Board member and failed to do anything once he found out. Utley was referred by Lewin's referral Wheeler and a bogus resume with false and misleading information was then circulated regarding Utley.

1 knowledge of computers, supposedly of the Internet,  
2 had some understanding of technology and was involved  
3 in some other patent processes.

4 Q. Did you feel that he knew what he was  
5 doing when it came to Iviewit's patents?

6 A. I can't comment on that.

7 Q. You don't know?

8 A. I don't know. I have no idea because I  
9 was not involved with the patents at all. I have no  
10 understanding of the technology, so -

Totally false, he had intimate knowledge and  
was at all disclosure meetings!!

11 Q. Do you know what an ultravirus act is?

12 A. No.

13 Q. Are you aware of any things that Brian  
14 Utley did that he specifically did not have board  
15 approval to do?

16 A. Not that I'm aware of.

17 Q. Did you ever hear anyone from the company  
18 complain that Brian Utley paid Proskauer's bills  
19 without the board's approval?

20 A. I don't recall. No.

21 Q. Do you recall ever hearing anyone  
22 complain that Brian Utley entered into payment  
23 arrangements on behalf of the company without the  
24 board's approval with respect to Proskauer's bills?

25 A. I don't recall that.

1 Q. Have you spoken to Eliot Bernstein  
2 lately?

3 A. Yes.

4 Q. When?

5 A. Eliot called me about a week ago.

6 Q. Mm-hmm. What did you talk about?

7 A. Eliot asked me to send him -- We had a  
8 substantial amount of bills also, accounting  
9 services. And he called me from California and he  
10 asked me to send him -- We never got paid. And I  
11 never --

12 Q. Who? Wait. Who never got paid?

Not true - He had agreed to  
convert his past bill to equity.

13 A. Goldstein, Lewin and Company.

14 Q. For accounting services for Iviewit?

15 A. Yes. There was some payments made, but  
16 the majority was not paid. And I really dropped it  
17 because I felt it was -- I did not want to pursue it.  
18 I felt there was nothing to collect.

19 Q. What do they owe Goldstein and Lewin?

20 A. Fifty some thousand dollars.

21 Q. Mm-hmm. How long have they owed this  
22 money?

23 A. About three years.

24 Q. Are you surprised?

25 A. Surprised at what?

1 Q. They haven't paid you?

2 A. Well, there's no money available.

3 Q. Okay.

4 A. So I don't want to spend the legal  
5 resources trying to collect it. I don't want to  
6 throw any good money after bad. So --

7 Q. How many other accounts payable are still  
8 out there among Goldstein and Lewin and Proskauer  
9 Rose?

10 A. Oh, I don't know. I don't know. If you  
11 want to, I'll just finish what Elliot's call was  
12 about.

13 Q. Please. I'm sorry for interrupting you.

14 A. That's okay.

15 He asked me to send him a copy of all our  
16 invoices, which I didn't understand why. I said,  
17 Eliot, are you getting ready to pay? I was basically  
18 kidding him. He said, no, we don't have money  
19 available right now, but I would like to have a copy  
20 of all those invoices. I said, okay. It's in the  
21 storage. We'll have to get it. I chatted with him  
22 how his family was, how he's doing. And that was it.

23 Q. What did he say how his family is doing?

24 A. He said the family is well, everything is  
25 okay. And that was basically it.

If there is no money, why is Proskauer suing Iviewit, and suing companies they do not have bills with but that have patents??

1 Q. Yeah.

2 A. And then we ordered the information to  
3 get from storage, which as soon as we get it, I will  
4 send it to him. That was it.

5 Q. Did he discuss the fact that he knew you  
6 were going to testify in this matter?

7 A. No.

8 Q. Have you discussed that testimony with  
9 anyone?

10 A. No.

11 Q. Do you know if Eliot is missing any  
12 documents that he needs for this lawsuit?

13 A. I have no idea.

This is untrue as the Company had asked for his records and the accounting records because they were missing.

14 Q. Brings up an interesting point. What  
15 happened when -- Why did Iviewit vacate their office  
16 at 2255 Glades Road?

17 A. For two reasons. Number one, they wanted  
18 to shift operations to California; and number two,  
19 they were running out of funds to pay the rent from  
20 what I understand.

This is untrue. The Company closed the Boca office because we found Utley stealing patents and Proskauer doing illegal loans with friends of theirs. Lewin was present at the Board meetings when this was done.

21 Q. As a - as a former board member, what -  
22 to what do you attribute Iviewit's running out of  
23 money?

24 A. To the lack of investors' interest in  
25 putting in additional money.

1 Q. Do you know Steven Lamont is?

2 A. The name does not sound familiar.

3 Q. Steven Lamont - L-a-m-o-n-t.

4 A. No. Who is he?

5 Q. He's someone that Iviewit brought in in  
6 the last year to handle things.

7 A. No.

8 Q. Have you spoken to Brian Utley or Raymond  
9 Hersh recently?

10 A. Yes. I spoke to Raymond Hersh about -- I  
11 saw him about three weeks ago. Raymond now works for  
12 a financial institution that looks to place loans.  
13 He stopped at my office and tried to have - see if I  
14 can recommend him any clients that are looking to  
15 finance businesses or inventory, receivables and  
16 such.

17 So that was my meeting with Raymond  
18 Hersh. Iviewit was really not discussed much  
19 anymore.

Did he ask Brian about stolen patents or stolen money or anything else he had become aware of as a Board member, prior to his jumping ship,

20 Brian Utley, I spoke to maybe three  
21 months ago. Brian I think moved to Minnesota,  
22 something like that. He told me about the illness of  
23 his daughter. Again, Iviewit wasn't really discussed  
24 much. That was it. I'm still friendly with all of  
25 them. Including Sy and Eliot.

1 Q. Let me go through my notes. I might be  
2 done.

3 A. Okay.

4 Q. A few points: Do you recall a patent  
5 attorney who did work for Iviewit named Joao -  
6 J-o-a-o - which I believe is a Brazilian or a  
7 Portuguese name?

8 A. No.

This is false. Lewin interfaced directly with Joao and paid him directly. There are multitudes of correspondences between Joao and Lewin. Lewin throughout deposition has tried to avoid knowing Joao and mixing him up with Foley & Lardner. Joao is a Wheeler referral and Lewin was on Board from his start with Company, until he was fired

9 Q. Do you remember why Foley & Lardner no  
10 longer did work for Iviewit - patent work after a  
11 certain time?

12 A. Eliot and Sy, and I'm not sure whether  
13 Brian was involved in that decision, might have been  
14 they decided they wanted to switch it over to another  
15 firm. And there were some people that Brian Utley  
16 knew. There was a law firm that Brian Utley knew. I  
17 don't recall their name. But it was switched over to  
18 them.

19 Now, Foley & Lardner, were they  
20 originally the patent attorneys?

21 Q. I believe so. Totally false they come in after 1 year of Joao.

22 A. Okay. Who were -- I forgot the name of  
23 the people that it was switched over to. There was a  
24 law firm that Brian was familiar with that  
25 specialized in patent work.

This law firm he refers to is Foley & Lardner that Brian brought in. What Brian forgot to tell Company is that the patent lawyer William Dick was responsible with him for misappropriating patents from his last employer and we found this out after we caught them doing same. Lewin was made aware of this as Board member and although Brian Utley came from his referral Wheeler (Utley best friend of Wheeler) he did nothing to fulfill his fiduciary

1 Q. Are you aware of any law firms besides  
2 Proskauer that stopped doing work for Iviewit because  
3 of bill issues?

4 A. Yes.

5 Q. Who are they?

6 A. I would say probably all the law firms  
7 they did that with.

8 Q. Eventually stopped --

9 A. Yes.

10 Q. -- working for Iviewit --

11 A. Yes.

12 Q. -- because of non-payment?

13 A. Yes.

14 Q. Do you know if there are any reasonable  
15 defenses that Iviewit had to actually paying those  
16 bills?

17 MR. SELZ: Objection to the form of the  
18 question.

19 A. I --

20 Q. Other than not having money, did Iviewit  
21 have any reason not to pay those bills?

22 MR. SELZ: Same objection. And also to  
23 relevancy.

24 Q. (By Mr. Prusaski) You can answer the  
25 question.

1           A.       They at the end were not happy with the  
2 patent work that was done at the law firm.  If that's  
3 the name, Foley & Lardner.  I'm not sure.  You know,  
4 I don't recall names.  But the original patent law  
5 firm that did the patent work, they were not happy  
6 with.  And whether they stopped payments or didn't  
7 pay them or finish paying them, I'm not aware.

8           Q.       When you say, you're referring to Eliot  
9 and Sy?

10          A.       Yes.

11          Q.       Anyone else?

12          A.       I would say mainly Eliot and Sy.

13          Q.       Was Brian Utley not happy with Foley &  
14 Lardner's work?

15          A.       I'm not sure.  It was mostly Eliot, not  
16 Sy.

17          Q.       Did you ever hear them complain?

18          A.       Brian, no.  I did not hear Brian  
19 complain.

20          Q.       I'm sorry.  What were you saying, this  
21 was mostly Eliot, not Sy?

22          A.       Mostly Eliot, not Sy, yes.  Because I  
23 don't know -- You know, Sy didn't understand the  
24 technology and patent either.  It was really Eliot,  
25 you know, that understood that.

Huge admission to why the bills were not paid was the patent work was in major question and we found people actually stealing patents and other malfeasances. The patents are all going into a six month suspension at the USPTO while all of these matters including allegations of Fraud Upon the United States Patent & Trademark Office are being investigated.

This denial is absurd again. Lewin knew and understood and used the technologies and was at meetings with many engineers who acclaimed it. He invested in the Company, took founders shares for his family, had his daughter Erika work at the Company, was accountant for the Company and secured investment and clients for the Company. He was intimately involved from day one, and almost every single person I view it is complaining against for malfeasances has a tentacle back to Lewin or one of his referrals.

1 Q. Are you Sy's next door neighbor?

2 A. No. I'm -- I live a couple blocks away  
3 from him.

4 Q. Do you know where he is this week?

5 A. No.

6 Q. So Foley & Lardner still hasn't fully  
7 been paid; is that what you're saying?

This statement makes  
no sense here, is it a  
transcript error??

8 A. I don't know. I don't know. I really  
9 don't know.

10 Q. Do you still refer work to Proskauer  
11 Rose?

12 A. Yes, I do. When the opportunity arises,  
13 I do.

14 Q. Who are Donald Kane and Ken Anderson?

15 A. There were people that got involved as  
16 far as trying to promote the company. I think one or  
17 both of them were on the board, if I recall now  
18 correctly. I'm not sure. But I know they got  
19 involved in trying to promote the technology,  
20 introduce them to venture capitalists. That was it.

21 Q. I'm going to show you a document that we  
22 will mark Plaintiff's Exhibit 1.

23 MR. PRUSASKI: Mr. Seiz, I'm showing the  
24 witness a copy of the Amended Second  
25 Affirmative Defenses that were filed by your

1 predecessor.

2 MR. SELZ: Okay.

3 MR. PRUSASKI: Let me mark this with a  
4 sticker as Exhibit 1.

5 (Thereupon, the above-referred to  
6 document was marked as Exhibit 1 for identification.)

7 Q. (By Mr. Prusaski) This is a document  
8 that was filed by Iviewit's attorneys. I'm going to  
9 ask you to look at paragraph number one with me.

10 It says, plaintiff, meaning Proskauer,  
11 has failed to perform work under the terms of any  
12 oral agreement between the parties for which it seeks  
13 remuneration.

14 And I'm going to ask you, sir, if you are  
15 aware of any facts or circumstances which tend to  
16 support that assertion made by Iviewit?

17 A. Not that I'm aware of.

18 Q. I'm going to ask you to look at paragraph  
19 two, which says, some work which may have been  
20 performed on behalf of the defendants was not - which  
21 is Iviewit, was not performed at the defendant's  
22 request nor pursuant to any agreement.

23 And I'll ask you the same question, are  
24 you aware of any facts or circumstances that tend to  
25 support that statement?

1 A. No, I'm not aware of it.

2 Q. Mr. Lewin, I'm going to show you a  
3 document which we will mark as Plaintiff's Exhibit  
4 Number 2.

5 MR. PRUSASKI: Mr. Selz, for your  
6 benefit, it's the March 28th, 2001 letter to  
7 Brian Utley from Chris Wheeler. Where are the exhibits??

8 MR. SELZ: Okay.

9 (Thereupon, the above-referred to  
10 document was marked as Exhibit 2 for identification.)

11 Q. (By Mr. Prusaski) And Mr. Lewin, I'll  
12 ask you to look at that document and tell me if you  
13 have ever seen it before.

14 A. I do not recall seeing this.

15 Q. Because you don't recall seeing it, I'm  
16 not going to ask you any questions about it.

17 A. Okay.

18 Q. I'm going to show you a document marked  
19 Plaintiff's Exhibit 3.

20 (Thereupon, the above-referred to  
21 document was marked as Exhibit 3 for identification.)

22 MR. PRUSASKI: Mr. Selz, it's a letter  
23 dated April 16th, 2001, from Proskauer Rose to  
24 Brian Utley. This letter attaches as an  
25 exhibit or is an enclosure of three pages of

1 what appears to be a statement.

2 Q. (By Mr. Prusaski) And I'll ask you, sir,  
3 to look at that document and tell me if you've ever  
4 seen it before?

5 A. No, I have not seen it.

6 Q. Do you recall if you worked for or you  
7 were a board member at the time that that letter  
8 appears to have been written, which is April 16th,  
9 2001?

This is the week or so before Utley is terminated and Proskauer are terminated from the Company.

10 A. I don't recall.

11 MR. PRUSASKI: I have no further  
12 questions. Thank you.

13 THE WITNESS: You're welcome.

14 MR. SELZ: I've got a little bit of stuff  
15 on cross.

16 THE WITNESS: Okay.

17 CROSS EXAMINATION

18 Q. (By Mr. Selz) Are you with me?

19 A. Yes.

20 Q. Okay. Mr. Lewin, my name is attorney  
21 Steve Selz. I'm representing the Iviewit companies  
22 in this case.

23 A. Okay.

24 Q. I'm just going to follow up on a couple  
25 of the issues that Mr. Prusaski had asked you

1 questions on.

2           You had indicated that at one point in  
3 time, your CPA firm - and when I mean yours, I mean  
4 Goldstein, et al. - had provided CPA services to the  
5 Iviewit companies; is that correct?

6           A.     That's correct.

7           Q.     Okay. Did Mr. Bernstein ever complain to  
8 you about the services your CPA company provided to  
9 Iviewit?

10          A.     No.

11          Q.     How about with regard to the - what you  
12 testified to earlier, that is, that Iviewit and  
13 specifically Eliot Bernstein and Sy Bernstein, were  
14 concerned about about having a nationally prominent  
15 law firm handling the matters for the Iviewit  
16 companies?

17          A.     Yes.

18          Q.     Were you privy to any of the discussions  
19 between Proskauer Rose's representatives and Messers.  
20 Bernstein and the board members on exactly what the  
21 scope of representation was going to be for Proskauer  
22 Rose?

23                   MR. PRUSASKI: Object to the form.

24          A.     When they were originally engaged, I was  
25 not a board member yet.

1 Q. Okay. So you weren't privy to those  
2 discussions when they were actually retained then?

3 A. I was in many of the meetings when they  
4 were discussing - you know, when they were originally  
5 retained. Not as a board member, but basically as an  
6 accountant and a consultant.

7 Q. Okay. To the best of your recollection,  
8 was there any specific delineation of the types of  
9 services that Proskauer Rose was going to provide?

10 A. I'm not sure I understand the question.  
11 Basically, they were looking for legal services and  
12 they were looking for introductions.

13 Q. Okay. So there was no discussion they  
14 were going to do specifically one type of  
15 representation? In other words, they didn't say,  
16 we'll only handle corporate formations and  
17 solicitation of investors, but we won't do anything  
18 else? Nothing like that happened?

A. Nothing like that that I'm aware of, no.

Q. There was never any discussion about  
limiting their role with regard to the patenting of  
the intellectual properties involved?

A. Well, from what I understand, that was  
handed to another law firm.

Q. Okay. And you had indicated that Ken

False testimony.  
Lewin was  
charged with  
getting Iviewit  
patent counsel  
as he states in  
the beginning for  
a patentable  
technology. Not  
to find corporate  
counsel. Fully  
aware of  
Rubenstein and  
his role to MPEG.

1 Rubenstein for Proskauer Rose had been involved with  
2 that portion of the representation for Iviewit, that  
3 is, to get someone else to handle the patent work?

4 A. Yes.

5 Q. Okay. And was Mr. Rubenstein ever at any  
6 board meetings that you can recall?

7 A. I never met him.

8 Q. Okay. You never had any discussions with  
9 him?

10 A. No.

11 Q. And you had stated previously that you  
12 hadn't been to all the board meetings though; is that  
13 correct?

14 A. That's correct.

15 Q. Okay. Now, you've got over 20 years of  
16 experience as a board of director on various  
17 corporate boards; is that a correct statement of  
18 fact?

19 A. That's correct.

20 Q. And in that time frame, have you ever  
21 been involved with the hiring of a law firm to  
22 represent any corporation or their interests?

23 A. Was I directly involved?

24 Q. Were you involved as a member of the  
25 board of directors in doing that in any other

1 situation, other than Iviewit?

2 A. Generally not.

3 Q. Okay. When you mean generally not, was  
4 there ever a time when you did?

5 A. Well, I don't mean exactly, you know, was  
6 there board approval to hire a law firm and I voted  
7 affirmative? I would say yes. Did I sit down and  
8 negotiate it with any law firm specifically to  
9 perform services? I have negotiated, but not  
10 necessarily as a board of director.

11 Q. Okay. Now, with regard to that, you do  
12 have some experience in reviewing legal bills that  
13 are provided to corporations for services rendered;  
14 is that correct?

15 A. I've seen them before, yes.

16 Q. Okay. And have you ever undertaken to,  
17 either in your role as an accountant or as a member  
18 of a board of directors, review legal billings for  
19 their reasonableness or their accurate reflection of  
20 services provided?

21 A. No.

22 Q. Okay. In your - in your -- In your  
23 opinion, as a member of the board of directors, sir,  
24 what would you think would be a reasonable value for  
25 the services provided by Proskauer Rose to the

1 Iviewit companies?

2 A. I - I can't even start telling you. I  
3 can't even answer that because --

4 Q. Do you know what Proskauer Rose did for  
5 the Iviewit companies?

6 A. They did all the legal -- They did all  
7 the legal work. They introduced them to --

8 Q. ~~They didn't do the patent work is what I~~  
9 ~~think --~~

10 A. ~~They did not do the patent work.~~

11 Q. Okay. So they did the corporate  
12 formation?

13 A. They did the corporate formations. They  
14 did contracts.

15 Q. Okay. How many contracts were there; do  
16 you recall?

17 A. No.

18 Q. Was there more than - more than a dozen  
19 contracts?

20 A. I have no idea.

21 Q. Okay. Let's go back to the corporations.  
22 Have you ever had the opportunity in the past to  
23 review billing statements or gain information on the  
24 cost of forming a corporation in the state of  
25 Delaware?

1 A. No.

2 Q. Do you know how much the ordinary and  
3 customary charge would be for those services?

4 A. I would say not really.

5 Q. Okay. You think more than ten thousand  
6 dollars to form a corporation would be reasonable?

7 A. I - I would -- I have no idea what --

8 Q. Okay.

9 A. More than ten thousand -- I would say  
10 probably less. I don't know. I would say probably  
11 less than ten thousand for forming a corporation.

12 Q. Do you have any idea what the total  
13 billing statements provided to the Iviewit companies  
14 by Proskauer Rose were in this matter?

15 A. Total altogether?

16 Q. Total altogether?

17 A. Not really.

18 Q. Would half a million dollars sound like  
19 too big a number to you?

20 A. I can't say whether it's too big or too  
21 small. I really don't know.

22 Q. Okay. Now, were you involved directly  
23 with regard to the approval of payment of legal bills  
24 provided by Proskauer Rose to the Iviewit companies?

25 A. I was not.

1 Q. Okay. Were you at any board of  
2 directors' meeting in which a vote was taken to  
3 approve the payment of any of those bills?

4 A. I don't recall.

5 MR. PRUSASKI: Objection. Assumes facts  
6 not in evidence.

7 Q. (By Mr. Selz) Let me rephrase it then.  
8 Sir, you stated that you attended some but not all of  
9 the board of directors' meetings; is that correct?

10 A. That's correct.

11 Q. Okay. Do you have a - a recollection of  
12 the goings on at those board of directors' meetings,  
13 things that were discussed?

14 A. Yes, some of them.

15 Q. Some of them. Okay.

16 To the best of your recollection, was  
17 there ever any suggestion as to the payment of any  
18 specific bill to Proskauer Rose?

19 A. Not specific. There were just general  
20 discussion on how to conserve cash.

21 Q. Okay. What you testified to earlier,  
22 basically, figuring out where they were going to  
23 allocate the cash resources?

24 A. That was it.

25 Q. Okay. But there was no - there was no

1 specific vote, to the best of your recollection, by  
2 the board of directors or discussion saying, pay this  
3 invoice to Proskauer; we authorize whoever, Brian  
4 Utley or Raymond Hersh or whoever else it might be,  
5 to cut a check?

6 A. Not that I recall. Because generally,  
7 those decisions were made at the board level. They  
8 were generally made by Sy and Eliot. And I don't  
9 recall. Maybe they were made. Not to my  
10 recollection. There were maybe general discussions,  
11 but not specific.

12 Q. Okay. Now, with regard to the stock that  
13 was given by Eliot Bernstein to Proskauer Rose --

14 A. Yes.

15 Q. -- were you privy to the discussions  
16 concerning that actual providing of the stock?

17 A. Yes, I was.

18 Q. Okay. And that was -- When did that take  
19 place?

20 A. I don't recall the year, but it was  
21 pretty much at the early - at the early stages of the  
22 relationship.

23 Q. Okay. Now, was that -- Did that occur at  
24 a board meeting?

25 A. I don't even know if there was a board at

1 that time. I don't even know if -- I'm not sure if I  
2 was on the board at that time.

3 Q. Okay. You might have just been simply  
4 acting as a CPA/consultant?

5 A. That's exactly right.

6 Q. And do you remember what year that was?

7 A. I would say somewhere around '98, '99,  
8 somewhere in there.

9 Q. Okay. And do you have any idea what the  
10 source of that stock was that was provided to  
11 Proskauer Rose?

12 A. What do you mean the source?

13 Q. Well, if it was from a corporation, the  
14 corporation had to be formed; is that correct?

15 A. Yes.

16 Q. Okay. And so, this was after Proskauer  
17 Rose was retained because they formed the corporate  
18 entities; is that correct?

19 A. Yes.

20 Q. Okay. So this wasn't part of the  
21 original agreement with Proskauer Rose then?

22 A. It was not. Not that - not that I  
23 recall. I think it was done a little bit later.

24 Q. Okay. And do you remember which entity  
25 the stock came from?

1           A.       I think it was Iviewit.com, Inc. There  
2 were so many of them floating around. It was  
3 difficult. It's difficult to recall.

4           Q.       Okay.

5           A.       Or maybe the LLC. I'm not sure at that  
6 time.

7           Q.       Do you recall the purpose for having -- I  
8 know you previously indicated that there was concerns  
9 about using an LLC because of limitations on the  
10 types of shareholders that you could have and other -  
11 and other limitations from that standpoint.

12                   Do you recall why there were upwards of  
13 eight entities formed?

14           MR. PRUSASKI: Objection. Assumes facts  
15 not in evidence. Go ahead.

16           A.       Yes. Yes. Some of the entities were  
17 formed to protect - so we could put the patents in  
18 them. Some of the entities were formed to be a  
19 management company. Some of the entities were  
20 formed --

21                   What happened is there was a change of  
22 strategy. I think originally, we were going to use  
23 an LLC. And then we switched over to a C - to a C  
24 Corp. There were some S Corps. involved. It might  
25 have been an S corporation. I'm not sure.

1           It was just basically -- All that was  
2 done -- There were two purposes; number one, set up a  
3 separate company to protect the patent.

4           Q.     Right.

5           A.     That, I recall. And - and number two,  
6 the rest were just basically tax strategies.

7           Q.     Okay. Now, was there -- Do you recall  
8 any disputes between Brian Utley and Eliot and Sy  
9 Bernstein about any issues other than the payment of  
10 Proskauer's bills?

11          A.     Other than? I mean, there were many  
12 dispute -- You know, when you have a board of  
13 directors and you have management, there's many  
14 disagreements on how to conduct company policy.

15          Q.     Okay.

16          A.     I mean, there were hundreds of them.

17          Q.     Were there any disagreements concerning  
18 the manner in which the patents had been filed or the  
19 names under which the patents had been filed?

20          A.     I don't recall on the names. I recall  
21 there were maybe disagreements of - you know, which I  
22 don't understand - I do not understand patents - of  
23 whether papers were prepared this way or that way or  
24 properly or improperly or -- You know, maybe those  
25 were discussions.

What did he do once he became aware patents were not properly assigned and correct inventors had not been listed? He had fiduciary responsibility to shareholders???

1           Q.     Okay. This goes back to the previous  
2 testimony that you had about Foley & Lardner --

3           A.     Yes.

4           Q.     -- and some concerns about how the  
5 patents had been prepared and filed?

6           A.     Yes.

7           Q.     Okay. Do you recall any other issues  
8 specifically concerning Mr. Utley and the - the  
9 patents?

10          A.     Well, Mr. Utley then brought in people  
11 that he knew who were supposedly - whose background  
12 was patent - patenting technology products. And he's  
13 dealt with them previously.

14                   And I think at one point, they stopped  
15 servicing us because of - I think we stopped making  
16 -- We did not make payments like we were supposed to.  
17 And they withdrew.

18                   Again, Eliot was not happy also with the  
19 job they were doing at the very end. Because at the  
20 end, Eliot basically was not happy with the job  
21 anybody was doing because they weren't getting him  
22 the results that he was looking for.

23          Q.     They weren't getting him the -- The  
24 patents weren't getting processed the way they were  
25 supposed to; is that what --

1           A.       I can't say whether they were done the  
2 way they were supposed to. They were not done based  
3 on -- You know, he was not happy with the -- He  
4 expressed his unhappiness.

5           Q.       Okay.

6           A.       Whether they were done the way they were  
7 supposed to, I have no idea.

8           Q.       Now, with regard to the payment of any of  
9 these bills to Proskauer Rose or to any of these  
10 other parties, were you directly involved with the  
11 preparation of payments or with regard to the  
12 authorization for payments?

13          A.       No, I was not.

14                   MR. SELZ: Okay. I have nothing further.

15                   REDIRECT EXAMINATION

16          Q.       (By Mr. Prusaski) The board -- Did the  
17 board vote on paying Proskauer's bills?

18          A.       I don't recall. I don't recall to that.

19          Q.       Did you say that was done more informally  
20 between the Bernsteins and Utley?

21          A.       Yes.

22          Q.       Now, you said you never saw Ken  
23 Rubenstein in a board meeting, right?

24          A.       I don't think so.

25          Q.       And Mr. Selz asked you, well, you haven't

1 been to all the board meetings, have you?

2 A. No, I have not.

3 Q. Were you personally aware of any board  
4 meetings that Rubenstein attended that you didn't  
5 attend?

6 A. No. No, I was not.

7 MR. PRUSASKI: I have no further  
8 questions.

9 MR. SELZ: Okay. I've got nothing  
10 further.

11 MR. PRUSASKI: You have the opportunity  
12 to waive your reading of the deposition or read  
13 the deposition to check it for errors. I  
14 believe you've probably been asked that before  
15 because you've done this before. What is your  
16 M.O.?

17 THE WITNESS: I waive it.

18 MR. SELZ: I'll order a copy. Chris, are  
19 you ordering it or no?

20 MR. PRUSASKI: Yes, yes.

21 MR. SELZ: Chris, you're ordering?

22 MR. PRUSASKI: Yes.

23 MR. SELZ: Then I'll get a copy.

24 MR. PRUSASKI: All right, Steve.

25 MR. SELZ: Okay. Thanks.

1 (Thereupon, at 12:05 p.m., the deposition  
2 was concluded.)  
3

4 CERTIFICATE OF OATH

5 STATE OF FLORIDA )  
6 )  
7 COUNTY OF BROWARD )

8 I, TAMARA EMERICK-MASCI, RPR, the undersigned  
9 authority, certify that GERALD LEWIN personally  
10 appeared before me and was duly sworn.

11 WITNESS my hand and official seal this  
12 16th day of September, 2002.

13   
14 TAMARA EMERICK-MASCI, RPR



**Tamara Emerick-Masci**  
Commission # 120 004959  
Expires March 7, 2003  
Bound by  
Atlantic Bonding Co., Inc.

## 1 REPORTER'S DEPOSITION CERTIFICATE

2 STATE OF FLORIDA )

3 COUNTY OF BROWARD )

4  
5 I, TAMARA EMERICK-MASCI, Registered  
6 Professional Reporter, certify that I was authorized  
7 to and did stenographically report the deposition of  
8 GERALD LEWIN; that a review of the transcript was not  
9 requested; and that the transcript is a true and  
10 complete record of my stenographic notes.

11  
12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties,  
14 nor am I a relative or employee of any of the  
15 parties' attorney or counsel connected with the  
16 action, nor am I financially interested in the  
17 action.

18  
19 DATED this 16th day of September, 2002.

20  
21  
22  
23  
24  
25  
  
TAMARA EMERICK-MASCI, RFR

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE, LLP, a New  
York limited liability partnership,

Plaintiff,

vs.

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

Defendants.

COPY

Proskauer Rose, L.L.P.  
2255 Glades Road, Suite 340 West  
Boca Raton, Florida 33341  
August 20, 2002  
11:15 a.m.

DEPOSITION OF WILLIAM KASSER, taken  
pursuant to the Rules and Notice hereinbefore  
filed, before MARY C. BETTIS, Court Reporter  
and Notary Public in and for the State of  
Florida at Large, at Proskauer Rose, L.L.P.,  
2255 Glades Road, Suite 340 West, Boca Raton,  
Florida 33341 on Tuesday, August 20, 2002,  
commencing at or about 11:15 a.m.

1 INDEX

2 WITNESS: PAGE:

3

4 WILLIAM KASSER

5 (Direct Examination by MR. PRUSASKI). . . . 4

6

7 E-X-H-I-B-I-T-S

8 PLAINTIFF'S

9 NUMBER	DESCRIPTION	PAGE
10 1	Composite	42
11 2	Composite	71
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

APPEARANCES:

PROSKAUER ROSE, L.L.P.  
by CHRISTOPHER W. PRUSASKI, ESQUIRE  
by MATTHEW TRIGGS, ESQUIRE  
appearing on behalf of the Plaintiff.

SELZ & MUVDI SELZ, P.A.  
by STEVEN M. SELZ, ESQUIRE  
appearing on behalf of the Defendants.

REPORTED BY:

MARY C. BETTIS, COURT REPORTER  
and Notary Public  
114 Southwest 10th Street  
Suite C  
Fort Lauderdale, Florida 33315

STIPULATION

It is hereby stipulated by and between  
counsel for the respective parties and the  
witness that reading and signing of the foregoing  
deposition and the same are, hereby waived.

AND FURTHER DEPONENT SAITH NOT.

1 Thereupon:

2 WILLIAM KASSER,

3 was called as a witness on behalf of the Plaintiff,

4 and, being first duly sworn, was examined on his

5 oath and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PRUSASKI

8 Q. Good morning, Mr. Kasser. I'm Chris

9 Prusaski, and we're here to take your deposition in

10 the subpoena that we had served on you in the case

11 of Proskauer Rose, L.L.P. versus Iviewit.com, Inc.,

12 et al.

13 Have you ever had your deposition taken

14 before?

15 A. Yes.

16 Q. How many times?

17 A. I'm uncertain. Probably seven or eight

18 times.

19 Q. I'm asking you because I just want to make

20 sure you know how the deposition is going to

21 proceed.

22 A. Yes.

23 Q. Obviously you do, but just to tell you if

24 I ask you any questions that you don't understand or

25 you would like me to rephrase, please don't hesitate

1 to say so and I will.  
 2 A. Yes.  
 3 Q. Sometimes we ask questions that can be  
 4 construed to be vague --  
 5 A. Yes.  
 6 Q. -- and if you answer a question, it's  
 7 assumed that you understood. If you need a break,  
 8 ask and we will be happy to accommodate you in any  
 9 way we can.  
 10 Would you please state your full name,  
 11 please.  
 12 A. William Richard Kasser.  
 13 Q. What is your address, sir?  
 14 A. 991 Northwest Ninth Street, Boca Raton,  
 15 Florida 33486.  
 16 Q. Your home telephone number?  
 17 A. Is (561) 347-8390.  
 18 Q. Is there any other number that you can be  
 19 reached at?  
 20 A. My office number is (561) 750-8796.  
 21 Q. What is your current occupation?  
 22 A. I sell insurance.  
 23 Q. For what company?  
 24 A. AFLAC.  
 25 Q. What's your office's address?

1 A. 1355 West Palmetto Park Road, Number 309,  
 2 Boca Raton, 33486.  
 3 Q. How long have you been working with AFLAC?  
 4 A. Six weeks.  
 5 Q. Can you tell me what you did for work  
 6 prior to that?  
 7 A. Prior to that, I was -- Prior that, I was  
 8 associated with Arbitrage International Marketing,  
 9 Incorporated. A-R-B-I-T-R-A-G-E, International  
 10 Marketing, Incorporated.  
 11 Q. Where are they located?  
 12 A. They are located at 7020 Lion's Head Lane,  
 13 Boca Raton.  
 14 Q. What did you do for them?  
 15 A. I was their Chief Financial Officer.  
 16 Q. For how long were you affiliated with  
 17 Arbitrage?  
 18 A. Approximately six months.  
 19 Q. And what did you do for employment before  
 20 that time?  
 21 A. I was involved with Iviewit Holdings,  
 22 Incorporated and its subsidiaries.  
 23 (Thereupon, Mr. Triggs entered the room.)  
 24 BY MR. PRUSASKI  
 25 Q. This is my colleague, Matt Triggs.

1 A. Hello, Bill Kasser.  
 2 (Thereupon, a discussion was held off the  
 3 record.)  
 4 BY MR. PRUSASKI  
 5 Q. We'll return to Iviewit in a few minutes.  
 6 A. Yes.  
 7 Q. Can you give me the benefit of your  
 8 education?  
 9 A. I have a Bachelors in Business  
 10 Administration from Point Park College in Pittsburg,  
 11 Pennsylvania.  
 12 Q. What year did you receive your B.S.?  
 13 A. '70.  
 14 Q. Any other degrees?  
 15 A. No.  
 16 Q. Do you have any professional licenses?  
 17 A. Only as an insurance agent.  
 18 Q. What years were you involved with Iviewit?  
 19 A. From 2001 into 2002.  
 20 Q. What month in 2001?  
 21 A. February 2001.  
 22 Q. And what was the month in 2002?  
 23 A. I don't know.  
 24 Q. Why?  
 25 A. Because I'm uncertain of my status with

1 the company. I haven't resigned and I haven't been  
 2 terminated.  
 3 Q. When was the last time you spoke with  
 4 anyone affiliated with Iviewit?  
 5 And before we get into that, I want to  
 6 just clarify that Iviewit -- When I use the term  
 7 generally, Iviewit means Iviewit.com, Inc., Iviewit  
 8 Holdings, Iviewit Technologies. Do you understand?  
 9 A. Yes.  
 10 Q. Okay. If I want to specify one particular  
 11 entity, I will. If I use the term Iviewit, like I  
 12 said generally, that's what I'm referring to.  
 13 A. Yes.  
 14 Q. So the question was, when was the last  
 15 time you spoke with anyone involved with the  
 16 company?  
 17 A. Spoke directly, it's difficult to say.  
 18 Probably over a month ago, but I'm not certain. I  
 19 don't have the date.  
 20 Q. To whom did you speak?  
 21 A. I would have spoken last -- I believe I  
 22 spoke with Elliott Bernstein. But again, I'm  
 23 uncertain as to the date.  
 24 Q. You believe it was sometime in July?  
 25 A. I suspect so.

Page 9

1 Q. Did you do anything to prepare for your  
2 deposition today?  
3 A. No.  
4 Q. Since you received the subpoena, you  
5 didn't speak with anyone involved with the company  
6 or review any documents?  
7 A. I have not spoken with anyone involved  
8 with the company.  
9 Q. No document review?  
10 A. I have done no document review.  
11 Q. And today is the first time you met  
12 Mr. Selz?  
13 A. Yes, it is.  
14 Q. What is Elliott Bernstein's role with  
15 Iviewit?  
16 A. He is the founder of the company.  
17 Q. What did you speak to Mr. Bernstein about  
18 last month?  
19 A. I believe he called me and we spoke just  
20 generally as to how we were each doing.  
21 Q. Business wasn't discussed?  
22 A. Very little.  
23 Q. What about Si Bernstein?  
24 A. Si I have had -- of course Si was -- I  
25 have had conversations with Si probably -- Again,

Page 10

1 about a month ago would have been the last one.  
2 Q. What is his relationship with Elliott?  
3 A. Si is Elliott's father.  
4 Q. What is Si's role with the Iviewit  
5 companies?  
6 A. Si was Chairman of the Board of Iviewit  
7 Holdings, Incorporated.  
8 Q. Do you know where Si lives?  
9 A. Si lives at 7020 Lion's Head Lane.  
10 Q. Where is that?  
11 A. That's in St. Andrews, here in Boca.  
12 Q. That is the address you gave me for  
13 Arbitrage?  
14 A. Correct.  
15 Q. And Si obviously has something to do with  
16 your last employer, prior to AFLAC?  
17 A. Yes.  
18 Q. Where does Elliott Bernstein live?  
19 A. I don't know.  
20 Q. Is he local?  
21 A. No.  
22 Q. Do you know what state?  
23 A. California.  
24 Q. Okay. City?  
25 A. I'm not certain. It may be Escondido or

Page 11

1 San Diego, in that area.  
2 Q. If you heard the street name, would you  
3 know it?  
4 A. Not currently. I know an address where he  
5 used to live, but my understanding is he's left  
6 there and I don't know the current address.  
7 Q. When was your last contact with Steven  
8 Lamont?  
9 A. Steven Lamont sent me an E-mail probably a  
10 week and a half ago.  
11 Q. Could you tell me what that was about?  
12 A. The E-mail requested that I return all  
13 Iviewit property that is in my possession.  
14 Q. Did you have anything with you?  
15 A. Did I have anything?  
16 Q. Iviewit property that was returned.  
17 A. I have Iviewit property. I didn't return  
18 anything.  
19 Q. Why not?  
20 A. Because Iviewit owes me a substantial  
21 amount of money.  
22 Q. How much money?  
23 A. I'm uncertain of the amount.  
24 Q. Over \$100,000?  
25 A. Yes.

Page 12

1 Q. Over 200?  
2 A. Yes.  
3 Q. Can you give me a ballpark?  
4 A. I asked for 250 in my response to Steven  
5 Lamont.  
6 Q. What is Steven Lamont's current role with  
7 the companies?  
8 A. I believe he is Chief Executive Officer.  
9 Q. Any specific company, business -- company  
10 that he's the CEO of?  
11 A. I believe it's Iviewit Holdings. Maybe  
12 all of them, I don't know.  
13 Q. Where does Mr. Lamont live, do you know?  
14 A. In New York, New York state.  
15 Q. Does he live in California at all?  
16 A. I don't know if he does or does not.  
17 Q. What particular property of Iviewit do you  
18 still have?  
19 A. I have some old files. I have two  
20 computers and a chair.  
21 Q. As far as the files are concerned, are  
22 they computer files or paper?  
23 A. Both.  
24 Q. How many boxes would you say the papers  
25 would fit in?

1 A. Papers would fit in eight boxes.  
 2 Q. Do you have any papers that would be  
 3 responsive to Proskauer Rose's lawsuit at all,  
 4 involving the issues of the unpaid bills?  
 5 A. I don't believe so.  
 6 Q. What was the last time you spoke with  
 7 Brian Utley? U-T-L-E-Y. Hold on. Before we get to  
 8 that, when did Mr. Lamont become involved in the  
 9 Iviewit Enterprises?  
 10 A. Sometime, I believe, in the Fall of 2001.  
 11 Q. That was after or before the Proskauer  
 12 Rose lawsuit was filed?  
 13 A. I'm not certain.  
 14 Q. May of 2001 was the lawsuit.  
 15 A. Then it's after.  
 16 Q. Okay. He was brought in as the CEO of  
 17 Iviewit Holdings, is that correct?  
 18 A. I believe so.  
 19 Q. Okay. We'll get back to Brian Utley. And  
 20 I'm sorry --  
 21 A. Okay.  
 22 Q. -- when was the last time you spoke with  
 23 Mr. Utley?  
 24 A. I believe it was in March of 2002.  
 25 Q. What about Raymond Hersh?

1 A. Raymond Hersh, probably also March.  
 2 Q. What did you talk about?  
 3 A. We discussed the potential for a  
 4 settlement of the involuntary bankruptcy action that  
 5 Mr. Utley and Mr. Hersh and another individual  
 6 brought against Iviewit.  
 7 Q. Are you a party to that?  
 8 A. No, I am not.  
 9 Q. And March was the last time you spoke to  
 10 either Mr. Utley or Mr. Hersh?  
 11 A. Yes.  
 12 Q. What was Mr. Utley's role with the Iviewit  
 13 companies?  
 14 A. He was president.  
 15 Q. When did you first become involved with  
 16 Iviewit?  
 17 A. February of 2001.  
 18 Q. What were you doing at that time, as far  
 19 as career?  
 20 A. Career, I had just finished a year of  
 21 trying to establish a consulting firm for myself.  
 22 Q. Do you recall who approached you about  
 23 Iviewit?  
 24 A. A friend of mine named Jeff Hahn, H-A-H-N.  
 25 Q. What was his role in the companies?

1 A. He is Raymond Hersh's neighbor.  
 2 Q. What was the purpose of the Iviewit  
 3 companies when you approached?  
 4 A. The purpose of the companies or the  
 5 purpose of the approach?  
 6 Q. The purpose of the approach.  
 7 A. The approach. Jeff contacted me. He knew  
 8 that I was looking for a full-time -- full-time,  
 9 permanent employment. And he indicated that his  
 10 neighbor was involved as Chief Financial Officer of  
 11 what he called at that time a well-funded start up,  
 12 and he needed an individual in the capacity of  
 13 controller to work with him, and he put me in touch  
 14 with Mr. Hersh.  
 15 Q. What was your role in the Iviewit  
 16 companies to be when you were approached?  
 17 A. I was to be Controller.  
 18 Q. What were your duties as Controller?  
 19 A. I would be responsible for the accounting  
 20 of the company.  
 21 Q. If you could, just describe your  
 22 day-to-day duties, that would be helpful.  
 23 A. Okay. I was to do all the accounting  
 24 functions, since it was a small staff, and  
 25 additionally I would assist Mr. Hersh in his role as

1 Chief Financial Officer.  
 2 Q. What type of accounting background did you  
 3 have?  
 4 A. Do I have?  
 5 Q. Yes.  
 6 A. I have a substantial amount of accounting  
 7 education in college, and in addition I have worked  
 8 as a Controller or Chief Financial Officer in a  
 9 number of smaller businesses.  
 10 Q. Now, at the time you were approached, were  
 11 any of the Iviewit entities formed yet, legally?  
 12 A. They were all formed at that point in  
 13 time.  
 14 Q. That was February of 2001?  
 15 A. Yes.  
 16 Q. Do you know what the first company to be  
 17 formed was?  
 18 A. I'm not certain.  
 19 Q. Okay. How many companies were there total  
 20 at the time you came in, in 2001?  
 21 A. I believe there were five that were active  
 22 at this point in time. Again, I'm operating from  
 23 memory.  
 24 Q. That's fine. I appreciate that.  
 25 A. Could be four.

1 Q. Could you tell me what they were?  
 2 A. Iviewit Holdings, Incorporated; Iviewit  
 3 Technologies, Incorporated; Iviewit.com,  
 4 Incorporated; Iviewit.com, L.L.C.; and there was  
 5 another one, I believe just Iviewit, Incorporated.  
 6 Again, I'm uncertain, once we get down past the top  
 7 three, as to dates and other things.  
 8 Q. So listing those companies doesn't jog  
 9 your memory as to which was the first one that was  
 10 formed or not?  
 11 A. I was not there when they were formed.  
 12 They were all formed when I came on board, so I  
 13 don't know which was formed first.  
 14 Q. Where were these companies located, as far  
 15 the business office?  
 16 A. The business office was in this building,  
 17 2255 West Glades Road. They were in Suite 337W.  
 18 Q. Were there any other addresses that any of  
 19 these entities operated out of?  
 20 A. There was an office in California.  
 21 Q. Is that California office still there?  
 22 A. No, it is not.  
 23 Q. What were the dates when the California  
 24 office was in operation?  
 25 A. The California office, again, operated

1 from memory and approximating, things it was in --  
 2 The office was operating when I came on board in  
 3 February, so I believe it had started either in late  
 4 2000 or early 2001, but I can't say for certain when  
 5 it started. It was there when I got there.  
 6 Q. Which particular entity operated out of  
 7 the California office?  
 8 A. There was no real distinction, entity to  
 9 entity, as to which operated out of where.  
 10 Q. Can you explain what you mean by that?  
 11 A. Well, the California office was  
 12 established to -- Mainly, as my -- as I understood  
 13 it, to do encoding work for Warner Brothers. And in  
 14 addition to that, to serve as a sales base for the  
 15 west coast, particularly the Los Angeles area where  
 16 most of the motion picture industry is located. As  
 17 far as one entity being housed there and the other  
 18 entities being housed here, there was no such  
 19 distinction.  
 20 Q. Is there any distinction with respect to  
 21 paying bills between the companies?  
 22 A. All bills were paid by Iviewit.com,  
 23 Incorporated.  
 24 Q. Why is that?  
 25 A. That was the operating entity, and that

1 was where the expenses in income were all recorded.  
 2 Q. Who signed the checks off the Iviewit.com  
 3 Inc. accounts?  
 4 A. When I came on board, Raymond Hersh did.  
 5 Q. Was there ever a time when you signed the  
 6 checks?  
 7 A. Yes, there was.  
 8 Q. Was it your responsibility to review the  
 9 bills that came in before you were paying them?  
 10 A. When I was signing the checks, yes.  
 11 Q. Do you remember what the dates were when  
 12 you were signing the checks?  
 13 A. I believe it started in August of 2001.  
 14 Q. Until what time?  
 15 A. I still am a signatory on the account.  
 16 Q. You don't recall signing any checks prior  
 17 to August 2001?  
 18 A. No, I was not on the account prior to  
 19 that.  
 20 Q. How many employees did the companies have  
 21 when you came on board?  
 22 A. When I came on board -- It would have been  
 23 approximately 20, when I came on board.  
 24 Q. Were they all located here at 2255 Glades  
 25 Road?

1 A. No.  
 2 Q. How many were here?  
 3 A. Probably 15 here. Again, I'm estimating.  
 4 One in New York; one in Chicago; and two in  
 5 California, so it would be 15 or 16 here.  
 6 Q. Do you know to this date how many  
 7 employees the corporations have?  
 8 A. I don't know today how many they have.  
 9 Q. Who were the people responsible for making  
 10 financial decisions for the companies?  
 11 A. When I came on board?  
 12 Q. Yes.  
 13 A. Brian Utley and Raymond Hersh made  
 14 financial decisions, as well as, of course, the  
 15 board of directors.  
 16 Q. The board of directors was comprised of  
 17 who?  
 18 A. The board of directors was chaired by Si  
 19 Bernstein, Simon L. Bernstein.  
 20 Q. Any other members?  
 21 A. Elliott was on -- Elliott Bernstein was on  
 22 the board. A number of individuals, who I am  
 23 unfamiliar with other than by name, were on the  
 24 board, and I can't remember with certainty those  
 25 names now.

1 Q. Do you know who is on the board now?  
 2 A. No, I don't.  
 3 Q. When we say, on the board, what company  
 4 are we talking about?  
 5 A. We are talking about Iviewit Holdings,  
 6 Incorporated. There were boards of directors for  
 7 the other corporations also, but generally Iviewit  
 8 Holdings, Incorporated being the top dog company.  
 9 That was the board that controlled what the other  
 10 companies did.  
 11 Q. Holdings, Inc. was the company, just to  
 12 clarify, that controlled the other companies, and  
 13 .com, Inc. was the operating entity?  
 14 A. Yes.  
 15 Q. Now, Mr. Utley and Mr. Hersh had financial  
 16 decision-making control of all of these companies,  
 17 is that correct?  
 18 A. They did make financial decisions for all  
 19 the companies, the board of directors also exercised  
 20 oversight.  
 21 Q. And that was from the time you started in  
 22 February 2001?  
 23 A. Yes.  
 24 Q. And to your knowledge, when did Mr. Utley  
 25 and Mr. Hersh not make decisions for the companies?

1 A. Mr. Utley and Mr. Hersh were terminated, I  
 2 believe, the end of March.  
 3 Q. 2001?  
 4 A. Correct.  
 5 Q. Why?  
 6 A. The Board of Directors terminated them.  
 7 I'm uncertain of all the details.  
 8 Q. Do you know when Proskauer Rose first  
 9 became involved with representing Iviewit?  
 10 A. I don't know an exact date. It would be  
 11 very early on in the life of the company.  
 12 Q. Do you know if it was '99 or 2000?  
 13 A. I don't know for a fact when it was.  
 14 Q. Do you know who made the decision to hire  
 15 Proskauer Rose?  
 16 A. No, I don't.  
 17 Q. Do you have any knowledge if any other law  
 18 firms were used by the Iviewit companies, besides  
 19 Proskauer?  
 20 A. Other law firms were used, yes.  
 21 Q. Do you recall who they were, what they  
 22 were?  
 23 A. What they were? Foley & Lardner, their  
 24 Milwaukee office was used, did a substantial amount  
 25 of patent work.

1 Q. Do they still represent the Iviewit  
 2 entities?  
 3 A. No, they don't.  
 4 Q. When did they stop representing the  
 5 Iviewit entities?  
 6 A. It would have been in the Summer of 2001,  
 7 I believe.  
 8 Q. Do you know why that was that they stopped  
 9 representing the Iviewit companies?  
 10 A. I'm not certain of all the details of  
 11 that.  
 12 Q. Did it have to do with the bills?  
 13 MR. SELZ: Objection, calls for  
 14 speculation.  
 15 BY MR. PRUSASKI  
 16 Q. You can answer.  
 17 A. There was -- There were substantial  
 18 amounts of money outstanding. There was also an  
 19 amount of inaction on the part of the firm that was  
 20 unsatisfactory, and the patent work was given to  
 21 another firm.  
 22 Q. Did Foley & Lardner terminate the  
 23 representation of the Iviewit companies or did  
 24 someone in Iviewit terminate the representation of  
 25 the Foley & Lardner?

1 A. I don't know who did the termination.  
 2 Q. Do you know how much was owed at the time  
 3 the termination stopped?  
 4 A. I believe it was in the neighborhood of  
 5 \$170,000.  
 6 Q. Do you know if that money has been paid?  
 7 A. I don't know if it has or has not.  
 8 Q. Do you know if Foley & Lardner sued for  
 9 that money?  
 10 A. To the best of my knowledge -- or to my  
 11 knowledge, they had not sued. I'm not aware of a  
 12 lawsuit.  
 13 Q. Are there any other law firms besides  
 14 Foley & Lardner?  
 15 A. That Iviewit has used?  
 16 Q. Yes.  
 17 A. Yes. There was a firm -- I'm not certain  
 18 of the full name of it -- Meltzer, Lippe, L-I-P-P-E,  
 19 I believe, and a number of other names in New York,  
 20 which I believe also served as patent counsel for a  
 21 while prior to Foley & Lardner.  
 22 Q. Prior to Foley & Lardner, do you remember  
 23 what the dates were?  
 24 A. No, I don't.  
 25 Q. Do you know why Foley & Lardner was used

1 instead of Meltzer & Lippe?  
 2 A. I don't know why.  
 3 Q. Do you know if it was over the bills?  
 4 A. I don't know why the decision was made to  
 5 move it to Foley & Lardner.  
 6 Q. Do you know what the name of the Iviewit  
 7 company that retained Proskauer was?  
 8 A. No, I don't.  
 9 Q. Do you know what -- for what purpose  
 10 Proskauer was hired to represent Iviewit?  
 11 (Thereupon, a fire alarm sounded.)  
 12 MR. SELZ: Fire alarm.  
 13 MR. PRUSASKI: Let's just go off the  
 14 record for a second.  
 15 (Thereupon, a short recess was taken.)  
 16 BY MR. PRUSASKI  
 17 Q. Before the break we were discussing former  
 18 law firms that were used by Iviewit.  
 19 A. Yes.  
 20 Q. We left off with Meltzer & Lippe --  
 21 A. Yes.  
 22 Q. -- who was brought in, I believe you  
 23 indicated, before Foley & Lardner?  
 24 A. They -- Yeah. I believe they were before  
 25 Foley & Lardner.

1 Q. Do you recall any other firms after Foley  
 2 & Lardner?  
 3 A. Yes. There is a firm on the west coast  
 4 that took over the patent work from Foley & Lardner.  
 5 Q. What was the name of that firm?  
 6 A. I'm drawing a blank on it right now.  
 7 Q. Do you know what city it's located in?  
 8 A. It's located in Los Angeles.  
 9 Q. If the name of the firm pops in your head  
 10 during this deposition, would you please let me  
 11 know?  
 12 A. Yes.  
 13 Q. Okay. Thank you. And they handled patent  
 14 work?  
 15 A. They handled patent work.  
 16 Q. Were there any firms after the Los Angeles  
 17 firm?  
 18 A. Handling patent work?  
 19 Q. Yeah.  
 20 A. No. Not -- Let's put it this way, not to  
 21 the best of my knowledge.  
 22 Q. Do you know what the dates when the Los  
 23 Angeles firm represented Iviewit were?  
 24 A. I believe they would have taken over in  
 25 the Summer of 2001, when Foley & Lardner -- when the

1 engagement with Foley & Lardner was terminated.  
 2 Q. And you don't recall who terminated that  
 3 engagement?  
 4 A. No, I don't.  
 5 Q. Do you know who terminated the engagement  
 6 of the Los Angeles firm?  
 7 A. I don't know that the engagement of the  
 8 Los Angeles firm has been terminated.  
 9 Q. Do you know of any other firms after the  
 10 Los Angeles firm that represented Iviewit in any  
 11 way?  
 12 A. In any way? After the -- Well, not after  
 13 the Los Angeles firm. The Los Angeles firm was  
 14 engaged to handle patent work. There were other  
 15 firms that were engaged for other matters.  
 16 Q. What were they?  
 17 A. There was a firm that is here in Boca,  
 18 Sachs, Sax & Klein, that was brought in initially to  
 19 respond to a letter from an attorney representing  
 20 Brian Utley, Raymond Hersh, and Mike Reale.  
 21 Q. What else did Spencer Sach's office do for  
 22 Iviewit?  
 23 A. They also represented Iviewit in the  
 24 lawsuit brought by Proskauer.  
 25 Q. Do they still represent Iviewit in any

1 way?  
 2 A. No, they do not.  
 3 Q. Do you know why that representation was  
 4 terminated?  
 5 A. Nonpayment of fees.  
 6 Q. Have they sued?  
 7 A. No.  
 8 Q. What other law firms represented Iviewit?  
 9 A. Furr & Cohen.  
 10 Q. Is that here in Boca?  
 11 A. Yes, they were here in Boca.  
 12 Q. What type of work did they do?  
 13 A. They are a -- They do bankruptcy work.  
 14 Sachs, Sax & Klein referred --  
 15 Q. Excuse me. Come in.  
 16 (Thereupon, a discussion was held off the  
 17 record.)  
 18 BY MR. PRUSASKI  
 19 Q. You were saying that Furr & Cohen did some  
 20 bankruptcy work for Iviewit?  
 21 A. Yes. Yeah, Sachs, Sax & Klein referred  
 22 Iviewit to Furr & Cohen when the matter involving  
 23 Utley and others became a bankruptcy matter.  
 24 Q. Do you know who represents Iviewit in the  
 25 bankruptcy court?

Page 29

1 A. Today?  
 2 Q. Yes, sir.  
 3 A. No, I don't.  
 4 Q. What about when Hersh filed the  
 5 involuntary bankruptcy petition?  
 6 A. At that time it was Brad Slayberg from  
 7 Furr & Cohen.  
 8 Q. Do you know if they represent Iviewit now  
 9 or is that representation with Furr & Cohen  
 10 terminated?  
 11 A. I believe that representation is  
 12 terminated, yes.  
 13 Q. And why do you believe that?  
 14 A. The last discussions we had relative to  
 15 bankruptcy they were concerned because they had  
 16 not -- The bills had not been paid and they were  
 17 petitioning to get out of the case.  
 18 Q. Do you know if Sachs' office and Furr &  
 19 Cohen are considered creditors in the bankruptcy  
 20 petition?  
 21 A. They were not at the time I was involved.  
 22 I don't know today.  
 23 Q. Getting back to Proskauer's representation  
 24 of Iviewit, do you know why Proskauer was hired by  
 25 Iviewit?

Page 30

1 A. No. I don't know specifically why, no.  
 2 Q. Did you form an opinion or understanding  
 3 as to why they were hired after you started working  
 4 for the companies?  
 5 A. The relationship was one of general  
 6 legal - corporate legal work, as far as I saw it. I  
 7 don't know what influenced the decision to retain  
 8 Proskauer versus another firm.  
 9 Q. Besides general legal corporate work, what  
 10 other types of work did Proskauer do for the Iviewit  
 11 companies?  
 12 A. I am -- I believe there was some patent  
 13 work early on, but I'm not certain of the nature of  
 14 it. Knowing again, it was long before my time and  
 15 it would have been early on in the relationship, so  
 16 I'm not sure what went on at that point.  
 17 Q. It was -- Whatever patent work was done by  
 18 Proskauer you are saying was done before  
 19 February 2001?  
 20 A. Yes.  
 21 Q. Do you have any recollection of what that  
 22 was?  
 23 A. No, I don't, other than -- Well, no, I  
 24 really don't. It was all -- It all happened long  
 25 before my time.

Page 31

1 Q. So to your knowledge, Foley & Lardner, and  
 2 Meltzer & Lippe, and the Los Angeles firms did the  
 3 patent work for the Iviewit companies?  
 4 A. That's correct.  
 5 Q. Who at Iviewit was responsible for  
 6 directing Proskauer do the work?  
 7 A. I believe Brian Utley was.  
 8 Q. Would you describe Brian as the main  
 9 contact between Iviewit and Proskauer?  
 10 A. It appeared that way when I came on board,  
 11 although again various -- various people at Iviewit  
 12 would have contact with Proskauer regarding  
 13 particular items.  
 14 Q. Do you recall who the attorneys at  
 15 Proskauer were that did the work for Iviewit  
 16 companies?  
 17 A. Chris Wheeler was involved, Rocky  
 18 Thompson -- Was his first name Donald?  
 19 Q. Yes.  
 20 A. Rocky did some corporate work while I was  
 21 there. I'm trying to think. And then anyone else  
 22 would have just been -- Those were the two that I  
 23 had spoken to, two attorneys. The rest would have  
 24 just been names on bills, old bills that I had  
 25 looked at. So there were a number of -- number of

Page 32

1 attorneys whose names appeared on bills that we had  
 2 in the file.  
 3 Q. Did you look at the bills while you were  
 4 with Iviewit?  
 5 A. Yes, I did.  
 6 Q. Did you review the bills before they came  
 7 in?  
 8 A. The ones that came in while I was there, I  
 9 reviewed.  
 10 Q. And at the time you were there was  
 11 February 2001 --  
 12 A. Yes.  
 13 Q. -- to the time Proskauer stopped  
 14 representing Iviewit?  
 15 A. Correct, yes.  
 16 Q. During that time you reviewed all the  
 17 Proskauer bills?  
 18 A. Yes.  
 19 Q. Did anyone else review the bills?  
 20 A. Yes, Raymond Hersh also looked at them and  
 21 I believe Brian Utley looked at them too.  
 22 Q. Who made the decision to pay the bills?  
 23 A. It would have been Raymond or Brian, based  
 24 on what they looked at on the bills.  
 25 Q. Did you have any say as to whether the

1 bills were paid or not?  
 2 A. At the time I came on board, I wasn't  
 3 familiar enough with the work that Proskauer was  
 4 doing to really enter into that decision.  
 5 Q. Do you have any idea how much the Iviewit  
 6 entities did pay Proskauer?  
 7 A. Paid to Proskauer?  
 8 Q. Yeah, being the accountant.  
 9 A. Difficulty recalling the exact number. I  
 10 did know at one time what was paid versus what  
 11 was --  
 12 Q. Can you recall a ballpark figure?  
 13 A. I would say it would be between 500,000  
 14 and 1 million.  
 15 Q. Who made the decision to pay those bills  
 16 that were paid?  
 17 A. Most of them were paid prior to my coming  
 18 on board, so I don't know who made the decision.  
 19 Q. Who had the financial authority to pay  
 20 those bills before you came on board?  
 21 A. I believe Brian Utley and Raymond Hersh.  
 22 Q. Did there ever come a time where  
 23 Iviewit -- Strike that.  
 24 The current bills that are the subject of  
 25 the lawsuit we are here on today, do you have any

1 idea why those bills weren't paid?  
 2 A. I believe they were unpaid primarily  
 3 because the company didn't have money to pay them.  
 4 Q. Are there any other reasons that you are  
 5 aware of that the bills were not paid?  
 6 A. Not that I'm aware of, no.  
 7 Q. Have you ever heard anybody -- Strike  
 8 that.  
 9 What entity paid the checks for the  
 10 Proskauer -- wrote the checks for the Proskauer  
 11 bills?  
 12 A. In the period of time that I was there, it  
 13 would have been Iviewit.com, Incorporated.  
 14 Q. Were the bills sent to Iviewit.com,  
 15 Incorporated?  
 16 A. Were the bills billed?  
 17 Q. Yes.  
 18 A. Was the name on --  
 19 Q. That's a good point you are making. Thank  
 20 you.  
 21 A. Yeah. I don't know. I'm trying to  
 22 remember now exactly which entity they were billed  
 23 to. I don't know for certain. Again, I would have  
 24 to -- would have to go look at them to tell you  
 25 which one of the entities they were billed to or if

1 they were billed to various of the entities. I  
 2 really don't know.  
 3 Q. Do you remember how often the bills were  
 4 received from Proskauer?  
 5 A. I believe they came in on a monthly basis.  
 6 Q. When they came in you would review them?  
 7 A. In the time that I was there, yes.  
 8 Q. Which is February 2001 to --  
 9 A. Correct.  
 10 Q. -- the time of the lawsuit?  
 11 A. Yes. There wasn't a whole lot of  
 12 activity, you know -- Let's -- There wasn't a whole  
 13 lot of activity with Proskauer Rose after I came on  
 14 board, after February of 2001.  
 15 Q. Okay. Do you recall that when you came to  
 16 Iviewit in February 2001 were they behind on  
 17 Proskauer's bills?  
 18 A. I believe they were, yes.  
 19 Q. Do you know how much?  
 20 A. I don't know the exact number at that  
 21 point in time.  
 22 Q. Do you have any idea why they were behind  
 23 on the bills?  
 24 A. The company was generally behind. Again,  
 25 it was an investor-funded company, and the money was

1 -- money was always tight, money coming from the  
 2 investors.  
 3 Q. Do you recall there ever being problems  
 4 with the bills when you would receive them?  
 5 A. Problems?  
 6 Q. Yes.  
 7 A. The bills that I received?  
 8 Q. Yes.  
 9 A. No.  
 10 Q. If there were a problem with the bills,  
 11 who would handle the problem from Iviewit?  
 12 MR. SELZ: Object to the form of the  
 13 question.  
 14 THE WITNESS: I'm uncertain. I believe --  
 15 I'm uncertain as to who would have handled them  
 16 prior to my getting involved. And I really  
 17 didn't see any problems, because it was very  
 18 little activity after I got involved.  
 19 BY MR. PRUSASKI  
 20 Q. Have you ever seen any documents  
 21 indicating that there were past problems with  
 22 Proskauer's bills that Iviewit had?  
 23 A. Have I seen documents indicating that?  
 24 Q. Yes.  
 25 A. Yes.

Page 37

1 Q. What did you see?  
 2 A. The only one that I saw was a letter in  
 3 the Proskauer file from Brian to Chris Wheeler,  
 4 Brian Utley to Chris Wheeler, objecting to a number  
 5 of items on a bill.  
 6 Q. On one bill?  
 7 A. On one bill, yes.  
 8 Q. Do you remember anything about that  
 9 particular bill?  
 10 A. No, I don't.  
 11 Q. Now, this file that you reviewed that had  
 12 this letter in it --  
 13 A. Yes.  
 14 Q. -- how many different objections to bills  
 15 did you see in it? Was it just the one letter?  
 16 A. That really was the only one I saw in that  
 17 file.  
 18 Q. Do you have that letter?  
 19 A. No, I don't.  
 20 Q. Where is it?  
 21 A. I don't know.  
 22 Q. Where did you see it?  
 23 A. I saw it in the Iviewit offices when I had  
 24 these files.  
 25 Q. Do you recall the month and the year when

Page 38

1 you saw the letter?  
 2 A. It would have been in -- Sometime in the  
 3 Summer of 2001. I can't give you an exact month,  
 4 but it would have been somewhere around then. It  
 5 was when -- I came across it while I was doing a  
 6 reconciliation of the bills in reference to the  
 7 Proskauer lawsuit.  
 8 Q. What were the results of that  
 9 reconciliation?  
 10 A. The results of the reconciliation was I  
 11 was able to find support for the amounts that  
 12 Proskauer was claiming.  
 13 Q. What do you mean by that?  
 14 A. In the billing file I was able to find  
 15 bills that corresponded to those that Proskauer  
 16 indicated were outstanding.  
 17 Q. So did that indicate to you that Iviewit  
 18 had received the bills?  
 19 A. Yes.  
 20 Q. How many objections were there, total,  
 21 written to those bills?  
 22 A. I believe there was just that one letter.  
 23 That was the only one I saw. Now, bear in mind that  
 24 this was a billing file and simply a file of  
 25 invoices, and it's entirely possible we don't know

Page 39

1 what else might have been out there. So this was  
 2 not a file -- You know, I cannot say that there  
 3 weren't other objections.  
 4 Q. So just to clarify that, the invoices that  
 5 were attached to the Proskauer lawsuit during the  
 6 reconciliation, you determined they were received?  
 7 A. Yes.  
 8 Q. Let's spend a few minutes talking about  
 9 the different entities.  
 10 A. Yes.  
 11 Q. Iviewit.com, Incorporated, we are going to  
 12 talk about that entity. I believe you indicated  
 13 that was the operations company?  
 14 A. Correct.  
 15 Q. Do you recall when it was formed?  
 16 A. The middle of 1999, I believe.  
 17 Q. Did Proskauer have anything to do with  
 18 forming that entity?  
 19 A. I believe they were involved in the  
 20 formation of it, yes. Though I can't say with  
 21 absolute certainty, but I believe they did.  
 22 Q. Do you know if this entity was formed  
 23 after Proskauer was hired to represent Iviewit?  
 24 A. I don't know the timing of what went on  
 25 when things were -- Again, it was all put together

Page 40

1 in the middle of -- in the Summer of 1999. At that  
 2 time, I was not involved with the company, so I  
 3 can't give you details of the -- of what preceded  
 4 what.  
 5 Q. Do you recall who the principals of  
 6 Iviewit.com, Inc. were?  
 7 A. At the time it was formed, I believe --  
 8 Again, I know that, of course, Brian Utley and  
 9 Elliott Bernstein would have been involved. I'm  
 10 uncertain as to what their capacities were. And in  
 11 fact, I'm not even absolutely certain that Brian was  
 12 around when it was formed. He may have come in  
 13 afterwards.  
 14 Q. What is the status of Iviewit.com, Inc.  
 15 now?  
 16 A. The status of Iviewit.com, Inc. as to it  
 17 exists. It probably -- I don't know, specifically,  
 18 anything about it.  
 19 Q. Does Mr. Lamont have anything to do with  
 20 it currently?  
 21 A. I don't know. Technically, if he does,  
 22 other than through his relationship with the holding  
 23 company -- I don't know how all of this is  
 24 structured today, and what may have taken place,  
 25 that I'm not aware of.

1 Q. Did Proskauer Rose perform any work for  
 2 Iviewit.com, Inc.?  
 3 A. I suspect they did. Although, without  
 4 looking at the bills, I can't say for sure which  
 5 entity. You know, I can't say with absolute  
 6 certainty that they performed work. You know,  
 7 again, I don't really know. I know they performed  
 8 work generally for the interests that were  
 9 represented there. Whether they actually performed  
 10 work in that company or not I'm unclear as to.  
 11 Q. Do you know who formed Iviewit Holdings,  
 12 Inc.?  
 13 A. I believe it would have been -- Well, it  
 14 would have been Elliott and Simon Bernstein and some  
 15 other individuals.  
 16 Q. Did Proskauer Rose have anything to do  
 17 with forming that entity?  
 18 A. I'm not certain whether they did or didn't  
 19 at that time.  
 20 Q. Do you know if Proskauer performed any  
 21 work for that entity?  
 22 A. For Iviewit Holdings?  
 23 Q. Yes.  
 24 A. Yes, I believe they did.  
 25 Q. Do you know what they did?

1 A. I know they did general corporate work.  
 2 Q. Now, the work that was performed for  
 3 Iviewit Holdings, Inc., was that billed to  
 4 Iviewit.com, Inc.? How did the bills work?  
 5 A. My recollection of it is the bills came to  
 6 the different entities, but again it's only a  
 7 recollection. You know, I'm hesitant to say with  
 8 absolute certainty that, you know, all bills. Let  
 9 me get a glass of water while he's getting that out.  
 10 Q. Sure.  
 11 (Thereupon, a discussion was held off the  
 12 record.)  
 13 (Whereupon, Plaintiff's Exhibit No. 1 was  
 14 marked for identification by the reporter.)  
 15 BY MR. PRUSASKI  
 16 Q. I'm going to show you a document,  
 17 Mr. Kasser, that's marked Plaintiff's Exhibit No. 1,  
 18 and I will ask you to take an opportunity to look at  
 19 that.  
 20 A. Okay.  
 21 MR. PRUSASKI: I brought copies of  
 22 everything for you.  
 23 MR. SELZ: Okay. Great.  
 24 BY MR. PRUSASKI  
 25 Q. I will ask you to look at that and tell me

1 if you have ever seen it before.  
 2 A. Yes, I have.  
 3 Q. When did you first see it?  
 4 A. Probably shortly after it was served on  
 5 us, late Summer of 2001.  
 6 Q. Did you utilize the invoices attached to  
 7 this document to perform your reconciliation that  
 8 you mentioned a little while ago?  
 9 A. I had already -- Prior to this document  
 10 coming in, I had already reconciled the account to  
 11 what Proskauer had claimed, so I just went through  
 12 my copy of this to see that the invoices, which are  
 13 only the first pages of invoices, corresponded to  
 14 what I had.  
 15 Q. When you did your reconciliation -- When  
 16 you performed your reconciliation --  
 17 A. Yeah.  
 18 Q. -- shortly after the lawsuit was filed --  
 19 A. Yeah.  
 20 Q. -- who asked you to perform the  
 21 reconciliation?  
 22 A. Ross Miller.  
 23 Q. What was his role in the company?  
 24 A. Ross Miller was functioning as a  
 25 consultant to the company at the time, I believe.

1 Q. When did he come aboard?  
 2 A. Ross Miller came aboard when the  
 3 management - Brian Utley, Raymond Hersh, Mike Reale,  
 4 R-E-A-L-E, and others - were terminated.  
 5 Q. Where does Mr. Reale live? I forgot to  
 6 ask you.  
 7 A. He lives in Delray Beach.  
 8 Q. Do you know his address, off the top of  
 9 your head?  
 10 A. Not off the top of my head.  
 11 Q. Phone number?  
 12 A. No, I don't know that either.  
 13 Q. Wife's name?  
 14 A. No.  
 15 Q. Street name?  
 16 A. No.  
 17 Q. Okay.  
 18 A. Michael Reale is all I can tell you.  
 19 Q. Okay. That's fine. Thank you.  
 20 Did you -- Who did you tell the results of  
 21 the reconciliation to?  
 22 A. To Mr. Miller.  
 23 Q. Anyone else?  
 24 A. I don't recall telling anyone else.  
 25 Q. Do you recall what you told Mr. Miller

Page 45

1 about your investigation?  
 2 A. I told Mr. Miller that I had gone through  
 3 the file of invoices and I had determined and also I  
 4 had gone through the accounts payable records and  
 5 determined that the amounts shown, the invoices  
 6 shown were -- had been recorded into accounts  
 7 payable, and that we had those invoices in our file,  
 8 and that they represented invoices that we had  
 9 received from Proskauer.  
 10 Q. Was it your understanding, during the  
 11 reconciliation process, that you had the complete  
 12 file at your disposal to use?  
 13 A. It was my understanding, yes, that that  
 14 was the -- Well, it was the invoice file. It was  
 15 the accounts payable file, the file into which  
 16 invoices received would be placed.  
 17 Q. And you only found that one letter from  
 18 Utley of objection?  
 19 A. That was stuck in the file.  
 20 Q. Okay. Was that where the letter would  
 21 usually be kept?  
 22 A. No.  
 23 Q. Where would they usually be kept?  
 24 A. My -- Again, my understanding of things,  
 25 and having come in late in the relationship with

Page 46

1 Utley and the others, I suspect Utley -- And again,  
 2 his secretary being the primary administrative  
 3 person -- may have had files that would have been  
 4 shipped to California when they terminated or at  
 5 least we believed they were shipped to California  
 6 when Utley was terminated.  
 7 Q. Have you ever heard of other letters  
 8 expressing an objection to the Proskauer bills?  
 9 A. I don't recall hearing of other letters.  
 10 Q. If you look at Exhibit 1 in the invoices  
 11 attached to it -- And you indicated you have seen  
 12 this document before. If you look at the invoices,  
 13 does that assist your recollection as to how  
 14 Proskauer sent the bills?  
 15 A. Most of them appear to be addressed to  
 16 Iviewit.com.  
 17 Q. Inc.?  
 18 A. Uh-huh.  
 19 Q. I believe you indicated that both of the  
 20 bills that were sent to Iviewit were sent to that  
 21 entity?  
 22 A. Yeah. That was the operating entity  
 23 again.  
 24 Q. Did anyone from Iviewit ever object to  
 25 Proskauer sending the bills to Iviewit.com, Inc.?

Page 47

1 MR. SELZ: Object to the form of the  
 2 question.  
 3 THE WITNESS: I don't know.  
 4 BY MR. PRUSASKI  
 5 Q. I'm sorry. What was your answer?  
 6 A. I don't know.  
 7 Q. Moving back to what we were talking about  
 8 before, I showed the exhibit to Iviewit Holdings,  
 9 Inc. --  
 10 A. Uh-huh.  
 11 Q. -- you indicated that Proskauer performed  
 12 some general corporate work for that entity.  
 13 A. Uh-huh.  
 14 Q. Do you recall specifically what type of  
 15 work was performed?  
 16 A. Specifically, I don't. Almost all the  
 17 work had been done before I got there.  
 18 Q. Who was making the decisions that  
 19 Iviewit -- for Proskauer to perform work for Iviewit  
 20 Holdings, Inc.?  
 21 A. I believe it would have been Brian Utley.  
 22 Q. Do you know what the current status of  
 23 Holdings, Inc. is?  
 24 A. No, I don't.  
 25 Q. You mentioned a little while ago that

Page 48

1 Steven Lamont had something to do with that company?  
 2 A. Yes.  
 3 Q. Do you have any idea, as you sit here  
 4 today, what they are doing, what their future  
 5 business plans are?  
 6 A. No, I don't.  
 7 Q. Iviewit Technologies, Inc. --  
 8 A. Yes.  
 9 Q. -- a few questions about that entity.  
 10 A. Okay.  
 11 Q. When was it formed, do you know?  
 12 A. I believe it was formed in the Summer of  
 13 1999. I can't be more specific than that.  
 14 Q. Did Proskauer have anything to do with its  
 15 formation?  
 16 A. Again, I don't know.  
 17 Q. Do you know if Proskauer performed any  
 18 work for Iviewit Technologies, Inc.?  
 19 A. I don't know for sure if they did or not.  
 20 Q. What is the current status of Iviewit  
 21 Technologies, Inc.?  
 22 A. I don't know.  
 23 Q. Were you satisfied with Proskauer's  
 24 representation with the Iviewit companies?  
 25 A. Again, having come in late in the process,

Page 49

1 I can't say one way or another. I can't evaluate  
 2 the work that they did.  
 3 Q. Do you know if others in the company were  
 4 satisfied with the services?  
 5 A. I didn't hear of any objections from the  
 6 management. Again, I -- The management that was in  
 7 place at the time, Utley, Hersh, and others. I know  
 8 that Elliott Bernstein has voiced some objections.  
 9 Q. What have you heard from Elliott  
 10 Bernstein?  
 11 A. Really nothing, other than knowing that he  
 12 had concerns about the work. At times it came  
 13 rather late in the relationship with the company.  
 14 Really, I don't have any specifics that I can tell  
 15 you, other than he had some displeasure with the  
 16 work.  
 17 Q. What specifically about the work was he  
 18 not happy with?  
 19 A. I can't say. I really can't say. Again,  
 20 my relationship with Elliott has been limited,  
 21 particularly of late, and there isn't much I can  
 22 tell you.  
 23 Q. Did you hear him make these comments  
 24 before or after the lawsuit was filed?  
 25 A. It would have been after the lawsuit,

Page 50

1 quite a while after really.  
 2 Q. Did you -- That was the first time you had  
 3 ever heard anyone involved with the companies in any  
 4 way object to the work Proskauer did?  
 5 A. I think there were some concerns that Si  
 6 Bernstein may have voiced earlier on as to the  
 7 volume of work, amounts of the bills, but that also  
 8 would have been around the time of the lawsuit.  
 9 Again, bear in mind that I came on board right  
 10 around this time. I don't have -- Again, I don't  
 11 have a lot of history of the company. If I had been  
 12 around since 1999, I might have known other things,  
 13 so a lot of -- I really just don't have a lot of  
 14 information as to how people felt in terms of the  
 15 lawsuit.  
 16 Q. But all these comments, you heard them  
 17 after the lawsuit was filed?  
 18 A. Correct.  
 19 Q. Is it in Si Bernstein's nature to complain  
 20 about bills?  
 21 A. Maybe. Nobody likes bills.  
 22 Q. Did Si Bernstein complain a lot about  
 23 bills?  
 24 A. No, not particularly. Again, most of my  
 25 relationship with Si Bernstein dealt with other

Page 51

1 things other than Proskauer.  
 2 Q. Uh-huh. I'm concerned as to whether Si  
 3 Bernstein was complaining, if he was complaining,  
 4 about the amount of bills or the work as reflected  
 5 in the bills?  
 6 A. He may have been complaining about both.  
 7 Again, I know that he did have some discussions with  
 8 Ross Miller, that I was not party to, but the  
 9 complaints that I heard were more general and  
 10 nothing specific.  
 11 Q. General as in --  
 12 A. No.  
 13 Q. -- these bills are too expensive?  
 14 A. Yeah. And it may have been that the work  
 15 wasn't what they wanted.  
 16 Q. Well, when you say it may have been --  
 17 A. I don't know.  
 18 Q. -- are you speculating?  
 19 A. Yeah. We did not sit down and go over  
 20 bill by bill, look at it item by item, and say this  
 21 item is, you know, something that we object to. We  
 22 don't think this was any good. This one is too  
 23 high. It couldn't have taken eight hours to do this  
 24 type of work. We didn't do any of that. We --  
 25 Q. Do you know if Si or Elliott has ever sat

Page 52

1 down and scrutinized these bills after the lawsuit  
 2 was filed?  
 3 A. I don't know if they have.  
 4 Q. Do you know why Proskauer stopped  
 5 representing Iviewit?  
 6 A. I believe it was over the payment of  
 7 bills.  
 8 Q. Is there a time when Iviewit stopped  
 9 paying Proskauer that you are aware of?  
 10 A. It would have been in the -- Sometime in  
 11 the Spring or early Summer of 2001.  
 12 Q. Why did they stop paying Proskauer's  
 13 bills?  
 14 MR. SELZ: Asked and answered.  
 15 BY MR. PRUSASKI  
 16 Q. You can answer the question.  
 17 A. I believe it was because we had no money.  
 18 Q. Was there a meeting held to where it was  
 19 decided that the bills wouldn't be paid?  
 20 A. In the Summer of 2001 we were receiving  
 21 funding in small amounts from our principal  
 22 investor, and at that time we were making on-account  
 23 payments to creditors who we were concerned about in  
 24 hopes of avoiding the problems that would in effect  
 25 lawsuits and so on, that would make it difficult to

1 find new investment or bring new investment into the  
 2 company.  
 3 Q. Was Proskauer considered one of those  
 4 creditors that you were concerned about?  
 5 A. Yes.  
 6 Q. So who was involved with the decision to  
 7 stop paying?  
 8 A. The decision? Ross Miller would have  
 9 been, but it was more a decision simply came by  
 10 default. We had no more money coming in from the  
 11 investors, so there was nothing we could do.  
 12 Q. Was Proskauer sending letters demanding  
 13 payment at that point in time?  
 14 A. Yes.  
 15 Q. And they were received by the company?  
 16 A. Yeah.  
 17 Q. Do you know if anyone in the company ever  
 18 sent letters back to Proskauer saying we are not  
 19 paying these bills because of this bona fide reason?  
 20 MR. SELZ: Objection to the form of the  
 21 question.  
 22 THE WITNESS: I'm not aware of any  
 23 objection. I know that Ross Miller had  
 24 discussion with Chris Wheeler, but I'm not -- I  
 25 was not a party to those discussions.

1 BY MR. PRUSASKI  
 2 Q. Do you know what was discussed, even  
 3 though you weren't a party?  
 4 A. I believe Ross was trying to negotiate a  
 5 settlement, and in affect a reduction, try to get a  
 6 concession from Chris in exchange for payment now,  
 7 which he would then -- The idea was to have some  
 8 concessions from the firm here, so that he could go  
 9 back to the investors and say they had bills  
 10 outstanding for \$369,000.  
 11 Ross was hopeful of being able to  
 12 negotiate some reduced amount that he could go back  
 13 to the investor and say they are willing to settle  
 14 for whatever this reduced amount is. The investor  
 15 would then look at it and pay that amount to make  
 16 that liability go away, and save the company from  
 17 the obvious problems the lawsuit would create.  
 18 Q. Do you know if Iviewit ever entered into  
 19 any payment arrangements with Proskauer while  
 20 Proskauer was representing the company?  
 21 A. I don't know if there were any formal  
 22 payment arrangements made. I do know that there  
 23 were on-account payments made.  
 24 Q. What do you mean by on-account payments?  
 25 A. In other words, a payment not of specific

1 invoices, but simply a payment made to be applied  
 2 generally to the account. Because again, typically  
 3 a company would do that if they can't afford to pay  
 4 all the amounts due, make a good faith payment of a  
 5 certain amount. And there were times when Iviewit  
 6 would send say \$20,000 to Proskauer, simply a round  
 7 amount of \$20,000.  
 8 Q. And that was an on-account payment?  
 9 A. Yes.  
 10 MR. PRUSASKI: Off the record, please.  
 11 (Thereupon, a lunch recess was taken.)  
 12 BY MR. PRUSASKI  
 13 Q. Mr. Kasser, during the break I made some  
 14 notes, so I want to touch on a couple of issues --  
 15 A. Sure thing.  
 16 Q. -- in areas that we have already covered,  
 17 but questions that I didn't ask.  
 18 A. Okay. Very good.  
 19 Q. You talked about Ross Miller a little  
 20 while ago.  
 21 A. Yes.  
 22 Q. Do you know if he's still affiliated with  
 23 Iviewit?  
 24 A. I believe he is not.  
 25 Q. What specifically was his role with the

1 company?  
 2 A. Ross Miller came in at the request of our  
 3 lead investor, Cross Bow Ventures, L.L.P., to in  
 4 effect run the company after the management had been  
 5 terminated.  
 6 Q. You are referring to Mr. Utley and  
 7 Mr. Hersh and --  
 8 A. And Mr. Reale and the rest of the  
 9 employees had also been terminated --  
 10 Q. I'm sorry to interrupt you.  
 11 A. No, go ahead.  
 12 Q. Do you know where Mr. Miller lives now?  
 13 A. I believe Mr. Miller is still in Atlanta,  
 14 Georgia, although I can't give you an address off  
 15 the top of my head.  
 16 Q. You don't recall a phone number for him?  
 17 A. No, I would have to look it up.  
 18 Q. Do you know what his wife's name is?  
 19 A. No, I don't.  
 20 Q. What company does he work for?  
 21 A. I don't believe he works for a company. I  
 22 think he's self-employed. He was at the time he was  
 23 involved with Iviewit.  
 24 Q. We talked about Foley & Lardner at the  
 25 beginning of this deposition --

Page 57

1 A. Yes.  
 2 Q. -- and their work for Iviewit. You  
 3 indicated, I believe, that they are no longer  
 4 working for Iviewit --  
 5 A. Yes.  
 6 Q. -- is that correct?  
 7 A. That's correct.  
 8 Q. Do you know if the issue of paying of  
 9 their bills was ever resolved?  
 10 A. I don't know if it was ever resolved.  
 11 Q. Was it ever compromised or attempted to --  
 12 Did the company ever attempt to compromise the  
 13 bills?  
 14 A. Not to my knowledge.  
 15 Q. You also mentioned another law firm,  
 16 Meltzer Lippe?  
 17 A. Yes.  
 18 Q. You indicated that they specifically did  
 19 patent work for the companies?  
 20 A. I believe they did. It was already in the  
 21 life of the company.  
 22 Q. Do you know if the company was happy with  
 23 the services provided by that firm?  
 24 A. I don't know.  
 25 Q. Were they satisfied with Foley & Lardner's

Page 58

1 representation?  
 2 A. I don't know for a fact that they were or  
 3 weren't.  
 4 Q. You indicated that at the time that  
 5 Iviewit stopped paying Proskauer, the primary  
 6 principal was the only one funding, is that Cross  
 7 Bow Ventures?  
 8 A. Yes.  
 9 Q. Where are they located?  
 10 A. They are in West Palm Beach.  
 11 Q. Who are the principals of that company?  
 12 A. I don't know the names of all the  
 13 individuals. Bruce Shoemaker is one name that comes  
 14 to mind. Hank Powell, A. Chickman Powell, III, was  
 15 involved with Cross Bow and was the one who we dealt  
 16 with at Cross Bow. Hank is no longer with Cross  
 17 Bow. You also see Cross Bow referred to as Alpine  
 18 Venture Capital Partners, which I believe is the  
 19 funding entity that we dealt with.  
 20 Q. Where did the principals of Iviewit or the  
 21 officers or directors affiliated with Alpine or  
 22 Cross Bow?  
 23 A. Excuse me?  
 24 Q. Were any of the officers or directors or  
 25 principals of Iviewit companies --

Page 59

1 A. Yes.  
 2 Q. -- affiliated as officers, directors,  
 3 stockholders of Alpine or Cross Bow?  
 4 A. No. None of the Iviewit people were held  
 5 in positions with Cross Bow.  
 6 Q. Is Cross Bow still funding any of these  
 7 companies, the Iviewit companies?  
 8 A. I don't believe so.  
 9 Q. Why don't you believe so?  
 10 A. They had stopped funding while I was still  
 11 involved. They may have come back in for a while,  
 12 but I doubt it.  
 13 Q. Okay.  
 14 A. I'm not aware of anything.  
 15 Q. We talked about the four different  
 16 companies and what roles they were --  
 17 A. Yes.  
 18 Q. -- affiliated with one another. Can you  
 19 tell me specifically what Iviewit Technologies, Inc.  
 20 does?  
 21 A. Iviewit Technologies -- It gets -- It can  
 22 get a little confusing here, but let me try to  
 23 explain. Approximately -- Iviewit Technologies,  
 24 Incorporated was formed in the early days of the  
 25 life of the company, because Iviewit Holdings,

Page 60

1 Incorporated originally was to be a subchapter  
 2 s-corporation. And in a subchapter s-corporation,  
 3 only natural persons can be shareholders, and there  
 4 are some other limitations too as to who can be a  
 5 shareholder. Iviewit Technologies was formed as a  
 6 wholly owned -- Well, not wholly owned, I'm sorry.  
 7 It was formed as a subsidiary of Iviewit Holdings,  
 8 Incorporated to allow for the inclusion of investors  
 9 or other entities in ownership who would not qualify  
 10 as shareholders in subchapter s-corporations.  
 11 For currently approximately 92 percent of  
 12 the stock in Iviewit Technologies is held by Iviewit  
 13 Holdings. The other eight percent is held by  
 14 Proskauer Rose and a firm in California, Armstrong,  
 15 Hersh, Jackway, Higherman, and Worthiler, I believe.  
 16 Although, once I get past Armstrong, Hersh, I'm not  
 17 real sure of the rest of the names. And two  
 18 individuals who were not U.S. citizens or who were  
 19 involved in the initial invention, Zack Sirahjee and  
 20 Jude Rosario.  
 21 Q. How do you spell Sirahjee?  
 22 A. S-I-R-A-H-J-E-E. Don't hold me to that,  
 23 it could be wrong. If Zack shows up here some day  
 24 and complains because his name is spelled wrong,  
 25 don't come looking for me. That's as close as I can

1 get. But Zack is one of the people who was involved  
2 in technologies. At the time, I believe, of the  
3 first infusion of cash from an outside investor it  
4 was determined that it would be advisable to bring  
5 the outside investor into holdings, rather than into  
6 technologies, and therefore the s-corp. was  
7 terminated. The outside investor became a  
8 shareholder in holdings and the need for  
9 technologies disappeared.

10 There was an abortive effort begun at some  
11 point to convert the shares of the shareholders in  
12 technologies to holding shares, so that then -- In  
13 other words, so it was begun as a share exchange  
14 agreement, because it was never completed. But the  
15 idea would have been to take the shareholders in  
16 technologies and exchange shares of the holdings for  
17 the technologies shares and then collapse  
18 technologies and just have a straight line from  
19 Iviewit Holdings to Iviewit.com, rather than the  
20 current line that runs through technologies.

21 Now, at some point, if it was ever decided  
22 that it might be advisable to clean things up,  
23 that's something somebody needs to address is to get  
24 those shares converted.

25 Q. Do you know if Proskauer did any work for

1 technologies ever?

2 A. I don't know if Proskauer did any work for  
3 technologies specifically. I suspect they did.  
4 Whether they billed it to .com or not -- Again,  
5 there weren't a lot of -- The distinctions were not  
6 real well defined.

7 Q. Did Holdings or Technologies have bank  
8 accounts?

9 A. They had bank accounts. There was little  
10 activity in them.

11 Q. What is little activity?

12 A. Basically, when I came on board there was  
13 \$100 in each of their bank accounts.

14 Q. Which goes to your previous statement  
15 about little distinction between the companies?

16 A. Yeah. The main action was in the  
17 Iviewit.com, Inc. account. That's where -- That's  
18 where the money came in. That's where it went out.  
19 We made an effort when I came on board, although it  
20 was pretty late in the game at that point, to try to  
21 run the money that -- the investment that came in  
22 for Iviewit Holdings, run it through the Iviewit  
23 Holdings bank accounts. But that simply was an  
24 in-and-out transaction where Iviewit Holdings would  
25 receive say \$100,000 from the investor as a loan.

1 Iviewit Holdings would have of course signed the  
2 note for the loan and the other documentation and  
3 then Iviewit Holdings would turn around and lend the  
4 money to Iviewit.com, Inc. So again, that really  
5 was all Iviewit Holdings was doing there, so the  
6 bank account really wasn't, you know, necessary,  
7 other than for the facts that we pass money across  
8 it to get it down to .com, Inc.

9 Q. So would it be fair to say that Proskauer  
10 Rose was doing most of its work for Iviewit.com,  
11 Inc.?

12 MR. SELZ: Object to the form of the  
13 question.

14 MR. PRUSASKI: Can you specify as to what  
15 the objection is?

16 MR. SELZ: Most of it is work, and as to  
17 what time period -- I think the form of the  
18 question is vague.

19 BY MR. PRUSASKI

20 Q. During the time that Proskauer represented  
21 the Iviewit entities, would it be a fair statement  
22 to say that Proskauer did the majority of its work  
23 for Iviewit.com, Inc.?

24 A. I really can't say, because I wasn't  
25 around for most of the work, so I really don't know

1 which it related to. Again, you know, work that --  
2 You know, I really don't know what distinctions were  
3 made where and how it was handled previously. So  
4 it's hard -- It's difficult really and impossible  
5 for me to say which one of the entities the work was  
6 done for specifically back in the days prior to my  
7 coming on board, which is when the vast bulk of the  
8 work was done. Things had pretty much slowed down  
9 once I came on board in terms of Proskauer work.

10 Q. What is the entity that's now in  
11 bankruptcy?

12 A. I'm not aware of the status of the  
13 bankruptcy case.

14 Q. Which entity was in the bankruptcy case?

15 A. The bankruptcy case that was brought by  
16 Utley, et al?

17 Q. Yeah.

18 A. Okay. They brought their bankruptcy case  
19 against Iviewit.com, L.L.C.

20 Q. Are you aware of any other bankruptcy  
21 cases involving the Iviewit entities?

22 A. I'm not aware of any.

23 Q. Just the one that was brought by Hersh,  
24 Utley?

25 A. Yes.

Page 65

1 Q. Is Iviewit.com, L.L.C., to your knowledge,  
 2 still conducting business?  
 3 A. No, it is not.  
 4 Q. When did it stop -- I'm sorry.  
 5 A. To the best of my knowledge and belief,  
 6 it's not conducting any business.  
 7 Q. What type of business did it conduct?  
 8 A. I'm not aware it ever conducted any  
 9 business to speak of in the -- Going back to the  
 10 early days of the company, there were -- As I eluded  
 11 to earlier in the instance of the s-corp. which was  
 12 later determined and the formation of the  
 13 technologies, there were things that were done, sort  
 14 of bits and starts if you will, where I think they  
 15 didn't know quite what form they wanted things to  
 16 take, and so L.L.C. came into being early on in the  
 17 process, but really was not used for very much,  
 18 other than Brian Utley's employment agreement was  
 19 with L.L.C. And the lease the sublease in this  
 20 building, which was with Bank of America, was  
 21 negotiated and signed on behalf of L.L.C.  
 22 Q. Thank you for bringing that up. It's an  
 23 interesting point.  
 24 Why did Iviewit move out of this building  
 25 of 2255 Glades Road?

Page 66

1 A. We moved out of the building because our  
 2 lease expired October the 25th. We had moved out  
 3 prior to that actually, because we had no use for  
 4 the space anymore.  
 5 Q. Are we in 2001?  
 6 A. October 25th of 2001, yes, was the  
 7 expiration of the lease -- or the sublease, if you  
 8 will.  
 9 Q. Did they ever attempt to renew the lease  
 10 with the management?  
 11 A. No.  
 12 Q. Was the decision to move out ever have  
 13 anything to do with the rent not being paid on time?  
 14 A. We made the decision to move out because  
 15 we no longer needed the space.  
 16 Q. Where did Iviewit go after 2255 Glades  
 17 Road?  
 18 A. A lot of what was here was shipped to --  
 19 had already been shipped to California, and so I  
 20 took some files that were still in the office here  
 21 and some other items and took them home with me.  
 22 And there are some boxes of files, as I had said  
 23 earlier, in my garage. And I also -- We had a  
 24 refrigerator, a filing cabinet, a couple other  
 25 pieces of furniture that I rented a storage unit for

Page 67

1 at a self-storage place called Boca Storage. And I  
 2 have since turned the storage unit over to Ted  
 3 Bernstein, since he can use it personally. And Ted  
 4 has now those items that were in the storage unit.  
 5 They are still in the storage unit. He has it now.  
 6 Q. During the time that Iviewit occupied the  
 7 space at 2255 Glades Road, were all the files kept  
 8 here, at that office?  
 9 A. I cannot say with absolute certainty they  
 10 were.  
 11 Q. You indicated you performed that  
 12 reconciliation in or around May or June of 2001?  
 13 A. Yes.  
 14 Q. Did you perform them here at 2255 Glades  
 15 Road?  
 16 A. Yes.  
 17 Q. Okay. All the files that you needed to  
 18 conduct that reconciliation were located in that  
 19 office?  
 20 A. The accounts payable files were located  
 21 here, and that was, again, what I needed to perform  
 22 the reconciliation. Again, I was able to find  
 23 invoices for each of the items, detailed invoices  
 24 for each of the items that were on the account.  
 25 Q. Listed in the complaint?

Page 68

1 A. Yeah. If you look at -- I also was able  
 2 to, of course, track payments that were shown.  
 3 You'll see, if you read through, there are some  
 4 statements in there that show payments coming in.  
 5 Q. If you look at the last page of Exhibit 1,  
 6 which is Exhibit B to the amended complaint --  
 7 A. Yeah.  
 8 Q. -- does that final account total of  
 9 \$369,000 to your recollection -- Was that the amount  
 10 that Iviewit --  
 11 A. Yes.  
 12 Q. -- indicated that it owed when you did the  
 13 reconciliation?  
 14 A. Yes. 369 is the amount.  
 15 Q. So Iviewit -- When you did your  
 16 reconciliation, Iviewit's statements showed there  
 17 were open invoices for that amount?  
 18 A. Right. Yes. Those were the open invoices  
 19 I was able to find. Yes, sir. In fact -- Well,  
 20 let's -- I was able to find the open invoices that  
 21 Proskauer shows here.  
 22 Q. Are you aware of any instances that  
 23 Proskauer ever billed for work that wasn't actually  
 24 performed?  
 25 A. I'm not aware of any.

Page 69

1 Q. You never saw correspondence or documents  
 2 in Iviewit's files indicating otherwise?  
 3 A. Other than that one letter that I spoke of  
 4 earlier, which disputed some items, I had not seen  
 5 any other files.  
 6 Q. I think you indicated that Brian Utley was  
 7 the president of Iviewit.  
 8 A. Yes.  
 9 Q. Which particular companies was he the  
 10 president of?  
 11 A. I believe all of them; Iviewit Holdings,  
 12 Iviewit Technologies, and Iviewit.com, Inc.  
 13 Q. Okay. Other than the Proskauer Rose  
 14 lawsuit that we are here on today and the  
 15 involuntary bankruptcy petition that Brian Utley is  
 16 involved in --  
 17 A. Yes.  
 18 Q. -- sir, are you aware of any other court  
 19 proceedings involving Iviewit or other lawsuits?  
 20 A. I'm not aware of any.  
 21 Q. Do you have any idea what witnesses  
 22 Iviewit plans on having testify at the trial in this  
 23 case, who they are?  
 24 A. No, I'm not.  
 25 Q. Do you know if there's any other people

Page 70

1 that we didn't talk about today or specifically  
 2 mention that have any knowledge about this lawsuit  
 3 or the claims in the lawsuit?  
 4 A. I suspect Elliott Bernstein would have  
 5 some knowledge of the claims. I don't think we have  
 6 talked about him.  
 7 Q. Do you know what he's planning on  
 8 testifying about?  
 9 A. No, I don't. I don't know that he's  
 10 planning on testifying.  
 11 Q. I mean, based on your relationship with  
 12 him, can you tell me what you think that he's  
 13 planning on testifying about in this case?  
 14 A. Anything that I would say would be  
 15 speculation, because my relationship with Elliott is  
 16 not that close and has not been very close of late  
 17 at all. I haven't spoken to him in a while.  
 18 Q. Can I ask you the same question for Si  
 19 Bernstein?  
 20 A. Yes. Again, with Si, I don't know of any  
 21 specific complaints that he may have. We really  
 22 haven't talked about them, other than just some  
 23 generalities. Most of my relationship with Si  
 24 focussed on other things in the insurance business  
 25 specifically. It had nothing to do with Iviewit.

Page 71

1 Q. I'm going to show you a document that I  
 2 want to mark as Plaintiff's Exhibit Number 2.  
 3 (Whereupon, Plaintiff's Exhibit No. 2 was  
 4 marked for identification by the reporter.)  
 5 BY MR. PRUSASKI  
 6 Q. I'm going to ask you to take your time and  
 7 look at that document and tell me if you have ever  
 8 seen it before?  
 9 While you are looking at that, I will step  
 10 outside for about 30 seconds. We can go off the  
 11 record.  
 12 A. Okay.  
 13 (Thereupon, a discussion was held off the  
 14 record.)  
 15 BY MR. PRUSASKI  
 16 Q. Before we talk about Exhibit 2 -- We're  
 17 back on the -- I just want to ask you a couple of  
 18 follow-up questions.  
 19 A. Sure.  
 20 Q. You indicated that there was an abortive  
 21 effort to convert shares in Iviewit Technologies to  
 22 Iviewit Holdings that was never completed?  
 23 A. That's correct.  
 24 Q. Who did the legal work for that?  
 25 A. I'm not certain.

Page 72

1 Q. Do you have any reason to believe it was  
 2 Proskauer?  
 3 A. It may have been. It may not have been.  
 4 I don't know for a fact that it was or wasn't.  
 5 Q. You indicate that the main activity  
 6 between the companies was at Iviewit.com, Inc. and  
 7 that the money went in and out of that company?  
 8 A. Yes.  
 9 Q. Did that ever change?  
 10 A. Technically the investment came through  
 11 Iviewit Holdings. Now, we weren't always real  
 12 strict about depositing it into the Iviewit Holdings  
 13 account and then writing a check or doing a transfer  
 14 out of the Iviewit Holdings account to the  
 15 Iviewit.com, Inc. account. We did however, and I  
 16 got it corrected when I came in, so I made certain  
 17 we had done this end of it properly that at least we  
 18 accounted for the transfer in terms of loans passing  
 19 from Iviewit Holdings to Iviewit .com., Inc.  
 20 In other words, technically the way it  
 21 would work was investment would come into Iviewit  
 22 Holdings, that money would then be loaned to  
 23 Iviewit.com, Inc. Now, often times what really  
 24 happened was the money was simply received in the  
 25 Iviewit.com, Inc. bank account, but the loan was

1 always documented on the books of both, so that all  
 2 the -- from an accounting standpoint, all the  
 3 investment was received in Iviewit Holdings.  
 4 Q. Thank you. What is Iviewit.com, Inc.  
 5 doing today?  
 6 A. I don't know.  
 7 Q. What were they doing the last time you  
 8 knew?  
 9 A. Not much really. I know that there wasn't  
 10 much money around. There wasn't much money in the  
 11 company, so Steven Lamont was looking for investment  
 12 trying to find a new investor or investors. So to  
 13 the extent that there was anything for Iviewit.com,  
 14 Inc. to do there really -- absent investment --  
 15 wasn't a whole lot for it to do.  
 16 Q. Okay.  
 17 A. It's not as though there is a company that  
 18 makes widgets and the widget plant is opening and  
 19 widgets are going out the door. So until there is  
 20 investment there isn't much to do.  
 21 Q. Okay. Thank you. Let's turn our  
 22 attention to Exhibit No. 2 --  
 23 A. Yes, sir.  
 24 Q. -- which I believe you have had an  
 25 opportunity to look at?

1 A. Yes, I have.  
 2 Q. Would you look at the last page for me,  
 3 please?  
 4 A. Yes, sir.  
 5 Q. Tell me whose signature that is?  
 6 A. That's mine.  
 7 Q. Do you recall signing this document?  
 8 A. Yes, I do.  
 9 Q. When is the first time that you saw it?  
 10 A. When is the first time that I saw it?  
 11 Sometime before the date that we returned it to you.  
 12 I don't know the exact date that I first saw it.  
 13 Q. January 21, 2002 is indicated on the first  
 14 page. Does that refresh your recollection as to an  
 15 accurate date?  
 16 A. When I first saw it or when I -- That is  
 17 the date that I believe it was delivered to you. I  
 18 don't know the date I first saw it, but it would  
 19 have been prior to that.  
 20 Q. If you look at your answer to  
 21 interrogatory number one --  
 22 A. Yes.  
 23 Q. -- which indicates: Identify each and  
 24 every person that participated or assisted in  
 25 preparing the answers to these interrogatories. And

1 you list yourself as an employee of Iviewit.com,  
 2 Inc.  
 3 A. Yes.  
 4 Q. Were you ever a principal of that company?  
 5 A. No, I was not.  
 6 Q. Did you ever consider yourself an employee  
 7 of Iviewit.com, L.L.C.  
 8 A. No.  
 9 Q. Why not?  
 10 A. Because all payments, all activities were  
 11 done with Iviewit.com, Inc. that was the operating  
 12 entity, and my belief and the way I wanted it to  
 13 operate, had things gone on and I could have  
 14 operated it the way I wanted it, it would have been  
 15 to have all the operations occurring in Iviewit.com,  
 16 Inc. That's where all the employees would have  
 17 been. You don't want employees all over the lot in  
 18 the different corporations.  
 19 Q. Okay. Your response to interrogatory  
 20 number two you list two people --  
 21 A. Yes.  
 22 Q. -- who are believed or known by the  
 23 defendants to have knowledge concerning the issues  
 24 in the lawsuit, Mr. Utley and Mr. Hersh.  
 25 A. Yes.

1 Q. I'm going to depose Mr. Utley on Thursday  
 2 in Minnesota.  
 3 A. Okay.  
 4 Q. Do you still believe that he is the best  
 5 person to talk to pertaining to the invoices?  
 6 A. He would have been the one who would have  
 7 seen them and would have approved payment on them.  
 8 He would be a good person to talk to.  
 9 Q. What about Mr. Hersh?  
 10 A. Mr. Hersh might also be worth talking to.  
 11 Q. If you look at your response to  
 12 interrogatory number three, identify the  
 13 representative of the defendants with the most  
 14 knowledge as to the allegations contained in the  
 15 amended complaint and the answer to affirmative  
 16 defenses, and you list yourself.  
 17 A. Yes.  
 18 Q. Was that your decision or the attorney's  
 19 decision to name yourself there?  
 20 A. We didn't have anybody else at the time  
 21 who was available, so that was Eileen Schnell,  
 22 S-C-H-N-A-L-L, from -- She was at --  
 23 Q. Sachs, Sax & Klein.  
 24 A. -- Sachs, Sax & Klein at the time.  
 25 Q. Do you know today if there is anyone else

1 that is considered to be the person with the most  
2 knowledge to represent the defendants?

3 A. There may be other people. Again, that  
4 also is a decision that could be made by the  
5 management of the company, now that Steven is on  
6 board or Elliott. There may be other people who are  
7 more knowledgeable who are around.

8 Q. What knowledge does Steven have pertaining  
9 to the invoices?

10 A. I don't know what he may have gained from  
11 review of the files, if he may have. I don't know  
12 if it's reviewed, the files, or not.

13 Q. But he never was involved with the Iviewit  
14 companies when Proskauer was performing legal work?

15 A. That's correct.

16 Q. On interrogatory number four and five, we  
17 ask if there are any invoices attached to the  
18 amended complaint, which is Exhibit 1 that you  
19 looked at, which the defendants claim were paid, and  
20 you answer yes. And on number five you listed  
21 343838?

22 A. Right.

23 Q. Do you remember how you came up with that  
24 answer?

25 A. I believe we went back and went through

1 the reconciliation and showed that it had been paid.  
2 I think it may have been that an audit in the  
3 application of on-account payment. I would have to  
4 go back and look at it to make sure that's the case.  
5 But it may have been an application in an on-account  
6 payment, because it doesn't effect the balance  
7 that's due. We still agree with the balance or we  
8 were still able to reconcile the balance due, the  
9 369,000. It's just that this invoice had been paid.

10 Q. Do you know if that's the letter that you  
11 saw in the file during the reconciliation. Does  
12 this help your memory as to that?

13 A. No.

14 Q. It doesn't help. You don't know that?

15 A. No, I don't know.

16 Q. If you look at interrogatory number six,  
17 we ask: Do the defendants claim that there are any  
18 invoices attached to the amended complaint,  
19 Exhibit A, that were not received by the defendants?  
20 And the answer was there are invoices that the  
21 defendants have no record of receiving. And if you  
22 turn to seven, interrogatory seven --

23 A. Yeah.

24 Q. -- we ask that you list them. And listed  
25 are a number of invoice numbers.

1 A. Right.

2 Q. And could you explain that response?

3 A. I would have to. I'm not certain as to  
4 what we did at the time. At the time it would have  
5 been I worked with Eileen Schnull and we went  
6 through the items that we had. And at the time we  
7 felt that was correct. I would have to go back and  
8 do some research. In other words, to say why I  
9 agree that we were able to come up with these  
10 answers that we have here.

11 Q. Your reconciliation, do you still recall  
12 the results of the reconciliation showing that all  
13 the invoices were received by the company?

14 A. I recall -- Yeah, that I was able to show  
15 that invoices that made up the claim were received  
16 by the company were in the company file, so they  
17 were received.

18 Q. You think that interrogatory seven could  
19 be best explained by saying that it was something  
20 that was come up with by the attorney?

21 A. I'm not sure. Again, as I said, I would  
22 have to go back and probably sit down and look at  
23 all the details that we had that I no longer have  
24 available to me, think about what we were doing, and  
25 determine why we answered the question this way.

1 I'm certain if we answered the question this way,  
2 there was a good reason why we did it at the time,  
3 but I don't know right now, without going back and  
4 thinking about things, why we did it.

5 Q. Looking at your response to interrogatory  
6 number ten --

7 A. Uh-huh.

8 Q. -- question -- The question was based on  
9 the defendant's third affirmative defense that the  
10 monies that the plaintiff claims are owed are  
11 unreasonable and don't bear relation to the value of  
12 the services provided. We ask that you identify  
13 each invoice attached to the amended complaint as  
14 Exhibit A.

15 A. Yes.

16 Q. And the response was the invoices attached  
17 to the exhibit don't reflect what services were  
18 performed --

19 A. Yeah.

20 Q. -- so it's not possible for the defense to  
21 identify each invoice. Having said that, I believe  
22 I have asked you if you recall there being any bills  
23 that you ever saw that didn't bear a relation to the  
24 services performed. Do you recall ever seeing any  
25 bills?

1 A. That somebody had identified that did not  
 2 bear relation to services performed?  
 3 Q. Yeah. Did you ever see any bills that  
 4 Proskauer sent Iviewit that didn't bear relation to  
 5 the value of the services performed by Proskauer?  
 6 A. Again, since most or almost all of the  
 7 bills in question were prior to my coming on board  
 8 with Iviewit, I really am not in a position to make  
 9 that statement about the bulk of what's there.  
 10 Again, that would have had to have been evaluated by  
 11 other people and they would have to make that  
 12 determination.  
 13 Q. Did you run across anything while doing  
 14 your reconciliation?  
 15 A. I mentioned that letter. Again, I had  
 16 only the accounts payable file to work with, and  
 17 that contained invoices that had been passed through  
 18 to the accounts payable clerk for payment, so if  
 19 there were objections, they were made elsewhere.  
 20 Q. Okay. One final question pertaining to --  
 21 MR. TRIGGS: Let's take a minute before  
 22 you are done, but go ahead and ask your  
 23 question.  
 24 BY MR. PRUSASKI  
 25 Q. One final question pertaining to

1 interrogatory number seven.  
 2 A. Yes.  
 3 Q. I just want to clarify that you can't  
 4 recall how you and the attorney came up with this  
 5 answer, but it's your recollection today that the  
 6 reconciliation showed that all the invoices were  
 7 received?  
 8 A. I was the -- Well, the -- I was able to  
 9 find invoices, yes, that were consistent with the  
 10 statements that we received from Proskauer Rose that  
 11 added up to the \$369,000 figure. Now, that said,  
 12 it's possible that, again, because of on-account  
 13 payments and other things that there are invoices  
 14 that may be considered paid by Proskauer Rose that  
 15 were not intended for payment or by Iviewit or  
 16 vise-versa. There may be invoices that Iviewit  
 17 intended to pay, because of the way the money was  
 18 applied when it came into your firm here, may have  
 19 been applied to other invoices. So it's -- I can't  
 20 give you a whole lot of help there.  
 21 Q. Okay. But you told Ross Miller, after you  
 22 performed the reconciliation, that the invoices  
 23 attached to the lawsuit we do have record of  
 24 receiving?  
 25 A. Yes.

1 MR. PRUSASKI: Okay. You want to step out  
 2 for a moment?  
 3 MR. TRIGGS: Back in just a second.  
 4 (Thereupon, a short break was taken.)  
 5 BY MR. PRUSASKI  
 6 Q. After the management changed hands in  
 7 March of 2001, when I believe you testified that  
 8 Utley and Hersh were fired --  
 9 A. Yes.  
 10 Q. -- who was responsible after that point  
 11 for looking into whether bills were owed or not?  
 12 A. Ross Miller.  
 13 Q. Before that, it was Utley and Hersh?  
 14 A. Yes.  
 15 Q. You testified today that you became  
 16 involved with the companies in February of 2001?  
 17 A. Yes.  
 18 Q. You were unable to testify as to  
 19 information pertaining to a lot of things before  
 20 that time.  
 21 A. Right.  
 22 Q. Would you defer that to Utley?  
 23 A. Yes.  
 24 Q. Would you defer to Utley on that?  
 25 A. He certainly would know more about it than

1 I do.  
 2 Q. What document gathering efforts were you  
 3 involved in in this lawsuit?  
 4 A. I'm trying to remember now what I did.  
 5 Really, we didn't have a whole lot of documents to  
 6 look at when I came in, other than the accounts  
 7 payable files and some files that I created after  
 8 that based on what I was able to scrape together or  
 9 of things that occurred after I was there. And of  
 10 course some basic corporate records like the  
 11 corporate minute books. There really weren't that  
 12 many files that I came across. Most of the files  
 13 that were - other than accounts and accounts payable  
 14 files that the company had - were, I believe,  
 15 shipped to California by Utley when he left. At  
 16 least that was what was supposed to have happened to  
 17 them.  
 18 Q. Did Sax's office have the opportunity to  
 19 go through the California documents?  
 20 A. No.  
 21 Q. Why?  
 22 A. We didn't -- One thing, we couldn't find  
 23 any documents in California that were shipped there.  
 24 Q. Didn't Bernstein have them?  
 25 A. There was a lot of stuff that he did have,

Page 85

1 a lot of stuff that he didn't have, and it may not  
 2 have been shipped anyway. Again, I don't -- I did  
 3 not -- I did not examine what was shipped to  
 4 California --  
 5 Q. So how much --  
 6 A. -- so I don't know what went to California  
 7 and I don't know what was there. All I can speak  
 8 for is what I have or what I was able to retain,  
 9 which was stuff that mainly is stuff that related to  
 10 accounting.  
 11 Q. These files were shipped to California in  
 12 October 2001. I believe you said was the time that  
 13 2255 Glades was vacated?  
 14 A. Well, it was shipped long before that.  
 15 Most everything was shipped out, taken out of the  
 16 office here, 2255 Glades, and shipped to California  
 17 at the end of March when Utley and the rest of  
 18 management were terminated, March 2001.  
 19 Q. And where in California were they taken,  
 20 to a warehouse?  
 21 A. No, they were shipped to the office that  
 22 we had out in California.  
 23 Q. How big a volume of files were shipped  
 24 out?  
 25 A. There were -- Again, since I didn't

Page 86

1 examine everything that went into the boxes, I can't  
 2 say how much were files and how much were other  
 3 things, because we also shipped almost all of the  
 4 computer equipment and a lot of other stuff that was  
 5 in the office. So there were 70-plus boxes of  
 6 various sizes that were packed up and shipped out.  
 7 Q. Can you say that more or less than half of  
 8 those 70 were files?  
 9 A. I would say less than half were files.  
 10 Most of it or a lot of it was computer equipment.  
 11 Q. So between 20 and 30 would be a good  
 12 estimate?  
 13 A. Hard to say how many boxes of files.  
 14 Again, you know, anything I would say would be  
 15 speculation.  
 16 Q. Well, a lot of times when we don't know  
 17 the -- When we can't give a final number, we can  
 18 give ballpark figures, so I will ask you if you want  
 19 to give me a ballpark figure, knowing that it's a  
 20 ballpark figure.  
 21 A. No, I didn't inspect the packing of the  
 22 boxes. I do know that the files were supposed to be  
 23 packed and shipped. Now, how much of them -- Which  
 24 boxes had files in them and which had computers and  
 25 other things is difficult for me to say. I know

Page 87

1 that there were more boxes of computers than there  
 2 were files, but I don't know the exact numbers.  
 3 Q. But Spencer Sax's office never had the  
 4 benefit of looking at these documents?  
 5 A. No.  
 6 Q. Who is in control of the offices in  
 7 California now?  
 8 A. The office -- We moved out of the office  
 9 in California in -- I can't really say what month we  
 10 moved out, but we did move out of the office in  
 11 California at some point there. Probably in the  
 12 Fall of 2001.  
 13 Q. What happened to the boxes at that point?  
 14 A. I don't know for sure what happened to  
 15 anything that was in there, other than the intent  
 16 was that it would all be moved to the garage of the  
 17 house, which Elliott Bernstein was living in at the  
 18 time.  
 19 Q. But you don't know if that in fact  
 20 happened?  
 21 A. I wasn't there to see it happen.  
 22 MR. PRUSASKI: Nothing further.  
 23 MR. TRIGGS: Just I think we don't have  
 24 the interrogatory response yet, so I think I  
 25 would just reserve on that, but other than that

Page 88

1 I think I'm done.  
 2 MR. PRUSASKI: I don't have any other  
 3 questions for you.  
 4 THE WITNESS: Okay.  
 5 MR. PRUSASKI: I do have the right to ask  
 6 you some questions to follow up the questions  
 7 Mr. Selz asks you.  
 8 THE WITNESS: Yes.  
 9 MR. PRUSASKI: Also, we haven't received a  
 10 set of interrogatory answers, and if any new  
 11 material comes up in the interrogatory answers,  
 12 Mr. Selz's office will have to resubpoena you.  
 13 But of course, I will give you the benefit of a  
 14 telephone call first.  
 15 THE WITNESS: That's what I was going to  
 16 say, just call me and I will come over here.  
 17 MR. SELZ: I have nothing on cross.  
 18 MR. PRUSASKI: Okay.  
 19 THE WITNESS: We're done?  
 20 (Thereupon, discussions were held off the  
 21 record.)  
 22 THE WITNESS: I'll waive.  
 23 THE REPORTER: Does anyone need to order,  
 24 Gentlemen?  
 25 MR. TRIGGS: I think probably, but let me

1 at least ponder it for a little bit.  
 2 MR. SELZ: If he gets it, we'll get a  
 3 copy.  
 4 (Thereupon, the deposition was concluded  
 5 at 2:18 p.m.)  
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CERTIFICATE

STATE OF FLORIDA )  
 ) SS.  
 COUNTY OF BROWARD )

I, MARY C. BETTIS, Court Reporter and Notary Public, certify that I was authorized to and did stenographically report the deposition of WILLIAM KASSER; that a review of the transcript IS requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 29th day of April, 2003.

*Mary C. Bettis*  
 MARY C. BETTIS  
 Notary Public

CERTIFICATE OF OATH

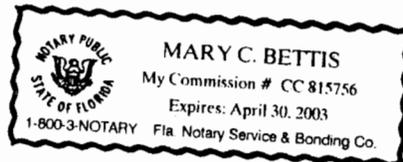
STATE OF FLORIDA )  
 ) SS.  
 COUNTY OF BROWARD )

I, the undersigned authority,  
 certify that WILLIAM KASSER personally appeared  
 before me and was duly sworn.

WITNESS my hand and official seal

this 29th day of April, 2003.

*Mary C. Bettis*  
 MARY C. BETTIS  
 Notary Public



<b>-\$-</b>	2:18 [1] 89:5	72:25	alarm [2] 25:11,12	areas [1] 55:16
<b>\$100</b> [1] 62:13	<b>-3-</b>	<b>accountant</b> [1] 33:8	<b>all</b> [44] 11:12 12:12,15	<b>Armstrong</b> [2] 60:14,16
<b>\$100,000</b> [2] 11:24	30 [2] 71:10 86:11	<b>accounted</b> [1] 72:18	13:3 15:23 16:12 17:12	<b>arrangements</b> [2] 54:19
62:25	309 [1] 6:1	<b>accounting</b> [6] 15:19,23	18:22 19:1,24 21:16,18	54:22
<b>\$170,000</b> [1] 24:5	33315 [1] 2:14	16:2,6 73:2 85:10	22:7 23:10 30:24,24 32:16	<b>asks</b> [1] 88:7
<b>\$20,000</b> [2] 55:6,7	33341 [2] 1:17,26	<b>accounts</b> [14] 19:3 45:4	39:25 40:23 42:8 44:18	<b>assist</b> [2] 15:25 46:13
<b>\$369,000</b> [3] 54:10 68:9	33486 [2] 5:15 6:2	45:6,15 62:8,9,13,23	47:16 50:16 55:4 58:12	<b>assisted</b> [1] 74:24
82:11	337W [1] 17:17	67:20 81:16,18 84:6,13	63:5 67:7,17 69:11 70:17	<b>associated</b> [1] 6:8
<b>-*-</b>	340 [2] 1:16,25	84:13	73:1,2 75:10,10,15,16,17	<b>assumed</b> [1] 5:7
<b>'70</b> [1] 7:13	343838 [1] 77:21	<b>accurate</b> [1] 74:15	79:12,23 81:6 82:6 85:7	<b>Atlanta</b> [1] 56:13
<b>'99</b> [1] 22:12	347-8390 [1] 5:17	<b>across</b> [4] 38:5 63:7	86:3 87:16	<b>attached</b> [8] 39:5 43:6
<b>-.-</b>	369 [1] 68:14	81:13 84:12	<b>allegations</b> [1] 76:14	46:11 77:17 78:18 80:13
<b>.4</b> [1] 3:5	369,000 [1] 78:9	<b>action</b> [4] 14:4 62:16	<b>allow</b> [1] 60:8	80:16 82:23
<b>.com</b> [4] 21:13 62:4 63:8	<b>-4-</b>	91:16,17	<b>almost</b> [3] 47:16 81:6	<b>attempt</b> [2] 57:12 66:9
72:19	42 [1] 3:10	<b>active</b> [1] 16:21	86:3	<b>attempted</b> [1] 57:11
<b>-/-</b>	<b>-5-</b>	<b>activities</b> [1] 75:10	<b>Alpine</b> [3] 58:17,21 59:3	<b>attention</b> [1] 73:22
<b>/</b> [1] 1:14	500,000 [1] 33:13	<b>activity</b> [6] 35:12,13	57:20 66:19	<b>attorney</b> [5] 27:19 79:20
<b>-0-</b>	561 [2] 5:17,20	36:18 62:10,11 72:5	<b>also</b> [18] 14:1 21:7,19	82:4 91:13,15
<b>01-04671</b> [1] 1:3	<b>-7-</b>	<b>actually</b> [3] 41:9 66:3	23:18 24:20 27:23 32:20	<b>attorney's</b> [1] 76:18
<b>-1-</b>	70 [1] 86:8	68:23	45:3 50:7 56:9 57:15	<b>attorneys</b> [3] 31:14,23
<b>1</b> [7] 3:10 33:14 42:13,17	70-plus [1] 86:5	<b>added</b> [1] 82:11	58:17 66:23 68:1 76:10	32:1
46:10 68:5 77:18	7020 [2] 6:12 10:9	<b>addition</b> [2] 16:7 18:14	77:4 86:3 88:9	<b>audit</b> [1] 78:2
<b>10th</b> [1] 2:12	71 [1] 3:11	<b>additionally</b> [1] 15:25	<b>always</b> [3] 36:1 72:11	<b>August</b> [4] 1:18,26 19:13
<b>114</b> [1] 2:12	750-8796 [1] 5:20	<b>address</b> [8] 5:13,25 10:12	73:1	19:17
<b>11:15</b> [2] 1:19,27	<b>-9-</b>	11:4,6 44:8 56:14 61:23	<b>amended</b> [5] 68:6 76:15	<b>authority</b> [2] 33:19 90:5
<b>1355</b> [1] 6:1	92 [1] 60:11	<b>addressed</b> [1] 46:15	77:18 78:18 80:13	<b>authorized</b> [1] 91:6
<b>15</b> [2] 20:3,5	991 [1] 5:14	<b>addresses</b> [1] 17:18	<b>America</b> [1] 65:20	<b>available</b> [2] 76:21 79:24
<b>15TH</b> [1] 1:1	<b>-A-</b>	<b>Administration</b> [1] 7:10	16:6 22:24 23:19 51:4	<b>avoiding</b> [1] 52:24
<b>16</b> [1] 20:5	<b>A-R-B-I-T-R-A-G-E</b>	<b>administrative</b> [1] 46:2	54:12,14,15 55:5,7 68:9	<b>aware</b> [15] 24:11 34:5,6
<b>1999</b> [4] 39:16 40:1 48:13	[1] 6:9	<b>advisable</b> [2] 61:4,22	68:14,17	40:25 52:9 53:22 59:14
50:12	<b>a.m</b> [2] 1:19,27	<b>affect</b> [1] 54:5	<b>amounts</b> [6] 23:18 38:11	64:12,20,22 65:8 68:22
<b>-2-</b>	<b>AB</b> [1] 1:3	<b>affiliated</b> [6] 6:16 8:4	45:5 50:7 52:21 55:4	68:25 69:18,20
<b>2</b> [5] 3:11 71:2,3,16 73:22	<b>able</b> [13] 38:11,14 54:11	55:22 58:21 59:2,18	<b>Andrews</b> [1] 10:11	<b>away</b> [1] 54:16
<b>20</b> [4] 1:18,26 19:23 86:11	67:22 68:1,19,20 78:8	<b>affirmative</b> [2] 76:15	<b>Angeles</b> [10] 18:15 26:8	
<b>200</b> [1] 12:1	79:9,14 82:8 84:8 85:8	80:9	26:16,23 27:6,8,10,13,13	
<b>2000</b> [2] 18:4 22:12	<b>aboard</b> [2] 44:1,2	<b>afford</b> [1] 55:3	31:2	
<b>2001</b> [32] 7:19,20,21	<b>abortive</b> [2] 61:10 71:20	<b>AFLAC</b> [3] 5:24 6:3	<b>answer</b> [10] 5:6 23:16	<b>-B-</b>
13:10,14 14:17 16:14,20	<b>about</b> [44] 1:27 9:17,23	10:16	47:5 52:16 74:20 76:15	<b>B</b> [1] 68:6
18:4 19:13,17 21:22 22:3	10:1 11:11 13:25 14:2,22	<b>after</b> [26] 13:11,15 26:1	77:20,24 78:20 82:5	<b>B.S.</b> [1] 7:12
23:6 26:25 30:19 32:11	21:4,5 29:4 37:8 39:8,12	26:16 27:9,12,12 30:3	<b>answered</b> [3] 52:14	<b>Bachelors</b> [1] 7:9
35:8,14,16 38:3 43:5	40:18 45:1 47:7 48:9	35:13,14 36:18 39:23 43:4	79:25 80:1	<b>background</b> [1] 16:2
52:11,20 66:5,6 67:12	49:12,17 50:20,22 51:4,6	43:18 49:24,25 50:1,17	<b>answers</b> [4] 74:25 79:10	<b>balance</b> [3] 78:6,7,8
83:7,16 85:12,18 87:12	52:23 53:4 55:19 56:24	52:1 56:4 66:16 82:21	88:10,11	<b>ballpark</b> [5] 12:3 33:12
<b>2002</b> [6] 1:18,26 7:19,22	59:15 62:15 70:1,2,6,8,13	83:6,10 84:7,9	<b>anyway</b> [1] 85:2	86:18,19,20
13:24 74:13	70:22 71:10,16 72:12 76:9	<b>afterwards</b> [1] 40:13	<b>appear</b> [1] 46:15	<b>bank</b> [7] 62:7,9,13,23 63:6
<b>2003</b> [1] 90:9 91:18	79:24 80:4 81:9 83:25	<b>again</b> [41] 8:22 9:25 16:22	<b>APPEARANCES</b> [1] 2:1	65:20 72:5
<b>21</b> [1] 74:13	<b>absent</b> [1] 73:14	17:6,25 20:3 30:14 31:11	<b>appeared</b> [3] 31:10 32:1	<b>bankruptcy</b> [15] 14:4
<b>2255</b> [10] 1:16,25 17:17	<b>absolute</b> [4] 39:21 41:5	34:23 35:24 39:25 40:8	90:6	28:13,20,23,25 29:5,15
19:24 65:25 66:16 67:7	42:8 67:9	41:7 42:6 45:24 46:1,23	<b>appearing</b> [2] 2:5,8	29:19 64:11,13,14,15,18
67:14 85:13,16	<b>absolutely</b> [1] 40:11	48:16,25 49:6,19 50:9,10	<b>application</b> [2] 78:3,5	64:20 69:15
<b>250</b> [1] 12:4	<b>accommodate</b> [1] 5:8	50:24 51:7 55:2 62:4 63:4	<b>applied</b> [3] 55:1 82:18	<b>base</b> [1] 18:14
<b>25th</b> [2] 66:2,6	<b>account</b> [12] 19:15,18	64:1 67:21,22 70 70 77:3	82:19	<b>based</b> [4] 32:23 70:11
<b>29th</b> [2] 90:9 91:18	43:10 55:2 62:17 63:6	79:21 81:6,10,15 82:12	<b>appreciate</b> [1] 16:24	80:8 84:8
	67:24 68:8 72:13,14,15	85:2,25 86:14	<b>approach</b> [3] 15:5,6,7	<b>basic</b> [1] 84:10
		<b>against</b> [2] 14:6 64:19	<b>approached</b> [4] 14:22	<b>basis</b> [1] 35:5
		<b>agent</b> [1] 7:17	15:3,16 16:10	<b>Beach</b> [3] 1:2 44:7 58:10
		<b>ago</b> [6] 8:18 10:1 11:10	<b>approved</b> [1] 76:7	<b>bear</b> [6] 38:23 50:9 80:11
		43:8 47:25 55:20	<b>approximating</b> [1] 18:1	80:23 81:2,4
		<b>agree</b> [2] 78:7 79:9	<b>April</b> [2] 90:9 91:18	<b>became</b> [4] 22:9 28:23
		<b>agreement</b> [2] 61:14	<b>Arbitrage</b> [3] 6:8,17	61:7 83:15
		65:18	10:13	<b>become</b> [2] 13:8 14:15
		<b>ahead</b> [2] 56:11 81:22	<b>area</b> [2] 11:1 18:15	<b>beginning</b> [1] 56:25
		<b>al</b> [2] 4:12 64:16		<b>begun</b> [2] 61:10,13
				<b>behalf</b> [4] 2:5,8 4:3 65:21

**behind** [3] 35:16,22,24  
**belief** [2] 65:5 75:12  
**benefit** [3] 7:7 87:4 88:13  
**Bernstein** [20] 8:22 9:17  
 9:23 10:18 20:19,19,21  
 40:9 41:14 49:8,10 50:6  
 50:22,25 51:3 67:3 70:4  
 70:19 84:24 87:17  
**Bernstein's** [2] 9:14  
 50:19  
**best** [5] 24:10 26:21 65:5  
 76:4 79:19  
**BETTIS** [5] 1:22 2:10  
 90:11 91:5,20  
**between** [7] 2:17 18:21  
 31:9 33:13 62:15 72:6  
 86:11  
**big** [1] 85:23  
**bill** [7] 7:1 37:5,6,7,9  
 51:20,20  
**billed** [7] 34:16,22,25  
 35:1 42:3 62:4 68:23  
**billing** [2] 38:14,24  
**bills** [65] 13:4 18:21,22  
 19:9 23:12 25:3 29:16  
 31:24,24 32:1,3,6,17,19  
 32:22,24 33:1,15,20,24  
 34:1,5,11,14,16 35:3,17  
 35:23 36:4,7,10,22 37:14  
 38:6,15,18,21 41:4 42:4,5  
 42:8 46:8,14,20,25 50:7  
 50:20,21,23 51:4,5,13  
 52:1,7,13,19 53:19 54:9  
 57:9,13 80:22,25 81:3,7  
 83:11  
**bit** [1] 89:1  
**bits** [1] 65:14  
**blank** [1] 26:6  
**board** [30] 10:6 17:12  
 18:2 19:4,21,22,23 20:11  
 20:15,16,18,22,24 21:1,3  
 21:9,19 22:6 31:10 33:2  
 33:18,20 35:14 50:9 62:12  
 62:19 64:7,9 77:6 81:7  
**boards** [1] 21:6  
**Boca** [10] 1:17,25 5:14  
 6:2,13 10:11 27:17 28:10  
 28:11 67:1  
**bona** [1] 53:19  
**books** [2] 73:1 84:11  
**Bow** [10] 56:3 58:7,15,16  
 58:17,17,22 59:3,5,6  
**boxes** [10] 12:24 13:1  
 66:22 86:1,5,13,22,24  
 87:1,13  
**Brad** [1] 29:6  
**break** [4] 5:7 25:17 55:13  
 83:4  
**Brian** [18] 13:7,19 20:13  
 27:20 31:7,8 32:21,23  
 33:21 37:3,4 40:8,11 44:3  
 47:21 65:18 69:6,15  
**bring** [2] 53:1 61:4  
**bringing** [1] 65:22  
**Brothers** [1] 18:13  
**brought** [9] 13:16 14:6

25:22 27:18,24 42:21  
 64:15,18,23  
**BROWARD** [2] 90:4  
 91:4  
**Bruce** [1] 58:13  
**building** [4] 17:16 65:20  
 65:24 66:1  
**bulk** [2] 64:7 81:9  
**business** [11] 7:9 9:21  
 12:9 17:15,16 48:5 65:2,6  
 65:7,9 70:24  
**businesses** [1] 16:9

-C-

**C** [10] 1:22 2:10,13 90:1,1  
 90:11 91:1,1,5,20  
**CA** [1] 1:3  
**cabinet** [1] 66:24  
**California** [25] 10:23  
 12:15 17:20,21,23,25 18:7  
 18:11 20:5 46:4,5 60:14  
 66:19 84:15,19,23 85:4,6  
 85:11,16,19,22 87:7,9,11  
**calls** [1] 23:13  
**cannot** [2] 39:2 67:9  
**capacities** [1] 40:10  
**capacity** [1] 15:12  
**Capital** [1] 58:18  
**career** [2] 14:19,20  
**case** [10] 1:3 4:10 29:17  
 64:13,14,15,18 69:23  
 70:13 78:4  
**cases** [1] 64:21  
**cash** [1] 61:3  
**CEO** [2] 12:10 13:16  
**certain** [16] 8:18 10:25  
 13:13 16:18 18:4 23:10  
 24:17 30:13 34:23 40:11  
 41:18 55:5 71:25 72:16  
 79:3 80:1  
**certainly** [1] 83:25  
**certainty** [5] 20:24 39:21  
 41:6 42:8 67:9  
**certify** [3] 90:6 91:6,12  
**chair** [1] 12:20  
**chaired** [1] 20:18  
**Chairman** [1] 10:6  
**change** [1] 72:9  
**changed** [1] 83:6  
**check** [1] 72:13  
**checks** [7] 19:2,6,10,12  
 19:16 34:9,10  
**Chicago** [1] 20:4  
**Chickman** [1] 58:14  
**Chief** [5] 6:15 12:8 15:10  
 16:1,8  
**Chris** [6] 4:8 31:17 37:3  
 37:4 53:24 54:6  
**CHRISTOPHER** [1]  
 2:3  
**CIRCUIT** [2] 1:1,1  
**citizens** [1] 60:18

**city** [2] 10:24 26:7  
**claim** [3] 77:19 78:17  
 79:15  
**claimed** [1] 43:11  
**claiming** [1] 38:12  
**claims** [3] 70:3,5 80:10  
**clarify** [4] 8:6 21:12 39:4  
 82:3  
**clean** [1] 61:22  
**clerk** [1] 81:18  
**close** [3] 60:25 70:16,16  
**coast** [2] 18:15 26:3  
**Cohen** [6] 28:9,19,22 29:7  
 29:9,19  
**collapse** [1] 61:17  
**colleague** [1] 6:25  
**college** [2] 7:10 16:7  
**comes** [2] 58:13 88:11  
**coming** [7] 33:17 36:1  
 43:10 53:10 64:7 68:4  
 81:7  
**commencing** [1] 1:27  
**comments** [2] 49:23  
 50:16  
**companies** [37] 10:5  
 12:7 14:13,25 15:3,4,16  
 16:19 17:8,14 18:21 19:20  
 20:10 21:10,12,16,19,25  
 22:18 23:9,23 30:4,11  
 31:3,16 48:24 50:3 57:19  
 58:25 59:7,7,16 62:15  
 69:9 72:6 77:14 83:16  
**company** [53] 5:23 8:1  
 8:16 9:5,8,16 12:9,9 15:20  
 16:16 21:3,8,11 22:11  
 25:7 34:3 35:24,25 39:13  
 40:2,23 41:10 43:23,25  
 48:1 49:3,13 50:11 53:2  
 53:15,17 54:16,20 55:3  
 56:1,4,20,21 57:12,21,22  
 58:11 59:25 65:10 72:7  
 73:11,17 75:4 77:5 79:13  
 79:16,16 84:14  
**complain** [2] 50:19,22  
**complaining** [3] 51:3,3  
 51:6  
**complains** [1] 60:24  
**complaint** [6] 67:25 68:6  
 76:15 77:18 78:18 80:13  
**complaints** [2] 51:9  
 70:21  
**complete** [2] 45:11 91:10  
**completed** [2] 61:14  
 71:22  
**Composite** [2] 3:10,11  
**comprised** [1] 20:16  
**compromise** [1] 57:12  
**compromised** [1] 57:11  
**computer** [3] 12:22 86:4  
 86:10  
**computers** [3] 12:20  
 86:24 87:1  
**concerned** [5] 12:21  
 29:15 51:2 52:23 53:4

**concerning** [1] 75:23  
**concerns** [2] 49:12 50:5  
**concession** [1] 54:6  
**concessions** [1] 54:8  
**concluded** [1] 89:4  
**conduct** [2] 65:7 67:18  
**conducted** [1] 65:8  
**conducting** [2] 65:2,6  
**confusing** [1] 59:22  
**connected** [1] 91:16  
**consider** [1] 75:6  
**considered** [4] 29:19  
 53:3 77:1 82:14  
**consistent** [1] 82:9  
**construed** [1] 5:4  
**consultant** [1] 43:25  
**consulting** [1] 14:21  
**contact** [3] 11:7 31:9,12  
**contacted** [1] 15:7  
**contained** [2] 76:14  
 81:17  
**control** [2] 21:16 87:6  
**controlled** [2] 21:9,12  
**controller** [4] 15:13,17  
 15:18 16:8  
**conversations** [1] 9:25  
**convert** [2] 61:11 71:21  
**converted** [1] 61:24  
**copies** [1] 42:21  
**copy** [2] 43:12 89:3  
**corporate** [7] 30:6,9  
 31:20 42:1 47:12 84:10  
 84:11  
**corporation** [3] 1:8,10  
 1:12  
**corporations** [3] 20:7  
 21:7 75:18  
**correct** [14] 10:14 13:17  
 21:17 22:4 31:4 32:15  
 35:9 39:14 50:18 57:6,7  
 71:23 77:15 79:7  
**corrected** [1] 72:16  
**corresponded** [2] 38:15  
 43:13  
**correspondence** [1]  
 69:1  
**counsel** [4] 2:18 24:20  
 91:13,15  
**COUNTY** [3] 1:2 90:4  
 91:4  
**couple** [3] 55:14 66:24  
 71:17  
**course** [7] 9:24 20:14  
 40:8 63:1 68:2 84:10  
 88:13  
**court** [6] 1:1,22 2:10  
 28:25 69:18 91:5  
**covered** [1] 55:16  
**create** [1] 54:17  
**created** [1] 84:7  
**creditors** [3] 29:19 52:23  
 53:4

**cross** [11] 56:3 58:6,15  
 58:16,16,17,22 59:3,5,6  
 88:17  
**current** [7] 5:21 11:6 12:6  
 33:24 47:22 48:20 61:20

-D-

**D** [1] 3:1  
**date** [9] 8:19,23 20:6  
 22:10 74:11,12,15,17,18  
**Dated** [1] 91:18  
**dates** [5] 17:7,23 19:11  
 24:23 26:22  
**day-to-day** [1] 15:22  
**days** [3] 59:24 64:6 65:10  
**dealt** [3] 50:25 58:15,19  
**decided** [2] 52:19 61:21  
**decision** [15] 22:14 25:4  
 30:7 32:22 33:4,15,18  
 53:6,8,9 66:12,14 76:18  
 76:19 77:4  
**decision-making** [1]  
 21:16  
**decisions** [5] 20:10,14  
 21:18,25 47:18  
**default** [1] 53:10  
**defendant's** [1] 80:9  
**defendants** [9] 1:13 2:8  
 75:23 76:13 77:2,19 78:17  
 78:19,21  
**defense** [2] 80:9,20  
**defenses** [1] 76:16  
**defer** [2] 83:22,24  
**defined** [1] 62:6  
**degrees** [1] 7:14  
**Delaware** [3] 1:8,9,11  
**delivered** [1] 74:17  
**Delray** [1] 44:7  
**demanding** [1] 53:12  
**DEPONENT** [1] 2:21  
**depose** [1] 76:1  
**depositing** [1] 72:12  
**deposition** [10] 1:20  
 2:20 4:9,13,20 9:2 26:10  
 56:25 89:4 91:7  
**describe** [2] 15:21 31:8  
**DESCRIPTION** [1]  
 3:9  
**detailed** [1] 67:23  
**details** [4] 22:7 23:10  
 40:3 79:23  
**determination** [1] 81:12  
**determine** [1] 79:25  
**determined** [5] 39:6  
 45:3,5 61:4 65:12  
**Diego** [1] 11:1  
**different** [5] 37:14 39:9  
 42:6 59:15 75:18  
**difficult** [4] 8:17 52:25  
 64:4 86:25  
**Difficulty** [1] 33:9  
**Direct** [2] 3:5 4:6

<p>directing [1] 31:6                  directly [1] 8:17                  directors [9] 20:15,16                  20:18 21:6,19 22:6 58:21                  58:24 59:2                  disappeared [1] 61:9                  discussed [3] 9:21 14:3                  54:2                  discussing [1] 25:17                  discussion [5] 7:2 28:16                  42:11 53:24 71:13                  discussions [4] 29:14                  51:7 53:25 88:20                  displeasure [1] 49:15                  disposal [1] 45:12                  disputed [1] 69:4                  distinction [4] 18:8,19                  18:20 62:15                  distinctions [2] 62:5                  64:2                  document [10] 9:9,10                  42:16 43:7,9 46:12 71:1,7                  74:7 84:2                  documentation [1] 63:2                  documented [1] 73:1                  documents [8] 9:6 36:20                  36:23 69:1 84:5,19,23                  87:4                  doesn't [3] 17:8 78:6,14                  dog [1] 21:8                  Donald [1] 31:18                  done [12] 9:10 30:17,18                  47:17 64:6,8 65:13 72:17                  75:11 81:22 88:1,19                  door [1] 73:19                  doubt [1] 59:12                  down [6] 17:6 51:19 52:1                  63:8 64:8 79:22                  drawing [1] 26:6                  due [3] 55:4 78:7,8                  duly [2] 4:4 90:7                  during [8] 26:10 32:16                  39:5 45:10 55:13 63:20                  67:6 78:11                  duties [2] 15:18,22</p> <hr/> <p style="text-align: center;">-E-</p> <p>E [5] 3:1 90:1,1 91:1,1                  E-mail [2] 11:9,12                  E-X-H-I-B-I-T-S [1]                  3:7                  early [8] 18:4 22:11 30:13                  30:15 52:11 59:24 65:10                  65:16                  education [2] 7:8 16:7                  effect [3] 52:24 56:4 78:6                  effort [3] 61:10 62:19                  71:21                  efforts [1] 84:2                  eight [4] 4:17 13:1 51:23                  60:13                  Eileen [2] 76:21 79:5</p>	<p>either [3] 14:10 18:3                  44:12                  Elliott [16] 8:22 9:14                  10:2,18 20:21,21 40:9                  41:14 49:8,9,20 51:25                  70:4,15 77:6 87:17                  Elliott's [1] 10:3                  elsewhere [1] 81:19                  eluded [1] 65:10                  employee [4] 75:1,6                  91:13,14                  employees [5] 19:20                  20:7 56:9 75:16,17                  employer [1] 10:16                  employment [3] 6:19                  15:9 65:18                  encoding [1] 18:13                  end [3] 22:2 72:17 85:17                  engaged [2] 27:14,15                  engagement [4] 27:1,3                  27:5,7                  enter [1] 33:4                  entered [2] 6:23 54:18                  Enterprises [1] 13:9                  entirely [1] 38:25                  entities [14] 16:11 17:19                  18:18 23:2,5 33:6 34:25                  35:1 39:9 42:6 60:9 63:21                  64:5,21                  entity [23] 8:11 18:6,8,9                  18:17,25 21:13 34:9,22                  39:12,18,22 41:5,17,21                  46:21,22 47:12 48:9 58:19                  64:10,14 75:12                  equipment [2] 86:4,10                  Escondido [1] 10:25                  ESQUIRE [3] 2:3,4,7                  establish [1] 14:21                  established [1] 18:12                  estimate [1] 86:12                  estimating [1] 20:3                  et [2] 4:12 64:16                  evaluate [1] 49:1                  evaluated [1] 81:10                  exact [6] 22:10 33:9                  35:20 38:3 74:12 87:2                  exactly [1] 34:22                  Examination [2] 3:5 4:6                  examine [2] 85:3 86:1                  examined [1] 4:4                  exchange [3] 54:6 61:13                  61:16                  Excuse [2] 28:15 58:23                  Executive [1] 12:8                  exercised [1] 21:19                  exhibit [14] 42:13,17                  46:10 47:8 68:5,6 71:2,3                  71:16 73:22 77:18 78:19                  80:14,17                  exists [1] 40:17                  expenses [1] 19:1                  expensive [1] 51:13</p>	<p>expiration [1] 66:7                  expired [1] 66:2                  explain [3] 18:10 59:23                  79:2                  explained [1] 79:19                  expressing [1] 46:8                  extent [1] 73:13</p> <hr/> <p style="text-align: center;">-F-</p> <p>F [3] 90:1,1 91:1                  fact [6] 22:13 40:11 58:2                  68:19 72:4 87:19                  facts [1] 63:7                  fair [2] 63:9,21                  faith [1] 55:4                  Fall [2] 13:10 87:12                  familiar [1] 33:3                  far [5] 12:21 14:18 17:14                  18:17 30:6                  father [1] 10:3                  February [11] 7:21 14:17                  16:14 18:3 21:22 30:19                  32:11 35:8,14,16 83:16                  fees [1] 28:5                  felt [2] 50:14 79:7                  few [3] 7:5 39:8 48:9                  fide [1] 53:19                  figure [4] 33:12 82:11                  86:19,20                  figures [1] 86:18                  file [18] 32:2 37:3,11,17                  38:14,24,24 39:2 45:3,7                  45:12,14,15,15,19 78:11                  79:16 81:16                  filed [7] 1:22 13:12 29:4                  43:18 49:24 50:17 52:2                  files [28] 12:19,21,22                  37:24 46:3 66:20,22 67:7                  67:17,20 69:2,5 77:11,12                  84:7,7,12,12,14 85:11,23                  86:2,8,9,13,22,24 87:2                  filing [1] 66:24                  final [4] 68:8 81:20,25                  86:17                  financial [9] 6:15 15:10                  16:1,8 20:10,14 21:15,18                  33:19                  financially [1] 91:16                  fine [2] 16:24 44:19                  finished [1] 14:20                  fire [2] 25:11,12                  fired [1] 83:8                  firm [21] 14:21 23:19,21                  24:17 26:3,5,9,17,23 27:6                  27:8,10,13,13,17 30:8                  54:8 57:15,23 60:14 82:18                  firms [10] 22:18,20 24:13                  25:18 26:1,16 27:9,15                  28:8 31:2                  first [19] 4:4 9:11 14:15                  16:16 17:9,13 22:8 31:18                  43:3,13 50:2 61:3 74:9,10                  74:12,13,16,18 88:14</p>	<p>fit [2] 12:25 13:1                  five [3] 16:21 77:16,20                  Florida [8] 1:2,17,24,26                  2:14 5:15 90:2 91:2                  focussed [1] 70:24                  Foley [18] 22:23 23:22                  23:25 24:8,14,21,22,25                  25:5,23,25 26:1,4,25 27:1                  31:1 56:24 57:25                  follow [1] 88:6                  follow-up [1] 71:18                  follows [1] 4:5                  foregoing [1] 2:19                  forgot [1] 44:5                  form [7] 30:2 36:12 47:1                  53:20 63:12,17 65:15                  formal [1] 54:21                  formation [3] 39:20                  48:15 65:12                  formed [17] 16:11,12,17                  17:10,11,12,13 39:15,22                  40:7,12 41:11 48:11,12                  59:24 60:5,7                  former [1] 25:17                  forming [2] 39:18 41:17                  Fort [1] 2:14                  found [1] 45:17                  founder [1] 9:16                  four [3] 16:25 59:15 77:16                  friend [1] 14:24                  full [2] 5:10 24:18                  full-time [2] 15:8,8                  functioning [1] 43:24                  functions [1] 15:24                  funding [5] 52:21 58:6                  58:19 59:6,10                  furniture [1] 66:25                  Furr [6] 28:9,19,22 29:7,9                  29:18                  future [1] 48:4</p> <hr/> <p style="text-align: center;">-G-</p> <p>gained [1] 77:10                  game [1] 62:20                  garage [2] 66:23 87:16                  gathering [1] 84:2                  general [6] 30:5,9 42:1                  47:12 51:9,11                  generalities [1] 70:23                  generally [7] 8:7,12 9:20                  21:7 35:24 41:8 55:2                  Gentlemen [1] 88:24                  Georgia [1] 56:14                  given [1] 23:20                  Glades [10] 1:16,25 17:17                  19:24 65:25 66:16 67:7                  67:14 85:13,16                  glass [1] 42:9                  goes [1] 62:14                  gone [3] 45:2,4 75:13                  good [8] 4:8 34:19 51:22</p>	<p>55:4,18 76:8 80:2 86:11                  Great [1] 42:23</p> <hr/> <p style="text-align: center;">-H-</p> <p>H [1] 90:1                  H-A-H-N [1] 14:24                  Hahn [1] 14:24                  half [3] 11:10 86:7,9                  hand [1] 90:8                  handle [2] 27:14 36:11                  handled [4] 26:13,15                  36:15 64:3                  Handling [1] 26:18                  hands [1] 83:6                  Hank [2] 58:14,16                  happy [3] 5:8 49:18 57:22                  hard [2] 64:4 86:13                  head [6] 6:12 10:9 26:9                  44:9,10 56:15                  hear [2] 49:5,23                  heard [7] 11:2 34:7 46:7                  49:9 50:3,16 51:9                  hearing [1] 46:9                  held [9] 7:2 28:16 42:11                  52:18 59:4 60:12,13 71:13                  88:20                  Hello [1] 7:1                  help [3] 78:12,14 82:20                  helpful [1] 15:22                  hereby [2] 2:17,20                  hereinbefore [1] 1:21                  Hersh [26] 13:25 14:1,5                  14:10 15:14,25 19:4 20:13                  21:15,25 22:1 27:20 29:4                  32:20 33:21 44:3 49:7                  56:7 60:15,16 64:23 75:24                  76:9,10 83:8,13                  Hersh's [1] 15:1                  hesitant [1] 42:7                  hesitate [1] 4:25                  high [1] 51:23                  Higherman [1] 60:15                  hire [1] 22:14                  hired [4] 25:10 29:24 30:3                  39:23                  history [1] 50:11                  hold [2] 13:7 60:22                  holding [2] 40:22 61:12                  holdings [38] 1:9 6:21                  8:8 10:7 12:11 13:17 17:2                  21:5,8,11 41:11,22 42:3                  47:8,20,23 59:25 60:7,13                  61:5,8,16,19 62:7,22,23                  62:24 63:1,3,5 69:11                  71:22 72:11,12,14,19,22                  73:3                  home [2] 5:16 66:21                  hopeful [1] 54:11                  hopes [1] 52:24                  hours [1] 51:23                  house [1] 87:17                  housed [2] 18:17,18</p>
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**-I-**  
**idea** [7] 33:5 34:1 35:22  
 48:3 54:7 61:15 69:21  
**identification** [2] 42:14  
 71:4  
**identified** [1] 81:1  
**identify** [4] 74:23 76:12  
 80:12,21  
**III** [1] 58:14  
**impossible** [1] 64:4  
**in-and-out** [1] 62:24  
**inaction** [1] 23:19  
**Inc** [30] 1:8,9,11 4:11 8:7  
 19:3 21:11,13 40:6,14,16  
 42:3 47:9,23 48:7 59:19  
 62:17 63:4,8 69:12 72:6  
 72:15,19,23,25 73:4,14  
 75:2,11,16  
**Inc.** [10] 41:2,12 42:4  
 46:17,25 47:20 48:18,21  
 63:11,23  
**inclusion** [1] 60:8  
**income** [1] 19:1  
**Incorporated** [17] 6:9  
 6:10,22 10:7 17:2,3,4,5  
 18:23 21:6,8 34:13,15  
 39:11 59:24 60:1,8  
**indicate** [2] 38:17 72:5  
**indicated** [15] 15:9 25:23  
 38:16 39:12 46:11,19  
 47:11 57:3,18 58:4 67:11  
 68:12 69:6 71:20 74:13  
**indicates** [1] 74:23  
**indicating** [3] 36:21,23  
 69:2  
**individual** [2] 14:5  
 15:12  
**individuals** [4] 20:22  
 41:15 58:13 60:18  
**industry** [1] 18:16  
**influenced** [1] 30:7  
**information** [2] 50:14  
 83:19  
**infusion** [1] 61:3  
**initial** [1] 60:19  
**inspect** [1] 86:21  
**instance** [1] 65:11  
**instances** [1] 68:22  
**instead** [1] 25:1  
**insurance** [3] 5:22 7:17  
 70:24  
**intended** [2] 82:15,17  
**intent** [1] 87:15  
**interested** [1] 91:17  
**interesting** [1] 65:23  
**interests** [1] 41:8  
**International** [2] 6:8,9  
**interrogatories** [1]  
 74:25  
**interrogatory** [12] 74:21  
 75:19 76:12 77:16 78:16  
 78:22 79:18 80:5 82:1

87:24 88:10,11  
**interrupt** [1] 56:10  
**invention** [1] 60:19  
**investigation** [1] 45:1  
**investment** [9] 53:1,1  
 62:21 72:10,21 73:3,11  
 73:14,20  
**investor** [9] 52:22 54:13  
 54:14 56:3 61:3,5,7 62:25  
 73:12  
**investor-funded** [1]  
 35:25  
**investors** [5] 36:2 53:11  
 54:9 60:8 73:12  
**invoice** [5] 45:14 78:9  
 78:25 80:13,21  
**invoices** [33] 38:25 39:4  
 43:6,12,13 45:3,5,7,8,16  
 46:10,12 55:1 67:23,23  
 68:17,18,20 76:5 77:9,17  
 78:18,20 79:13,15 80:16  
 81:17 82:6,9,13,16,19,22  
**involuntary** [3] 14:4  
 29:5 69:15  
**involved** [27] 6:21 7:18  
 8:15 9:5,7 13:8 14:15  
 15:10 22:9 29:21 31:17  
 36:16,18 39:19 40:2,9  
 50:3 53:6 56:23 58:15  
 59:11 60:19 61:1 69:16  
 77:13 83:16 84:3  
**involving** [4] 13:4 28:22  
 64:21 69:19  
**issue** [1] 57:8  
**issues** [3] 13:4 55:14  
 75:23  
**item** [3] 51:20,20,21  
**items** [8] 31:13 37:5  
 66:21 67:4,23,24 69:4  
 79:6  
**Iviewit** [140] 1:9,10 6:21  
 7:5,18 8:4,6,7,7,8,11 9:15  
 10:4,6 11:13,16,17,20  
 12:11,17 13:9,17 14:6,12  
 14:16,23 15:2,15 16:11  
 17:2,2,5 21:5,7 22:9,18  
 23:1,5,9,23,24 24:15 25:6  
 25:10,18 26:23 27:10,22  
 27:23,25 28:8,20,22,24  
 29:8,24,25 30:10 31:3,5,9  
 31:11,15 32:4,14 33:5,23  
 35:16 36:11,22 37:23  
 38:17 39:23 41:11,22 42:3  
 46:20,24 47:8,19,19 48:7  
 48:18,20,24 52:5,8 54:18  
 55:5,23 56:23 57:2,4 58:5  
 58:20,25 59:4,7,19,21,23  
 59:25 60:5,7,12,12 61:19  
 62:22,22,24 63:1,3,5,21  
 64:21 65:24 66:16 67:6  
 68:10,15 69:7,11,12,19  
 69:22 70:25 71:21,22  
 72:11,12,14,19,19,21 73:3  
 77:13 81:4,8 82:15,16  
**Iviewit's** [2] 68:16 69:2  
**Iviewit.com** [35] 1:8  
 4:11 8:7 17:3,4 18:22 19:2  
 34:13,14 39:11 40:6,14

40:16 41:2 42:4 46:16,25  
 61:19 62:17 63:4,10,23  
 64:19 65:1 69:12 72:6,15  
 72:23,25 73:4,13 75:1,7  
 75:11,15  
**-J-**  
**Jackway** [1] 60:15  
**January** [1] 74:13  
**Jeff** [2] 14:24 15:7  
**jog** [1] 17:8  
**Jude** [1] 60:20  
**JUDICIAL** [1] 1:1  
**July** [1] 8:24  
**June** [1] 67:12  
**-K-**  
**Kasser** [10] 1:20 3:4 4:2  
 4:8 5:12 7:1 42:17 55:13  
 90:6 91:8  
**kept** [3] 45:21,23 67:7  
**Klein** [5] 27:18 28:14,21  
 76:23,24  
**knew** [2] 15:7 73:8  
**knowing** [3] 30:14 49:11  
 86:19  
**knowledgable** [1] 77:7  
**knowledge** [15] 21:24  
 22:17 24:10,11 26:21 31:1  
 57:14 65:1,5 70:2,5 75:23  
 76:14 77:2,8  
**known** [2] 50:12 75:22  
**-L-**  
**L** [1] 20:19  
**L-I-P-P-E** [1] 24:18  
**L.L.C** [6] 64:19 65:1,16  
 65:19,21 75:7  
**L.L.C.** [1] 17:4  
**L.L.P** [5] 1:15,24 2:2 4:11  
 56:3  
**Lamont** [8] 11:8,9 12:5  
 12:13 13:8 40:19 48:1  
 73:11  
**Lamont's** [1] 12:6  
**Lane** [2] 6:12 10:9  
**Lardner** [17] 22:23 23:22  
 23:25 24:8,14,21,22,25  
 25:5,23,25 26:2,4,25 27:1  
 31:1 56:24  
**Lardner's** [1] 57:25  
**Large** [1] 1:24  
**last** [14] 8:3,14,21 9:18  
 10:1,16 11:7 13:5,22 14:9  
 29:14 68:5 73:7 74:2  
**late** [8] 18:3 43:5 45:25  
 48:25 49:13,21 62:20  
 70:16  
**Lauderdale** [1] 2:14  
**law** [6] 22:17,20 24:13  
 25:18 28:8 57:15  
**lawsuit** [23] 13:3,12,14  
 24:12 27:24 33:25 35:10

38:7 39:5 43:18 49:24,25  
 50:8,15,17 52:1 54:17  
 69:14 70:2,3 75:24 82:23  
 84:3  
**lawsuits** [2] 52:25 69:19  
**lead** [1] 56:3  
**lease** [4] 65:19 66:2,7,9  
**least** [4] 46:5 72:17 84:16  
 89:1  
**left** [3] 11:5 25:20 84:15  
**legal** [5] 30:6,6,9 71:24  
 77:14  
**legally** [1] 16:11  
**lend** [1] 63:3  
**less** [2] 86:7,9  
**letter** [12] 27:19 37:2,12  
 37:15,18 38:1,22 45:17  
 45:20 69:3 78:10 81:15  
**letters** [4] 46:7,9 53:12  
 53:18  
**liability** [2] 1:5 54:16  
**licenses** [1] 7:16  
**life** [3] 22:11 57:21 59:25  
**likes** [1] 50:21  
**limitations** [1] 60:4  
**limited** [2] 1:5 49:20  
**line** [2] 61:18,20  
**Lion's** [2] 6:12 10:9  
**Lippe** [5] 24:18 25:1,20  
 31:2 57:16  
**list** [4] 75:1,20 76:16  
 78:24  
**listed** [3] 67:25 77:20  
 78:24  
**listing** [1] 17:8  
**live** [5] 10:18 11:5 12:13  
 12:15 44:5  
**lives** [4] 10:8,9 44:7  
 56:12  
**living** [1] 87:17  
**LLP** [1] 1:4  
**loan** [3] 62:25 63:2 72:25  
**loaned** [1] 72:22  
**loans** [1] 72:18  
**local** [1] 10:20  
**located** [10] 6:11,12  
 17:14 18:16 19:24 26:7,8  
 58:9 67:18,20  
**longer** [4] 57:3 58:16  
 66:15 79:23  
**look** [20] 32:3 34:24 42:18  
 42:25 46:10,12 51:20  
 54:15 56:17 68:1,5 71:7  
 73:25 74:2,20 76:11 78:4  
 78:16 79:22 84:6  
**looked** [5] 31:25 32:20  
 32:21,24 77:19  
**looking** [8] 15:8 41:4  
 60:25 71:9 73:11 80:5  
 83:11 87:4  
**Los** [10] 18:15 26:8,16,22  
 27:6,8,10,13,13 31:2  
**lunch** [1] 55:11

**-M-**  
**M** [1] 2:7  
**main** [3] 31:8 62:16 72:5  
**majority** [1] 63:22  
**makes** [1] 73:18  
**management** [8] 44:3  
 49:6,6 56:4 66:10 77:5  
 83:6 85:18  
**March** [7] 13:24 14:1,9  
 22:2 83:7 85:17,18  
**mark** [1] 71:2  
**marked** [3] 42:14,17 71:4  
**Marketing** [2] 6:8,10  
**MARY** [5] 1:22 2:10  
 90:11 91:5,20  
**material** [1] 88:11  
**Matt** [1] 6:25  
**matter** [2] 28:22,23  
**matters** [1] 27:15  
**MATTHEW** [1] 2:4  
**may** [24] 10:25 13:14  
 40:12,24 46:3 50:6 51:6  
 51:14,16 59:11 67:12  
 70:21 72:3,3 77:3,6,10,11  
 78:2,5 82:14,16,18 85:1  
**mean** [4] 18:10 38:13  
 54:24 70:11  
**means** [1] 8:7  
**meeting** [1] 52:18  
**Meltzer** [5] 24:18 25:1  
 25:20 31:2 57:16  
**members** [1] 20:20  
**memory** [4] 16:23 17:9  
 18:1 78:12  
**mention** [1] 70:2  
**mentioned** [4] 43:8  
 47:25 57:15 81:15  
**met** [1] 9:11  
**Michael** [1] 44:18  
**middle** [2] 39:16 40:1  
**might** [4] 39:1 50:12  
 61:22 76:10  
**Mike** [2] 27:20 44:3  
**Miller** [15] 43:22,24 44:2  
 44:22,25 45:2 51:8 53:8  
 53:23 55:19 56:2,12,13  
 82:21 83:12  
**million** [1] 33:14  
**Milwaukee** [1] 22:24  
**mind** [3] 38:23 50:9 58:14  
**mine** [2] 14:24 74:6  
**Minnesota** [1] 76:2  
**minute** [2] 81:21 84:11  
**minutes** [2] 7:5 39:8  
**moment** [1] 83:2  
**money** [21] 11:21,22  
 23:18 24:6,9 34:3 35:25  
 36:1,1 52:17 53:10 62:18  
 62:21 63:4,7 72:7,22,24  
 73:10,10 82:17  
**monies** [1] 80:10

month [8] 7:20,22 8:18  
9:18 10:1 37:25 38:3 87:9  
monthly [1] 35:5  
months [1] 6:18  
morning [1] 4:8  
most [14] 18:16 33:17  
46:15 50:24 63:10,16,25  
70:23 76:13 77:1 81:6  
84:12 85:15 86:10  
motion [1] 18:16  
move [5] 25:5 65:24  
66:12,14 87:10  
moved [5] 66:1,2 87:8,10  
87:16  
Moving [1] 47:7  
MUVDI [1] 2:6

---

-N-

---

N [1] 3:1  
name [15] 5:10 11:2 20:23  
24:18 25:6 26:5,9 31:18  
34:18 44:13,15 56:18  
58:13 60:24 76:19  
named [1] 14:24  
names [6] 20:25 24:19  
31:24 32:1 58:12 60:17  
natural [1] 60:3  
nature [2] 30:13 50:19  
necessary [1] 63:6  
need [3] 5:7 61:8 88:23  
needed [4] 15:12 66:15  
67:17,21  
needs [1] 61:23  
negotiate [2] 54:4,12  
negotiated [1] 65:21  
neighbor [2] 15:1,10  
neighborhood [1] 24:4  
never [5] 61:14 69:1  
71:22 77:13 87:3  
new [9] 1:4 12:14,14 20:4  
24:19 53:1,1 73:12 88:10  
Ninth [1] 5:14  
Nobody [1] 50:21  
None [1] 59:4  
Nonpayment [1] 28:5  
nor [2] 91:14,16  
Northwest [1] 5:14  
Notary [5] 1:23 2:11  
90:12 91:6,21  
note [1] 63:2  
notes [2] 55:14 91:11  
nothing [6] 49:11 51:10  
53:11 70:25 87:22 88:17  
Notice [1] 1:21  
now [25] 16:10 20:25 21:1  
21:15 26:6 29:8 34:22  
37:11 38:23 40:15 42:2  
54:6 56:12 61:21 64:10  
67:4,5 72:11,23 77:5 80:3  
82:11 84:4 86:23 87:7  
number [26] 3:9 5:16,18  
5:20 6:1 16:9 20:22 24:19  
31:25,25 33:9 35:20 37:4

44:11 56:16 71:2 74:21  
75:20 76:12 77:16,20  
78:16,25 80:6 82:1 86:17  
numbers [2] 78:25 87:2

---

-O-

---

O [2] 90:1,1  
oath [1] 4:5  
object [6] 36:12 46:24  
47:1 50:4 51:21 63:12  
objecting [1] 37:4  
objection [6] 23:13  
45:18 46:8 53:20,23 63:15  
objections [6] 37:14  
38:20 39:3 49:5,8 81:19  
obvious [1] 54:17  
obviously [2] 4:23 10:15  
occupation [1] 5:21  
occupied [1] 67:6  
occurred [1] 84:9  
occurring [1] 75:15  
October [3] 66:2,6 85:12  
off [13] 7:2 19:2 25:13,20  
28:16 42:11 44:8,10 55:10  
56:14 71:10,13 88:20  
office [25] 5:20 17:15,16  
17:20,21,24,25 18:2,7,11  
22:24 27:21 29:18 66:20  
67:8,19 84:18 85:16,21  
86:5 87:3,8,8,10 88:12  
office's [1] 5:25  
Officer [5] 6:15 12:8  
15:10 16:1,8  
officers [3] 58:21,24  
59:2  
offices [2] 37:23 87:6  
official [1] 90:8  
often [2] 35:3 72:23  
old [2] 12:19 31:24  
on-account [7] 52:22  
54:23,24 55:8 78:3,5  
82:12  
once [3] 17:6 60:16 64:9  
one [34] 8:10 10:1 17:5,9  
18:17 20:4,4 30:5 33:10  
34:25 37:2,6,7,15,16  
38:22,23 45:17 49:1 51:22  
53:3 58:6,13,15 59:18  
61:1 64:5,23 69:3 74:21  
76:6 81:20,25 84:22  
ones [1] 32:8  
open [3] 68:17,18,20  
opening [1] 73:18  
operate [1] 75:13  
operated [5] 17:19,25  
18:6,9 75:14  
operating [6] 16:22 18:2  
18:25 21:13 46:22 75:11  
operation [1] 17:24  
operations [2] 39:13  
75:15  
opinion [1] 30:2  
opportunity [3] 42:18

73:25 84:18  
order [1] 88:23  
originally [1] 60:1  
otherwise [1] 69:2  
outside [4] 61:3,5,7 71:10  
outstanding [3] 23:18  
38:16 54:10  
oversight [1] 21:20  
owed [4] 24:2 68:12  
80:10 83:11  
owes [1] 11:20  
owned [2] 60:6,6  
ownership [1] 60:9

---

-P-

---

P.A [1] 2:6  
p.m [1] 89:5  
packed [2] 86:6,23  
packing [1] 86:21  
page [5] 3:2,9 68 5 74:2  
74:14  
pages [1] 43:13  
paid [17] 18:22 24:6 29:16  
33:1,7,10,16,17 34:1,5,9  
52:19 66:13 77:19 78:1,9  
82:14  
Palm [2] 1:2 58:10  
Palmetto [1] 6:1  
paper [1] 12:22  
papers [3] 12:24 13:1,2  
Park [2] 6:1 7:10  
part [1] 23:19  
participated [1] 74:24  
particular [6] 8:10 12:17  
18:6 31:13 37:9 69:9  
particularly [3] 18:15  
49:21 50:24  
parties [2] 2:18 91:14  
parties' [1] 91:15  
Partners [1] 58:18  
partnership [1] 1:5  
party [4] 14:7 51:8 53:25  
54:3  
pass [1] 63:7  
passed [1] 81:17  
passing [1] 72:18  
past [3] 17:6 36:21 60:16  
patent [12] 22:25 23:20  
24:20 26:4,13,15,18 27:14  
30:12,17 31:3 57:19  
pay [8] 32:22 33:6,15,19  
34:3 54:15 55:3 82:17  
payable [8] 45:4,7,15  
67:20 81:16,18 84:7,13  
paying [8] 18:21 19:9  
52:9,12 53:7,19 57:8 58:5  
payment [14] 52:6 53:13  
54:6,19,22,25 55:1,4,8  
76:7 78:3,6 81:18 82:15  
payments [7] 52:23  
54:23,24 68:2,4 75:10  
82:13

Pennsylvania [1] 7:11  
people [10] 20:9 31:11  
50:14 59:4 61:1 69:25  
75:20 77:3,6 81:11  
percent [2] 60:11,13  
perform [6] 41:1 43:7,20  
47:19 67:14,21  
performed [16] 41:6,7,9  
41:20 42:2 43:16 47:11  
47:15 48:17 67:11 68:24  
80:18,24 81:2,5 82:22  
performing [1] 77:14  
period [2] 34:12 63:17  
permanent [1] 15:9  
person [5] 46:3 74:24  
76:5,8 77:1  
personally [2] 67:3 90:6  
persons [1] 60:3  
pertaining [5] 76:5 77:8  
81:20,25 83:19  
petition [3] 29:5,20  
69:15  
petitioning [1] 29:17  
phone [2] 44:11 56:16  
picture [1] 18:16  
pieces [1] 66:25  
Pittsburg [1] 7:10  
place [3] 40:24 49:7 67:1  
placed [1] 45:16  
plaintiff [4] 1:6 2:5 4:3  
80:10  
Plaintiff's [5] 3:8 42:13  
42:17 71:2,3  
planning [3] 70:7,10,13  
plans [2] 48:5 69:22  
plant [1] 73:18  
point [14] 7:10 16:12,22  
30:16 34:19 35:21 53:13  
61:11,21 62:20 65:23  
83:10 87:11,13  
ponder [1] 89:1  
pops [1] 26:9  
position [1] 81:8  
positions [1] 59:5  
possession [1] 11:13  
possible [3] 38:25 80:20  
82:12  
potential [1] 14:3  
Powell [2] 58:14,14  
preceded [1] 40:3  
prepare [1] 9:1  
preparing [1] 74:25  
president [3] 14:14 69:7  
69:10  
pretty [2] 62:20 64:8  
previous [1] 62:14  
previously [1] 64:3  
primarily [1] 34:2  
primary [2] 46:2 58:5  
principal [3] 52:21 58:6  
75:4  
principals [4] 40:5 58:11

58:20,25  
problem [2] 36:10,11  
problems [6] 36:3,5,17  
36:21 52:24 54:17  
proceed [1] 4:21  
proceedings [1] 69:19  
process [3] 45:11 48:25  
65:17  
professional [1] 7:16  
properly [1] 72:17  
property [4] 11:13,16,17  
12:17  
Proskauer [76] 1:4,15  
1:24 2:2 4:11 13:3,11 22:8  
22:15,19 25:7,10 27:24  
29:24 30:8,10,18 31:6,9  
31:12,15 32:13,17 33:3,6  
33:7 34:10,10 35:4,13  
37:3 38:7,12,15 39:5,17  
39:23 41:1,16,20 43:11  
45:9 46:8,14,25 47:11,19  
48:14,17 50:4 51:1 52:4,9  
53:3,12,18 54:19,20 55:6  
58:5 60:14 61:25 62:2  
63:9,20,22 64:9 68:21,23  
69:13 72:2 77:14 81:4,5  
82:10,14  
Proskauer's [5] 29:23  
35:17 36:22 48:23 52:12  
provided [2] 57:23 80:12  
Prusaski [31] 2:3 3:5 4:7  
4:9 6:24 7:4 23:15 25:13  
25:16 28:18 36:19 42:15  
42:21,24 47:4 52:15 54:1  
55:10,12 63:14,19 71:5  
71:15 81:24 83:1,5 87:22  
88:2,5,9,18  
Public [5] 1:23 2:11  
90:12 91:6,21  
purpose [5] 15:2,4,5,6  
25:9  
pursuant [1] 1:21  
put [3] 15:13 26:20 39:25

---

-Q-

---

qualify [1] 60:9  
questions [8] 4:24 5:3  
48:9 55:17 71:18 88:3,6,6  
quite [2] 50:1 65:15

---

-R-

---

R [2] 90:1 91:1  
R-E-A-L-E [1] 44:4  
rather [3] 49:13 61:5,19  
Raton [5] 1:17,25 5:14  
6:2,13  
Raymond [10] 13:25  
14:1 15:1 19:4 20:13  
27:20 32:20,23 33:21 44:3  
reached [1] 5:19  
read [1] 68:3  
reading [1] 2:19  
real [4] 18:8 60:17 62:6  
72:11

<p><b>Reale</b> [5] 27:20 44:3,5,18 56:8</p> <p><b>really</b> [26] 30:24 33:4 35:2 36:16 37:16 41:7 49:11,14,19 50:1,13 63:4 63:6,24,25 64:2,4 65:17 70:21 72:23 73:9,14 81:8 84:5,11 87:9</p> <p><b>reason</b> [3] 53:19 72:1 80:2</p> <p><b>reasons</b> [1] 34:4</p> <p><b>recalling</b> [1] 33:9</p> <p><b>receive</b> [3] 7:12 36:4 62:25</p> <p><b>received</b> [17] 9:4 35:4 36:7 38:18 39:6 45:9,16 53:15 72:24 73:3 78:19 79:13,15,17 82:7,10 88:9</p> <p><b>receiving</b> [3] 52:20 78:21 82:24</p> <p><b>recess</b> [2] 25:15 55:11</p> <p><b>recollection</b> [7] 30:21 42:5,7 46:13 68:9 74:14 82:5</p> <p><b>reconcile</b> [1] 78:8</p> <p><b>reconciled</b> [1] 43:10</p> <p><b>reconciliation</b> [22] 38:6 38:9,10 39:6 43:7,15,16 43:21 44:21 45:11 67:12 67:18,22 68:13,16 78:1 78:11 79:11,12 81:14 82:6 82:22</p> <p><b>record</b> [11] 7:3 25:14 28:17 42:12 55:10 71:11 71:14 78:21 82:23 88:21 91:10</p> <p><b>recorded</b> [2] 19:1 45:6</p> <p><b>records</b> [2] 45:4 84:10</p> <p><b>reduced</b> [2] 54:12,14</p> <p><b>reduction</b> [1] 54:5</p> <p><b>reference</b> [1] 38:6</p> <p><b>referred</b> [3] 28:14,21 58:17</p> <p><b>referring</b> [2] 8:12 56:6</p> <p><b>reflect</b> [1] 80:17</p> <p><b>reflected</b> [1] 51:4</p> <p><b>refresh</b> [1] 74:14</p> <p><b>refrigerator</b> [1] 66:24</p> <p><b>regarding</b> [1] 31:12</p> <p><b>related</b> [2] 64:1 85:9</p> <p><b>relation</b> [4] 80:11,23 81:2 81:4</p> <p><b>relationship</b> [11] 10:2 30:5,15 40:22 45:25 49:13 49:20 50:25 70:11,15,23</p> <p><b>relative</b> [3] 29:14 91:13 91:14</p> <p><b>remember</b> [8] 19:11 20:24 24:22 34:22 35:3 37:8 77:23 84:4</p> <p><b>renew</b> [1] 66:9</p> <p><b>rent</b> [1] 66:13</p> <p><b>rented</b> [1] 66:25</p> <p><b>rephrase</b> [1] 4:25</p>	<p><b>report</b> [1] 91:7</p> <p><b>REPORTED</b> [1] 2:9</p> <p><b>reporter</b> [6] 1:22 2:10 42:14 71:4 88:23 91:5</p> <p><b>represent</b> [6] 23:1 25:10 27:25 29:8 39:23 77:2</p> <p><b>representation</b> [8] 23:23,24 28:3 29:9,11,23 48:24 58:1</p> <p><b>representative</b> [1] 76:13</p> <p><b>represented</b> [7] 26:23 27:10,23 28:8 41:9 45:8 63:20</p> <p><b>representing</b> [7] 22:9 23:4,9 27:19 32:14 52:5 54:20</p> <p><b>represents</b> [1] 28:24</p> <p><b>request</b> [1] 56:2</p> <p><b>requested</b> [2] 11:12 91:9</p> <p><b>research</b> [1] 79:8</p> <p><b>reserve</b> [1] 87:25</p> <p><b>resigned</b> [1] 8:1</p> <p><b>resolved</b> [2] 57:9,10</p> <p><b>respect</b> [1] 18:20</p> <p><b>respective</b> [1] 2:18</p> <p><b>respond</b> [1] 27:19</p> <p><b>response</b> [7] 12:4 75:19 76:11 79:2 80:5,16 87:24</p> <p><b>responsibility</b> [1] 19:8</p> <p><b>responsible</b> [4] 15:19 20:9 31:5 83:10</p> <p><b>responsive</b> [1] 13:3</p> <p><b>rest</b> [4] 31:23 56:8 60:17 85:17</p> <p><b>resubpoena</b> [1] 88:12</p> <p><b>results</b> [4] 38:8,10 44:20 79:12</p> <p><b>retain</b> [2] 30:7 85:8</p> <p><b>retained</b> [1] 25:7</p> <p><b>return</b> [3] 7:5 11:12,17</p> <p><b>returned</b> [2] 11:16 74:11</p> <p><b>review</b> [9] 9:6,9,10 19:8 32:6,19 35:6 77:11 91:8</p> <p><b>reviewed</b> [4] 32:9,16 37:11 77:12</p> <p><b>Richard</b> [1] 5:12</p> <p><b>right</b> [8] 26:6 50:9 68:18 77:22 79:1 80:3 83:21 88:5</p> <p><b>Road</b> [9] 1:16,25 6:1 17:17 19:25 65:25 66:17 67:7,15</p> <p><b>Rocky</b> [2] 31:17,20</p> <p><b>role</b> [9] 9:14 10:4 12:6 14:12,25 15:15,25 43:23 55:25</p> <p><b>roles</b> [1] 59:16</p> <p><b>room</b> [1] 6:23</p> <p><b>Rosario</b> [1] 60:20</p> <p><b>Rose</b> [16] 1:4,15,24 2:2 4:11 13:12 22:8,15 35:13 41:1,16 60:14 63:10 69:13</p>	<p>82:10,14</p> <p><b>Rose's</b> [1] 13:3</p> <p><b>Ross</b> [12] 43:22,24 44:2 51:8 53:8,23 54:4,11 55:19 56:2 82:21 83:12</p> <p><b>round</b> [1] 55:6</p> <p><b>Rules</b> [1] 1:21</p> <p><b>run</b> [4] 56:4 62:2,1,22 81:13</p> <p><b>runs</b> [1] 61:20</p> <p style="text-align: center;">-S-</p> <p><b>S-C-H-N-A-L-L</b> [1] 76:22</p> <p><b>s-corp</b> [2] 61:6 65:11</p> <p><b>s-corporation</b> [2] 60:2 60:2</p> <p><b>s-corporations</b> [1] 60:10</p> <p><b>S-I-R-A-H-J-E-E</b> [1] 60:22</p> <p><b>Sach's</b> [1] 27:21</p> <p><b>Sachs</b> [5] 27:18 28:14,21 76:23,24</p> <p><b>Sachs'</b> [1] 29:18</p> <p><b>SAITH</b> [1] 2:21</p> <p><b>sales</b> [1] 18:14</p> <p><b>San</b> [1] 11:1</p> <p><b>sat</b> [1] 51:25</p> <p><b>satisfied</b> [3] 48:23 49:4 57:25</p> <p><b>save</b> [1] 54:16</p> <p><b>saw</b> [14] 30:6 37:2,16,23 38:1,23 69:1 74:9,10,12 74:16,18 78:11 80:23</p> <p><b>Sax</b> [5] 27:18 28:14,21 76:23,24</p> <p><b>Sax's</b> [2] 84:18 87:3</p> <p><b>Schnall</b> [1] 76:21</p> <p><b>Schnull</b> [1] 79:5</p> <p><b>scrape</b> [1] 84:8</p> <p><b>scrutinized</b> [1] 52:1</p> <p><b>seal</b> [1] 90:8</p> <p><b>second</b> [2] 25:14 83:3</p> <p><b>seconds</b> [1] 71:10</p> <p><b>secretary</b> [1] 46:2</p> <p><b>see</b> [10] 36:17 37:1,15,22 43:3,12 58:17 68:3 81:3 87:21</p> <p><b>seeing</b> [1] 80:24</p> <p><b>self-employed</b> [1] 56:22</p> <p><b>self-storage</b> [1] 67:1</p> <p><b>sell</b> [1] 5:22</p> <p><b>Selz</b> [16] 2:6,6,7 9:12 23:13 25:12 36:12 42:23 47:1 52:14 53:20 63:12 63:16 88:7,17 89:2</p> <p><b>Selz's</b> [1] 88:12</p> <p><b>send</b> [1] 55:6</p> <p><b>sending</b> [2] 46:25 53:12</p> <p><b>sent</b> [7] 11:9 34:14 46:14</p>	<p>46:20,20 53:18 81:4</p> <p><b>serve</b> [1] 18:14</p> <p><b>served</b> [3] 4:10 24:20 43:4</p> <p><b>services</b> [7] 49:4 57:23 80:12,17,24 81:2,5</p> <p><b>set</b> [1] 88:10</p> <p><b>settle</b> [1] 54:13</p> <p><b>settlement</b> [2] 14:4 54:5</p> <p><b>seven</b> [5] 4:17 78:22,22 79:18 82:1</p> <p><b>share</b> [1] 61:13</p> <p><b>shareholder</b> [2] 60:5 61:8</p> <p><b>shareholders</b> [4] 60:3 60:10 61:11,15</p> <p><b>shares</b> [6] 61:11,12,16,17 61:24 71:21</p> <p><b>shipped</b> [17] 46:4,5 66:18 66:19 84:15,23 85:2,3,11 85:14,15,16,21,23 86:3,6 86:23</p> <p><b>Shoemaker</b> [1] 58:13</p> <p><b>short</b> [2] 25:15 83:4</p> <p><b>shortly</b> [2] 43:4,18</p> <p><b>show</b> [4] 42:16 68:4 71:1 79:14</p> <p><b>showed</b> [4] 47:8 68:16 78:1 82:6</p> <p><b>showing</b> [1] 79:12</p> <p><b>shown</b> [3] 45:5,6 68:2</p> <p><b>shows</b> [2] 60:23 68:21</p> <p><b>Si</b> [19] 9:23,24,24,25 10:3 10:6,8,9,15 20:18 50:5,19 50:22,25 51:2,25 70:18 70:20,23</p> <p><b>Si's</b> [1] 10:4</p> <p><b>signatory</b> [1] 19:15</p> <p><b>signature</b> [1] 74:5</p> <p><b>signed</b> [4] 19:2,5 63:1 65:21</p> <p><b>signing</b> [5] 2:19 19:10 19:12,16 74:7</p> <p><b>Simon</b> [2] 20:19 41:14</p> <p><b>simply</b> [6] 38:24 53:9 55:1,6 62:23 72:24</p> <p><b>Sirahjee</b> [2] 60:19,21</p> <p><b>sit</b> [3] 48:3 51:19 79:22</p> <p><b>six</b> [3] 6:4,18 78:16</p> <p><b>sizes</b> [1] 86:6</p> <p><b>Slayberg</b> [1] 29:6</p> <p><b>slowed</b> [1] 64:8</p> <p><b>small</b> [2] 15:24 52:21</p> <p><b>smaller</b> [1] 16:9</p> <p><b>someone</b> [1] 23:24</p> <p><b>sometime</b> [5] 8:24 13:10 38:2 52:10 74:11</p> <p><b>Sometimes</b> [1] 5:3</p> <p><b>somewhere</b> [1] 38:4</p> <p><b>sorry</b> [5] 13:20 47:5 56:10 60:6 65:4</p> <p><b>sort</b> [1] 65:13</p>	<p><b>sounded</b> [1] 25:11</p> <p><b>Southwest</b> [1] 2:12</p> <p><b>space</b> [3] 66:4,15 67:7</p> <p><b>speak</b> [5] 8:20 9:5,17 65:9 85:7</p> <p><b>specific</b> [5] 12:9 48:13 51:10 54:25 70:21</p> <p><b>specifically</b> [12] 30:1 40:17 47:14,16 49:17 55:25 57:18 59:19 62:3 64:6 70:1,25</p> <p><b>specifics</b> [1] 49:14</p> <p><b>specify</b> [2] 8:10 63:14</p> <p><b>speculating</b> [1] 51:18</p> <p><b>speculation</b> [3] 23:14 70:15 86:15</p> <p><b>spell</b> [1] 60:21</p> <p><b>spelled</b> [1] 60:24</p> <p><b>Spencer</b> [2] 27:21 87:3</p> <p><b>spend</b> [1] 39:8</p> <p><b>spoke</b> [9] 8:3,15,17,22 9:19 13:6,22 14:9 69:3</p> <p><b>spoken</b> [4] 8:21 9:7 31:23 70:17</p> <p><b>Spring</b> [1] 52:11</p> <p><b>SS</b> [2] 90:3 91:3</p> <p><b>St</b> [1] 10:11</p> <p><b>staff</b> [1] 15:24</p> <p><b>standpoint</b> [1] 73:2</p> <p><b>start</b> [1] 15:11</p> <p><b>started</b> [5] 18:3,5 19:13 21:21 30:3</p> <p><b>starts</b> [1] 65:14</p> <p><b>state</b> [6] 1:23 5:10 10:22 12:14 90:2 91:2</p> <p><b>statement</b> [3] 62:14 63:21 81:9</p> <p><b>statements</b> [3] 68:4,16 82:10</p> <p><b>status</b> [6] 7:25 40:14,16 47:22 48:20 64:12</p> <p><b>stenographic</b> [1] 91:10</p> <p><b>stenographically</b> [1] 91:7</p> <p><b>step</b> [2] 71:9 83:1</p> <p><b>Steven</b> [9] 2:7 11:7,9 12:4,6 48:1 73:11 77:5,8</p> <p><b>still</b> [16] 12:18 17:21 19:15 23:1 27:25 55:22 56:13 59:6,10 65:2 66:20 67:5 76:4 78:7,8 79:11</p> <p><b>stipulated</b> [1] 2:17</p> <p><b>STIPULATION</b> [1] 2:16</p> <p><b>stock</b> [1] 60:12</p> <p><b>stockholders</b> [1] 59:3</p> <p><b>stop</b> [4] 23:4 52:12 53:7 65:4</p> <p><b>stopped</b> [7] 23:8 24:3 32:13 52:4,8 58:5 59:10</p> <p><b>storage</b> [5] 66:25 67:1,2 67:4,5</p> <p><b>straight</b> [1] 61:18</p>
---	--	--	---	--

street [4] 2:12 5:14 11:2  
44:15  
strict [1] 72:12  
Strike [2] 33:23 34:7  
structured [1] 40:24  
stuck [1] 45:19  
stuff [5] 84:25 85:1,9,9  
86:4  
subchapter [3] 60:1,2  
60:10  
subject [1] 33:24  
sublease [2] 65:19 66:7  
subpoena [2] 4:10 9:4  
subsidiaries [1] 6:22  
subsidiary [1] 60:7  
substantial [4] 11:20  
16:6 22:24 23:17  
such [1] 18:18  
sued [3] 24:8,11 28:6  
Suite [4] 1:16,25 2:13  
17:17  
Summer [8] 23:6 26:25  
38:3 40:1 43:5 48:12  
52:11,20  
support [1] 38:11  
supposed [2] 84:16  
86:22  
suspect [5] 8:25 41:3  
46:1 62:3 70:4  
sworn [2] 4:4 90:7

-T-

T [5] 90:1,1,1 91:1,1  
technically [3] 40:21  
72:10,20  
technologies [25] 1:11  
8:8 17:3 48:7,18,21 59:19  
59:21,23 60:5,12 61:2,6,9  
61:12,16,17,18,20 62:1,3  
62:7 65:13 69:12 71:21  
Ted [2] 67:2,3  
telephone [2] 5:16 88:14  
telling [1] 44:24  
ten [1] 80:6  
term [2] 8:6,11  
terminate [2] 23:22,24  
terminated [17] 8:2 22:1  
22:6 27:1,2,5,8 28:4 29:10  
29:12 44:4 46:4,6 56:5,9  
61:7 85:18  
termination [2] 24:1,3  
terms [3] 50:14 64:9  
72:18  
testified [3] 4:5 83:7,15  
testify [2] 69:22 83:18  
testifying [3] 70:8,10,13  
Thank [6] 26:13 34:19  
44:19 65:22 73:4,21  
therefore [1] 61:6  
Thereupon [12] 4:1 6:23  
7:2 25:11,15 28:16 42:11  
55:11 71:13 83:4 88:20  
89:4

thinking [1] 80:4  
third [1] 80:9  
Thompson [1] 31:18  
three [2] 17:7 76:12  
through [12] 40:22 43:11  
45:2,4 61:20 62:22 68:3  
72:10 77:25 79:6 81:17  
84:19  
Thursday [1] 76:1  
tight [1] 36:1  
times [6] 4:16,18 49:12  
55:5 72:23 86:16  
timing [1] 39:24  
today [14] 9:2,11 20:8  
29:1,22 33:25 40:24 48:4  
69:14 70:1 73:5 76:25  
82:5 83:15  
together [2] 39:25 84:8  
too [4] 32:21 51:13,22  
60:4  
took [3] 26:4 66:20,21  
top [5] 17:6 21:8 44:8,10  
56:15  
total [3] 16:19 38:20 68:8  
touch [2] 15:13 55:14  
track [1] 68:2  
transaction [1] 62:24  
transcript [2] 91:9,9  
transfer [2] 72:13,18  
trial [1] 69:22  
Triggs [7] 2:4 6:23,25  
81:21 83:3 87:23 88:25  
true [1] 91:10  
try [3] 54:5 59:22 62:20  
trying [6] 14:21 31:21  
34:21 54:4 73:12 84:4  
Tuesday [1] 1:26  
turn [3] 63:3 73:21 78:22  
turned [1] 67:2  
two [7] 12:19 20:4 31:22  
31:23 60:17 75:20,20  
type [5] 16:2 28:12 47:14  
51:24 65:7  
types [1] 30:10  
typically [1] 55:2

-U-

U-T-L-E-Y [1] 13:7  
U.S [1] 60:18  
unable [1] 83:18  
uncertain [9] 4:17 7:25  
8:23 11:23 17:6 22:7  
36:14,15 40:10  
unclear [1] 41:10  
undersigned [1] 90:5  
understand [2] 4:24 8:8  
understood [2] 5:7  
18:12  
unfamiliar [1] 20:23  
unit [4] 66:25 67:2,4,5  
unpaid [2] 13:4 34:2

unreasonable [1] 80:11  
unsatisfactory [1]  
23:20  
up [14] 15:11 56:17 60:23  
61:22 65:22 77:23 79:9  
79:15,20 82:4,11 86:6  
88:6,11  
used [8] 11:5 22:18,20,24  
24:15,25 25:18 65:17  
usually [2] 45:21,23  
utilize [1] 43:6  
Utley [36] 13:7,19,23 14:5  
14:10 20:13 21:15,24 22:1  
27:20 28:23 31:7 32:21  
33:21 37:4 40:8 44:3  
45:18 46:1,1,6 47:21 49:7  
56:6 64:16,24 69:6,15  
75:24 76:1 83:8,13,22,24  
84:15 85:17  
Utley's [2] 14:12 65:18

-V-

vacated [1] 85:13  
vague [2] 5:4 63:18  
value [2] 80:11 81:5  
various [4] 31:1,1,11 35:1  
86:6  
vast [1] 64:7  
Venture [1] 58:18  
Ventures [2] 56:3 58:7  
versus [3] 4:11 30:8  
33:10  
vise-versa [1] 82:16  
voiced [2] 49:8 50:6  
volume [2] 50:7 85:23  
vs [1] 1:7

-W-

W [1] 2:3  
waive [1] 88:22  
waived [1] 2:20  
warehouse [1] 85:20  
Warner [1] 18:13  
water [1] 42:9  
week [1] 11:10  
weeks [1] 6:4  
well-funded [1] 15:11  
west [7] 1:16,25 6:1 17:17  
18:15 26:3 58:10  
Wheeler [4] 31:17 37:3  
37:4 53:24  
whole [5] 35:11,12 73:15  
82:20 84:5  
wholly [2] 60:6,6  
widget [1] 73:18  
widgets [2] 73:18,19  
wife's [2] 44:13 56:18  
William [6] 1:20 3:4 4:2  
5:12 90:6 91:8  
willing [1] 54:13  
without [2] 41:3 80:3  
witness [12] 2:19 3:2 4:3

36:14 47:3 53:22 88:4,8  
88:15,19,22 90:8  
witnesses [1] 69:21  
words [4] 54:25 61:13  
72:20 79:8  
worked [2] 16:7 79:5  
works [1] 56:21  
worth [1] 76:10  
Worthiler [1] 60:15  
writing [1] 72:13  
written [1] 38:21  
wrong [2] 60:23,24  
wrote [1] 34:10

-X-

X [1] 3:1

-Y-

year [3] 7:12 14:20 37:25  
years [1] 7:18  
yet [2] 16:11 87:24  
York [5] 1:5 12:14,14  
20:4 24:19  
yourself [4] 75:1,6 76:16  
76:19

-Z-

Zack [3] 60:19,23 61:1

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

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

Defendants.

-----/

Boca Raton, Florida  
November 14, 2002  
2:00 o'clock p.m.

DEPOSITION

OF

SIMON L. BERNSTEIN

-----

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE LLP  
by: CHRISTOPHER W. PRUSASKI, ESQ.  
3 Appearing on behalf of the Plaintiff.

4 SELZ & MUVDI SELZ, P.A.  
by: STEVEN M. SELZ, ESQ.  
5 Appearing on behalf of the Defendant.

6 LAW OFFICES OF STEVEN I. GREENWALD, P.A.  
by: STEVEN I. GREENWALD, ESQ.  
7 Appearing on behalf of the Simon Bernstein.

8 - - - - -

9 Deposition of SIMON L. BERNSTEIN, a witness  
10 of lawful age, taken by the Plaintiff, for purposes  
11 of discovery and for use as evidence in the  
12 above-entitled cause, pursuant to notice heretofore  
13 filed, before TAMARA EMERICK-MASCI, Registered  
14 Professional Reporter and Notary Public, in and for  
15 the State of Florida at Large, at 2255 Glades Road,  
16 Boca Raton, Florida.

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I N D E X

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WITNESS:

D C RD RC

SIMON L. BERNSTEIN

BY MR. PRUSASKI

4

E X H I B I T S

PLAINTIFF'S

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1 Thereupon:

2 SIMON L. BERNSTEIN

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5 DIRECT EXAMINATION

6 Q. (By Mr. Prusaski) Good afternoon. Would  
7 you state your name, please?

8 A. Simon L. Bernstein.

9 Q. Mr. Bernstein, what is your address?

10 A. 7020 Lions - L-i-o-n-s - Head - H-e-a-d,  
11 Lane, Boca 33496.

12 Q. Do you have any other homes?

13 A. No.

14 Q. Are you planning on going on any vacation  
15 in the next four months?

16 A. Not that I know of.

17 Q. You're here pursuant to a subpoena that  
18 we served on you a couple months ago, right?

19 A. Correct.

20 Q. Thank you.

21 Have you ever had your deposition taken  
22 before?

23 A. I have.

24 Q. Okay. The reason I ask is because I want  
25 to make it clear of how the deposition proceeds. If

1 you answer one of my questions, it's assumed that you  
2 understood it. If at any time I ask a question  
3 that's not clear to you, please let me know. That's  
4 basically your only obligation during this  
5 deposition, other than to tell the truth, to ask me  
6 to rephrase any questions that aren't clear to you.

7 If you need to take a break, if you need  
8 to call your wife, as you mentioned, we will  
9 accommodate you.

10 Those are the only ground rules for the  
11 deposition. If you have any further questions, just  
12 please ask us.

13 What is your occupation?

14 A. I'm retired.

15 Q. What is the benefit of your educational  
16 background, briefly?

17 A. Two years of college.

18 Q. When did you graduate college?

19 A. I didn't.

20 Q. Back in the 1960s?

21 A. Before that. '54? '56? Something like  
22 that.

23 MR. GREENWALD: 1954 or 1854?

24 Q. (By Mr. Prusaski) What did you spend  
25 your career doing for work?

1           A.       Well, I owned a few furniture stores when  
2 I was younger. But the most -- But the majority of  
3 my adult occupational career was in the life  
4 insurance business.

5           Q.       How many years did you spend in that  
6 business, sir?

7           A.       Thirty-seven.

8           Q.       Do you hold any professional licenses?

9           A.       Just an insurance license.

10          Q.       Did you do anything to prepare for your  
11 deposition today?

12          A.       I showered.

13          Q.       Did you look at any documents to prepare  
14 for the deposition?

15          A.       No.

16          Q.       We're going to talk about the Iviewit  
17 companies. And for purposes of clarity, if I use the  
18 term Iviewit, I mean all of the Iviewit entities  
19 collectively. If I want to discuss a particular  
20 Iviewit entity, I'll make it clear of which one I'm  
21 going to talk about. Do you follow me on that?

22          A.       I do. I don't know the companies any  
23 better than --

24          Q.       Okay. What was your role with the  
25 Iviewit companies?

1 A. I was the chairman of the board.

2 Q. What year did you get involved in the  
3 Iviewit companies?

4 A. I actually got involved with them prior  
5 to their being Iviewit companies. Probably, I  
6 believe, 1997. Somewhere in that period of time.

7 Q. Who are the officers and directors?

8 A. At what period of time?

9 Q. Beginning. How about the time Proskauer  
10 was hired?

11 A. When they were brought in, there was no  
12 board of directors. And there were no officers  
13 either that I can think of.

14 Q. Who was --

15 A. Maybe Eliot was the only officer.

16 Q. Who comprised the initial board of  
17 directors?

18 A. The initial board, I believe, was myself,  
19 Eliot, Brian Utley. I assumed Chris Wheeler. I  
20 later found out that he wasn't, but in the beginning,  
21 it was represented that he was. Jerry Lewin. And  
22 that might be the original group. I - I don't know.  
23 I think that was the early on group.

24 Q. How long have you known Jerry Lewin?

25 A. Five, six years.

1 Q. Was your first experience with Jerry  
2 Lewin through Iviewit or did you know him prior to  
3 that?

4 A. I think I had met him prior to that  
5 through an insurance friend of mine. At that time, I  
6 don't believe he lived in the same community I do  
7 now.

8 Q. He's your neighbor?

9 A. He lives across the street, around the  
10 corner, yeah.

11 Q. When's the last time you saw him?

12 A. Within the month.

13 Q. Just passing in the street?

14 A. At the club.

15 Q. Oh. You're members of the same country  
16 club?

17 A. Yes.

18 Q. Do you consider yourself social friends  
19 with Mr. Lewin?

20 A. Social friends, no.

21 Q. No. Do you talk to him when you see him  
22 at the club?

23 A. Yes.

24 Q. Okay. When's the last time you or saw or  
25 spoke to Brian Utley?

1           A.     I would assume it was -- No, I don't  
2 remember. I can't give you an exact date.

3           Q.     Have you seen him subsequent to the time  
4 when he left Iviewit, which was, I believe, March of  
5 2001 or April - I'm sorry - April 2001?

6           A.     I don't think so.

7           Q.     What about Hersh, Raymond Hersh?

8           A.     Have I seen him since?

9           Q.     Subsequent to the time you left the  
10 company.

11          A.     I don't believe so.

12          Q.     Haven't spoken to him?

13          A.     I might have. He has some insurance with  
14 me.

15          Q.     Mm-hmm. Still does?

16          A.     Yes.

17          Q.     So you don't specifically recall speaking  
18 to him after March of 2001?

19          A.     No, I don't.

20          Q.     What about Steven Lamont?

21          A.     I never met Steven Lamont.

22          Q.     Have you spoken to him on the phone?

23          A.     On occasion, maybe once or twice.

24          Q.     Do you know what Lamont's role with the  
25 Iviewit companies is now?

1 A. I believe he was brought in to act as  
2 current president. No, I don't know. The answer is  
3 no, I don't know.

4 Q. Do you have any contact or involvement  
5 with Iviewit right now?

6 A. No.

7 Q. You don't sit as a board member or a  
8 principal of those companies?

9 A. No.

10 Q. Does your son, Eliot?

11 A. I don't know. I believe so, but I don't  
12 know.

13 Q. Where does Eliot live?

14 A. In California.

15 Q. Do you know what city?

16 A. Escondido.

17 Q. Mm-hmm. You -- Does he - does he work  
18 other than his involvement with Iviewit?

19 A. I don't know.

20 Q. How do you not know what your son does?

21 A. Does your father know what you do?

22 Q. Yep.

23 A. You have a better relationship than I do.

24 Q. Okay. Well, I don't mean to patronize  
25 you by asking you these questions if your

1 relationship with your --

2 A. I don't know. I'm answering your  
3 question.

4 Q. Let me continue. If your relationship  
5 with your son is estranged and you don't know what he  
6 does for a living, then I accept that and respect  
7 that answer.

8 A. It's not estranged. I talk to Eliot on  
9 occasion. I don't know what else he's doing other  
10 than still acting as the main person in Iviewit.

11 Q. Does he run that company out of his  
12 house?

13 A. I don't know.

14 Q. Is your daughter-in-law pregnant?

15 A. Yes.

16 Q. Do you know how - when she's due?

17 A. Anytime that phone rings.

18 Q. You're waiting for a baby any day now?

19 A. I am. Any day.

20 Q. Is it a boy or girl?

21 A. They won't tell me that either.

22 Q. They don't know?

23 A. I don't think -- They say they don't  
24 know. I don't know.

25 Q. Have you spoken to her recently?

1 A. Yes.

2 Q. Candace?

3 A. Yes.

4 Q. When's the last time you talked to her?

5 A. I think I spoke to her yesterday.

6 Q. How's she doing physically?

7 A. She's complaining. She's not -- She's  
8 big and waddling around.

9 Q. Mm-hmm. Does she have any problems? Is  
10 everything coming smoothly?

11 A. I don't know.

12 Q. You didn't discuss her health at all?

13 A. No, I don't. She's having a baby.

14 Q. What time yesterday did you speak to her?

15 A. If it was yesterday, it was - I think she  
16 called the house to see how my wife was - maybe three  
17 o'clock, four o'clock.

18 Q. In the afternoon?

19 A. I believe so.

20 Q. Was Eliot home?

21 A. I don't know.

22 Q. How many kids do they have?

23 A. Two.

24 Q. Other than the pregnancy?

25 A. Yes.

1 Q. Okay.

2 A. Is this all relevant to this or --

3 Q. Yeah.

4 A. Okay. I just thought maybe you were  
5 interested in -- I have five - four other children,  
6 If you want to know about them too, but --

7 Q. No, only tell me about what I ask about.

8 A. Okay. I was just wondering if you were  
9 headed in that direction.

10 Q. Nope.

11 Let's talk about the bills that Iviewit  
12 hasn't paid. I'm going to show you a document which  
13 is being marked as Plaintiff's Exhibit 1. It's a  
14 copy of the Amended Complaint. Take your time. Take  
15 a look at the document. Tell me if you've ever seen  
16 it before.

17 (Thereupon, the above-referred to  
18 document was marked as Plaintiff's Exhibit 1 for  
19 identification.)

20 MR. PRUSASKI: I'm going to give you two  
21 attorneys an extra copy to look at of  
22 everything.

23 MR. GREENWALD: Thank you. I assume,  
24 counsel, for the record, these alleged bills  
25 are attached to - in the Complaint as exhibits,

1 are they not?

2 MR. PRUSASKI: This is the Amended  
3 Complaint in its entirety that was filed in the  
4 lawsuit.

5 MR. GREENWALD: Okay. But -- I  
6 appreciate that.

7 MR. PRUSASKI: And the bills.

8 MR. GREENWALD: Okay. They were attached  
9 as exhibits?

10 MR. PRUSASKI: Yes.

11 MR. GREENWALD: Okay.

12 Q. (By Mr. Prusaski) After page 7, you  
13 have a series of bills, and then you have Exhibit B,  
14 which is --

15 A. Would you --

16 Q. -- a running statement of account.

17 A. Would you restate the question to me,  
18 please?

19 Q. I'm going to ask you to look at that  
20 document and tell me if you've ever seen it before?

21 A. This document.

22 Q. Yes.

23 A. No, I have not.

24 Q. Attached to that document starting as  
25 Exhibit A, starting after page 7 of the Amended

1 Complaint are Proskauer invoices, which appear to be  
2 addressed to Iviewit.

3 A. Mm-hmm.

4 Q. Do those documents look familiar to you?

5 A. No.

6 Q. Have you ever been told that Proskauer  
7 Rose filed a lawsuit against Iviewit to collect  
8 unpaid bills?

9 A. I have.

10 Q. And when did you first learn that?

11 MR. GREENWALD: Don't guess. Only if you  
12 know.

13 A. I don't know. I don't remember the date.

14 Q. Was it shortly after the time the lawsuit  
15 was filed?

16 A. When was the lawsuit filed?

17 Q. May of - May of 2001.

18 A. I assume it would be right around that  
19 time.

20 Q. Okay. The Amended Complaint alleges that  
21 \$369,460 are due and owing in unpaid attorney's fees  
22 bills. Have you ever had occasion to go through the  
23 bills that comprise that amount?

24 A. I might have.

25 Q. You don't recall?

1           A.       I don't know the number to be exact, to  
2 be 369. I've gone through the - the bills when -  
3 when they were brought to me by - by Brian Utley.

4           Q.       When were they brought to you?

5           A.       As the bills were coming in.

6           Q.       Okay.

7           A.       So I, you know, haven't seen them as a -  
8 as a group. I've seen them individually. And I  
9 don't know if they're all here or, you know, if these  
10 are correct. I'm just looking at numbers here.

11          Q.       Right. Do you have any knowledge if - if  
12 the allegation that Proskauer made in the lawsuit  
13 that Iviewit owes that amount, do you have any  
14 knowledge if that amount is actually due or not?

15          A.       No.

16          Q.       No knowledge?

17          A.       If that amount is due?

18          Q.       Yes.

19          A.       No, I have no knowledge.

20          Q.       Okay. Have you ever sat down with anyone  
21 to determine whether the bills attached to this  
22 lawsuit are due and owing?

23          A.       With -- That's attached to this lawsuit?

24          Q.       Yes.

25          A.       As they stand in here?

1 Q. Yes.

2 A. No, I have not.

3 Q. Okay. Has Eliot Bernstein ever told you  
4 that the bills attached to the Proskauer/Iviewit  
5 lawsuit are not due and owing by Iviewit?

6 A. Has he told me they weren't due?

7 Q. They were not.

8 A. No.

9 Q. Have you ever discussed this lawsuit with  
10 Eliot Bernstein?

11 A. Yes.

12 Q. What have you talked about?

13 A. The overcharge of the bills, the - you  
14 know, the things that happened in the past. That's  
15 about it.

16 Q. Were there overcharges?

17 A. In my opinion?

18 Q. Yeah.

19 A. Mm-hmm.

20 Q. Well, explain what you mean by there were  
21 overcharges.

22 A. Well, they were -- There were many, many  
23 opportunities that Mr. Utley and Mr. Wheeler  
24 developed bills for conferences for hours on end for  
25 simple matter, such as leases, drafting of corporate

1 minutes, just things that in my history as - as a  
2 businessman, paying lawyers, were abusive.

3 Q. When did the abusive charges start?

4 A. Almost from the first day.

5 Q. Do you recall how long Proskauer  
6 represented Iviewit?

7 A. Almost from the first day.

8 Q. No. I mean -- You didn't listen to my  
9 question. Do you recall how long a period of time  
10 Proskauer represented Iviewit?

11 A. Oh, I - I - I believe it was probably  
12 somewhere in the 2001.

13 Q. So it was over two years, right?

14 A. I imagine.

15 Q. Okay. And these charges started almost  
16 immediately?

17 A. They started immediately.

18 Q. Well, then why did Proskauer continue to  
19 represent Iviewit if, in your opinion, Proskauer was  
20 overcharging the company?

21 A. I didn't make those decisions.

22 Q. Who did?

23 A. Mr. Utley did.

24 Q. Was Mr. Utley given -- He was the  
25 president, right?

1 A. Correct.

2 Q. And COO?

3 A. COO.

4 Q. That was his job to make those decisions,  
5 correct?

6 A. To - to the understanding that he  
7 reported to the board of directors.

8 Q. Did he report to the board of directors?

9 A. Correct.

10 Q. So the board of directors gave Utley  
11 authority the make decisions with respect to the  
12 continuation of Proskauer's services?

13 A. With certain limitations.

14 Q. What were those limitations?

15 A. After we felt that the company was being  
16 overcharged, he was limited to a five thousand dollar  
17 a month expenditure. And he far exceeded that.

18 Q. When --

19 A. I mean, obviously, he far exceeded it  
20 because the bills are much more than five thousand  
21 dollars a month.

22 Q. Around what date was the five thousand  
23 dollar expenditure?

24 A. I don't know. It was a board meeting.  
25 We had one a month at least.

1 MR. GREENWALD: Let him finish asking the  
2 question.

3 THE WITNESS: Okay.

4 Q. (By Mr. Prusaski) Was it in '99?

5 A. It could have been.

6 Q. Okay. So after -- Did you see the bills  
7 when they came in?

8 A. I saw some bills that came in. Those  
9 bills that pertained to things that I would be  
10 involved in, such as the lease and stuff like that.

11 Q. So you're saying that sometime after  
12 Proskauer started representing Iviewit, the board  
13 limited Utley to five thousand dollars a month in  
14 attorney's fees?

15 A. Yes, that's correct.

16 Q. And you're saying that Utley exceeded  
17 that limitation by allowing Proskauer to bill more  
18 than five thousand a month?

19 A. That's correct.

20 Q. Did Iviewit continue to allow Proskauer  
21 to do work for it for at least a year, year-  
22 and-a-half after that?

23 A. That may be true, I don't know.

24 Q. Okay.

25 A. You know, I wouldn't know what they did.

1 Q. Did you ever send any letters to --

2 Well, to whom did you speak at Proskauer

3 about the bills? Christopher Wheeler?

4 A. Chris Wheeler.

5 Q. Was there anyone else?

6 A. I think Myra.

7 Q. Myra. Myra Robbins?

8 A. Myra Robbins, correct.

9 Q. Okay.

10 A. Who was constantly working on the account  
11 and who also was of the opinion that the billing  
12 process was exceedingly costly for Iviewit.

13 Q. Miss Robbins was of the opinion?

14 A. That's correct.

15 Q. What did she tell you?

16 A. She said that, you know, I'm doing the  
17 work. It then goes to somebody else. And then it  
18 goes to Chris. And so, we're getting three hourly  
19 charges for the same bill.

20 Q. How soon after Proskauer started doing  
21 work for Iviewit did she tell you that?

22 A. Maybe six months. Maybe a year. I don't  
23 know exact dates.

24 Q. This is '99 then we're talking?

25 A. Probably.

1 Q. Did you lodge any complaints to  
2 Mr. Wheeler about the bills?

3 A. I certainly did.

4 Q. How often?

5 A. Frequently.

6 Q. How frequently? You've got to be -  
7 you've got to be more exact than frequently.

8 A. Okay. Well, first of all, I lodged the -  
9 most of my complaints with Mr. Utley, who was  
10 supposedly meeting with Mr. Wheeler at all these  
11 different times. And then I have - I went across the  
12 hall and spoke to Chris Wheeler two or three times,  
13 suggesting that these bills have to stop. They are  
14 just out of line because they were not consistent  
15 with the - what my understanding of the original  
16 arrangement was when Iviewit was formed and stock was  
17 given to Proskauer Rose. And it was my understanding  
18 that that stock was given in lieu of a postponement  
19 of the bills until such time as we got funded. And  
20 that's -- That was what -- You know, those are the  
21 complaints I lodged.

22 Q. Did you ever send any complaints to  
23 anyone in writing about Proskauer's bills?

24 A. I might have. I don't think I put them  
25 in writing. I might have - I might have had

1 Mr. Utley -- I know that they went in the form of a  
2 written memo to the board so that the other members  
3 of the board were aware of the fact.

4 For example, I think the first one was I  
5 - it came to my attention that Chris Wheeler, who I  
6 thought was a director of the company, after six or  
7 seven meetings, that we were being billed for his  
8 appearances at our board meetings. And I said, well,  
9 why would a member of the board be billing us? And I  
10 later was told that, oh, no, he wasn't a member of  
11 the board. He was there as a consultant. And I  
12 said, well, you know, it seems strange to me that we  
13 have anybody there as a consultant when nobody asked  
14 for a consultant.

15 Q. Who designated Mr. Wheeler as a  
16 consultant?

17 A. That -- I was told he was a consultant by  
18 Mr. Utley, who was told by Mr. Wheeler.

19 Q. Other than what you said, Proskauer's  
20 excessive billing, were there any other problems with  
21 the bills?

22 A. You mean, as far as the workmanship?

23 Q. Yes.

24 A. I couldn't answer that because I  
25 wasn't -- I don't know how it related to the

1 companies, what workmanship they did, whether it was  
2 good work or bad work. I really don't know.

3 Q. Well, do you know if Proskauer ever  
4 billed for work it really didn't do?

5 A. I don't know that either.

6 Q. Have you ever heard anybody say that  
7 Proskauer billed for work that wasn't done?

8 A. Not to -- Nobody's ever said that to me,  
9 no.

10 Q. You've never heard it?

11 A. I never heard it personally, no.

12 Q. Did there come a time when Iviewit  
13 stopped paying Proskauer Rose?

14 A. Not to my knowledge.

15 Q. Why did Proskauer sue Iviewit?

16 A. Maybe they stopped paying them. As I  
17 said, I don't know.

18 Q. When did you stop being a board of  
19 directors member of the company?

20 A. When we dissolved the board of directors.

21 Q. When was that?

22 A. I don't know for sure, but I think it was  
23 late 2001. Is this 2002, right?

24 Q. The lawsuit was filed in May of 2001.  
25 Was the board of directors still intact at that time?

1 A. I don't know. I don't remember.

2 Q. Well, it's November 2002.

3 A. Correct.

4 Q. Was the board of directors in existence a  
5 year ago?

6 A. I have to find some reference because at  
7 that point, all the meetings were held by the phone.  
8 And I --

9 THE WITNESS: Do you know when?

10 MR. GREENWALD: Don't -- This is not  
11 audience participation. If you don't know,  
12 it's okay.

13 A. I don't know.

14 Q. Do you know - do you know when -- Do you  
15 recall somebody telling you that Proskauer sued  
16 Iviewit?

17 A. Yes.

18 Q. When?

19 A. A year ago maybe. I --

20 Q. Who told you Proskauer sued Iviewit?

21 A. Probably Eliot.

22 Q. What was your initial reaction when you  
23 found out a lawsuit was filed? Were you surprised?

24 A. No.

25 Q. Why weren't you surprised?

1 A. Because they hadn't been paid.

2 Q. Okay.

3 A. And they had been threatening lawsuit for  
4 a long time.

5 Q. Why hadn't they been paid?

6 A. Well, first of all, do you want my  
7 opinion or you want --

8 Q. Yeah.

9 A. This is only an opinion because I don't  
10 know.

11 Q. You were a member of the board. You  
12 speak with experience. Why weren't they paid?

13 A. Again, they were not paid because they  
14 were felt to be unjustifiable. They were not paid  
15 because the arrangement was supposed to be that when  
16 we received the funding, they would - they would be  
17 paid. And we had not received the \$20 million  
18 funding that it was predicated on. And to the best  
19 of my knowledge, that's why they weren't paid. And  
20 they didn't have the money. That would also be a  
21 reason they wouldn't be paid.

22 Q. Iviewit didn't have the money?

23 A. Not at that time.

24 Q. So there were three reasons you just  
25 stated. Iviewit didn't have the money, Iviewit did

1 not receive funding. I guess that's the same as the  
2 first, isn't it?

3 A. Well, there is a lot of reasons. I mean,  
4 there could have been money, but it didn't develop.

5 Q. Proskauer was felt to be unjustifiable?

6 A. Absolutely.

7 Q. What do you mean by that?

8 A. Well, they had been told that their  
9 billings were obsessive [sic.] from the beginning.

10 Q. Excessive or obsessive?

11 A. Excessive. And they have been told. You  
12 know, we have tried to have multiple times of  
13 meetings that - that to arrange some form of a - an  
14 understanding that - on these bills. And they never  
15 happened. At least that's what Mr. Utley kept  
16 saying.

17 Q. What was -- Mr. Lewin was a board member?

18 A. Yes, he was.

19 Q. And he attended the board meetings with  
20 you?

21 A. Yes, he did.

22 Q. Were these bills ever discussed at the  
23 board meetings?

24 A. Absolutely.

25 Q. How often?

1 A. Quite often in the -- You know.

2 Q. Did Mr. Lewin ever say that the bills  
3 were excessive?

4 A. Well, I believe that - that, you know, we  
5 got consent of the board members that they were  
6 excessive, so I suspect that he participated in that  
7 vote, yes.

8 Q. Did you ever hear him complain that they  
9 were excessive?

10 A. Yes, to me personally.

11 Q. I'm going to show you Mr. Lewin's  
12 deposition that I took in this matter. I'm going to  
13 ask you to turn to page 14. I'm using this document  
14 to refresh your recollection.

15 At line 17, my question was, other than  
16 the fact that you say the company ran out of money,  
17 is there any other reason that you know of why  
18 Proskauer's bills weren't paid by Iviewit? His  
19 answer was, no. Let's start with that.

20 A. That's his --

21 MR. GREENWALD: There is no question.

22 A. Yeah. What is the question?

23 Q. That's contrary to what you're telling  
24 me. Isn't it?

25 MR. GREENWALD: I m going to object

1 because you're asking the witness to comment  
2 upon the testimony of another witness.

3 MR. PRUSASKI: I'm telling the witness in  
4 a deposition that another board member has said  
5 the only reason the bills weren't paid was  
6 because there was no money. And I want to know  
7 how he feels in response to that.

8 A. That may be his opinion. It's not mine.

9 Q. Do you agree with it?

10 A. Absolutely not.

11 Q. Well, he was a board member, wasn't he?

12 A. Yeah.

13 Q. And you said he often complained?

14 A. I said he was aware of the complaints  
15 about the bills being excessive.

16 Q. So was he lying in his deposition?

17 A. You'll have to ask him.

18 Q. Okay. Look at the next - the question.

19 A. Okay.

20 Q. Did you ever hear anyone from the company  
21 at any time object or state that Proskauer did work  
22 that it wasn't authorized to do for Iviewit?  
23 Mr. Selz objected to the form. I said, you can  
24 answer. Mr. Lewin said, no.

25 A. That's pretty consistent with what I

1 said.

2 Q. Well --

3 MR. GREENWALD: There is no question.

4 Q. (By Mr. Prusaski) Well, you were a  
5 member of the company. Didn't you?

6 A. What?

7 Q. You were a member of the company?

8 A. Only as a director.

9 Q. And you testified that nobody ever  
10 complained that Proskauer billed for work that wasn't  
11 done, right?

12 A. I said that they did not.

13 Q. So that's with consistent with what you  
14 said?

15 A. Exactly.

16 Q. Page 19, line 19.

17 MR. GREENWALD: Let me get there. Hang  
18 on. Line 19, you said.

19 Q. (By Mr. Prusaski) My question was, but  
20 you were never personally aware of any bona fide  
21 problems with Proskauer's bills? The answer was, no.  
22 That's inconsistent with your testimony,  
23 correct?

24 A. It is.

25 Q. You don't agree with Mr. Lewin on that?

1 A. I do not.

2 Q. You've heard him complain about bona --

3 A. No.

4 Q. Let me -- You've heard Mr. Lewin complain  
5 about bona fide problems with Proskauer's bills?

6 A. I have not heard Mr. Lewin complain. I  
7 heard Mr. Lewin agree that the bills were excessive.

8 Q. Well, isn't that complaining about the  
9 bills?

10 A. That's your - that's your terms. Not  
11 mine.

12 Q. Okay. You're splitting hairs on that  
13 one, aren't you?

14 Look at page 33, line 14.

15 MR. GREENWALD: Line 14, counsel?

16 MR. PRUSASKI: Yes.

17 Q. (By Mr. Prusaski) Question, was it your  
18 understanding that the bills were due and owing?  
19 Mr. Lewin's answer: Yes. Did I view it ever object to  
20 the payment of any of these bills? Mr. Selz  
21 objected. Mr. Lewin said, not that I'm aware of.

22 A. That's his opinion.

23 Q. You don't agree with that?

24 A. Oh, absolutely not.

25 Q. Is he lying?

1           A.     No, I don't know if he's lying.  Maybe  
2 that's what --

3           Q.     It's not - It's not --

4           A.     Don't argue with me.

5           Q.     It's his opinion based on his position as  
6 a director of the company?

7           A.     It may be.  I don't know what he was  
8 thinking.

9           Q.     Would he have first-hand knowledge to be  
10 able to answer the question of whether or not the  
11 bills were due and owing?

12          A.     I don't know.  He may.

13          Q.     Did Brian Utley ever enter into payment  
14 arrangements with Proskauer?

15          A.     I think I stated that he was authorized  
16 to pay them five thousand dollars a month.

17          Q.     And did he?

18          A.     I don't know.

19          Q.     Did Brian Utley act outside the  
20 permission of the board of directors?

21          A.     Many times.

22          Q.     What did he do?

23          A.     Specifically, what do you want to know?

24          Q.     What did he do?  Give me some examples  
25 of --

1           A.     He acted outside of the board of  
2 directors' approval.

3           Q.     Specifically, how?

4           A.     He went -- He made more arrangements with  
5 Mr. Wheeler that we were unaware of. He entered into  
6 more legal costs that we were not aware of.

7           Q.     Did he do this along with Mr. Hersh?

8           A.     I have no idea.

9           Q.     What was Mr. Hersh's role in the company?

10          A.     Chief financial officer.

11          Q.     I don't know if I asked you this, so  
12 forgive me if I'm asking twice. Other than you say  
13 Proskauer billed excessively, were there any other  
14 problems with Proskauer's bills?

15          A.     I told you, as far as the quality of the  
16 work, I can't comment on that.

17          Q.     Okay. There was no other problems that  
18 you're aware of other than the excessive billing?

19          A.     What problems are you asking me about?

20          Q.     Well, do you recall ever having any  
21 discussions or problems with the billings other than  
22 they were too high?

23          A.     My personal involvement?

24          Q.     Yeah.

25          A.     No.

1 Q. When you spoke to Mr. Wheeler -- You said  
2 about three or four times. Did you say about three  
3 or four times?

4 A. Yes, I did.

5 Q. You came to Mr. Wheeler's office to  
6 discuss the bills?

7 A. Correct.

8 Q. And what did Mr. Wheeler say in response  
9 to your complaints?

10 A. At different times, he had different  
11 answers. He said he would review them. He said that  
12 he would work it out with Mr. Utley. He was aware of  
13 my displeasure. And that was about it.

14 Q. Did you ever attempt to fire Proskauer  
15 Rose?

16 A. I personally recommended that they be  
17 fired, yes.

18 Q. When?

19 A. In one of the board meetings. I don't  
20 know.

21 Q. '99 or 2000?

22 A. '99 probably.

23 Q. Obviously, that wasn't done because  
24 Proskauer represented Iviewit for a couple years  
25 after that?

1 A. I'm only one member of the board.

2 Q. Did Mr. Lewin recommend that they be  
3 fired too?

4 A. I don't know.

5 Q. Well, you were at the board meetings with  
6 Mr. Lewin, right?

7 A. Ask Mr. Lewin. I don't know.

8 Q. Well, you were at the board meetings with  
9 Mr. Lewin?

10 A. I was at the board meetings with nine  
11 other board members as well.

12 Q. Do you just not recall Mr. Lewin saying  
13 that?

14 A. I do not recall that he said that.

15 Q. Okay. Okay. Did any other board members  
16 recommend the firing of Proskauer Rose?

17 A. I believe that Don Cane suggested that we  
18 find new counsel.

19 Q. Because they were too expensive?

20 A. Because they were too expensive. And  
21 basically, I guess that's why. I can't answer a  
22 question why a man makes a statement. But yes, I  
23 would suspect. Because we were a start-up company  
24 and we just couldn't afford those kind of bills.

25 Q. Who made the decision to hire Proskauer?

1 A. Probably me.

2 Q. Based on? What did you know about the  
3 firm that you hired them?

4 A. Very little. Mr. Lewin recommended them.  
5 And he recommended them under the - under the concept  
6 that they would be - that we would give to them  
7 stock. And for that stock, they would delay the  
8 payment of the bills until such time as we reached  
9 our funding.

10 Q. Was that done?

11 A. No.

12 Q. Why not?

13 A. I don't know.

14 Q. What - what part of that did - did not  
15 occur is basically what I wanted to ask you?

16 A. The bills started coming right away. And  
17 demands for money were constantly coming in.

18 Q. Do you recall any particular bills or any  
19 particular charges on any bills that you recall as  
20 being excessive?

21 A. I think I answered that. I think I told  
22 you the lease was one that I reviewed. And there  
23 might have been others. And I think the corporate  
24 setups.

25 Q. Let me stop you because I don't - I don't

1 want to have to keep going back. What lease in  
2 particular are you referring to?

3 A. The lease on the space across from  
4 Proskauer.

5 Q. Do you - do you recall anything specific  
6 about --

7 A. Just the amount of hours it took to - to  
8 draft the lease.

9 Q. How many hours; do you remember?

10 A. Oh, I don't know offhand.

11 Q. Do you know if that bill was paid?

12 A. I assume it was.

13 Q. Mm-hmm. And other than the lease, what  
14 charges do you recall being excessive?

15 A. Well, all the numerous amount of  
16 corporate resolutions and corporate this and  
17 corporate that that were coming in for a company that  
18 was just a little short of being IBM.

19 Q. Well, you had one of the former IBM guys,  
20 right?

21 A. Obviously, you're right. Who knew Mr. --  
22 Who was brought in and recommended by Chris Wheeler,  
23 coincidentally, by the way.

24 Q. The -- So we have the lease on space, the  
25 numerous resolutions. Anything else that you recall

1 that was excessive?

2 A. Yes, there was so much that -- There was  
3 so much legal work for this small company that it's  
4 difficult now to recall what happened three, four  
5 years ago specifically.

6 Q. Did you - did you ever direct any of the  
7 Proskauer attorneys to do any work for the companies?

8 A. Me personally?

9 Q. Mm-hmm. Yes.

10 A. Might have in the very beginning when we  
11 were just forming the companies and there was no  
12 president or no board or anything else.

13 Q. Did Proskauer Rose ever perform any work  
14 for you personally?

15 A. Yes, sir.

16 Q. What did they do?

17 A. Estate planning.

18 Q. What attorney from Proskauer handled  
19 that?

20 A. Al Gortz.

21 Q. Do you remember when that was?

22 A. 2000 maybe.

23 Q. Well, if in '99, you thought Proskauer  
24 was billing excessively, why did you allow Mr. Gortz  
25 to do your personal estate planning?

1 A. He's got a good reputation.

2 Q. Did you pay those bills?

3 A. I did. They were also excessive. And I  
4 called that to his attention as well.

5 Q. Was that resolved?

6 A. I just paid the bill.

7 Q. Wasn't worth getting that far into --

8 A. I just paid the bill.

9 Q. All right. Did - did the firm - did the  
10 firm ever do any other personal work for you besides  
11 estate planning?

12 A. Not after that, no.

13 Q. Did they do any personal work for you or  
14 your immediate family?

15 A. They did work for Eliot, I know.

16 Q. What did they do for him?

17 A. Estate planning.

18 Q. That was in 2000?

19 A. Oh, I don't know. No, that was quite  
20 early on.

21 Q. For any of your other siblings?

22 A. No.

23 Q. Brothers? Sisters? No other immediate  
24 family members?

25 A. I don't know. I don't know. I have a

1 couple of my other children who were investors in  
2 Iviewit and I don't know whether they ever had them  
3 do any work.

4 Q. Have you ever recommended Proskauer Rose  
5 to anyone?

6 A. In the beginning, I might have. I don't  
7 remember.

8 Q. Who from Iviewit directed Proskauer to do  
9 the legal work?

10 A. Who from Iviewit? Brian Utley.

11 Q. Did anyone else? Mr. Hersh?

12 A. Oh, I don't know. I wouldn't think so.

13 Q. So the president and the COO was in  
14 charge of directing the legal work for Proskauer?

15 A. You know, yeah, I would think so.

16 Q. Okay.

17 A. I mean, I think everything would have  
18 gone through them. So when you say directed somebody  
19 to do it, I would imagine he directed it.

20 Q. Before I forget, I'm going to jump back,  
21 so forgive me. Were there any formal resolutions of  
22 the board of directors that Brian Utley was only  
23 permitted to have Proskauer bill up to five thousand  
24 dollars a month?

25 A. I believe it was in the minutes.

1 Q. Were there any signed documents about  
2 that?

3 A. I don't know.

4 Q. Was it a unanimous resolution of the  
5 board of directors?

6 A. Yes. Well, unanimous. I mean, the vote  
7 was -- The vote carried. I don't know whether it was  
8 unanimous. I mean, I don't know whether Mr. Utley  
9 abstained from voting or not on that particular  
10 issue. And I don't know that everybody was in the  
11 board meeting at that particular meeting.

12 Q. I'm going to show you a document that we  
13 will mark as Plaintiff's Exhibit Number 2.

14 A. Do you want these back?

15 Q. Just put them in middle of the table.  
16 I'm going to take them at the end.

17 (Thereupon, the above-referred to  
18 document was marked as Plaintiff's Exhibit 2 for  
19 identification.)

20 Q. (By Mr. Prusaski) I'm going to ask --  
21 It's a letter dated March 28th, 2001. I'm going to  
22 ask you to take your time and look at that document  
23 and tell me if you've ever seen it before.

24 A. I don't think I've ever seen this, no.

25 Q. This is a letter from Christopher Wheeler

1 to Brian Utley --

2 A. Mm-hmm.

3 Q. -- regarding \$344.5 thousand dollars in  
4 invoices. Do you know whether a reconciliation was  
5 ever performed to determine whether these bills are  
6 due or not?

7 A. I do not.

8 Q. Okay. I'm going to show you a document  
9 that's marked Plaintiff's Exhibit Number 3. It's a  
10 letter dated April 16th, 2001. I'm going to ask you  
11 to look at that and tell me if you've ever seen it  
12 before?

13 A. No, I have not.

14 (Thereupon, the above-referred to  
15 document was marked as Plaintiff's Exhibit 3 for  
16 identification.)

17 Q. (By Mr. Prusaski) Do you know if a  
18 reconciliation was ever performed to determine  
19 whether the three pages of invoices attached are due  
20 and owing?

21 A. I do not.

22 Q. Okay. Have you ever seen this open  
23 invoices account listing before?

24 A. These?

25 Q. Yes.

1 MR. GREENWALD: For the record, are you  
2 referring to the attachment which you marked as  
3 3?

4 MR. PRUSASKI: Exhibit 3.

5 A. I have not.

6 Q. So you've never been through the actual  
7 bills that Proskauer's attached to its lawsuit to  
8 determine whether they're due or not?

9 A. I don't know what bills are attached to  
10 the lawsuit.

11 Q. Okay. That answers my question.

12 Let me show you a letter dated March  
13 24th, 2000, which we will mark as Plaintiff's Exhibit  
14 Number 4.

15 (Thereupon, the above-referred to  
16 document was marked as Plaintiff's Exhibit 4 for  
17 identification.)

18 Q. (By Mr. Prusaski) I'll ask you to look  
19 at this and tell me if you've ever seen it before.

20 A. I'm sure I have.

21 Q. The second sentence of the first  
22 paragraph says, Brian and I have an arrangement  
23 whereby Iviewit would pay \$25,000 this past Monday,  
24 25,000 on April 3rd, and 50,000 on April 17th.

25 Do you recall that being an arrangement?

1           A.     You know, I - I recall having seen the  
2 letter. I don't have - recall ever agreeing to this  
3 being an arrangement, no.

4           Q.     Okay. Did Mr. Utley have the authority  
5 of the company to make that payment arrangement?

6           A.     No.

7           Q.     But he worked for the company for over a  
8 year after this letter was delivered, right?

9           A.     Mm-hmm.

10          THE REPORTER: Yes?

11          Q.     (By Mr. Prusaski) Why is that?

12          Yeah. You have to answer yes or no.

13          A.     I didn't fire him. I should have, but I  
14 didn't.

15          Q.     Okay. Who fired him?

16          A.     The board.

17          Q.     You were -- Did you attempt to have him  
18 fired before that?

19          A.     No.

20          Q.     Why not?

21          A.     I just didn't.

22          Q.     Okay.

23          A.     I wasn't, you know, in charge of that,  
24 so --

25          Q.     Do you know if he responded to this

1 letter in writing?

2 A. I do not.

3 Q. You don't remember or you didn't respond?

4 A. I don't remember.

5 Q. Do you know if anybody did?

6 A. I do not know.

7 Q. Plaintiff's Exhibit Number 5 is a letter  
8 dated March 31st, 2000.

9 (Thereupon, the above-referred to  
10 document was marked as Plaintiff's Exhibit 5 for  
11 identification.)

12 Q. (By Mr. Prusaski) I'll ask you to look  
13 at this document and tell me if you've ever seen it  
14 before.

15 A. Yes.

16 Q. Do you recall what your proposals were  
17 that are being referenced in the first two sentences?

18 A. I think the -- I believe that I suggested  
19 that - that one, we go back to the original  
20 agreement, and that we pay them the bills when we get  
21 them - when we get our proper funding. And -- Oh.  
22 And the other was that in order to avoid any  
23 conflicts, we would give them additional stock equal  
24 to the bill.

25 Q. And that was rejected by Mr. Wheeler?

1           A.       I -- You read the letter. That's what  
2 the letter says.

3           Q.       Do you know if it was ever in writing  
4 that Proskauer wouldn't bill until Iviewit received  
5 certain funding?

6           A.       I don't know.

7           Q.       You don't recall ever seeing written  
8 documents --

9           A.       No.

10          Q.       -- pertaining to that?

11          A.       No.

12          Q.       Would that have been a verbal agreement?

13          A.       It was a verbal agreement.

14          Q.       Between whom?

15          A.       It was between -- When I asked Mr. Lewin  
16 to find a law firm under those arrangements and he  
17 came back with Proskauer, he suggested that that they  
18 would postpone the billings, that they would not bill  
19 for the stock, but that they would postpone the  
20 billing until such time as we got our funding.

21                   And I agreed at that time that we would  
22 proceed on that basis. But it never from the  
23 beginning went that way. We started getting bills  
24 immediately.

25          Q.       Before I forget, how much did you pay

1 Proskauer for your personal estate planning?

2 A. I don't remember. Twelve, fifteen  
3 thousand.

4 Q. Okay. Over the course of how long did  
5 Mr. Gortz do work for you?

6 A. How long did it take to get the job done?

7 Q. Yeah.

8 A. Three, four months.

9 Q. Okay.

10 A. You know, it wasn't constant work. And  
11 then I had the bill -- Then I had those bills  
12 reviewed by other attorneys, who have indicated that  
13 it was an excessive amount of money. But that was  
14 just my personal --

15 Q. What were the names of those attorneys?

16 MR. GREENWALD: I'm going to object to  
17 the extent it calls for him to violate the  
18 attorney-client privilege and any  
19 communications he may have had.

20 MR. PRUSASKI: He already told me what  
21 they are. What they said may violate a  
22 privilege. Who they are certainly doesn't.

23 MR. GREENWALD: That's my objection.

24 MR. PRUSASKI: Are you instructing the  
25 witness not to answer the question?

1 MR. GREENWALD: No.

2 Q. (By Mr. Prusaski) Who are the attorneys?

3 A. My son-in-law was one, David Simon.

4 Q. Where does he work?

5 A. In Chicago.

6 Q. Big firm?

7 A. No, small firm.

8 Q. Hmm.

9 A. Does that make it bad? Hmm?

10 Q. No.

11 A. Just wondered what the hmm was.

12 Q. I didn't always work at a big firm.

13 A. The other attorney, I don't know. I  
14 don't remember. Somebody from the club, but I don't  
15 remember. You know how you sit around and you talk  
16 about these things.

17 Q. And Mr. Simon and this other attorney  
18 objected to the amount of Mr. Gortz's billing on your  
19 personal estate planning?

20 A. Just said to me that it seemed high.

21 Q. I'm going to show you a document marked  
22 Plaintiff's Exhibit Number 6. It's a copy of the  
23 Answer and Affirmative Defenses filed by Iviewit.  
24 Have you ever seen this document before?

25 A. No.

1 (Thereupon, the above-referred to  
2 document was marked as Plaintiff's Exhibit 6 for  
3 identification.)

4 Q. (By Mr. Prusaski) This is the Answer and  
5 Affirmative Defenses that have been filed in this  
6 lawsuit by Iviewit by their prior law firm, Sachs,  
7 Sax & Klein on their behalf.

8 A. Mm-hmm.

9 Q. And if you flip through to page four to  
10 the affirmative defenses. I realize that you didn't  
11 write these, Mr. Bernstein, but I want to ask you if  
12 you know anything about them.

13 MR. GREENWALD: I'll object to form.

14 I'm - I'm not sure I understand. Would you  
15 mind rephrasing that? When you say does he  
16 know anything about them?

17 MR. PRUSASKI: I'm going to point out  
18 specific defenses and I'm going to ask your  
19 client to read them. And I'm going to ask him  
20 if he knows anything about them.

21 MR. GREENWALD: Okay.

22 Q. (By Mr. Prusaski) If you look at  
23 paragraph 42, it says that, the plaintiff did not  
24 provide any services to defendants, and thus,  
25 plaintiff would be unjustly enriched if permitted to

1 make any recovery.

2 Where it says, plaintiff did not provide  
3 any services to defendants, do you know what that  
4 means?

5 A. Not a thing.

6 Q. Well, the plaintiff did provide services  
7 to the defendants, right? They acted as their  
8 lawyers --

9 A. Mm-hmm.

10 Q. -- for several years.

11 Do you have any other knowledge to  
12 support that statement that was filed in the  
13 affirmative defenses?

14 A. No.

15 Q. Okay. Paragraph 43, the second clause  
16 after the comma says that, plaintiff's claims are  
17 barred.

18 A. Where is this?

19 Q. Paragraph 43 after the comma, the second  
20 clause of the sentence says that, plaintiff's claims  
21 are barred because plaintiff has already been  
22 adequately compensated for its services.

23 Is that true?

24 A. In my opinion, it is.

25 Q. Okay. What do you mean by that?

1           A.       Whatever we paid them was more than a  
2 enough.   That's just my opinion.

3           Q.       But as far as this lawsuit is concerned,  
4 you said you've never been through the bills --

5           A.       No.

6           Q.       -- that we claim are due?

7           A.       You asked me whether it was my opinion,  
8 and I'm just telling you that in my opinion, it seems  
9 to make sense, whatever we paid them was enough.

10          Q.       Okay.   The next document I'm going to  
11 show you is an Amended Affirmative Defense.   And I'll  
12 mark this Plaintiff's 7.

13                   (Thereupon, the above-referred to  
14 document was marked as Plaintiff's Exhibit 7 for  
15 identification.)

16          Q.       (By Mr. Prusaski)   If you look at  
17 paragraphs 1 and 2 on the bottom of the first page --  
18                   First of all, have you ever seen this  
19 before?

20          A.       No.

21          Q.       Same as the last one.   This is an Amended  
22 Affirmative Defense that your - I'm sorry - that  
23 Iviewit's attorneys filed in this lawsuit.   And I'm  
24 going read to defense to you and ask you if you have  
25 any first-hand knowledge to support the claim.

1 Paragraph 1 says, plaintiff has failed to  
2 perform work under the terms of any oral agreement  
3 between the parties for which it seeks remuneration,  
4 for which it seeks payment.

5 A. I know what it means.

6 Q. Do you have any knowledge that tends to  
7 support that statement?

8 A. No.

9 Q. Paragraph 2 says, some work which may  
10 have been performed on behalf of the defendants was  
11 not performed at the defendant's request nor pursuant  
12 to any agreement.

13 Do you have any knowledge of any  
14 information that supports that statement?

15 A. No.

16 Q. Do you recall any other law firms that  
17 worked for Iviewit?

18 A. Yes.

19 Q. Do you remember what those names were?

20 A. Foley and Lardner.

21 Q. It's a patent firm, right?

22 A. Well, it's a law firm that does patent,  
23 yes.

24 Q. They did the intellectual property work?

25 A. Some.

1 Q. Okay.

2 A. There was a firm before them, Melzer  
3 something. Goldstein something. I think there was  
4 one other firm after that - I don't recall who it  
5 was - that did patent work in California. But I'm  
6 not sure of the name.

7 Q. Do you know if any of those firms remain  
8 unpaid by Iviewit?

9 A. Do you want my -- To the best of my  
10 knowledge, Foley and Lardner may still remain unpaid.  
11 I don't know.

12 Q. Do you know why they may not have been  
13 paid?

14 A. No.

15 Q. Were their bills excessive?

16 A. I don't believe so, no.

17 Q. Was Iviewit having any money problems  
18 that rendered it unable to pay Foley and Lardner's  
19 bills?

20 A. I don't know.

21 Q. Did Iviewit ever have any trouble paying  
22 its bills, not just to Proskauer, its bills in  
23 general?

24 A. I don't know. I didn't get involved in  
25 the day-to-day -- There was always a shortage of

1 money, but we always paid bills.

2 Q. When you said you didn't get involved in  
3 the day-to-day, what do you mean?

4 A. I wasn't a director or -- I mean, I  
5 wasn't an officer or employee of the company.

6 Q. What was Bill Kasser's role in the  
7 company?

8 A. I believe he was hired by Mr. Hersh to do  
9 bookkeeping, pay bills and so on and so forth.

10 Q. Do you know if he did an adequate job?

11 A. From what I know of him, yes.

12 Q. Do you know if he ever did -- Do you know  
13 if he ever performed a reconciliation of the bills  
14 that Proskauer attached to the lawsuit to determine  
15 whether they were due?

16 A. No, I don't.

17 Q. Do you know if anybody did?

18 A. I thought Utley did, but I don't know.

19 Q. Do you know what the outcome of  
20 Mr. Utley's reconciliation was?

21 A. No.

22 Q. Have you spoken to Mr. Kasser lately?

23 A. Not for a few months.

24 Q. Yeah?

25 What -- Well, I guess you've talked to

1 him this year, right?

2 A. Yes.

3 Q. You've talked to him after the  
4 dissolution of the board of directors?

5 A. Yes.

6 Q. Do you have a -- Are you friends with him  
7 or something?

8 A. No, he worked for me in another capacity  
9 for an insurance agency that we started up.

10 Q. If I tell that you Mr. Kasser testified  
11 in his deposition that did he a reconciliation of the  
12 bills in the lawsuit and he said that they were due,  
13 would you agree with that?

14 A. No, I wouldn't agree with it. But I  
15 wouldn't disagree with it either.

16 Q. Why wouldn't you disagree with it?

17 A. Because I don't know that he has.

18 Q. Have you ever been on the board of  
19 directors of another company besides the Iviewit  
20 entities?

21 A. Been on the board of directors of my own  
22 companies.

23 Q. Yeah.

24 A. Mm-hmm.

25 Q. What - what type of companies are those?

1 Furniture stores?

2 A. No. Insurance agencies.

3 Q. Insurance agencies?

4 A. Mm-hmm.

5 Q. Are you familiar with Florida corporate  
6 law?

7 A. No.

8 Q. Okay. What were your day-to-day  
9 responsibilities as a board member?

10 A. Day-to-day?

11 Q. Mm-hmm.

12 MR. GREENWALD: Object to the form.

13 MR. PRUSASKI: What's wrong with the  
14 question?

15 MR. GREENWALD: It assumes that he had  
16 day-to-day duties as a board member.

17 Q. (By Mr. Prusaski) Explain how your job  
18 worked as a board member of Iviewit.

19 A. I would attend board meetings.

20 Q. How often did that happen?

21 A. At least once a month.

22 Q. Did you do anything between those board  
23 meetings that had to do with Iviewit?

24 A. Not directly, no.

25 Q. Indirectly?

1 A. My son was involved in the company, so I  
2 would have conversations with him.

3 Q. When?

4 A. Take --

5 Q. When would you review Proskauer's bills?  
6 During the meetings?

7 A. During the meetings, prior to the  
8 meeting, you know, an hour before, whatever.

9 Q. Would Mr. Utley attend the board  
10 meetings?

11 A. Oh, yes. That's who I would review them  
12 with.

13 Q. Did you tell Mr. Utley to tell Proskauer  
14 that their billings are excessive?

15 A. Yes.

16 Q. What did he say to that?

17 A. He said he was going to do it.

18 Q. Did he?

19 A. Did he? I don't know.

20 Q. Did he complain to Proskauer?

21 A. Did he?

22 Q. I'm asking you if you know?

23 A. You work for Proskauer. Did he?

24 Q. I'm asking you if you know. It's your  
25 depo.

1           A.       I have no idea. I assume he did, but I  
2 have no idea.

3           Q.       Why do you assume he did?

4           A.       Because he was told to do it.

5           Q.       Did you ever see any documents that were  
6 cc'd to you or copied to you from Utley complaining  
7 about the bills?

8           A.       No.

9           Q.       Was anything ever done by Proskauer in  
10 response to Mr. Utley's complaints?

11          A.       Well, it's obvious there was because you  
12 a saw a letter from Chris Wheeler to me saying that  
13 he wanted to - to do something to - with regard to  
14 the bills. And obviously, we made offers to try and  
15 make, you know, try to make the bills come in line  
16 with what we could pay. And the letters speak for  
17 themselves.

18          Q.       Did the board ever direct Utley to write  
19 any letters to Proskauer complaining about the amount  
20 of the bills?

21          A.       The board made many strong suggestions to  
22 Mr. Utley that, to get the bills in order and that he  
23 was limited to five thousand dollars a month.

24          Q.       When did you first learn that he wasn't  
25 abiding by the five thousand dollar a month?

1 A. Well, the five thousand dollars a month?

2 Q. Mm-hmm.

3 A. Probably the month after that that  
4 happened. It's just -- It was just like nothing  
5 happened, you know. He would do what he wanted.

6 Q. I'm - I'm -- Mr. Bernstein, I'm just  
7 trying to figure out why then Iviewit allowed  
8 Proskauer to do its general corporate work for at  
9 least another year after that.

10 A. You'd have to speak to Mr. Utley.

11 Q. Okay. You don't have an answer for that?

12 A. I don't.

13 Q. Okay.

14 A. I wish I did, but I don't.

15 Q. Who was responsible for receiving the  
16 bills when they came in from Proskauer?

17 A. I don't -- Who is responsible?

18 Q. Yeah. Who was the person in Iviewit  
19 whose responsibility was to receive the bills when  
20 they came in?

21 A. I'm sure Chris handed them to Brian.  
22 They were only across the hall.

23 Q. Oh, they were - they were walked over?

24 A. As far as I know. Maybe he mailed them.  
25 I have no idea.

1 Q. Who was in charge of determining who  
2 would pay or whether the bills would be paid?

3 A. Mr. Utley. Excuse me. Phone call.

4 MR. GREENWALD: Go off the record for  
5 just a second while he answers the phone.

6 (Thereupon, a recess was taken.)

7 Q. (By Mr. Prusaski) Who was the person at  
8 Iviewit who determined whether the bills would be  
9 paid?

10 A. Brian Utley.

11 Q. That was his job?

12 A. He -- You asked me if that's who  
13 determined it. And I answered yes. He was  
14 president, COO.

15 Q. Did the rates of the Proskauer attorneys  
16 at the time you hired - the companies hired Proskauer  
17 -- Let me start that over.

18 At the time the companies hired  
19 Proskauer, did you know what the rates of the  
20 attorneys were?

21 A. No.

22 Q. Why not?

23 A. I didn't ask, I guess.

24 Q. Didn't you think that was important?

25 A. Not really, because they were, in my

1 opinion, my understanding, was they were doing it for  
2 the stock. And so, you know, one way or another, if  
3 the rates were, whatever they were, I thought they  
4 would be charged fairly, be compensated by the stock.

5 Q. So your understanding then, so I'm clear,  
6 is that Proskauer was going to perform legal work in  
7 exchange for stock?

8 A. Proskauer was going to perform legal work  
9 and - and was given stock so that their bills would  
10 be paid at a point when the funding became available.  
11 That was my understanding.

12 Q. Did you ever see a Retainer Agreement  
13 that was signed with Proskauer?

14 A. No. I didn't even know there was one.

15 Q. Have you seen or spoken to Chris Wheeler  
16 since Proskauer stopped doing work for Iviewit?

17 A. I might have seen him on a social  
18 evening, you know, someplace socially.

19 Q. Do you know if Iviewit owes any money to  
20 Mr. Lewin's firm?

21 A. I believe it does.

22 Q. Do you know how much?

23 A. No.

24 Q. Fifty thousand?

25 A. Do you want to pick any other number? I

1 don't know what it is.

2 Q. Do you know that -- Do you know why  
3 Mr. Lewin's firm hasn't been paid by Iviewit?

4 A. No. I suspect that Mr. Lewin hasn't been  
5 bothering him.

6 Q. Been bothering?

7 A. The firm, Iviewit.

8 Q. Do you know how long the money's been  
9 due?

10 A. I don't.

11 Q. You never asked?

12 A. I don't - didn't ask. And I don't care.

13 Q. Why don't you care? It's an outstanding  
14 debt of a --

15 A. Of what?

16 Q. -- of a corporation with which you were  
17 involved.

18 A. I also am involved with stock from IBM.  
19 I don't give a damn if they ever pay their bills.

20 Q. I appreciate your candidness. Are you  
21 planning to testify at the trial of this matter?

22 A. Are you asking me if --

23 Q. Are you planning to testify at the trial  
24 of this matter when this case goes to trial I guess  
25 in a couple months?

1 A. If I'm requested, I'll testify.

2 Q. Do you know what you're going to testify  
3 to?

4 A. That I'm Simon L. Bernstein and I live at  
5 7020 Lions Head Lane.

6 Q. That's it?

7 A. That's it. And the truth.

8 Q. Do you know if Proskauer was paid a  
9 retainer?

10 A. I don't.

11 Q. You testified that you directed Proskauer  
12 to do work at the very beginning of the relationship  
13 with Iviewit?

14 A. Well, I and the rest of the folks  
15 involved, Mr. Wheeler, Mr. Lewin and so on and so  
16 forth.

17 Q. Did you --

18 A. We agreed that Proskauer would be our  
19 firm.

20 Q. Did you ever call any of the Proskauer  
21 attorneys and tell them to do specific work?

22 A. I don't recall. No, I don't think so.

23 Q. Okay. That was Mr. Utley?

24 A. Well, that was prior to Mr. Utley.

25 Q. Yeah. Who did -- Who directed Proskauer

1 to do work prior to Mr. Utley coming aboard?

2 A. There was very little work. We really  
3 didn't have anything to do. We were using - we were  
4 using the - Mr. Wheeler's facility on occasion for a  
5 meeting. And that was about it.

6 Q. Weren't the --

7 A. The company wasn't really set up yet.

8 Q. So the - the Iviewit.com, Inc., Iviewit  
9 Holdings and Technologies?

10 A. I think Iviewit.com was the only one set  
11 up.

12 Q. Before Mr. Utley came aboard?

13 A. Yes.

14 Q. Who directed Proskauer to set that  
15 company up?

16 A. I probably did. Or Mr. Lewin did. One  
17 of the two of us.

18 Q. Or Eliot Bernstein?

19 A. No, he wouldn't do that.

20 Q. Why not?

21 A. Wasn't in the business end of the  
22 business.

23 Q. He was more into the technological  
24 aspects?

25 A. He was the inventor.

1 Q. Right. And you handled the -- You and  
2 Mr. Lewin took care of the business side?

3 A. For the short interim until Mr. Utley was  
4 hired.

5 Q. Okay. Who brought Mr. Utley in? Was it  
6 Mr. Wheeler?

7 A. Yes.

8 Q. Did you find him to be experienced at the  
9 time that he came aboard?

10 A. Well, I found his resume to look quite  
11 enchanting, although it didn't - it turned out that  
12 his resume was neither complete nor quite factual.

13 Q. What, what do you mean by that?

14 A. Well, Mr. Wheeler - I mean, Mr. Utley  
15 worked for another company, which I understand  
16 terminated him for practices involved in - in  
17 something illegal with patents. I don't know what it  
18 was.

19 Q. He committed a crime?

20 A. I don't know if it was a crime, but I  
21 know he was fired from this company for --

22 Q. Was --

23 A. -- work.

24 Q. Was it recently?

25 A. Prior to Iviewit.

1 Q. Immediately prior? Within the couple  
2 years?

3 A. Yes.

4 Q. So we're talking the late '90s?

5 A. Talking immediately prior to us reviewing  
6 him as a candidate.

7 Q. Do you remember any other particulars  
8 about that?

9 A. I know that he represented - that he was  
10 represented as the person who ran the IBM office in  
11 Boca and something like 17,000 employees that worked  
12 for him, which I found out later was not true.

13 Q. What is not true about that?

14 A. He didn't run it. There were other  
15 people who ran it. He worked for them.

16 Q. So his resume represented him as the  
17 person who ran the office when in fact you found out  
18 that wasn't true?

19 A. Either his resume or his description by  
20 Chris Wheeler that --

21 Q. Did you ever confront Mr. Utley with  
22 that?

23 A. Not until I found out much later on.

24 Q. When did you find out?

25 A. Towards the end --

1 Q. Towards?

2 A. -- of Mr. Utley's tenure with Iviewit.

3 Q. Did you ever confront Mr. Wheeler about  
4 that?

5 A. I did.

6 Q. Do you recall when?

7 A. About the same time.

8 Q. What did Mr. Wheeler say?

9 A. I don't recall.

10 Q. Do you remember what you said to  
11 Mr. Wheeler?

12 A. Just to the extent that he wasn't who we  
13 thought he was. That's all.

14 Q. Before I forget, you said that  
15 Mr. Wheeler attended board meetings quite often?

16 A. In the beginning, every one.

17 Q. Yeah? Do you remember was that the  
18 entire year of '99?

19 A. I don't remember.

20 Q. Maybe more? Maybe less?

21 A. Maybe less.

22 Q. Can you estimate how many meetings he  
23 attended?

24 A. I think I said six, but --

25 Q. Six?

1           A.       It might have been one, seven or eight or  
2 maybe five.

3           Q.       Were what you say the excessiveness of  
4 Proskauer's bills, were they ever mentioned at those  
5 meetings when Mr. Wheeler was in attendance?

6           A.       No. That was early on. That was early  
7 on.

8           Q.       It was after Mr. Wheeler was no longer  
9 attending board meetings that the excessiveness of  
10 Proskauer's bills, you say, was discussed?

11          A.       No, I would assume they started from the  
12 beginning. They just weren't as visible.

13          Q.       What did Mr. Wheeler say when you sat  
14 down and talked to him in person about the  
15 excessiveness of Proskauer's bills? Did he say that  
16 he would take care of it?

17          A.       He said he would look into it.

18          Q.       Did you point out the specifics of what  
19 you had problems with to him when you met with him?

20          A.       I don't recall.

21          Q.       Okay. Do you know if anybody else from  
22 the company did?

23          A.       Meet with him?

24          Q.       Yeah.

25          A.       I was told Brian Utley did, but --

1 Q. Eliot Bernstein didn't?

2 A. Not that I know of.

3 Q. Would he review the bills? You said it  
4 was more the inventor.

5 A. He might have. He might have reviewed  
6 them, but he was more the inventor.

7 Q. Yeah.

8 A. He relied on Brian Utley.

9 MR. PRUSASKI: That's a good place to  
10 end. I have no further questions.

11 THE WITNESS: Thank you.

12 MR. GREENWALD: Do you have questions?

13 MR. SELZ: No.

14 MR. GREENWALD: Okay. We will read it.

15 MR. PRUSASKI: I'll take a copy of it.

16 THE REPORTER: Steve, do you want a copy?

17 MR. SELZ: Yes.

18 MR. GREENWALD: It's exactly 3:15. How  
19 about that?

20 (Thereupon, at 3:15 p.m., the deposition  
21 was concluded.)

22

23

24

25

WITNESS CERTIFICATE

I, SIMON L. BERNSTEIN, do hereby certify that I have read the foregoing transcript of my deposition given on November 14, 2002; that, together with any additions or corrections attached hereto, it is true and correct.

WITNESS

SUBSCRIBED AND SWORN TO before me this \_\_\_ day of \_\_\_\_\_, 2002, by the witness who has produced a \_\_\_\_\_ as identification and who did not take an additional oath.

NOTARY PUBLIC

My Commission expires:



## 1 REPORTER'S DEPOSITION CERTIFICATE

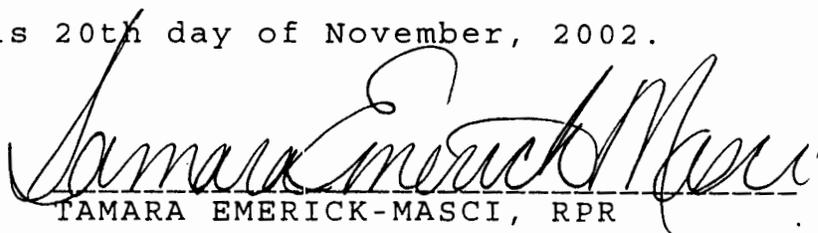
2 STATE OF FLORIDA )

3 COUNTY OF BROWARD )

4  
5 I, TAMARA EMERICK-MASCI, Registered Professional  
6 Reporter, certify that I was authorized to and did  
7 stenographically report the deposition of SIMON L.  
8 BERNSTEIN; that a review of the transcript was  
9 requested; and that the transcript is a true and  
10 complete record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,  
12 employee, attorney or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorney or counsel connected with the action, nor am  
15 I financially interested in the action.

16 DATED this 20th day of November, 2002.

17  
18  
19  
20  
21  
22  
23  
24  
25  
  
TAMARA EMERICK-MASCI, RPR

KEN SCHANZER & ASSOCIATES, INC.  
209 N. 20th Avenue  
Hollywood, Florida 33020  
(954) 922-2660

November 20, 2002

To: Simon L. Bernstein  
c/o Steven I. Greenwald, Esq.  
6971 N. Federal Highway  
Suite 105  
Boca Raton, Florida 33487

Re: Proskauer vs. Iviewit  
Deposition of Simon L. Bernstein

The above-referenced deposition taken in the above-entitled cause on November 14, 2002, is now ready for signature. Please come to this office and sign same; or if you wish to waive the signing of the deposition, please so advise.

If this deposition has not been signed by December 4, 2002, or prior to the trial of said cause, or the signature thereto waived, we shall consider such delay a waiver of signature and proceed according to the Florida Rules of Civil Procedure.

If you have any reason which you would like for me to place on the deposition as to your failure or inability to sign, please advise.

Very truly yours,

  
Tamara Emerick-Maschi, RFR

CC: All counsel of record.

KEN SCHANZER & ASSOCIATES, INC. (954) 922-2660

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: CA 01-04671 AB

---

PROSKAUER ROSE, LLP, a New York limited  
liability partnership,

Plaintiff,

vs.

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

Defendants.

---

Boca Raton, Florida  
January 31, 2003  
10:25 a.m.

DEPOSITION  
OF  
ELIOT I. BERNSTEIN

-----

APPEARANCES:

PROSKAUER ROSE LLP  
 BY: CHRISTOPHER W. PRUSASKI, ESQ.  
 Appearing on behalf of the Plaintiff

SELZ & MUVDI SELZ, P.A.  
 BY: STEVEN M. SELZ, ESQ.  
 Appearing on behalf of the Defendant

- - - - -  
I N D E X

	<u>Page</u>
Direct Examination by Mr. Prusaski	3
Cross Examination by Mr. Selz	231
Redirect Examination by Mr. Prusaski	233

DEPOSITION OF ELIOT IVAN BERNSTEIN, a witness  
 herein, taken pursuant to the Rules and Notice hereinbefore  
 filed, before ELIZABETH DAVILA SAINT-LOTH, Shorthand  
 Reporter and Notary Public in and for the State of Florida  
 at Large, at Proskauer Rose, LLP, 2255 Glades Road, Suite  
 340W, Boca Raton, Florida 33433 on the 31st day of January,  
 2003, commencing at 10:25 a.m.

1 Thereupon:

2                                   ELIOT I. BERNSTEIN,  
3                   a witness, having been first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5                                   DIRECT EXAMINATION

6 BY MR. PRUSASKI:

7           Q.    Good morning, Mr. Bernstein. I'm Chris Prusaski  
8 from Proskauer Rose. We've met before.

9                    Can you, for the record, state your full name  
10 please.

11           A.    Eliot Ivan Bernstein.

12           Q.    What is your address?

13           A.    10158 Stonehedge Drive or Stonehedge Circle,  
14 Boynton Beach 33437.

15           Q.    Are you a resident of Florida now?

16           A.    I reside in Florida, now.

17           Q.    You recently moved from California?

18           A.    I did.

19           Q.    Okay. What was your address in Escondido before  
20 that?

21           A.    16975 Guejito Road, G-U-E-J-I-T-O Road, Escondido  
22 92027.

23           Q.    Okay. To get a couple of things out of the way  
24 before we start, just the rules of the depo -- and I'm sure  
25 you're aware of them because I know you've sat through a

1 couple of them so far in this case.

2 If, for some reason, I ask a question and you  
3 don't understand it, before you answer, please, tell me and  
4 I'll try and rephrase it the best I can.

5 If you answer a question, it's assumed that you  
6 understood the question. And because the stenographer  
7 needs to record everything that's said in this room, nods  
8 of heads, acknowledging a yes or a no, can't go down on  
9 paper.

10 If you need to take a break for some reason, just  
11 tell me; and you and Mr. Selz can take a break, as long as  
12 there's no question pending at the time.

13 What is your current occupation?

14 A. Inventor.

15 Q. Do you have an employer?

16 A. I am not sure.

17 Q. Do you receive a W-2 or a paycheck?

18 A. I receive unemployment compensation.

19 Q. Based on your employment with what entity?

20 A. It would have been with Iviewit.com, which is  
21 bankrupt -- or partially going through something, I am not  
22 sure what that is.

23 Q. Iviewit.com, Inc.?

24 A. Yes.

25 Q. Okay. The Delaware corporation that's a defendant

1 in this lawsuit?

2 A. I'd have to see the documents.

3 Q. I'm not going to mark this as an exhibit.

4 This is the answer that Mr. Sachs's client  
5 filed -- Mr. Sachs's firm filed. Those are the defendants  
6 in this lawsuit.

7 A. So correct, it was one of the defendants in this  
8 lawsuit.

9 Q. The Iviewit.com, Inc. was your former employer?

10 A. Correct.

11 Q. What's your educational background?

12 A. A B.S. psychology, University of Wisconsin,  
13 Madison.

14 Q. What year?

15 A. I don't know.

16 Q. Was it during the '80s that you graduated?

17 A. Yeah. Yes.

18 Q. Do you have any postgraduate education?

19 A. No.

20 Q. Do you hold any licenses, like a lawyer,  
21 accountant?

22 A. No.

23 MR. PRUSASKI: I'm going to show you some  
24 documents that we'll mark as Plaintiff's  
25 Exhibit 1, composite.

1 (Whereupon, Plaintiff's Composite  
2 Exhibit 1 was marked for identification.)

3 Q. I'm going to ask you to look at these documents in  
4 general, and tell me if you've seen them before.

5 MR. SELZ: Thank you.

6 A. Yeah.

7 Q. The document on top is a printout of a statement  
8 that's attached to the amended complaint as an exhibit.

9 MR. PRUSASKI: For your benefit, Mr. Selz, each of  
10 the attorneys' bills underneath the statement  
11 on top are chronologically the statements that  
12 are referenced in the amended complaint that  
13 total the amount of money that's claimed by  
14 Proskauer.

15 Q. Were these sent to Iviewit by Proskauer when you  
16 worked for Iviewit?

17 A. I am not sure if this set of documents you've  
18 provided for the court was sent to Iviewit at all. It  
19 conflicts with some of the bills I have.

20 I don't think it's a complete set of all of the  
21 bills, you can tell me better on that. So I am not sure  
22 why we're having a billing dispute which all of the  
23 documents aren't presented to me with all the detail, I  
24 think we've asked for that.

25 So these documents, I would have to say, were

1 given to, I believe, Brian Utley for, you know, reasons at  
 2 a time where such documents became public to the company.  
 3 The board of directors was irate. And it led to the term  
 4 of -- one of the causes of actions against Mr. Utley's  
 5 termination was these excessive and insane billings that  
 6 weren't authorized by the board for things like  
 7 transferring the company into a Distance Learning company,  
 8 et cetera, without board approval.

9           Some of the billings for the stock transfers of  
 10 Tiedemann/Prolow, which I think might be included in here,  
 11 might not, which were done without proper consultation to  
 12 the board.

13           You know -- so, you know, I might have seen part  
 14 of these documents or there might be a lot more of the  
 15 documents that are not here. And so yeah, I have seen part  
 16 of these documents is my answer.

17           MR. SELZ: Can I make just an observation, Chris,  
 18 real quick. I've noticed there's a lot of  
 19 pages in these documents that have -- are  
 20 either blank or like have one line or something  
 21 at the top.

22           Are these -- is there some reason why  
 23 there are blank pages in here that you know of?

24           MR. PRUSASKI: No, I don't --

25           MR. SELZ: I'm just curious as to whether

1 or not these are -- I've never seen -- in the  
2 copies of the billing statements that I have  
3 and have previously been attached to motions to  
4 the court, none of them I have ever seen have  
5 had this one line on the next page kind of  
6 view, and it seems pretty consistent  
7 throughout. This is what I'm talking about.

8 MR. PRUSASKI: My understanding is those  
9 are the documents that Proskauer sent to  
10 Iviewit, the bills.

11 MR. SELZ: Okay. Okay.

12 THE WITNESS: Is my office --

13 MR. PRUSASKI: Thank you for your answer.  
14 You said -- that's the exhibit that we're going  
15 to attach to the deposition.

16 THE WITNESS: Is that an exhibit that was -- did  
17 you not just ask me if I've seen these  
18 documents in relation to this, or Iviewit.com?  
19 Because I've seen them in relation to the  
20 lawsuit, but not --

21 MR. PRUSASKI: To the lawsuit. Good  
22 point, and I appreciate you asking me that.

23 THE WITNESS: Right.

24 BY MR. PRUSASKI:

25 Q. When you were working for Iviewit, at the time

1 Proskauer was representing Iviewit, did you see the billing  
2 statements when they came in?

3 A. I saw different billing statements that addressed  
4 patent patterns, et cetera, that we were paying Proskauer  
5 to do, which I don't find a lot of it in here. I find  
6 missing and incomplete billing statements. These were  
7 given to Brian Utley.

8 Q. Well, those are the bills -- those are the bills  
9 that we allege in the complaint haven't been paid, and so  
10 that's why you're not looking at every bill that Proskauer  
11 ever sent to Iviewit.

12 A. Which ones did you pay? Do you have those?

13 Q. Well, I'm going to show you those, and we'll get  
14 into that later.

15 A. Okay.

16 Q. You said some things in your answer that interest  
17 me.

18 Brian Utley, you indicated, received the bills  
19 when they came in from Proskauer?

20 A. Yes. Okay, these bills.

21 Q. Was it his job to receive and review the bills  
22 when they came in from creditors?

23 A. Yes, it was part of his job.

24 Q. What was his role with the company?

25 A. His role was misrepresented to us by Proskauer as

1 an engineer capable of completing an engineering review;  
2 that's what he was first brought on for by Chris, who said  
3 that he had the engineering degrees and background to do an  
4 analysis for Real 3-D, another person Chris brought into  
5 the company. And --

6 Q. What I asked was what his role is. Was he the  
7 president?

8 A. Well, you're asking what the role was, I'm  
9 defining his role.

10 Q. Well, I'm narrowing it down. Was he the  
11 president?

12 A. Well, at first, he wasn't. At first, he was not.  
13 He was hired on to review the technology for an  
14 engineering opinion for Real 3-D, so that was his first  
15 assignment.

16 After the completion of that review, Chris asked  
17 that we make him CEO; it was not approved by the board. He  
18 was approved for president and COO -- well, actually, he  
19 was approved for chief operating officer.

20 And Chris asked me to resign from president and  
21 turn my title over to Brian, which I did; and I took kind  
22 of a more passive role in the organization at that point.  
23 I became secretary, I believe.

24 And that was based on Chris's recommendation that  
25 he had all of the strengths and qualities of an excellent

1 CEO/president-type position and had the capabilities as an  
2 engineer to work for our company.

3 Q. Was Brian ultimately the president?

4 A. Brian was ultimately the president and COO.

5 Q. Did the board of directors know he was the  
6 president and COO?

7 A. Yes.

8 Q. What other -- who was the CFO of the company?

9 A. I don't believe anybody at the time.

10 Q. Was it Hersh?

11 Was Mr. Hersh ultimately the CFO?

12 A. Mr. Hersh was ultimately the CFO, I believe.

13 Q. Did he review the bills when they came in from  
14 Proskauer, Mr. Hersh?

15 A. Mr. Hersh did review the bills, I believe. I  
16 don't know what bills he reviewed.

17 Q. Did you review them?

18 A. Are we referring to this set of bills?

19 Q. No, in general.

20 A. Did I review bills?

21 Q. Yes.

22 A. I thought I was reviewing bills, but I guess Brian  
23 had a whole set of bills that nobody had ever seen that him  
24 and Chris had designed by themselves that, when it got to  
25 the board, obviously it became a huge issue where credible

1 members of Goldman Sachs and Arthur Andersen's personal  
2 financial planning division looked in and said what the  
3 hell is going on; why do we have all of these bills and no  
4 patents, when we're paying for patents; what are these  
5 bills about Distance Learning?

6           Then, they found out a bunch of other things about  
7 Distance Learning that had been going on between  
8 Mr. Wheeler and Mr. Utley that have driven these bills to  
9 large proportions. Then, they were incensed, if not  
10 infuriated. And I believe they put some kind of \$5,000  
11 spending limit on these two; but they had still gone way  
12 above that \$5,000 limit and transacted wild amounts of  
13 bills.

14           Q.    So it's Iviewit's position that Mr. Utley was  
15 agreeing to pay bills to Proskauer which you claim  
16 shouldn't have been paid?

17           A.    They shouldn't have even been billed.

18           Q.    When did you first learn about this?

19           A.    Oh, God. Well, my dad really first started to ask  
20 some questions about what the bills were for. And then,  
21 there were several board meetings in which the bills became  
22 a very large focus of the meeting.

23           And everybody was concerned that we were being,  
24 you know, way overbilled, in light of the fact that we  
25 hadn't gotten the royalties promised by Proskauer for their

1 patent pools, which was kind of the deal we had worked was.  
2 You know, there would be a larger bill to us because you  
3 were delaying payment until you got money out of the patent  
4 pools after Ken Rubenstein deemed them novel.

5 Q. Right, and we'll get into that.

6 But my question was: When did you first become  
7 aware of this?

8 A. I'd have to -- I'd have to -- I probably would be  
9 answering something you are not -- I'm not exactly sure of.

10 MR. SELZ: If you can't answer --

11 Q. You can't --

12 A. I am not exactly sure of the exact date.

13 Q. I'll help you narrow when. Was it last year?

14 A. No.

15 Q. Was it the year before that, 2000, 2001?

16 A. Yeah. No, 2000 is accurate. End of the year.

17 Q. Well, Proskauer stopped representing Iviewit in  
18 about April of 2001, does that date ring a bell?

19 A. Yes.

20 Q. That's my understanding of when that happened.

21 A. Correct, yeah.

22 Q. Was it before or after that?

23 A. Before. Just like I said, it was the end -- it  
24 was mid-, end of 2000 that I became aware of some of the  
25 miss -- malfeasances that were happening on not only the

1 bill, but multiple other issues.

2 Q. Did you tell your lawyers about that after the  
3 lawsuit was filed?

4 A. Did I -- well, actually, the lawyers I thought  
5 were hired for the lawsuit against Proskauer, it wasn't  
6 even disclosed to me.

7 Actually, Wayne Smith of Warner Brothers notified  
8 me that I was being sued by both the involuntarily  
9 bankruptcy by Mr. Wheeler's friend, Mr. Utley; and  
10 Mr. Wheeler's lawsuit against the company were not  
11 disclosed --

12 Q. Proskauer Rose?

13 A. -- correct -- were not disclosed to all of  
14 the shareholders by the CEO who was put in, which was also  
15 a Chris Wheeler referral --

16 Q. Well, my question was: Did somebody mention it to  
17 Spencer Sachs's firm, who was defending Iviewit in the  
18 Proskauer lawsuit, about this alleged malfeasance that you  
19 were aware about -- aware of?

20 A. Yes.

21 Q. Who?

22 A. A representative brought in -- which we later,  
23 through your billings, noticed was a Chris Wheeler referral  
24 of Ross Miller. Ross was brought in by the investment firm  
25 that Chris Wheeler had also identified, so they put Ross

1 in.

2 Ross didn't notify any of the shareholders or  
3 board members that we can any evidence of that we were even  
4 in these suits. So we found out through -- you know, at  
5 the last minute, when Spencer Sachs was declining counsel  
6 for us -- and which is kind of why we're late to the game  
7 is, we didn't really get notification from our management  
8 that was, I guess, friends with Chris, that we were even in  
9 these.

10 Q. Well, who got -- I'm confused. Who got a copy of  
11 the lawsuit that Proskauer filed?

12 A. Ross Miller. Ross Miller.

13 Q. And is he the one that hired Sachs Sachs & Klein  
14 to defend Iviewit?

15 A. I would believe so.

16 Q. Did you know anything about it at the time?

17 A. Not at that time.

18 Q. When did you get updated about this?

19 A. Several months after it was filed, I believe.

20 Q. Did Ross Miller know about what you are telling me  
21 is the alleged malfeasance of Utley?

22 A. Ross Miller did know about the malfeasances of  
23 Utley, correct. He was investigating those.

24 MR. PRUSASKI: Well, I'll show you a  
25 document that's marked as Plaintiff's Exhibit 2

1 and Plaintiff's Exhibit 3, two documents.

2 (Whereupon, Plaintiff's Exhibits 2 and 3  
3 were marked for identification.)

4 Q. I'll ask you to look at those, and tell me if  
5 you've seen them before.

6 MR. SELZ: Which one are you marking as 2 and  
7 which one are you marking as 3?

8 MR. PRUSASKI: The second affirmative  
9 defense is 2; the answer to the affirmative  
10 defense is 3.

11 A. Yes, I have seen them.

12 Q. When did you see these documents?

13 A. After I was notified that I had counsel  
14 representing me in a case I hadn't known about before, so  
15 whenever Spencer Sachs and I had first talked -- whenever  
16 Spencer Sachs and I first spoke.

17 Q. Have you noticed that the allegations of Utley's  
18 alleged malfeasance with the bills aren't anywhere in these  
19 documents?

20 A. Yes, that's because this set of documents was  
21 prepared by Bill Kasser on affirmative defenses against --  
22 I believe they were prepared by people like Ross and stuff.  
23 I don't --

24 Q. Well, these were prepared by Sachs's office and  
25 signed by Sachs's office. Those aren't the interrogatory

1 answers.

2 A. Right. And I don't think I did -- oh, what are  
3 these?

4 Q. Those are the answers and affirmative defenses  
5 filed by Iviewit's lawyers after the lawsuit was filed by  
6 Proskauer. Those aren't the interrogatory answers, which I  
7 think you're talking about, which we'll get to in a moment.

8 A. Okay.

9 Q. That's why it's important that, if I show you a  
10 document, you've got to flip through it, and I don't mind  
11 if you do.

12 A. Yeah, I will. I will. I will.

13 What's the date on this document?

14 Q. They're on the end, on the signature.

15 Have you seen those before?

16 A. I am going to take a look at them.

17 I believe I have seen them through this case. I'm  
18 not sure, but I might have seen these in the course of the  
19 case.

20 Q. Are you aware that your comments about Mr. Utley's  
21 malfeasance or the officers' malfeasance regarding  
22 Proskauer's bills aren't asserted as affirmative defenses  
23 in this matter?

24 A. I don't think anything that I would have to say  
25 was asserted in this because I don't think I'm part of that

1 assertion.

2 Q. Did you ever tell Mr. Selz, after you hired him,  
3 about the alleged malfeasance of Mr. Utley pertaining to  
4 the bills?

5 A. Absolutely.

6 Q. Okay.

7 A. Of course he was late to -- showing up, so he was  
8 retained --

9 Q. Right. He arrived in the case in July?

10 A. Right.

11 Q. Who else has information about -- or who you are  
12 planning on having testify at trial as to Mr. Utley's  
13 malfeasance pertaining to the bills, besides yourself?

14 A. I have an objection to that because it could  
15 possibly endanger the lives of people who I would list  
16 as --

17 Q. You have to answer the question.

18 A. There's no protection of people? I can't plead  
19 for people --

20 Q. No.

21 A. -- who could be in danger?

22 MR. SELZ: If you know of someone, you should say  
23 it. If you don't know who they are --

24 Q. Well, let me ask you -- let me ask you this, and  
25 maybe it will make you feel better about your answer: Who

1 is going to be testifying for Iviewit at trial?

2 When Mr. Selz is told that he's allowed to put his  
3 case on after Proskauer rests at trial, what witnesses are  
4 going to be called besides you?

5 A. I don't know all of them at the moment but, you  
6 know, I would expect everybody that would be involved with  
7 knowledge of the malfeasances names would be David Culter  
8 (ph), Alan Epstein, Michele Mulrooney, James Jackoway, Alan  
9 Epstein -- I don't know if you've got that. There would be  
10 Maurice Buchsbaum, perhaps; Anthony Frenden, James  
11 Armstrong, Jeff Friedstein, Donald Kane, Ken Anderson, Jim  
12 Osterling (ph), Mitchell Welsh.

13 Q. Mitchell what?

14 A. Mitchell Welsh.

15 Q. Okay. So all of the people you've mentioned so  
16 far are going to testify on Iviewit's behalf at the trial  
17 in April?

18 A. Would you like me to finish?

19 Q. No. All of the people you've listed so far are  
20 going to --

21 A. Yes.

22 Q. -- testify on behalf of Iviewit at the trial in  
23 April?

24 A. Yes.

25 MR. PRUSASKI: I'll be right back. We are taking

1 a minute break. I'm going to get the witness  
2 and exhibit list that these people aren't on.

3 (Whereupon, Mr. Prusaski briefly steps out  
4 of the room.)

5 MR. PRUSASKI: Okay. We're on the record.

6 This is the defendants' exhibit list,  
7 which -- when we go on a break next time I'll  
8 copy and we'll appropriately mark it, but we'll  
9 leave this as Exhibit Number 4.

10 BY MR. PRUSASKI:

11 Q. I'll ask you to take a look at that, and tell me  
12 if you have ever seen it before.

13 THE WITNESS: This yours?

14 MR. SELZ: I can't answer any questions you have.  
15 Just go ahead and look at it.

16 A. It's not the whole --

17 Q. No. This document that's tabbed.

18 A. 85?

19 MR. SELZ: Right. Just that one.

20 A. Have I seen this?

21 Q. Yes.

22 A. No. This is the first time I've ever seen this.

23 Q. Okay. This is the exhibit list that your  
24 attorney -- and witness list that your attorney filed on  
25 Iviewit's behalf, and it lists the people who you plan on

1 calling at trial. And the only people who are going to be  
2 allowed to be called at trial for the defendant.

3 And I'm noticing that none of these people that  
4 you just listed are listed here. I know who Raymond Joao  
5 is, he's the attorney in New York, and we'll get into him  
6 later.

7 Of the people who are going to testify that you  
8 say as to Brian Utley's malfeasance with the bills, which  
9 one of those people listed are going to testify to that?

10 A. None.

11 Q. What about yourself and your father?

12 A. You know, I can only speak for myself.

13 Q. Okay. Do you know if your dad is going to -- your  
14 father, is going to testify at trial?

15 A. I don't know. I haven't asked him.

16 Q. You are going to testify, I assume?

17 A. Correct.

18 Q. Any of the other people going to testify that you  
19 know of as to Brian Utley's malfeasance?

20 A. On this list?

21 Q. Yes.

22 A. No.

23 Q. Have you spoken to any of the people on that list  
24 recently?

25 A. I spoke to Gerri Lewin maybe two months -- no,

1 he's not on there. Nobody, he's not on here. Gerri Lewin  
2 was the name.

3 No. I haven't talked to any of these witnesses.

4 Q. So if you are limited to those witnesses on that  
5 list, how are you going to prove this Brian Utley  
6 malfeasance at trial?

7 MR. SELZ: Objection; calls for a legal  
8 conclusion.

9 A. You'll need my lawyer. Talk to my lawyer.

10 Q. Okay. So you are the only one that's planning on  
11 testifying as to the Brian Utley malfeasance?

12 A. I didn't say that. I did not say that.

13 I gave you a list of people that I think will  
14 testify against Mr. Utley.

15 Q. They can't testify at trial because they're not on  
16 that list.

17 A. We'll see. Things change.

18 Q. So you are going to try and get those people to  
19 testify at trial, even though they're not listed?

20 A. Many more.

21 Q. Okay. Good luck, you are going to need it.

22 A. Okay. Well, we didn't learn about all of the  
23 malfeasances until we discovered all of your documents.

24 Q. Well, you told me -- well, you told me you knew  
25 about the malfeasance before the lawsuit was filed.

1           A.    I knew -- you asked me if I had seen the bills,  
2 and I said that some of the bills started us to investigate  
3 some of the malfeasances against Mr. Utley.

4           The list of malfeasances against Mr. Utley, many  
5 of them were discovered, and we'll need additional  
6 witnesses after all of this.

7           Q.    What do you mean "all of this"?

8           A.    Well, we were in discovery. We had to rebuild the  
9 documents that Mr. Utley and Mr. Wheeler destroyed and  
10 never sent to California like they were supposed to.

11           We had to rebuild through talking to people about  
12 what had happened so that we can understand some of the  
13 Distance Learning billings and all of these kind of things  
14 that we had never seen before, so it took time. And there  
15 will be additional witnesses who --

16           Q.    Were you telling your lawyer this when you were  
17 learning about it?

18           A.    Well, my lawyer came on and probably filed that  
19 with -- one day after Spencer Sachs which -- like I said,  
20 was hired counseled by Mr. Wheeler's friends, and I think  
21 he's got a personal relationship with Mr. Sachs, which  
22 might cause some conflict, or I'm not sure. You can ask  
23 him.

24           Q.    Do you think Spencer Sachs' firm representing  
25 Iviewit was a conflict because Spencer Sachs and Chris

1 Wheeler were friends?

2 A. No, because Chris Wheeler recommended Ross Miller  
3 to the company.

4 Q. And Ross Miller hired Sachs' firm?

5 A. And that wasn't disclosed until we got these  
6 documents from you.

7 Q. So do you -- are you intimating that Spencer Sachs  
8 didn't represent Iviewit well?

9 A. I would say that Spencer Sachs didn't represent  
10 Iviewit and its shareholders or its board or anything at  
11 all. He represented Ross Miller, and that was it.

12 We did -- we found out that --

13 Q. How do you know that?

14 A. Well, I know that because, as Spencer Sachs began  
15 to represent Iviewit, he told us that we had a large unpaid  
16 bill, I believe. That he had rung up with Mr. Miller, I  
17 guess, relating to this suit, I guess. And if we didn't  
18 pay, he wasn't going to represent us, which seemed kind of  
19 unfair with trial coming up.

20 So I had no time, I had to get an attorney. I  
21 thank the judge gracefully for allowing me the time to do  
22 that and prepare a case, which took a lot of time for  
23 Mr. Selz, who was fresh on the docket that day because of  
24 our counsel, which was hired for the trial --

25 Q. Hold on. You're getting beyond the scope of my

1 question.

2 A. Was I?

3 Q. Yes.

4 A. Okay.

5 Q. Listen to the question.

6 Well, first of all, who is Ross Miller?

7 A. Ross Miller was referred to the company by Chris;  
8 it's reflected as such in your billing statements.

9 Ross Miller was also friends with another friend  
10 of Chris that controlled the loans in the company, Mr. Hank  
11 Powell and Steve Warner of Crossbow Ventures.

12 Q. What was Mr. Miller's role with Iviewit?

13 A. He was acting CEO, as they put him in Crossbow;  
14 and they were -- you know, the secured creditors picking  
15 the management with Chris, I guess. But I didn't know that  
16 Chris was involved in that decision until I reflected on  
17 these bills you sent me.

18 Q. When did Crossbow -- when did Crossbow become  
19 involved with Iviewit?

20 A. When -- well, that's a great question. Ross  
21 Miller represented -- I don't know, but he has this  
22 representation to Crossbow that was never represented to us  
23 by Chris. He was introduced to the company very early on  
24 to be a CEO for the company by Chris. And then, more  
25 recently --

1 Q. Do you remember when?

2 A. I don't. It's in your billing statement.

3 Q. Well, I'm sure it is, but do you remember.

4 A. No.

5 Q. 2000, 2001?

6 A. No. I would say -- I would say 2000, actually.

7 19 -- it could be -- no. Actually, Ross came in 1999, I  
8 believe.

9 Q. Was Crossbow funding Iviewit?

10 A. Not at that time.

11 Q. When did they start funding Iviewit?

12 A. I don't know the exact date.

13 Q. Do they own Iviewit now?

14 A. No.

15 Q. What's Crossbow's involvement, if at all, with any  
16 of the Iviewit entities now?

17 A. Talk to my counsel, I don't have -- my counsel has  
18 answers for that.

19 Q. Do you?

20 A. No.

21 Q. "Talk to my counsel" isn't an appropriate answer  
22 if you know the answer.

23 A. Oh. Then, no, I don't know the exact state of  
24 where the Crossbow situation is.

25 Q. Did Crossbow at one point own any of the Iviewit

1 entities?

2 A. Yes.

3 Q. Did they recently sell some of the Iviewit  
4 entities? Because I read a Palm Beach Post article a  
5 couple weeks ago, something about that, I don't recall  
6 exactly what.

7 A. I don't know. I didn't read the article.

8 Q. Nobody showed it to you or told you about it?

9 A. No.

10 Q. Did Crossbow at one point own Iviewit?

11 A. No.

12 Q. Did they have a controlling or ownership interest  
13 in it?

14 A. They have an ownership in it, just not a  
15 controlling interest --

16 Q. Were any -- any people from Crossbow at all  
17 participating in the mediation on Wednesday?

18 A. No.

19 Q. Were you consulting with any people from Crossbow  
20 on the telephone at the mediation on Wednesday?

21 A. No.

22 Q. Who were you consulting with on the telephone at  
23 mediation?

24 A. My wife.

25 Q. Were you talking to Mr. Lamont at all?

1 A. During mediation, no. .

2 Q. During any of the breaks at mediation?

3 A. Stephen Lamont, no.

4 Q. The night before?

5 A. Oh, yes. Every night, before --

6 Q. But not at all during the mediation?

7 A. Correct.

8 Q. Were there any principals or affiliates of  
9 Crossbow who you were consulting with at all during  
10 mediation?

11 A. No.

12 Q. Okay. So Crossbow had nothing to do whatsoever  
13 with the mediation in this case?

14 A. That I know of at this point, yes.

15 Q. When did Crossbow part company, as far as a  
16 business relationship with Iviewit?

17 A. Well, when they found, let's see, Brian Utley  
18 stealing patents; when they hired Blakely Sokoloff to find  
19 that out.

20 Q. When? When, is the question.

21 A. Their exact termination --

22 Q. That's an event; I want you to narrow it down to a  
23 date.

24 A. Somewhere in the -- I believe the end of 2001.

25 Q. And that was the last time that any of the Iviewit

1 entities had any relationship whatsoever with Crossbow?

2 A. I didn't say that.

3 Q. When did Crossbow cease from entirely having any  
4 type of relationship with Iviewit, which is what I think I  
5 asked?

6 A. A few weeks ago.

7 Q. Okay. What happened a few weeks ago?

8 A. Crossbow had proposed a new company. I brought in  
9 counsel to set up a new company; we had worked several  
10 months to produce a new company. We were said to be 50/50  
11 owners on the new company.

12 And then, unilaterally, they withdrew their offer  
13 and told us they had an assigned interest in the patents  
14 and that they were planning to do a deal with some company  
15 in Jacksonville, Distream or something.

16 Q. Does Crossbow have an interest in the pending  
17 Iviewit technology patents?

18 A. Oh, absolutely.

19 Q. Does Iviewit itself or you have an interest in the  
20 pending patents?

21 A. They have a secured loan on the pending patents,  
22 for which they've claimed assignment for, of which Iviewit  
23 finds part of this conspiracy.

24 Q. Involving Proskauer?

25 A. Correct.

1 Q. When did you find out about this?

2 A. About?

3 Q. The alleged conspiracy.

4 A. I'm still finding out about it.

5 Q. When did you first find out about it?

6 If you are still finding out about it, fine.

7 A. Well, a lot of it started with, you know, Brian  
8 Utley's resume becoming -- based upon false information.  
9 So we learned that we had been hoodwinked into a candidate  
10 who didn't qualify for what he was sold to the board by  
11 Mr. Wheeler to be.

12 That, in fact, the credentials Mr. Wheeler  
13 provided to such board and board members was misrepresented  
14 entirely, as to his past employer, where Mr. Wheeler now is  
15 believed to have had full information of Mr. Monte  
16 Friedkin's firing Brian.

17 Q. Okay. Let's talk about --

18 A. Excuse me. Did I -- was I finished?

19 Q. Yes. Let's talk about --

20 A. Can I finish my answer?

21 Q. Because you weren't answering my question.

22 MR. SELZ: He's entitled to give an answer.

23 A. You asked me -- you asked me a very complicated  
24 question --

25 Q. How long is the answer going to be?

1 A. Can you read me back the question, please?

2 MR. PRUSASKI: No. Do not read back the  
3 question.

4 MR. SELZ: Chris, he's clearly entitled to  
5 give an answer to the best of his ability.

6 Q. The question was: When did you first find out  
7 that Mr. Utley and Proskauer were conspiring with Crossbow?

8 A. Okay. So I was explaining --

9 Q. A date.

10 A. Oh. Somewhere around 2 of '01 or something.

11 Q. February?

12 A. Maybe. Around there, possibly --

13 Q. That's what I wanted, and I'll try and be more --

14 A. -- it could be a little earlier.

15 Q. -- and I'll try and be more clear, if I'm asking  
16 for a date or a specific explanation of a time, okay? So  
17 we can agree on that.

18 A. Great.

19 Q. So it was about February of '01 when you first  
20 started learning about this alleged conspiracy between  
21 Proskauer, Utley and Crossbow?

22 A. Correct.

23 Q. And why didn't your attorneys ever plead that as a  
24 defense to this bill collection lawsuit?

25 A. Because they were attorneys not hired by me.

1 Q. Did you hire Mr. Selz?

2 A. Yeah.

3 Q. He never pled that as an affirmative defense.

4 A. He wasn't up to speed at that point, and he pled  
5 to his events --

6 Q. So you knew about this in 02 of '01, February of  
7 2001?

8 A. Correct.

9 Q. And you hired this attorney sitting next to you in  
10 July of 2002, a year and a half later?

11 A. Yes.

12 Q. And he didn't know about that at the time when he  
13 filed these -- when he filed papers in this case?

14 A. You would have to ask him, but I wouldn't think he  
15 could because he had to start reviewing all of the  
16 documents before he could confirm that there was actually a  
17 conspiracy going on.

18 He was brought in very late, so it took him a lot  
19 of time to review documents that were sent to him  
20 overnight, because the counsel representing us prior was  
21 Mr. Wheeler's friend. So it's hard to not see the conflict  
22 coming there. But Ross Miller --

23 Q. Is this conspiracy the basis for the counterclaim  
24 documents that you and your attorney filed -- I guess sent  
25 me on Tuesday night?

1 A. Yeah.

2 Q. When did you first tell your lawyer about this?

3 A. Which lawyer?

4 Q. Mr. Selz.

5 A. Mr. Selz was brought in by another lawyer,  
6 Caroline Rogers.

7 Q. Right. When did you first tell him about the  
8 conspiracy? A date.

9 A. You would have to defer that to Caroline Rogers  
10 who was my acting counsel at the time. And she --

11 Q. With what firm is Miss Rogers?

12 A. She's private.

13 Q. Where is she located?

14 A. Chicago. She contacted Mr. Selz, so that -- I  
15 wouldn't know what the first date was.

16 Q. And she explained everything to Mr. Selz?

17 A. I am not sure. You would have to talk to him  
18 about it.

19 Q. Did you and Mr. Selz ever have a conversation  
20 about this alleged conspiracy?

21 A. Yes.

22 Q. After he -- how long after he started representing  
23 Iviewit did you have this conversation?

24 A. I don't recall. I don't recall.

25 Q. Was it shortly thereafter?

1           A.    I would say it was -- I started to explain what  
2 was happening piece by piece through sending him multiple  
3 documents over time so that he could understand the  
4 complexity.

5           By the way, I had to rebuild all the documents  
6 because none of the corporate record was sent to me and all  
7 of the computers were locked out. And Mr. Utley stole a  
8 bunch of our computers, which he later had to return via  
9 police court order or whatever, police order. So it took  
10 us a lot of time.

11          Q.    Does -- does July of 2002 ring a bell --

12          A.    It doesn't ring a bell.

13          Q.    -- to you as to when you hired this attorney?

14          A.    I don't recall.

15          Q.    Does it sound accurate?

16          A.    I don't recall.

17          Q.    Okay. Was it last year that you hired this  
18 attorney?

19          A.    I don't know.

20          Q.    You don't remember if it was last year, which was  
21 less than 30 days ago?

22          A.    I didn't hire this attorney. I didn't hire this  
23 attorney, so I don't know.

24          Q.    This attorney, Mr. Selz.

25          A.    I did not hire him.

1 Q. Who hired him?

2 A. Caroline Rogers.

3 Q. With your consent?

4 A. Yes.

5 Q. You consented to the hiring?

6 A. She has a power of attorney for me.

7 Q. Okay. How do you spell Caroline Rogers' last  
8 name?

9 A. Caroline Prochotska, P-R-O-C-H-O-T-S-K-A, Rogers.

10 Q. Rogers with a D?

11 A. No.

12 Q. R-O-G-E-R-S?

13 A. Correct.

14 Q. Do you know her address?

15 A. I don't.

16 Q. She's located in the City of Chicago?

17 A. She is.

18 Q. She's a solo practitioner?

19 A. I believe so.

20 MR. PRUSASKI: I'm taking a one-minute break.

21 I'll be right back.

22 (Whereupon, a recess was taken from 11:12  
23 to 11:20 a.m.)

24 BY MR. PRUSASKI:

25 Q. Mr. Bernstein, when we left we were talking about

1 Crossbow. You indicated that Crossbow had pulled out of  
2 some sort of venture with Iviewit about two weeks ago; is  
3 that correct?

4 A. Several weeks ago.

5 Q. Okay. Sometime in January, though?

6 A. I don't know the exact time. I wasn't --

7 Q. Okay. You can't remember if it was before or  
8 after New Year's?

9 A. I wasn't involved in the discussions, so I don't  
10 know --

11 Q. Who was involved?

12 A. Several of my attorneys.

13 Q. Mr. Selz?

14 A. No.

15 Q. What other law firms are representing you?

16 A. I don't know.

17 Q. I don't want you to tell me -- I don't want you to  
18 tell me what you told your attorneys.

19 A. I don't know. I don't know.

20 Q. Well, I don't want you to tell me what you told  
21 your attorneys because that's confidential.

22 A. I don't know.

23 Q. You don't know what law firms are representing  
24 Iviewit?

25 A. That is correct.

1 Q. Okay. Who would know?

2 A. Caroline.

3 Q. This attorney in Chicago?

4 A. Yeah.

5 Q. Okay. Who authorized her to hire these attorneys  
6 on your behalf?

7 A. Me and Stephen Lamont, the acting CEO.

8 Q. Is he testifying at trial, Mr. Lamont?

9 A. I would presume he would be additionally required  
10 at this point, with the allegations stated set forth.

11 MR. PRUSASKI: Exhibit 4, okay? Your  
12 copy.

13 Can I see Exhibit 1, please.

14 Mr. Bernstein?

15 The whole thing is Exhibit 1. Thanks.  
16 I'm going to keep them in the middle of the  
17 table because as the deposition progresses,  
18 there are going to be a lot of documents flying  
19 around, and I don't want to lose anything.

20 Q. So as of this date Crossbow doesn't have  
21 anything to do with Iviewit, except it owns some of the  
22 pending patent applications?

23 A. I didn't say that. They have assignment to the  
24 pending applications.

25 Q. Okay.

1           A.    And I don't know what their transaction with their  
2 third party is.

3           Q.    Is Iviewit still doing business today?

4           A.    Yeah, I would assume it is.

5           Q.    Okay. Did they lay you off; is that why you are  
6 receiving unemployment compensation?

7           A.    The company had no money, and I explained the  
8 situation to the unemployment office. And they had counted  
9 it as employment; that the company was in involuntarily  
10 bankruptcy and had no funds, and that I was the only person  
11 there left, because my prior management hired by  
12 Mr. Wheeler had abandoned us -- and abandoned us with no  
13 documents or anything. So I was the only person to act on  
14 behalf at the time with the shareholders.

15          Q.    Who are you referring to as the "prior  
16 management," Miller or Utley?

17          A.    Prior management would have been -- well, Utley;  
18 then Miller; then, Maurice Buchsbaum, Ray Hersh. All your  
19 defendants were Chris Wheeler's friends.

20          Q.    I thought -- well, you said Utley abandoned the  
21 company?

22          A.    No. I'm just saying that management had all been  
23 abandoned.

24                    So Utley's replacement Ross Miller, who was  
25 brought in to cover for Utley's malfeasance, as he was

1 terminated by the board. All of that combined was that --  
2 Maurice Buchsbaum, who was also referred by Mr. Wheeler and  
3 was a director of the company as well as management of the  
4 company. Mr. Hersh was also brought in by Mr. Wheeler,  
5 abandoned the company. Mr. Kasser, I believe is related to  
6 Mr. Wheeler; he abandoned the company.

7 And so all of the management basically abandoned  
8 at different stages of this. So I was left holding a  
9 company with no management, basically. So at that point, I  
10 did do things to protect my shareholders, as I uncovered  
11 the evidence leading to the conspiracy charges herein.

12 Q. Don't all of these people you just mentioned claim  
13 that Iviewit owed them money -- still owes them money?

14 A. Yes. Yeah, they're Chris Wheeler's friends.

15 Q. Okay. But they all claim that Iviewit still owes  
16 them money? That's why they left.

17 A. I don't know what -- no. As a matter of fact, I  
18 don't know if they still claim.

19 Mr. Utley filed an involuntarily bankruptcy on the  
20 company. I don't think he pursued it; that was as the  
21 allegations against him were unveiled.

22 Mr. Hersh was a part of that involuntarily  
23 bankruptcy; he's also another friend of Mr. Wheeler's. And  
24 Rigel is a subcontractor of Real 3-D, which was  
25 Mr. Wheeler's referral for an engineering study. And Rigel

1 is a subcontractor of Real 3-D who tried to steal the image  
2 output technology once with Mr. Wheeler writing a document  
3 that got rejected by Foley & Lardner.

4 So the three of them pursued an involuntary  
5 against the company. Maurice Buchsbaum took no action  
6 against the company --

7 MR. PRUSASKI: I don't even remember what  
8 my question is, do you?

9 MR. SELZ: Wasn't it: These people were  
10 owed money by the company; is that correct?

11 MR. PRUSASKI: Didn't they claim that they  
12 were owed money by --

13 THE WITNESS: No. You said do they still  
14 claim -- do they still have claims against the  
15 company, so I'm answering your question.

16 MR. PRUSASKI: Okay.

17 THE WITNESS: Sorry that you can't listen  
18 long enough to retain it. But if you have  
19 trouble, can't she read it back for us?

20 MR. PRUSASKI: Are you going to take  
21 personal shots at me through this deposition?

22 THE WITNESS: I haven't taken any personal  
23 shot.

24 MR. PRUSASKI: You're sorry that I can't  
25 listen long enough? That sounds like a

1 personal shot --

2 THE WITNESS: You just said I can't --  
3 well, you were actually affronting my answer in  
4 the midstream of it --

5 MR. PRUSASKI: This lawsuit has nothing to  
6 do with me personally.

7 THE WITNESS: -- by saying that you could  
8 not remember your own question, that's all.

9 MR. PRUSASKI: This lawsuit has nothing to  
10 do with me personally.

11 THE WITNESS: I didn't take any shot.

12 MR. PRUSASKI: Okay. I feel like you did.

13 THE WITNESS: I explained -- okay. Well,  
14 I'm sorry for that.

15 MR. PRUSASKI: Okay. Thank you.

16 BY MR. PRUSASKI:

17 Q. Okay. The next question I'll ask --

18 A. Did you want me to finish that?

19 Q. No.

20 A. No?

21 Q. I don't think you are -- well, if you asked me if  
22 I want you to finish, no. I don't think you're answering  
23 the question. If you insist on continuing, please  
24 continue.

25 A. Would you like me to answer the question?

1 Q. Yeah. Don't all of those people still to date  
2 claim that Iviewit owes them money?

3 A. No, they do not.

4 Q. Okay. Thank you. You answered the question.

5 So who is currently running Iviewit; who are the  
6 principals of the company?

7 A. Stephen Lamont and myself.

8 Q. Okay. But you have no idea who the attorneys  
9 representing Iviewit -- and you are a principal-- you have  
10 no idea who the attorneys representing Iviewit with the  
11 Crossbow deal are?

12 A. Caroline Prochotska is making the main  
13 representation, and she's chosen a team of lawyers from  
14 varied firms. And you can find that information out by  
15 calling her.

16 Q. Why did Crossbow pull out of a venture with  
17 Iviewit recently?

18 A. Call Crossbow. I can't make an answer based on --

19 Q. You do not know the answer to the question?

20 A. No. They just pulled out and basically violated  
21 good faith negotiations midstream and said they were  
22 assigning our patent assignments to some other company.

23 Q. Do you know what company has the assignments right  
24 now?

25 A. Yeah. Distream, I believe. I don't know these

1 things to be fact.

2 Q. Distream?

3 A. Yeah. D-I-S-T-R-E-A-M.

4 Q. Where are they located?

5 A. Jacksonville.

6 Q. What kind of work is that company involved in?

7 A. I don't know.

8 Q. Who told you this, your attorney, that Crossbow  
9 had assigned its interests in the intellectual property to  
10 Distream?

11 A. Caroline Rogers.

12 Q. Caroline. The attorney in Chicago?

13 A. Right.

14 Q. But you say there are other attorneys representing  
15 Iviewit in the negotiations with Crossbow besides Caroline  
16 Rogers?

17 A. Correct.

18 Q. Other law firms?

19 A. Law firms.

20 Q. Are they Florida or Illinois law firms?

21 A. I don't know all the details about them.

22 Q. You have never seen any of the bills from them?

23 A. I've never met them, seen bills, paid bills, or  
24 anything.

25 Q. Who is handling all of that?

1 A. I don't know.

2 Q. Miss Rogers?

3 A. I don't know how she's handling her affairs.

4 Q. What are your current positions -- what is your  
5 current role at the company? Do you have a title?

6 A. No, not that I know of.

7 Q. Are you a president?

8 A. I would be acting president right now. Stephen  
9 Lamont would be acting CEO, but we're not sure because of  
10 the damage done by Proskauer to our companies, if they are  
11 even our companies.

12 Q. Where does Mr. Lamont live?

13 A. New York, I believe.

14 Q. He's a lawyer by trade, isn't he?

15 A. I don't know.

16 Q. You don't know what Mr. Lamont's background is?

17 A. I believe he graduated Columbia Law School.

18 Q. What did he do between graduating Columbia Law  
19 School and going to work with Iviewit?

20 A. Worked for a variety of technology companies.

21 Q. Did you hire him?

22 A. Yeah.

23 Q. Okay. So what was the deal with Crossbow before  
24 they pulled out?

25 A. I don't know the parameters.

1 Q. Well, you say they stepped out of a deal in good  
2 faith recently; is that correct?

3 A. Correct.

4 Q. You seem to have formed an opinion about that. So  
5 what were the facts that led rise for you to have an  
6 opinion?

7 A. I wasn't on most of the calls, so you would have  
8 to refer to Miss Rogers.

9 Q. If the deal had happened, what would have  
10 happened?

11 A. You would have to refer to Miss Rogers.

12 Q. You have no idea, sitting here, looking at me in  
13 the eye? You are telling me you have no idea what the deal  
14 would have been?

15 A. I knew parameters of different stages of the deal  
16 after they had been contemplated and completed, but I  
17 wasn't in the daily negotiations of these meetings, so I  
18 don't know what the parameters were all throughout or what  
19 they would have been at the end and why they did all that.  
20 I wasn't in on those calls.

21 Q. Was Lamont?

22 A. No.

23 Q. Just Rogers?

24 A. Correct.

25 Q. So you have this lawyer in Chicago running all of

1 the shots for Iviewit right now, without any input from you  
2 or Lamont?

3 MR. SELZ: Objection to form.

4 Q. You can answer the question.

5 A. Yes. I put input to her. I don't know what  
6 happens to that input as she negotiates.

7 Mr. Lamont has asked her to negotiate the legal  
8 strategies for the company; she is a lawyer, he is not.  
9 And obviously, we needed a lawyer to deal with some of  
10 these friends of Mr. Wheeler's who are pursuing all of  
11 these legal actions against the company.

12 Q. Is Crossbow pursuing legal actions against  
13 Iviewit?

14 A. Yes. Obviously they're pursuing assignments  
15 against the company's patent portfolio, so I don't know how  
16 you would classify that legally.

17 Q. Have they sued Iviewit?

18 A. I don't know the technical terms, Miss Rogers  
19 would.

20 Q. You don't know about any lawsuits that Crossbow  
21 filed?

22 A. I don't.

23 Q. So when Miss Rogers notified you that Crossbow had  
24 pulled out of the deal, did she explain why it happened?

25 A. You know, I don't think I asked for an explanation

1 because I just said once a snake, twice a snake, three  
2 times always a snake.

3 Q. Well, the first time they were a snake what  
4 happened?

5 A. The first time they were a snake, they pulled  
6 funding when they had promised funding. They interfered  
7 with my clients. They interfered with my management.

8 Then, they conspired to steal technology, I guess,  
9 through some people that they flew out here to a company,  
10 Zio Sync, I believe, or something.

11 Q. Was Crossbow involved in your alleged conspiracy  
12 by Proskauer?

13 A. Yes.

14 Q. When did you first learn about that?

15 A. I'm still learning about it.

16 Q. When did you first learn about it?

17 A. Well, I first learned about Crossbow, I believe,  
18 conspiracy as they're making assignments.

19 See, what happened was -- in a board meeting they  
20 told the board that they were securing their notes to  
21 protect Iviewit's shareholders from Chris Wheeler's lawsuit  
22 and Brian Utley's involuntary lawsuit, and that the action  
23 was a mechanism using the security to protect the assets of  
24 Iviewit from Proskauer and Utley.

25 So we assigned -- we took a secured interest with

1 Crossbow based on that claim. They have now called their  
2 secured interest as part of an attempt to claim the asset.

3 Q. When did you first find out --

4 A. That happened all over through a long period of  
5 time, so...

6 Q. When did you first find out?

7 A. First I would have found out, perhaps the end of  
8 2000 and -- no, I don't know the exact answer. I can't  
9 recall.

10 Q. What year?

11 A. I can't recall.

12 Q. 2001?

13 A. I can't recall.

14 Q. Before 2001?

15 A. I can't recall.

16 Q. Was it before the Proskauer lawsuit --

17 A. No.

18 Q. -- was filed? It was after?

19 A. Yeah.

20 Q. Did you tell your attorneys at the time?

21 A. Yes.

22 Q. What did they do about it?

23 A. Well, my attorney Caroline has been working with  
24 people to protect me. Mr. Utley came out after being  
25 terminated, and they found patents had been written into

1 his own name going to his house without assignment to the  
2 company, et cetera.

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

10 Q. Utley said this?

11 A. Yes.

12 Q. When was this?

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

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

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

22 Actually, let's go back. It starts really when we  
23 found that Ken Rubenstein wasn't a partner with Proskauer  
24 at the time he was represented. That was found out by, I  
25 believe, Don Kane of Goldman Sachs and Jeff Friedstein of

1 Goldman Sachs.

2 Q. Okay. Well, this is getting into an area --

3 A. You were asking me --

4 Q. Right.

5 A. Okay.

6 Q. This is getting into all of the allegations of the  
7 counterclaim specifically which, as of right now, isn't a  
8 part of this lawsuit, so I'm not going to depose him on the  
9 allegations in the counterclaim, which I don't think you  
10 are going to get filed anyway.

11 If something strange happens and you get it filed,  
12 we'll come back and we'll have a very, very long deposition  
13 on the allegations of the counterclaim.

14 Right now, this deposition deals with those bills  
15 that we claim aren't paid and your defenses to our claim  
16 that they are not paid, okay --

17 MR. SELZ: Let me just go on to say: The scope of  
18 the deposition obviously is within your  
19 control. You can ask him anything under the  
20 sun you want to ask him about.

21 You've got the counterclaim in front of  
22 you. If you want to ask him questions or the  
23 questions relate to whatever he's talking  
24 about, where you go with it is up to you.

25 MR. PRUSASKI: I'm going to ask him dates

1 of some of these events because they pertain to  
2 some of the defenses in the complaint and in  
3 the answer to the affirmative defenses.

4 The allegations of conspiracy, the  
5 specifics of those allegations in the papers  
6 that you've filed --

7 THE WITNESS: Who filed?

8 MR. PRUSASKI: -- less than -- you know,  
9 48 hours ago, the proposed counterclaim, I am  
10 not asking those questions because I don't  
11 think I'm ever going to have to ask those  
12 questions. And if I do, we'll come back and  
13 we'll ask those questions, okay.

14 So this deposition deals with the bills  
15 that we claim aren't paid in Iviewit's defenses  
16 to those bills.

17 BY MR. PRUSASKI:

18 Q. Okay. So let's backtrack a little bit. And let's  
19 talk about -- you and Mr. Lamont are currently running  
20 Iviewit?

21 A. Correct.

22 Q. Nobody else?

23 A. Correct.

24 Q. Does it have any employees?

25 A. No.

1 Q. Where is it located? Do you have an address?

2 A. In my house.

3 Q. In your house in Boynton Beach?

4 A. Correct.

5 Q. And you moved from Escondido to Boynton, when,  
6 December?

7 A. Yeah. Approximately.

8 Q. Like before Christmas?

9 A. Two weeks. A few weeks ago.

10 Q. January?

11 A. I'm Jewish, so I go by the Jewish holidays.

12 Q. Okay. Christmas is December 25th.

13 A. Great.

14 Q. So a couple of weeks ago you moved from Escondido  
15 to Boynton Beach? You permanently reside in Boynton Beach  
16 now --

17 A. Uh-huh.

18 Q. -- and Iviewit's office is in your house?

19 A. Correct.

20 Q. Okay. Where is Mr. Lamont located?

21 A. In his home in New York.

22 Q. No employees? Iviewit doesn't have employees?

23 A. You said other than you and Mr. Lamont --

24 Q. Yeah. Yeah.

25 A. -- does Iviewit have any employees?

1 Q. Correct.

2 A. No.

3 Q. Does it have income?

4 A. No.

5 Q. Now, after Crossbow pulled out of this venture,  
6 which you say isn't in good faith, did that seem to end the  
7 income stream for the companies?

8 A. Yes.

9 Q. Are there any other deals pending with any other  
10 entities out there to fund Iviewit to take the company off?

11 MR. SELZ: Objection to form.

12 A. Ask me that question again.

13 Q. Are there any deals pending right now between  
14 Iviewit and any other companies or entities besides  
15 Crossbow that could result in Iviewit going back into  
16 business and making money?

17 A. Yes. The answer is there are patents pending that  
18 if those deals, if you would like to call them deals, close  
19 with the patent offices after all of the malfeasances just  
20 caused by my legal staff -- if they survive that, those  
21 deals are yes, obviously, shy of income revenues. As Chris  
22 Wheeler knows, since he sold this to most of his customers.

23 Q. Now, these patents that are pending, these are  
24 different than the patents that are assigned to Crossbow,  
25 or does Crossbow have an interest in every single one of

1 the pending patent applications?

2 A. You would have to defer that to Caroline Rogers.

3 Q. You have no idea?

4 A. It's so screwed up, the patent work that's been  
5 performed by Proskauer, Foley and Meltzer Lippe, that it's  
6 hard for me to know or follow any of what's going on.

7 Q. So what is the company doing now?

8 A. Well, we're positioning ourselves to deal with the  
9 malfeasances, get our patents back together and file  
10 properly. And if they are not, we're preparing the  
11 liability suits against those who have perpetrated such  
12 crimes against us.

13 Q. But if Crossbow has an interest in the patents and  
14 you claim that the patents were -- what did you say,  
15 screwed up --

16 A. Yes.

17 Q. -- by the lawyers?

18 A. Yes.

19 Q. Has Crossbow indicated that that's the case?

20 A. Crossbow's been made aware of that. They hired  
21 counsel Blakely Sokoloff Zafman & Taylor to uncover the  
22 patents going into Utley's name, that we were unaware of as  
23 a company. So they made decisions based on that to get  
24 Utley's patents back into the company name.

25 They made changes in the patents, based on

1 Blakely's analysis which things were screwed up; and that's  
2 what they did. So I would assume they were aware that  
3 there are problems, and they are aware further that there  
4 are problems based on the analysis by Greenberg Traurig, I  
5 believe. I'm not sure who it is actually, but I believe  
6 it's a partner or something of them. I'm --

7 Q. Is Crossbow aware of your allegations of  
8 malfeasance by Utley pertaining to Utley approving  
9 Proskauer's bills?

10 A. I don't know.

11 Q. You haven't talked to anybody from the company  
12 about that?

13 A. They are aware of the entire belief that the  
14 company was in danger of Brian Utley. They are aware of  
15 all allegations the company had up until the point they  
16 stopped funding. At that point they issued --

17 Q. Is there any correspondence from Crossbow anywhere  
18 where Crossbow talks about the alleged malfeasance of the  
19 former principals of Iviewit?

20 A. No. They fired them. They actually closed down  
21 the office here in Boca Raton, fired all of the employees  
22 overnight. Hank Powell was disturbed in a board meeting,  
23 which I believe we have notes on or some kind of --

24 Q. When you say "they," you mean Crossbow?

25 A. Yeah. Crossbow came to the board meeting. Hank

1 Powell asked Brian why he hadn't let everybody go and let  
2 himself go, like he was supposed to, and send the corporate  
3 records to the California offices.

4 Brian said that -- let me just think what his  
5 words were at that time -- that the employees were going to  
6 be given furlough; even though it was a board decision that  
7 they be let go of immediately as we were finding that money  
8 might be -- being stolen from the company.

9 Property was being requested of our employees to  
10 steal for Mr. Utley on his behalf, property that eventually  
11 was stolen and transferred to one of the investors that  
12 Mr. Wheeler represented.

13 In your documents -- I think I finished it. Does  
14 that answer it basically?

15 Q. Yeah. But how did Crossbow have the authority to  
16 fire all of the employees at the time back in March of  
17 2001?

18 A. It was a board decision.

19 And what they were saying was, based on Utley's  
20 being caught lying at Paramount Pictures about his  
21 background, and that his resume was a lie, and that there  
22 were all of these other background allegations going on,  
23 that Mr. Utley needed to be terminated.

24 Part of the problem was that we had a business  
25 plan for Wachovia Bank which Mr. Utley unilaterally.

1 without board approval, turned into a Distance Learning  
2 company with the aiding and abetting of Proskauer --

3 Q. Wait. Wasn't my question --

4 A. Yes.

5 Q. Wasn't my question, simply: How did Crossbow have  
6 the authority to fire all of the employees?

7 A. Well, I'm getting to that.

8 Q. You are talking about like some movie studio.

9 A. Well, no, I'm getting to it. I'm saying Wachovia  
10 Bank -- Wachovia -- you asked --

11 Q. Please get to it.

12 Well, the question was: How did Crossbow have the  
13 authority to fire the employees?

14 And the answer was: Well, Crossbow ran the  
15 company, they were on the board; or, Crossbow owned the  
16 company.

17 A. It was --

18 Q. I mean, how did they have the authority to say: I  
19 want to fire the employees?

20 A. Here is what they did. They said that they would  
21 not fund the company without Brian Utley and his service  
22 group and all of the management that was related to Chris  
23 Wheeler being fired and terminated on that date to protect  
24 the company and their assets from any further damages  
25 against the company. And they also asked the board to take

1 secure positions on the loans to protect against Proskauer  
2 Rose's actions and Brian Utley's actions.

3 Q. Does Iviewit have any documents from Crossbow that  
4 explain their displeasure with the principals of the  
5 company?

6 A. I don't know.

7 Q. You have never seen any?

8 A. All of the documents have been destroyed pretty  
9 much. We've been left with some documents that are  
10 frauded, as well as an incomplete set of records  
11 transferred by Mr. Utley who, in a board meeting, was  
12 assigned to do such.

13 Q. Do you recall ever seeing any documents at any  
14 time from Crossbow that expressed displeasure with the  
15 former principals of Iviewit?

16 A. Yes. I know that they are aware of and expressed  
17 displeasures to third parties that could be called as  
18 witnesses for us, and told that they heard that Crossbow  
19 was very displeased with what was going on.

20 Q. Who at Crossbow specifically was very displeased  
21 with Utley in particular?

22 A. Hank Powell. Maurice Buchsbaum.

23 Q. When is the last time you spoke to Hank Powell?

24 A. Before he was fired from Crossbow. Maybe -- I  
25 don't know. I can't recall.

1 Q. Last year?

2 A. I can't recall.

3 Q. Has it been over a year since he was fired?

4 A. I do not recall.

5 Q. Okay. I'm going to help you recall.

6 A. Okay.

7 Q. Was it last year?

8 A. I don't know.

9 Q. Was it before the Proskauer lawsuit?

10 A. I am not sure.

11 Q. Was it within the last five years?

12 A. Yes.

13 Q. Okay. Was it within the last two years?

14 A. I don't know.

15 Q. What circumstances was he fired from Crossbow?

16 A. Call Crossbow.

17 Q. You have no idea why Mr. Powell was fired from  
18 Crossbow?

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

21 Q. Mr. Powell was involved in the conspiracy?

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

1 over.

2 Q. So Mr. Powell was somehow involved in a  
3 conspiracy?

4 A. Well, Mr. Powell secured the loans of Iviewit.  
5 And what happened was, to be quite honest, a member of  
6 Warner Brothers was flown out to meet with Crossbow --

7 Q. Wait a second. Was Buchsbaum -- just so I don't  
8 get confused --

9 A. Yeah. You're going to get real confused.

10 Q. -- was Buchsbaum involved in the conspiracy?

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

13 But, you know, under further investigation and  
14 more documents being provided to us from you and other  
15 people who can rebuild the corporate record, he very well  
16 might be part of the conspiracy.

17 Q. So you think he might be --

18 A. I did not say that.

19 Q. Do you think he might be?

20 A. I don't know --

21 Q. You don't know what you think?

22 A. -- and until I get all of the records and  
23 documents, I don't know.

24 Q. You don't know what you think?

25 A. I know exactly what I think.

1 Q. Do you have a hunch?

2 A. I don't make things -- statements like that about  
3 people until I have actual facts to do that.

4 Q. So these people, Powell and Buchsbaum, might be  
5 involved in the --

6 A. Powell might be.

7 Q. -- let me finish -- in the grand conspiracy with  
8 Proskauer, yet you threw both of their names out earlier in  
9 this deposition as people who are going to testify for you  
10 at trial?

11 A. Perhaps.

12 Q. Okay. When is the last time you spoke to  
13 Buchsbaum?

14 A. I can't recall.

15 Q. Was it within five years?

16 A. Yes.

17 Q. Are you friends?

18 A. Yes.

19 Q. Are you friends with Powell?

20 A. I don't know the answer to that yet, until the  
21 truth comes out in this matter.

22 Q. If you called them right now and asked them to  
23 lunch, would they go with you or would they hang up on you?

24 A. I wouldn't call them until I need them as  
25 witnesses in this case.

1 Q. Okay. Where do they live?

2 A. I don't know.

3 Q. Florida?

4 A. I have no idea.

5 Q. Well, if you might need them as witnesses, you  
6 have no idea where they live?

7 A. Not today.

8 Q. Okay. What are you planning on doing in a month  
9 when you have to go to trial to find them?

10 A. I wouldn't, my attorney would.

11 Q. Okay. So these people have knowledge -- these  
12 people are former Crossbow principals who may have  
13 knowledge --

14 A. Maurice was a former employee and Hank Powell was  
15 a board director of Iviewit as well, so we get that all  
16 down.

17 Q. Okay. But they were on the board of Iviewit?

18 A. Correct.

19 Q. But you have no idea where these guys live?

20 A. Correct, not today. I know where they were  
21 whenever I last saw them.

22 Q. Who hired them to the board of Iviewit?

23 A. Chris suggested that we put them on the board.  
24 And Chris was attending all of the board meetings and  
25 controlling the company so, you know --

1 Q. How was Chris Wheeler controlling the company?

2 A. By putting in all of his friends, which would be  
3 basically his friends; Brian Utley, Ray Hersh, Maurice  
4 Buchsbaum, Hank Powell, Steve Warner, and pretty much  
5 anybody who is on your side of the witness list.

6 Q. Mr. Lewin?

7 A. Lewin and Wheeler are good friends.

8 Q. Didn't you originally go to Lewin to find lawyers,  
9 and you eventually found Proskauer through Lewin?

10 A. I didn't, my father did.

11 Q. How did you know Lewin?

12 A. I didn't, my father knew him.

13 Q. Simon Bernstein knew Lewin?

14 A. Correct.

15 Q. And when was this, when you were looking for  
16 lawyers? Let's go back to the beginning.

17 A. I can't recall.

18 Q. Was it --

19 A. It was when I discovered the technology.

20 Q. Late '99 ring a bell?

21 A. Early '98, mid-'98.

22 Q. You discovered the technology in early to mid-'98?

23 A. Correct.

24 Q. And for my benefit, if you had to explain what the  
25 technology is to a person who doesn't have any computer

1 savvy whatsoever --

2 A. Yeah.

3 Q. -- how would you do it? Help me out here.

4 A. Okay. The ability to zoom on images, single image  
5 files, without pixilation, without using software programs.  
6 So just on a simple -- the problem first confronted by us  
7 was pixilation.

8 So for the simple person to understand what the  
9 problem was, was we had carried through a bad habit. Since  
10 early times you've seen the painting on the wall, the  
11 canvas matches the frame.

12 When you started in computers and you built a  
13 picture on the computer, you matched the size of the image  
14 to the frame. Therefore, when you went to zoom on such  
15 image, you have what was commonly referred to in prior art  
16 as pixilation.

17 Therefore, there wasn't this ability to drive in  
18 through a virtual world on a 2-D image any further than a  
19 little bit without -- because you had no further reference  
20 data.

21 So I simply came up with an idea that you should  
22 be well aware of -- you're my patent counsel, and having  
23 your patent counsel review but, for your explanation, blow  
24 the picture up, as Chris Wheeler has told many people, to  
25 the size of the Empire State Building and, then, put it

1 back in that frame digitally so that you really have a  
2 picture that's monstrous behind that frame. And as you go  
3 to zoom, you have this unbelievable experience of trues  
4 (sic) being in an environment, which Chris boasted about.

5 Q. How long did it take you to develop that?

6 A. Oh, my God. How long did it take?

7 Q. You came up with it around mid-'98, you said?

8 A. Yes. Yes. And it took me oh, God, over four,  
9 five years.

10 Q. So there came a day when you and your father --

11 A. Did you want me to finish?

12 Q. Oh. I thought you were. I'm sorry.

13 A. No. I also was working on a technology that the  
14 holy grail of the Internet was termed by pretty much  
15 everybody in the engineering world to be full screen, full  
16 frame rate video at low band width -- full frame rate video  
17 at 30 frames per second through low band width.

18 I'm a psychology major, as I told you. So it was  
19 very simple to me, once I had a vision of it, why it wasn't  
20 working. And the mathematics will never work, but I can  
21 see or that most engineers could see; that's why it was the  
22 holy grail. But what happened was, I saw it differently.

23 If you understand interlacing, it's the splitting  
24 of a single frame of video, I've worked -- for 50 years,  
25 since the television was introduced, they had a band width

1 problem -- well, I'm going to explain it for a simple guy.

2           So what you do, so that you don't have jitter --  
3 which, if you remember, in the 1950s type projection what  
4 you saw was this jittering going on. It drove your mind  
5 and optic center crazy to see this jitter; plus, you  
6 started to have audio sync difficulties. So a psychologist  
7 recommended interlacing, which is the splitting of the  
8 frames sending those two frames down the pipe and, then,  
9 rebuilding with a photon gun on the other end -- which is  
10 what your TV has been doing since TV.

11           What I came up with was this slightly different  
12 idea, build the image in a quarter screen, send it in a  
13 corner screen, blow it up on the user end, optically fool  
14 the mind, a 75 percent savings in band width, which was  
15 heralded by Mr. Wheeler in fact, who everybody -- as having  
16 been the holy grail discovery of the decade, worth  
17 billions, as he claimed to everybody who he had invest in  
18 the company, as well as many other people which we will be  
19 calling in to witness now that we know of the conspiracy,  
20 who will testify on direct testimony.

21           Q. All right. I just wanted to know about the  
22 technology, and you're flying off on a tangent.

23           A. The third is -- okay. The third is remote control  
24 applications of video, and that would be the bulk of the  
25 discoveries that we brought to you.

1 Q. Okay. So in about March of '98 you had developed  
2 this technology?

3 A. I did, somewhere in '98.

4 Q. Okay. And you had come to a point where you  
5 decided you needed lawyers to facilitate the development of  
6 this technology?

7 A. We've -- we felt that we needed to design a  
8 company that would protect the technologies or find the  
9 best mechanism. My dad asked Gerri Lewin, Gerri brought in  
10 Chris.

11 Q. What were you doing for work between college and  
12 the time that you built this technology; what was your  
13 profession?

14 A. I had invented two -- I had invented two -- well,  
15 you asked it. Do you want my entire employment history  
16 through that period?

17 Q. Well, generally, what were you doing?

18 If I came up to you and said: What have you been  
19 doing the last ten years, what would you say?

20 A. Which ten years?

21 Q. Between the time you graduated college and the  
22 time you hired Proskauer, what were you doing --

23 A. That was 20 something years. Do you want to know  
24 each of my employments throughout the ten years, or would  
25 you like --

1 Q. Was it in the same profession?

2 A. No.

3 Q. What were you doing?

4 A. Okay.

5 Q. I don't need to know what employer you were with  
6 and how much money you made, what was your job?

7 A. Okay. I was creating multimedia --

8 Q. It's not a trick question.

9 A. It's fine.

10 Q. It seems like you think it's a trick question,  
11 it's not --

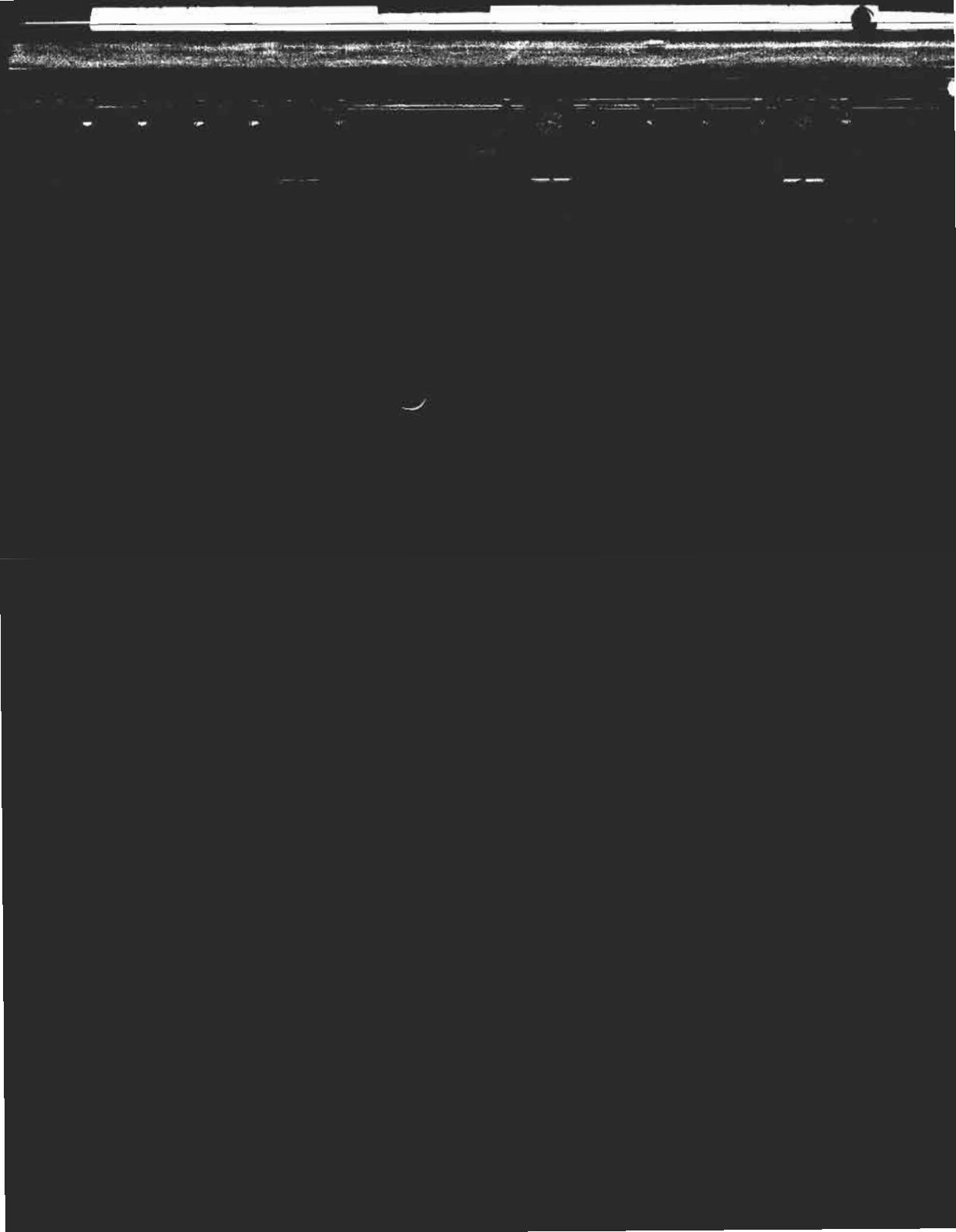
12 A. You've asked me for a 20-year period of my life,  
13 what was I doing for my occupation; I've been doing several  
14 things.

15 Q. Okay.

16 A. This is the first part of the answer.

17 A. I had developed some insurance products. I  
18 sold and marketed those insurance products; I built the  
19 multimedia tools around those products. And I built a  
20 paperless environment for the insurance industry using  
21 scanning technologies for underwriting, et cetera, which I  
22 was in the process, by the way, of working on very heavily  
23 at the time of these discoveries, because insurance was  
24 categorically one of the things that I always did.

25 On the other hand, I moved rock and roll bands



1 around the world. And then, there might have been various  
2 other jobs throughout that that I did to earn a living.

3 Q. Was your work in insurance all throughout the '90s  
4 from, let's say, '90 to '98 when you developed this  
5 technology?

6 A. No.

7 Q. What else were you doing during the '90s?

8 A. Rock and roll, freight forwarding and --

9 Q. What years was that?

10 A. That was -- I don't recall. Somewhere --

11 Q. In the early '90s?

12 A. I can't recall.

13 Q. Were you doing it at the time when you developed  
14 the technology, moving the rock and roll bands?

15 A. I have been creating the technologies for a long  
16 time, but no; not at that particular time, to be specific.

17 Q. When you worked in insurance products, who were  
18 your employers?

19 A. STP Enterprises and Allianz, SP Lexington  
20 Southwest, and I believe that's about it.

21 Q. What years did you work for STP Enterprises?

22 A. I'm not sure of the exact years. About 15 years.

23 Q. You worked for them for 15 years?

24 A. Yes.

25 Q. What year did you leave that company?

1 A. I don't recall.

2 Q. Was it during the '90s?

3 A. Yeah.

4 Q. You don't remember what year you started?

5 A. I started in -- when I was a kid, so it's hard

6 to --

7 Q. Shortly after you graduated from college?

8 A. No --

9 Q. What was your first --

10 A. -- I worked through college, right. I had my -- I  
11 was working through my own company, SP Lexington Southwest  
12 through --

13 Q. SP Lexington Southwest was your company?

14 A. Yes.

15 Q. What type of business was it in?

16 A. Insurance.

17 Q. What was your role with the company; were you the  
18 president?

19 A. I was.

20 Q. Is that a Florida company?

21 A. No. It was Wisconsin and California.

22 Q. Did that company have employees?

23 A. Not that I can -- not that I can recall.

24 Q. Were you the only employee?

25 A. Yeah. Maybe.

1 Q. It was a closely held corporation; you were the  
2 president and basically ran the company?

3 A. Correct.

4 Q. Okay. Did you pay the bills for that company?

5 A. Yes.

6 Q. Did that company ever have lawyers that were hired  
7 to represent it?

8 A. Just in the formation.

9 Q. Allianz, how do you spell that?

10 A. Yes. A-L-L-I-A-N-Z.

11 Q. Was that your company?

12 A. No.

13 Q. Why are you laughing at me?

14 A. I don't know. It's just it's a major public  
15 global company, I just thought --

16 Q. Okay. I've never heard of it.

17 A. I was laughing in the sense that I would like to  
18 own it.

19 Q. I guess me too, if it's a major public company,  
20 right.

21 When did you work for them?

22 A. I don't recall the years.

23 Q. What was your title and role with them?

24 A. It was just sales.

25 Q. What did you sell, insurance?

1 A. Uh-huh.

2 Q. Your dad is in insurance, isn't he?

3 A. Correct.

4 Q. That rings a bell from his deposition.

5 Did you ever enter into any ventures

6 insurance-wise with your father?

7 A. Yeah. Joint invent products.

8 Q. Which ultimately led to the technology that we're  
9 talking about today?

10 A. No. Yeah, kind of. But yeah, the two -- not  
11 inventions for technology, but inventions for insurance  
12 products. So we invented no-load life insurance, which is  
13 noncommissioned life insurance, which me and my brother  
14 invented. And then, me and my sister and her husband, with  
15 my father, invented arbitrage leverage life insurance.

16 Q. Is that like a type of insurance policy or is that  
17 computer technology related to insurance products?

18 A. Boy you ask a funny question.

19 Computers are the backbone to the insurance  
20 industry, so almost all products are computer centered;  
21 meaning, from the actuarial calculations to the  
22 underwriting material. The product formulation, it's all  
23 very computer intensive.

24 And I was very concerned about the paper that we  
25 were using because our product is a very legal beast. It

1 involves a lot more legal documentation than just buying a  
2 life insurance policy, and it was very costly in paper. So  
3 I was in the process of designing for my father and  
4 Allstate a paperless environment, where buying insurance  
5 could be transacted between the underwriters and the agents  
6 and the carrier without paper.

7           And it was not a concept at the time that you  
8 would consider today to be novel, but at that time it was  
9 pretty much blowing away even the biggest carriers. Now  
10 everybody is doing it, so. But it was in the -- working on  
11 the invention of trying to make the transactions less  
12 computer savvy. I have been involved with computers for  
13 many years.

14           Q.   How long did you run SP Lexington Southwest?

15           A.   I can't recall.

16           Q.   Was it more than five years?

17           A.   Yeah.

18           Q.   Was it around ten years?

19           A.   Could be.

20           Q.   So you were the principal and you ran this  
21 closely-held company for --

22           A.   Years.

23           Q.   -- a ballpark figure of ten years?

24           A.   Yes.

25           Q.   Okay. It could be a little less, it could be a

1 little more?

2 A. Correct.

3 Q. Okay. Have you run any other companies besides SP  
4 Lexington Southwest and Iviewit?

5 Were there any other companies before Iviewit that  
6 you were the principal of?

7 A. Not that I can recall.

8 Q. Since Iviewit was formed, have there been any  
9 other non-Iviewit entities that you have been the principal  
10 of?

11 A. No.

12 Q. So in mid-'98 you have invented a technology that  
13 could be revolutionary. And you and Mr. Simon Bernstein  
14 decide that you need lawyers, and your father decides to  
15 approach Gerald Lewin, the accountant, correct?

16 A. Correct.

17 Q. Did you know Mr. Lewin at the time?

18 A. Yes. I had met him at my dad's club.

19 Q. They lived in the same neighborhood or still do,  
20 right?

21 A. Yeah, a block or two apart.

22 Q. Right. So they're social friends from the club,  
23 as well as neighbors?

24 A. Correct.

25 Q. Okay. And it was your dad's idea to approach

1 Mr. Lewin?

2 A. Correct.

3 Q. You were okay with that?

4 A. Correct.

5 Q. Did you participate in the initial meeting with  
6 Mr. Lewin regarding finding attorneys?

7 A. I don't recall.

8 Q. Who came up with the name Proskauer Rose, was it  
9 Mr. Lewin or your father?

10 A. Yes, Mr. Lewin.

11 Q. Had you ever heard of Proskauer?

12 A. Never.

13 Q. Okay. Did you do any research about the firm at  
14 that time?

15 A. I did.

16 Q. What did you find out?

17 A. That they were A rated. That I could trust my  
18 inventions with them, if I were to choose them as my patent  
19 counsel --

20 Q. Okay.

21 A. -- because Mr. Lewin wanted us to get patent  
22 counsel, so he was -- see, I don't -- you asked about that  
23 first meeting, no.

24 So Mr. Lewin was looking for patent counsel and  
25 recommended Proskauer, and I did do research at that point

1 is the answer.

2 Q. And you learned that they were A rated -- AB  
3 rated --

4 A. Yes.

5 Q. -- and you felt from your research that you could  
6 trust Proskauer?

7 A. Absolutely.

8 Q. What did Mr. Lewin say about Proskauer?

9 A. He said Chris Wheeler was a very dear friend, and  
10 I could trust him with all of the inventions and processes  
11 of which we had discovered. And that -- you know, that it  
12 would be wise for me to secure his services.

13 Q. Were there any other lawyers -- I'm sorry.  
14 Were there any other law firms that were  
15 recommended as well as Proskauer at that time?

16 A. Yeah. There were other law firms in consideration  
17 at the time.

18 Q. Do you remember which ones they were?

19 A. Some like Irell and Manella I was considering.  
20 Richard Rossman (ph) had referred a few. So yeah,  
21 there were other people that were starting to approach us  
22 with law firms.

23 Q. And Proskauer ultimately won out?

24 A. Correct.

25 Q. Why?

1           A.    Ken Rubenstein.  Chris came and told us that Ken  
2 was with Proskauer.  I looked up Ken.  He was significantly  
3 one of the best, brightest minds in technology that were  
4 dealing with what I had discovered.

5                    So at Mr. Wheeler's behest we brought -- you know,  
6 I believe that Mr. Wheeler made the representation not only  
7 that Ken was qualified, but that Ken deemed them novel and  
8 unique; that he controlled the patent pools that would  
9 eventually use such scaled video and image applications for  
10 DVDs, et cetera.  I don't know if he was doing DVDs at the  
11 point, but that he controlled these patent pools.

12                   So to us it was a very good decision, and we did  
13 trust him most definitely.

14           Q.    So we're still in mid -'98, right, you're doing  
15 your research on Proskauer?

16           A.    No.  Proskauer would be later '98.

17           Q.    Last quarter of '98 we're talking about?

18           A.    Yeah, somewhere around there.

19           Q.    And Rubenstein was with Proskauer then?

20           A.    That's the representation that was made to us.

21           Q.    Did you do any research on that, to see if  
22 Rubenstein was with Proskauer?

23           A.    No.  Not until later and when somebody notified  
24 us --

25           Q.    I was confused by your last answer.

1 I was under the assumption that during your  
2 research of Proskauer you had learned that Rubenstein was  
3 with the company.

4 A. No. I actually ended up, after Rubenstein had had  
5 several conversations with me, being advised by Don Kane of  
6 Goldman Sachs and Jeff Friedstein that they had done some  
7 research and that Ken Rubenstein was with either one of two  
8 firms, a Mineola firm of Meltzer Lippe or some other firm I  
9 can't recall the name of; but that -- after their review,  
10 that he was not at Proskauer Rose at such time.

11 So I respectfully requested Al Gortz to confirm  
12 that he was with the company. And quite to our surprise,  
13 he really wasn't with the company. According to  
14 Mr. Wheeler, he was in the process of transferring from  
15 this Mineola firm. And --

16 Q. So at the time you were initially looking into  
17 Proskauer because Mr. Lewin recommended the firm, you  
18 didn't know about Ken Rubenstein?

19 A. Based on Chris Wheeler's representations.

20 You asked me if I researched the firm, not the  
21 partners. I researched the firm because --

22 Q. Okay. During your research of the firm you didn't  
23 know anything about Ken Rubenstein?

24 A. Only what Chris Wheeler was telling us.

25 Q. And Chris Wheeler represented to you that

1 Rubenstein was with the firm?

2 A. He represented that he was a partner of this firm,  
3 Proskauer Rose.

4 Q. Verbally or in writing, did he make that  
5 representation?

6 A. Verbally. And then, in writing, I believe we  
7 would have to look at some of the verbiage of what he used  
8 to make representations to other people even at the time.

9 Q. No, to you. To you.

10 A. To me it was, you know, it was verbally --

11 Q. Okay.

12 A. -- that we had Ken Rubenstein who opined and was  
13 the end pegged centered guy.

14 Q. Okay. And --

15 A. We just trusted him, that he was partner. I  
16 didn't go check -- I didn't check if you were a partner  
17 today.

18 Q. Fine. So you made the decision to hire Proskauer.  
19 And when was your first meeting with Proskauer?

20 A. I would say with Chris or -- Chris as a member of  
21 Proskauer --

22 Q. Yeah.

23 A. -- somewhere around 11 of '98.

24 Q. That meeting was with Mr. Wheeler?

25 A. I believe my dad met with him once prior and,

1 then, yeah with Mr. -- my father.

2 Q. When did you ultimately make the decision to hire  
3 Proskauer?

4 A. Right about there.

5 Q. Yeah?

6 A. Yeah.

7 Q. There was an agreement at that meeting with you  
8 and your father that Proskauer would represent Iviewit --

9 A. No. Chris was --

10 Q. -- at the time, you and your father?

11 A. No. No.

12 We had to go through a machination first before he  
13 would represent us. Chris Wheeler said that he would have  
14 to have Ken review the technology to see if there was a  
15 reason to represent us at all.

16 Ken was going to review and also opine for the two  
17 and a half percent stock. And I guess there's a committee  
18 here that -- you know, taking stock in my company had to go  
19 through, et cetera.

20 Ken was going to be the opiner (sic) on if they  
21 were, quote, novel; and he had to do the research and blah,  
22 blah, blah (sic). And then, we would sign formal  
23 agreements, which never occurred -- that's why obviously  
24 you don't have a retainer either; but there might be one  
25 out there from that period, I don't know. I am not sure.

1 Q. So it was a verbal agreement that Proskauer would  
2 represent Iviewit, is that what you are saying?

3 A. I'm not sure. The corporate record, as I  
4 mentioned, has been destroyed by Mr. Utley, so it's hard to  
5 know.

6 Q. So you are not sure. But whether it was verbal or  
7 in writing, your recollection of the events is that it was  
8 about November of 1998 when this agreement was made, that  
9 Proskauer would handle the representation?

10 A. No. Like I said, it was at that time that I met  
11 Mr. Wheeler.

12 And after that time, we went through a small  
13 machination of -- it might have been a few weeks -- where  
14 Ken Rubenstein was interfacing with me, having talks,  
15 learning how to download the video from me, checking into  
16 the Web site, all of these kind of things, to learn about  
17 the technologies on a private and confidential basis of  
18 course.

19 So it might have been -- you know, somewhere  
20 around one or two Chris Wheeler wrote a letter saying there  
21 are the three steps.

22 Q. January or February of '99?

23 A. I'm not -- I can't --

24 Q. What do you mean by one or two?

25 A. Somewhere around there.

1 Q. Oh. So you are referring to the number of the  
2 month. I got confused on what you meant.

3 A. Okay.

4 Q. January, February of '99?

5 A. Correct. And after Mr. Rubenstein had so opined  
6 that we had novel and unique processes --

7 Q. You're going way off the topic again.

8 A. Okay. I'm sorry.

9 Q. When is when. And you've said January, February  
10 of '99. I'm satisfied with that, that's it.

11 A. Okay. Okay.

12 Well, I wasn't sure if you were talking about when  
13 a formal arrangement was entered into after you had started  
14 providing services for us, which would have been nine  
15 months later than that. So I wasn't sure if that's what  
16 you wanted. And your answer was --

17 Q. No.

18 A. -- the time that we engaged you formally.

19 Q. No.

20 A. Okay.

21 Q. When did Proskauer start first doing work for you  
22 and your father?

23 A. Right about that time, when Ken started reviewing  
24 the patents. I mean -- not the patents, the technologies,  
25 excuse me.

1 Q. When did Proskauer do personal work for you?

2 A. You know, the -- I don't remember when Al Gortz's  
3 bill was. But somehow he billed me a year later for it in  
4 '98, but I am not sure that correlates correctly with the  
5 personal work of the estate.

6 Q. In '98?

7 A. That's --

8 Q. We're in January, February of '99 now, when  
9 Proskauer first started doing work for Iviewit.

10 A. Yeah, right.

11 Q. Was this work personal work by Al Gortz in '98?

12 A. Well, Al Gortz billed for it in '99 but put a '98  
13 date on it. So I'm not sure why he did that, and it's been  
14 confusing to me ever since I've looked at these doctored  
15 bills.

16 Q. So the bill for the personal work that Al Gortz  
17 did for you came in '99, but showed that he did the work in  
18 '98?

19 A. Yes. Take a look at your billing records.

20 Q. That's not very nice.

21 A. No. I'm just saying it's in here, if you want to  
22 look. I don't know the exact --

23 Q. All right. The comments -- that's kind of like  
24 personal towards me, and I don't even want to do that.

25 A. Okay.

1 Q. If I ask you a question: "Why don't you look at  
2 your billing records" isn't a very nice thing to say.

3 A. Sorry. I'm sorry. You're taking things that  
4 aren't personal personal.

5 Q. All right.

6 A. I just meant that they are contained within the  
7 document.

8 Q. Okay. What type of personal work was it, was it  
9 estate planning?

10 A. Yeah.

11 Q. You said estate planning for your father as well?

12 A. I don't know.

13 Q. Did Proskauer Rose do any personal legal work for  
14 anybody else in your family?

15 A. Not that I'm aware of.

16 Q. Were you satisfied with Al Gortz's work?

17 A. I had it reviewed by another estate planner who  
18 thought it was terrible, but --

19 Q. Who?

20 A. Michele Mulrooney of Armstrong, Hirsch, Jackoway,  
21 Tyerman & Wertheimer.

22 Q. Where is that located?

23 A. In Los Angeles.

24 Q. Mulrooney, M-U-L-R-O-O-N-E-Y?

25 A. Correct.

1 Q. Armstrong?

2 A. A-R-M-S-T-R-O-N-G.

3 Q. Yeah, I know. What's the second word?

4 A. Hirsch, H-I-R-S-C-H.

5 Q. Third word?

6 A. Jackoway.

7 Q. J A C --

8 A. K O W A Y.

9 Q. And when did she review this work for you that Al  
10 Gortz did?

11 A. While he was doing it.

12 Q. While he was doing it?

13 A. Yes.

14 Q. In '99?

15 A. When he was drafting it, whenever.

16 Q. What did she say about it?

17 A. That there were problems that she felt that we  
18 needed to address.

19 Q. Did you pay Proskauer's bill for the work that Al  
20 Gortz did for your estate planning?

21 A. I believe so.

22 Q. Do you remember how much it was?

23 A. I don't. I don't think I paid it personally.  
24 I think -- I don't know how it was paid.

25 Q. But it was -- you claim it was a doctored bill or

1 the dates were wrong on it?

2 A. I am claiming that in the doctored bills here  
3 that --

4 Q. I'm just talking about the bill for the work Al  
5 Gortz did.

6 A. It's part of this bill here, this whole set, so --

7 Q. Okay.

8 A. -- so when and where he did it is a question of  
9 his time line, not mine. Meaning, it wasn't in the '98  
10 billings, but it shows up very strangely in some of the  
11 records we have that he starts billing for something in '98  
12 when it's already late '99. And I think that the comment  
13 is that it was an error or something. But we'll -- I don't  
14 have it all here. But --

15 Q. But you never called or wrote a letter to Al Gortz  
16 about that, the problems you had with the bill for the  
17 personal services, did you?

18 A. No. That's after we were ceased doing business  
19 with you guys, I spotted some inconsistencies with the  
20 billing statements, the --

21 Q. So the first time you saw the bill -- are you  
22 saying that the first time you saw the bill that Al Gortz  
23 did personal work on was after the lawsuit was filed?

24 A. Yeah.

25 Q. Who received the bill for the personal work that

1 Al Gortz did at the time the bill was sent?

2 A. I think he gave it to Brian Utley or my father  
3 perhaps. I don't know.

4 Q. Because of the great conspiracy Utley never showed  
5 you the bill and you didn't find out until after the  
6 lawsuit was filed?

7 A. No. Like I said, they had come to me and asked me  
8 to pay a personal bill for Al Gortz's services, and I paid  
9 it late, you know, at whatever time period. But it wasn't  
10 reflected in the bill --

11 Q. But you paid it --

12 A. Somebody did. I don't know who did.

13 Q. -- so it's not a part of this lawsuit, the work  
14 that Al Gortz did?

15 A. It's in this bill.

16 Q. Where?

17 A. In '98. 11 of '98 I believe, if my memory serves  
18 me.

19 Q. So the work that Al Gortz did on the bill says  
20 that he did it in 11 of '98?

21 A. I believe so.

22 Q. Wasn't that around the time that you were looking  
23 into Proskauer to do work for Iviewit?

24 A. If you go by your time line.

25 Q. Okay. So you're saying --

1 A. Remember, I have problems with these documents.

2 Q. You're saying that Mr. Gortz -- your testimony is  
3 that Mr. Gortz didn't do the work in '98, he did it in '99,  
4 and that he misrepresented the time on the bill?

5 A. Correct.

6 Q. Was there anything else that was wrong with the  
7 bill for personal work which you know of?

8 A. Personal work?

9 Q. Yes. We're talking about the estate planning  
10 work --

11 A. No.

12 Q. -- where Mr. Gortz allegedly misrepresented the  
13 date.

14 A. No. Other than that -- that it's missing some of,  
15 I would assume, are the debt -- I would have to review the  
16 entire bill, since I don't have the entire bill from --  
17 since the corporate record's been destroyed by  
18 Mr. Wheeler's referral Mr. Utley. And you will not  
19 provide --

20 Q. Who -- who destroyed the corporate records for  
21 Mr. Gortz's personal work?

22 A. I would assume Mr. Utley and Mr. Wheeler.

23 Q. Well, you just said that the documents were  
24 destroyed by Mr. Utley and Mr. Wheeler.

25 A. Correct.

1 Q. You know for a fact that they were or are you  
2 making an assumption, because that's a pretty strong  
3 accusation?

4 A. It could be strong or not.

5 I'm -- I feel pretty confident that the  
6 document -- corporate record has been, after reviewing your  
7 documents especially that were provided by court order -- I  
8 feel there's large gaps in the corporate record that have  
9 been destroyed both by this firm and Mr. Utley.

10 Q. Well, they weren't provided by court order. We  
11 allowed you to come in and look at them.

12 A. Well, however you want to view it.

13 Q. So the personal work that Mr. Gortz did for you,  
14 the personal estate planning work that he did in '99 and  
15 you claim he wrote '98 on the bill, that's been destroyed?

16 A. The original bills.

17 Q. I don't want to talk about Iviewit's work from  
18 Proskauer.

19 A. The original bills have been destroyed.

20 Q. Let me finish.

21 A. Oh, okay.

22 Q. I don't want to talk about Iviewit's work from  
23 Proskauer.

24 I want to talk right now, this question, about the  
25 work that Mr. Gortz did for you for estate planning.

1 A. Yes.

2 Q. Where are those files?

3 A. Destroyed.

4 Q. How do you know that? How do you know they're not  
5 on our shelves?

6 A. Well, I thought they were supposed to be a part of  
7 what was here. So if all is here was everything that you  
8 have worked on on my behalf --

9 Q. No, this. The documents that are --

10 A. Oh, okay. So I just said, I'm going off the bill  
11 here to make my estimate on when Mr. Gortz did his work;  
12 although, I don't believe that that's the original bill.

13 Q. Have you ever heard anyone tell you that Proskauer  
14 destroyed any records?

15 A. Yes.

16 Q. Who?

17 A. Several people.

18 Q. Identify them.

19 A. Anthony Frenden. Anthony Frenden. And not only  
20 records --

21 Q. How do you spell Frenden?

22 A. F-R-E-N -- F-R-E-N-D-E-N.

23 Q. Don't get ahead of yourself.

24 And who is this guy?

25 A. He was working for Iviewit at the time at --

1 Q. He was an employee?

2 A. Yes.

3 Q. Where does he live?

4 A. I believe somewhere in California.

5 Q. How old is Mr. Frenden, approximately?

6 A. I don't know. I don't know, 30 maybe.

7 Q. 30-ish?

8 A. Yeah.

9 Q. What did he tell you?

10 A. He told me that they were locking us out of the  
11 computer files, that there was some shredding going on of  
12 documents.

13 Q. By Proskauer?

14 A. By Utley. By Utley.

15 Q. I want to talk about who told you Proskauer  
16 destroyed files. We'll get to Utley.

17 A. I said by looking at the documents I thought were  
18 supposed to be provided here in completeness and the  
19 billing statements you have submitted, I would assume that  
20 Proskauer has made destruction of documents that alter the  
21 state -- you might be right, they might be sitting on your  
22 shelves.

23 Q. So it's an assumption?

24 A. Yes, correct.

25 Q. You do not have any factual basis that Proskauer

1 in fact destroyed bills; it's an assumption, correct?

2 A. Correct, yes.

3 Q. Now, Frenden is the person who told you that Utley  
4 was destroying records?

5 A. Right. And also pointed out that Brian had stole  
6 several of our highly proprietary computers with documents,  
7 et cetera, inside them. And it was brought in to do an  
8 analysis after receiving such computers to determine the  
9 files that have been destroyed --

10 Q. You are going off on this wicked tangent again.

11 A. Okay.

12 Q. Just focus, Eliot. Stick with the question.

13 A. Okay.

14 Q. Mr. Frenden told you that Utley was destroying --

15 A. Are you attacking me?

16 Q. Not at all. You are frustrating me.

17 A. Okay.

18 Q. If I sound frustrated, forgive me.

19 A. Okay.

20 Q. But to take a deposition, you have to listen to  
21 the questions and answer the question.

22 A. Okay. I'm trying.

23 Q. I'm not attacking you, you know that.

24 A. I'll try.

25 Q. Okay. Please.

1           Now, Frenden told you that Utley was destroying  
2 documents. Did Proskauer have anything to do with that?

3           A. I am not sure.

4           Q. You don't know?

5           A. I don't know.

6           Q. Who else told you that Utley was destroying  
7 documents?

8           A. Maurice Buchsbaum.

9           Q. What did he tell you?

10          A. He told me right as Utley was being terminated.

11                 See, I hadn't come back to get the corporate  
12 records because Utley had come out and threatened my life,  
13 so I had my wife and children move --

14          Q. What did he tell you when he threatened your life?

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

18          Q. Who is "we"?

19          A. Meaning him, Chris Wheeler and Mike --

20          Q. Are you paraphrasing or are you quoting him?

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

23          Q. He said: We will kill you --

24          A. Yes.

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

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

5 Q. When was this?

6 A. We told everybody this.

7 Q. When was this?

8 A. This is right around January of 2001.

9 Q. This is the: We will kill you statement by --

10 A. Correct. Utley.

11 Q. -- Mr. Utley?

12 A. Correct.

13 Q. And Mr. Utley stayed on with the company for four  
14 more months after that?

15 A. Well, I don't know. Roughly. Three or four, as  
16 it was unwinding.

17 Q. Did you call the police?

18 Did you call the police --

19 A. I did.

20 Q. -- and tell them your life was threatened?

21 A. I did.

22 Q. Who did you call?

23 A. The Rancho Palos Verdes Police -- Rancho Palos  
24 Verdes Police Department.

25 Q. That's a small town on the peninsula, isn't it?

1 A. It is.

2 Q. That's very nice. You lived there?

3 A. I did.

4 Q. That's where Mela -- 10 Mela?

5 A. Correct.

6 Q. Okay. I'm refreshing my recollection.

7 A. Good job.

8 Q. Okay. So when I call the Rancho Palos Verdes  
9 Police Department later today, after this deposition is  
10 over, why don't you tell me what date you called them, so I  
11 can --

12 A. I also called the FBI.

13 Q. Okay. Who did you speak to at the FBI?

14 A. I don't remember. I have --

15 Q. What office did you call?

16 A. Long Beach.

17 Q. Long Beach.

18 A. I also notified Caroline Prochotska Rogers,  
19 Michele Mulrooney, David Culter, and a bunch of the other  
20 witnesses we're going to try to bring in to corroborate --

21 Q. Law enforcement agencies. I wanted law  
22 enforcement agencies that I can get documentary proof from  
23 them that you called.

24 A. Okay, great. The FBI in Long Beach and the Rancho  
25 Palos Verdes --

1 Q. And what did they do about it, the FBI in Long  
2 Beach --

3 A. Caroline got involved, and she started a series of  
4 protection measures to protect my life.

5 Q. Did she go to court and get a restraining order  
6 against Utley?

7 A. No.

8 Q. What did Caroline do? What do you mean protection  
9 measures?

10 A. She took a series of things to find out --

11 Q. This is the attorney in Chicago?

12 A. Yes.

13 Q. Do you have her phone number?

14 A. I don't recall.

15 Q. Do you have it in a book?

16 A. Yeah.

17 Q. Can you give it to your lawyer?

18 THE WITNESS: Do you have that?

19 Q. Would you agree, after the deposition, to give it  
20 to your lawyer so I can call her?

21 A. Sure. You can look it up. Sure.

22 Q. Thanks. Well, I did. I did on a break. I looked  
23 in Martindale.com, and I couldn't find it.

24 A. Oh, really?

25 Q. So I'll check something else.

1 A. Okay.

2 Q. She doesn't have a listing in Martindale.

3 A. Is Martindale the only source --

4 Q. No. No, but I'm not done, Mr. Bernstein. I'll  
5 find her phone number.

6 A. Okay. Well, I didn't think you were still --

7 Q. The Rancho Palos Verdes Police Department, when  
8 did you call them, the day that Mr. Utley threatened you?

9 A. I don't recall.

10 Q. Was it sometime in January 2001?

11 A. I don't recall.

12 Q. Well, you just said --

13 A. It was after. It was after.

14 Q. You said the threat was January 2001.

15 A. Yes. I didn't call them right away, I called  
16 friends of mine first.

17 Q. How long -- how long after did you call the  
18 police?

19 A. A few months.

20 Q. Why did you wait so long?

21 A. Because I wanted my friends to advise me on what  
22 measures to take against such actions of a firm like  
23 yourself, through it's referral Brian Utley, making threats  
24 against someone's life. And it's a very scary situation.

25 So you take some time to prepare yourself so that,

1 in the event that anything happens to you or your children,  
2 you will have adequate evidence against those perpetrating  
3 such crimes.

4 So you need to get a lawyer on your side, you need  
5 to take mostly secretive measures to transfer the data and  
6 documents to such people, without knowledge that it's  
7 happening to such people that want to kill you or destroy  
8 your companies brick by brick, which I think is what I  
9 said.

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

12 A. In person.

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

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

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

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

21 Q. Who was he conspiring with to kill you?

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

24 Q. So you felt at the time that if Mr. Utley was  
25 going to kill you, he was going to do it in conspiracy with

1 Foley & Lardner and Proskauer Rose?

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

4 Q. Foley & Lardner is a large New York law firm?

5 A. I believe Wisconsin. But you know from  
6 Martindale, so I'm not sure. I don't want to -- if you can  
7 check in that source.

8 Q. You are being condescending and sarcastic.

9 A. No. I don't know. I mean, you might be right  
10 from your research.

11 Q. I think -- okay. Be careful.

12 A. Okay.

13 Q. I think you and I know that you don't want to go  
14 there.

15 A. Okay.

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

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

19 Q. Meltzer Lippe --

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

22 MR. SELZ: I have to take a rest room break. It's  
23 just going to need -- I just need a minute.

24 (Whereupon, a recess was taken from 12:27  
25 to 12:36 p.m.)

1 BY MR. PRUSASKI:

2 Q. When we went on break, we were talking generally  
3 about in January 2001 Brian Utley had threatened your life.

4 We were also talking about people who told you  
5 that Brian Utley was destroying documents and we were  
6 talking about Maurice Buchsbaum. I believe you indicated  
7 he was formerly with Crossbow.

8 A. Correct, and Iviewit.

9 Q. And an Iviewit board member.

10 A. And unemployed.

11 Q. Okay. What did Mr. Buchsbaum tell you about  
12 Mr. Utley destroying documents?

13 A. He told me that we should have a board resolution,  
14 which I believe we did; that Utley had, through the  
15 supervision of him and Raymond Hersh, while closing down  
16 the Boca office, should send the documents in its entirety  
17 to the Los Angeles office, at which point Mr. Hersh became  
18 very agitated with the board's decision and said that they  
19 needed to keep the records here for some reason, even  
20 though the corporate decision was to close down Mr. Utley's  
21 organization and move the company to California with all  
22 the records and computers.

23 Q. Did Buchsbaum ever see Utley destroying documents?

24 A. I'm not sure. You have to ask him.

25 Q. Did he tell you that he saw him destroying

1 documents?

2 A. He told me that he was aware, I believe, that  
3 documents were being destroyed of the corporate record and  
4 that I should move them immediately.

5 Q. Did you verify that the documents were being  
6 destroyed?

7 A. I had conversations that there were several people  
8 involved, and that pertained to the corporate record on  
9 computer files being locked out, as well as shredded.

10 Q. Were there any other occasions where Buchsbaum  
11 told you that Utley was destroying documents or maybe was  
12 destroying documents?

13 A. Yes. Absolutely he was --

14 Q. What else happened?

15 A. -- and I can't recall the date.

16 Foley & Lardner's filings of the provisional  
17 applications to full formal filings was 48 hours away, so  
18 we'll be able to date it that way.

19 Mr. Utley came to me and asked me to sign blank  
20 pages of paper for patents that he had prepared with us for  
21 Foley & Lardner and told me I had to execute them  
22 immediately because we only had until midnight to file such  
23 documents, and they were too lengthy for me to review.

24 I demanded a review and said I wouldn't sign any  
25 document without reviewing it first. He refused to turn

1 over the patents to us. So Jim Armstrong, one of the  
2 executives of the company at the time, Jennifer Kluge, a  
3 secretary who copied them -- and I grabbed the files from  
4 Mr. Utley physically and copied them.

5 And quite to our surprise, we had found that Foley  
6 & Lardner is -- and this is part of why Mr. Utley maintains  
7 a threat against us -- that they had changed the patent  
8 titles, written in wrong math, had missed the inventions  
9 that we had given them, that there were all kinds of  
10 problems in the patents they were about to file that we had  
11 never seen, including missing the inventors and Mr. Utley  
12 turning up as the inventor on inventions when he wasn't  
13 even there. Thereby, I think, constituting all kinds of  
14 frauds and improprieties against the United States Patent  
15 Office, filing willful and wrongful patents on behalf of a  
16 company.

17 Q. Did you report that to the U.S. Patent Office?

18 A. Yes.

19 Q. When?

20 A. Stephen Lamont has -- we talked to Harry Motes  
21 (ph) in, I believe, one or two conversations.

22 I believe I called Mr. Motes initially upon  
23 discovering and told him, you know, that perhaps my life  
24 was in danger, and I would appreciate it if he held off  
25 until I could get some people to find out if these

1 allegations were all that they appeared to be.

2 And then, after Mr. Lamont had reviewed a lot of  
3 the documentation surrounding the allegations, he felt  
4 comfortable writing a draft letter to Mr. Motes, which he  
5 did. And we called Mr. Motes to discuss what the  
6 allegations would imply and what our course of action  
7 should be.

8 Q. Mr. Motes is with the United States Patent Office?

9 A. He is the head of the investigatory body for them,  
10 I believe.

11 Q. Do you remember when you contacted him about the  
12 alleged fraud?

13 A. No, I don't.

14 Q. Was it after the Proskauer lawsuit?

15 A. Yes.

16 Q. So it's between the Proskauer lawsuit filing and  
17 now?

18 A. Yes.

19 Q. Do you know what happened with the investigation;  
20 what the disposition was?

21 A. Well, he -- no. We called him and counseled him,  
22 and he's advised us to write a letter, which we did. And  
23 then, we brought in Caroline to further the work.

24 She has felt that she wanted a full legal audit of  
25 the patents of which she's undertaken to get from Greenberg

1 Traurig.

2 Q. Traurig.

3 A. Traurig. And you know, that's -- we now stand --  
4 if there were errors caused by Proskauer, Foley or Meltzer  
5 due to negligence that we perhaps under, you know,  
6 Section 8 of the Constitution, will have to appeal to  
7 authorities like Mr. Motes.

8 But that, if there are ways to correct or fix the  
9 mistakes and the errors and omissions and, you know, all of  
10 the things we've uncovered through our investigation that  
11 point to conspiracy, such as missing patents, patents in  
12 our attorneys' own names, all kinds of misrepresentations,  
13 et cetera, that -- you know, that we all --

14 Q. What attorneys' names are on the patents?

15 A. What law firm?

16 Q. What attorneys. You said you were complaining to  
17 the patent office --

18 A. Ray Joao has written 70 patents into his own name.

19 Raymond Joao, who was a misrepresented Proskauer  
20 underling of Ken Rubenstein's at the time that Ken was  
21 misrepresented as a Proskauer partner. When, in fact, they  
22 both worked at one -- Meltzer Lippe Goldstein Schnitzel,  
23 out of -- all of New York.

24 Q. Ray Joao's name -- wrote his name on 70 patents  
25 belonging to you?

1           A.    We believe -- after reviewing several of them, we  
2 haven't seen them all, although he claims on his own  
3 biography right now that he has 70 patents, which prior  
4 to --

5           Q.    Where is that biography, on his law firm's Web  
6 site?

7           A.    Yes.

8           Q.    So if I went and found it, it would say that?

9           A.    Yes.  And several of them have to deal with things  
10 like remote control videoing and --

11          Q.    Are these patents that Crossbow has an interest  
12 in?

13          A.    Nobody in our company has even -- has an interest  
14 in these because we didn't know Ray Joao was filing all of  
15 these patents in his own name.

16                And as we found out Ray Joao's patents were  
17 missing pertinent information, we suddenly started seeing a  
18 series of public correspondences where Mr. Joao claims he  
19 has the technology from remote control wireless video  
20 applications for security, which is a major thing we  
21 disclosed to Ken Rubenstein in your group --

22          Q.    Has Greenberg Traurig reviewed these patent  
23 applications that Joao filed?

24          A.    I'm not sure, I didn't hire them.  I don't know  
25 what's part or part not of their review.

1 Q. Has any independent law firm ever opined that  
2 these patents were done incorrectly?

3 A. Which patents?

4 Q. The patents that Joao filed.

5 A. Yes. They have actually commented, several  
6 people, on the fact that because they appear to look like  
7 ideas similar to ours that, in fact, if it pans out under  
8 full investigation by federal authorities that Mr. Joao has  
9 transacted such malfeasance that, you know, perhaps they'd  
10 be -- we'd be able to walk into his shoes or whatever, as  
11 well as --

12 Q. Hold on. Yeah. I'm just trying to focus on this.

13 A. Okay.

14 Q. What law firms have --

15 A. Blakely Sokoloff --

16 Q. Let me finish the question. The question and the  
17 answer have to correspond in the record.

18 A. Okay.

19 Q. What law firms have come under -- have made the  
20 opinion that Mr. Joao improperly or fraudulently, as you  
21 say, filed these patents in his own name?

22 A. May have fraudulently filed these patents in his  
23 own name is Foley & Lardner originally --

24 Q. What lawyers at Foley & Lardner?

25 A. Doug Beauman (ph), Steve Becker.

1 Q. Okay. Who else?

2 What cities are they in, Beauman and Becker?

3 A. Milwaukee.

4 Q. Milwaukee, Wisconsin. Okay.

5 A. Blakely Sokoloff has reviewed the allegations  
6 against Mr. Joao's filing patents in his own name.

7 Q. Is Mr. Joao involved in the conspiracy that you  
8 told me about a little while ago where --

9 A. Absolutely.

10 Q. No, let me finish.

11 A. Yeah.

12 Q. Was Mr. -- I appreciate that. Let me finish.

13 A. Okay.

14 Q. Was Mr. Joao involved in the conspiracy that you  
15 told me about a little while ago where Brian Utley  
16 threatened to kill you?

17 A. No. Not that I am aware of.

18 Q. That was Proskauer, Brian Utley, Meltzer Lippe?

19 A. No. Proskauer, Brian Utley and Foley & Lardner,  
20 perhaps.

21 He didn't mention them at the time; but they were  
22 all being uncovered for these malfeasances like, you know,  
23 filing wrong patents, filing wrong inventors.

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

1 A. You bet, every single day.

2 I've hidden my children off the streets. I'm  
3 scared to death to leave my house. My wife is scared to  
4 death to leave the house.

5 Q. Do you think that Proskauer is going to --

6 A. Well, they've already completed --

7 Q. Let me finish.

8 A. Okay.

9 Q. You'll get your turn, and I'm not going to stop  
10 you.

11 A. That's fine.

12 Q. Do you think that Proskauer Rose wants you dead?

13 A. Yes.

14 Q. Why?

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

17 But more the motive that Proskauer had to be  
18 aligned with Utley and Foley was because, when we grabbed  
19 those patents from Mr. Utley and they were the wrong things  
20 and everything was screwed up and he was on as inventors,  
21 and later finding patents in his name -- and his character  
22 being questioned because of the bogus resume submitted by  
23 Chris Wheeler to the board. With all of these  
24 inconsistencies coming of age, meaning -- somebody started  
25 to tell me, hey, you better check. I know a guy named

1 Brian Utley, he ripped off his last employer of patents and  
2 he had to close down a \$3 million operation.

3 So, you know, you're hearing all of these things.  
4 You don't want to jump out and say it all because you want  
5 to protect yourself, as I was saying earlier. So yes, I  
6 think that Proskauer Rose has a big interest to seeing me  
7 destroyed. And so, therefore, they filed a lawsuit when  
8 they know the company has nothing --

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

11 A. I fear no evil.

12 Q. That's nice.

13 A. See, you laugh about that.

14 Q. I'm not laughing.

15 A. Yes, you laughed.

16 Q. That doesn't tell me why --

17 A. I fear no evil.

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

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

21 Q. Is Proskauer evil?

22 A. Yes. Because of these actions, yes.

23 Q. Do I work for an evil company?

24 A. Yes, if you are all knowledgeable.

25 If everybody is unknowledgeable about the actions

1 of a few individuals, I would hate to see an Arthur  
2 Andersen occur.

3 Q. Who are the few individuals?

4 A. Well, Chris Wheeler is the main protagonist. I  
5 guess Ken Rubenstein, after seeing his deposition, would be  
6 another main protagonist.

7 Q. Al Gortz, is he involved?

8 A. I don't think so. I don't know.

9 You know, from that point, I don't know any more  
10 of the partners who would be involved.

11 Q. Has anything happened in your life since this  
12 lawsuit was filed that you felt was suspicious that you  
13 felt --

14 A. Yeah, they filed.

15 Q. -- hold on -- that you felt that any of the  
16 litigants in this lawsuit was following you or harassing  
17 you or doing anything to you and your family that caused  
18 you to be in fear for your safety?

19 A. I think you'd have to talk to my attorneys about  
20 that.

21 I have felt, like I told you, very afraid of these  
22 things. And yes, they have filed actions against the  
23 company to hurt the company, and voluntary bankruptcies  
24 that they basically walked away from, not getting their  
25 allegations of all of this money we owed them.

1           Which, by the way, the bankruptcy was hidden from  
2 the board and the shareholders for quite some time, while  
3 counsel was hired for us by, I believe, either you or  
4 Crossbow or the Ross Miller guy. In which, when we called  
5 our bankruptcy counsel, he said: Boy, it's good to hear  
6 from an Iviewit person. We've been doing all of this work  
7 for Crossbow and blah, blah, blah to prepare a bankruptcy  
8 for you. We aren't even sure what the hell is going on,  
9 but it's good that somebody from Iviewit called us.

10       Q.    Have you had to call the police or law enforcement  
11 since this Proskauer lawsuit was filed in May of 2001?

12       A.    No.

13       Q.    When you called the police in Rancho --

14       A.    Palos Verdes.

15       Q.    -- thank you -- did they send a patrol car out to  
16 your house?

17       A.    They did.

18       Q.    An officer met with you?

19       A.    Correct.

20       Q.    Did he do a report?

21       A.    He did.

22       Q.    Did anything come of that?

23       A.    No.

24       Q.    Why? He didn't believe you?

25       A.    No. Not at all. He believed every word of it. I

1 even showed him evidence of it.

2 Q. What evidence?

3 A. Evidence that's being presented in this case.

4 Q. No, no. You called the police because Brian Utley  
5 threatened to kill you?

6 A. Yes.

7 Q. In Ranchos Palos Verdes --

8 A. Yes. He asked why --

9 Q. A policeman came to your house --

10 A. He asked me why.

11 Q. -- and you showed him evidence of the death  
12 threat?

13 A. No. I showed him evidence of why Mr. Utley had  
14 threatened me. He believed based on the evidence that I  
15 was in deep shit.

16 Q. Okay. But there was no evidence like a tape or a  
17 witness who said Brian Utley threatened to kill this man?

18 A. Don't worry. I believe those are there. Those  
19 witnesses will be there.

20 Q. There were witnesses present when Utley said: I am  
21 going to kill you?

22 A. I am not sure at this time.

23 Q. Well, you said there are witnesses who are going  
24 to be present.

25 A. There are going to be witnesses present to the

1 fact that Mr. Utley made threats on my life.

2 Q. Who are they?

3 A. People from Crossbow ventures, David Culter.

4 Q. Were they there when Utley threatened you?

5 A. No.

6 Q. Well, then, how can they be witnesses when he  
7 threatened you --

8 A. Well, but there might be people from a restaurant  
9 that happened to be sitting at tables across -- I don't  
10 know. We'll have to do some discovery.

11 Q. This happened at a restaurant?

12 A. It did.

13 Q. What restaurant?

14 A. I don't recall the name. China Palace, or  
15 something on -- across the street from the Warner Brothers'  
16 office we had.

17 Q. That's where Utley threatened to kill you?

18 A. Correct.

19 Q. It was just the two of you at the table?

20 A. Correct.

21 Q. Have you looked for these people at the restaurant  
22 who might have seen this?

23 A. I don't have the resource right now because, you  
24 know, they pretty much destroyed the company.

25 Q. China Palace?

1 A. Yes.

2 Q. When you lived in California did you -- did you  
3 ever live in -- you lived in LA County for a while?

4 A. No.

5 Q. Rancho Palos Verdes is not LA County?

6 A. Yes.

7 Q. All right. Did you go looking for this restaurant  
8 to verify the name of it after the death threat was made?

9 A. Yeah, I believe so.

10 Q. It was a Chinese restaurant?

11 A. Correct. It was the last time me and Utley saw  
12 each other.

13 It was the last time I saw my parents until I  
14 recently moved back. It's the last time I talked to most  
15 of my friends. I went into basic seclusion and hiding my  
16 family.

17 I moved my wife and children out of town  
18 overnight, put them into a hotel with no house. We left my  
19 condominium here abandoned. And we did that because we  
20 were scared for our children, and we are still scared today  
21 for our children. And based on the evidence --

22 Q. Why?

23 A. -- I think people like Mr. Selz are scared and  
24 Miss Prochotska Rogers are scared. And they have valid  
25 reason to be because this is uncovering a can of worms that

1 is huge; meaning, you know, there are all kinds of problems  
2 here.

3 So obviously, you worry for your life, especially  
4 when somebody comes and makes threats on it; and then,  
5 carries through on half of the threats. I mean, they have  
6 destroyed the company brick by brick --

7 Q. Proskauer?

8 A. -- helping with their friends.

9 Q. "They." "They" who?

10 A. The conspiracy group of Mr. Wheeler's friends.

11 Q. Mr. Wheeler, Mr. Utley?

12 A. Mr. Dick, Maurice Buchsbaum, perhaps; members of  
13 Crossbow, perhaps.

14 Q. Foley & Lardner?

15 A. Foley & Lardner through Bill Dick.

16 Q. These are the people who conspired to destroy  
17 you --

18 A. Destroy the company.

19 Q. -- and kill you?

20 A. Well, I -- Mr. Utley only made claim to  
21 Mr. Wheeler and himself.

22 Q. During the death threat?

23 A. Yes.

24 Q. Utley said Wheeler and I will kill you?

25 A. Yeah, basically. We will kill you.

1 Q. Oh. I was under the assumption that you said it  
2 was just Utley.

3 A. No.

4 Q. So he included others in the death threat?

5 A. Yeah, I believe.

6 Can we read it back from the record?

7 MR. PRUSASKI: No, it's a hassle.

8 THE WITNESS: Is it a hassle to read it  
9 back?

10 MR. SELZ: You can go back and look for it.

11 THE WITNESS: Yeah. Can we?

12 MR. PRUSASKI: At a break, later, we can  
13 do that, if you want.

14 THE WITNESS: Okay.

15 MR. PRUSASKI: It takes a long time when  
16 the court reporter is taking it down. When  
17 it's typed out, it's easier. Because right now  
18 it's in code form -- you know about that.

19 THE WITNESS: Right.

20 A. Mr. Utley and Mr. Wheeler are best friends; a  
21 relationship that wasn't first actually represented, I  
22 think, poses a huge conflict of interest.

23 But nonetheless, what was represented to us, we  
24 later found to be, you know, that they have seen much more  
25 than just casual acquaintances, but best friends.

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

2 A. I asked him that the other day.

3 Q. What did he say?

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

7 Q. Do you think he is?

8 A. Yeah.

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

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

14 I would be a little concerned. You'd have to ask  
15 Mr. Selz his opinion.

16 Q. That's fair. You think your lawyer in Chicago  
17 fears for her life because of this?

18 MR. SELZ: Objection; calls for speculation.

19 A. Yeah. Okay.

20 Q. Do you think your lawyer fears for her life in  
21 Chicago because of this?

22 A. Yes. No. Let me qualify that.

23 Q. All right.

24 A. Yes, she feels that action could be taken against  
25 her, and that's why she remains secretive for a long time.

1           But I asked her that the other day, should she  
2 remain and go away and not be involved in my life, as I  
3 came to confront you folks; and that I didn't want to get  
4 anybody ancillary to get hurt, including Mr. Selz and Miss  
5 Rogers.

6           And she said: I am not worried; I would do it for  
7 the truth. I would do it for all of the right reasons and  
8 nobody is going to scare me from getting up there and, you  
9 know, presenting our case. So I think she's scared, but  
10 she's going to do it.

11          Q. Has anyone else told you that they are in fear for  
12 their life because of the Proskauer, Foley, Brian Utley  
13 conspiracy group?

14          A. No.

15          Q. Your wife is afraid for her life?

16          A. Yes.

17          Q. And for the lives of your children?

18          A. Correct.

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

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

24                 Somebody made a threat on me in their home ground,  
25 so I left their home ground to a ground where I have many

1 legal friends. People to help me protect myself.

2 Q. Here?

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

4 So -- and that's why I'm scared here. And I was  
5 scared for collateral damage to people like my parents, and  
6 whatnot, so I broke ties with them, hardly talked to them  
7 over the last year and a half, didn't let them see their  
8 grandchildren, never flew back here, okay.

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

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

13 A. Yes, of course.

14 Q. Okay.

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

18 Q. Proskauer?

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

23 Q. This conspiracy that we're talking about, that you  
24 are in fear of and you're fighting --

25 A. Yes.

1 Q. -- this forms the basis of your malpractice action  
2 against Proskauer?

3 A. Part of it.

4 MR. PRUSASKI: Are you doing okay  
5 timewise?

6 THE WITNESS: What time is it?

7 MR. SELZ: It's 1:00.

8 THE WITNESS: I told you, I will go --

9 MR. PRUSASKI: Let's go off the record.

10 (Whereupon, a discussion was held off the  
11 record.)

12 BY MR. PRUSASKI:

13 Q. When you called the FBI, when Brian Utley  
14 threatened your life, did they make a report?

15 A. I don't know.

16 Q. Did you get anything in the mail afterwards or the  
17 case number or anything?

18 A. No. No.

19 Q. Do you remember the name of the agent?

20 A. I don't.

21 Q. Did they send somebody to your house, or did you  
22 go there?

23 A. No, they didn't.

24 Q. It was all over the telephone?

25 A. Yes. And then, I contacted Caroline who knew FBI

1 agents in Chicago. She said she would handle future  
2 correspondence, if necessary, with the FBI, and that she  
3 had somebody in Chicago that could help us.

4 Q. Has the U.S. Attorney's office, to your knowledge,  
5 pursued any sort of action --

6 A. Caroline would be handling all of those -- I don't  
7 know.

8 Q. Wait. I've got to finish the question, I'm not --  
9 I know you're eager to answer the question, and I  
10 appreciate that.

11 A. Okay.

12 Q. But because she's taking it down, it's not a  
13 normal conversation between two people where a little  
14 interruption is okay.

15 A. I know. She asked me. Okay. Sorry.

16 Q. That's all right.

17 A. Sorry, Miss Court Reporter.

18 MR. SELZ: And the best thing to do is to let him  
19 totally finish the question and he'll let you  
20 totally finish the answer and, that way, the  
21 record is clear. And not only that but, also,  
22 sometimes he might ask you something in a way  
23 that you don't anticipate, so interrupting the  
24 question won't necessarily get the answer --

25 THE WITNESS: It's just something that the

1 average human being doesn't communicate like  
2 that for their whole life.

3 MR. PRUSASKI: Right.

4 THE WITNESS: So we are not as in  
5 awareness of the rules of this form of  
6 proceeding where we can't cross-box, so it's a  
7 little difficult since we're used to regular  
8 communication.

9 MR. PRUSASKI: Right. You've got to --

10 THE WITNESS: So you can keep asking me.  
11 And I'll ask that the court reporter, if she  
12 has any problems, to ask me. I'm sorry for --

13 MR. PRUSASKI: Okay. But you are okay  
14 with not taking a lunch break.

15 THE WITNESS: I'm okay. Like I said --

16 MR. PRUSASKI: You don't need to eat?

17 THE WITNESS: I don't need anything. I  
18 need to protect my children. So whatever time  
19 that takes, I am here.

20 BY MR. PRUSASKI:

21 Q. What steps have you taken to protect your  
22 children?

23 A. I moved them out of town overnight. They  
24 disappeared from my family, haven't been back here until  
25 recently to go through these trials against you.

1           And we have been in hiding on a ranch and running  
2 around towns and trying to fend for our lives as, you know,  
3 all of these actions were unfolding which were so  
4 complicated that nobody would have been able to deal with.

5           At the same time, we were fearing for our lives  
6 and trying to keep our kids going to school and trying to  
7 live normal lives, when we felt pressures and noticed that  
8 the documents were destroyed and they noticed all the --  
9 see, what happened was, after Utley's threat, we looked at  
10 the records. And all of a sudden, Blakely Sokoloff found  
11 patents going out with his own name -- in his own name for  
12 inventions he couldn't have invented because he wasn't  
13 there.

14           And we found all kinds of things that were scary;  
15 loans transacted without proper documentation. All kinds  
16 of things that will be presented under the conspiracy case  
17 to whichever court this lands up in.

18           And the bottom line is, you know, that is --  
19 further and further, as evidence was uncovered, my wife  
20 said wow, this isn't just a threat, this is now real; they  
21 are filing actions against us overnight.

22           Mr. Wheeler is filing for a bill when he knows the  
23 company doesn't have any money. What does he want, my  
24 blood? What are you after?

25           You know, normally, a law firm that takes two and

1 a half percent stock interest in patents that are told to  
2 them to be worth billions would wait until the patents --  
3 to expire and, then, decide that they're going to sue. But  
4 what are you suing a company that you know has nothing,  
5 know has no assets?

6 You are just doing it as an action to harm me.  
7 And you know -- you know I don't have -- Mr. Wheeler knows  
8 darn well that the funding was pulled on the company --

9 Q. We don't know that the company doesn't have  
10 assets, though.

11 A. Yes, he does.

12 Q. What does he know?

13 A. He knows all the assets in the company. He was  
14 doing the books with Mr. Utley.

15 Q. And they're all gone.

16 A. And they're all gone, right. That's right.

17 They sent me a bunch of fragmented computers that  
18 we're all locked out of on passwords. And then they --  
19 Mr. Utley stole computers to Mr. Bruce Prolow, Chris  
20 Wheeler's friend out in New Jersey, a company they had  
21 referred him to that they had secretly been planning a  
22 merger and acquisition.

23 But when Brian brought this Distance Learning  
24 company in to the board, the board threw him out, said get  
25 out of this company. Brian, you are in deep trouble

1 because you transacted money with Mr. Wheeler on behalf of  
2 Iviewit without board approval; you are being terminated;  
3 we want you to let go of all of the employees and transfer  
4 the corporate records. That was the board's decision at  
5 that point.

6 And believe me, as that's all happening, and all  
7 of these things are being uncovered, you really do fear for  
8 your life and your wife, as she learns those things, which  
9 you try to protect her from learning, fears for her life  
10 and fears for her kids' life.

11 Q. Why do you come here and -- you have been here  
12 about three days now to review the files?

13 A. Yeah.

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

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

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

20 Q. Yes.

21 A. And I feel that that would be your debt to the  
22 firm, to make any action now that you are aware that there  
23 are many people involved who have reviewed the case,  
24 reviewed the evidences against you; that that would be  
25 foolish, right? I fear nothing walking in here today.

1           Yesterday, when I didn't have enough people having  
2 reviewed the evidence against the people who have  
3 perpetrated such frauds, I was real scared.

4           I only had a few people who believed what had  
5 occurred occurred, and they told me specific legal steps to  
6 take to protect myself, which we did. And now, they all  
7 feel comfortable, I believe, after the review of such  
8 documents and evidence to, A, file lawsuits on the  
9 company's behalf against the perpetrators and, B, whatever;  
10 but now it's public, there's no stopping it.

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

13       Q.    At Proskauer?

14       A.    Absolutely.

15       Q.    And think that --

16       A.    Chris Wheeler.

17       Q.    -- that they orchestrated an accidental death?

18       A.    Correct. Or something, or purposely done.

19       Q.    Over the last year or two, when you have been  
20 afraid of these law firms conspiring to kill you, how in  
21 your mind did you think it would happen if they tried to  
22 kill you?

23           MR. SELZ:  Objection to form, calls for  
24 speculation.

25       Q.    In your mind, how did you think it would happen?

1 A. I anticipate all options.

2 Should I be drinking the coffee? Just kidding.

3 That was a joke; I'm just trying to lighten it up here.

4 Believe me, I have been living in a lot more  
5 stress --

6 Q. It's hard for me to joke about this, for reasons  
7 I'm sure you understand.

8 A. It's hard for me to joke about this, as you can  
9 understand; but I was trying to make light because I saw  
10 stress in you.

11 Q. In me?

12 A. Yes. Sorry.

13 And maybe -- you know, I don't know this  
14 Mr. Prusaski, maybe you are not aware of all of this, I  
15 don't know. Okay. If you are not, this is probably the  
16 first time you are hearing this, and I hope that you fear  
17 for me, too.

18 You want to know some of the other reasons why  
19 Mr. Utley was into this position?

20 Q. Sure.

21 A. Okay. You know, at a meeting at Paramount  
22 Pictures, it was found that he was lying. He was incapable  
23 of producing math answers. He exposed that he did not have  
24 an engineering degree to a top engineer.

25 By the time I had left the lot of

1 Paramount/Viacom, I got a phone call from the top of Warner  
2 Brothers technology team asking me what had happened in  
3 this meeting with Mr. Pierce.

4 I said that Brian Utley was exposed as a fraud;  
5 that he didn't have an engineering degree as he had been  
6 selling to everybody. That he had fumbled on math  
7 equations that the gentleman asked him, it was the biggest  
8 joke -- meeting of my life.

9 He asked me to never have Brian Utley contact any  
10 other employee other than him at Warner Brothers; of which  
11 much shortly, further after, he was trying to smear the  
12 company at this point throughout a bunch of correspondence  
13 to the Warner Brother Group to try to hurt the company.  
14 Kind of like Ken Rubenstein retracting his statements that  
15 he had made prior to them about Iviewit's technology. At  
16 this point, he stops making representations for Iviewit;  
17 kind of weird.

18 Nonetheless, Mr. Utley was being exposed on the  
19 patent side through Foley & Lardner. There were some  
20 meetings with -- we had conversations with Mr. Wheeler  
21 involved in, that were exposing that there were frauds  
22 perhaps.

23 Remember, at this time I just grabbed some  
24 documents and found, wow, there's lots of math errors in  
25 these patents. Brian Utley is misnamed, invention titles

1 have changed from what we agreed on, blah, blah, blah.

2 We have meetings to correct such things and still,  
3 in the end, Foley filed the wrong patent, and all of these  
4 things were exposed. And there were a lot of reasons for  
5 people to want to protect their interests through the death  
6 of the guy who was going to tell the story, and that's me.

7 So you know what, I ran and hid while I could tell  
8 the story to some qualified lawyers, showed them the  
9 evidence that we were uncovering, built back the corporate  
10 record, get new witnesses based on what we were uncovering  
11 over this time period; meaning, now, the witness list  
12 should grow tremendously because we've had time to break  
13 into the files we were locked out of.

14 We have had time to re-assemble corporate record  
15 by going to board members and whatnot, and asking them to  
16 reconstruct their records, send us their records, et  
17 cetera. So as the evidence is coming to us -- still is  
18 coming to us, in fact, from your evidence, I am even  
19 more -- if I had seen this, I'd be more scared at the time.

20 Meaning, from what I see here, you have -- a lot  
21 of the documents weren't -- well, I was under the  
22 impression the judge ordered all documents to be here that  
23 I had requested in my request. If you are telling me  
24 that's wrong --

25 THE WITNESS: That is wrong, Steve?

1 MR. SELZ: Yes.

2 THE WITNESS: What did he order?

3 MR. SELZ: Well, basically we have access  
4 to the files from the corporate representation,  
5 Iviewit representation --

6 THE WITNESS: Were they all here in this  
7 conference room? Okay. Then, from what I've  
8 seen --

9 MR. PRUSASKI: From the corporate  
10 representation, not from the personal  
11 representation, because that's between you and  
12 this firm personally.

13 THE WITNESS: No, I don't care about  
14 personal. Right. That's right. I am not  
15 asking for those either.

16 So you are saying to me that all of the  
17 documents were here --

18 MR. PRUSASKI: From the entire file, as  
19 Proskauer keeps it, from the Iviewit  
20 representation.

21 THE WITNESS: Then I'm really scared -- I  
22 would have been really scared, because I would  
23 say destruction of documents has occurred and  
24 there were a lot of things missing.

25 BY MR. PRUSASKI:

1 Q. Why?

2 A. Information on the patents that Ray Joao --

3 Q. We haven't gone through the whole file.

4 A. I have, pretty much.

5 Q. I thought you told my paralegal two days ago that  
6 you were going to need several more days to look at the  
7 whole file.

8 A. No, I didn't say that. I said I would need  
9 several more days to photocopy the whole file.

10 Q. But you've looked at the whole file?

11 A. I've looked at the whole file, and I looked for  
12 certain pieces of information.

13 Q. What do you think happened to the patent documents  
14 that you can't find in the file?

15 A. I'm going to leave that so I can ask Mr. Wheeler  
16 those questions. I mean, if you're saying everything is  
17 here, I don't know what happened to them, they're missing.

18 Q. You are not going to ask Mr. Wheeler those  
19 questions; you asked. You took his deposition.

20 A. No. I don't think we finished, but...

21 Q. All right. Well, that's a bone of contention that  
22 you can take up with the judge.

23 A. Right. We will.

24 Q. We think you did.

25 A. Okay.

1 Q. But you are planning on asking Mr. Wheeler where  
2 certain missing documents were?

3 A. Yeah.

4 Q. Okay. What else was missing? The patent  
5 documents --

6 A. Tapes.

7 Q. What type of tapes?

8 A. Tapes of patent conversations.

9 Q. Speaking of tapes, what did you do with the tape  
10 of the Brian Utley deposition that you made from your house  
11 in California?

12 A. I don't recall.

13 Q. Did you make that tape?

14 A. Yes, I did.

15 Q. All right. Why did you tape the deposition?

16 A. Because I was very busy at the time. I was kind  
17 of on the phone; kind of, I believe, helping my wife  
18 through something, and so I kept the tape so I could play  
19 it back. And I figured the court reporter had a tape, so  
20 it was fine.

21 Q. Do you know differently now?

22 A. No. I didn't understand why it wasn't fine with  
23 you then.

24 Q. Well, it's against the law to tape somebody over  
25 the telephone across state lines without their permission.

1 A. I thought we had all agreed that it was being  
2 taped.

3 Q. No.

4 A. Okay. Was the court reporter taping it?

5 Q. Yes, but she's allowed to because she's an officer  
6 of the court as a court reporter.

7 A. Okay. Well, you know, I'm not a lawyer so I don't  
8 know that much law --

9 Q. Can you and I agree that you will safeguard that  
10 tape?

11 A. Yes.

12 Q. And not let anyone hear it?

13 A. Correct.

14 Q. And ultimately, if we decide that we would like  
15 you to destroy it, you would do that for us?

16 A. Correct.

17 Q. Thank you. All right. So info on patents --

18 A. I may have destroyed it, actually, so is that  
19 okay?

20 Q. You don't remember if you did or not?

21 A. I don't.

22 THE WITNESS: Did you tell me? I can't ask Steve  
23 any questions, but --

24 A. I don't recall. I might have.

25 MR. SELZ: And obviously, I couldn't

1       advise you as to what I had advised you with  
2       regard to the legality or illegality of taping  
3       those things, issues --

4       Q.     So information on patents was missing from the  
5       file, that you've noticed over the last week; tapes of  
6       patent conversations were missing from the Proskauer file.  
7       What else?

8       A.     Billing records, the full billing statements from,  
9       you know, all the partners with notes. I didn't see a lot  
10      of the billing statements.

11      Q.     What else?

12      A.     I am not sure. I haven't finished reviewing all  
13      of my images of the documents.

14      Q.     I thought you said you went through the whole  
15      file.

16      A.     I did. I glanced at it; but I will have more time  
17      to go through it. I photographed a lot of it.

18             And as soon as I'm done reviewing my photographs  
19      and copies of such records, I will make my full analysis,  
20      after my attorneys have reviewed such, of what's missing  
21      and what's not.

22      Q.     So as you sit here right now, you can tell me that  
23      there are three categories of items missing; and those are  
24      the information on certain patents, the tapes of patent  
25      conversations and the full billing statements with notes --

1 A. And the information that's given --

2 Q. -- and that's subject to being enlarged by you, as  
3 you continue to --

4 A. Unless you've said there was stuff missing from  
5 the conference room, here; like you said earlier that you  
6 had stuff on your shelves.

7 Nobody told me to go look at shelves. I was here  
8 to look at the documents pertaining to my company --

9 Q. We've provided the entire file to you for the  
10 representation of the Iviewit companies.

11 A. So there is nothing on the shelves out there --

12 Q. Not that I'm aware of.

13 A. -- so I can go back on the record and make my  
14 statements that things are absolutely missing.

15 Q. Yeah.

16 A. Oh, yeah. Okay. Yes.

17 Q. I am just asking you what -- I am not expecting  
18 you to know what's on our shelves. I'm expecting you --

19 A. Is there more on the shelves?

20 Q. I don't know. I'm expecting you to tell me if you  
21 noticed anything missing from the table.

22 A. Yes.

23 Q. All right. And what types of patent conversation  
24 tapes were there?

25 A. Well, we came to your offices with -- let's see.

1 Who was here?

2 What happened was, Chris Wheeler took us to Real  
3 3-D telling us we had video patents. I did not believe him  
4 on the way up there.

5 Ken Rubenstein and Ray Joao were supposed to be --  
6 since this was the defining meeting of our lives with  
7 Intel, Solkin Graphics (ph) and Lockheed -- one of my  
8 patent counsels was supposed to be representing us, either  
9 Ken or Ray, and neither of them are unavailable.

10 They were both unreachable by any form of  
11 communication, I think is what they were -- told to us. We  
12 tried, for the entire trip up to Orlando, to get a pinion  
13 because Chris wanted me to expose --

14 Q. No. But the tapes, though.

15 A. This is the tape. Hold on. I'm getting to the  
16 tapes.

17 Q. You are getting to the tapes?

18 A. Yeah.

19 Q. Are you sure?

20 A. So there was -- it turns out that, as we go into  
21 the meeting, Chris still can't ascertain from his counsel  
22 if there are patents on a video that he wants me to  
23 disclose.

24 Although he says under NDA I am protected, I would  
25 not disclose to the Real 3-D people the video process

1 because Chris could not with certainty determine -- like he  
2 had told everybody that was on that meeting that -- from  
3 our side, that there were such patents.

4 I wanted to see such patents because we had  
5 already found some malfeasances with Ray Joao's work  
6 through Wayne Huizenga's attorney, Steven Filopak (ph). So  
7 I needed to know --

8 Q. Stop there.

9 A. Yes.

10 Q. Steven Filopak --

11 A. Yes.

12 Q. -- is Huizenga's attorney?

13 A. Correct.

14 Q. How do you spell Filopak?

15 A. I don't know, look it up.

16 Q. P H or F?

17 A. I don't know.

18 Q. I've got to know what letter to look under.

19 MR. SELZ: Either F or P.

20 A. F.

21 MR. SELZ: Do the F or P, probably.

22 Q. All right. All right. All right.

23 A. Chris should know.

24 Q. You guys are a rough crowd. Filopak --

25 A. We're a rough crowd?

1 MR. SELZ: I think -- my guess would probably be  
2 the P.

3 THE WITNESS: We're a gentle crowd, just  
4 unprovoked.

5 Q. And Steven Filopak, Huizenga's attorney, you are  
6 saying knew about malfeasances committed by whom?

7 A. Well, he went to the Proskauer Rose New York  
8 office and met with, I believe, Ray Joao and Ken Rubenstein  
9 on our behalf. Although, it's not present in Ken  
10 Rubenstein's records, which might be part of the reason why  
11 I feel the bills are bogus.

12 Q. How do you know what Ken Rubenstein's records say?

13 A. Well, under deposition I believe he explained --  
14 and I've got your part of the billing record and part of  
15 what I've recovered from our files, records to show that  
16 Ken is not a billing partner anywhere in fact, on any of  
17 the bills provided, although his name is mentioned all over  
18 the bills. He doesn't -- he's the only free lawyer I have  
19 ever hired.

20 He attends a lot of conferences with interoffice.  
21 He's the only partner that's ever consulted that doesn't  
22 list his name as a partner billing for my company.

23 Q. Well, I asked you: How do you know that  
24 Rubenstein didn't take these notes?

25 A. He said he didn't in his deposition.

1 Q. Did you see him taking notes?

2 A. No. I was here, and he was in New York.

3 Q. No, not during the depo.

4 I mean, if you're saying that he doesn't have  
5 notes --

6 A. They aren't part --

7 Q. -- do you know somebody who originally saw him  
8 take notes?

9 A. They aren't part of your -- yeah. He was telling  
10 me in court he was taking notes; he was learning my  
11 processes always. So, you know, I would assume he has a  
12 lot of records, and that's part of what's missing in the  
13 corporate record as well as in your billing.

14 He's never bills as a partner, although he's  
15 consulted constantly. He's the only Proskauer partner not  
16 listed as a partner billing inside the records, although  
17 he's mentioned 20, 30 times.

18 Q. Why do you think he never bills --

19 A. Well, I think he had problems right from the  
20 start. The fact that he wasn't with Proskauer would have  
21 made it a big problem to put him in as a Proskauer partner  
22 in the original bills, where he shows up a lot.

23 Q. Did you find out when he joined Proskauer?

24 A. We had asked him; he couldn't recall.

25 Q. Who did?

1 A. We did, in the deposition. He gave a six-month  
2 window of opportunity. So, no, we don't know the exact  
3 time.

4 Do you happen to know? I'm just wondering.

5 Q. No.

6 A. Okay. Just wondering. Phenomenal.

7 Q. Did you find out when he joined?

8 A. We do not know exactly.

9 We know that, at the time he was represented as a  
10 Proskauer partner, he was listed at other law firms. And  
11 he was not at any of the Proskauer Rose New York offices  
12 where he later turned up.

13 Q. And this is when you first met --

14 A. And Mr. Wheeler told us that he wasn't.

15 Q. When you first met Chris Wheeler?

16 A. Correct.

17 Q. In late '98?

18 A. Correct.

19 Q. And you actually said you had conversations with  
20 Rubenstein in late '98, when you represented --

21 A. '98, '99, correct.

22 Q. Early '99?

23 A. Correct.

24 Q. When you represented he was a Proskauer partner --

25 A. Correct.

1 Q. -- when in fact he was an attorney with a  
2 completely other law firm?

3 A. And by the way, his underling, Ray Joao, was also  
4 represented as his underling for Proskauer, and he turned  
5 out to also be at Meltzer Lippe. At which point, when it  
6 was discovered, Chris Wheeler had to sign a retainer with a  
7 new law firm, which we were all confused about.

8 The board asked about liability issues to  
9 Mr. Wheeler. And I believe he said jokingly stated that we  
10 would now have two law firms with deep pockets to sue if  
11 anything got screwed up, because everybody was worried  
12 about what was going on. Why are you representing lawyers  
13 that aren't lawyers at your firm?

14 So he said they were in the transitional phase or  
15 something, but it was different from what we were  
16 originally told.

17 Q. So Filopak will testify that there was wrongdoing  
18 by whom?

19 A. I don't know.

20 He went to a meeting at the offices of Proskauer  
21 Rose with Ray Joao and Ken Rubenstein to review the patents  
22 on behalf of Wayne Huizenga.

23 We got a call from Chris Brandon (ph) that Wayne  
24 Huizenga's patent review panned out to be that there was --  
25 I think he said tuna fish in the patents, and not the

1 actual subject of my inventions, which started an  
2 investigation headed by Chris Wheeler into the work  
3 performed by Meltzer Lippe, who it had now turned into --  
4 we had to take a retainer.

5 By the way, Chris is referring legal counsel for  
6 me to protect my patent. Why would he refer a law firm in  
7 New York City, far away from the client, if it he wasn't --  
8 he represented that these were your New York partners  
9 handling the patents for us.

10 Q. Did he ever represent the bill of patent lawyers  
11 in his office in Boca?

12 A. No.

13 Q. What other attorneys -- before I forget, what  
14 other attorneys in Boca Raton represented Iviewit, besides  
15 Mr. Wheeler, at Proskauer? Was Rocky Thomson involved?

16 A. Yeah.

17 Q. What can you tell me --

18 A. Mara Lerner mountain top (sic).

19 Rocky was at the taped meeting.

20 Q. Mara Lerner Robbins?

21 A. Yeah. Actually -- so if you wanted to ask me any  
22 other questions, we came back from Real 3-D without  
23 patents, as Mr. Wheeler and Mr. Rubenstein and Mr. Joao had  
24 represented.

25 And in fact, when we asked Ray Joao to send us

1 such video patent, he said he hadn't filed it yet. And  
2 Mr. Wheeler had been asking me to disclose under NDA my  
3 processes to his friend at Real 3-D, Jerry Stanley (ph); so  
4 I didn't.

5 We wasted a lot of everybody's time schlepping  
6 around all of these people to Orlando where we couldn't  
7 disclose the video process. So what had to happen is we  
8 brought in the original inventors again, Zaccarul Sarozi  
9 (ph) -- which we later found out aren't even on these  
10 inventions, which is quite absurd.

11 Jude Rosario and myself are to come to Chris's  
12 office because he's going to appear for Ray and he's going  
13 to make sure everything is -- Ken is opining on everything;  
14 we're going to be okay, don't worry. He assures the board  
15 that we are at no risk; that the video is in protection  
16 state because -- as a matter of fact, Ken Rubenstein  
17 represents that the patents are safe because in --  
18 they're -- it's first to invent.

19 So even if Ray had failed to file timely, and  
20 we're months later, they should have been filed -- even if  
21 he had done that, that it would be based on the first two  
22 in fact.

23 Well, what Mr. Rubenstein failed to represent to  
24 us was that that's only true in the United States. That in  
25 foreign lands they must have -- they might have just

1 subjected the company to tremendous liabilities, amongst  
2 the other liabilities that we're finding out.

3 So Mr. Huizenga refused further investment based  
4 on that, not based on whatever -- whatever nonsense was  
5 claimed to have been the basis of it. I think it was  
6 something about my father being -- I can't remember, but it  
7 was something you guys said about my father being in a  
8 fight with Mr. Huizenga, but Mr. Utley made that  
9 representation in his deposition.

10 Q. Mara Lerner Robbins and Rocky Thomson and Chris  
11 Wheeler --

12 A. Wait. Wait. So we come here to do a taping --  
13 because you want to know where that tape is, and so do I --

14 Q. Is it a quick answer?

15 A. Nothing is quick here. I mean these are  
16 complicated --

17 Q. All right. If you can try -- if you can try and  
18 condense it --

19 A. Okay. You asked me what tape; so the tape is a  
20 tape --

21 Q. Audio or video?

22 A. Audio, and the audiotape was given to Gloria  
23 Burfeld (ph). But what it was for was the inventors  
24 disclosing the patents via teleconference to Ray Joao and  
25 Ken Rubenstein so that they can, thus, secure as

1 provisional or pending or whatever apps they were supposed  
2 to do for the video disclosure that they should have done  
3 prior to us ever going even into Real 3-D, where Chris  
4 wanted us to present to his friend under NDA versus under  
5 patent. That was interesting.

6 Rocky Thomson put us into a room and, at one  
7 point, we found Gerri Lewin's cell phone actively  
8 connected -- I mean, people going: Gerri, we can't hear  
9 anything.

10 Q. Wait. I'm confused. Somebody was eavesdropping  
11 on you?

12 A. Yes --

13 Q. Who?

14 A. -- on Mr. Lewin's cell phone. So we ran out of  
15 the office, and we told Rocky Thomson --

16 Q. Who is "we"?

17 A. Me and Zaccarul Sarozi, who -- Jude wasn't there  
18 yet, he came later. But we told him hey, we're out of  
19 here, man, these guys are --

20 Q. When was this? Give me an approximate date so I  
21 can --

22 A. June of '99, roughly.

23 It's in your notes. If you look carefully, you'll  
24 find that Gloria did receive a tape at such --

25 Q. Okay.

1 A. -- and when we asked your staff about my state at  
2 that point, they'll say: He was real worried that things  
3 were going on. And I think it's in the tape, actually.

4 Q. Well, why did you continue to let Proskauer  
5 represent you for over a year after that?

6 A. Well, you see the real question --

7 Q. June of '99?

8 A. June of '99. But the real question --

9 Q. Two years?

10 A. Yes.

11 The real question was Chris blamed it on Ray Joao,  
12 who he had now signed a Meltzer Lippe thing with. He,  
13 then, had Utley review Ray Joao's work. And Brian Utley  
14 said it was inferior; Foley & Lardner said it was inferior,  
15 and so we got rid of Ray.

16 And we were thinking that it was going to be Ken  
17 and his group. But Ken made representations several times  
18 that he didn't have a group that does patent prosecution,  
19 whatever.

20 And Brian and Chris brought in Mr. Bill Dick. And  
21 they forgot to tell us that Mr. Dick and Mr. Utley had been  
22 involved in patent malfeasance at his prior employer.

23 Q. Did Rocky Thomson have anything to do with the  
24 conspiracy that you have been telling me about?

25 A. Like I said, there are so many -- certain people

1 that I've mentioned already. Other people I won't make  
2 representations until I have full statements --

3 Q. Wheeler and Rubenstein you can confirm are part of  
4 the --

5 A. Absolutely.

6 Q. -- as a part of the --

7 A. Conspiracy.

8 MR. SELZ: Let him finish his question.

9 THE WITNESS: Oh, sorry.

10 Q. -- conspiracy to run you out of business and/or  
11 potentially kill you; but you don't know if Rocky Thomson  
12 is involved with that?

13 A. No.

14 Q. What about Mara Robbins?

15 A. No.

16 Q. Any other -- what other associates here at the  
17 Boca Raton office?

18 A. Not a single one can I -- until I have all of the  
19 evidence in my hand on the other people and hear their  
20 statements, can I make decisions based on if they are part  
21 of it or not.

22 Meaning, I won't know Mara Robbins' position until  
23 I ask her certain questions through this trial.

24 Q. What other associates in the Boca office between  
25 Rocky Thomson and Mara Robbins worked on Iviewit's file?

1           A.    God, I don't know.  But I think every one of them  
2 according to the billings.  I mean, there wasn't anybody  
3 who wasn't working --

4           Q.    Were you objecting to the number of --

5           A.    I didn't even know there were meetings.  They were  
6 mostly in our office.

7           MR. SELZ:  Wait.  Let him finish his question.

8           THE WITNESS:  Okay.  Sorry.

9           Q.    Were you objecting, when you got these bills, and  
10 you noticed that there were attorneys that you didn't  
11 recognize; was that ever the case?

12          A.    No.  There were billings we didn't recognize.

13                I mean, it's mostly this interoffice calling each  
14 other about issues, so it's hard to track that that  
15 occurred.  I never -- like I said, if this set of billing  
16 documents is -- got rich as far as I'm concerned -- is a  
17 bunch of interoffice billings between your own group of  
18 people.

19                It doesn't represent what truthfully happened,  
20 patent meetings, et cetera; Ken Rubenstein's time,  
21 et cetera.  And it's a bunch of garbage.

22                So what I see there is a billing record that I  
23 would like to verify with your employees under, you know,  
24 sworn statements and see if they're willing to back all of  
25 that.  And then, I'll make my decision if they're involved

1 in part of the conspiracy; if I have evidence to show --  
2 show them as part of the conspiracy. The ones that I have  
3 mentioned I have evidence to support conspiracy.

4 Q. Wheeler and Rubenstein?

5 A. Correct.

6 Q. What evidence is that? What you've told me  
7 already?

8 A. Other than -- there is evidence. I think I've  
9 submitted it to the court.

10 Q. Okay. You've submitted all of the evidence you  
11 have --

12 A. I didn't say "all."

13 Q. Are you holding back anything?

14 A. No. Yes.

15 Q. What?

16 A. I would assume to say to you I'm holding back a  
17 lot of evidence, as we try to repair the drives that were  
18 damaged on the transfer; as we are trying to build back the  
19 corporate record that was destroyed and not sent to  
20 California properly, the corporate books, et cetera.

21 This is a very monumental task, to shift through  
22 38 computers, try to break back into your server. I  
23 haven't been able to log into my domain since Mr. Utley  
24 transferred the computers, of which he gave specific orders  
25 for people to lock us out of those files. So --

1 Q. Are you good -- are you talented as far as  
2 re-creating computer files that have been erased? I mean,  
3 you seem to be pretty computer --

4 A. You know, I've been spending 24 hours a day for --

5 MR. SELZ: Let him finish his question.

6 THE WITNESS: Sorry. Sorry.

7 Q. Go ahead. It's all right, Eliot. Go ahead.

8 A. I have been spending 24 hours a day trying to get  
9 it back together so the truth can be told.

10 And I have been building it day by day. And  
11 people are submitting documents to me at different times.  
12 When they recover their files, when they get  
13 correspondences, they send them off to me. We're trying to  
14 locate some of the other witnesses of this to get more  
15 documents from them.

16 But basically, the entire corporate record, as  
17 directed by the board, was not transferred by Mr. Utley,  
18 who said -- made representation that he would get the  
19 entire Wheeler file, et cetera, because we knew -- I think,  
20 you know, once Brian was gone it only took you guys two or  
21 three days to quit and send out -- send somebody a  
22 letter -- it wasn't me, but sent a letter that said you  
23 quit the services.

24 Q. When Iviewit was being represented by Proskauer --

25 A. Yeah.

1 Q. -- were there times when you were calling anyone  
2 at Proskauer or sending letters to anyone at Proskauer  
3 complaining about the bills?

4 A. I wasn't dealing with the bills.

5 Q. Okay.

6 A. I mean, you think I'm like the bill guy.

7 Q. Okay. No, I don't think anything. I just want to  
8 know --

9 A. What? I heard my board members complaining --

10 Q. Let me finish.

11 A. Okay.

12 Q. I want you to give me some insight into who was  
13 getting the bills, who was making the decisions to pay them  
14 and who was complaining about them, if at all; can you tell  
15 me that?

16 A. Yeah. At first there was nobody complaining  
17 because nobody was seeing them, except Brian Utley and  
18 Chris Wheeler, best friends.

19 Then, as soon as we started to see them, Si  
20 started complaining. Buchsbaum had complaints --

21 Q. Are there written complaints or calls?

22 A. Yeah. People were asking all about the claims,  
23 and it's written on the bills that there's problems.

24 Q. Where are those notes written on the bills, those  
25 complaints?

1 A. They are part of evidence somewhere.

2 Q. Have you seen them in our files?

3 A. I have seen them in our files.

4 Q. Because we've asked for them, and I never saw them  
5 before.

6 A. What?

7 Q. The written complaints that you are talking about  
8 to --

9 A. Buried in there somewhere.

10 THE WITNESS: Did you bring him a CD?

11 MR. SELZ: Yes.

12 THE WITNESS: So you got it.

13 MR. SELZ: The compact disk that he sent me, that  
14 was the one that we sent out --

15 MR. PRUSASKI: The one you sent to me  
16 about four months ago?

17 THE WITNESS: Yes.

18 MR. PRUSASKI: That just had a couple of  
19 icons on it.

20 MR. SELZ: It didn't have any contents on  
21 it?

22 MR. PRUSASKI: No. Our IT people looked  
23 at it and said there's a couple of icons.

24 THE WITNESS: Well, you know, your IT  
25 problems are apparent all over the place.

1           Because you can't open most files according to  
2           Chris Wheeler's notes. He can't read half the  
3           things in the world. "Scrambled Word  
4           documents" he writes back on his notes. So,  
5           you know, I don't know. I submit to you.

6 BY MR. PRUSASKI:

7           Q.    So you were writing -- you were hand writing  
8           objections on bills?

9           A.    No. My father was.

10          Q.    He was. And you saw them?

11          A.    I saw them, yeah. I saw them.

12          Q.    I think Brian Utley testified that there were  
13          never any written objections to the bills.

14          A.    No. Brian Utley in fact testified that there were  
15          objections to the bill, and he was aware that board members  
16          and my father had complaints about billing, overbilling,  
17          et cetera.

18          Q.    When did this overbilling complaint start?

19          A.    Oh, my God. Don Kane went berserk --

20          Q.    No. When did it start? We'll get into Don Kane.  
21                  When did it start?

22          A.    I don't know exactly when it started, but my dad  
23          formed a committee to start reviewing.

24                  And we put a limiting motion on Brian at the board  
25          that he couldn't bill more than 5,000 a month or something

1 with Proskauer because word was catching on that Brian  
2 said: Can I have a check for all of these moneys, and I've  
3 made deals with Proskauer to pay them hundreds of thousands  
4 of dollars of our cash when, in fact, we've given you stock  
5 graciously, because of your statements that we would be  
6 receiving patent royalties from Ken's pools, and that would  
7 be the way to offset these bills, et cetera. And we had no  
8 idea.

9 Then, Mr. Utley came in and said he wanted to  
10 start paying all this money weekly to Proskauer; people  
11 said no, letters were written and, then, the board got very  
12 upset.

13 Q. Why did you -- I'm confused as to why Iviewit just  
14 continued to let Proskauer do work for months and months,  
15 if not years, after they thought that Proskauer was  
16 overbilling?

17 A. Well, my dad was trying to set up meetings with  
18 Chris to negotiate and settle and find out what was the  
19 matter --

20 Q. Why didn't -- why didn't you fire the lawyers that  
21 were allegedly overbilling you?

22 A. Well, you know, because we felt very insecure  
23 about that. Because you had so much knowledge of our  
24 patents and we were seeing so many of your clients in Ken's  
25 patents pools utilizing our products, that we felt that

1 that would be a severe thing versus getting some of these  
2 issues corrected.

3 It wasn't until we saw some of the more apparent,  
4 large scope scams, like that Mr. Wheeler had submitted a  
5 bogus resume on Mr. Utley.

6 Q. Who do you think made that resume?

7 A. Chris Wheeler.

8 Q. You think Chris sat there at his computer and just  
9 drafted a bogus resume to dupe you into believing that  
10 Utley had these qualifications?

11 A. Yes. And then, in fact, he created another one  
12 with Mr. Utley for a Wachovia business plan which claims  
13 completely the opposite of what they claimed in the first  
14 resume. You should take a look at those, too.

15 And that was approved and authored by Mr. Wheeler,  
16 and billed for it as such for business plan reviews.

17 Q. Where are the hard copies of these written  
18 objections that are on Proskauer's bills that Simon  
19 Bernstein sent?

20 THE WITNESS: Do you have them?

21 Q. Because I never got them. And this is -- this  
22 could be significant. We've asked for them, and we've  
23 never got them. And they are not listed as exhibits by the  
24 defendant; so do you know where they are?

25 A. You know, I can look for them. But as I've said,

1 a lot of our documents have been destroyed. So I passed  
2 most of the corporate record --

3 Q. Do you think Utley destroyed these documents?

4 A. Oh, absolutely. He's destroyed his own -- so many  
5 documents that it's not funny.

6 Q. But I thought your attorney just said I got them  
7 on a disk.

8 A. He does because part of what I did was, as I was  
9 hearing from people like Maurice Buchsbaum that documents  
10 were being destroyed, I started to have people grab as much  
11 as they could, so some of the documents we have.

12 And I would assume they are on the disk. Have you  
13 reviewed the disk? You're saying that the disk has no  
14 weight other than icon?

15 Q. There was a CDR that was given to us --

16 A. Yeah, right.

17 Q. -- and our IT department told us there was just a  
18 few icons on it. And they gave me a printout of what was  
19 on it, it was nothing.

20 A. How much data was on it?

21 Q. I sent a letter back to your attorney saying that  
22 this was all we found on the disk, and here is a printout,  
23 and I didn't get a response. So I assume that was the  
24 case.

25 A. Well, I had assumed I had submitted them with the

1 CD, so that's the case.

2 Q. What do you think happened?

3 A. I have no idea. Maybe the mail.

4 Maybe you don't have a good IT department, which  
5 you've had several problems opening files such as simple  
6 Word documents, according to Mr. Wheeler's notes.

7 Q. Okay. So there were written complaints by Simon  
8 Bernstein to the bills?

9 A. Correct. There were board meetings with  
10 complaints as well.

11 Q. And what -- were there Proskauer attorneys present  
12 at the board meetings?

13 A. Absolutely. And Chris --

14 Q. Who?

15 A. Chris Wheeler.

16 Q. And what would he say in response to the  
17 complaints about the bill?

18 A. He was going to negotiate and review and, you  
19 know, check on the items; and that was just at the end,  
20 when he was first questioned about it. And then, the board  
21 asked him to step out during those conversations; that he  
22 was the subject of investigating why these bills were even  
23 occurring.

24 Q. Were the bills ever -- I'm sorry. Strike that.

25 A. Nobody saw the bills. They were --

1 Q. Did Proskauer Rose ever take any action to correct  
2 the bills based on the alleged complaints by Simon  
3 Bernstein?

4 A. According to letters I've seen by Mr. Utley in the  
5 documents I've submitted, yes.

6 Q. Okay. So let's recap for a second. Just to make  
7 sure we're clear.

8 You never submitted written objections to the  
9 bills, but your father did, correct?

10 A. I wasn't reviewing them; he was, correct.

11 Q. Correct?

12 A. Correct.

13 Q. You don't know, as we sit here right now, where  
14 the written objections to the bills are, correct?

15 A. They're in a box probably somewhere in the  
16 transfer of my stuff from LA to California.

17 Q. Right. But you have to -- when I ask you a  
18 question, you can't answer with assumptions. That's always  
19 dangerous. You have to answer with facts.

20 Do you, as you sit here right now, know where  
21 these written objections to Proskauer's bills are that your  
22 father submitted to Proskauer?

23 A. Yes.

24 Q. Where are they?

25 A. Caroline Rogers would have a copy.

1 Q. The lawyer in Chicago?

2 A. Correct.

3 Q. Have you ever given these documents to Mr. Selz?

4 A. Yeah.

5 Q. So he has a copy, too?

6 A. Yeah.

7 Q. Okay. So Caroline Rogers and your attorney  
8 sitting next to you has a copy of all of these documents  
9 that Si Bernstein sent to Proskauer complaining about the  
10 bills?

11 A. Correct.

12 Q. When did you give them to Mr. --

13 A. As a matter of fact --

14 Q. When did you give the documents to Mr. Selz?

15 A. I don't recall.

16 Q. Who else from Iviewit sent written objections to  
17 Proskauer about Proskauer's bills, besides Simon Bernstein?

18 A. I believe Bill Kasser.

19 Q. K-A-S-S-E-R.

20 A. Right. And I believe Ross Miller would have  
21 documents. I may even have copies of those I thought I  
22 submitted to this court, but I'm not sure. They might have  
23 come after, as I was building this.

24 Q. Where -- as you sit here right now, do you know  
25 where the written objections by Bill Kasser and Ross Miller

1 are located? Where are those documents located?

2 A. No.

3 Q. You do not know?

4 A. I do not know.

5 Q. Did you give them to your attorney sitting next to  
6 you?

7 A. I do not know, but Bill Kasser was asked to give  
8 back all of the corporate --

9 MR. SELZ: He asked you -- he asked you a specific  
10 question.

11 A. Did I what?

12 Q. Did you give them to Mr. Selz?

13 A. Yes.

14 Q. But you just answered that, as you sit here, you  
15 don't know where they are --

16 A. Wait. Which documents? Sorry, I wasn't  
17 listening.

18 Mr. Kasser's documents -- I'm sorry.

19 Q. Don't get ahead of yourself.

20 A. I'm sorry. I was a little bit confused on that  
21 question --

22 Q. Listen to the question.

23 A. Yes.

24 Q. You know that Simon Bernstein's written objections  
25 are at Mr. Selz's office --

1 A. Correct.

2 Q. -- and Miss Rogers' office?

3 A. Correct.

4 Q. Now, do you know where Bill Kasser and Ross  
5 Miller's written objections to Proskauer's bills are  
6 located?

7 MR. SELZ: Asked and answered. I think he said he  
8 doesn't know where they're located.

9 A. No.

10 Q. You do not know where they're located?

11 A. I have belief where they may be located. I don't  
12 know.

13 Q. Where do you think they're located?

14 A. At Bill Kasser's house. He's now high-jacked the  
15 rest of our corporate records.

16 Q. Did you ever give those documents by Bill Kasser  
17 and Ross Miller, those written objections, to Mr. Selz?

18 A. I don't know.

19 Q. Besides Bill Kasser, Ross Miller and Simon  
20 Bernstein, who else submitted written objections to  
21 Proskauer?

22 A. Written?

23 Q. To the bills --

24 A. To Proskauer.

25 Q. Written objections to the bills.

1 A. To Proskauer, nobody else that I know of.

2 Q. That's it? Those three individuals that we've  
3 discussed --

4 A. That I currently know of.

5 Q. -- are the only people who you've seen documents  
6 from objecting to Proskauer's bills, correct?

7 A. Correct.

8 Q. Okay. Now, you were the technology part of the  
9 company. You didn't really handle the finances of the  
10 company, is that what you were saying earlier?

11 A. Correct.

12 Q. So the bills that would come in from the creditor,  
13 it wasn't your job to review the bills. It was your job to  
14 handle the technology, correct?

15 A. Part -- yeah. You know, yes. Well, initially I  
16 was looking at the bills, until Mr. Utley was brought in by  
17 Mr. Wheeler.

18 Q. Now, when you were first looking at the bills  
19 before Mr. Utley came in, was there a problem with  
20 Proskauer's bills, before Mr. Utley came aboard?

21 A. No. No. We were paying them. We had paid some  
22 of them. Everything was kind of being worked on until  
23 Mr. Utley came and, then, it was in his charge.

24 Q. And after Mr. Utley came aboard, that's when, in  
25 your testimony today, Proskauer's billing problems started?

1 A. Yeah. Oh, yeah.

2 Q. And you didn't find this out until after the fact  
3 because of the conspiracy between Utley and Proskauer?

4 A. And the conflicts, obviously.

5 Q. And the conflicts of interest that you --

6 A. Correct. Between Chris and Brian and the company,  
7 that I don't think we have a waiver of conflict on.

8 So Chris basically worked with Brian to do the  
9 bills. We were unaware mainly of what was going on. And  
10 when we became aware of it, all of the board members had a  
11 cow about it.

12 And there were actions taken to reduce any further  
13 possibility of them racking up these insane legal bills.  
14 And spending limits were put on Mr. Utley. And we were all  
15 very afraid that -- you know, in fact, they were meeting  
16 every day. They lived in each other's offices.

17 I mean, Mr. Wheeler lived in our offices with  
18 Mr. Utley. There's a hundred people that will tell you  
19 that, and Mr. Utley lived in your office across the hall.  
20 So they basically spent most of their days together, as far  
21 as I could see.

22 You know, I'm sure there's billing records to the  
23 contrary of what I'm saying, but they spent a whole lot of  
24 time together every day. They traveled together,  
25 everything else.

1           So the bill is flowing between those two. As  
2 you'll note on your billings and your records and the  
3 statements that you provided in your complaint, most of  
4 those letters are addressed to Brian Utley with very few  
5 other people being sent any of the correspondence.

6           Q.    Well, he was the president, wasn't he?

7           A.    Yeah. But if he had a conflict, he certainly  
8 should have been showing it to the other -- and the board  
9 had already told him not to spend over \$5,000; so he  
10 shouldn't have been approving these things, like shifting  
11 the company from a technology to a Distance Learning  
12 company and billing up lots of legal bills doing such. I  
13 mean, a clear violation of protecting the client.

14           I mean, these things -- you know, shifting the  
15 company focus would have had to take up board approval.  
16 Billing bills to do a shift and create merger and  
17 acquisition documents to transfer stock of the company you  
18 would figure it would have to go through a board kind of  
19 procedure. And none of that was happening, as well as none  
20 of the bills were being shared. So we didn't know, you  
21 know, what they were up to, Mr. Wheeler and Mr. Utley.

22           And now, looking at some of the documents we're  
23 quite blown away.

24           Q.    When the bills started coming to you before Utley  
25 was a part of the company, were you the president?

1 A. Was I -- yeah.

2 Q. Were they addressed to Mr. Eliot Bernstein,  
3 president?

4 A. I don't know. Are they there?

5 Q. I don't think so.

6 A. Do you have any records of any bills being sent to  
7 anybody prior to Mr. Utley?

8 Q. Well, if you don't know, just say "I don't know."

9 A. Well, I would say that based on my observations of  
10 all of the documents that I can see today, there are really  
11 no letters --

12 MR. SELZ: Eliot, it's what you know.

13 THE WITNESS: Yeah, what I know.

14 MR. SELZ: Answer the question from what  
15 you know.

16 A. No.

17 Q. You don't remember how they were addressed? If  
18 you don't remember, say so.

19 A. I don't remember receiving any other than Al  
20 Gortz's personal bill.

21 Q. Well, you said just ten minutes ago that you,  
22 before Utley came aboard, were the person who received the  
23 Proskauer bills and there was no problem with them.

24 A. I saw bills. I'm just clarifying your question  
25 for a second --

1 Q. Please.

2 A. I did see bills, I believe.

3 What I'm trying to say is I don't see those  
4 letters and correspondences any more in the corporate  
5 record. You are providing letters that I had at one point,  
6 that I thought I would find in your files that aren't there  
7 any more; that's why I'm concerned about the records.

8 And what you've provided to the court isn't any  
9 letters to me prior to Mr. Utley, those are all destroyed  
10 it appears; so that's where I was heading.

11 Q. There were letters to you from Proskauer before  
12 Mr. Utley came aboard?

13 A. I believe so. They might have been to my father,  
14 too.

15 Q. And you can't find them anywhere in the file that  
16 we provided?

17 A. No.

18 Q. You've looked in the whole file and you can't find  
19 them?

20 A. Yeah. I've looked in a lot of files --

21 Q. There's about five or six feet of correspondence  
22 in that file and you can't find those letters in there?

23 You're shaking your head no.

24 A. No is the answer.

25 Q. What happened to those letters that Proskauer sent

1 you before Mr. Utley came aboard; you think they were  
2 destroyed by Proskauer?

3 MR. SELZ: Objection, calls for speculation.

4 Q. You can speculate all you want. We're doing a lot  
5 of speculating today.

6 A. Yeah, I would --

7 Q. Tell me what you think happened, please.

8 A. I would think that part of those records have been  
9 destroyed.

10 Q. By Proskauer?

11 A. By Proskauer and Mr. Utley.

12 Q. Why?

13 A. To cover up the tracks of what really happened  
14 with this company and its technologies, to try to hide that  
15 you were our technology attorneys.

16 Q. Just another part of the grand conspiracy --

17 A. Correct.

18 Q. -- that forms the basis of your lawsuit?

19 A. Correct.

20 Q. Counterclaim.

21 A. It doesn't form the basis. There's many pieces of  
22 evidence which will show the conspiracy and how it  
23 unfolded. This is just part of covering up your tracks.

24 Q. But you don't have any first --

25 A. Oh, I --

1 Q. Well, let me finish. You don't have any  
2 first-hand knowledge, as you sit here today, that Proskauer  
3 ever destroyed one document pertaining to Iviewit, do you?  
4 These are assumptions.

5 A. Did I actually --

6 MR. SELZ: No. What he's asking you is: Did you  
7 see anyone destroy any documents?

8 Q. Did you see anyone destroy --

9 MR. PRUSASKI: I liked my question.

10 Q. You don't know -- do you have any first-hand  
11 knowledge, as you sit here today, that Proskauer ever  
12 destroyed a single document relating to Iviewit?

13 And "first-hand knowledge" is: Do you have any  
14 first-hand knowledge? Did you see it or hear it yourself?

15 A. Unless there's information on the table --

16 Q. It's a yes or no answer.

17 A. Unless there's information that was on this table,  
18 that's in shelves that you've claimed is not on shelves but  
19 might be on shelves -- based on what I've seen here through  
20 your documents --

21 Q. Your answer is no because you don't want to answer  
22 it --

23 A. No. My answer is yes.

24 Q. You do have first-hand knowledge?

25 A. Based on if I've looked at all of the documents

1 that you say you provided here, that there are no missing  
2 documents on shelves that I should be -- have been looking  
3 at, yes, documents are missing.

4 Q. I asked you if you have first-hand knowledge of  
5 whether Proskauer destroyed --

6 A. Well, that would be destroyed. If they're not  
7 here --

8 Q. No. Don't split my question --

9 A. Well, you told me there was nothing that was on  
10 shelves are missing; the documents are here.

11 Q. All right. Let's take it one step at a time.

12 A. Right.

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

15 A. No.

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

18 A. No.

19 MR. PRUSASKI: Okay. I need to eat lunch.

20 It is now 1:50, and we're going to break  
21 until 2:30 p.m.

22 The court reporter needs to eat, and so do  
23 I.

24 (Whereupon, a discussion was held off the  
25 record.)

1 (Whereupon, a luncheon recess was taken  
2 from 1:50 p.m. to 2:56.)

3 (Whereupon, the deposition of Eliot I.  
4 Bernstein resumed at 2:56 p.m.)

5 (Whereupon, Plaintiff's Exhibits 4 through  
6 9 were marked for identification.)

7 DIRECT EXAMINATION (Continued)

8 BY MR. PRUSASKI:

9 Q. Okay. We're back on the record.

10 We took a lunch break. And to let you know,  
11 you're still under oath, Mr. Bernstein.

12 Before we broke for lunch, we were talking about  
13 documents that you indicated you had given to your lawyer,  
14 Mr. Selz, that contained written objections by Simon  
15 Bernstein to Proskauer's bills.

16 MR. PRUSASKI: Mr. Selz, have we received all of  
17 the documents in your possession in response to  
18 the request for production?

19 MR. SELZ: I believe so. I believe so.

20 If there are any others, obviously we have  
21 to do a supplementary for any documents that  
22 we've received.

23 I'm going to have to review my file,  
24 because I know that we did receive some  
25 supplemental documents from Caroline Prochotska

1 Rogers --

2 MR. PRUSASKI: The Chicago attorney.

3 MR. SELZ: -- recently.

4 MR. PRUSASKI: Okay. Well, can we have an  
5 answer to that next week, because we are  
6 approaching calendar.

7 MR. SELZ: Most certainly. Most  
8 certainly.

9 Yeah. Obviously, if there are any  
10 documents that we have in our possession that  
11 we've received recently that are responsive to  
12 any request for production, we will respond --

13 MR. PRUSASKI: Right. Because we had  
14 certainly asked, right after this lawsuit was  
15 filed, for any documents containing any  
16 objections, and I'm concerned that we don't  
17 have them, if they exist.

18 BY MR. PRUSASKI:

19 Q. Mr. Bernstein, if you would, look at the document  
20 that I previously gave you that's marked as Plaintiff's  
21 Exhibit 3, which is Iviewit's answer and affirmative  
22 defenses that is dated November 2nd, 2001.

23 If you would, go to page 4, where the affirmative  
24 defenses start, if you look at the first affirmative  
25 defense it says: Plaintiff's amended complaint fails to

1 state a cause of action upon which relief can be granted in  
2 that defendants herein were not parties to any contract or  
3 agreement with plaintiff --

4 A. Where's that? Just so we're on the same page? I  
5 missed something.

6 MR. SELZ: Page 4.

7 THE WITNESS: Page 4, not paragraph 4.

8 Q. Paragraph 39.

9 A. Okay.

10 Q. -- Plaintiff's amended complaint fails to state a  
11 cause of action upon which relief can be granted in that  
12 defendants herein were not parties to any contract or  
13 agreement with plaintiff and plaintiff's allegations are in  
14 direct conflict with the relevant written documents.

15 Do you have any factual knowledge to support that  
16 statement?

17 A. I am not sure. I didn't -- I don't think I did  
18 these defenses.

19 Q. Okay.

20 A. I think they were done by Mr. Kent or Kasser.  
21 Can I ask for an explanation of what it means?

22 Q. No. If you don't know; that's okay.

23 A. Let me just try to read it for a second.

24 MR. SELZ: Do you know?

25 THE WITNESS: No, I don't know.

1 MR. SELZ: If you don't know, you don't know.

2 THE WITNESS: I don't know.

3 Q. Okay. Paragraph 40 says: Plaintiff has failed to  
4 meet all conditions precedent to the bringing of this  
5 action against defendants.

6 Do you have any factual basis as the corporate  
7 representative to explain what that means?

8 A. No.

9 Q. Paragraph 41 states: The moneys that plaintiff  
10 claims are owed are unreasonable and do not bear a relation  
11 to the value of the services provided. Thus, plaintiff's  
12 recovery herein, if any, should be reduced accordingly.

13 Do you have any factual knowledge to support that  
14 defense by Iviewit?

15 A. Yes.

16 Q. What is that?

17 A. Lots of evidence about the patents and the  
18 copyright work which was failed to be performed, which  
19 might have jeopardized our copyright position with the U.S.  
20 Copyright Office.

21 The Distance Learning stuff that was billed  
22 without board approval, the transaction of Bruce Prolow's  
23 stock without -- or securities without board approval. If  
24 that's what this is saying. I mean, I --

25 Q. It sounds like that would be a malpractice

1 defense, what you're saying, wouldn't it?

2 A. I don't know.

3 MR. SELZ: Objection, legal conclusion.

4 Q. You can answer the question.

5 A. I don't know, I'm not a lawyer.

6 Q. Well, it says there -- it basically says the bills  
7 are unreasonable and the amounts don't bear a relation to  
8 the value of the services which, to me, tends to indicate  
9 that you are complaining that the bills were overstated.

10 A. I did not do these. These were done by a referral  
11 of Mr. Wheeler's, who brought in counsel that is friendly  
12 with Mr. Wheeler, that were done by Mr. Kasser, who later  
13 turned out to be a witness for you.

14 MR. SELZ: Wait a minute. Just answer the  
15 question.

16 THE WITNESS: Okay.

17 A. Then, I don't know. You know, I'm basing my  
18 answer based on the knowledge I have after getting involved  
19 and reviewing all of the documents.

20 This was put together by somebody that now appears  
21 on -- for you --

22 MR. SELZ: No.

23 THE WITNESS: Okay.

24 Q. If you look at paragraph 47 on page 5 which  
25 states: The plaintiff's claims should be dismissed because

1 plaintiff has failed to join an indispensable party,  
2 namely, Iviewit LLP.

3 Are you very fluent in the different corporate  
4 entities of Iviewit, is that something that you dealt with?

5 A. No. I've been trying to figure it out for now --  
6 as long as I got involved in trying to figure out what was  
7 going on and what was misrepresented to us.

8 Q. So do you -- can you talk about the difference  
9 between Iviewit, LLP and Iviewit.com, Inc. as opposed to  
10 Iviewit Technologies?

11 A. No.

12 Q. Why; because you handled the technology and that  
13 was more of the business side?

14 A. No. What happened was Chris Wheeler represented  
15 to the board that I and the other inventors should assign  
16 our interests and our patents to an entity that he was  
17 going to create.

18 Now, there were a lot of people, including your  
19 own attorneys, patent attorneys, that were counseled on us  
20 that said that inventors should license to a company.

21 Mr. Wheeler wanted the company to own the patents  
22 against the advice of people, such as Don Kane from Goldman  
23 Sachs, Arthur Andersen representatives, Armstrong Hirsch  
24 representatives. And the only person who thought that this  
25 corporate scheme, as he called it -- that would protect the

1 patents as much as they were going to be protected if we  
2 had kept them in our names, was this corporate scheme  
3 Mr. Wheeler devised that would be two or three companies.

4 He wasn't really going to bill us for it because  
5 it was for Mr. Huizenga, he thought, would want this this  
6 way and might not make the investment based on that. So he  
7 decided to create a scheme against everybody's advice. And  
8 he was asked about issues such as bankruptcies and lawsuits  
9 against company Holtzman's (ph) patents.

10 So Mr. Wheeler created a complex scheme of  
11 companies that nobody who is involved with the company that  
12 I know of understands, has knowledge to all of what was  
13 happening to the different entities that were being set up  
14 by Mr. Utley and Mr. Wheeler without, in several instances,  
15 board approval; so no.

16 I mean, it's so complicated that, you know, it's  
17 hard for a regular inventor-kind of guy to figure out.

18 Q. Well, if you take Iviewit.com, Inc., did Proskauer  
19 establish that company?

20 A. Yeah. Chris had mentioned that it was a company  
21 to be formed that any and all lawsuits would be brought  
22 against; that the patent company, companies, whatever he  
23 was designing, were protected and shielded from lawsuits of  
24 which, I think, you guys are suing some of the patent  
25 companies, which would make him the first guy to sue his

1 own scheme to protect the patents; but hey, you know,  
2 whatever.

3 He assured everybody that the companies with the  
4 patents wouldn't be involved in any lawsuits at Iviewit.com  
5 where all the bills were, like yours, was the only entity  
6 that had any exposure; and that, through his scheme, we  
7 were so-called protected from anybody doing what you are  
8 doing actually.

9 Q. When was Iviewit.com, Inc. formed?

10 A. You have to ask Chris Wheeler that.

11 Q. You don't know?

12 A. No.

13 Q. Do you know who the principals of Iviewit.com,  
14 Inc. were, was that you?

15 A. No. I don't know.

16 Q. Were you one of the principals, do you remember?

17 A. I don't know.

18 Q. Do you know if Proskauer performed any work for  
19 Iviewit.com, Inc.?

20 A. If that's the company -- you know, I mean, it's so  
21 confusing. There's Iviewit.com, Iviewit.com, Inc.,  
22 Iviewit.com, LLC, so I don't know.

23 Q. Okay. There were so many companies that you can't  
24 really speak intelligently about the differences between  
25 the companies?

1 A. No. I can speak about the differences that were  
2 told to us that were supposed to be represented.

3 Iviewit.com was supposed to be an operating  
4 company; but now, there appears to be several Iviewit.coms.  
5 We didn't know about that, but I guess that's part of this  
6 overbilling.

7 Q. What was Iviewit, LLC?

8 A. I don't know. Ask -- I don't know.

9 Q. Well, have you seen our retainer agreement in this  
10 matter?

11 A. No. I've seen the one you've provided to the  
12 Court. That didn't occur until nine months after the  
13 companies were formed.

14 Q. Right. Do you know why?

15 A. No.

16 Q. I'm going to show you a document being marked as  
17 Plaintiff's Exhibit 5, a copy of a letter dated  
18 September 8, 1999. I'll ask you to look at it and tell me  
19 if you have ever seen it before.

20 A. Yes. I have seen it in this matter.

21 Q. Is that the document that you were just talking  
22 about that was signed nine months after --

23 A. Correct.

24 Q. Now, do you notice that it's signed by Brian  
25 Utley, president, Iviewit, LLC?

1 A. Yeah.

2 Q. Was that the operating entity at the time?

3 A. No.

4 Q. What was?

5 A. Like I said, I don't know for sure. But I was  
6 represented that Iviewit.com, Inc. was the only one that  
7 would be entering into engagements or anything else for  
8 services with any professional fees.

9 This would have never passed for ratification, if  
10 it was presented to the board; but it seems to appear to  
11 have only been presented to Mr. Utley.

12 Q. You never saw this before the lawsuit was filed?

13 A. No.

14 Q. When did you first see it?

15 A. When the lawsuit was filed.

16 Q. So this document was signed without board  
17 approval?

18 A. I don't even think that's a real document that was  
19 part of anything at this company that was told -- that was  
20 sent to us --

21 MR. SELZ: Answer the question.

22 A. No.

23 Q. Well, you think this was fabricated?

24 A. Yes.

25 Q. After the lawsuit was filed?

1 A. Yes.

2 Q. By whom?

3 A. Perhaps before. By Mr. Wheeler and Mr. Utley.

4 Q. So you're saying, although this letter is dated  
5 September 8th, 1999, it bears actually a stamp that was  
6 fabricated?

7 A. Sure.

8 Q. Do you have any knowledge --

9 A. I believe.

10 Q. It's a hunch?

11 A. It's a hunch.

12 Q. Okay. You are skeptical that it was actually  
13 signed on or around this date that's listed on there?

14 A. Right. Exactly.

15 Q. Why?

16 A. Well, because it's with the wrong company. I would  
17 assume, from what we were represented by Mr. Wheeler.

18 And it's so far after services began being  
19 performed by 50 partners of Proskauer, that it seems  
20 almost -- almost ludicrous that this document is signed  
21 months after you engaged to do work with us, instead of  
22 like proper lawyers who engage with me that we sign a  
23 retainer agreement.

24 Q. Have you seen any other documents in this case  
25 that you think were fabricated by Proskauer?

1 A. Yes.

2 Q. Do you remember what they were?

3 A. Yeah, documents back and forth between Ray Joao;  
4 faxes, particularly.

5 Q. Anything in particular that you remember about  
6 them that I can identify them by?

7 A. Yeah. Ray Joao's faxes, take a look at them.

8 Q. All of them?

9 A. Well, he only billed for one; but there's about 47  
10 that go between and, yeah, most of them look like frauded  
11 documents.

12 Q. Okay. Can you tell with your eyes that they're  
13 fraudulent, or is there something --

14 A. I've gone over them --

15 Q. -- physically wrong with them, or are you  
16 concerned that the contents seem to be fraudulent?

17 A. Physically what's wrong with them is that most of  
18 them are missing headers and proper footers and proper date  
19 and time stamps between the correspondences between  
20 Mr. Joao and Mr. Wheeler; that Mr. Joao's documents  
21 provided are not provided for in his billings, he never  
22 billed for such faxes. And that they bare false signatures  
23 in some cases, I mean, so...

24 Q. Do you know what Iviewit Technologies is?

25 A. One of Chris Wheeler's companies.

1 Q. Do you remember what the purpose of the company  
2 was?

3 A. No, I don't.

4 Q. When it was formed?

5 A. Nobody knows.

6 Q. No?

7 A. Not that we know of, but most corporate people are  
8 confused about all of these companies.

9 Q. Would it be a fair statement that Proskauer did  
10 form all of the Iviewit companies?

11 A. I don't know.

12 Q. Okay. Do you know if Proskauer --

13 A. Well, if they formed them -- I'm not sure if I  
14 know of all the Iviewit companies yet.

15 Q. You are still finding some?

16 A. Yeah. I guess there was some formed with  
17 Proskauer on this Distance Learning stuff that I was  
18 unaware of as well, and I think the board was unaware of;  
19 so I did see some in your documents that we don't have  
20 record of.

21 Q. Iviewit Holdings, Inc., do you remember that  
22 company?

23 A. You know, it was told to me that -- that I believe  
24 was the company that -- and I have to check my notes --  
25 that held the patents. But according to current patent

1 counsel, who's reviewed it, I think they're confused as to  
2 who holds the patents.

3 Q. Who is current patent counsel?

4 A. I don't know. You would have to defer that to  
5 Caroline Rogers.

6 Q. Greenberg Traurig? It's not Greenberg Traurig?

7 A. They've reviewed it --

8 Q. Yeah.

9 A. -- but there was some other firm, too, that I  
10 can't remember the name.

11 Q. Caroline Rogers has power of attorney?

12 A. Yes.

13 Q. Over the companies or over you?

14 A. Me.

15 Q. Personally?

16 A. Yeah.

17 Q. Did you grant it to her?

18 A. I did.

19 Q. Okay.

20 A. I was afraid, in the event that I got killed, that  
21 somebody would have proper authority to take actions to  
22 defend me.

23 Q. Killed as a result of the --

24 A. Of this.

25 Q. -- conspiracy --

1 A. Correct.

2 Q. -- between Proskauer --

3 A. Correct.

4 Q. -- Utley --

5 A. Correct.

6 Q. -- Foley & Lardner?

7 A. Correct.

8 Q. Who else?

9 A. Ray Joao.

10 Q. Ray Joao.

11 A. We're not sure if he's in the conspiracy to kill.

12 Foley & Lardner were -- I'm sure, that they are in  
13 the conspiracy to kill. The only two who have conspired --  
14 and one is hearsay, Mr. Wheeler -- is Mr. Utley, using  
15 Mr. Wheeler as his threat. As best friends, I just took it  
16 as to be a reasonable assumption that it could be the  
17 truth. Mr. Wheeler has not done such himself -- has not  
18 done such himself.

19 Q. Physically threatened to kill you?

20 A. He has never threatened to kill me. Mr. Utley  
21 made the threat on behalf of both of them.

22 Q. Do you remember anything about the Iviewit bank  
23 accounts during the time Proskauer was representing  
24 Iviewit?

25 A. Yeah. I remember that it appeared that some of

1 the checks were being signed by people not authorized on  
2 the accounts --

3 Q. Like who?

4 A. -- one of Mr. Wheeler's reports, I believe Ray  
5 Hersh.

6 Q. Wasn't he the CFO?

7 A. Yeah, but I don't think he was an authorized  
8 signator on the account. I am not sure. We'll check,  
9 but --

10 Q. You are not sure?

11 A. No. But it had to do with checks going to  
12 Proskauer over the amount that Brian was billing --  
13 supposed to be billing.

14 I think, in this document that was labeled  
15 Exhibit 5, there was a \$5,000 or something -- or is it this  
16 letter?

17 Q. No.

18 A. Some letter we have he was supposed to have owed  
19 \$5,000 --

20 Q. Okay.

21 A. And so it became questionable why checks were  
22 being written to Proskauer that -- instead of my signature  
23 or Si's signature, which were required over 5,000, why  
24 Brian and Hersh were on those checks.

25 Q. What did you do about it, when you found out there

1 were checks being signed by someone who you felt wasn't a  
2 signator?

3 A. It was already too late, the companies were  
4 disbanded. You know, all of this was -- it was already  
5 over, they were gone. So I didn't find out until after  
6 that this was happening, as with most of the claims.

7 You know, I was a trusting guy. I trusted my  
8 attorneys. I trusted the management referrals they had  
9 brought in to us.

10 And it wasn't until all kinds of documents started  
11 to come up, like Blakely Sokoloff uncovering documents and  
12 all of this weird stuff; then, we got the corporate record  
13 that we were locked out of our files. I mean, it all  
14 became suspicious then, but we didn't have all the answers.

15 Q. Do you know if checks were ever written off of one  
16 entity's accounts to pay another entity's bills?

17 A. No.

18 Q. You don't know?

19 A. No. I didn't handle the checks.

20 Q. Who did?

21 A. Brian Utley, Gerri Lewin, Ray Hersh.

22 Q. As a board member, did Gerri Lewin have hands-on  
23 day-to-day operation with the company?

24 A. In the beginning, him and Chris, yeah, every day.

25 Q. Was Gerri Lewin part of the conspiracy?

1 A. Gerri just referred me to Chris.

2 I have told you who I have documented evidence  
3 against. I am not going to bring people in until I have  
4 all of their statements, have a chance to talk to them  
5 about certain documents that have been found. So I can't  
6 answer that question today based on the current set -- I've  
7 asked Gerri to give me his complete set of records so that  
8 I can make that assertion.

9 Anything that has been referred or came from Chris  
10 Wheeler may be perhaps involved. And other than Chris and  
11 Brian and that -- I won't say that there aren't other  
12 people involved in the conspiracy that I can find but,  
13 certainly, those are two that I have evidence on them.

14 At your firm, I don't know if the rest of your  
15 partners are involved or even know about any of this -- and  
16 Rubenstein, by the way.

17 Q. Did Iviewit having trouble paying its bills when  
18 Proskauer was its lawyers?

19 A. Well, that's a weird question.

20 I mean, you know, we weren't -- Utley started to  
21 say we needed to pay all of these bills and, you know,  
22 that's part of why Si freaked out, was because he was upset  
23 that Proskauer had take two and a half percent stock, that  
24 they were going to delay billing.

25 There wasn't -- that when fundings would be due,

1 or we'd get fundings, we would pay some of the bills; and  
2 that he was delaying and, you know, blah until we got these  
3 royalties from Ken Rubenstein. And then, it was his big  
4 payout, according to what he had heard from his sources,  
5 Real 3-D, et cetera, was the billions of dollars of value  
6 to the technologies and his two and a half percent stock.

7 And he kept telling everybody that there was  
8 billing and don't worry about the excess billing, and the  
9 triple billing, and the triple billing between my office,  
10 people calling, don't worry about any of that because it's  
11 going to come out of our patent royalties from  
12 Mr. Rubenstein.

13 Q. Wheeler said that?

14 A. Many times.

15 Q. Who else was present when he said that?

16 A. Oh, many -- all of the board members. So he sold  
17 all of their stocks.

18 And Kenny Rubenstein, he got -- would put him on  
19 the board -- advisory board based on Chris Wheeler's  
20 recommendation.

21 Q. Was Gerri Lewin present at the board meetings when  
22 Chris Wheeler made those comments?

23 A. Yes.

24 Q. Gerri -- were you on the telephone during Gerri  
25 Lewin's deposition?

1 A. No.

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

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

7 Q. Were you on the telephone when Mr. Hersh's  
8 deposition was being taken?

9 A. No.

10 Q. He said the same thing.

11 A. Another Mr. Wheeler referral, management referral.

12 I would assume that all of these people that are  
13 friends of Chris Wheeler aren't going to testify against  
14 him as being part of the conspiracy, but we'll see.

15 That's why I said, we'll have to get a chance to  
16 talk to them and look in their eyes. I mean, you know and  
17 that -- you know, as this unfolds. And then, I'll make,  
18 you know, the determination if we should take actions  
19 against Mr. Lewin and if he was so involved.

20 Q. Have you reviewed any bills from Proskauer that  
21 have entries for attorney time for services that were never  
22 actually performed?

23 A. Yeah.

24 Q. Can you give me an example?

25 A. Distance Learning.

1 Q. Okay. Tell me about that.

2 A. They were never -- oh -- that were never  
3 performed? Sorry, I missed that. I'm sorry.

4 Let me re-answer.

5 MR. SELZ: Objection to form.

6 A. Right. Yes.

7 And the question is answered unequivocally yes.  
8 Copyrights are not on file with the U.S. Copyright Office,  
9 and they were billed for it in these bills that you  
10 provided, which exposes the company to such tremendous  
11 liability that I -- you know.

12 Q. Proskauer Rose?

13 A. Of course.

14 You failed to file my copyrights. I hope you've  
15 got those on the shelf somewhere, by the way, because that  
16 would be good to know. I didn't see any in the documents  
17 you provided me to come in here and copy. If not, maybe  
18 they were destroyed, I don't know.

19 Do you have such documents, Mr. Prusaski --

20 MR. SELZ: No.

21 THE WITNESS: I can't ask him that?

22 MR. SELZ: No.

23 MR. PRUSASKI: Just bear with me for a  
24 moment.

25 MR. SELZ: No problem.

1 (Pause.)

2 BY MR. PRUSASKI:

3 Q. I'm going to show you a document marked as  
4 Plaintiff's Exhibit Number 6. It's a letter dated  
5 March 24th, 2000.

6 I'll ask you to look at it, take a moment to read  
7 it; and tell me if you have ever seen it before.

8 A. Yeah. I have seen it in this case, and I am not  
9 sure if I've seen it prior to or a similar document, but go  
10 ahead. Yeah.

11 Q. Do you recall seeing it on or around March 24th of  
12 2000?

13 A. I don't recall. I'd have to check in my notes.

14 Q. Is this document something you think may have been  
15 fabricated after the fact?

16 A. Anything might have been but, you know, let's just  
17 assume it's good for now.

18 Q. Do you recall what the first paragraph is  
19 discussing in payment -- repayment arrangement of \$25,000  
20 and 50,000?

21 A. No. Those were arrangements made by Brian without  
22 board approval. Part of what became the subject of the  
23 board's discussions; that Brian not be making deals with  
24 Chris Wheeler, his good friend, on bills that most of us  
25 had never seen the details or backups or anything else on.

1 Q. It indicates -- in paragraph 2, it says: "I am  
2 advised that you have put a hold on this arrangement  
3 pending a meeting which you wish to have with us."

4 Were you present at that meeting?

5 A. No.

6 Q. Was your father there?

7 A. I can't answer for him.

8 Q. Okay. You don't recall if Simon went to that  
9 meeting or not?

10 A. I don't recall.

11 Q. Do you recall what the outcome of the meeting was,  
12 with respect to the payment arrangement?

13 A. Yeah. That there was to be no payment  
14 arrangements, it wasn't satisfactory; that Brian should be  
15 limited on the spending, and that there might be problems  
16 with what's going on with the billing between Brian and  
17 Chris running up bills that were, you know, massive.

18 Q. Okay. But Proskauer continued to represent  
19 Iviewit for 14 months after the date of this letter, so I'm  
20 just curious as to what arrangement was made.

21 A. Well, Brian kept saying that things were being  
22 arranged and done, and not to worry; that, you know, the  
23 patent for royalties were going to be pre-paid in advance  
24 by Mr. Rubenstein and his -- and Peg and DVD (ph) pools and  
25 whatever else he's involved in. And all of the clients of

1 yours that were using our technologies under  
2 non-disclosures, and we were finding them everywhere,  
3 seeing the hurt. Our technology pop up at everybody we  
4 signed an NDA with you about, like Visual Data, et cetera,  
5 et cetera, whole host of names.

6 So Chris kept making a representation that don't  
7 worry, the bill -- you know, in light of if the company  
8 makes billions from my royalties from my clients, Intel,  
9 Solkin Graphics, Lockheed, to Real 3-D and, you know, then,  
10 what is a bill of a few million dollars.

11 And you know what, to be quite honest, if those  
12 were the things that came back to this company, like we  
13 should be entitled to on our own inventions, and we even  
14 had proper patents, like they were supposed to cure, and  
15 copyrights, then we don't have any problem.

16 Q. The question -- the question pertained to: Why  
17 did Proskauer continue to represent Iviewit for 14 months  
18 after the date of this letter and --

19 A. Continues --

20 Q. -- if Brian Utley -- if Brian Utley was making  
21 deals that you were aware of that were against board  
22 approval -- without board approval? Sorry.

23 A. Okay, because the deals were redacted. We didn't  
24 follow approval on the deals because --

25 Q. Why didn't you get rid of Utley right then and

1 there, I mean, in March of 2000?

2 A. Because Chris came in --

3 Q. You are telling -- hold on. In March of 2000 you  
4 are telling me that the board of directors was aware that  
5 Utley was making deals that you didn't agree with and  
6 without your approval, why wasn't it until 13 months later  
7 that he was canned?

8 A. I am not sure this document is an actual  
9 representation or that the dates are right, or any of that.

10 Q. Assume it is.

11 A. Okay. I'll assume it is. That's what I was  
12 assuming from the start, that your story is being sold by  
13 these documents.

14 So, if that's the case, when we were presented  
15 with documented things or undocumented that Mr. Utley and  
16 Mr. Wheeler were working a bill and made arrangements,  
17 people on the board became very concerned. People hadn't  
18 seen the bills. They requested the bills, they were  
19 analyzing bills.

20 As a matter of fact, we brought in so many people  
21 in to analyze your bill and negotiate settlements with you  
22 because of its outrageousness. But at the time that this  
23 was happening, in March of 2000, Chris kept saying,  
24 don't -- you know, it's not a worry, okay, so we were just  
25 making a payment arrangement in the event that I got

1 funding from this guy or that guy and blah, and don't  
2 worry, Si and I will talk and everything will be fine, but  
3 who cares if it's building up, we're going to make a bundle  
4 on this patent stuff from Ken Rubenstein, so don't you  
5 worry, this is nothing compared to what's coming.

6 That was a constant representation to the board  
7 and everybody involved in the company and all of the  
8 shareholders and everybody who ever invested in the  
9 company, were all based on Mr. Wheeler's statements like  
10 that. He was the one out selling it to everybody.

11 Q. That's not consistent with what the letter says,  
12 is it?

13 A. This letter is between Brian and Chris. And  
14 again, you have --

15 Q. It's between your father and Chris.

16 A. Well, I don't know if my father received it, so I  
17 don't know.

18 Q. Assuming he did --

19 A. Yeah.

20 Q. -- it's a letter that's addressed to Si --

21 A. And then, Si started problems up that the bills  
22 were too high. He might have started reviewing at this  
23 point, I don't know; but that's when those documents with  
24 his comments on them will come into -- I think you should  
25 review them, but --

1 Q. All right.

2 A. He started to say this isn't right.

3 And by the way, as you know, he wants a meeting,  
4 Si, with Chris, according to this letter, in which they're  
5 going to discuss some of these billing issues. It wasn't  
6 like, oh, okay, Brian made a deal, take it; it's like  
7 there's problems, we need to meet. In fact --

8 MR. PRUSASKI: Look at this one,  
9 Plaintiff's Number 7.

10 Q. It's a letter dated March 31st of 2000. Take a  
11 look at it, read it, and tell me if you have ever seen it  
12 before, while I get a cup of coffee.

13 (Pause.)

14 A. I think I've seen it in the case. I am not sure.  
15 It looks similar maybe to a document I have seen.

16 Q. This letter marked Exhibit 7 is dated a week after  
17 the previous letter, correct?

18 A. Yes.

19 Q. And in it it references a meeting that was had  
20 between Simon and Chris Wheeler, correct?

21 A. Correct.

22 Q. Which, I guess, is the meeting you were talking  
23 about your father was requesting?

24 A. Yeah.

25 Q. In the letter it indicates that Chris Wheeler has

1 rejected Simon Bernstein's proposed resolutions to settle  
2 the past due accounts. It seems to be inconsistent with  
3 what you are telling me about Chris Wheeler saying don't  
4 worry about the bills, pay them when you get funding.

5 Chris Wheeler is still sending letters to your  
6 father indicating to just pay the bills.

7 A. Chris Wheeler is meeting with my father in this  
8 letter, according to what I can see, I don't know how you  
9 take your read on it, saying -- Si was arguing that the  
10 bills were -- something was wrong with them, and Chris  
11 isn't accepting his proposal and wants -- demands payments.

12 Si was very upset that based on Chris's prior  
13 statements to the board of directors about how the bills  
14 would be paid and when they would be paid out of Ken's  
15 royalty streams, et cetera, and your client uses up my  
16 technology; that he was obviously upset that Chris was  
17 starting to demand now that his best friend was controlling  
18 the checkbook money.

19 Q. Probably.

20 A. Yeah.

21 Q. This is 14 months before Proskauer terminated the  
22 representation.

23 A. Because they obviously stopped demanding the money  
24 and getting money. Why didn't you stop billing that day?

25 They didn't.

1 MR. SELZ: You can't --

2 Q. I am not a material witness.

3 A. I'm sorry. Proskauer didn't stop billing that  
4 day.

5 I mean, why did Chris Wheeler continue to provide  
6 services for 14 months if he wasn't getting paid?

7 Q. Apparently, the answer to your question, because  
8 there were periodic payments being made, according to the  
9 payment plan.

10 A. There was no payment plan that ever was accepted  
11 by our company. Mr. Utley made several attempts to make  
12 agreements with Mr. Wheeler, which we all felt was a  
13 conflict of interest, and that's what happened.

14 Q. Well, there are documents signed by Mr. Utley, as  
15 president of Iviewit, entering into payment plans with  
16 Proskauer, are you aware of that?

17 A. Yes. And I am aware that we made a representation  
18 for Mr. Utley to be our president based on inconsistent  
19 things in his resume provided to the board by Mr. Wheeler.

20 Q. So for that reason, those documents signed by --

21 A. All could be frauds.

22 Q. -- Utley --

23 A. All could be.

24 Q. -- are not binding by Iviewit?

25 A. Including the documents Mr. Utley signed where he

1 signed patents into his own name, didn't assign a charter  
2 company, et cetera, yes. I would say that Mr. Utley has a  
3 habit of signing documents that are frauds.

4 Q. Do you realize that you are the only person that's  
5 going to testify at trial on behalf of the defendants who  
6 is going to state that?

7 A. Really? Monte Friedkin of Diamond Teflon Marble  
8 will (ph), and saw Utley, and will come in and testify.

9 Q. He is not a witness at this trial.

10 A. He will be.

11 Q. Well, how are you going to convince the judge to  
12 let witnesses not --

13 A. I'll let my counsel -- I'll let my counsel answer  
14 how we approach that --

15 Q. Okay. It's a stretch. You're limited to the  
16 witnesses you listed on your witness list.

17 A. In this matter, in this court.

18 MR. SELZ: Is that a question or is that a  
19 statement?

20 MR. PRUSASKI: Yeah, actually, he's asking  
21 me questions.

22 A. In this matter, in this court.

23 Q. There's going to be other matters.

24 A. I don't know. You would have to talk to counsel.

25 Q. Okay. Let me show you a letter dated April 10.

1 2000. I'm marking it as Plaintiff's Exhibit 8.

2 I'll ask you to look at it and read it, and tell  
3 me if you have ever seen it before.

4 A. No. Other than in this case.

5 Q. You have seen it in this case?

6 A. I have, as part of the court record.

7 Q. Did you receive a copy of this at or about the  
8 time --

9 A. Never.

10 Q. Do you see yourself cc'd on the bottom of it?

11 A. Yeah. I see two different type fonts for me and  
12 Al Gortz on the cc line. I am not sure if that's a typical  
13 typewriting mistake or -- but to me it appears that it  
14 could have been. It says cc --

15 Q. Do you see your name on the bottom of it?

16 A. I do, but I never saw the document.

17 Q. So it wasn't delivered to you?

18 A. No.

19 Q. So what is the cc, a fabrication?

20 A. Yes.

21 Q. Okay. Do you think this letter was fabricated  
22 after the fact by Proskauer?

23 A. I don't know.

24 Q. It indicates receipt of a \$25,000 payment from  
25 Iviewit. Do you recall that payment being made?

1 A. I didn't handle the checkbook. I don't recall it.  
2 No, I don't recall.

3 Q. You didn't handle the checkbook?

4 A. And I don't recall. I don't know.

5 Q. Now that you are looking at this letter -- I  
6 withdraw the question.

7 A. I'm looking at this letter, by the way --

8 Q. I withdrew the question.

9 A. Sorry.

10 Q. I get to decide the questions.

11 Plaintiff's Exhibit Number 9 is a memo dated  
12 4/11/2000. Please look at it and tell me if you have ever  
13 seen it before.

14 MR. PRUSASKI: This is your copy, Steve.

15 MR. SELZ: Sure.

16 A. Yeah.

17 Q. You're listed on the cc's. This was never cc'd to  
18 you?

19 A. No.

20 Q. This references a proposed payment plan wherein  
21 Mr. Utley is saying that it is our intent to fulfill the  
22 agreement. Do you know what he's talking about?

23 A. I have no idea.

24 Q. Okay.

25 A. I don't know why he cc'd me either.

1 Q. Assuming there was -- assuming this letter did  
2 reach Chris Wheeler from Brian Utley --

3 A. Yeah.

4 Q. -- did Mr. Utley have permission of the company to  
5 enter into a repayment agreement?

6 A. No.

7 Q. Did he have to receive permission from the board  
8 before he could do such things?

9 A. I would believe so.

10 Q. Do you know? "I would believe so" is a guess. Do  
11 you know specifically --

12 A. Yes, because if it was based on -- yes. If it's  
13 based on the last document, a \$25,000 check needed to be  
14 approved, you know, yeah. He wasn't authorized to approve  
15 those kind of amounts, and make deals on behalf of the  
16 company on those amounts.

17 I'll look at whatever you want.

18 (Whereupon, witness speaks with his counsel.)

19 (Whereupon, Plaintiff's Exhibit 10 was marked for  
20 identification.)

21 Q. I'll hand you a document marked Plaintiff's  
22 Exhibit Number 10, a letter dated March 28, 2001 consisting  
23 of four pages.

24 I'll ask you to look at the document and tell me  
25 if you have ever seen it before.

1 A. Possibly in this matter.

2 Q. Do you recall -- have you had enough time to look  
3 at it?

4 A. I will in just a second.

5 Q. Let me know when you are ready.

6 A. This is a document between Mr. Wheeler and  
7 Mr. Utley, with Al Gortz being the only person cc'd.

8 Q. I'm aware of that.

9 A. Okay.

10 Q. I'm asking if you have ever seen it before.

11 A. Before this matter?

12 Q. Yeah.

13 A. No.

14 Q. You have never seen it before right now?

15 A. Before this matter? This --

16 Q. Right now.

17 A. I've said, I think I've seen it in the records of  
18 this proceeding. Prior to that, I never saw this.

19 Q. The records -- after the lawsuit was filed?

20 A. Yeah.

21 Q. Do you recall seeing it at or around March 28th of  
22 2001?

23 A. No.

24 Q. Do you know if you've ever heard your father talk  
25 about the receipt of this letter?

1 A. No.

2 Q. Based on seeing this letter prior to today, do you  
3 know whether or not the statements in this letter that  
4 \$344,519 were due at the time this letter was written?

5 A. No idea.

6 Q. You have no idea?

7 A. No.

8 Q. Do you know if Mr. Kasser did an accounting or a  
9 reconciliation of these bills?

10 A. Yes. I mean, for -- Ross Miller told us that  
11 there were -- gross negligence and inconsistencies that  
12 were in the bills, but that's after this, buddy.

13 Q. You were on --

14 A. No. This is as bills -- started to review what we  
15 were starting to get a hold of, the documents. And yeah,  
16 he had problems, he reported such. And now I'm confused as  
17 to why that never got part of this record, but --

18 Q. Were you on the phone during Mr. Kasser's  
19 deposition?

20 A. No.

21 Q. Okay. I thought you were.

22 A. No.

23 Q. I specifically recall him telling me that you did  
24 a reconciliation of these bills and you found them all to  
25 be due and owing.

1 A. Well, that's interesting. I have e-mails and  
2 correspondences from him that will possibly say different,  
3 as soon as I can get his records.

4 Q. Do you have any idea why he would have testified  
5 inconsistent with those --

6 A. Yeah. He's Chris Wheeler's referral'd friend.

7 Q. Bill Kasser?

8 A. Yeah, I think. I'm pretty sure he was hired in by  
9 one of the group of people that are Mr. Wheeler's  
10 referrals.

11 Q. So he has motive? You're saying he has  
12 motivation --

13 A. Absolutely.

14 Q. -- because he's Mr. Wheeler's friend?

15 A. Absolutely. And he's locked us out of corporate  
16 records, more destruction of our documents. So I'm sure  
17 you deposed him in your favor; that's how we'll know.

18 Q. But you have documents from Kasser saying that he  
19 did a reconciliation of the bills and that the bills  
20 weren't due and owing?

21 A. I may. I have to check the records.

22 Q. Would you check and give them to your lawyer,  
23 because we're entitled to copies of bills because we've  
24 asked for them and I don't have them.

25 A. You know, you're going to have to do something

1 probably because we can't get them from Mr. Kasser who has  
2 hijacked them now.

3 Q. Well, you need to check and see if you have them.

4 A. Well, he's holding as ransom part of my corporate  
5 records.

6 Q. Well, you just said you don't know if you have  
7 them or not --

8 A. I don't, but the company might have those records,  
9 but Mr. Kasser refuses to give us the records.

10 Q. I just asked you: Do you have those records, and  
11 you said I don't know.

12 A. I was answering on behalf -- well, that's true. I  
13 don't know.

14 Mr. Kasser should have records of his files and  
15 the corporate files, but he's refusing to give them -- give  
16 the files to us.

17 Q. But you, Eliot Bernstein, don't have them,  
18 possession of the documents from Kasser that are  
19 inconsistent with his deposition testimony?

20 A. I am not sure. I'll have to check my notes.

21 Q. Would you?

22 A. Yeah.

23 Q. And if you do, you'll turn them over to your  
24 lawyer?

25 A. If I haven't already. Which lawyer?

1 Q. The one sitting next to you.

2 A. Okay.

3 Q. The only lawyer I care about, the one defending  
4 you in this lawsuit.

5 This document is marked Plaintiff's Exhibit 11.  
6 It's a letter dated April 16, 2001 containing a three-page  
7 attachment. Please look at it and tell me if you have ever  
8 seen it before.

9 (Whereupon, Plaintiff's Exhibit 11 was marked for  
10 identification.)

11 A. It's not addressed to me. It's between Brian and  
12 Chris again.

13 Q. We are all aware of what it says --

14 A. No.

15 Q. -- but just tell me if you have ever seen it  
16 before. You are a principal of --

17 A. Part of this --

18 Q. The reason I ask is because you're a principal of  
19 the company, and it's not unusual for principals to get  
20 copies of letters.

21 A. Right. But if you are not cc'd, then it's hard to  
22 get a copy; but that's okay. No, I haven't seen this,  
23 other than in this case.

24 Q. Do you have any idea whether the bills that are  
25 attached to this letter totaling 369,460.97 were actually

1 due on April 16th, 2001?

2 A. No. No.

3 Q. You have no idea?

4 A. No. And actually, on some of these invoices we  
5 started to look them up at the end, here, and I believe --  
6 let's see, that for example, 4/6 through 4/11, it looks  
7 like, we had bills for over \$5,000 roughly.

8 Again, that would -- you know, I don't know. I  
9 think the letter we've tried to lock up into is over \$4,000  
10 a month without board approval or some kind of approval.

11 Q. But you just put the statement "I don't know" at  
12 the end of it. So I mean --

13 A. I'm just saying based on looking at these --

14 Q. Are you filibustering, or are you telling me you  
15 don't know?

16 A. No. No, I looked at these as part of the case.

17 So then, when I looked at them, I found all of  
18 these inconsistencies, like billings for Distance Learning,  
19 things that the company had no records of, and so on.

20 Q. So you can specifically look at this list of bills  
21 on Exhibit 11 and point out specific bills for me right now  
22 that you have a problem with?

23 A. No.

24 Q. Okay. Well, that answers my question.

25 A. Okay.

1 Q. I think -- you know, you can't make assumptions  
2 and guesses in depositions, it's going to get you into  
3 trouble; and I think your attorney would agree.

4 A. Okay.

5 Q. Exhibit 12 is a letter dated April 27th, 2001,  
6 it's three pages long.

7 (Whereupon, Plaintiff's Exhibit 12 was marked for  
8 identification.)

9 A. Yes.

10 Q. Have you seen this document before?

11 A. As part of this case.

12 Q. You did not receive it on or around April 27th --

13 A. Never.

14 Q. No one within the company gave you a copy?

15 A. No.

16 Q. Is it a fair statement to make that the letter is  
17 basically Proskauer informing Iviewit that they're  
18 terminating representation?

19 A. It appears --

20 MR. SELZ: Objection. The letter speaks for  
21 itself.

22 Q. You can answer the question. Is that a fair  
23 statement?

24 A. No. It's a statement that Chris Wheeler is  
25 informing Brian Utley.

1 Q. I said: Is it a fair statement that Proskauer is  
2 informing Iviewit that they're terminating its  
3 representation?

4 A. I'm saying that Iviewit never saw this, and that  
5 Brian Utley saw it.

6 Q. Well, who was Iviewit? Brian Utley is the  
7 president?

8 A. At this time, I think Brian Utley was being fired.

9 Q. Was he fired as of April 27th?

10 A. I don't know, I'd have to check my notes.

11 Q. So you just made a statement that you have no idea  
12 if it's true or not?

13 A. He was on his way out the door on 4/27/2001 with  
14 allegations against him --

15 Q. Was he still the president of the company, on  
16 4/27/01?

17 A. I don't think so. I'd have to check my notes.

18 Q. You don't think so?

19 A. No.

20 Q. Why not?

21 A. But I'll check my notes. What?

22 Q. Why not? Why don't you think so?

23 A. Well, because he was being relieved of his duties  
24 and he was terminating the company. This might have  
25 happened according to your time line at some point there.

1 but I have to check my notes.

2 Q. Did Wheeler -- did Christopher Wheeler know on  
3 4/27/01, when this letter was written, that Utley was being  
4 fired?

5 A. It would certainly justify his reason for writing  
6 it, but I don't know.

7 Q. Thank you.

8 A. But yes, I would assume. Yeah.

9 Q. You would assume? Didn't we just have an  
10 agreement --

11 A. I wasn't going --

12 Q. -- that you would stop assuming?

13 A. No, but you said I should. I know my lawyer --

14 MR. PRUSASKI: Would you like to tell him that he  
15 shouldn't assume?

16 A. You didn't let me finish the statement of what my  
17 assumption was, but that's okay.

18 Q. Thank you for correcting me again.

19 Did Mr. Wheeler know on 4/27/01 that Mr. Utley was  
20 being fired?

21 A. I don't know. I'll check my records.

22 Q. Do you know why Proskauer terminated its  
23 representation of Iviewit?

24 A. I believe because Mr. Utley was under, now,  
25 investigation for a lot of allegations.

1 Mr. Wheeler was now coming into a problem of --  
2 one of the board members had questioned why stock was  
3 transacted on behalf of the company without any board  
4 member seeing the documents or anything. And, you know, it  
5 was Chris Wheeler's friend, Mr. Prolow, was involved in  
6 that transfer.

7 Q. But if it's your theory that Iviewit -- if it's  
8 your theory that Proskauer was involved in a conspiracy to  
9 take over Iviewit or take its technology and make money --

10 A. Proskauer, I didn't say -- if I can -- I believe  
11 that Proskauer Partners, right, okay.

12 Q. Proskauer Partners. Proskauer partners were in a  
13 conspiracy to, according to you, steal Iviewit's technology  
14 and make a fortune from that technology, wouldn't it be  
15 inconsistent with that conspiracy to terminate its  
16 representation?

17 Why not resume control of the company by  
18 representing it? I'm asking you how you feel about that;  
19 because it seems to me that, according to your conspiracy  
20 theory, that this is inconsistent.

21 A. Okay. Well, you know -- and it's a little tough  
22 to follow until you really get your hands around it all,  
23 but you will.

24 What happened, if you're at this point, was that  
25 the board got rid of Utley. There were allegations that

1 nobody wanted to fully put their finger on, although there  
2 was need and time to start investigating the allegations,  
3 like: Were patents missing from the corporate record; why  
4 were patent documents changed; what was going on needed to  
5 be ascertained?

6           Once Mr. Utley was fired by the board, you can see  
7 that the actions of Mr. Wheeler are to follow and leave the  
8 company immediately after that; which, you have to ask  
9 yourself, why a guy who took two and a half percent stock,  
10 knew the company didn't have money, according to your own  
11 statements, was pressuring the company for money here, when  
12 he knew the balance sheet because he was controlling it  
13 with Brian, demanding payment when he knew there was no  
14 money, and that it was supposed to come out of his royalty  
15 streams and his clients.

16           So at this point, Chris Wheeler ran from the  
17 company. I don't think I got that letter or any board  
18 member that I know of has this letter, or any other member  
19 of management that wasn't referred by Brian Utley and Chris  
20 Wheeler has that letter.

21           As you can see, none of these letters are  
22 addressed to anybody except Brian and Chris basically.

23           Q.   Who should they have been addressed to?

24           A.   Sure. You know, Si is questioning the bills with  
25 his name on it. This is a termination letter; so it should

1 have gone to the board, shouldn't have it? And instead,  
2 oh, it goes to Ross Miller, Chris Wheeler's friend, one of  
3 the first guys he introduced the company to, as  
4 conservatory.

5 So, once again, he's replaced Utley with another  
6 friend, Mr. Miller, and he's got that same conflict going,  
7 I guess; I would call it conflict of interest, I guess.

8 But -- and then, the only other people he cc'd  
9 aren't any of the board members of Iviewit, where he's  
10 quitting and resigning services and everything else, but Al  
11 Gortz; Kenneth Hilton, I've never heard of, and Matt  
12 Triggs. It seems kind of funny to me, but you make the  
13 call.

14 Wouldn't you normally think you would notify the  
15 company?

16 Q. Let me show you a document marked Plaintiff's  
17 Exhibit Number 13. I'll ask you to look at this document  
18 and tell me if you have ever seen it before.

19 (Whereupon, Plaintiff's Exhibit 13 was marked for  
20 identification.)

21 A. Yes.

22 Q. Is that your signature on the last page? That's a  
23 bad copy, but I am sure you can identify it.

24 A. I can't, but it appears to be.

25 Q. State of California, County of San Diego and a

1 notary seal, does that jog your recollection as to your  
2 signature page?

3 A. Correct.

4 Q. Okay. So you signed this, the originals?

5 A. I can't see that very well, but yeah.

6 Q. Do you remember signing the originals?

7 A. I remember signing the interrogatories.

8 Q. If you look at the second to the last page, that's  
9 Mr. Selz's handwriting, isn't it? "Iviewit LLC was the  
10 party that retained the plaintiff, not any of the other  
11 parties."

12 A. I don't know Mr. Selz's handwriting.

13 Q. Did he write that?

14 A. Who?

15 Q. Did you write that?

16 A. No.

17 Q. Okay. Was that written on there when you signed  
18 these or after?

19 A. I don't recall.

20 Q. Look at page 7 of 18. Did you prepare these on  
21 your computer, by the way, these answers?

22 A. I prepared them, I believe, on a computer.

23 Q. Okay. So you typed these answers out on a  
24 keyboard and printed them and signed them?

25 A. Yes, I believe so -- or someone. Yeah. I don't

1 know. I'd have to -- I don't know.

2 Q. These were served back in September. You don't  
3 remember if you prepared these? It's pretty substantial.

4 A. Well, you asked if I typed them out, printed them  
5 out, et cetera. I don't know that, it could have been  
6 somebody else.

7 Q. Do you know where you were when these answers were  
8 written?

9 A. I believe at Mela in Rancho Palos Verdes.

10 Q. Were you sitting at your computer composing these  
11 responses -- or a computer composing these responses?

12 A. At times.

13 Q. Okay. Did other people help you?

14 A. Yes.

15 Q. Who?

16 A. I can't recall. I'll check my notes.

17 Q. Well, page 1 says: Identify each and every person  
18 who participated or assisted in the preparation of these  
19 interrogatories, and the answer is Eliot Bernstein. Now  
20 you are telling me there is somebody else?

21 A. Yeah, there might have been. Yeah, my wife  
22 definitely.

23 Q. So why didn't you list her?

24 A. I thought it meant who prepared the content, not  
25 the actual print document type thing. You asked me who --

1 Q. No. Who prepared the content?

2 A. That's not what you asked me. You said --

3 Q. All right, fine. Who prepared the content?

4 Let's start over then.

5 A. Okay. Let's -- so we're talking just strictly the  
6 contents?

7 Q. Content.

8 A. Yes. I did.

9 Q. Nobody else?

10 A. I don't believe so.

11 Q. Look at question 19 on page 7. It says -- the  
12 second clause says: Did the defendants ever complain to or  
13 otherwise notify Proskauer Rose that the plaintiff  
14 allegedly performed work which was not performed at  
15 defendants' request; answer yes.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And if -- 20 says: If you answered  
19 interrogatory 19 in the affirmative, please explain as to  
20 each instance where defendants complained to or notified  
21 Proskauer Rose, the date when the communication occurred,  
22 and you list some letters.

23 I've been trying to find the communications from  
24 Iviewit to Proskauer that you told me about complaining  
25 about the bills. Do you see them in here?

1 A. Well, I see one. It fully emphasizes that at this  
2 time that I was doing the interrogatories, I was trying to  
3 rebuild corporate records from -- locked out of computers,  
4 missing computers that were stolen by Mr. Utley. I had to  
5 get all of these things together. I had to go through all  
6 of the documents.

7 So, as you will see, it also says that I would  
8 need to ascertain these statements that -- especially the  
9 one you just asked me, after I see your documents.

10 Q. What about the letters you told me about earlier?  
11 Your father had written some complaints about the bills --

12 A. Yes.

13 Q. -- and Mr. Buchsbaum had written some complaints  
14 about the bills. Did you indicate that in your answers  
15 here?

16 A. No, but it's indicated in your letters you  
17 submitted earlier, that there were issues regarding the  
18 bill. But I -- have I submitted these?

19 Q. I don't understand what you mean.

20 A. Have I submitted these?

21 Q. The question was -- you told me --

22 A. Yeah, I did submit them.

23 Q. Let me finish. You're interrupting, and it's  
24 driving me crazy.

25 A. I'm okay.

1 Q. You told me earlier in the deposition that  
2 Buchsbaum and your father had sent to Proskauer written  
3 objections to the bills and that you think you gave them to  
4 your attorney and he's going to check to see if they exist,  
5 because they were due to me a long time ago and I don't  
6 have them.

7 Did you identify those written objections here in  
8 your answer to number 20?

9 A. I believe so.

10 Q. Where?

11 A. I believe I -- did I reference them?

12 Wait. Restate that question, please.

13 Q. You were asked to identify if there were any  
14 written objections to Proskauer's bills. Did you identify  
15 in here what you told me earlier in the deposition?

16 A. In question 20, yeah. 2/29/2000 letter from  
17 Wheeler to Utley regarding disputed billings --

18 Q. 2/29/2000?

19 A. Yeah, regarding disputed billings.

20 In fact, Utley's testimony in his deposition says  
21 there he was brought in and made aware that there were  
22 problems with the overbilling --

23 Q. But I asked you if you identified in here the  
24 written objections from Iviewit to Proskauer, not letters  
25 written from Proskauer --

1 A. Let's start all over again because I'm confused.  
2 Where do I -- where do you want me to identify  
3 that statement, that you're trying --

4 Q. I'm trying to get to the bottom of where all of  
5 the documents are of where Iviewit complained to Proskauer  
6 about the bills.

7 A. They should be submitted.

8 Q. Are there any of those listed here?

9 A. Okay. Now, ask me the question again, please.

10 Q. Are there any letters from Iviewit to Proskauer  
11 objecting to the bills that you identified here in these  
12 interrogatory answers?

13 A. Yes, I make mention of them here.

14 Q. What page are you looking at?

15 A. 9 of 18. Several correspondences between Simon  
16 Bernstein and Chris Wheeler regarding erroneous billings  
17 were in writing and oral --

18 Q. What paragraph?

19 MR. SELZ: C1.

20 A. C1.

21 Q. Several correspondences between Simon Bernstein  
22 and Chris Wheeler regarding erroneous billings were in  
23 writing and oral. Those were the ones you identified as to  
24 having turned over to your attorney Mr. Selz?

25 A. Correct.

1 Q. Okay. Were there correspondences between  
2 Buchsbaum, is that what you mean by paragraph 5?

3 A. I don't think I ever said that they were in  
4 writing, but they had conversation.

5 Q. Yes, you did. I specifically asked you to  
6 identify in writing the documents.

7 A. Okay. I don't know, but I know that he had  
8 correspondence.

9 Q. Okay. Were there any other besides Simon  
10 Bernstein and Mr. Buchsbaum in writing, any other  
11 complaints or objections --

12 A. About the bills?

13 Q. Yes.

14 A. Sure. Stephen Lamont made objections.

15 Q. But I thought Lamont wasn't on until -- on board  
16 with Iviewit until well after the lawsuit was filed.

17 A. When this was made --

18 Q. I only care about the lawsuit.

19 A. Well, this is after the lawsuit, right?

20 Q. That's correct. Well, no.

21 A. This is much after. This is --

22 MR. SELZ: He's asking if there are any complaints  
23 before the lawsuit was filed, is what he's  
24 asking, not after the lawsuit was filed.

25 THE WITNESS: Yeah. There were other

1 written complaints, or oral?

2 MR. SELZ: Yes, other written complaints.

3 THE WITNESS: Okay. I don't know. I  
4 can't find it.

5 Q. You just remember Buchsbaum and Simon Bernstein,  
6 correct?

7 A. I don't -- I don't recall Buchsbaum in writing.  
8 Although, I thought I saw documents relating to his work on  
9 the bill with Proskauer. I'll check the record. My record  
10 that I have had to reconstruct.

11 Q. Well, let's clarify --

12 A. Okay.

13 Q. -- because now you're testifying inconsistently  
14 with earlier --

15 A. Okay.

16 Q. -- so I am going to give you an opportunity to  
17 clarify and to finalize your answer.

18 A. Okay.

19 Q. The only documents that you saw that object to  
20 Proskauer's bills that are in writing are written by Simon  
21 Bernstein, correct?

22 A. No. I forgot. Brian Utley also wrote  
23 correspondences --

24 MR. SELZ: Objecting to the billing?

25 THE WITNESS: To the billing.

1 Q. You have seen those?

2 A. Yeah.

3 Q. Where are those?

4 A. I believe in the corporate record that I still  
5 have part of, and that should be submitted in this.

6 Q. So your attorney has them?

7 A. Yeah.

8 Q. Do you remember the substance of any of those  
9 letters or how many letters there were from Utley?

10 A. I don't. But the substance with Utley was  
11 corresponding with Wheeler that he was negotiating some of  
12 these bill issues, blah, and, you know, that they were  
13 over -- that we had been double-billed or something,  
14 whatever. And he was talking to Wheeler about reducing  
15 hours, et cetera.

16 Q. If Utley was in a conspiracy with Wheeler, so you  
17 say, why would he write letters objecting about Proskauer's  
18 bills? It doesn't seem very consistent with your theory.

19 A. You know, I can't speculate on that. I don't know  
20 what their story is or not.

21 Q. Very inconsistent with a conspiracy theory, isn't  
22 it?

23 A. I don't know. Slip-ups occur.

24 Sometimes you have to look like a good guy when  
25 you are a bad guy just so -- you know, how that plays out

1 in a conspiracy. So while Mr. Utley was trying to sell us  
2 that he was working for the company, in fact, he was  
3 working to the detriment of the company.

4 He wasn't going to come out and say hi, I'm  
5 ripping you guys off with Chris Wheeler; do you mind?  
6 That's how conspiracies work, Mr. Prusaski, I think.

7 Q. Did you sign checks on behalf of Iviewit when  
8 Proskauer represented Iviewit?

9 A. Yeah, I think so.

10 Q. You think so?

11 A. Prior to Mr. Utley, yes.

12 Q. After Mr. Utley came aboard, did you sign checks?

13 A. I might have cosigned checks. I might have been  
14 asked to sign a few checks by other employees.

15 Q. When Mr. Utley was the president of Iviewit, what  
16 were your day-to-day responsibilities?

17 A. Inventing, selling the technology to various  
18 investors and whatnot.

19 Q. Did you direct Proskauer to do any work?

20 A. Sure.

21 Q. On a day-to-day basis?

22 A. No. Not even close.

23 Q. Who did?

24 A. Brian Utley.

25 Q. Brian Utley.

1 A. All work was requested by Mr. Utley almost after  
2 his joining the company.

3 Q. When did he come aboard, how many months after  
4 Proskauer started representing the Bernsteins?

5 A. Well, if you go according to the statements and  
6 the depositions, Mr. Utley came aboard according to his own  
7 words in 9 of '99; but he was actually active in  
8 transcribing documents in July of 1999 from my record and,  
9 you know, it might just be another mistake.

10 Q. So it was from January, to give you the benefit of  
11 the doubt, July of '99 who was directing Proskauer to do  
12 work; was that Simon Eliot Bernstein?

13 A. I'd have to see the billing statements from that  
14 period to make those statements.

15 Q. Who were the principals at that point?

16 A. Oh, there were a lot of principals; there was  
17 Gerri Lewin, Si, me. Chris was, you know, representing all  
18 of the board meetings and the company in that regard.

19 There was Ken on the advisory board, I think,  
20 coming on at that period. You had Don Kane.

21 Q. Have you ever sued Brian Utley? Have you ever  
22 sued Brian Utley?

23 A. Not yet.

24 Q. Why? He's been gone for years.

25 A. Not yet.

1 Q. You're planning on it?

2 A. I don't know. I would have to check with counsel.

3 Q. Does Iviewit owe Foley & Lardner money right now?

4 A. I don't know. We go from lawsuit...

5 Q. Do you personally or Iviewit owe Gerri Lewin  
6 money?

7 A. I don't know.

8 Q. How do you not know if you owe Gerri Lewin money  
9 or not?

10 A. I don't know.

11 Q. I know that I don't own Gerri Lewin money, because  
12 I know who I owe money to and who I don't.

13 A. Have you had a long protracted relationship with  
14 Mr. Lewin?

15 Q. No.

16 A. Okay. Well, I have.

17 Q. But I've had long protracted --

18 A. But I know --

19 Q. Okay.

20 A. -- I've asked for credit billing records, he's  
21 provided inconsistent, not full billing records. He, I  
22 believe, is trying to get those records for me to ascertain  
23 such issues.

24 Q. Do you know which entity Proskauer's invoices were  
25 addressed to?

1 A. I assume Iviewit.com.

2 Q. You are assuming. You are assuming.

3 Do you remember? Do you remember?

4 A. I would have to check all of the documents. I  
5 don't think I can provide it as requested by the Court, all  
6 of the invoices of the relationship. I think there are  
7 some missing of your invoices provided for this case, so  
8 it's very hard to tell now.

9 Q. Do you remember right now who they were addressed  
10 to, the invoices that Proskauer sent?

11 A. From the ones that I've looked at that you have  
12 presented the Court in regards to this case, Iviewit.com, I  
13 believe, the operating company.

14 Q. It was the operating company?

15 A. I believe.

16 Q. Iviewit.com, Inc.

17 A. As represented by Mr. Wheeler.

18 Q. Did you ever complain to anybody at Proskauer  
19 during the representation that Proskauer was addressing the  
20 bills to the wrong entity?

21 A. I don't think I saw that from most of these bills.

22 Q. Did you -- listen to my question.

23 A. Yeah.

24 Q. It's simple. Did you ever complain to anyone at  
25 Proskauer during Proskauer's representation that the bills

- 1 were addressed to the wrong entity, yes or no?
- 2 A. I may have.
- 3 Q. Yes or no?
- 4 A. I may have.
- 5 Q. You may have?
- 6 A. I'd have to check my notes.
- 7 Q. You don't remember is the answer, correct?
- 8 A. I may have.
- 9 Q. Do you remember?
- 10 A. I don't recall now --
- 11 Q. Okay.
- 12 A. -- if I recollect.
- 13 Q. If you don't recall, you don't recall, that's not
- 14 a dangerous answer.
- 15 A. Okay. I'm fine with that.
- 16 Q. It's safe in the respect that it's honest.
- 17 A. Okay. I don't recall.
- 18 Q. So your answer is I don't recall?
- 19 A. Right.
- 20 Q. Thank you.
- 21 Do you know if anybody did?
- 22 A. I don't recall.
- 23 Q. Are you on any medication?
- 24 A. No.
- 25 Q. Are you under the care of any physicians?

1 A. No.

2 Q. When is the last time you took a prescription  
3 medication?

4 A. Several years ago almost.

5 Q. Do you see any physicians or psychiatrists or  
6 psychologists?

7 A. No.

8 Q. Have you ever?

9 A. Yes.

10 Q. When was the last time you saw a therapist or a  
11 psychiatrist or a psychologist?

12 A. I saw one the other day.

13 Q. For a professional appointment, or did you run  
14 into them at the mall?

15 A. For a consultation.

16 Q. Okay. Have you ever been adjudged incompetent?

17 A. Never.

18 Q. Have you ever been arrested?

19 A. No. Not that I can recall.

20 Q. Institutionalized?

21 A. Not -- not that I can recall.

22 Q. You hesitated for a second.

23 A. I did. I just was recollecting -- you know, I had  
24 a car accident, so I -- part of my memory has been joggled  
25 from hitting a car carrier at 90 miles an hour, so it takes

1 me a little bit to go historically beyond that point.

2 Q. I'm sorry to hear about that.

3 A. Thank you.

4 Q. Do you have memory problems because of the car  
5 accident?

6 A. I had memory problems.

7 Q. When was the accident?

8 A. God, I have problems with things like that. It's  
9 in the '80s.

10 Q. Mid-, early, late?

11 A. Early.

12 Q. What type of memory problems did you have? Do  
13 they continue to this day?

14 A. No. In fact, I improved my memory greatly through  
15 exercise.

16 Q. Okay. So you are not dealing with any negative  
17 results memory-wise as a result of the accident today,  
18 right? If anything, you have improved it?

19 A. Correct.

20 MR. PRUSASKI: Okay. No further questions.

21 Would you like to cross?

22 MR. SELZ: I think I have a couple of  
23 cross. Let's take a quick break then.

24 (Whereupon, a recess was taken from 4:11  
25 to 4:19 p.m.)

## 1 CROSS EXAMINATION

2 BY MR. SELZ:

3 Q. Okay. Mr. Bernstein, plaintiff has presented us  
4 with what's been marked as plaintiff's number 7. It's a  
5 letter dated March 31st, 2000. With regard to that letter,  
6 I reference you to the last sentence of that letter.

7 A. Yes.

8 Q. Do you see that?

9 A. I do.

10 Q. What does that sentence read exactly?

11 A. I would appreciate your reviewing this with your  
12 board of directors for their approval and beginning payment  
13 forthwith.

14 Q. Okay. To the best of your knowledge, was there  
15 ever any board approval for any payment plan between  
16 Iviewit.com, Inc. or any of the other Iviewit entities and  
17 Proskauer Rose --

18 A. Absolutely not.

19 Q. Okay. Let me finish my sentence.

20 -- that was approved by the board of directors?

21 Was there any plan approved by the board of  
22 directors for any re-payment or payment plan?

23 A. I don't believe so. I'll check my notes.

24 Q. Were there ever minutes of the meetings of the  
25 board of directors kept?

1 A. They said that they were kept and destroyed.

2 Q. Okay. Are you aware of any document which would  
3 evidence an approval by the board of directors and any  
4 payment plan from any of the Iviewit entities to Proskauer  
5 Rose?

6 A. No.

7 Q. With regard to the proposed counterclaim that's  
8 been filed in this action --

9 MR. PRUSASKI: Where are my documents --

10 MR. SELZ: They are there, right there,  
11 back in that pile. Let's get this marked as  
12 Defendant's Number 1.

13 (Whereupon, Defendants' Exhibit 1 was  
14 marked for identification.)

15 Q. Have you seen that document before, sir?

16 A. Yes.

17 Q. Okay. Are you familiar with the allegations  
18 contained in that counterclaim for damages?

19 A. Yes.

20 Q. To the best of your knowledge, are those  
21 allegations true and correct?

22 A. Yes.

23 MR. SELZ: Okay. I've got nothing further.

24 MR. PRUSASKI: Once again, I'm reserving  
25 my right to ask questions about this

1 counterclaim because it's not a counterclaim  
2 yet. It's a pending motion to amend.

3 If the judge allows you to assert a  
4 counterclaim, we'll be back here to talk about  
5 this document.

6 One redirect question.

7 REDIRECT

8 BY MR. PRUSASKI:

9 Q. You said that, sir, the documents -- the records  
10 of the board of directors meetings were destroyed; is that  
11 correct?

12 A. Most of them.

13 Q. By whom were they destroyed?

14 A. I believe Mr. Utley and Mr. Wheeler -- Mr. Utley  
15 and Wheeler who both kept the board notes. Mr. Wheeler  
16 keeping them with Mr. Utley, but we can't find any of them.

17 Q. You said, in response to your attorney's  
18 questions, that the notes were destroyed, the records of  
19 the board of directors meetings were destroyed. And now  
20 you are telling me you think they were --

21 A. Some notes were recovered from the computers that  
22 we were locked out of, and the data was restored through  
23 Data Recovery. But out of the corporate records, yes,  
24 they're gone.

25 Q. They were destroyed, then?

1 A. They weren't transferred with the corporate record  
2 by Mr. Utley.

3 Q. But you said they were destroyed. Were they or  
4 weren't they?

5 A. Yeah, I believe they were.

6 Q. You believe they were. You don't know if they  
7 were, you think they were.

8 A. To the best of my knowledge, they were destroyed,  
9 of certain board meetings.

10 Q. What evidence do you have to say they were  
11 destroyed?

12 A. They're missing.

13 Q. That's evidence that they were destroyed?

14 How do you know they're not in somebody's drawer;  
15 does that make them destroyed?

16 A. Yeah. They're not part of the corporate record  
17 anymore that the corporation has. And I have asked, you  
18 know, to have them provided here, which I didn't see. And  
19 so yeah, you know, as far as I know, destruction would mean  
20 missing from the company's records.

21 Q. Oh. So missing equals destroyed?

22 A. Yes, in this instance it does.

23 Q. Okay. So whenever you said "destroyed" in this  
24 deposition, you meant missing?

25 A. Probably. If you're saying do you have -- yeah.

1 Q. That was --

2 A. I want to think through that answer.

3 Q. You were on the right track. What you just  
4 started to say was on the right track.

5 A. I want to answer that, because the documents --  
6 the corporate record was supposed to be transferred in its  
7 entirety to the corporation in California by Mr. Utley, and  
8 such documents in their entirety and computers containing  
9 such documents in their entirety were not transferred to  
10 the corporation timely or at all.

11 Then, it is the company's position, I guess that  
12 we have to take, is that we are not in possession of our  
13 own records because the people who were supposed to  
14 transfer them did not transfer the documents to the company  
15 as directed by the board of directors.

16 Q. So that's your evidence that Mr. Wheeler destroyed  
17 the minutes of the board of directors meetings, the fact  
18 that they never showed up when they were supposed to show  
19 up to -- by Utley?

20 A. And they're not here --

21 Q. So Wheeler destroyed them?

22 A. -- for many of the meetings -- for many of the  
23 meetings that Chris was keeping notes for, yes, I did not  
24 find them here. So no, they might not be destroyed, they  
25 might be on the other shelves.

1 Q. Well, you are singing a completely different tune  
2 than you were two minutes ago.

3 A. No. I'm just saying that if they were part of the  
4 work that was on this table, and that they were part of the  
5 corporate record that was transferred, many of the minutes  
6 of the board meeting are destroyed at this point. We do  
7 not have them, possession of them --

8 Q. That means they're destroyed?

9 A. -- and the people in charge of them are not  
10 presenting them to us, so they might be in hiding from us.  
11 Okay. But I -- to me, they company, they're destroyed,  
12 gone, not existent. They're not part of our corporate  
13 record.

14 Q. So when you said "destroyed" about documents in  
15 this deposition, you meant that you didn't have them; you  
16 don't know for a fact that they were actually destroyed?  
17 Do you know what destroyed means?

18 A. Well, to us it means --

19 Q. What does destroy mean to you?

20 A. Okay. To the company, we asked for --

21 Q. I don't care about the company. I want to know  
22 what Simon Bernstein thinks -- Eliot Bernstein thinks  
23 destroyed means.

24 A. Missing from your records, not provided when  
25 requested. Missing documents would, to me, represent a

1 destruction of documents.

2 Also, on the destruction side of documents, is the  
3 locking out of computer domains and files with the intent  
4 so that documents --

5 Q. All I asked you is what destroyed means to you.

6 A. Well, I'm explaining. You know, are the board  
7 notes and damaged hard drives or stolen computers that were  
8 taken to New Jersey by Mr. Utley; could be, but I'm not --

9 Q. See, when you say Mr. Wheeler destroyed documents,  
10 most people would frame an image of a man going over to a  
11 shredding machine and putting documents in a shredding  
12 machine. But you're saying it means something completely  
13 different --

14 A. No. I'm saying that unless they ended up -- we  
15 just went through this a little while ago in the  
16 deposition, but you said all of the documents were here at  
17 this table.

18 Q. Did you say in that counterclaim that Proskauer  
19 destroyed documents?

20 A. I am not sure. I believe so. Do we --

21 MR. SELZ: I don't think so.

22 MR. PRUSASKI: Let me see it.

23 A. No.

24 Q. Why didn't you say it in there if it happened?

25 A. I was busy listing the key things.

1 Q. Destroying documents by a law firm isn't very key  
2 to you?

3 A. I've notified my counsel that that occurred long  
4 ago, so he might have overlooked it in filing the claim to  
5 get it on based on the evidence --

6 Q. Okay. So you're still sticking to your story that  
7 Proskauer destroyed documents?

8 A. I'm -- because they're missing, in my  
9 interpretation --

10 Q. Because he's missing them -- you let your attorney  
11 know, but you didn't put it in the counterclaim?

12 A. Well, he has a lot of it, you know. Yes, I would  
13 say --

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

16 A. In my interpretation --

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

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

23 Q. So destroyed means missing to you?

24 A. Yes.

25 MR. PRUSASKI: Right. Why don't you go buy a

1 dictionary? There's a Barnes & Noble down the  
2 street.

3 I have no further questions. Thank you.

4 THE WITNESS: Okay.

5 Does he want to read or waive?

6 MR. SELZ: He'll read. Hold the  
7 transcript.

8 (Thereupon, the deposition was concluded  
9 at 4:29 p.m.)

10

- - - - -

11

AND FURTHER THE DEPONENT SAITH NOT

12

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\_\_\_\_\_

14

DEPONENT

15

16

STATE OF FLORIDA

17

COUNTY OF BROWARD

18

19

SUBSCRIBED AND SWORN to before

20

me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Broward

21

County, Florida.

22

23

\_\_\_\_\_

24

Notary Public, State of Florida

25

CERTIFICATE OF OATH

STATE OF FLORIDA  
COUNTY OF BROWARD

I, the undersigned authority, certify that  
ELIOT I. BERNSTEIN personally appeared before me and was  
duly sworn.

WITNESS my hand and official seal this 17<sup>th</sup>  
day of March, 2003.



---

ELIZABETH DAVILA SAINT-LOTH

Notary Public, State of Florida

CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

I, ELIZABETH DAVILA SAINT-LOTH, Shorthand Reporter, certify that I was authorized to and did stenographically report the deposition of ELIOT I. BERNSTEIN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 17th day of March, 2003.



ELIZABETH DAVILA SAINT-LOTH,  
Shorthand Reporter  
My Commission # DD 072032  
Expires: November 15, 2005

#	[1] 208:1 18 [2] 215:20 220:15 19 [3] 26:7 217:11 217:19 1950s [1] 66:3 1998 [1] 81:8 1999 [4] 26:7 178:16 180:5 225:8 1:00 [1] 120:7 1:50 [2] 169:20 170:2	[1] 91:7 31 [1] 1:14 31st [3] 2:23 196:10 231:5 33433 [1] 2:23 33437 [1] 3:14 340W [1] 2:23 369,460.97 [1] 207:25 38 [1] 149:22 39 [1] 172:8	90 [1] 229:25 92027 [1] 3:22	[1] 146:7 Actual [4] 61:3 142:1 184:8 216:25 Actuarial [1] 72:21 Additional [2] 23:5 23:15 Additionally [1] 37:9 Address [5] 3:12 3:19 35:14 52:1 85:15 Addressed [11] 9:3 164:4 165:2 165:17 195:20 207:11 213:22 213:23 226:25 227:9 228:1 Addressing [1] 227:19 Adequate [1] 98:2 Adequately [1] 94:4 Adjudged [1] 229:16 Advance [1] 192:23 Advice [2] 175:22 176:7 Advise [2] 97:21 134:1 Advised [4] 78:5 103:22 134:1 192:2 Advisory [2] 168:19 225:19 Affairs [1] 44:3 Affiliates [1] 28:8 Affronting [1] 41:3 Afrald [7] 109:9 110:21 117:5 118:15 126:20 163:15 183:20 Afterwards [1] 120:16 Age [1] 108:24 Agencies [2] 95:21 95:22 Agent [1] 120:19 Agents [2] 73:5 121:1 Agitated [1] 100:18 Ago [19] 27:5 29:6 29:7 34:21 36:2 36:4 51:9 52:9 52:14 107:8 107:15 131:5 152:16 165:21 219:5 229:4 236:2 237:15 238: 4 Agree [5] 31:17 96:19 133:9 194:5 209:3 Agreed [3] 109:18 129:1 133:1 Agreeing [1] 12:15 Agreement [10] 80:7 81:1 81:8 172:3 172: 13 178:9 180:23 201:22 202:5 211:10 Agreements [2] 80:23 198:12 Ahead [6] 20:15 90:23 150:7 150:7 150:19 191:10 Aiding [1] 57:2 AI [20] 78:11 83:2 83:11 83:12 83: 18 84:16 85:9 85:19 86:4 86: 15 86:22 87:1 87:8 87:14 87: 19 110:7 166:19 200:12 203:7
\$			A	
\$25,000			A.m.	
[3] 191:19 200:24 202:13			[2] 1:15 2:24	
\$3			AB	
[1] 109:2			[2] 1:3 76:2	
\$344,519			Abandoned	
[1] 204:4			[8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19	
\$4,000			Abetting	
[1] 208:9			[1] 57:2	
\$5,000			Ability	
[6] 12:10 12:12 164:9 185:15 185:19 208:7	2	4	[3] 31:5 64:4 64:17	
	[2] 15:25 16:2 16:6 16:9 31:10 192:1 2-D [1] 64:18 2/29/2000 [2] 219:18 219:18 20 [5] 67:23 139:17 217:18 219:8 219:16 20-year [1] 68:12 2000 [15] 13:15 13:16 13:24 26:5 26: 6 48:8 49:13 191:5 191:12 194: 1 194:3 194:23 196:10 200:1 231:5 2001 [19] 13:15 13:18 26:5 28:24 32: 7 48:12 48:14 56:17 94:8 97: 10 97:14 100:3 111:11 171:22 202:22 203:22 207:6 208:1 209:5 2002 [2] 32:10 34:11 2003 [5] 1:14 2:24 239:20 240:10 241:18 2005 [1] 241:23 2255 [1] 2:22 231 [1] 2:11 233 [1] 2:11 24 [2] 150:4 150:8 24th [2] 191:5 191:11 25th [1] 52:12 27th [3] 209:5 209:12 210:9 28 [1] 202:22 28th [1] 203:21 2:30 [1] 169:21 2:56 [2] 170:2 170:4 2nd [1] 171:22	4 [7] 20:9 37:11 170:5 171:23 172:6 172:7 172:7 4/11 [1] 208:6 4/11/2000 [1] 201:12 4/27/01 [3] 210:16 211:3 211:19 4/27/2001 [1] 210:13 4/6 [1] 208:6 40 [1] 173:3 41 [1] 173:9 47 [2] 174:24 181:9 48 [2] 51:9 101:17 4:11 [1] 230:24 4:19 [1] 230:25 4:29 [1] 239:9	90 [1] 229:25 92027 [1] 3:22	A [1] 15 2:24 [2] 1:3 76:2 Abandoned [8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19 Abetting [1] 57:2 Ability [3] 31:5 64:4 64:17 Able [4] 101:18 106:10 123:4 149:23 Aboard [8] 162:20 162:24 165:22 166: 12 167:1 224:12 225:3 225:6 Above-entitled [1] 3:4 Absolutely [14] 18:5 29:18 76:7 98:20 101: 13 107:9 126:14 135:14 147:5 166:4 157:13 205:13 205:15 231:18 Absurd [1] 143:10 Accepted [1] 198:10 Accepting [1] 197:11 Access [1] 130:3 [1] 136:3 [4] 229:24 230:5 230:7 230:17 Accidental [1] 126:17 According [16] 78:13 148:2 153:1 157:6 168:4 182:25 188:4 196:4 197: 8 198:8 210:25 212:13 212:19 213:10 225:5 225:6 Accordingly [1] 173:12 Account [1] 185:8 Accountant [2] 5:21 74:15 Accounting [1] 204:8 Accounts [4] 184:23 185:2 186:16 197:2 Accurate [2] 13:16 34:15 Accusation [1] 89:3 Acknowledging [1] 4:8 Acquaintances [1] 116:25 Acquisition [2] 124:22 164:17 Act [1] 38:13 Acting [5] 25:13 33:10 37:7 44:8 44:9 Action [15] 40:5 47:22 103:6 117:24 120:1 121:5 124:6 125:22 158: 1 172:1 172:11 173:5 232:8 241:15 241:16 Actions [15] 7:4 46:11 46:12 58:2 58:2 97:22 109:22 109:25 110:22 123:3 123:21 163:12 183:21 189:18 213:7 Active [1] 226:7 Actively
	0	5		
01-04671				
[1] 1:3				
02				
[1] 32:6				
072032				
[1] 241:23				
	1	6		
1				
[7] 5:25 6:2 37:13 37:15 216: 17 232:12 232:13				
10				
[4] 95:4 199:25 202:19 202:22				
100				
[1] 60:12				
10158				
[1] 3:13				
10:25				
[2] 1:15 2:24				
11				
[6] 79:23 87:17 87:20 207:5 207:9 208:21 11:12 [1] 35:22 11:20 [1] 35:23 12 [2] 209:5 209:7 12:27 [1] 99:24 12:36 [1] 99:25 13 [3] 194:6 214:17 214:19 14 [4] 192:19 193:17 197:21 198:6 15 [3] 69:22 69:23 241:23 16 [1] 207:6 16975 [1] 3:21 16th	5 [4] 174:24 178:17 185:15 221:2 5,000 [2] 163:25 185:23 50 [2] 66:24 180:19 50,000 [1] 191:20 60/50 [1] 29:10	90 [1] 229:25 92027 [1] 3:22	A [1] 15 2:24 [2] 1:3 76:2 Abandoned [8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19 Abetting [1] 57:2 Ability [3] 31:5 64:4 64:17 Able [4] 101:18 106:10 123:4 149:23 Aboard [8] 162:20 162:24 165:22 166: 12 167:1 224:12 225:3 225:6 Above-entitled [1] 3:4 Absolutely [14] 18:5 29:18 76:7 98:20 101: 13 107:9 126:14 135:14 147:5 166:4 157:13 205:13 205:15 231:18 Absurd [1] 143:10 Accepted [1] 198:10 Accepting [1] 197:11 Access [1] 130:3 [1] 136:3 [4] 229:24 230:5 230:7 230:17 Accidental [1] 126:17 According [16] 78:13 148:2 153:1 157:6 168:4 182:25 188:4 196:4 197: 8 198:8 210:25 212:13 212:19 213:10 225:5 225:6 Accordingly [1] 173:12 Account [1] 185:8 Accountant [2] 5:21 74:15 Accounting [1] 204:8 Accounts [4] 184:23 185:2 186:16 197:2 Accurate [2] 13:16 34:15 Accusation [1] 89:3 Acknowledging [1] 4:8 Acquaintances [1] 116:25 Acquisition [2] 124:22 164:17 Act [1] 38:13 Acting [5] 25:13 33:10 37:7 44:8 44:9 Action [15] 40:5 47:22 103:6 117:24 120:1 121:5 124:6 125:22 158: 1 172:1 172:11 173:5 232:8 241:15 241:16 Actions [15] 7:4 46:11 46:12 58:2 58:2 97:22 109:22 109:25 110:22 123:3 123:21 163:12 183:21 189:18 213:7 Active [1] 226:7 Actively	
	2	7		
'01				
[3] 31:10 31:19 32:6				
'80s				
[2] 5:16 230:9				
'90				
[1] 69:4				
'90s				
[4] 69:3 69:7 69:11 70:2				
'98				
[23] 63:21 67:1 67:3 69:4 77: 14 77:16 77:17 79:23 83:4 83: 8 83:11 83:12 83:18 86:9 86: 11 87:17 87:17 87:20 88:3 89: 15 140:17 140:20 140:21 '99 [18] 63:20 81:22 82:4 82:10 83: 8 83:12 83:17 85:14 86:12 88: 3 89:14 140:21 140:22 145:22 146:7 146:8 225:7 225:11	7 [1] 208:6 4/11/2000 [1] 201:12 4/27/01 [3] 210:16 211:3 211:19 4/27/2001 [1] 210:13 4/6 [1] 208:6 40 [1] 173:3 41 [1] 173:9 47 [2] 174:24 181:9 48 [2] 51:9 101:17 4:11 [1] 230:24 4:19 [1] 230:25 4:29 [1] 239:9	90 [1] 229:25 92027 [1] 3:22	A [1] 15 2:24 [2] 1:3 76:2 Abandoned [8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19 Abetting [1] 57:2 Ability [3] 31:5 64:4 64:17 Able [4] 101:18 106:10 123:4 149:23 Aboard [8] 162:20 162:24 165:22 166: 12 167:1 224:12 225:3 225:6 Above-entitled [1] 3:4 Absolutely [14] 18:5 29:18 76:7 98:20 101: 13 107:9 126:14 135:14 147:5 166:4 157:13 205:13 205:15 231:18 Absurd [1] 143:10 Accepted [1] 198:10 Accepting [1] 197:11 Access [1] 130:3 [1] 136:3 [4] 229:24 230:5 230:7 230:17 Accidental [1] 126:17 According [16] 78:13 148:2 153:1 157:6 168:4 182:25 188:4 196:4 197: 8 198:8 210:25 212:13 212:19 213:10 225:5 225:6 Accordingly [1] 173:12 Account [1] 185:8 Accountant [2] 5:21 74:15 Accounting [1] 204:8 Accounts [4] 184:23 185:2 186:16 197:2 Accurate [2] 13:16 34:15 Accusation [1] 89:3 Acknowledging [1] 4:8 Acquaintances [1] 116:25 Acquisition [2] 124:22 164:17 Act [1] 38:13 Acting [5] 25:13 33:10 37:7 44:8 44:9 Action [15] 40:5 47:22 103:6 117:24 120:1 121:5 124:6 125:22 158: 1 172:1 172:11 173:5 232:8 241:15 241:16 Actions [15] 7:4 46:11 46:12 58:2 58:2 97:22 109:22 109:25 110:22 123:3 123:21 163:12 183:21 189:18 213:7 Active [1] 226:7 Actively	
	3	8		
[3] 194:6 214:17 214:19				
14				
[4] 192:19 193:17 197:21 198:6				
15				
[3] 69:22 69:23 241:23				
16				
[1] 207:6				
16975				
[1] 3:21				
16th				
	3	8		
[8] 2:10 16:1 16:2 16:7 16:10 171:21 3-D [1] 10:4 10:14 39:24 40:1 136: 3 136:25 142:22 143:3 145:3 188:5 193:9 30 [4] 34:21 65:17 91:6 139:17 30-ish	8 [3] 104:6 178:18 200:1 85 [1] 20:18 8th [1] 180:5	90 [1] 229:25 92027 [1] 3:22	A [1] 15 2:24 [2] 1:3 76:2 Abandoned [8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19 Abetting [1] 57:2 Ability [3] 31:5 64:4 64:17 Able [4] 101:18 106:10 123:4 149:23 Aboard [8] 162:20 162:24 165:22 166: 12 167:1 224:12 225:3 225:6 Above-entitled [1] 3:4 Absolutely [14] 18:5 29:18 76:7 98:20 101: 13 107:9 126:14 135:14 147:5 166:4 157:13 205:13 205:15 231:18 Absurd [1] 143:10 Accepted [1] 198:10 Accepting [1] 197:11 Access [1] 130:3 [1] 136:3 [4] 229:24 230:5 230:7 230:17 Accidental [1] 126:17 According [16] 78:13 148:2 153:1 157:6 168:4 182:25 188:4 196:4 197: 8 198:8 210:25 212:13 212:19 213:10 225:5 225:6 Accordingly [1] 173:12 Account [1] 185:8 Accountant [2] 5:21 74:15 Accounting [1] 204:8 Accounts [4] 184:23 185:2 186:16 197:2 Accurate [2] 13:16 34:15 Accusation [1] 89:3 Acknowledging [1] 4:8 Acquaintances [1] 116:25 Acquisition [2] 124:22 164:17 Act [1] 38:13 Acting [5] 25:13 33:10 37:7 44:8 44:9 Action [15] 40:5 47:22 103:6 117:24 120:1 121:5 124:6 125:22 158: 1 172:1 172:11 173:5 232:8 241:15 241:16 Actions [15] 7:4 46:11 46:12 58:2 58:2 97:22 109:22 109:25 110:22 123:3 123:21 163:12 183:21 189:18 213:7 Active [1] 226:7 Actively	
	9	9		
[4] 170:6 201:11 220:15 225:7				

214:10 Alan [2] 19:8 19:8 Aligned [1] 108:18 Allegations [23] 16:17 37:10 39:21 50:6 50:9 50:13 51:4 51:5 55:7 56:15 56:22 103:1 103:3 103:6 107:5 110:25 172:13 210:14 211:25 212:25 213:2 232:17 232:21 Allege [1] 9:9 Alleged [11] 14:18 15:21 16:18 18:3 30:3 31:20 33:20 47:11 65:18 103:12 168:2 Allegedly [3] 88:12 154:21 217:14 Allianz [3] 69:19 71:9 71:10 Allowed [4] 19:2 21:2 89:11 133:5 Allowing [1] 24:21 Allows [1] 233:3 Allstate [1] 73:4 Almost [5] 72:20 180:20 180:20 226:1 229:4 Alter [1] 91:20 Amend [1] 233:2 Amended [4] 6:8 6:12 171:25 172:10 Amount [2] 6:13 186:12 Amounts [4] 12:12 174:7 202:15 202:16 Analysis [5] 10:4 55:1 55:4 92:8 134:19 Analyze [1] 194:21 Analyzing [1] 194:19 Ancillary [1] 118:4 Anderson [2] 110:2 176:23 Anderson's [1] 12:1 Anderson [1] 19:11 Angeles [2] 84:23 100:17 Answer [67] 4:3 4:5 6:4 7:16 8:13 9:16 13:10 16:9 18:17 18:25 20:14 26:21 26:22 30:20 30:22 30:25 31:5 41:3 41:25 42:18 42:19 46:4 48:8 51:3 53:17 56:14 57:14 61:20 68:16 76:1 77:25 82:16 92:21 106:17 121:9 121:20 121:24 144:14 168:18 168:19 165:14 166:24 168:16 168:21 168:21 168:23 171:5 171:21 174:4 174:14 174:18 179:21 187:6 190:4 192:7 198:7 199:13 209:22 216:19 217:15 219:8 222:17 228:7 228:14 228:18 236:2 236:5 Answered [5] 42:4 160:14 161:7 190:7 217:18 Answering [5] 13:9 30:21 40:15 41:22 206:12 Answers [12] 17:1 17:4 17:6 26:18 127:23 186:14 208:24 215:21 216:23 216:7 218:14 220:12	Anthony [3] 19:10 90:19 90:19 Anticipate [2] 121:23 127:1 Anyway [1] 50:10 Apart [1] 74:21 Apparent [2] 152:25 155:3 Appeal [1] 104:6 Appear [3] 106:6 143:12 179:10 APPEARANCES [1] 2:1 Appeared [3] 103:1 184:25 240:7 Appearing [2] 2:4 2:5 Applications [8] 37:22 37:24 64:1 66:24 77:9 101:17 105:20 106:23 Appointment [1] 229:13 Appreciate [5] 8:22 102:24 107:12 121:10 231:11 Approach [4] 74:15 74:25 76:21 199:14 Approaching [1] 171:6 Appropriate [1] 26:21 Appropriately [1] 20:8 Approval [18] 7:8 57:1 125:2 164:15 173:22 173:23 176:15 179:17 191:22 193:22 193:22 193:24 194:6 208:10 208:10 231:12 231:15 232:3 Approve [1] 202:14 Approved [7] 10:17 10:18 10:19 165:15 202:14 231:20 231:21 Approving [2] 65:8 164:10 Approximate [1] 145:20 Apps [1] 145:1 April [9] 13:18 19:17 19:23 199:25 207:6 208:1 209:5 209:12 210:9 Arbitrage [1] 72:15 Area [1] 50:2 Arguing [1] 197:9 Armstrong [6] 19:11 84:20 85:1 86:2 102:1 176:23 Arranged [1] 192:22 Arrangement [6] 82:13 191:19 192:2 192:12 192:20 194:25 Arrangements [3] 191:21 192:14 194:16 Arrested [1] 229:18 Arrived [1] 18:9 Art [2] 54:15 118:22 Arthur [3] 12:1 110:1 175:23 Article [2] 27:4 27:7	Ascertain [3] 136:21 218:8 226:22 Ascertained [1] 213:5 Assemble [1] 129:14 Assert [1] 233:3 Asserted [2] 17:22 17:25 Assertion [2] 18:1 187:8 Asset [1] 48:2 Assets [5] 47:23 57:24 124:5 124:10 124:13 Assign [2] 176:15 199:1 Assigned [5] 29:13 43:9 47:25 53:24 58:12 Assigning [1] 42:22 Assignment [4] 10:15 29:22 37:23 49:1 Assignments [4] 42:22 42:23 46:14 47:18 Assisted [1] 216:18 Associates [2] 147:16 147:24 Assume [19] 21:16 38:4 55:2 88:15 88:22 91:19 139:11 149:16 156:12 166:23 180:17 189:12 191:17 194:10 194:11 211:8 211:9 211:15 227:1 Assumed [2] 4:5 166:25 Assuming [7] 194:12 195:18 202:1 202:1 211:12 227:2 227:2 Assumption [7] 78:1 89:2 91:23 92:1 116:1 184:16 211:7 Assumptions [3] 158:18 168:4 209:1 Assured [1] 177:3 Assures [1] 143:14 Attach [1] 8:15 Attached [3] 6:8 8:3 207:25 Attachment [1] 207:7 Attacking [2] 92:15 92:23 Attempt [1] 48:2 Attempts [1] 198:11 Attending [1] 62:24 Attends [1] 138:20 Attention [1] 119:21 Attorney [35] 20:24 20:24 21:5 24:20 32:9 32:24 34:13 34:18 34:22 34:23 34:24 35:6 37:3 43:8 43:12 48:23 62:10 96:11 137:8 137:12 138:5 141:1 156:6 156:21 169:7 169:5 171:2 183:11 189:21 200:3 219:4 220:24 223:6 238:10 241:13 Attorney's [2] 121:4 233:17 Attorneys [23] 31:23 31:25 36:12 36:18	36:21 37:5 42:8 42:10 43:14 48:20 75:6 104:16 110:19 134:20 142:13 142:14 148:10 157:11 167:15 176:19 175:19 186:8 241:15 Attorneys' [3] 6:10 104:12 104:14 Audio [3] 66:6 144:21 144:22 Audiotape [1] 144:22 Audit [1] 103:24 Authorized [1] 165:15 Authorities [2] 104:7 106:8 Authority [6] 56:15 57:6 57:13 57:18 183:21 240:6 Authorized [6] 7:6 37:5 185:1 185:7 202:14 241:7 Average [1] 122:1 Aware [30] 3:25 13:7 13:24 14:19 14:19 17:20 64:20 55:2 55:3 55:7 55:13 55:14 58:18 64:22 84:15 101:2 107:17 128:22 127:14 135:12 163:15 163:10 193:21 194:4 198:16 198:17 203:8 207:13 219:21 232:2 Awareness [1] 122:5	Basis [9] 32:23 81:17 91:25 120:1 144:5 167:18 167:21 173:6 224:21 Beach [10] 1:2 3:14 27:4 52:3 62:15 62:15 95:16 95:17 95:24 96:2 Bear [3] 173:10 174:7 190:23 Bears [1] 180:5 Beast [1] 72:25 Beauman [2] 106:25 107:2 Became [11] 7:2 10:23 11:25 12:21 13:24 100:17 163:10 185:21 186:14 191:22 194:17 Becker [2] 106:25 107:2 Become [2] 13:6 26:18 Becoming [1] 30:8 Began [2] 24:14 180:18 Beginning [3] 63:16 186:24 231:12 Behalf [20] 2:4 2:6 19:16 19:22 20:25 37:6 38:14 56:10 90:8 102:15 126:1 126:9 138:9 141:22 184:21 199:5 202:15 206:12 212:3 224:7 Behest [1] 77:5 Behind [2] 65:2 119:20 Belief [2] 65:13 161:11 Bell [5] 13:18 34:11 34:12 63:20 72:4 Belonging [1] 104:25 Benefit [3] 6:9 83:24 225:10 Bernstein [34] 1:22 2:18 3:2 3:7 3:11 35:25 37:14 63:13 74:13 97:4 155:19 167:8 168:3 169:9 169:17 161:20 165:2 170:4 170:11 170:15 171:19 206:17 216:19 220:16 220:21 221:10 222:5 222:21 225:12 231:3 236:22 236:22 240:7 241:9 Bernstein's [2] 160:24 197:1 Bernsteins [1] 225:4 Berserk [1] 153:19 Best [14] 4:4 31:5 67:9 77:3 116:20 116:25 119:15 121:18 151:18 184:15 197:17 231:14 232:20 234:8 Bet [1] 108:1 Better [3] 6:21 18:25 108:25 Between [33] 12:7 31:20 44:18 53:13 67:11 67:21 73:5 103:16 121:13 130:11 147:24 148:17 163:3 163:8 164:1 175:9 177:24 181:3 181:10 181:19 181:19 184:2 188:9 192:16 195:13 195:15 196:20 203:8 207:11 220:15 220:21 221:1 231:15 Beyond [2] 24:25 230:1 Big
			B B.S. [1] 6:12 Backbone [1] 72:19 Background [7] 5:11 10:3 44:16 49:5 56:21 56:22 98:16 Backtrack [1] 51:18 Backups [1] 191:25 Bad [3] 64:9 214:23 223:25 Balance [1] 213:12 Ballpark [1] 73:23 Band [4] 65:16 55:17 65:25 66:14 Bands [2] 68:25 69:14 Bank [3] 56:25 67:10 164:22 Bankrupt [1] 4:21 Bankruptcies [2] 110:23 176:8 Bankruptcy [7] 14:9 38:10 39:19 39:23 111:1 111:5 111:7 Bare [1] 181:22 Barnes [1] 239:1 Based [33] 4:19 10:24 30:8 42:18 48:1 54:23 64:25 55:4 56:19 78:19 112:14 114:21 129:10 143:21 144:3 144:4 147:20 158:2 165:9 168:19 168:25 174:18 178:6 187:8 188:19 196:9 197:12 198:18 202:12 202:13 204:2 208:13 238:5 Basic [1] 114:15 Basing [1] 174:17	

[5] 109:6 117:5 117:5 139:21  
188:3  
**Biggest**  
[2] 73:9 128:7  
**Bill**  
[56] 9:10 13:2 14:1 16:21 24:  
16 31:24 83:3 83:16 85:19 85:  
25 86:4 86:8 88:16 86:21 86:  
22 86:25 87:1 87:5 87:8 87:10  
87:15 87:19 88:4 88:7 88:16  
88:16 89:15 90:10 90:12 98:22  
116:15 123:22 142:10 146:20  
151:6 153:15 153:25 157:17  
159:18 159:25 160:7 161:4  
161:14 161:16 161:19 164:1  
165:20 176:4 193:7 193:10  
194:16 194:21 205:7 218:18  
222:9 223:12  
**Billed**  
[9] 12:17 83:3 83:12 155:16  
173:21 181:9 181:22 190:9  
223:13  
**Billings**  
[44] 6:22 8:2 9:1 9:3 9:6 25:8  
26:2 83:19 84:2 86:11 86:20  
91:19 134:8 134:8 134:10 134:  
25 138:14 138:16 138:22 139:  
13 139:16 148:15 148:22 153:  
16 162:25 163:22 164:12 164:  
16 185:12 185:13 187:24 189:  
8 188:8 188:9 188:9 192:16  
196:5 197:24 198:3 222:24  
222:25 226:13 226:20 226:21  
**Billions**  
[15] 7:5 7:9 14:23 23:13 86:10  
148:2 148:12 148:17 164:2  
181:21 208:18 219:17 219:19  
220:16 220:22  
**Billions**  
[5] 66:17 108:16 124:2 188:5  
193:8  
**Bills**  
[135] 6:10 6:19 6:21 8:10 9:8 9:  
8 9:18 9:20 9:21 11:13 11:15  
11:16 11:18 11:20 11:22 11:23  
12:3 12:5 12:8 12:13 12:15 12:  
20 12:21 16:18 17:22 18:4 18:  
13 21:8 23:1 23:2 25:17 43:22  
43:23 43:23 50:14 51:14 51:16  
55:9 71:4 83:15 86:2 89:16 89:  
19 92:1 138:11 138:17 138:18  
139:14 139:18 139:22 148:9  
151:3 151:4 151:13 151:23  
151:24 153:8 153:13 154:7  
155:18 157:8 157:22 157:24  
157:25 158:2 158:9 158:14  
158:21 159:10 159:17 161:5  
161:23 161:25 162:5 162:12  
162:13 162:16 162:18 162:20  
163:9 163:13 164:12 164:16  
164:20 164:24 165:6 165:23  
155:24 166:2 170:15 174:6  
174:9 177:5 186:16 187:17  
187:21 188:1 189:3 189:20  
190:9 191:24 192:17 194:18  
194:18 194:19 195:21 197:4  
197:6 197:10 197:13 204:9  
204:12 204:14 204:24 205:19  
205:19 205:23 207:24 208:7  
208:20 208:21 213:24 217:25  
218:11 218:14 219:3 219:14  
220:6 220:11 221:12 222:20  
223:18 227:20 227:21 227:25  
**Binding**  
[1] 198:24  
**Biography**  
[2] 105:3 105:5  
**Bit**  
[4] 51:18 64:19 160:20 230:1  
**Blah**  
[12] 80:21 80:22 80:22 111:7  
111:7 111:7 129:1 129:1 129:1  
188:2 195:1 223:12  
**Blakely**  
[6] 28:18 54:21 106:15 107:5  
123:10 186:11

**Blakely's**  
[1] 65:1  
**Blamed**  
[1] 146:11  
**Blank**  
[3] 7:20 7:23 101:19  
**Block**  
[1] 74:21  
**Blood**  
[1] 123:24  
**Blow**  
[2] 64:23 66:13  
**Blowing**  
[1] 73:9  
**Blown**  
[1] 164:23  
**Board**  
[97] 7:3 7:8 7:8 7:12 10:17 11:  
5 11:25 12:21 16:3 24:10 30:  
10 30:13 30:13 39:1 47:19 47:  
20 55:22 56:25 56:5 56:18 57:  
1 57:15 57:25 58:11 52:15 62:  
17 62:22 62:23 62:24 100:9  
100:13 108:23 111:2 124:24  
124:24 125:2 129:15 141:8  
143:14 150:17 151:9 153:15  
153:24 164:11 167:9 157:12  
157:20 163:10 164:8 164:15  
164:18 173:22 173:23 175:15  
176:15 179:10 179:16 182:18  
186:22 188:16 188:19 188:19  
188:21 191:22 193:21 193:22  
194:4 194:17 195:8 197:13  
198:19 202:7 208:10 212:2  
212:3 212:25 213:6 213:17  
214:1 214:9 221:15 225:18  
225:19 231:12 231:15 231:20  
231:21 231:25 232:3 233:10  
233:15 233:19 234:9 235:15  
235:17 236:6 237:6  
**Board's**  
[3] 100:18 125:4 191:23  
**Boasted**  
[1] 65:4  
**Boca**  
[8] 1:14 2:23 56:21 100:16 142:  
11 142:14 147:17 147:24  
**Body**  
[1] 103:9  
**Bogus**  
[4] 108:22 138:11 155:5 155:9  
**Bone**  
[1] 131:21  
**Book**  
[1] 96:15  
**Books**  
[2] 124:14 149:20  
**Bottom**  
[4] 123:18 200:10 200:15 220:4  
**Box**  
[2] 122:6 168:15  
**Boy**  
[2] 72:18 111:5  
**Boynton**  
[5] 3:14 52:3 52:5 52:15 82:15  
**Brandon**  
[1] 141:23  
**Break**  
[15] 4:10 4:11 20:1 20:7 35:20  
96:22 99:22 100:2 116:12 122:  
14 129:12 149:22 169:20 170:  
10 230:23  
**Breaks**  
[1] 28:2  
**Brian**  
[79] 7:1 9:7 9:18 10:21 11:3 11:  
4 11:22 21:8 21:19 22:5 22:11  
28:17 30:7 30:18 47:22 56:14  
56:1 66:4 67:21 68:2 63:3 87:2  
92:5 97:23 100:3 100:5 107:15  
107:18 107:19 109:1 112:4  
112:17 118:12 120:13 124:23  
124:25 128:4 128:9 128:25  
132:10 146:13 146:20 150:20

151:17 153:12 153:14 153:24  
154:1 163:6 163:8 164:4 178:  
24 186:12 186:24 186:21 187:  
11 191:21 191:23 192:14 192:  
16 192:21 193:20 193:20 196:  
13 196:6 202:2 207:11 209:25  
210:5 210:6 210:8 213:13 213:  
19 213:22 222:22 224:24 224:  
25 225:21 226:22  
**Brick**  
[10] 49:8 49:9 93:21 93:22 93:  
25 93:25 98:8 98:8 115:6 115:6  
**Briefly**  
[1] 20:3  
**Brightest**  
[1] 77:3  
**Bring**  
[6] 49:8 93:21 93:25 95:20 152:  
10 187:3  
**Bringing**  
[1] 173:4  
**Broke**  
[2] 119:6 170:12  
**Brother**  
[2] 72:13 128:13  
**Brothers**  
[4] 14:7 60:6 128:2 128:10  
**Brothers'**  
[1] 113:15  
**Brought**  
[23] 10:2 10:4 14:22 14:24 29:  
8 32:18 33:5 38:25 39:4 66:25  
67:9 77:5 92:7 103:23 124:23  
143:8 146:20 162:16 174:11  
178:21 188:9 194:20 219:21  
**Broward**  
[4] 239:17 239:20 240:4 241:4  
**Bruce**  
[2] 124:19 173:22  
**Buchsbaum**  
[25] 19:10 18 39:2 40:5 58:  
22 60:7 60:10 60:11 61:4 61:  
13 63:4 93:8 100:6 100:11 100:  
23 101:10 115:12 151:20 156:  
9 218:13 219:2 221:2 221:10  
222:5 222:7  
**Buddy**  
[1] 204:12  
**Build**  
[2] 66:12 149:18  
**Building**  
[4] 64:25 160:10 169:23 195:3  
**Built**  
[5] 64:12 67:12 68:18 68:19  
129:9  
**Bulk**  
[1] 66:24  
**Bunch**  
[7] 12:8 34:8 95:19 124:17 128:  
12 148:17 148:21  
**Bundle**  
[1] 195:3  
**Burfield**  
[1] 144:23  
**Buried**  
[1] 152:9  
**Business**  
[10] 28:16 38:3 53:16 56:24 70:  
15 86:18 147:10 155:12 155:  
16 175:13  
**Busy**  
[2] 132:16 237:25  
**Buy**  
[1] 238:25  
**Buying**  
[2] 73:1 73:4

**Calendar**  
[1] 171:6  
**California**  
[14] 3:17 23:10 56:3 70:21 91:  
4 94:2 100:21 114:2 119:3 132:  
11 149:20 158:16 214:25 235:7  
**Candidate**  
[1] 30:9  
**Canned**  
[1] 194:7  
**Canvas**  
[1] 64:11  
**Capabilities**  
[1] 11:1  
**Capable**  
[1] 10:1  
**Car**  
[4] 111:15 229:24 229:25 230:4  
**Care**  
[7] 117:4 117:5 130:13 207:3  
221:18 228:25 236:21  
**Careful**  
[1] 99:11  
**Carefully**  
[1] 145:23  
**Cares**  
[1] 196:3  
**Caroline**  
[23] 33:6 33:9 35:2 35:7 35:9  
37:2 42:12 43:11 43:12 43:15  
48:23 54:2 95:18 96:3 96:8  
103:23 120:25 121:6 185:25  
159:7 170:25 183:5 183:11  
**Carried**  
[1] 64:9  
**Carrier**  
[2] 73:6 229:25  
**Carriers**  
[1] 73:9  
**Carries**  
[1] 115:5  
**Case**  
[33] 1:3 4:1 16:14 17:17 17:19  
18:9 19:3 24:22 28:13 32:13  
64:19 61:25 112:3 118:9 119:  
16 119:22 120:17 123:16 125:  
23 148:11 156:24 167:1 180:  
24 191:8 194:14 196:14 200:4  
200:5 207:23 208:16 209:11  
227:7 227:12  
**Cases**  
[1] 181:23  
**Cash**  
[1] 154:4  
**Casual**  
[1] 116:25  
**Catching**  
[1] 154:1  
**Categorically**  
[1] 68:24  
**Categories**  
[1] 134:23  
**Caught**  
[1] 56:20  
**Caused**  
[3] 53:20 104:4 110:17  
**Causes**  
[1] 7:4  
**Cc**  
[3] 200:12 200:14 200:19  
**Cc'd**  
[6] 200:10 201:17 201:25 203:  
7 207:21 214:8  
**Cc's**  
[1] 201:17  
**CD**  
[2] 152:10 157:1  
**CDR**  
[1] 156:15  
**Cease**  
[1] 29:3  
**Ceased**  
[1] 86:18

**Cell**  
[2] 145:7 145:14  
**Center**  
[1] 66:5  
**Centered**  
[2] 72:20 79:13  
**CEO**  
[6] 10:17 14:14 25:13 25:24 37:  
7 44:9  
**CEO/president**  
[1] 11:1  
**CEO/president-type**  
[1] 11:1  
**Certain**  
[7] 131:12 132:2 134:24 146:  
25 147:23 187:5 234:9  
**Certainly**  
[6] 164:7 171:7 171:8 171:14  
187:13 211:5  
**Certainty**  
[1] 137:1  
**CERTIFICATE**  
[2] 240:1 241:1  
**Certify**  
[3] 240:6 241:7 241:12  
**Cetera**  
[22] 7:8 9:4 49:2 68:21 77:10  
80:19 92:7 104:13 129:17 148:  
20 148:21 149:20 150:19 153:  
17 164:7 188:5 193:4 193:5  
197:15 199:2 216:5 223:15  
**CFO**  
[4] 11:8 11:11 11:12 185:6  
**Chance**  
[2] 187:4 189:15  
**Change**  
[1] 22:17  
**Changed**  
[3] 102:7 129:1 213:4  
**Changes**  
[1] 54:25  
**Character**  
[1] 108:21  
**Charge**  
[2] 162:23 236:9  
**Charges**  
[1] 39:11  
**Charter**  
[1] 199:1  
**Check**  
[27] 79:16 79:16 96:25 99:7  
108:25 154:2 157:19 182:24  
185:8 191:13 202:13 205:21  
205:22 206:3 206:20 210:10  
210:17 210:21 211:1 211:21  
216:16 219:4 222:9 226:2 227:  
4 228:8 231:23  
**Checkbook**  
[3] 197:18 201:1 201:3  
**Checking**  
[1] 81:15  
**Checks**  
[1] 185:1 185:11 185:21 185:  
24 186:1 186:15 186:19 224:7  
224:12 224:13 224:14  
**Chicago**  
[12] 33:14 35:16 37:3 43:12 45:  
25 96:11 117:16 117:21 121:1  
121:3 159:1 171:2  
**Chief**  
[1] 10:19  
**Children**  
[10] 83:13 94:3 98:1 108:2 114:  
17 114:20 114:21 118:17 122:  
18 122:22  
**China**  
[2] 113:14 113:25  
**Chinese**  
[1] 114:10  
**Choose**  
[1] 75:18  
**Chosen**  
[1] 42:13  
**Chris**

**C**

**C1**  
[2] 220:19 220:20  
**CA**  
[1] 1:3  
**Calculations**  
[1] 72:21

<p>[1] 3:7 7:17 10:2 10:4 10:16 10:20 11:24 14:15 14:23 14:25 15:8 23:25 24:2 25:7 26:10 26: 15 25:16 25:23 26:24 31:4 38: 19 39:14 47:21 49:8 53:21 57: 22 59:23 60:11 62:23 62:24 63: 1 64:24 65:4 67:10 76:9 77:1 78:19 78:24 78:25 79:20 79:20 80:9 80:13 81:20 93:19 108:23 110:4 124:19 126:16 136:2 136:13 136:21 137:1 137:23 140:15 141:8 141:23 142:2 142:5 144:10 145:3 146:11 146:20 151:18 153:2 154:18 155:7 155:8 157:13 157:15 163:6 163:8 175:14 176:20 177:10 181:25 186:24 187:1 187:9 187:10 188:19 188:22 189:13 191:24 192:17 193:6 194:2 194:23 195:13 195:15 196:4 196:20 196:25 197:3 197:5 197:7 197:10 197:16 198:5 202:2 205:6 207:12 209: 24 212:5 213:16 213:19 213: 22 214:2 220:16 220:22 224:5 226:17 236:23</p> <p><b>Chris's</b> [3] 10:24 143:11 197:12</p> <p><b>Christmas</b> [2] 52:8 62:12</p> <p><b>Christopher</b> [2] 2:3 211:2</p> <p><b>Chronologically</b> [1] 6:11</p> <p><b>Circle</b> [1] 3:13</p> <p><b>CIRCUIT</b> [2] 1:1 1:2</p> <p><b>Circumstances</b> [1] 59:15</p> <p><b>Cities</b> [1] 107:2</p> <p><b>City</b> [2] 35:16 142:7</p> <p><b>Claim</b> [17] 12:15 39:12 39:15 39:18 40:11 40:14 42:2 48:1 48:2 50: 15 60:15 51:15 54:14 85:25 89: 15 115:20 238:4</p> <p><b>Claimed</b> [5] 6:13 29:22 66:17 144:5 155: 13 158:18</p> <p><b>Claiming</b> [1] 86:2</p> <p><b>Claims</b> [8] 40:14 105:2 105:18 151:22 155:12 173:10 174:25 186:5</p> <p><b>Clarify</b> [2] 222:11 222:17</p> <p><b>Clarifying</b> [1] 155:24</p> <p><b>Classify</b> [1] 46:18</p> <p><b>Clause</b> [1] 217:12</p> <p><b>Clear</b> [4] 31:15 121:21 158:7 164:13</p> <p><b>Clearly</b> [1] 31:4</p> <p><b>Client</b> [4] 5:4 142:7 164:13 197:15</p> <p><b>Clients</b> [5] 47:7 154:24 192:25 193:8 213:15</p> <p><b>Close</b> [5] 53:18 100:20 109:2 118:19 224:22</p> <p><b>Closed</b> [1] 55:20</p> <p><b>Closely</b> [2] 71:1 73:21</p> <p><b>Closely-held</b> [1] 73:21</p> <p><b>Closing</b></p>	<p>[1] 100:15</p> <p><b>Clouded</b></p> <p><b>Club</b> [2] 74:18 74:22</p> <p><b>Code</b> [1] 116:18</p> <p><b>Coffee</b> [2] 127:2 198:12</p> <p><b>Collateral</b> [1] 119:5</p> <p><b>Collection</b> [1] 31:24</p> <p><b>College</b> [4] 67:11 67:21 70:7 70:10</p> <p><b>Columbia</b> [2] 44:17 44:18</p> <p><b>Combined</b> [1] 39:1</p> <p><b>Comfortable</b> [2] 103:4 126:7</p> <p><b>Coming</b> [10] 24:19 32:22 108:24 119: 21 129:17 129:18 164:24 195: 5 212:1 226:20</p> <p><b>Commencing</b> [1] 2:24</p> <p><b>Comment</b> [1] 86:12</p> <p><b>Commented</b> [1] 106:5</p> <p><b>Comments</b> [4] 17:20 83:23 188:22 195:24</p> <p><b>Commsion</b> [1] 241:23</p> <p><b>Committed</b> [1] 138:6</p> <p><b>Committee</b> [2] 80:17 153:23</p> <p><b>Commonly</b> [1] 64:15</p> <p><b>Communicate</b> [1] 122:1</p> <p><b>Communication</b> [3] 122:8 136:11 217:21</p> <p><b>Communications</b> [1] 217:23</p> <p><b>Compact</b> [1] 152:13</p> <p><b>Companies</b> [24] 44:10 44:11 44:20 53:7 53: 14 74:3 74:5 93:22 98:8 135: 10 176:3 176:11 176:22 176: 25 177:3 177:23 177:25 178: 13 181:25 182:8 182:10 182: 14 183:13 186:3</p> <p><b>Company</b> [161] 7:2 7:7 7:9 24:10 5:11 2 11:8 14:10 24:3 25:7 25:10 25:23 25:24 28:15 29:8 29:9 29:10 29:11 29:14 38:7 38:9 38:21 39:3 39:4 39:5 39:6 39:9 39:20 40:5 40:6 40:10 40:15 42:6 42:22 42:23 43:6 44:5 46: 8 46:11 47:9 49:2 49:8 53:10 54:7 54:23 54:24 56:11 56:14 55:15 56:8 57:2 57:15 57:16 57:21 57:24 57:25 58:5 62:25 63:1 66:18 67:8 69:25 70:11 70:13 70:17 70:20 70:22 71: 71:4 71:6 71:11 71:15 71:19 73:21 78:3 78:12 78:13 80:18 94:13 100:21 102:2 102:16 105:13 109:8 109:23 110:23 110:23 113:24 115:8 115:18 123:23 124:4 124:8 124:9 124: 13 124:20 124:24 124:25 128: 12 128:13 135:8 138:22 144:1 162:9 162:10 163:5 164:11 164:12 164:15 164:17 164:25 167:14 175:20 175:21 176:9 178:11 178:19 178:20 178:22 177:20 178:4 179:18 180:16 182:1 182:22 182:24 186:23</p>	<p>190:10 193:7 193:12 195:7 195:9 198:11 199:2 202:4 202: 16 206:8 207:19 208:19 209: 14 210:15 210:24 212:3 212: 17 213:8 213:10 213:11 213: 17 214:3 214:15 224:2 224:3 226:2 226:18 227:13 227:14 235:14 236:11 236:20 236:21 236:20</p> <p><b>Company's</b> [4] 46:15 126:9 234:20 235:11</p> <p><b>Compared</b> [1] 195:5</p> <p><b>Compensation</b> [2] 4:18 38:6</p> <p><b>Complain</b> [3] 217:12 227:18 227:24</p> <p><b>Complained</b> [2] 217:20 220:5</p> <p><b>Complaining</b> [9] 104:16 161:3 151:9 151:14 151:16 151:20 159:9 174:9 217:24</p> <p><b>Complaint</b> [8] 6:8 6:12 9:9 61:2 163:18 164:3 171:25 172:10</p> <p><b>Complaints</b> [15] 151:20 151:21 151:25 152: 7 153:16 157:7 157:10 157:17 168:2 218:11 218:13 221:11 221:22 222:1 222:2</p> <p><b>Complete</b> [3] 6:20 187:7 241:10</p> <p><b>Completed</b> [2] 45:16 108:6</p> <p><b>Completely</b> [4] 141:2 155:13 236:1 237:12</p> <p><b>Completeness</b> [1] 91:18</p> <p><b>Completing</b> [1] 10:1</p> <p><b>Completion</b> [1] 10:16</p> <p><b>Complex</b> [1] 176:10</p> <p><b>Complexity</b> [1] 34:4</p> <p><b>Complicated</b> [4] 30:23 123:4 144:16 176:16 98:25 104:11 107:7 107:14 116:10 118:13 119:23 123:16 146:24 147:7 147:10 149:1 149:2 149:3 163:3 167:16 167: 22 183:25 184:11 184:13 186: 25 187:12 189:8 189:14 212:8 212:13 212:15 212:19 223:16 223:21 224:1</p> <p><b>Conspired</b> [3] 47:8 115:16 184:13</p> <p><b>Conspiring</b> [5] 31:7 98:19 98:21 99:16 126: 20</p> <p><b>Constant</b> [1] 196:8</p> <p><b>Constantly</b> [1] 139:15</p> <p><b>Constituting</b> [1] 102:13</p> <p><b>Constitution</b> [1] 104:6</p> <p><b>Consultation</b> [2] 7:11 229:15</p> <p><b>Consulted</b> [2] 138:21 139:15</p> <p><b>Consulting</b> [3] 27:19 27:22 28:9</p> <p><b>Contact</b> [1] 129:9</p> <p><b>Contacted</b> [3] 33:14 103:11 120:25</p> <p><b>Contacted</b> [3] 84:8 170:14 232:18</p> <p><b>Containing</b> [3] 171:15 207:6 235:8</p>	<p><b>Confident</b> [1] 89:5</p> <p><b>Confidential</b> [2] 36:21 81:17</p> <p><b>Conflrm</b> [3] 32:16 78:11 147:3</p> <p><b>Conflict</b> [10] 23:22 23:25 32:21 116:22 163:7 164:7 172:14 198:13 214:6 214:7</p> <p><b>Conflicts</b> [3] 6:19 163:4 163:5</p> <p><b>Confront</b> [1] 118:3</p> <p><b>Confronted</b> [1] 64:8</p> <p><b>Confused</b> [13] 15:10 60:8 60:9 77:25 82: 2 141:7 145:10 154:13 160:20 182:8 183:1 204:16 220:1</p> <p><b>Confusing</b> [2] 83:14 177:21</p> <p><b>Connected</b> [2] 145:8 241:15</p> <p><b>Consent</b> [1] 35:3</p> <p><b>Consented</b> [1] 35:5</p> <p><b>Conservatory</b> [1] 214:4</p> <p><b>Consider</b> [1] 73:8</p> <p><b>Consideration</b> [1] 78:16</p> <p><b>Considering</b> [1] 76:19</p> <p><b>Consistent</b> [3] 8:6 195:11 223:18</p> <p><b>Consisting</b> [1] 202:22</p> <p><b>Conspiracies</b> [3] 49:18 49:20 224:6</p> <p><b>Conspiracy</b> [56] 29:23 30:3 31:20 32:17 32: 23 33:8 33:20 39:11 47:11 47: 18 49:15 49:19 49:21 51:4 59: 19 59:21 59:24 59:25 59:25 60: 3 60:10 60:16 61:7 66:19 87:4 98:25 104:11 107:7 107:14 116:10 118:13 119:23 123:16 146:24 147:7 147:10 149:1 149:2 149:3 163:3 167:16 167: 22 183:25 184:11 184:13 186: 25 187:12 189:8 189:14 212:8 212:13 212:15 212:19 223:16 223:21 224:1</p> <p><b>Conspired</b> [3] 47:8 115:16 184:13</p> <p><b>Conspiring</b> [5] 31:7 98:19 98:21 99:16 126: 20</p> <p><b>Constant</b> [1] 196:8</p> <p><b>Constantly</b> [1] 139:15</p> <p><b>Constituting</b> [1] 102:13</p> <p><b>Constitution</b> [1] 104:6</p> <p><b>Consultation</b> [2] 7:11 229:15</p> <p><b>Consulted</b> [2] 138:21 139:15</p> <p><b>Consulting</b> [3] 27:19 27:22 28:9</p> <p><b>Contact</b> [1] 129:9</p> <p><b>Contacted</b> [3] 33:14 103:11 120:25</p> <p><b>Contacted</b> [3] 84:8 170:14 232:18</p> <p><b>Containing</b> [3] 171:15 207:6 235:8</p>	<p><b>Contemplated</b> [1] 45:16</p> <p><b>Content</b> [4] 216:24 217:1 217:3 217:7</p> <p><b>Contention</b> [1] 131:21</p> <p><b>Contents</b> [3] 152:20 181:16 217:6</p> <p><b>Continue</b> [7] 41:24 93:15 135:3 146:4 193:17 198:5 230:13</p> <p><b>Continued</b> [4] 49:4 154:14 170:7 172:18</p> <p><b>Continues</b> [1] 193:19</p> <p><b>Continuing</b> [1] 41:23</p> <p><b>Contract</b> [2] 172:2 172:12</p> <p><b>Contrary</b> [1] 163:23</p> <p><b>Control</b> [5] 60:19 66:23 105:10 105:19 212:17</p> <p><b>Controlled</b> [3] 25:10 77:8 77:11</p> <p><b>Controlling</b> [6] 27:12 27:15 62:25 63:1 197: 17 213:12</p> <p><b>Conversation</b> [5] 33:19 33:23 121:13 135:23 221:4</p> <p><b>Conversations</b> [9] 78:5 101:7 102:21 128:20 132:8 134:5 134:25 140:19 157:21</p> <p><b>Convince</b> [1] 199:11</p> <p><b>COO</b> [3] 10:18 11:4 11:6</p> <p><b>Copied</b> [2] 102:3 102:4</p> <p><b>Copies</b> [6] 8:2 134:19 155:17 159:21 206:23 207:20</p> <p><b>Copy</b> [14] 15:10 20:8 37:12 125:17 158:25 159:5 159:8 178:17 190:17 200:7 201:14 207:22 209:14 214:23</p> <p><b>Copyright</b> [4] 173:18 173:19 173:20 190:8</p> <p><b>Copyrights</b> [3] 190:8 190:14 193:15</p> <p><b>Corner</b> [1] 66:13</p> <p><b>Corporate</b> [43] 34:6 56:2 60:15 81:3 88: 17 88:20 89:5 89:8 93:11 100: 20 101:3 101:8 125:4 129:9 129:14 130:4 130:9 139:13 149:19 149:20 160:16 156:2 160:8 161:15 166:4 173:6 176: 3 175:25 176:2 182:7 186:12 205:15 206:4 206:15 213:3 218:3 223:4 233:23 234:1 234: 16 235:8 236:5 236:12</p> <p><b>Corporation</b> [8] 1:9 1:10 4:10 4:25 71:1 234: 17 236:7 236:10</p> <p><b>Correct</b> [100] 5:7 5:10 13:21 14:13 15: 23 21:17 28:7 29:25 31:22 32: 8 35:13 36:3 36:25 40:10 43: 17 45:2 45:3 45:24 51:21 51: 23 62:4 52:19 53:1 62:18 62: 20 63:14 63:23 71:3 72:3 74:2 74:15 74:16 74:24 75:2 75:4 76:24 82:5 84:25 88:5 88:25 91:24 92:1 92:2 94:1 94:10 94: 12 95:5 100:8 104:8 111:19 113:18 113:20 114:11 118:18 126:18 129:2 133:13 133:16 137:13 140:16 140:18 140:21</p>
---	--	--	---	---

140:23 140:25 149:5 157:9  
 158:1 158:9 158:10 158:11  
 158:12 158:14 159:2 159:11  
 161:1 161:3 162:6 162:7 162:  
 11 162:14 163:6 167:17 167:  
 19 178:23 184:1 184:3 184:5  
 184:7 196:17 196:20 196:21  
 215:3 220:25 221:20 222:6  
 222:21 228:7 230:19 232:21  
 233:11

**Corrected**  
 [1] 155:2

**Correcting**  
 [1] 211:18

**Correctly**  
 [1] 83:4

**Correlates**  
 [1] 83:4

**Correspond**  
 [1] 106:17

**Correspondence**  
 [6] 55:17 121:2 128:12 164:5  
 166:21 221:8

**Correspondences**  
 [9] 105:18 150:13 166:4 181:  
 19 205:2 220:15 220:21 221:  
 222:23

**Corresponding**  
 [1] 223:11

**Corroborate**  
 [1] 95:20

**Cosigned**  
 [1] 224:13

**Costly**  
 [1] 73:2

**Couch**  
 [1] 49:7

**Counsel**  
 [30] 15:5 16:13 24:24 26:17 26:  
 17 26:21 29:9 32:20 33:10 54:  
 21 64:22 64:23 76:19 75:22 75:  
 24 111:3 111:5 136:21 142:5  
 174:11 183:1 183:3 199:13  
 199:13 199:24 202:18 226:2  
 238:3 241:13 241:15

**Counseled**  
 [3] 23:20 103:21 175:19

**Counsels**  
 [1] 136:8

**Counted**  
 [1] 38:8

**Counterclaim**  
 [14] 32:23 50:7 50:9 60:13 50:  
 21 61:9 167:20 232:7 232:18  
 233:1 233:1 233:4 237:18 238:  
 11

**County**  
 [8] 1:2 114:3 114:5 214:25 239:  
 17 239:21 240:4 241:4

**Couple**  
 [7] 3:23 4:1 27:5 52:14 152:18  
 152:23 230:22

**Course**  
 [7] 17:18 18:7 81:18 93:16 103:  
 6 119:13 190:13

**Court**  
 [26] 1:1 6:18 8:4 34:9 89:7 89:  
 10 96:5 116:16 121:17 122:11  
 123:17 132:19 133:4 133:6  
 133:5 139:10 149:9 159:22  
 166:8 169:22 178:12 199:17  
 199:22 200:6 227:5 227:12

**Cover**  
 [2] 38:25 167:13

**Covering**  
 [1] 167:23

**Cow**  
 [1] 163:11

**Crazy**  
 [2] 66:5 218:24

**Create**  
 [3] 164:16 176:17 176:7

**Created**  
 [2] 155:11 176:10

**Creating**  
 [2] 68:7 69:15

**Credentials**  
 [1] 30:12

**Credibly**  
 [1] 11:25

**Credit**  
 [1] 226:20

**Creditor**  
 [1] 162:12

**Creditors**  
 [2] 9:22 25:14

**Crimes**  
 [2] 54:12 98:3

**Cross**  
 [5] 2:11 122:6 230:21 230:23  
 231:1

**Cross-box**  
 [1] 122:6

**Crossbow**  
 [68] 25:11 25:13 25:18 25:18  
 25:22 26:9 26:24 26:25 27:10  
 27:16 27:19 28:9 28:12 28:15  
 29:1 29:3 29:8 29:16 31:7 31:  
 21 36:1 36:1 37:20 42:11 42:  
 16 42:18 43:8 43:15 44:23 46:  
 12 46:20 46:23 47:11 47:17 48:  
 1 53:5 53:15 53:24 53:25 64:  
 13 54:19 55:7 65:17 55:18 55:  
 24 55:25 66:15 67:5 67:12 67:  
 14 67:15 58:3 68:14 58:18 68:  
 20 68:24 59:15 59:16 59:18 69:  
 22 60:6 62:12 100:7 106:11  
 111:4 111:7 113:3 116:13

**Crowd**  
 [2] 26:15 54:20

**Crowd**  
 [3] 137:24 137:25 138:3

**Culter**  
 [3] 19:7 95:19 113:3

**Cup**  
 [1] 196:12

**Cure**  
 [1] 193:14

**Curious**  
 [2] 7:25 192:20

**Current**  
 [6] 4:13 44:4 44:5 182:25 183:  
 3 187:8

**Customers**  
 [1] 53:22

**D**

**Dad**  
 [7] 12:19 21:13 67:9 72:2 79:  
 25 153:22 154:17

**Dad's**  
 [2] 74:18 74:25

**Daily**  
 [1] 45:17

**Damage**  
 [2] 44:10 119:5

**Damaged**  
 [2] 149:18 237:7

**Damages**  
 [2] 67:24 232:18

**Danger**  
 [4] 18:21 49:4 55:14 102:24

**Dangerous**  
 [2] 158:19 228:14

**Darn**  
 [1] 124:8

**Data**  
 [6] 64:20 98:5 156:20 193:4  
 233:22 233:23

**Date**  
 [23] 13:12 17:18 17:13 26:12  
 28:23 31:9 31:16 33:8 33:15  
 37:20 42:1 57:23 83:13 88:13  
 95:10 101:15 101:18 146:20  
 180:13 181:18 192:19 193:18  
 217:21

**Dated**  
 [13] 171:22 178:17 180:4 191:

4 196:10 196:16 199:25 201:  
 11 202:22 207:6 209:5 231:5  
 241:18

**Dates**  
 [3] 50:25 86:1 194:9

**David**  
 [3] 19:7 95:19 113:3

**DAVILA**  
 [4] 2:20 240:14 241:6 241:22

**Day-to-day**  
 [3] 186:23 224:16 224:21

**Days**  
 [7] 34:21 125:12 131:5 131:6  
 131:9 150:21 163:20

**DD**  
 [1] 241:23

**Dead**  
 [2] 108:12 109:19

**Deal**  
 [14] 13:1 29:14 42:11 44:23 45:  
 1 45:9 45:13 45:15 46:9 46:24  
 54:8 105:9 123:4 196:6

**Dealing**  
 [3] 77:4 151:4 230:16

**Deals**  
 [14] 50:14 51:14 53:9 53:13 53:  
 18 63:18 63:21 154:3 191:23  
 193:21 193:23 193:24 194:5  
 202:15

**Dealt**  
 [1] 176:4

**Dear**  
 [1] 76:9

**Death**  
 [8] 108:3 108:4 112:11 114:8  
 115:22 116:4 126:17 129:5

**Debt**  
 [2] 98:15 125:21

**Decade**  
 [1] 66:16

**December**  
 [2] 52:6 52:12

**Deception**  
 [1] 118:22

**Decide**  
 [4] 74:14 124:3 133:14 201:10

**Decided**  
 [2] 67:5 176:7

**Decides**  
 [1] 74:14

**Decision**  
 [10] 25:16 56:6 56:18 77:12 79:  
 18 80:2 100:18 100:20 125:4  
 148:25

**Decisions**  
 [3] 54:23 147:20 151:13

**Declining**  
 [1] 15:5

**Deemed**  
 [2] 13:4 77:7

**Deep**  
 [3] 112:15 124:25 141:10

**Defend**  
 [2] 15:14 183:22

**Defendant**  
 [4] 2:6 4:25 21:2 155:24

**Defendant's**  
 [1] 232:12

**Defendants**  
 [10] 1:11 5:5 5:7 38:19 172:2  
 172:12 173:5 199:5 217:12  
 217:20

**Defendants'**  
 [3] 20:6 217:15 232:13

**Defending**  
 [2] 14:12 207:3

**Defense**  
 [7] 16:9 16:10 31:24 32:3 171:  
 25 173:14 174:1

**Defenses**  
 [10] 16:21 17:4 17:22 50:15 51:  
 2 51:3 61:15 171:22 171:24  
 172:18

**Defet**  
 [3] 33:9 64:2 183:4

**Defining**  
 [2] 10:9 136:6

**Definitely**  
 [2] 77:13 216:22

**Degree**  
 [2] 127:24 128:5

**Degrees**  
 [1] 10:3

**Delaware**  
 [4] 1:9 1:9 1:10 4:25

**Delay**  
 [1] 187:24

**Delaying**  
 [2] 13:3 188:2

**Delivered**  
 [1] 200:17

**Demand**  
 [1] 197:17

**Demanding**  
 [2] 197:23 213:13

**Demands**  
 [1] 197:11

**Department**  
 [5] 94:24 95:9 97:7 156:17 157:  
 4

**Depo**  
 [2] 3:24 139:3

**DEPONENT**  
 [2] 239:11 239:14

**Depose**  
 [1] 50:8

**Deposed**  
 [1] 205:17

**Deposition**  
 [37] 1:20 2:18 8:15 37:17 40:  
 21 50:12 50:14 50:18 51:14 61:  
 9 72:4 82:20 95:9 96:19 109:  
 19 110:5 131:19 132:10 132:  
 15 138:13 138:25 140:1 144:9  
 170:3 188:25 189:2 189:8 204:  
 19 208:19 219:1 219:15 219:  
 20 234:24 236:15 237:16 239:  
 8 241:8

**Depositions**  
 [2] 209:2 225:6

**Design**  
 [1] 67:7

**Designed**  
 [1] 11:24

**Designing**  
 [2] 73:3 176:23

**Destroy**  
 [7] 98:7 115:16 115:18 133:15  
 168:7 168:8 236:19

**Destroyed**  
 [63] 23:9 68:8 81:4 88:17 88:  
 20 88:24 88:9 89:15 89:19 90:  
 3 90:14 91:16 92:1 92:9 101:3  
 101:6 109:7 113:24 115:6 123:  
 8 133:18 149:19 156:1 156:3  
 156:4 156:10 166:9 167:2 167:  
 9 168:3 168:12 169:5 169:6  
 190:18 232:1 233:10 233:13  
 233:18 233:19 233:25 234:3  
 234:8 234:11 234:13 234:15  
 234:21 234:23 235:16 235:21  
 235:24 236:6 236:8 236:11  
 236:14 236:18 236:17 236:23  
 237:5 237:9 237:19 238:7 238:  
 15 238:23

**Destroying**  
 [13] 92:4 92:14 93:1 93:6 100:  
 5 100:12 100:23 100:25 101:  
 11 101:12 169:14 169:17 238:1

**Destruction**  
 [8] 91:20 117:13 130:23 205:  
 16 234:19 237:1 237:2 238:19

**Detail**  
 [1] 6:23

**Details**

[2] 43:21 191:25

**Determination**  
 [1] 189:18

**Determine**  
 [2] 92:8 137:1

**Detriment**  
 [1] 224:3

**Develop**  
 [1] 65:5

**Developed**  
 [4] 67:1 68:17 69:4 69:13

**Development**  
 [1] 67:5

**Devised**  
 [1] 176:3

**Diamond**  
 [1] 199:7

**Dick**  
 [5] 98:22 115:12 115:15 146:  
 20 146:21

**Dictionary**  
 [1] 239:1

**Died**  
 [1] 126:11

**Diego**  
 [1] 214:25

**Difference**  
 [1] 175:8

**Differences**  
 [2] 177:24 178:1

**Different**  
 [13] 9:3 39:8 45:15 53:24 66:  
 11 141:15 150:11 175:3 176:  
 13 200:11 205:2 236:1 237:13

**Differently**  
 [2] 66:22 132:21

**Difficult**  
 [1] 122:7

**Difficulties**  
 [1] 66:8

**Digitally**  
 [1] 65:1

**Direct**  
 [6] 2:10 3:5 66:20 170:7 172:  
 14 224:19

**Directed**  
 [2] 150:17 235:15

**Directing**  
 [1] 225:11

**Director**  
 [2] 39:3 62:15

**Directors**  
 [13] 7:3 11:5 194:4 197:13 231:  
 12 231:20 231:22 231:25 232:  
 3 233:10 233:19 235:15 235:17

**Disappeared**  
 [1] 122:24

**Disbanded**  
 [1] 186:4

**Disclose**  
 [4] 136:23 136:25 143:2 143:7

**Disclosed**  
 [5] 14:6 14:11 14:13 24:5 105:  
 21

**Disclosing**  
 [1] 144:24

**Disclosure**  
 [1] 145:2

**Disclosures**  
 [1] 193:2

**Discovered**  
 [7] 22:23 23:5 63:19 63:22 76:  
 11 77:4 141:6

**Discovers**  
 [2] 66:25 68:23

**Discovering**  
 [1] 102:23

**Discovery**  
 [3] 23:8 66:16 113:10

**Discuss**  
 [2] 103:5 196:5

**Discussed**  
 [1] 162:3

<p>Discussing [1] 191:19</p> <p>Discussion [2] 120:10 169:24</p> <p>Discussions [2] 36:9 191:23</p> <p>Disk [6] 152:13 156:7 156:12 156:13 156:13 156:22</p> <p>Dismissed [1] 174:25</p> <p>Displeased [2] 58:19 58:20</p> <p>Displeasure [2] 58:4 58:14</p> <p>Displeasures [1] 58:17</p> <p>Disposition [1] 103:20</p> <p>Dispute [1] 6:22</p> <p>Disputed [2] 219:17 219:19</p> <p>Distance [12] 7:7 12:5 12:7 23:13 57:1 118:22 124:23 164:11 173:21 182:17 189:25 208:18</p> <p>Distream [5] 29:15 42:25 43:2 43:3 43:10</p> <p>Disturbed [1] 65:22</p> <p>Division [1] 12:2</p> <p>Docket [1] 24:23</p> <p>Doctored [3] 83:14 85:25 86:2</p> <p>Document [36] 6:7 15:25 17:10 17:13 20:17 40:2 84:7 89:6 101:25 168:3 168:12 171:19 178:16 178:21 179:16 179:18 180:20 185:14 191:3 191:9 191:14 194:8 196:15 200:16 202:13 202:21 202:24 203:8 207:5 209:10 214:16 214:17 216:25 232:2 232:15 233:5</p> <p>Documentary [1] 95:22</p> <p>Documentation [3] 73:1 103:3 123:15</p> <p>Documented [2] 187:2 194:15</p> <p>Documents [154] 5:2 5:24 6:3 6:17 6:23 6:25 7:2 7:14 7:15 7:16 7:19 6:9 8:18 16:1 16:12 16:19 16:20 22:23 23:9 24:6 32:16 32:19 32:24 34:3 34:5 37:18 38:13 56:13 68:3 68:8 58:9 58:13 60:14 60:23 68:1 88:23 89:7 90:9 91:12 91:17 91:20 92:6 93:2 93:7 98:8 100:5 100:12 100:16 100:23 101:1 101:3 101:5 101:11 101:12 101:23 123:8 126:8 128:24 129:21 129:22 130:17 130:23 131:13 132:2 132:5 134:13 136:8 148:16 150:11 150:15 153:4 156:1 156:3 156:5 156:9 156:11 157:8 158:5 159:3 159:8 159:14 159:21 160:1 160:16 160:18 161:16 162:5 164:17 164:22 165:10 168:7 168:20 168:25 169:2 169:3 169:10 169:14 169:17 170:13 170:17 170:21 170:25 171:10 171:15 172:14 174:19 180:24 181:3 181:11 181:20 182:19 188:10 186:11 187:5 190:16 190:19 194:13 195:23 198:14 198:20 198:25 199:3 204:15 205:16 206:18 206:18 212:4 213:4 218:6 218:9 220:5 221:6 222:8 222:19 225:8 227:4 232:9 233:9 235:5 235:8 236:5</p>	<p>9 236:14 236:14 236:25 237:1 237:2 237:4 237:9 237:11 237:16 237:19 238:1 238:7 238:15</p> <p>Dollars [3] 154:4 188:5 193:10</p> <p>Domain [1] 149:23</p> <p>Domains [1] 237:3</p> <p>Don [6] 49:25 78:5 153:19 153:20 175:22 225:20</p> <p>Donald [1] 19:11</p> <p>Done [15] 7:11 44:10 78:6 97:4 106:2 126:18 134:18 143:21 145:2 172:20 174:10 174:12 184:17 184:18 192:22</p> <p>Door [1] 210:13</p> <p>Double [1] 223:13</p> <p>Double-billed [1] 223:13</p> <p>Doubt [1] 225:11</p> <p>Doug [1] 106:25</p> <p>Down [15] 4:8 10:10 26:22 49:8 55:20 62:16 66:8 93:21 93:25 100:15 100:20 109:2 116:16 121:12 239:1</p> <p>Download [1] 81:15</p> <p>Draft [1] 103:4</p> <p>Drafted [1] 155:9</p> <p>Drafting [1] 85:15</p> <p>Drawer [1] 234:14</p> <p>Drinking [1] 127:2</p> <p>Drive [2] 3:13 64:17</p> <p>Drives [1] 12:8</p> <p>Driving [2] 149:17 237:7</p> <p>Driving [1] 218:24</p> <p>Drove [1] 66:4</p> <p>Due [8] 104:5 187:25 197:2 204:4 204:25 205:20 208:1 219:5</p> <p>Duly [2] 3:3 240:8</p> <p>Dupe [1] 155:9</p> <p>During [17] 5:16 28:1 28:2 28:6 28:9 69:7 70:2 78:1 78:22 115:22 139:3 157:21 184:23 188:24 204:18 227:19 227:25</p> <p>Duties [1] 210:23</p> <p>DVD [1] 192:24</p> <p>DVDs [2] 77:10 77:10</p>	<p>Earn [1] 69:2</p> <p>Easier [1] 116:17</p> <p>Eat [3] 122:16 169:19 169:22</p> <p>Eavedropping [1] 145:10</p> <p>Education [2] 5:18 98:16</p> <p>Educational [1] 5:11</p> <p>Either [8] 7:20 78:7 80:24 111:3 130:15 136:8 137:19 201:25</p> <p>Ellot [15] 1:22 2:18 3:2 3:11 92:12 150:7 165:2 165:12 170:3 206:17 218:19 225:12 236:22 240:7 241:8</p> <p>ELIZABETH [4] 2:20 240:14 241:6 241:22</p> <p>Emphasizes [1] 218:1</p> <p>Empire [1] 64:25</p> <p>Employee [6] 62:14 70:24 91:1 128:10 241:13 241:14</p> <p>Employees [15] 51:24 52:22 52:22 52:25 55:21 56:5 56:9 56:16 57:6 57:13 57:19 70:22 125:3 148:23 224:14</p> <p>Employer [6] 4:15 5:9 30:14 68:5 109:1 146:22</p> <p>Employers [1] 69:18</p> <p>Employment [3] 4:19 38:9 67:15</p> <p>Employments [1] 67:24</p> <p>End [18] 13:16 13:23 13:24 17:14 28:24 45:19 48:7 49:13 53:6 66:9 66:13 79:13 129:3 157:19 208:5 208:12</p> <p>Endanger [1] 18:15</p> <p>Ended [2] 78:4 237:14</p> <p>Enforcement [3] 95:21 95:22 111:10</p> <p>Engage [1] 180:22</p> <p>Engaged [2] 82:18 180:21</p> <p>Engagements [1] 179:7</p> <p>Engineer [3] 10:1 11:2 127:24</p> <p>Engineering [7] 10:1 10:3 10:14 39:25 65:15 127:24 128:5</p> <p>Engineers [1] 65:21</p> <p>Enlarged [1] 135:2</p> <p>Enter [2] 72:5 202:5</p> <p>Entered [1] 82:13</p> <p>Entering [2] 179:7 198:15</p> <p>Enterprises [2] 69:19 69:21</p> <p>Entire [9] 56:13 67:15 88:16 88:16 130:18 136:9 136:12 150:16 180:19</p> <p>Entirely [2] 29:3 30:14</p>	<p>Entirety [4] 100:16 235:7 235:8 235:9</p> <p>Entities [11] 26:16 27:1 27:4 29:1 53:10 53:14 74:9 175:4 176:13 231:16 232:4</p> <p>Entitled [4] 30:22 31:4 193:13 205:23</p> <p>Entity [7] 4:19 175:16 177:5 179:2 226:24 227:20 228:1</p> <p>Entity's [2] 186:16 186:16</p> <p>Entries [1] 189:21</p> <p>Environment [3] 65:4 68:20 73:4</p> <p>Epstein [2] 19:8 19:9</p> <p>Equals [1] 234:21</p> <p>Equations [1] 128:7</p> <p>Erased [1] 150:2</p> <p>Erroneous [2] 220:16 220:22</p> <p>Error [1] 86:13</p> <p>Errors [3] 104:4 104:9 128:24</p> <p>Escondido [4] 3:19 3:21 52:5 52:14</p> <p>Especially [3] 89:7 116:3 218:8</p> <p>ESQ [2] 2:3 2:5</p> <p>Establish [1] 176:19</p> <p>Estate [8] 83:5 84:9 84:11 84:17 85:20 88:9 89:14 89:25</p> <p>Estimate [1] 90:11</p> <p>Et [22] 7:8 9:4 49:2 68:21 77:10 80:19 92:7 104:13 129:16 148:20 148:21 149:20 150:19 153:17 154:7 188:5 193:4 193:5 197:15 199:2 216:5 223:15</p> <p>Event [4] 28:22 98:1 183:20 194:25</p> <p>Events [3] 32:5 51:1 81:7</p> <p>Eventually [3] 56:10 63:9 77:9</p> <p>Everywhere [1] 193:2</p> <p>Evidence [35] 15:3 39:11 98:2 112:1 112:2 112:3 112:11 112:13 112:14 112:16 114:21 119:10 123:19 126:2 126:8 129:9 129:17 129:16 147:19 149:1 149:3 149:6 149:8 149:10 149:17 152:1 167:22 173:17 187:2 187:13 232:3 234:10 234:13 235:16 238:5</p> <p>Evidences [1] 125:24</p> <p>Evil [7] 109:11 109:17 109:20 109:20 109:21 109:23 126:18</p> <p>Exact [9] 13:12 26:12 26:23 28:21 36:6 48:8 69:22 83:22 140:2</p> <p>Exactly [8] 13:9 13:12 27:6 60:25 140:8 153:22 180:14 231:10</p> <p>Examination [8] 2:10 2:11 2:11 3:5 170:7 231:1</p> <p>Example [2] 189:24 208:6</p>	<p>Excellent [1] 10:25</p> <p>Except [3] 37:21 151:17 213:22</p> <p>Excess [1] 188:8</p> <p>Excessive [1] 7:5</p> <p>Excuse [2] 30:18 82:25</p> <p>Execute [1] 101:21</p> <p>Executives [1] 102:2</p> <p>Exercise [1] 230:15</p> <p>Exhibit [32] 5:3 5:25 6:2 6:8 8:14 8:16 15:25 16:1 20:2 20:6 20:9 20:20 23:37:11 37:13 37:15 171:21 178:17 185:15 191:4 196:16 200:1 201:11 202:19 202:22 207:5 207:9 208:21 209:5 209:7 214:17 214:19 232:13</p> <p>Exhibits [3] 16:2 155:23 170:5</p> <p>Exist [2] 171:17 219:4</p> <p>Existent [1] 236:12</p> <p>Expect [1] 19:6</p> <p>Expecting [3] 135:17 135:18 135:20</p> <p>Experience [1] 65:3</p> <p>Expire [1] 124:3</p> <p>Expires [1] 241:23</p> <p>Explain [7] 34:1 46:24 58:4 63:24 66:1 173:7 217:19</p> <p>Explained [4] 33:16 38:7 41:13 138:13</p> <p>Explaining [2] 31:8 237:6</p> <p>Explanation [4] 31:16 46:25 64:23 172:21</p> <p>Expose [2] 93:15 136:13</p> <p>Exposed [4] 127:23 128:4 128:18 129:4</p> <p>Exposes [1] 190:10</p> <p>Exposing [1] 128:21</p> <p>Exposure [1] 177:6</p> <p>Expressed [3] 58:14 58:16 126:18</p> <p>Eye [1] 45:13</p> <p>Eyes [3] 169:13 181:12 189:16</p>
	<p>E [1] 205:1</p> <p>Eager [1] 121:9</p> <p>Early [8] 26:23 63:21 63:22 64:10 69:11 140:22 230:10 230:11</p>		<p>F F-R-E-N [1] 90:22</p> <p>Fabricated [5] 179:23 180:6 180:25 191:15 200:21</p> <p>Fabrication [1] 200:19</p> <p>Facilitate [1] 67:5</p> <p>Fact [34] 12:24 30:12 39:17 43:1 49:5 56:15 89:1 92:1 104:21 106:6 106:7 113:1 129:18 138:16 139:20 141:1 142:25 143:16 143:22 163:14 164:4 155:11 169:13 163:2 163:15 191:15</p>	

194:20 196:7 200:22 219:20  
 224:2 230:14 235:17 236:16  
**Facts**  
 [3] 46:5 61:3 158:19  
**Factual**  
 [4] 91:25 172:15 173:6 173:13  
**Failed**  
 [6] 143:19 143:23 173:3 173:3  
 18 175:1 190:14  
**Falls**  
 [2] 171:25 172:10  
**Fair**  
 [5] 117:16 182:9 209:16 209:22 210:1  
**Faith**  
 [3] 42:21 45:2 53:6  
**False**  
 [2] 30:8 181:22  
**Familial**  
 [1] 232:17  
**Family**  
 [4] 84:14 110:17 114:16 122:24  
**Far**  
 [10] 4:1 19:16 19:19 28:15 142:7 148:16 150:1 163:20 180:18 234:19  
**Father**  
 [32] 21:11 21:14 63:10 63:12 65:10 72:6 72:15 73:3 74:14 75:9 80:1 80:8 80:10 82:22 84:11 87:2 144:6 144:7 153:9 163:16 158:9 158:22 166:13 192:6 195:15 195:16 196:23 197:6 197:7 203:24 218:11 219:2  
**Favor**  
 [1] 205:17  
**Faxes**  
 [3] 181:4 181:7 181:22  
**FBI**  
 [7] 95:12 95:13 96:24 96:1 120:13 120:25 121:2  
**Fear**  
 [15] 109:11 109:17 109:20 109:20 110:18 117:9 118:11 118:20 119:10 119:24 125:7 125:15 125:18 125:25 127:16  
**Feared**  
 [1] 107:24  
**Fearing**  
 [1] 123:5  
**Fears**  
 [6] 117:1 117:4 117:17 117:20 125:9 125:10  
**February**  
 [7] 31:11 31:19 32:6 81:22 82:4 82:9 83:8  
**Federal**  
 [1] 106:8  
**Fees**  
 [1] 179:8  
**Feet**  
 [1] 166:21  
**Felt**  
 [15] 67:7 76:5 86:17 98:24 103:3 103:24 110:12 110:13 110:15 110:21 123:7 154:22 154:25 186:1 198:12  
**Fend**  
 [1] 123:2  
**Few**  
 [13] 29:6 29:7 52:8 76:20 81:13 97:19 110:1 110:3 126:4 166:18 164:4 193:10 224:14  
**FIFTEENTH**  
 [1] 1:2  
**Fight**  
 [1] 144:8  
**Fighting**  
 [1] 119:24  
**Figure**  
 [5] 73:23 164:18 175:5 176:6 176:17  
**Figured**  
 [1] 132:19

**File**  
 [24] 54:9 101:22 102:10 126:8 130:18 131:3 131:7 131:9 131:10 131:11 131:14 134:5 134:6 134:15 135:9 143:19 147:25 160:19 186:15 166:18 166:22 170:23 190:8 190:14  
**Filed**  
 [44] 2:20 5:5 6:5 14:3 15:11 15:19 17:5 17:5 20:24 22:25 23:18 32:13 32:13 32:24 39:19 46:21 48:18 50:10 60:11 51:6 51:7 76:23 87:8 105:23 106:4 106:21 106:22 109:7 110:12 110:14 110:22 111:11 129:3 143:1 143:20 171:15 179:12 179:15 179:25 203:19 221:16 221:23 221:24 232:8  
**Files**  
 [26] 64:5 90:2 91:11 91:16 92:9 101:9 102:3 125:12 126:17 129:13 130:4 138:15 149:25 150:2 150:12 152:2 152:3 153:1 157:5 166:6 166:20 186:13 206:14 206:15 206:16 237:3  
**Filibustering**  
 [1] 208:14  
**Filing**  
 [9] 102:15 103:16 105:14 107:6 107:23 107:23 123:21 123:22 238:4  
**Fillings**  
 [2] 101:16 101:17  
**Filopak**  
 [6] 137:6 137:10 137:14 137:24 138:5 141:17  
**Finalize**  
 [1] 222:17  
**Finances**  
 [1] 162:9  
**Financial**  
 [1] 12:2  
**Financially**  
 [1] 241:16  
**Fine**  
 [9] 30:6 68:9 79:18 108:11 132:20 132:22 196:2 217:3 228:15  
**Finger**  
 [1] 213:1  
**Finish**  
 [22] 19:18 30:20 41:18 41:22 61:7 65:11 89:20 106:16 107:10 107:12 108:7 121:8 121:19 121:20 147:8 148:7 150:5 151:10 168:1 211:16 218:23 231:19  
**Finished**  
 [4] 30:18 56:13 131:20 134:12  
**Fire**  
 [5] 56:16 57:6 57:13 57:19 154:20  
**Fired**  
 [12] 55:20 55:21 57:23 58:24 59:3 59:15 59:17 210:8 210:9 211:4 211:20 213:6  
**Firing**  
 [1] 30:16  
**Firm**  
 [32] 5:5 14:17 14:24 23:24 24:4 33:11 75:13 78:8 78:8 78:15 78:17 78:20 78:21 78:22 79:1 79:2 89:9 97:22 99:4 104:15 106:1 109:19 123:25 125:22 130:12 141:2 141:7 141:13 142:6 183:9 187:14 238:1  
**Firm's**  
 [1] 105:5  
**Firms**  
 [19] 36:15 36:23 42:14 43:18 43:19 43:20 76:14 76:16 76:22 78:8 98:23 99:2 99:16 106:14 106:19 117:13 128:20 140:10 141:10  
**First**  
 [56] 3:3 10:2 10:12 10:12 10:12 14:12 18:12 19:13 16:15 16:16

16:20 22 25:6 30:5 31:6 31:19 33:2 33:7 33:15 47:3 47:5 47:7 14 47:16 47:17 48:3 48:6 48:7 49:19 64:6 68:16 70:9 75:23 79:19 80:12 82:21 83:9 86:21 86:22 97:16 101:25 116:21 127:16 140:13 140:15 143:18 143:21 151:16 155:13 157:20 162:18 167:24 169:4 171:24 176:25 179:14 191:18 214:3  
**First-hand**  
 [6] 168:2 168:10 168:13 168:14 168:24 169:4  
**Fish**  
 [1] 141:25  
**Five**  
 [5] 69:11 61:15 65:9 73:16 166:21  
**Fix**  
 [1] 104:8  
**Flew**  
 [2] 47:9 119:8  
**Flip**  
 [1] 17:10  
**Florida**  
 [15] 1:2 1:14 2:21 2:23 3:15 3:16 43:20 62:3 70:20 239:16 239:21 239:24 240:3 240:15 241:3  
**Flowing**  
 [1] 164:1  
**Flown**  
 [1] 60:6  
**Fluent**  
 [1] 175:3  
**Flying**  
 [2] 37:18 66:22  
**Focus**  
 [4] 12:22 92:12 106:12 164:15  
**Foley**  
 [22] 40:3 54:5 98:22 99:1 99:4 101:16 101:21 102:5 104:4 106:23 106:24 107:19 108:18 116:14 115:15 118:12 128:19 129:3 146:14 184:6 184:12 226:3  
**Folks**  
 [1] 118:3  
**Follow**  
 [4] 54:6 193:24 212:22 213:7  
**Following**  
 [1] 110:16  
**Follows**  
 [1] 3:4  
**Fonts**  
 [1] 200:11  
**Fool**  
 [1] 66:13  
**Foollish**  
 [1] 126:25  
**Footers**  
 [1] 181:18  
**Foreign**  
 [1] 143:25  
**Forget**  
 [1] 142:13  
**Forgive**  
 [1] 92:18  
**Forgot**  
 [2] 146:21 222:22  
**Form**  
 [9] 46:3 63:11 116:18 122:5 128:23 136:10 167:21 182:10 190:5  
**Formal**  
 [3] 80:22 82:13 101:17  
**Formally**  
 [1] 82:18  
**Formation**  
 [1] 71:8  
**Formed**  
 [9] 45:4 74:8 163:23 176:21 177:9 178:13 182:4 182:13 182:16

**Former**  
 [5] 6:9 55:19 58:15 62:12 62:14  
**Formerly**  
 [1] 100:7  
**Forms**  
 [2] 120:1 167:18  
**Formulation**  
 [1] 72:22  
**Forth**  
 [2] 37:10 181:3  
**Forthwith**  
 [1] 231:13  
**Fortune**  
 [1] 212:14  
**Forwarding**  
 [1] 69:8  
**Four**  
 [5] 65:8 94:13 94:15 152:16 202:23  
**Fragmanted**  
 [1] 124:17  
**Frame**  
 [8] 64:11 64:14 65:1 65:2 65:16 65:16 65:24 237:10  
**Frames**  
 [3] 65:17 66:8 66:8  
**Fraud**  
 [2] 103:12 128:4  
**Frauded**  
 [2] 58:10 181:10  
**Frauds**  
 [5] 102:14 126:3 128:21 198:21 199:3  
**Fraudulent**  
 [2] 181:13 181:16  
**Fraudulently**  
 [2] 106:20 106:22  
**Freaked**  
 [1] 187:22  
**Free**  
 [1] 138:18  
**Freight**  
 [1] 69:8  
**Frenden**  
 [8] 19:10 90:19 90:19 90:21 90:22 91:5 92:3 92:14 93:1  
**Fresh**  
 [1] 24:23  
**Friedkin**  
 [1] 199:7  
**Friedkin's**  
 [1] 30:16  
**Friedstein**  
 [3] 19:11 49:25 78:6  
**Friend**  
 [15] 14:9 25:9 32:21 39:23 76:9 124:20 143:3 145:4 191:24 197:17 206:6 205:14 212:5 214:2 214:8  
**Friendly**  
 [1] 174:11  
**Friends**  
 [25] 15:8 23:20 24:1 26:9 38:19 39:14 46:10 61:17 61:19 63:2 63:3 63:7 74:22 97:16 97:21 99:2 114:15 115:8 116:10 116:20 116:25 119:1 151:18 184:15 189:13  
**Front**  
 [1] 50:21  
**Frustrated**  
 [1] 92:18  
**Frustrating**  
 [1] 92:18  
**Fulfill**  
 [1] 201:21  
**Full**  
 [13] 3:9 30:15 65:15 65:15 65:16 101:17 103:24 106:8 134:8 134:9 134:25 147:2 226:21  
**Fully**  
 [2] 213:1 218:1  
**Fumbled**

[1] 128:6  
**Fund**  
 [2] 53:10 57:21  
**Funding**  
 [8] 26:9 26:11 47:6 47:6 55:16 124:8 195:1 197:4  
**Findings**  
 [2] 187:25 188:1  
**Funds**  
 [1] 38:10  
**Funny**  
 [3] 72:18 156:5 214:12  
**Furlough**  
 [1] 56:6  
**Future**  
 [1] 121:1  
**G**  
**G-U-E-J-I-T-O**  
 [1] 3:21  
**Game**  
 [1] 15:6  
**Gaps**  
 [1] 89:8  
**Garbage**  
 [1] 148:21  
**General**  
 [2] 6:4 11:19  
**Generally**  
 [2] 67:17 100:2  
**Gentle**  
 [1] 138:3  
**Gentleman**  
 [1] 128:7  
**Gerald**  
 [1] 74:15  
**Garri**  
 [18] 21:25 22:1 67:9 67:9 145:7 145:8 166:21 186:22 186:25 187:1 187:7 188:21 188:24 188:24 226:17 226:5 226:8 228:11  
**Given**  
 [10] 7:1 9:7 56:6 102:9 107:1 144:22 154:4 166:15 169:3 170:13  
**Glades**  
 [1] 2:22  
**Glanced**  
 [1] 134:16  
**Global**  
 [1] 71:15  
**Gloria**  
 [2] 144:22 146:24  
**God**  
 [6] 12:19 65:6 65:8 148:1 163:19 230:8  
**Gold**  
 [1] 99:18  
**Goldman**  
 [5] 12:1 49:25 50:1 78:6 175:22  
**Goldstein**  
 [2] 99:20 104:22  
**Gortz**  
 [22] 78:11 83:11 83:12 83:16 86:10 85:20 86:5 86:15 86:22 87:1 87:14 87:19 88:2 88:3 88:12 89:13 89:25 90:11 110:7 200:12 203:7 214:11  
**Gortz's**  
 [5] 83:2 84:16 87:8 88:21 165:20  
**Grab**  
 [1] 156:10  
**Grabbed**  
 [3] 102:3 108:18 128:23  
**Gracefully**  
 [1] 24:21  
**Graciously**  
 [1] 154:5  
**Graduated**  
 [4] 5:16 44:17 67:21 70:7  
**Graduating**

<p>[1] 44:18  <b>Grail</b>  [3] 65:14 65:22 66:16  <b>Grand</b>  [2] 61:7 167:16  <b>Grandchildren</b>  [1] 119:8  <b>Grant</b>  [1] 183:17  <b>Granted</b>  [2] 172:1 172:11  <b>Graphics</b>  [2] 136:7 193:9  <b>Great</b>  [5] 25:20 31:18 52:13 87:4 95:24  <b>Greatly</b>  [1] 230:14  <b>Greenberg</b>  [5] 55:4 103:25 105:22 183:6 183:6  <b>Gross</b>  [1] 204:11  <b>Ground</b>  [3] 118:24 118:25 118:25  <b>Group</b>  [9] 57:22 105:21 115:10 118:13 128:13 146:17 146:18 148:17 205:9  <b>Grow</b>  [1] 129:12  <b>Guajito</b>  [1] 3:21  <b>Guess</b>  [18] 11:22 15:8 24:17 24:17 25:15 32:24 47:8 71:19 80:17 110:5 138:1 178:5 182:16 196:22 202:10 214:7 214:7 235:11  <b>Guesses</b>  [1] 209:2  <b>Gun</b>  [1] 66:9  <b>Guns</b>  [2] 119:10 119:11  <b>Guy</b>  [15] 66:1 79:13 90:24 108:25 111:4 129:6 151:6 176:17 176:25 186:7 195:1 195:1 213:9 223:24 223:25  <b>Guys</b>  [9] 62:19 86:19 137:24 144:7 145:19 160:20 176:24 214:3 224:5</p>	<p>23 62:14 63:4  <b>Harassing</b>  [1] 110:16  <b>Hard</b>  [12] 32:21 54:6 70:5 81:4 127:6 127:8 148:14 155:17 176:17 207:21 227:8 237:7  <b>Hardly</b>  [1] 119:6  <b>Harm</b>  [1] 124:6  <b>Harry</b>  [1] 102:20  <b>Hassle</b>  [2] 116:7 116:8  <b>Hate</b>  [1] 110:1  <b>Head</b>  [2] 103:9 166:23  <b>Headed</b>  [1] 142:2  <b>Headers</b>  [1] 181:18  <b>Heading</b>  [1] 166:10  <b>Heads</b>  [1] 4:8  <b>Hear</b>  [6] 111:5 133:12 145:8 147:19 168:14 230:2  <b>Heard</b>  [8] 56:18 71:16 75:11 90:13 151:9 188:4 203:24 214:11  <b>Hearing</b>  [3] 109:3 127:16 156:9  <b>Hearsay</b>  [1] 184:14  <b>Heavily</b>  [1] 68:22  <b>Held</b>  [6] 71:1 73:21 102:24 120:10 169:24 182:25  <b>Hell</b>  [2] 12:3 111:8  <b>Help</b>  [6] 13:13 59:5 64:3 119:1 121:3 216:13  <b>Helping</b>  [2] 115:8 132:17  <b>Heralded</b>  [1] 68:15  <b>Herein</b>  [5] 2:19 39:11 172:2 172:12 173:12  <b>Hereinbefore</b>  [1] 2:19  <b>Herish</b>  [14] 11:10 11:11 11:12 11:14 11:15 38:18 39:4 39:22 63:3 100:15 100:17 185:5 185:24 186:21  <b>Hersh's</b>  [1] 189:7  <b>Hesitated</b>  [1] 229:22  <b>Hi</b>  [1] 224:4  <b>Hiccup</b>  [1] 126:11  <b>Hid</b>  [1] 129:7  <b>Hidden</b>  [2] 108:2 111:1  <b>Hide</b>  [1] 167:14  <b>Hiding</b>  [3] 114:15 123:1 236:10  <b>High</b>  [1] 195:22  <b>High-jacked</b>  [1] 161:14  <b>Highly</b>  [1] 92:8</p>	<p><b>Hijacked</b>  [1] 206:2  <b>Hilton</b>  [1] 214:11  <b>Himself</b>  [4] 56:2 115:21 184:17 184:18 207:21 227:8 237:7  <b>Hindsight</b>  [1] 49:18  <b>Hire</b>  [9] 32:1 34:22 34:22 34:25 37:5 44:21 79:18 80:2 105:24  <b>Hired</b>  [2] 1] 10:13 14:5 15:13 18:2 23:20 24:4 24:24 28:18 31:25 32:9 34:13 34:17 35:1 38:11 54:20 62:22 67:22 71:6 111:3 138:19 205:8  <b>Hiring</b>  [1] 35:5  <b>Hirsch</b>  [4] 84:20 85:4 85:4 175:23  <b>Historically</b>  [1] 230:1  <b>History</b>  [1] 67:15  <b>Hitting</b>  [1] 229:25  <b>Hold</b>  [9] 5:20 24:25 106:12 110:15 136:15 192:2 194:3 204:15 239:6  <b>Holding</b>  [4] 39:8 149:13 149:16 206:4  <b>Holdings</b>  [1] 1:9 182:21  <b>Holds</b>  [1] 183:2  <b>Holidays</b>  [1] 52:11  <b>Holtzman's</b>  [1] 176:9  <b>Holy</b>  [3] 65:14 65:22 66:16  <b>Home</b>  [3] 52:21 118:24 118:25  <b>Honest</b>  [3] 60:5 193:11 228:16  <b>Hoodwinked</b>  [1] 30:9  <b>Hope</b>  [2] 127:16 190:14  <b>Host</b>  [1] 193:5  <b>Hotel</b>  [4] 94:2 94:3 94:3 114:18  <b>Hour</b>  [1] 229:25  <b>Hours</b>  [5] 51:9 101:17 150:4 150:8 223:15  <b>House</b>  [12] 49:1 52:2 52:3 62:18 108:3 108:4 111:16 112:9 114:18 120:21 132:10 161:14  <b>Huge</b>  [3] 11:25 115:1 116:22  <b>Huilzenga</b>  [4] 141:22 144:3 144:8 176:5  <b>Huilzenga's</b>  [4] 137:6 137:12 138:5 141:24  <b>Human</b>  [1] 122:1  <b>Hunch</b>  [3] 61:1 180:10 180:11  <b>Hundred</b>  [1] 163:18  <b>Hundreds</b>  [1] 154:3  <b>Hurt</b>  [4] 110:23 118:4 128:13 193:3  <b>Husband</b>  [1] 72:14</p>	<p><b>I</b>  <b>Icon</b>  [1] 156:14  <b>Icons</b>  [3] 162:19 162:23 166:18  <b>Idea</b>  [2] 42:8 42:10 46:12 45:13 54:3 59:17 62:4 62:6 62:19 64:21 66:12 74:25 154:8 157:3 201:23 204:5 204:6 205:4 207:24 208:3 210:11  <b>Ideas</b>  [1] 106:7  <b>Identification</b>  [8] 6:2 16:3 170:6 202:20 207:10 209:8 214:20 232:14  <b>Identified</b>  [4] 14:25 219:23 220:11 220:23  <b>Identify</b>  [9] 90:18 181:8 214:23 216:17 219:7 219:13 219:14 220:2 221:6  <b>Illegality</b>  [1] 134:2  <b>Illinois</b>  [1] 43:20  <b>Image</b>  [8] 40:1 64:4 64:13 64:15 64:18 66:12 77:9 237:10  <b>Images</b>  [2] 64:4 134:13  <b>Immediately</b>  [4] 56:7 101:4 101:22 213:8  <b>Imply</b>  [1] 103:6  <b>Important</b>  [1] 17:9  <b>Impression</b>  [1] 129:22  <b>Improperly</b>  [1] 106:20  <b>Improprieties</b>  [1] 102:14  <b>Improved</b>  [2] 230:14 230:18  <b>Inc</b>  [15] 1:9 1:9 1:10 4:23 5:9 175:9 176:18 177:9 177:14 177:19 177:21 179:6 182:21 227:16 231:16  <b>Incapable</b>  [1] 127:22  <b>Incensed</b>  [1] 12:9  <b>Included</b>  [2] 7:10 116:4  <b>Including</b>  [4] 102:11 118:4 176:18 198:25  <b>Income</b>  [3] 53:3 53:7 53:21  <b>Incompetent</b>  [1] 229:16  <b>Incomplete</b>  [2] 9:6 58:10  <b>Inconsistencies</b>  [1] 208:18  <b>Inconsistencies</b>  [3] 86:19 108:24 204:11  <b>Inconsistent</b>  [6] 19:7 198:18 205:5 206:19 212:15 212:20 223:21 226:21  <b>Interfacing</b>  [1] 222:13  <b>Incorrectly</b>  [1] 106:2  <b>Independent</b>  [1] 106:1  <b>Indicate</b>  [2] 174:8 218:14  <b>Indicated</b>  [6] 9:18 36:1 54:19 100:6 170:13 218:16</p>	<p><b>Indicates</b>  [3] 192:1 196:25 200:24  <b>Indicating</b>  [1] 197:6  <b>Indispensable</b>  [1] 175:1  <b>Individuals</b>  [3] 110:1 110:3 162:2  <b>Industry</b>  [2] 68:20 72:20  <b>Inferior</b>  [2] 146:14 146:14  <b>Info</b>  [1] 133:17  <b>Information</b>  [12] 18:11 30:8 30:15 42:14 105:17 131:2 131:12 134:4 134:24 135:1 168:15 168:17  <b>Informing</b>  [3] 209:17 209:25 210:2  <b>Infuriated</b>  [1] 12:10  <b>Initial</b>  [1] 75:5  <b>Input</b>  [3] 46:1 46:5 46:8  <b>Insane</b>  [2] 7:5 163:13  <b>Insecure</b>  [1] 154:22  <b>Inside</b>  [2] 92:7 139:8  <b>Insight</b>  [1] 151:12  <b>Insist</b>  [1] 41:23  <b>Instance</b>  [2] 217:20 234:22  <b>Instances</b>  [1] 176:14  <b>instead</b>  [3] 180:21 185:22 214:1  <b>Institutionalized</b>  [1] 229:20  <b>insurance</b>  [18] 68:17 68:18 68:20 68:23 69:3 69:17 70:16 71:25 72:2 72:11 72:12 72:13 72:15 72:16 72:17 72:19 73:2 73:4  <b>insurance-wise</b>  [1] 72:6  <b>Intel</b>  [2] 136:7 193:8  <b>Intellectual</b>  [1] 43:9  <b>Intelligently</b>  [1] 177:24  <b>Intensive</b>  [1] 72:23  <b>Intent</b>  [2] 201:21 237:3  <b>Interest</b>  [18] 9:16 27:12 27:15 29:13 29:16 29:19 47:25 48:2 53:25 54:13 105:11 105:13 109:8 116:22 124:1 163:5 198:13 214:7  <b>Interested</b>  [1] 241:16  <b>Interesting</b>  [2] 145:5 206:1  <b>Interests</b>  [3] 43:9 129:5 175:16  <b>Interfacing</b>  [1] 81:14  <b>Interfered</b>  [2] 47:5 47:7  <b>Interlacing</b>  [2] 65:23 66:7  <b>Internet</b>  [1] 65:14  <b>interoffice</b>  [3] 138:20 148:13 148:17  <b>Interpretation</b></p>
<p><b>H</b>  <b>Habit</b>  [2] 64:9 199:3  <b>Half</b>  [9] 32:10 80:17 115:5 119:7 124:1 153:2 187:23 188:6 213:9  <b>Hall</b>  [1] 163:19  <b>Hand</b>  [6] 68:25 147:19 153:7 169:4 202:21 240:9  <b>Handle</b>  [7] 81:9 121:1 162:9 162:14 186:19 201:1 201:3  <b>Handed</b>  [1] 176:12  <b>Handling</b>  [4] 43:25 44:3 121:6 142:9  <b>Hands</b>  [1] 212:22  <b>Hands-on</b>  [1] 186:22  <b>Handwriting</b>  [2] 216:9 216:12  <b>Hang</b>  [1] 61:23  <b>Hank</b>  [7] 25:10 55:22 55:25 58:22 58:</p>				

<p>[2] 238:9 238:16  <b>Interrogatories</b>  [3] 215:7 216:19 218:2  <b>Interrogatory</b>  [4] 16:25 17:6 217:19 220:12  <b>Interrupting</b>  [2] 121:23 218:23  <b>Interruption</b>  [1] 121:14  <b>Intimating</b>  [1] 24:7  <b>Introduced</b>  [3] 25:23 66:25 214:3  <b>Invent</b>  [2] 72:7 143:18  [7] 67:14 67:14 72:12 72:14 72:15 74:12 123:12  <b>Inventing</b>  [1] 224:17  <b>Invention</b>  [2] 73:11 128:25  <b>Inventions</b>  [10] 72:11 72:11 75:18 76:10 102:8 102:12 123:12 142:1 143:10 193:13  <b>Inventor</b>  [3] 4:14 102:12 176:17  <b>Inventor-kind</b>  [1] 176:17  <b>Inventors</b>  [7] 102:11 107:23 108:20 143:8 144:23 175:15 175:20  <b>Invest</b>  [1] 66:17  <b>Invested</b>  [1] 195:8  <b>Investigate</b>  [1] 23:2  <b>Investigating</b>  [3] 16:23 167:22 213:2  <b>Investigation</b>  [6] 60:13 103:19 104:10 106:8 142:2 211:25  <b>Investigatory</b>  [1] 103:9  <b>Investment</b>  [3] 14:24 144:3 176:6  <b>Investors</b>  [2] 66:11 224:18  <b>Invoices</b>  [5] 208:4 226:24 227:6 227:7 227:10  <b>Involuntarily</b>  [4] 14:8 38:9 39:19 39:22  <b>Involuntary</b>  [2] 40:4 47:22  <b>Involved</b>  [40] 19:6 25:16 25:19 36:9 36:11 43:6 47:11 59:19 59:21 59:22 60:2 60:10 61:5 73:12 96:3 101:8 107:7 107:14 110:7 110:10 118:2 125:23 128:21 142:15 146:22 147:12 148:25 174:18 175:6 176:11 177:4 187:10 187:12 187:15 189:6 189:19 192:25 195:7 212:5 212:8  <b>Involvement</b>  [1] 26:15  <b>Involves</b>  [1] 73:1  <b>Involving</b>  [1] 29:24  <b>Irate</b>  [1] 7:3  <b>Irell</b>  [1] 76:19  <b>Issue</b>  [1] 11:25  <b>Issued</b>  [1] 65:16  <b>Issues</b>  [11] 14:1 93:15 134:3 141:8</p>	<p>148:14 155:2 176:8 196:5 218:17 223:12 226:23  <b>Items</b>  [2] 134:23 167:19  <b>Itself</b>  [3] 29:19 108:16 209:21  <b>Ivan</b>  [2] 2:18 3:11  <b>Ivewit</b>  [130] 1:9 1:10 6:15 6:16 6:18 8:10 8:25 9:1 9:11 13:17 14:17 15:14 19:1 19:22 23:25 24:8 24:10 24:15 25:12 26:19 26:9 26:11 26:13 26:16 26:25 27:3 27:10 28:16 28:25 29:4 29:17 29:19 29:22 33:23 36:2 36:24 37:21 38:3 39:13 39:15 42:2 42:5 42:9 42:10 42:17 43:15 44:19 46:1 46:13 46:17 47:24 51:20 52:22 52:25 63:10 63:14 53:15 55:19 68:3 68:15 60:4 62:15 62:17 62:22 74:4 74:5 74:8 74:9 80:8 81:2 83:9 87:23 90:25 100:8 100:9 111:6 111:9 125:2 128:16 130:5 130:19 135:10 142:14 150:24 164:13 169:16 168:3 168:12 169:14 189:17 173:14 175:2 175:4 175:9 175:10 178:7 178:25 181:24 182:10 182:14 182:21 184:22 184:24 187:17 192:19 193:17 198:15 198:24 200:25 209:17 210:2 210:4 210:8 211:23 212:7 212:9 214:9 215:9 217:24 219:24 220:5 220:10 221:16 224:7 224:8 224:15 226:3 226:5 231:16 232:4  <b>Ivewit's</b>  [13] 12:14 17:5 19:16 20:25 47:21 51:15 52:18 89:17 89:22 128:15 147:25 171:21 212:13  <b>Ivewit.com</b>  [20] 1:9 4:20 4:23 5:9 8:18 175:9 176:18 177:4 177:9 177:13 177:19 177:21 177:21 177:22 178:3 179:6 227:1 227:12 227:16 231:16  <b>Ivewit.coms</b>  [1] 178:4</p>	<p>3 181:20 184:9 184:10  <b>Joao's</b>  [8] 49:21 104:24 105:18 107:6 137:5 146:13 181:7 181:20  <b>Job</b>  [8] 9:21 9:23 68:8 95:7 162:13 162:13  <b>Jobs</b>  [1] 69:2  <b>Jog</b>  [1] 215:1  <b>Jogged</b>  [1] 229:24  <b>Join</b>  [1] 175:1  <b>Joined</b>  [2] 139:23 140:7  <b>Joining</b>  [1] 225:2  <b>Joint</b>  [1] 72:7  <b>Joke</b>  [4] 127:3 127:6 127:8 128:8  <b>Jokingly</b>  [1] 141:9  <b>Jude</b>  [2] 143:11 146:17  <b>Judge</b>  [5] 24:21 129:22 131:22 199:11 233:3  <b>JUDICIAL</b>  [1] 1:2  <b>July</b>  [5] 18:9 32:10 34:11 226:8 226:11  <b>Jump</b>  [1] 109:4  <b>June</b>  [3] 145:22 146:7 146:8  <b>Justify</b>  [1] 211:5</p>	<p><b>Keyboard</b>  [1] 216:24  <b>Kid</b>  [1] 70:5  <b>Kidding</b>  [1] 127:2  <b>Kids</b>  [1] 123:6  <b>Kids'</b>  [1] 125:10  <b>Kill</b>  [23] 93:16 93:23 94:9 98:7 98:13 98:17 98:21 98:25 107:16 112:5 112:17 112:21 113:17 115:19 115:24 115:25 126:20 126:22 147:11 184:11 184:13 184:19 184:20  <b>Killed</b>  [2] 183:20 183:23  <b>Killing</b>  [1] 119:18  <b>Kind</b>  [22] 8:5 10:21 12:10 13:1 15:6 23:13 24:18 43:6 62:23 72:10 81:16 83:23 128:14 128:17 132:18 132:17 162:22 164:18 176:17 202:15 208:10 214:12  <b>Kinds</b>  [7] 102:9 102:13 104:12 115:1 123:14 123:15 186:10  <b>Kinko's</b>  [1] 125:16  <b>Klein</b>  [1] 16:13  <b>Kluge</b>  [1] 102:2  <b>Knowledge</b>  [21] 19:7 62:11 62:13 98:6 121:4 154:23 168:2 168:11 168:13 168:14 168:24 169:4 172:15 173:13 174:18 176:12 180:8 231:14 232:20 234:8 238:17  <b>Knowledgeable</b>  [1] 109:24  <b>Known</b>  [1] 16:14  <b>Knows</b>  [5] 53:22 123:22 124:7 124:13 182:5</p>	<p>12 87:9 140:17 140:20 186:3 230:10  <b>Laugh</b>  [1] 109:13  <b>Laughed</b>  [1] 109:15  <b>Laughing</b>  [3] 71:13 71:17 109:14  <b>Law</b>  [32] 36:15 36:23 43:18 43:19 43:20 44:17 44:18 44:18 74:16 76:22 95:21 95:21 98:23 99:4 99:16 104:15 105:5 106:1 106:14 106:19 111:10 117:13 123:25 126:22 147:11 184:10 142:6 238:1  <b>Lawsuit</b>  [44] 5:1 5:6 5:8 8:20 8:21 14:3 14:5 14:10 14:18 15:11 17:5 22:25 31:24 41:5 41:9 47:21 47:22 48:16 50:8 59:9 86:23 87:8 87:13 103:14 103:16 107:25 209:7 110:12 110:16 111:11 117:10 167:18 171:14 179:12 179:15 179:25 203:19 207:4 221:16 221:18 221:19 221:23 221:24 226:4  <b>Lawsuits</b>  [6] 46:20 126:8 176:8 176:21 176:23 177:4  <b>Lawyer</b>  [28] 5:20 22:9 22:9 23:16 23:18 33:2 33:3 33:5 44:14 45:25 46:8 46:9 96:17 96:20 98:4 117:1 117:16 117:20 133:7 138:18 159:1 170:13 174:5 205:22 206:24 206:25 207:3 211:13  <b>Lawyers</b>  [19] 14:2 14:4 17:5 42:13 54:17 63:8 63:16 67:5 71:6 74:14 76:13 106:24 128:8 141:12 141:13 142:10 164:20 180:22 187:18  <b>Lay</b>  [1] 38:5  <b>Lead</b>  [1] 117:12  <b>Leading</b>  [1] 39:11  <b>Learn</b>  [5] 12:18 22:22 47:14 47:16 81:16  <b>Learned</b>  [5] 30:9 47:17 49:20 76:2 78:2  <b>Learning</b>  [18] 7:7 12:5 12:7 23:13 23:17 31:20 47:15 49:15 57:1 81:15 124:23 125:9 139:10 164:11 173:21 182:17 189:25 208:18  <b>Learns</b>  [1] 126:8  <b>Leave</b>  [6] 20:9 69:25 108:3 108:4 131:15 213:7  <b>Led</b>  [3] 7:3 45:5 72:8  <b>Left</b>  [8] 35:25 38:11 39:8 39:16 58:9 114:18 118:25 127:25  <b>Legal</b>  [15] 22:7 46:7 46:11 46:12 53:20 72:25 73:1 84:13 103:24 119:1 126:5 142:5 163:13 164:12 174:3  <b>Legality</b>  [1] 134:2  <b>Legally</b>  [1] 46:16  <b>Lengthy</b>  [1] 101:23  <b>Lerner</b>  [3] 142:18 142:20 144:10  <b>Less</b></p>
	<p><b>J</b>  <b>Jackoway</b>  [3] 19:8 84:20 85:6  <b>Jacksonville</b>  [2] 29:15 43:5  <b>James</b>  [2] 19:8 19:10  <b>January</b>  [14] 1:14 2:23 36:5 49:13 62:10 81:22 82:4 82:9 83:8 94:8 97:10 97:14 100:3 225:10  <b>Jeff</b>  [3] 19:11 49:25 78:6  <b>Jennifer</b>  [1] 102:2  <b>Jeopardized</b>  [1] 173:19  <b>Jerry</b>  [1] 143:3  <b>Jersey</b>  [2] 124:20 237:8  <b>Jewish</b>  [2] 62:11 62:11  <b>Jim</b>  [2] 19:11 102:1  <b>Jitter</b>  [2] 66:2 66:5  <b>Jittering</b>  [1] 66:4  <b>Joao</b>  [24] 21:4 104:18 104:19 105:14 105:18 105:23 106:4 106:8 106:20 107:7 107:14 131:2 136:5 138:8 141:3 141:21 142:23 142:25 144:24 146:11 181:</p>	<p><b>K</b>  <b>Kane</b>  [7] 19:11 49:25 78:5 153:19 163:20 175:22 225:20  <b>Kasser</b>  [18] 16:21 39:5 159:18 169:19 169:25 160:7 161:4 161:16 161:19 172:20 174:12 204:8 206:7 206:18 206:1 206:9 206:14 206:18  <b>Kasser's</b>  [3] 160:18 161:14 204:18  <b>Keep</b>  [4] 37:16 100:19 122:10 123:6  <b>Keeping</b>  [3] 233:16 235:23 238:21  <b>Keeps</b>  [1] 130:19  <b>Ken</b>  [38] 13:4 19:11 49:23 77:1 77:1 77:2 77:7 77:7 78:7 78:18 78:23 79:12 80:14 80:16 80:20 81:1 82:23 104:20 104:20 105:21 110:5 128:14 136:5 136:9 138:8 138:9 138:12 138:16 141:21 143:13 143:16 144:25 146:16 146:17 148:20 188:3 196:4 225:19  <b>Ken's</b>  [3] 164:8 164:24 197:14  <b>Kenneth</b>  [1] 214:11  <b>Kenny</b>  [1] 188:18  <b>Kent</b>  [1] 172:20  <b>Kept</b>  [9] 132:18 176:2 188:7 192:21 193:6 194:23 231:25 232:1 233:15  <b>Key</b>  [3] 118:23 237:25 238:1</p>	<p><b>L</b>  <b>Labeled</b>  [1] 185:14  <b>Lamont</b>  [17] 27:25 28:3 37:7 37:8 42:7 44:9 44:12 45:21 46:2 46:7 51:19 52:20 52:23 102:20 103:2 221:14 221:15  <b>Lamont's</b>  [1] 44:16  <b>Lands</b>  [2] 123:17 143:25  <b>Lardner</b>  [16] 40:3 98:22 99:1 99:4 101:2 102:8 106:23 106:24 107:19 115:14 115:15 128:19 146:14 184:6 184:12 226:3  <b>Lardner's</b>  [1] 101:16  <b>Large</b>  [8] 2:22 12:9 12:22 24:15 89:8 99:4 117:13 165:4  <b>Larger</b>  [1] 13:2  <b>Last</b>  [29] 13:13 16:5 28:25 34:17 34:20 36:7 58:23 69:1 69:7 59:11 69:13 61:12 62:21 67:19 77:17 77:25 109:1 114:11 114:13 114:14 119:7 126:19 134:5 202:13 214:22 215:8 229:2 229:10 231:6  <b>Late</b>  [10] 15:6 18:7 32:18 63:20 86:</p>	

[4] 34:21 61:8 73:11 73:25 <b>Letter</b> [49] 81:20 86:15 103:4 103:22 137:18 150:22 150:22 156:21 178:17 180:4 186:16 186:18 191:4 192:19 193:18 195:11 195:13 195:20 196:4 196:10 196:16 196:17 196:25 197:8 199:25 200:21 201:5 201:7 202:1 202:22 203:25 204:2 204:3 204:4 207:6 207:25 208: 9 209:5 209:16 209:20 211:3 213:17 213:18 213:20 213:25 219:16 231:5 231:5 231:6 <b>Letters</b> [22] 161:2 154:11 158:4 164:4 165:11 166:4 166:5 166:9 166: 11 166:22 166:25 197:5 207: 20 213:21 217:22 218:10 218: 16 219:24 220:10 223:9 223:9 223:17 <b>Leverage</b> [1] 72:15 <b>Lewin</b> [29] 21:25 22:1 63:6 63:7 63:8 63:9 63:11 63:13 67:9 74:15 74:17 75:1 75:8 75:9 75:10 75: 21 75:24 76:8 78:17 186:21 186:22 186:25 188:21 189:19 225:17 226:5 226:8 226:11 226:14 <b>Lewin's</b> [3] 145:7 145:14 188:25 <b>Lexington</b> [5] 69:19 70:11 70:13 73:14 74: 4 <b>Liabilities</b> [2] 144:1 144:2 <b>Liability</b> [4] 1:8 54:11 141:8 190:11 <b>License</b> [1] 176:20 <b>Licenses</b> [1] 5:20 <b>Lie</b> [2] 56:21 119:10 <b>Life</b> [33] 49:3 68:12 72:12 72:13 72: 15 73:2 93:12 93:14 94:20 96: 4 97:24 100:3 102:23 107:24 109:10 110:11 113:1 115:3 117:1 117:9 117:17 117:20 118:2 118:12 118:15 118:20 120:14 122:2 125:8 125:9 125: 10 125:15 128:8 <b>Light</b> [3] 12:24 127:9 193:7 <b>Lighten</b> [1] 127:3 <b>Limit</b> [2] 12:11 12:12 <b>Limited</b> [4] 1:5 22:4 192:15 199:15 <b>Limiting</b> [1] 163:24 <b>Limits</b> [1] 163:14 <b>Line</b> [7] 7:20 8:5 86:9 87:24 123:18 200:12 210:25 <b>Lines</b> [1] 132:25 <b>Lippe</b> [9] 54:5 78:8 99:19 99:20 104: 22 107:18 141:5 142:3 146:12 <b>List</b> [18] 18:15 20:2 20:6 20:23 20: 24 21:20 21:23 22:5 22:13 22: 16 23:4 63:5 129:11 138:22 199:16 208:20 216:23 217:22 <b>Listed</b> [12] 19:19 21:4 21:4 21:9 22: 13 199:16 140:10 165:23 180: 19 139:16 201:17 220:8 <b>Listen</b>	[6] 25:5 40:17 40:25 92:20 160: 22 227:22 <b>Listening</b> [1] 160:17 <b>Listing</b> [2] 97:2 237:25 <b>Lists</b> [1] 20:25 <b>Litigants</b> [1] 110:16 <b>Live</b> [7] 44:12 62:1 62:6 62:19 91:3 114:3 123:7 <b>Lived</b> [8] 74:19 94:3 95:2 114:2 114: 3 163:16 163:17 163:19 <b>Lives</b> [8] 18:15 118:17 123:2 123:5 123:7 136:6 <b>Living</b> [2] 69:2 127:4 <b>LLC</b> [4] 177:22 178:7 178:25 215:9 LLP [5] 1:5 2:3 2:22 176:2 175:9 <b>Load</b> [1] 72:12 <b>Loan</b> [1] 29:21 <b>Loans</b> [4] 25:10 58:1 60:4 123:15 <b>Locate</b> [1] 150:14 <b>Located</b> [13] 33:13 35:16 43:4 52:1 52: 20 84:22 160:1 180:1 161:6 161:8 161:10 161:11 161:13 <b>Lock</b> [2] 149:25 208:9 <b>Locked</b> [8] 34:7 101:9 124:18 129:13 186:13 205:15 218:3 233:22 <b>Lockhead</b> [2] 136:7 193:9 <b>Locking</b> [2] 91:10 237:3 <b>Log</b> [1] 149:23 <b>Look</b> [45] 6:3 16:4 17:16 20:11 20: 15 79:7 83:19 83:22 84:1 89: 11 96:21 106:6 118:10 126:12 131:6 135:7 136:8 137:15 137: 18 145:23 155:14 165:25 171: 19 171:24 174:24 178:18 181: 7 181:10 189:16 191:6 196:8 196:11 200:2 201:12 202:17 202:24 203:2 207:7 208:5 208: 20 214:17 215:8 215:20 217: 1 223:24 <b>Looked</b> [16] 12:2 77:2 83:14 96:22 113: 21 123:9 131:10 131:11 131: 11 152:22 166:18 166:20 168: 25 208:16 208:17 227:11 <b>Looking</b> [16] 9:10 45:12 63:15 75:24 78: 16 87:22 91:17 114:7 162:16 162:18 164:22 169:2 201:5 201:7 208:13 220:14 <b>Looks</b> [2] 196:15 208:6 <b>Los</b> [2] 84:23 100:17 <b>Lose</b> [1] 37:19 <b>LOTH</b> [3] 2:20 241:6 241:22 <b>Low</b> [2] 65:16 65:17 <b>Luck</b> [1] 22:21 <b>Ludicrous</b> [1] 180:20	<b>Lunch</b> [5] 61:23 122:14 169:19 170: 10 170:12 <b>Luncheon</b> [1] 170:1 <b>Lying</b> [2] 56:20 127:22 <b>M</b> <b>Machination</b> [2] 80:12 81:13 <b>Machine</b> [2] 237:11 237:12 <b>Madison</b> [1] 5:13 <b>Mall</b> [2] 120:16 157:3 <b>Main</b> [3] 42:12 110:4 110:6 <b>Maintains</b> [1] 102:6 <b>Major</b> [5] 65:18 71:14 71:19 98:23 105:20 <b>Malfesance</b> [17] 14:18 15:21 16:18 17:21 17:21 18:3 18:13 21:8 21:19 22:6 22:11 22:25 38:25 65:8 65:18 106:9 146:22 <b>Malfesances</b> [13] 13:25 15:22 19:7 22:23 23: 3 23:4 49:6 53:19 54:9 98:16 107:22 137:5 138:6 <b>Mall</b> [1] 229:14 <b>Malpractice</b> [2] 120:1 173:25 <b>Man</b> [3] 112:17 145:19 237:10 <b>Management</b> [14] 15:7 25:15 38:11 38:16 38: 17 38:22 39:3 39:7 39:9 47:7 67:22 186:8 189:11 213:19 <b>Manella</b> [1] 76:19 <b>Mara</b> [8] 142:18 142:20 144:10 147: 14 147:22 147:25 <b>Marble</b> [1] 199:7 <b>March</b> [11] 56:16 67:1 191:5 191:11 194:1 194:3 194:23 196:10 202:22 203:21 231:5 <b>Mark</b> [3] 5:3 5:24 20:8 <b>Marked</b> [18] 6:2 16:25 16:3 170:6 171: 20 178:16 191:3 196:16 202: 19 202:21 207:5 207:9 209:7 214:16 214:19 231:4 232:11 232:14 <b>Marketed</b> [1] 68:18 <b>Marking</b> [3] 16:8 16:7 200:1 <b>Martindale</b> [3] 97:2 97:3 99:6 <b>Martindale.com</b> [1] 96:23 <b>Massive</b> [1] 192:17 <b>Matched</b> [1] 64:13 <b>Matches</b> [1] 64:11 <b>Material</b> [2] 72:22 198:2 <b>Math</b> [4] 102:8 127:23 128:6 128:24 <b>Mathematics</b> [1] 65:20 <b>Matt</b>	[1] 214:11 <b>Matter</b> [14] 17:23 39:17 61:21 143:16 154:19 159:13 178:10 178:20 194:20 199:17 199:22 203:1 203:11 203:15 <b>Matters</b> [1] 199:23 <b>Maurence</b> [11] 19:10 38:18 39:2 40:5 58: 22 62:14 63:3 93:8 100:6 115: 12 156:9 <b>Mean</b> [34] 23:7 55:24 57:18 81:24 82: 24 96:8 99:9 115:5 131:16 139: 4 144:15 145:8 148:2 148:13 150:2 151:6 163:17 164:13 164:14 173:24 176:16 177:20 181:23 186:13 187:20 189:16 194:1 198:5 204:10 208:12 218:19 221:2 234:19 236:19 <b>Meaning</b> [8] 72:21 86:9 93:19 108:24 115:1 129:11 129:20 147:22 105:20 <b>Means</b> [11] 98:13 98:17 172:21 173:7 236:8 236:17 236:18 236:23 237:5 237:12 238:23 <b>Meant</b> [5] 82:2 84:6 216:24 234:24 236:15 <b>Measures</b> [4] 96:4 96:9 97:22 98:5 <b>Mechanism</b> [2] 47:23 67:9 <b>Mediation</b> [8] 27:17 27:20 27:23 28:1 28: 2 28:6 28:10 28:13 <b>Medication</b> [2] 228:23 229:3 <b>Meet</b> [3] 60:6 173:4 196:7 <b>Meeting</b> [28] 12:22 47:19 55:22 55:25 58:11 75:5 75:23 79:19 79:24 80:7 127:21 128:3 128:8 136:6 136:21 137:2 141:20 142:19 163:15 182:3 192:4 192:9 192: 11 196:3 196:19 196:22 197:7 236:6 <b>Meetings</b> [19] 12:21 45:17 62:24 128:20 129:2 148:5 148:20 154:17 157:9 167:12 188:21 225:18 231:24 233:10 233:19 234:9 235:17 235:22 235:23 <b>Mela</b> [3] 95:4 95:4 216:9 <b>Meltzer</b> [1] 54:5 78:8 99:18 99:19 99: 20 104:4 104:22 107:18 141:5 142:3 146:12 <b>Member</b> [7] 60:5 79:20 100:9 186:22 212:4 213:18 213:18 <b>Members</b> [12] 12:1 15:3 30:13 99:2 115: 12 129:15 151:9 153:15 163: 10 188:16 212:2 214:9 <b>Memo</b> [1] 201:11 <b>Memory</b> [6] 87:17 229:24 230:4 230:6 230:12 230:14 <b>Memory-wise</b> [1] 230:17 <b>Mention</b> [3] 14:16 107:21 220:13 <b>Mentioned</b> [8] 19:15 39:12 81:4 138:17 139:17 147:1 149:3 176:20 <b>Merger</b> [2] 124:22 164:16 <b>Met</b>	[9] 3:8 43:23 74:18 79:25 81: 10 111:18 138:8 140:13 140:15 <b>Metaphorically</b> [1] 119:12 <b>Michele</b> [3] 19:8 84:20 95:19 <b>Mid</b> [3] 13:24 77:14 230:10 <b>Mid-98</b> [4] 63:21 63:22 65:7 74:12 <b>Middle</b> [1] 37:16 <b>Midnight</b> [1] 101:22 <b>Midstream</b> [2] 41:4 42:21 <b>Might</b> [45] 7:10 7:11 7:13 7:14 17:19 23:22 56:8 60:16 60:17 60:19 61:4 61:6 62:5 69:1 80:24 81: 13 81:19 91:21 92:1 92:9 99:113: 8 113:22 121:22 133:24 138: 10 143:25 159:22 166:13 168: 19 173:19 176:6 189:5 191:16 192:15 195:22 206:8 210:24 216:21 224:13 224:13 225:9 236:24 235:25 236:10 238:4 <b>Mike</b> [1] 93:19 <b>Miles</b> [1] 229:25 <b>Miller</b> [25] 14:24 15:12 15:12 15:20 15:22 24:2 24:4 24:11 24:16 25:6 25:7 25:9 25:21 32:22 38: 16 38:18 38:24 111:4 159:20 159:25 161:17 161:19 204:10 214:2 214:6 <b>Miller's</b> [2] 25:12 161:5 <b>Million</b> [2] 109:2 193:10 <b>Milwaukee</b> [2] 107:3 107:4 <b>Mind</b> [8] 17:10 66:4 66:14 109:18 117:11 126:21 126:25 224:5 <b>Minds</b> [1] 77:3 <b>Mine</b> [2] 86:9 97:16 <b>Mineola</b> [2] 78:8 78:15 <b>Minute</b> [4] 16:5 20:1 99:23 174:14 <b>Minutes</b> [5] 165:21 231:24 235:17 236: 2 236:5 <b>Misnamed</b> [1] 128:25 <b>Misrepresentations</b> [1] 104:12 <b>Misrepresented</b> [7] 9:25 30:13 88:4 88:12 104: 19 104:21 175:7 <b>Miss</b> [11] 13:25 33:11 44:2 45:8 45: 11 46:18 46:23 114:24 118:4 121:17 161:2 <b>Missed</b> [3] 102:8 172:5 190:3 <b>Missing</b> [33] 9:6 88:14 102:11 104:11 105:17 130:24 131:17 132:2 132:4 134:4 134:6 134:20 134: 23 136:4 136:14 136:21 139: 12 169:1 169:3 169:10 181:18 213:3 218:4 227:7 234:12 234: 20 234:21 234:24 236:24 236: 25 238:8 238:10 238:23 <b>Mistake</b> [2] 200:13 225:9 <b>Mistakes</b> [1] 104:9
--	---	--	--	--

<p><b>Mitchell</b> [3] 19:12 19:13 19:14 <b>Moment</b> [4] 17:7 19:5 190:24 191:6 <b>Money</b> [29] 6:13 13:3 38:7 39:13 39:13 39:16 40:10 40:12 42:2 63:16 66:7 68:8 110:25 123:23 125:1 164:10 189:4 197:18 197:23 197:24 212:9 213:10 213:11 213:14 226:3 226:6 226:8 226:11 226:12 <b>Moneys</b> [2] 154:2 173:9 <b>Monstrous</b> [1] 65:2 <b>Monte</b> [2] 30:15 199:7 <b>Month</b> [4] 62:8 82:2 163:25 208:10 <b>Months</b> [15] 16:19 21:25 29:10 82:15 94:14 97:19 143:20 162:18 164:14 164:14 178:12 178:22 180:21 192:19 193:17 194:6 197:21 198:6 225:3 <b>Monumental</b> [1] 149:21 <b>Morning</b> [1] 3:7 <b>Most</b> [19] 45:7 53:22 65:21 77:13 114:14 163:1 156:2 163:20 164:3 171:7 171:7 181:10 181:17 182:7 186:6 191:24 227:21 233:12 237:10 <b>Mostly</b> [3] 98:5 148:6 148:13 <b>Motes</b> [6] 102:20 102:22 103:4 103:5 103:8 104:7 <b>Motion</b> [2] 163:24 233:2 <b>Motions</b> [1] 8:3 <b>Motivation</b> [1] 206:12 <b>Motive</b> [3] 108:18 108:17 205:11 <b>Mountain</b> [1] 142:18 <b>Move</b> [5] 93:13 94:2 100:21 101:4 118:19 <b>Moved</b> [8] 3:17 52:5 52:14 68:25 94:1 114:14 114:17 122:23 <b>Movie</b> [1] 57:8 <b>Moving</b> [1] 69:14 <b>Mulrooney</b> [1] 8:5 84:20 84:24 84:24 95:19 <b>Multimedia</b> [2] 68:7 68:19 <b>Multiple</b> [2] 14:1 34:2 <b>Must</b> [1] 143:25 <b>MUVDI</b> [1] 2:5</p>	<p><b>Namely</b> [1] 175:2 <b>Names</b> [6] 19:7 61:8 104:12 104:14 176:2 193:5 <b>Narrow</b> [2] 13:13 28:22 <b>Narrowing</b> [1] 10:10 <b>NDA</b> [4] 136:24 143:2 145:4 193:4 <b>Necessarily</b> [1] 121:24 <b>Necessary</b> [1] 121:2 <b>Need</b> [22] 4:10 22:9 22:21 23:5 61:24 62:5 68:5 74:14 98:4 98:4 99:23 99:23 122:18 122:17 122:18 131:6 131:8 169:19 196:7 206:3 213:2 218:8 <b>Needed</b> [10] 46:9 66:23 67:5 67:7 85:18 100:19 137:7 187:21 202:13 213:4 <b>Needs</b> [2] 4:7 169:22 <b>Negative</b> [1] 230:16 <b>Negligence</b> [2] 104:5 204:11 <b>Negotiate</b> [4] 46:7 154:18 157:18 194:21 <b>Negotiates</b> [1] 46:6 <b>Negotiating</b> [1] 223:11 <b>Negotiations</b> [3] 42:21 43:15 45:17 <b>Neighborhood</b> [1] 74:19 <b>Neighbors</b> [1] 74:23 <b>Never</b> [44] 8:1 23:10 23:14 25:22 32:3 43:22 43:23 58:7 65:20 71:16 76:12 80:23 86:15 87:4 102:11 119:8 128:9 139:14 139:18 145:15 152:4 153:13 155:21 155:23 168:8 179:9 179:12 181:21 184:20 189:21 190:2 190:2 191:25 200:9 200:16 201:17 203:14 203:18 204:17 209:13 210:4 214:11 229:17 235:18 <b>New</b> [20] 1:5 21:5 29:8 29:9 29:10 29:11 36:8 44:13 52:21 99:4 104:23 124:20 129:10 138:7 139:2 140:11 141:7 142:7 142:8 237:8 <b>Next</b> [8] 8:5 20:7 32:9 41:17 159:8 160:5 171:5 207:1 <b>Nice</b> [4] 83:20 84:2 95:2 109:12 <b>Night</b> [3] 28:4 28:5 32:25 <b>Nine</b> [3] 82:14 178:12 178:22 <b>No-load</b> [1] 72:12 <b>Noble</b> [1] 239:1 <b>Nobody</b> [17] 11:23 22:1 27:8 51:22 105:13 117:4 118:8 123:4 135:7 161:16 181:17 157:25 162:1 176:11 182:5 213:1 217:9 <b>Non</b> [2] 74:9 193:2 <b>Non-disclosures</b> [1] 193:2 <b>Non-iviewit</b></p>	<p>[1] 74:9 <b>Noncommissioned</b> [1] 72:13 <b>None</b> [7] 8:4 21:3 21:10 34:6 164:19 164:19 213:21 <b>Nonetheless</b> [2] 116:23 128:18 <b>Nonsense</b> [1] 144:4 <b>Normal</b> [2] 121:13 123:7 <b>Normally</b> [2] 123:25 214:14 <b>Notary</b> [4] 2:21 215:1 239:24 240:15 <b>Note</b> [1] 164:2 <b>Notes</b> [30] 47:20 55:23 134:9 134:25 138:24 139:1 139:5 139:8 139:10 145:23 161:24 153:2 153:4 157:6 182:24 191:13 206:20 210:10 210:17 210:21 211:1 216:16 228:6 231:23 233:15 233:18 233:21 236:23 237:7 241:11 <b>Nothing</b> [12] 28:12 41:5 41:9 109:8 124:4 125:25 135:11 144:15 156:19 169:9 195:5 232:23 <b>Notice</b> [2] 2:19 178:24 <b>Noticed</b> [8] 7:18 14:23 16:17 123:7 123:8 134:5 135:21 148:10 <b>Noticing</b> [1] 21:3 <b>Notification</b> [1] 15:7 <b>Notified</b> [7] 14:7 16:13 46:23 77:23 95:18 217:20 238:3 <b>Notify</b> [3] 15:2 214:14 217:13 <b>Novel</b> [5] 13:4 73:8 77:7 80:21 82:6 <b>November</b> [3] 81:8 171:22 241:23 <b>Number</b> [14] 20:9 82:1 96:13 97:5 120:17 148:4 191:4 195:9 201:11 202:22 214:17 219:8 231:4 232:12</p>	<p><b>Occupation</b> [2] 4:13 68:13 <b>Occur</b> [3] 110:2 178:12 223:23 <b>Occurred</b> [7] 80:23 126:5 126:5 130:23 148:15 217:21 238:3 <b>Occurring</b> [2] 49:7 157:23 <b>Offer</b> [1] 29:12 <b>Office</b> [28] 8:12 16:24 16:25 38:8 52:18 55:21 95:15 100:16 100:17 102:15 102:17 103:8 104:17 113:16 121:4 138:8 142:11 143:12 145:15 147:17 147:24 148:6 160:25 161:2 163:19 173:20 188:9 190:8 <b>Officer</b> [3] 10:19 111:18 133:5 <b>Officers'</b> [1] 17:21 <b>Offices</b> [7] 53:19 56:3 135:25 140:11 141:20 163:16 163:17 <b>Official</b> [1] 240:9 <b>Offset</b> [1] 154:7 <b>Often</b> [1] 118:23 <b>Old</b> [1] 91:5 <b>Omissions</b> [1] 104:9 <b>Once</b> [8] 40:2 47:1 65:19 79:25 150:20 213:6 214:5 232:24 <b>One</b> [54] 5:7 7:4 7:20 8:5 15:13 16:6 16:7 20:19 21:9 22:10 23:19 26:25 27:10 53:25 56:11 81:24 77:3 78:7 80:24 81:20 81:24 102:1 102:21 104:22 138:7 145:6 147:18 148:1 152:14 152:15 155:11 166:5 168:3 169:11 177:16 178:11 179:6 181:9 181:25 184:14 185:4 186:5 195:10 196:8 205:9 207:1 207:3 209:14 212:2 214:2 218:1 218:9 229:12 233:6 <b>One-minute</b> [1] 35:20 <b>Ones</b> [5] 9:12 76:18 149:2 220:23 227:11 <b>Open</b> [1] 163:1 <b>Opening</b> [1] 167:5 <b>Operating</b> [5] 10:19 178:3 179:2 227:13 227:14 <b>Operation</b> [2] 109:2 186:23 <b>Opine</b> [1] 80:16 <b>Opined</b> [3] 79:12 82:5 106:1 <b>Opiner</b> [1] 80:20 <b>Opining</b> [1] 143:13 <b>Opinion</b> [5] 10:14 45:4 45:6 106:20 117:15 <b>Opportunity</b> [2] 140:2 222:16 <b>Opposed</b> [1] 176:9 <b>Opposite</b> [1] 165:13 <b>Optic</b></p>	<p>[1] 66:5 <b>Optically</b> [1] 66:13 <b>Options</b> [1] 127:1 <b>Oral</b> [3] 220:17 220:23 222:1 <b>Orchestrated</b> [1] 126:17 <b>Order</b> [6] 34:9 34:9 89:7 89:10 96:5 130:2 <b>Ordered</b> [1] 129:22 <b>Orders</b> [1] 149:24 <b>Organization</b> [2] 10:22 100:21 <b>Original</b> [5] 89:16 89:19 90:12 139:22 143:8 <b>Originally</b> [4] 63:8 106:23 139:7 141:16 <b>Originals</b> [2] 215:4 216:6 <b>Orlando</b> [2] 136:12 143:6 <b>Osterling</b> [1] 19:12 <b>Otherwise</b> [1] 217:13 <b>Ourselves</b> [1] 64:8 <b>Outcome</b> [1] 192:11 <b>Output</b> [1] 40:2 <b>Outrageousness</b> [1] 194:22 <b>Overbilled</b> [1] 12:24 <b>Overbilling</b> [6] 153:16 163:18 154:16 154:21 178:6 219:22 <b>Overlooked</b> [1] 238:4 <b>Overnight</b> [6] 32:20 55:22 94:2 114:16 122:23 123:21 <b>Overstated</b> [1] 174:9 <b>Owe</b> [4] 226:3 226:5 226:8 226:12 <b>Owed</b> [6] 39:13 40:10 40:12 110:25 173:10 185:18 <b>Owes</b> [3] 39:13 39:15 42:2 <b>Owling</b> [2] 204:25 205:20 <b>Own</b> [27] 26:13 26:25 27:10 41:8 49:1 70:11 71:18 104:12 104:16 105:2 105:15 106:21 106:23 107:6 123:11 123:11 148:17 166:4 176:19 175:21 177:1 193:13 199:1 213:10 225:6 226:11 235:13 <b>Owned</b> [1] 67:15 <b>Owners</b> [1] 29:11 <b>Ownership</b> [2] 27:12 27:14 <b>Owns</b> [1] 37:21</p>	<p><b>P</b> <b>P.A.</b> [1] 2:5 <b>P.m.</b> [2] 169:21 170:2 <b>Packed</b></p>
<p><b>N</b></p> <p><b>Name</b> [27] 3:9 22:2 35:8 49:1 54:22 54:24 75:8 78:9 104:18 104:24 104:24 105:15 106:21 106:23 107:6 108:21 113:14 114:6 120:19 123:11 123:11 138:17 138:22 183:10 199:1 200:15 213:25 <b>Named</b> [1] 108:25</p>					

[1] 94:2 Page [15] 2:10 8:5 171:23 172:4 172:8 6 172:7 174:24 207:6 214:22 215:2 215:8 215:20 216:17 217:11 220:14 Pages [5] 7:19 7:23 101:20 202:23 209:8 Paid [16] 9:9 12:16 43:23 50:15 50:16 51:15 85:23 85:24 87:8 87:11 162:21 189:3 192:23 197:14 197:14 198:6 Painting [1] 64:10 Palace [2] 113:14 113:25 Palm [1] 2:1 27:4 Palos [9] 94:23 94:23 95:8 95:25 97:7 7 111:14 112:7 114:5 216:9 Panned [1] 141:24 Pans [1] 106:7 Paper [5] 4:9 72:24 73:2 73:6 101:20 Paperless [2] 68:20 73:4 Papers [2] 32:13 51:5 Paragraph [9] 172:7 172:8 173:3 173:9 174:24 191:18 192:1 220:18 221:2 Paralegal [1] 131:5 Parameters [3] 44:25 46:15 45:18 Paramount [2] 56:20 127:21 Paramount/Viacom [1] 128:1 Paraphrasing [1] 93:20 Parents [2] 114:13 119:5 Part [56] 7:13 7:15 9:23 17:25 28:15 29:23 39:22 48:2 50:8 56:24 60:16 68:16 88:6 87:13 90:6 6 102:16 105:25 105:25 120:3 134:10 138:14 138:14 139:6 139:9 139:12 147:3 147:6 147:20 149:1 149:2 152:1 156:8 162:8 162:15 164:25 167:8 167:16 167:23 178:5 179:19 186:25 187:22 189:14 191:22 200:6 204:17 208:4 207:12 208:16 209:11 223:5 229:24 234:18 236:3 236:4 236:12 Partially [1] 4:21 Participate [1] 75:5 Participated [1] 216:18 Participating [1] 27:17 Particular [3] 58:21 69:16 181:5 Particularly [1] 181:4 Parties [5] 58:17 172:2 172:12 215:11 241:13 Parties' [1] 241:14 Partner [15] 49:23 55:6 79:2 79:15 79:16 104:21 138:16 138:21 138:22 139:14 139:15 139:16 139:	21 140:10 140:24 Partners [9] 78:21 110:10 134:9 142:8 180:19 187:15 212:11 212:12 212:12 Partnership [1] 1:6 Party [3] 38:2 175:1 215:10 Passed [2] 156:1 179:9 Passive [1] 10:22 Passwords [1] 124:18 Past [2] 30:14 197:2 Patent [49] 9:4 13:1 13:3 37:22 42:22 46:15 53:19 54:1 54:4 64:22 64:23 75:16 75:21 75:24 77:8 77:11 102:7 102:14 102:17 103:8 104:17 105:22 128:19 129:3 131:3 132:4 132:8 134:6 6 134:24 136:23 136:8 141:24 142:6 142:10 143:1 145:5 148:18 146:22 148:20 154:6 175:19 176:22 176:24 182:25 183:3 188:11 192:23 195:4 213:4 Patents [76] 12:4 12:4 28:18 29:13 29:17 29:20 29:21 48:25 49:6 53:9 17 53:23 53:24 54:9 54:13 54:14 54:22 54:24 54:25 82:24 82:24 24 101:20 102:1 102:10 102:12 15 103:25 104:11 104:11 104:14 14 104:18 104:24 105:3 105:5 11 105:15 105:16 106:2 106:3 106:4 106:21 106:22 107:6 107:23 108:19 108:21 109:1 123:11 124:1 124:2 128:25 131:2 133:17 134:4 134:24 136:3 136:22 137:3 137:4 141:21 21 141:25 142:9 142:23 143:17 144:24 154:24 154:25 173:17 175:16 175:21 176:1 176:9 177:1 177:4 182:25 183:2 193:14 199:1 213:3 Patrol [1] 111:15 Patterns [1] 9:4 Pause [2] 191:1 196:13 Pay [13] 9:12 12:15 24:18 71:4 85:19 87:8 151:13 154:3 186:16 187:21 188:1 197:4 197:6 Paycheck [1] 4:17 Paying [8] 9:4 12:4 119:21 154:10 162:21 187:17 Payment [17] 13:3 19:19 192:12 192:13 194:25 198:9 198:10 198:15 200:24 200:25 201:20 213:13 23:11 12 23:15 23:12 23:1 22 23:4 Payments [2] 197:11 198:8 Payout [1] 188:4 Peg [1] 192:24 Pegged [1] 79:13 Pending [14] 4:12 29:18 29:20 29:21 37:22 37:24 53:9 53:13 53:17 53:23 54:1 145:1 192:3 233:2 Peninsula [1] 94:25 People [89] 16:22 18:15 18:18 18:19	19:15 19:19 20:2 20:25 21:1 21:3 21:7 21:9 21:18 21:23 22:2 13 22:18 23:11 27:16 27:19 39:12 12 40:9 42:1 47:9 48:24 60:15 61:3 61:4 61:9 62:11 62:12 64:24 24 66:18 76:21 79:8 90:17 98:6 98:7 100:4 101:7 102:25 108:6 113:3 113:8 113:21 114:23 115:16 119:1 119:5 119:20 121:13 125:23 126:1 126:2 126:4 129:5 136:25 143:6 145:8 146:25 147:1 147:19 148:18 149:25 160:11 151:22 152:22 154:10 156:9 156:10 162:5 163:18 164:5 175:18 175:22 182:7 185:1 187:3 187:12 188:10 189:12 194:17 194:17 194:20 20 205:9 214:8 216:13 235:13 236:9 237:10 Per [1] 65:17 Percent [7] 60:12 66:14 80:17 124:1 187:23 188:6 213:9 Performed [9] 54:5 142:3 173:18 177:18 180:19 189:22 190:3 217:14 217:14 Perhaps [15] 19:10 48:7 59:19 61:11 87:3 102:23 104:5 106:9 107:20 115:12 116:13 126:12 128:22 180:3 187:10 Period [9] 48:4 49:14 67:16 68:12 80:25 87:9 129:11 225:14 226:20 180:3 187:10 Periodic [1] 198:8 Permanently [1] 62:15 Permission [3] 132:25 202:4 202:7 Perpetrated [2] 64:11 126:3 Perpetrating [1] 98:2 Perpetrators [1] 126:9 Person [14] 10:4 38:10 38:13 63:25 64:8 62:3 98:10 98:12 111:6 165:22 22 175:24 199:4 203:7 216:17 Personal [27] 12:1 23:21 40:21 40:22 41:1 1 83:1 83:5 83:11 83:16 83:24 84:4 84:4 84:8 84:13 85:17 86:23 86:25 87:8 88:7 88:8 88:21 89:13 89:14 130:10 130:14 165:20 238:17 Personally [7] 41:6 41:10 85:23 130:12 183:15 226:5 240:7 Pertain [1] 51:1 Pertained [2] 101:8 193:16 Pertaining [8] 18:3 18:13 55:8 135:8 168:3 169:14 Pertinent [1] 105:17 Ph [15] 19:6 19:12 76:20 99:18 102:21 106:25 136:7 137:6 141:23 143:3 143:9 144:23 176:9 192:24 199:8 Phase [1] 141:14 Phenomenal [1] 140:8 Phone [8] 96:13 97:5 98:11 128:1 132:17 145:7 145:14 204:18 Photocopy [1] 131:9	Photographed [1] 134:17 Photographs [1] 134:18 Photon [1] 66:9 Physically [4] 102:4 181:15 181:17 184:19 154:25 Physicians [2] 228:25 229:5 Pick [1] 125:16 Picking [1] 25:14 Picture [3] 64:13 64:24 66:2 Pictures [2] 56:20 127:22 Piece [2] 34:2 34:2 Pieces [2] 131:12 167:21 Pierce [1] 128:3 Pile [1] 232:11 Pinion [1] 136:12 Pipe [1] 65:8 Pitilation [4] 64:5 64:7 64:16 Place [1] 152:25 Plaintiff [10] 1:7 2:4 172:3 172:13 173:3 3 173:9 175:1 215:10 217:13 231:3 Plaintiffs [25] 5:24 6:1 16:25 16:1 16:2 170:5 171:20 171:25 172:10 172:13 173:11 174:25 178:17 191:4 196:9 200:1 201:11 202:19 202:21 207:5 207:9 209:7 214:18 214:19 231:4 Plan [11] 20:25 56:25 155:12 155:16 198:9 198:10 201:20 231:15 231:21 231:22 232:4 Planner [1] 84:17 Planning [14] 12:2 18:12 22:10 29:14 52:8 84:9 84:11 85:20 88:9 89:14 89:25 124:21 132:1 226:1 Plans [1] 198:15 Play [1] 132:18 Plays [1] 223:25 Plead [2] 18:18 31:23 Pled [2] 32:3 32:4 Plus [1] 66:5 PM [4] 99:25 170:4 230:25 239:9 Pockets [1] 141:10 Point [32] 8:22 10:22 26:25 27:10 28:14 32:4 37:10 39:9 55:15 55:5 16 67:4 75:25 77:11 98:15 100:17 104:11 110:9 125:5 128:12 128:16 141:5 145:7 146:2 166:5 5 196:23 208:21 210:25 212:24 213:16 225:15 230:1 236:8 Pointed [1] 92:5 Police [12] 34:9 34:9 94:17 94:18 94:	23 94:24 95:9 97:7 97:18 111:10 10 111:13 112:4 Policeman [1] 112:9 Policy [2] 72:16 73:2 Pools [7] 13:1 13:4 77:8 77:11 154:6 154:25 192:24 Pop [1] 193:3 Portfolio [1] 46:15 Poses [1] 116:22 Position [6] 11:1 12:14 127:19 147:22 173:19 235:11 Positioning [1] 54:8 Positions [2] 44:4 58:1 Possession [5] 170:17 171:10 206:18 235:12 236:7 Possibility [1] 163:13 Possibly [4] 18:15 31:12 203:1 205:2 Post [1] 27:4 Postgraduate [1] 5:18 Potentially [1] 147:11 Powell [14] 25:11 65:22 58:1 58:22 58:23 59:17 59:21 60:2 60:4 61:4 61:6 61:19 62:14 63:4 Power [2] 35:6 183:11 Practitioner [1] 35:18 Pre [1] 192:23 Pre-paid [1] 192:23 Precedent [1] 173:4 Preparation [1] 216:18 Prepare [4] 24:22 97:25 111:7 215:20 Prepared [10] 16:21 16:22 16:24 101:20 219:9 215:22 216:3 216:24 217:1 217:3 Preparing [1] 54:10 Prescription [1] 229:2 Present [1] 112:20 112:24 112:25 119:15 138:9 145:4 157:11 188:15 188:21 192:4 238:20 Presented [8] 6:23 112:3 123:16 179:10 179:11 194:14 227:12 231:3 Presenting [2] 118:9 238:10 Presenting [20] 10:7 10:11 10:18 10:20 11:3 11:4 11:6 44:7 44:8 70:18 71:2 164:6 164:25 165:3 178:25 198:15 198:18 210:7 210:15 224:15 Pressures [1] 123:7 Pressuring [1] 213:11 Presume [1] 37:9 Pretty
---	---	---	--	---

[12] 8:6 58:8 63:4 65:14 73:9  
89:2 89:5 113:24 131:4 150:3  
205:8 216:3  
Previous  
[1] 196:17  
Previously  
[2] 8:3 171:20  
Principal  
[6] 42:9 73:20 74:6 74:9 207:  
16 207:18  
Principals  
[11] 28:8 42:6 55:19 58:4 58:  
15 62:12 177:13 177:16 207:  
19 225:15 225:16  
Print  
[1] 216:25  
Printed  
[2] 215:24 216:4  
Printout  
[3] 6:7 156:18 156:22  
Private  
[2] 33:12 81:17  
Problem  
[12] 56:24 64:6 64:9 66:1 139:  
21 162:19 165:23 189:5 190:  
25 193:15 208:22 212:1  
Problems  
[22] 65:3 65:4 86:17 86:16 88:  
1 102:10 115:1 122:12 139:19  
151:23 152:25 167:5 162:25  
155:15 195:21 196:7 204:16  
219:22 230:4 230:6 230:8 230:  
12  
Procedure  
[1] 164:19  
Proceeding  
[2] 122:6 203:18  
Process  
[5] 68:22 73:3 78:14 136:25  
143:7  
Processes  
[4] 76:10 82:6 139:11 143:3  
Prochotska  
[6] 35:9 35:9 42:12 95:18 114:  
24 170:25  
Produce  
[1] 29:10  
Producing  
[1] 127:23  
Product  
[2] 72:22 72:25  
Production  
[2] 170:18 171:12  
Products  
[9] 68:17 68:18 68:19 69:17 72:  
7 72:12 72:17 72:20 154:25  
Profession  
[2] 67:13 68:1  
Professional  
[2] 179:8 229:13  
Programs  
[1] 64:5  
Progresses  
[1] 37:17  
Projection  
[1] 66:3  
Prolow  
[2] 124:19 212:5  
Prolow's  
[1] 173:22  
Promised  
[2] 12:25 47:6  
Proof  
[1] 95:22  
Proper  
[7] 7:11 123:15 180:22 181:18  
181:18 183:21 193:14  
Properly  
[2] 64:10 149:20  
Property  
[3] 43:9 56:9 56:10  
Proportions  
[1] 12:9

Proposal  
[1] 197:11  
Proposed  
[5] 29:8 51:9 197:1 201:20 232:  
7  
Proprietary  
[1] 92:6  
Prosecution  
[1] 146:18  
Proskauer  
[101] 1:5 2:3 2:22 3:8 6:14 6:  
15 8:9 9:1 9:4 9:10 9:19 9:25  
11:14 12:15 12:25 13:17 14:5  
14:12 14:18 15:11 17:8 19:3  
29:24 31:7 31:21 44:10 47:12  
47:24 48:16 49:23 54:5 67:2  
56:1 59:9 61:8 63:9 67:22 75:8  
78:11 75:25 76:6 76:8 76:15  
76:23 77:2 77:15 77:16 77:19  
77:22 78:2 78:10 78:17 79:3  
79:18 79:19 79:21 80:3 80:8  
81:1 81:9 82:21 83:1 83:9 84:  
13 87:23 89:18 89:23 90:13 91:  
13 91:15 91:20 91:25 93:2 93:  
16 98:14 99:1 99:17 103:14  
103:16 104:4 104:19 104:21  
107:18 107:19 108:5 108:12  
108:17 109:6 109:21 111:11  
115:7 118:12 118:20 118:21  
119:18 119:19 120:2 126:13  
130:19 134:6 138:7 139:15  
139:20 139:21 139:23 140:10  
140:11 140:24 141:4 141:20  
142:15 146:4 150:24 151:2  
151:2 154:1 154:3 154:10 154:  
14 164:15 167:11 158:1 158:  
22 169:9 169:17 161:21 161:  
24 162:1 163:3 165:23 166:11  
166:25 167:2 167:10 167:11  
168:2 168:11 169:5 169:14  
169:17 176:18 177:18 180:19  
180:25 182:9 182:12 182:17  
184:2 184:23 185:12 185:22  
187:18 187:23 189:20 190:12  
192:18 193:17 197:21 198:3  
198:16 200:22 209:17 210:1  
211:22 212:8 212:10 212:11  
212:12 212:12 217:13 217:21  
217:24 219:2 219:24 219:25  
220:5 220:10 222:9 224:8 224:  
19 225:4 225:11 227:10 227:  
18 227:19 227:25 231:17 232:  
4 237:18 238:7 238:15  
Proskauer's  
[18] 17:22 55:9 85:19 155:18  
168:21 169:17 161:5 162:6  
162:20 162:25 170:15 219:14  
222:20 223:17 226:24 227:25  
Protagonist  
[2] 110:4 110:6  
Protect  
[18] 39:10 47:21 47:23 48:24  
57:23 58:1 67:8 96:4 109:5  
119:1 122:18 122:21 125:9  
126:6 129:5 142:6 175:25 177:  
1  
Protected  
[4] 136:24 176:1 176:23 177:7  
Protecting  
[1] 164:13  
Protection  
[4] 18:18 96:4 96:8 143:15  
Protracted  
[2] 226:13 226:17  
Prove  
[1] 22:5  
Provide  
[3] 88:19 198:5 227:5  
Provided  
[23] 6:18 30:13 60:14 89:7 89:  
10 91:18 135:9 138:17 164:3  
166:8 166:16 169:1 173:11  
178:11 181:21 181:21 190:10  
190:17 198:19 226:21 227:7  
234:18 236:24  
Providing

[2] 82:14 166:5  
Provisional  
[2] 101:16 146:1  
Proximity  
[1] 118:19  
Prusaski  
[7] 2:3 2:10 2:11 3:6 3:7 6:23  
6:9 7:24 8:8 8:13 8:21 8:24 15:  
24 16:8 19:25 20:3 20:5 20:10  
21:31 35:20 35:24 37:11 40:7  
40:11 40:16 40:20 40:24 41:5  
41:9 41:12 41:15 41:16 50:25  
51:8 51:17 100:1 116:7 116:12  
116:15 120:4 120:9 120:12  
122:3 122:9 122:13 122:16  
122:20 127:14 130:9 130:18  
130:25 152:15 152:18 162:22  
153:6 168:9 169:19 170:8 170:  
18 171:2 171:14 171:13 171:18  
190:19 190:23 191:2 196:8  
199:20 201:14 211:14 224:6  
230:20 232:9 232:24 233:8  
237:22 238:25  
Psychiatrist  
[1] 229:11  
Psychiatrists  
[1] 229:5  
Psychologist  
[2] 66:6 229:11  
Psychologists  
[1] 229:6  
Psychology  
[2] 5:12 65:18  
Public  
[8] 2:21 7:2 7:14 7:19 106:  
18 126:10 239:24 240:15  
Pull  
[1] 42:16  
Pulled  
[7] 36:1 42:20 44:24 46:24 47:  
5 53:5 124:8  
Purpose  
[1] 182:1  
Purposely  
[1] 126:18  
Pursuant  
[1] 2:19  
Pursue  
[2] 49:4 93:16  
Pursued  
[3] 39:20 40:4 121:5  
Pursuing  
[3] 46:10 46:12 46:14  
Put  
[20] 12:10 14:14 14:25 19:2 25:  
13 46:5 62:23 64:25 83:12 114:  
18 139:21 145:6 153:24 163:  
14 174:20 188:18 192:2 208:  
11 213:1 238:11  
Putting  
[2] 63:2 237:11

## Q

Qualifications  
[1] 156:10  
Qualified  
[2] 77:7 129:8  
Qualify  
[2] 30:10 117:22  
Qualities  
[1] 10:25  
Quarter  
[2] 66:12 77:17  
Questionable  
[1] 185:21  
Questioned  
[3] 108:22 157:20 212:2  
Questioning  
[1] 213:24  
Questions  
[19] 12:20 20:14 50:22 50:23  
51:10 51:12 61:13 92:21 131:  
16 131:19 133:23 142:22 147:  
23 199:21 201:10 230:20 232:

25 233:18 239:3  
Quick  
[4] 7:18 144:14 144:15 230:23  
Quilt  
[2] 150:21 160:23  
Quite  
[7] 60:5 78:12 102:5 111:2 143:  
10 164:23 193:11  
Quitting  
[1] 214:10  
Quote  
[1] 80:21  
Quoting  
[2] 93:20 93:21

## R

Racking  
[1] 163:13  
Ran  
[8] 57:14 71:2 73:20 129:7 145:  
14 213:16  
Ranch  
[1] 123:1  
Rancho  
[8] 94:23 94:23 95:8 95:24 97:  
7 111:13 114:5 216:9  
Ranchos  
[1] 112:7  
Ransom  
[1] 206:4  
Rate  
[2] 65:18 65:16  
Rated  
[3] 76:17 76:2 76:3  
Ratification  
[1] 179:9  
Raton  
[5] 1:14 2:23 55:21 142:14 147:  
17  
Ray  
[27] 38:18 49:21 63:3 104:18  
104:24 105:14 105:16 131:2  
136:5 136:9 137:5 138:8 141:3  
141:21 142:25 143:12 143:19  
144:24 146:11 146:13 146:15  
181:3 181:7 184:9 184:10 185:  
4 186:21  
Raymond  
[3] 21:4 100:15 104:19  
Re  
[3] 129:14 190:4 231:22  
Re-answer  
[1] 190:4  
Re-assemble  
[1] 129:14  
Re-creating  
[1] 160:2  
Re-payment  
[1] 231:22  
Reach  
[1] 202:2  
Read  
[18] 27:4 27:7 31:1 31:2 40:19  
116:6 116:8 153:2 172:23 191:  
6 196:11 197:9 200:2 231:10  
239:5 239:5  
Ready  
[1] 203:5  
Real  
[22] 7:18 10:4 10:14 39:24 40:  
1 49:17 49:19 60:9 123:20 126:  
3 138:2 138:25 142:22 143:3  
145:3 146:2 146:8 146:8 146:  
11 179:18 188:5 193:9  
Realize  
[1] 199:4  
Realized  
[1] 119:19  
Really  
[18] 12:19 16:7 49:22 65:1 78:  
13 96:24 125:7 130:21 130:22  
162:9 165:10 167:13 176:4  
177:24 199:7 212:22  
Reason

[11] 4:2 4:10 7:22 80:15 100:  
19 114:25 138:10 189:3 198:  
20 207:18 211:5  
Reasonable  
[1] 184:16  
Reasons  
[5] 7:1 118:7 127:6 127:18 129:  
4  
Rebuild  
[5] 23:8 23:11 34:5 60:15 218:3  
Rebuilding  
[1] 66:9  
Recap  
[1] 168:6  
Receipt  
[2] 200:24 203:25  
Receive  
[8] 4:17 4:18 9:21 145:24 170:  
24 200:7 202:7 209:12  
Received  
[7] 9:18 96:25 165:22 170:16  
170:22 171:11 196:16  
Receiving  
[4] 38:8 92:8 154:6 165:19  
Recently  
[10] 3:17 21:24 26:25 27:3 42:  
17 45:2 114:14 122:25 171:3  
171:11  
Recess  
[4] 36:22 99:24 170:1 230:24  
Recognize  
[2] 148:11 148:12  
Recollect  
[1] 228:12  
Recollecting  
[1] 229:23  
Recollection  
[3] 81:7 95:6 215:1  
Recommendation  
[2] 10:24 188:20  
Recommended  
[5] 24:2 66:7 75:25 76:15 78:17  
Reconciliation  
[3] 204:9 204:24 205:19  
Reconstruct  
[2] 129:16 222:10  
Record  
[43] 3:9 4:7 20:5 34:6 60:15 81:  
3 89:6 89:8 101:3 101:8 106:  
17 116:6 120:9 120:11 121:21  
125:19 129:10 129:14 135:13  
138:14 139:13 148:22 149:19  
160:16 166:2 166:5 169:25  
170:9 182:20 186:12 200:6  
204:17 213:3 222:9 222:9 223:  
4 225:8 234:1 234:16 235:6  
236:5 236:13 241:10  
Record's  
[1] 88:17  
Records  
[55] 66:3 58:10 60:22 83:19 84:  
2 86:11 88:20 90:14 90:20 92:  
4 93:12 100:19 100:22 123:10  
125:4 129:16 129:16 134:8  
134:19 138:10 138:12 138:15  
139:12 139:16 161:15 163:22  
164:2 165:8 166:7 167:8 187:7  
203:17 203:19 205:3 205:16  
205:21 206:5 206:8 206:9 206:  
10 206:14 208:19 211:21 218:  
3 226:20 226:21 226:22 233:9  
233:18 233:23 234:20 236:13  
236:24 238:20 238:21  
Recover  
[1] 150:12  
Recovered  
[2] 138:15 233:21  
Recovery  
[2] 173:12 233:23  
Redacted  
[1] 193:23  
Redirect  
[3] 2:11 233:6 233:7  
Reduce

[1] 163:12 <b>Reduced</b> [1] 173:12 <b>Reducing</b> [1] 223:14 <b>Refer</b> [3] 45:8 45:11 142:6 <b>Reference</b> [3] 64:19 219:11 231:6 <b>Referenced</b> [1] 6:12 <b>References</b> [2] 196:19 201:20 <b>Referral</b> [8] 14:15 14:23 39:25 88:18 97:23 174:10 189:11 189:11 <b>Referral'd</b> [1] 206:6 <b>Referrals</b> [2] 188:8 205:10 <b>Referred</b> [9] 26:7 39:2 69:23 64:15 76:20 124:21 187:1 187:9 213:19 <b>Referring</b> [4] 11:18 38:15 82:1 142:5 <b>Reflected</b> [3] 25:8 25:16 87:10 <b>Refreshing</b> [1] 95:6 <b>Refused</b> [2] 10:125 144:3 <b>Refuses</b> [1] 206:9 <b>Refusing</b> [1] 206:15 <b>Regard</b> [4] 134:2 225:18 231:5 232:7 <b>Regarding</b> [7] 17:21 75:6 218:17 219:17 219:19 220:16 220:22 <b>Regards</b> [1] 227:12 <b>Regular</b> [2] 122:7 176:17 <b>Rejected</b> [2] 40:3 197:1 <b>Relate</b> [1] 50:23 <b>Related</b> [4] 39:5 67:22 60:11 72:17 <b>Relating</b> [4] 24:17 168:12 169:17 222:8 <b>Relation</b> [4] 8:18 8:19 173:10 174:7 <b>Relationship</b> [7] 23:21 28:16 29:1 29:4 116:21 226:13 227:6 <b>Relative</b> [2] 24:12 24:14 <b>Relevant</b> [1] 172:14 <b>Relief</b> [2] 172:1 172:11 <b>Relieved</b> [1] 210:23 <b>Remain</b> [1] 118:2 <b>Remains</b> [1] 117:25 <b>Remember</b> [39] 26:1 26:3 34:20 36:7 40:7 41:8 66:3 70:4 76:18 83:2 85:22 88:1 85:14 103:11 120:19 128:23 133:20 144:6 165:17 165:18 165:19 177:16 181:2 181:5 182:1 182:21 183:10 184:22 184:25 215:6 215:7 216:3 222:5 223:8 227:3 227:3 227:9 228:7 228:9 <b>Remote</b> [3] 66:23 105:10 105:19 <b>Repair</b> [1] 149:17	<b>Repayment</b> [2] 191:19 202:5 <b>Rephrase</b> [1] 4:4 <b>Replaced</b> [1] 214:5 <b>Replacement</b> [1] 38:24 <b>Report</b> [4] 102:17 111:20 120:14 241:8 <b>Reported</b> [1] 204:16 <b>Reporter</b> [10] 2:21 116:16 121:17 122:11 132:19 133:4 133:6 169:22 241:7 241:22 <b>Reports</b> [1] 186:4 <b>Represent</b> [16] 24:8 24:9 24:15 24:18 71:7 80:8 80:13 80:15 81:2 142:10 143:23 146:5 148:19 192:18 193:17 236:25 <b>Representation</b> [25] 25:22 42:13 77:6 77:20 79:5 81:9 130:4 130:5 130:10 130:11 130:20 136:10 144:9 160:18 193:6 194:9 195:6 197:22 198:17 209:18 210:3 211:23 212:16 227:19 227:25 <b>Representations</b> [5] 78:19 79:8 128:16 146:17 147:2 <b>Representative</b> [2] 14:22 173:7 <b>Representatives</b> [2] 175:23 175:24 <b>Represented</b> [23] 24:11 25:21 25:22 49:24 56:12 78:25 79:2 116:21 116:23 140:9 140:20 140:24 141:4 142:8 142:14 142:24 150:24 175:14 178:2 179:8 180:17 224:8 227:17 <b>Representing</b> [17] 9:1 13:17 16:14 23:24 32:20 33:22 36:15 36:23 42:9 42:10 43:14 136:8 141:12 184:23 212:18 225:4 225:17 <b>Represents</b> [1] 143:17 <b>Request</b> [4] 129:23 170:18 171:12 217:15 <b>Requested</b> [8] 56:9 78:11 129:23 194:18 225:1 227:5 236:25 241:9 <b>Requesting</b> [1] 196:23 <b>Required</b> [2] 37:9 185:23 <b>Research</b> [10] 76:13 76:25 76:5 77:15 77:21 78:2 78:7 78:22 80:21 99:10 <b>Researched</b> [2] 78:20 78:21 <b>Reserving</b> [1] 232:24 <b>Reside</b> [2] 3:16 52:15 <b>Resident</b> [1] 3:15 <b>Resign</b> [1] 10:20 <b>Resigning</b> [1] 214:10 <b>Resolution</b> [1] 100:13 <b>Resolutions</b> [1] 197:1 <b>Resource</b> [1] 113:23 <b>Respect</b> [2] 192:12 228:16	<b>Respectfully</b> [1] 78:11 <b>Respond</b> [1] 171:12 <b>Response</b> [4] 156:23 157:16 170:17 233:17 <b>Responses</b> [2] 216:11 216:11 <b>Responsibilities</b> [1] 224:16 <b>Responsive</b> [1] 171:11 <b>Rest</b> [3] 99:22 161:15 187:14 <b>Restate</b> [1] 219:12 <b>Restaurant</b> [6] 113:8 113:11 113:13 113:21 114:7 114:10 <b>Restored</b> [1] 233:22 <b>Restraining</b> [1] 96:5 <b>Rests</b> [1] 19:3 <b>Result</b> [3] 63:15 183:23 230:17 <b>Results</b> [1] 230:17 <b>Resume</b> [9] 30:8 66:21 108:22 155:5 155:6 165:9 155:14 198:19 212:17 <b>Resumed</b> [1] 170:4 <b>Retain</b> [1] 40:18 <b>Retained</b> [2] 18:8 215:10 <b>Retainer</b> [5] 80:24 141:6 142:4 178:9 180:23 <b>Retracting</b> [1] 128:14 <b>Return</b> [1] 34:8 <b>Revenues</b> [1] 53:21 <b>Review</b> [29] 9:21 10:1 10:13 10:16 11:13 11:15 11:17 11:20 32:19 64:23 78:9 80:14 80:16 85:9 88:15 101:23 101:24 105:25 125:12 126:7 141:21 141:24 146:13 167:18 162:13 170:23 195:25 204:14 241:9 <b>Reviewed</b> [13] 11:16 84:17 103:2 105:22 107:5 126:23 125:24 126:2 134:20 166:13 183:1 183:7 189:20 <b>Reviewing</b> [13] 11:22 32:15 82:23 89:6 101:25 106:1 134:12 134:18 153:23 158:10 174:19 195:22 231:11 <b>Reviews</b> [1] 155:16 <b>Revolutionary</b> [1] 74:13 <b>Rich</b> [1] 148:16 <b>Richard</b> [1] 76:20 <b>Rid</b> [3] 146:15 193:25 212:25 <b>Rigel</b> [2] 39:24 39:25 <b>Ring</b> [4] 13:18 34:11 34:12 63:20 <b>Rings</b> [1] 72:4	<b>Ripped</b> [1] 109:1 <b>Ripping</b> [1] 224:5 <b>Rise</b> [1] 45:5 <b>Risk</b> [1] 143:15 <b>Road</b> [3] 2:22 3:21 3:21 <b>Robbins</b> [4] 142:20 144:10 147:14 147:25 <b>Robbins'</b> [1] 147:22 <b>Rock</b> [3] 68:25 69:8 69:14 <b>Rocky</b> [8] 142:15 142:19 144:10 145:6 145:15 146:23 147:11 147:25 <b>Rogers</b> [24] 33:8 33:9 33:11 35:2 35:9 35:10 35:12 43:11 43:16 44:2 45:8 45:11 45:23 46:18 46:23 54:2 95:18 114:24 118:5 158:25 159:7 171:1 183:5 183:11 <b>Rogers'</b> [2] 35:7 161:2 <b>Role</b> [10] 9:24 9:25 10:6 10:8 10:9 10:22 25:12 44:5 70:17 71:23 <b>Roll</b> [3] 68:25 69:8 69:14 <b>Room</b> [6] 4:7 20:4 99:22 130:7 135:5 145:6 <b>Rosario</b> [1] 143:11 <b>Rose</b> [22] 1:5 2:3 2:22 3:8 14:12 75:8 78:10 79:3 84:13 99:1 108:12 109:6 118:20 138:7 140:11 141:21 158:1 190:12 217:13 217:21 231:17 232:5 <b>Rose's</b> [1] 58:2 <b>Ross</b> [27] 14:24 14:24 14:25 15:2 15:12 15:16 15:20 15:22 16:22 24:2 24:4 24:11 25:6 25:7 25:9 25:20 26:7 32:22 38:24 111:4 159:20 159:25 161:4 161:17 161:19 204:10 214:2 <b>Rosman</b> [1] 76:20 <b>Rough</b> [2] 137:24 137:25 <b>Roughly</b> [3] 94:15 145:22 208:7 <b>Royalties</b> [6] 12:25 164:6 188:3 188:11 192:23 193:8 <b>Royalty</b> [2] 197:15 213:14 <b>Rubenstein</b> [34] 13:4 49:23 77:1 77:19 77:22 78:2 78:4 78:7 78:18 78:23 79:1 79:12 81:14 82:5 105:21 110:5 128:14 136:5 138:8 138:24 140:20 141:21 142:23 143:16 143:23 144:25 147:3 149:4 187:16 188:3 188:12 188:18 192:24 195:4 <b>Rubenstein's</b> [4] 104:20 138:10 138:12 148:20 <b>Rules</b> [3] 2:19 3:24 122:5 <b>Run</b> [5] 73:14 74:3 117:11 147:10 229:13 <b>Rung</b> [1] 24:16 <b>Running</b>	[5] 42:5 45:25 51:19 123:1 192:17 <b>S</b> <b>Sachs</b> [16] 12:1 15:5 15:13 15:13 16:15 16:16 23:19 23:21 23:25 24:7 24:9 24:14 49:25 50:1 78:6 175:23 <b>Sachs'</b> [2] 23:24 24:4 <b>Sachs's</b> [5] 5:4 5:5 14:17 16:24 16:25 <b>Safe</b> [2] 143:17 228:16 <b>Safeguard</b> [1] 133:9 <b>Safety</b> [1] 110:18 <b>SAINT</b> [3] 2:20 241:6 241:22 <b>SAINT-LOTH</b> [4] 2:20 240:14 241:6 241:22 <b>SAITH</b> [1] 239:11 <b>Sales</b> [1] 71:24 <b>San</b> [1] 214:25 <b>Sarcastic</b> [1] 99:8 <b>Sarozl</b> [2] 143:8 145:17 <b>Sat</b> [2] 3:25 165:8 <b>Satisfactory</b> [1] 192:14 <b>Satisfied</b> [2] 82:10 84:16 <b>Savings</b> [1] 66:14 <b>Savvy</b> [2] 64:1 73:12 <b>Saw</b> [30] 9:3 62:21 65:22 66:4 86:21 86:22 100:25 114:11 114:13 127:9 139:7 152:4 153:10 153:11 153:11 155:3 157:25 165:24 169:16 179:12 199:8 200:16 203:18 210:4 210:5 222:8 222:19 227:21 229:10 229:12 <b>Scaled</b> [1] 77:9 <b>Scams</b> [1] 155:4 <b>Scanning</b> [1] 68:21 <b>Scare</b> [1] 118:8 <b>Scared</b> [13] 108:3 108:3 114:20 114:20 114:23 114:24 118:9 119:4 119:5 126:3 129:19 130:21 130:22 <b>Scary</b> [2] 97:24 123:14 <b>Scheme</b> [6] 178:25 176:2 176:7 178:10 177:1 177:6 <b>Schlepping</b> [1] 143:5 <b>Schnitzel</b> [3] 99:18 99:20 104:22 <b>School</b> [3] 44:17 44:19 123:6 <b>Scope</b> [3] 24:25 50:17 165:4 <b>Scrambled</b> [1] 153:3 <b>Screen</b> [3] 66:15 66:12 66:13 <b>Screwed</b>
--	---	--	--	---

[5] 54:4 54:15 55:1 108:20 141:11  
**Seal**  
[2] 215:1 240:9  
**Seclusion**  
[1] 114:15  
**Second**  
[1] 16:8 60:7 65:17 85:3 158:6 165:25 172:23 203:4 216:8 217:12 229:22  
**Secretary**  
[2] 10:23 102:3  
**Secretive**  
[2] 98:5 117:25  
**Secretly**  
[1] 124:21  
**Section**  
[1] 104:6  
**Secure**  
[3] 58:1 76:12 144:25  
**Secured**  
[5] 25:14 29:21 47:25 48:2 60:4  
**Securing**  
[1] 47:20  
**Securities**  
[1] 173:23  
**Security**  
[2] 47:23 105:20  
**See**  
[63] 5:2 9:1 16:12 22:17 28:17 32:21 37:13 47:19 55:21 65:21 66:5 75:22 77:21 80:14 93:11 100:23 109:13 110:1 119:7 119:20 123:9 129:20 134:9 136:25 137:4 139:1 146:6 148:22 148:24 151:19 163:21 165:10 166:2 166:3 168:7 168:8 168:14 169:13 179:14 182:19 189:14 190:16 197:8 200:10 200:11 200:15 206:3 208:6 213:6 213:21 215:5 217:16 217:25 218:1 218:7 218:9 219:4 225:13 229:5 231:8 234:18 237:9 237:22  
**Seeling**  
[1] 58:13 105:17 109:6 110:5 151:17 154:24 191:11 193:3 203:21 204:2 212:4  
**Seem**  
[5] 45:4 53:6 150:3 181:16 223:18  
**Sell**  
[3] 27:3 71:25 224:1  
**Selling**  
[3] 128:6 195:10 224:17  
**Selz**  
[95] 2:5 2:5 2:5 2:11 4:11 6:5 6:9 7:17 7:25 8:11 13:10 16:6 18:2 18:22 19:2 20:14 20:19 22:7 24:23 30:22 31:4 32:1 33:4 33:5 33:14 33:16 33:19 34:24 36:13 40:9 46:3 50:17 53:11 99:22 114:23 116:10 117:15 117:18 118:4 120:7 121:18 126:23 130:1 130:3 133:25 137:19 137:21 138:1 147:8 148:7 150:5 152:11 152:13 152:20 159:3 159:14 160:9 160:12 161:7 161:17 165:12 165:14 167:3 168:6 170:14 170:16 170:19 171:3 171:7 172:8 172:24 173:1 174:3 174:14 174:22 179:21 190:5 190:20 190:22 190:25 198:1 199:18 201:15 209:20 220:19 220:24 221:22 222:2 222:24 230:22 231:2 232:10 232:23 237:21 239:6  
**Selz's**  
[3] 160:25 216:9 216:12  
**Send**  
[10] 58:2 66:12 100:16 111:15 120:21 129:16 142:25 150:13 160:21 150:21  
**Sending**

[4] 34:2 66:8 151:2 197:5  
**Sense**  
[1] 71:17  
**Sent**  
[26] 6:15 6:18 8:9 9:11 23:10 25:17 32:19 32:24 34:5 87:1 124:17 149:19 150:22 152:13 152:14 152:15 155:19 166:21 159:9 159:16 164:5 165:6 166:25 179:20 219:2 227:10  
**Sentence**  
[3] 231:8 231:10 231:19  
**September**  
[3] 178:18 180:5 216:2  
**Series**  
[3] 96:3 96:10 105:18  
**Served**  
[1] 216:2  
**Server**  
[1] 149:22  
**Serves**  
[1] 87:17  
**Service**  
[1] 57:21  
**Services**  
[12] 76:12 82:14 86:17 87:8 150:23 173:11 174:8 179:8 180:18 189:21 198:5 214:10  
**Set**  
[14] 6:17 6:20 11:18 11:23 16:20 29:9 37:10 58:10 86:8 148:15 154:17 176:13 187:6 187:7  
**Settle**  
[2] 154:18 197:1  
**Settlements**  
[1] 194:21  
**Several**  
[23] 12:21 15:19 29:9 36:4 36:12 68:13 78:5 90:17 92:6 101:9 105:1 105:9 106:5 131:6 131:9 146:17 157:5 176:14 178:4 198:11 220:15 220:21 229:4  
**Severe**  
[1] 155:1  
**Shaking**  
[1] 156:23  
**Shared**  
[1] 164:20  
**Shareholders**  
[8] 14:14 15:2 24:10 38:14 39:10 47:21 111:2 195:8  
**Sheet**  
[1] 213:12  
**Shelf**  
[1] 190:15  
**Shelves**  
[13] 90:5 91:22 135:6 135:7 135:11 136:18 136:19 168:18 168:18 168:19 169:2 169:10 235:25  
**Shielded**  
[1] 176:23  
**Shift**  
[2] 149:21 164:16  
**Shifting**  
[2] 164:10 164:14  
**Shit**  
[2] 112:15 119:3  
**Shoes**  
[1] 106:10  
**Shorthand**  
[3] 2:20 241:6 241:22  
**Shortly**  
[3] 33:25 70:7 128:11  
**Shot**  
[3] 40:23 41:1 41:11  
**Shots**  
[2] 40:21 46:1  
**Show**  
[13] 5:23 9:13 15:24 17:9 138:15 149:1 149:2 167:22 178:16 191:3 199:25 214:16 235:18  
**Showed**  
[8] 27:8 83:17 87:4 112:1 112:

11 112:13 129:8 235:18  
**Showing**  
[2] 18:7 164:8  
**Shows**  
[2] 86:10 139:22  
**Shredded**  
[1] 101:9  
**Shredding**  
[3] 91:11 237:11 237:11  
**Shy**  
[1] 53:21  
**Si**  
[1] 151:19 159:9 187:22 195:2 195:20 195:21 196:4 197:9 197:12 213:24 225:17  
**Si's**  
[1] 185:23  
**Sic**  
[4] 65:4 80:20 80:22 142:18  
**Side**  
[6] 63:5 98:4 128:19 137:3 176:13 237:2  
**Sign**  
[8] 80:22 101:19 101:24 141:8 180:22 224:7 224:12 224:14  
**Signator**  
[2] 185:6 186:2  
**Signature**  
[5] 17:14 185:22 185:23 214:22 216:2  
**Signatures**  
[1] 181:22  
**Signed**  
[17] 16:25 146:12 178:22 178:24 179:16 180:13 180:20 185:1 186:1 193:4 198:14 198:20 198:25 199:1 215:4 216:17 216:24  
**Significant**  
[1] 155:22  
**Significantly**  
[1] 77:2  
**Signing**  
[3] 199:3 215:6 215:7  
**Similar**  
[3] 106:7 191:9 196:15  
**Simon**  
[19] 63:13 74:13 155:18 167:7 158:2 159:17 160:24 161:19 170:14 192:8 196:20 197:1 220:15 220:21 221:9 222:5 222:20 225:12 236:22  
**Simple**  
[6] 64:8 64:8 65:19 66:1 157:5 227:24  
**Simply**  
[2] 57:5 64:21  
**Singling**  
[1] 236:1  
**Single**  
[6] 63:25 64:4 85:24 108:1 147:18 168:12  
**Sister**  
[1] 72:14  
**Sk**  
[7] 134:22 158:13 158:20 159:24 160:14 168:2 168:11  
**Site**  
[2] 81:16 106:6  
**Sitting**  
[9] 32:9 46:12 91:21 113:9 117:12 169:8 160:5 207:1 216:10  
**Situation**  
[3] 26:24 38:8 97:24  
**Six**  
[1] 166:21  
**Six-month**  
[1] 140:1  
**Size**  
[2] 64:13 64:25  
**Skeptical**  
[1] 180:12  
**Slightly**

[1] 66:11  
**Silp**  
[1] 223:23  
**Silp-ups**  
[1] 223:23  
**Small**  
[2] 81:12 94:25  
**Smear**  
[1] 128:11  
**Smith**  
[1] 14:7  
**Snake**  
[5] 47:1 47:1 47:2 47:3 47:5  
**So-called**  
[1] 177:7  
**Social**  
[1] 74:22  
**Software**  
[1] 64:5  
**Sokoloff**  
[6] 28:18 54:21 106:15 107:5 123:10 186:11  
**Sold**  
[5] 30:10 53:22 68:18 188:16 194:12  
**Solkin**  
[2] 39:8 193:9  
**Solo**  
[1] 35:18  
**Someone**  
[3] 18:22 186:1 215:25  
**Sometime**  
[2] 36:5 97:10  
**Sometimes**  
[2] 121:22 223:24  
**Somewhere**  
[13] 28:24 31:10 67:3 69:10 77:18 79:23 81:19 81:25 91:4 152:1 152:9 158:15 190:15  
**Soon**  
[3] 134:18 151:19 205:3  
**Sorry**  
[26] 40:17 40:24 41:14 65:12 76:13 82:8 84:3 84:3 121:15 121:17 122:12 127:12 147:9 148:8 150:6 150:8 157:24 160:16 160:18 160:20 190:3 190:3 193:22 198:3 201:9 230:2  
**Sound**  
[2] 36:2 121:5  
**Sound**  
[2] 34:15 92:18  
**Sounds**  
[40] 25:173:25  
**Source**  
[2] 97:3 99:7  
**Sources**  
[1] 188:4  
**Southwest**  
[5] 69:20 70:11 70:13 73:14 74:4  
**SP**  
[5] 69:19 70:11 70:13 73:14 74:3  
**Speaking**  
[2] 119:11 132:9  
**Speaks**  
[2] 202:18 209:20  
**Spearheads**  
[1] 89:23  
**Specific**  
[6] 31:16 69:16 126:5 149:24 160:9 208:21  
**Specifically**  
[6] 50:7 58:20 202:11 204:23 208:20 221:5  
**Specifics**  
[1] 51:5  
**Speculate**  
[2] 167:4 223:19  
**Speculating**  
[1] 167:5  
**Speculation**

[3] 117:18 126:24 167:3  
**Speed**  
[1] 32:4  
**Spell**  
[4] 36:7 71:9 90:21 137:14  
**Spencer**  
[10] 14:17 15:5 16:15 16:16 23:19 23:24 23:25 24:7 24:9 24:14  
**Spend**  
[2] 125:14 164:9  
**Spending**  
[5] 12:11 150:4 150:8 163:14 192:15  
**Spent**  
[2] 163:20 163:23  
**Split**  
[1] 169:8  
**Spitting**  
[2] 65:23 66:7  
**Spoken**  
[1] 21:23  
**Spotted**  
[1] 86:19  
**Staff**  
[2] 53:20 146:1  
**Stages**  
[2] 39:8 46:15  
**Stamp**  
[1] 180:5  
**Stamps**  
[1] 181:19  
**Stand**  
[1] 104:3  
**Stanley**  
[1] 143:3  
**Start**  
[15] 3:24 26:11 32:15 82:21 139:20 163:18 153:20 153:21 163:23 164:10 171:24 194:12 213:2 217:4 220:1  
**Started**  
[33] 12:19 23:2 30:7 31:20 33:22 34:1 49:15 54:12 86:6 70:4 70:5 82:13 82:23 83:9 96:3 105:17 108:24 142:1 161:19 161:20 163:22 156:10 162:25 164:24 166:10 187:20 195:21 195:22 196:2 204:14 208:5 225:4 235:4  
**Starting**  
[3] 76:21 197:17 204:15  
**Starts**  
[2] 49:22 86:11  
**State**  
[17] 2:21 3:9 26:23 64:25 91:21 132:25 143:16 146:1 172:1 172:10 199:6 214:25 239:16 239:24 240:3 240:15 241:3  
**Statement**  
[15] 6:7 6:10 26:2 94:9 172:16 182:9 199:19 208:11 209:16 209:23 209:24 210:1 210:11 211:16 220:3  
**Statements**  
[26] 6:11 8:2 9:3 9:6 25:8 61:2 86:20 91:19 128:14 134:8 134:10 134:25 135:14 147:2 147:20 148:24 154:5 164:3 187:4 195:9 197:13 204:3 213:11 218:8 225:5 225:13 225:14  
**States**  
[5] 102:14 103:8 143:24 173:9 174:25  
**Stayed**  
[1] 94:13  
**Steal**  
[5] 40:1 47:8 56:10 59:20 212:13  
**Stealing**  
[1] 28:18  
**Stenographer**  
[1] 4:6  
**Stenographic**  
[1] 241:11

<b>Stenographically</b> [1] 241:8 <b>Step</b> [2] 157:21 169:11 <b>Stephen</b> [6] 28:3 37:7 42:7 44:8 102:20 221:14 <b>Stepped</b> [1] 45:1 <b>Steps</b> [4] 20:3 81:21 122:21 126:5 <b>Steve</b> [6] 25:11 63:4 106:25 129:25 133:22 201:14 <b>Steven</b> [4] 2:5 137:8 137:10 138:5 <b>Stick</b> [1] 92:12 <b>Sticking</b> [2] 238:6 238:14 <b>Still</b> [25] 12:11 30:4 30:6 38:3 39:13 39:15 39:18 40:13 40:14 42:1 47:15 74:19 77:14 97:6 114:20 129:2 129:17 136:21 170:11 182:15 197:5 210:15 223:4 238:6 238:14 <b>Stock</b> [11] 7:9 80:17 80:18 124:1 154:4 164:17 173:23 187:23 188:6 212:2 213:9 <b>Stocks</b> [1] 188:17 <b>Stole</b> [3] 34:7 92:5 124:19 <b>Stolen</b> [4] 56:8 56:11 218:4 237:7 <b>Stonehedge</b> [2] 3:13 3:13 <b>Stop</b> [5] 108:9 137:8 197:24 198:3 211:12 <b>Stopped</b> [3] 13:17 55:16 197:23 <b>Stopping</b> [1] 126:10 <b>Stops</b> [1] 128:16 <b>Story</b> [6] 129:6 129:8 194:12 223:20 238:6 238:14 <b>STP</b> [2] 69:19 69:21 <b>Strange</b> [1] 50:11 <b>Strangely</b> [1] 86:10 <b>Strategies</b> [1] 46:8 <b>Stream</b> [1] 63:7 <b>Streams</b> [2] 197:15 213:15 <b>Street</b> [2] 113:15 239:2 <b>Streets</b> [1] 108:2 <b>Strengths</b> [1] 10:25 <b>Stress</b> [2] 127:5 127:10 <b>Stretch</b> [1] 199:15 <b>Strictly</b> [1] 217:5 <b>Strike</b> [1] 157:24 <b>Strong</b> [2] 89:2 89:4 <b>Studio</b> [1] 67:8 <b>Study</b> [2] 39:25 118:22	<b>Stuff</b> [8] 16:22 135:4 135:6 158:16 173:21 182:17 186:12 195:4 <b>Subcontractor</b> [2] 39:24 40:1 <b>Subject</b> [4] 126:3 142:1 157:22 191:22 <b>Subjected</b> [1] 144:1 <b>Submit</b> [2] 153:5 218:22 <b>Submitted</b> [16] 9:19 108:22 149:9 149:10 156:4 156:25 158:5 158:8 158:22 159:22 161:20 218:17 218:18 218:20 220:7 223:5 <b>Submitting</b> [1] 150:11 <b>SUBSCRIBED</b> [1] 239:19 <b>Substance</b> [2] 223:8 223:10 <b>Substantial</b> [1] 216:3 <b>Sudden</b> [1] 123:10 <b>Suddenly</b> [2] 105:17 119:21 <b>Sue</b> [3] 124:3 141:10 176:25 <b>Sued</b> [4] 14:8 46:17 225:21 225:22 <b>Suggested</b> [1] 62:23 <b>Suing</b> [2] 124:4 176:24 <b>Sult</b> [1] 24:17 <b>Suite</b> [1] 2:22 <b>Suits</b> [2] 15:4 54:11 <b>Sun</b> [1] 50:20 <b>Supervision</b> [1] 100:15 <b>Supplemental</b> [1] 170:25 <b>Supplementary</b> [1] 170:21 <b>Support</b> [3] 149:3 172:15 173:13 <b>Supposed</b> [16] 23:10 56:2 90:6 91:18 136:5 136:8 146:1 178:2 178:3 185:13 186:18 193:14 213:14 235:6 236:13 236:18 <b>Surprise</b> [2] 78:12 102:5 <b>Surrounding</b> [1] 103:3 <b>Survive</b> [1] 63:20 <b>Suspicious</b> [2] 110:12 186:14 <b>Sworn</b> [4] 3:3 148:24 239:19 240:8 <b>Sync</b> [2] 47:10 66:6	[2] 65:18 81:14 <b>Tangent</b> [2] 66:22 92:10 <b>Tape</b> [15] 112:16 132:9 132:13 132:15 132:18 132:19 132:24 133:10 136:15 144:13 144:19 144:19 144:20 145:24 146:3 <b>Taped</b> [2] 133:2 142:19 <b>Tapes</b> [10] 132:6 132:7 132:8 132:9 134:5 134:24 135:24 136:14 136:16 136:17 <b>Taping</b> [3] 133:4 134:2 144:12 <b>Task</b> [1] 149:21 <b>Taylor</b> [1] 54:21 <b>Team</b> [2] 42:13 128:2 <b>Technical</b> [1] 46:18 <b>Technologies</b> [13] 11:10 69:20 67:8 68:21 69:15 81:17 82:24 108:15 167:14 175:10 181:24 188:6 193:1 <b>Technology</b> [35] 10:13 29:17 40:2 44:20 47:8 63:19 63:22 63:25 66:13 66:22 67:2 67:6 67:12 69:5 69:14 72:8 72:11 72:17 74:12 77:3 80:14 105:19 128:2 128:15 162:8 162:14 164:11 167:15 175:12 193:3 197:16 212:9 212:13 212:14 224:17 <b>Teflon</b> [1] 199:7 <b>Teleconference</b> [1] 144:24 <b>Telephone</b> [6] 27:20 27:22 120:24 132:25 188:24 189:7 <b>Television</b> [1] 65:25 <b>Ten</b> [6] 67:19 67:20 67:24 73:18 73:23 165:21 <b>Tends</b> [1] 174:6 <b>Term</b> [1] 7:3 <b>Termed</b> [1] 65:14 <b>Terminate</b> [1] 212:15 <b>Terminated</b> [8] 39:1 48:25 66:23 57:23 93:10 126:2 197:21 211:22 <b>Terminating</b> [3] 209:18 210:2 210:24 <b>Termination</b> [3] 7:5 28:21 213:25 <b>Terms</b> [1] 46:18 <b>Terrible</b> [1] 84:18 <b>Testified</b> [5] 3:4 153:12 153:14 189:2 206:4 <b>Testify</b> [17] 18:12 19:16 19:22 21:7 21:9 21:14 21:16 21:18 22:14 22:15 22:19 61:9 66:20 141:17 189:13 199:5 199:8 <b>Testifying</b> [4] 19:1 22:11 37:8 222:13 <b>Testimony</b> [5] 66:20 88:2 162:25 206:19 219:20 <b>Th</b> [1] 240:9 <b>Themselves</b>	[1] 11:24 <b>Theory</b> [5] 212:7 212:8 212:20 223:18 223:21 <b>Therapist</b> [1] 229:10 <b>Thereafter</b> [1] 33:25 <b>Thereby</b> [1] 102:13 <b>Therefore</b> [3] 64:14 64:17 109:7 <b>Thereupon</b> [2] 3:1 239:8 <b>They've</b> [3] 29:22 108:6 183:7 <b>Thinking</b> [1] 146:16 <b>Thinks</b> [2] 236:22 236:22 <b>Third</b> [5] 38:2 58:17 66:23 66:23 85:5 15 146:23 147:11 147:25 <b>Thomson</b> [7] 142:15 144:10 145:6 145:15 146:23 147:11 147:25 <b>Thousands</b> [1] 154:3 <b>Threat</b> [1] 97:14 102:7 112:12 114:8 115:22 116:4 118:24 123:9 123:20 184:15 184:21 <b>Threaten</b> [1] 98:10 <b>Threatened</b> [15] 93:12 93:14 94:20 97:8 100:3 107:16 112:5 112:14 112:17 113:4 113:7 113:17 120:14 184:19 184:20 <b>Threats</b> [4] 97:23 113:1 115:4 115:5 <b>Three</b> [12] 40:4 47:1 81:21 94:15 117:13 125:12 134:23 150:21 162:2 176:3 207:6 209:6 <b>Three-page</b> [1] 207:6 <b>Throw</b> [2] 61:8 124:24 <b>Throughout</b> [6] 8:7 45:18 67:24 69:2 69:3 128:12 <b>Tiedemann/Prolow</b> [1] 7:10 <b>Ties</b> [1] 119:6 <b>Timely</b> [2] 143:19 235:10 <b>Timewise</b> [1] 120:5 <b>Title</b> [3] 10:21 44:5 71:23 <b>Titles</b> [2] 102:8 128:25 <b>Today</b> [19] 38:3 62:7 62:20 72:9 73:8 79:17 96:9 109:9 109:19 114:20 125:25 162:25 165:10 167:5 168:2 168:11 187:6 204:2 230:17 <b>Together</b> [7] 54:9 150:9 163:20 163:24 163:24 174:20 218:5 <b>Tomorrow</b> [1] 126:11 <b>Took</b> [16] 10:21 23:14 24:22 32:18 34:9 40:5 47:25 65:8 96:10 131:19 136:2 150:20 170:10 184:15 213:9 229:2 <b>Tools</b> [1] 88:19 <b>Top</b> [6] 6:7 6:11 7:21 127:24 128:1 142:18	<b>Topic</b> [1] 82:7 <b>Total</b> [1] 6:13 <b>Totaling</b> [1] 207:25 <b>Totally</b> [2] 121:19 121:20 <b>Tough</b> [1] 212:21 <b>Touting</b> [1] 98:14 <b>Towards</b> [1] 83:24 <b>Town</b> [3] 94:25 114:17 122:23 <b>Towns</b> [1] 123:2 <b>Track</b> [3] 148:14 235:3 235:4 <b>Tracks</b> [2] 167:13 167:23 <b>Trade</b> [1] 44:14 <b>Transacted</b> [6] 12:12 73:5 106:9 123:15 125:1 212:3 <b>Transaction</b> [2] 38:1 173:22 <b>Transactions</b> [1] 73:11 <b>Transcribing</b> [1] 226:8 <b>Transcript</b> [3] 239:7 241:9 241:10 <b>Transfer</b> [8] 98:5 125:3 149:18 158:16 164:17 212:6 235:14 235:14 <b>Transferred</b> [6] 56:11 58:11 149:24 150:17 234:1 235:6 235:9 236:5 <b>Transferring</b> [2] 7:7 78:14 <b>Transfers</b> [1] 7:9 <b>Transitional</b> [1] 141:14 <b>Traurig</b> [7] 55:4 104:1 104:2 104:3 106:22 183:6 183:6 <b>Traveled</b> [1] 163:24 <b>Tremendous</b> [2] 144:1 190:10 <b>Tremendously</b> [1] 129:12 <b>Trial</b> [19] 18:12 19:1 19:3 19:16 19:22 21:1 21:2 21:14 22:6 22:15 22:19 24:19 24:24 37:8 61:10 62:9 147:23 199:5 199:9 <b>Trials</b> [1] 122:25 <b>Trick</b> [2] 68:8 68:10 <b>Tried</b> [4] 40:1 126:21 136:12 208:9 <b>Triggs</b> [1] 214:12 <b>Trip</b> [1] 136:12 <b>Triple</b> [2] 188:9 188:9 <b>Trouble</b> [4] 40:19 124:25 187:17 209:3 <b>True</b> [5] 143:24 206:12 210:12 232:21 241:10 <b>Trues</b> [1] 65:3 <b>Trust</b> [4] 75:17 76:8 76:10 77:13 <b>Trusted</b>
---	---	--	---	--

[3] 79:15 186:7 186:8  
**Trusting**  
 [1] 186:7  
**Truth**  
 [4] 61:21 118:7 150:9 184:17  
**Truthfully**  
 [1] 148:19  
**Try**  
 [14] 4:4 22:18 31:13 31:15 92:24 95:20 125:9 128:13 144:17 144:17 149:17 149:22 187:14 172:23  
**Trying**  
 [22] 73:11 92:22 106:12 123:2 123:6 123:6 127:3 127:9 128:11 149:18 150:8 150:13 154:17 166:3 176:5 175:6 217:23 218:2 220:3 220:4 224:1 226:22  
**Tuesday**  
 [1] 32:25  
**Tuna**  
 [1] 141:25  
**Tune**  
 [1] 236:1  
**Turn**  
 [4] 10:21 101:25 108:9 206:23  
**Turned**  
 [6] 57:1 140:12 141:4 142:3 174:13 220:24  
**Turning**  
 [1] 102:12  
**Turns**  
 [1] 138:20  
**TV**  
 [2] 66:10 66:10  
**Twice**  
 [1] 47:1  
**Two**  
 [34] 12:11 16:1 21:25 36:2 52:9 59:13 66:6 67:14 67:14 72:10 74:21 78:7 80:16 81:20 81:24 102:21 113:19 121:13 123:25 126:19 131:5 141:10 143:21 146:9 150:20 164:1 176:3 184:13 187:13 187:23 188:6 200:11 213:9 236:2  
**Tyerman**  
 [1] 84:21  
**Type**  
 [10] 11:1 29:4 66:3 70:15 72:16 84:8 132:7 200:11 216:25 230:12  
**Typed**  
 [3] 116:17 216:23 216:4  
**Types**  
 [1] 135:23  
**Typewriting**  
 [1] 200:13  
**Typical**  
 [1] 200:12

**U**

**U.S.**  
 [4] 102:17 121:4 173:19 190:8  
**Ultimately**  
 [8] 11:3 11:4 11:11 11:12 72:8 76:23 80:2 133:14  
**Unavailable**  
 [1] 136:9  
**Unaware**  
 [4] 54:22 163:9 182:18 182:18  
**Unbelievable**  
 [1] 66:3  
**Uncover**  
 [1] 54:21  
**Uncovered**  
 [6] 39:10 98:15 104:10 107:22 123:19 125:7  
**Uncovering**  
 [4] 114:25 129:9 129:10 186:11  
**Under**  
 [21] 3:4 50:19 60:13 78:1 104:5 106:7 106:19 118:1 123:16

129:21 136:24 137:18 138:13 143:2 146:4 145:4 148:23 170:11 193:1 211:24 228:25  
**Underling**  
 [3] 104:20 141:3 141:4  
**Underneath**  
 [1] 6:10  
**Undersigned**  
 [1] 240:6  
**Understood**  
 [1] 4:6  
**Undertaken**  
 [1] 103:25  
**Trying**  
 [1] 73:5  
**Underwriters**  
 [1] 73:5  
**Underwriting**  
 [2] 68:21 72:22  
**Undocumented**  
 [1] 194:15  
**Unemployed**  
 [1] 100:10  
**Unemployment**  
 [3] 4:18 38:6 38:8  
**Unequivocally**  
 [1] 190:7  
**Unfair**  
 [1] 24:19  
**Unfolded**  
 [1] 167:23  
**Unfolding**  
 [1] 123:3  
**Unfolds**  
 [1] 189:17  
**Unilaterally**  
 [2] 29:12 56:25  
**Unique**  
 [2] 77:8 82:6  
**United**  
 [3] 102:14 103:8 143:24  
**University**  
 [1] 5:12  
**Unknowledgeable**  
 [1] 109:25  
**Unless**  
 [4] 135:4 168:15 168:17 237:14  
**Unpaid**  
 [1] 24:15  
**Unprovoked**  
 [1] 138:4  
**Unreachable**  
 [1] 136:10  
**Unreasonable**  
 [2] 173:10 174:7  
**Unusual**  
 [1] 207:19  
**Unvelled**  
 [1] 39:21  
**Unwinding**  
 [1] 94:16  
**Up**  
 [55] 18:7 24:16 24:19 29:9 32:4 60:24 64:4 64:15 55:1 55:15 81:23 64:21 84:24 65:7 66:11 66:13 87:18 76:8 77:2 78:4 86:10 94:2 96:21 102:12 108:20 118:6 123:17 125:17 127:3 131:22 136:4 138:12 137:15 139:22 140:12 141:11 154:17 163:13 164:12 184:15 184:21 167:13 167:23 176:13 186:11 192:17 193:3 195:3 195:21 197:15 208:5 208:9 235:18 235:19 237:14  
**Updated**  
 [1] 15:18  
**Ups**  
 [1] 223:23  
**Upset**  
 [4] 154:12 187:22 197:12 197:16  
**Usur**  
 [1] 66:13  
**Uses**

[1] 197:15  
**Utilizing**  
 [1] 154:25  
**Utley**  
 [17] 7:1 9:7 9:18 12:8 12:14 14:9 15:21 15:23 18:3 22:5 22:11 22:14 23:3 23:4 23:9 28:17 31:7 31:21 34:7 38:16 38:17 38:20 39:19 47:24 48:24 49:10 55:8 55:8 55:14 56:10 56:23 56:25 57:21 58:11 58:21 63:3 81:4 87:2 87:4 88:18 88:22 88:24 89:9 91:14 91:14 91:16 92:2 3:92 14:93 1:93 6:93 10:93 12 94:10 94:11 94:13 96:6 97:8 97:23 98:10 98:24 99:17 100:3 100:5 100:12 100:14 100:23 101:11 101:19 102:4 102:6 102:11 107:15 107:18 107:19 108:18 108:19 109:1 112:4 112:13 112:17 112:20 113:1 113:4 113:17 114:11 115:11 115:20 116:24 116:2 116:20 118:12 120:13 124:14 124:19 127:19 128:4 128:9 128:18 128:25 132:10 144:8 146:13 146:13 146:21 149:23 150:17 151:17 163:12 153:14 154:9 155:5 155:10 155:12 156:3 158:4 162:16 162:19 162:20 162:23 162:24 163:3 163:14 163:18 163:19 164:4 164:21 164:24 165:7 165:22 166:9 166:12 167:1 167:11 176:14 178:25 179:11 180:3 184:4 184:14 184:20 186:21 187:20 193:20 193:20 193:25 194:5 194:15 198:11 198:14 198:18 198:22 198:25 199:2 199:8 201:21 202:2 202:4 203:7 209:25 210:5 210:6 210:8 211:3 211:19 211:24 212:25 213:6 213:19 214:5 218:4 219:17 222:22 223:9 223:10 223:16 224:1 224:11 224:12 224:15 224:24 224:25 225:1 225:6 225:21 225:22 233:14 233:14 233:16 234:2 235:7 235:19 237:8  
**Utley's**  
 [17] 7:4 16:17 17:20 18:12 21:8 21:19 30:8 38:24 38:25 47:7 22 64:22 54:24 66:19 68:2 100:20 123:9 219:20

**V**

**Valid**  
 [1] 114:24  
**Value**  
 [3] 173:11 174:8 188:5  
**Valued**  
 [1] 108:15  
**Varied**  
 [1] 42:14  
**Variety**  
 [1] 44:20  
**Various**  
 [2] 69:1 224:17  
**Venture**  
 [3] 36:2 42:16 53:5  
**Ventures**  
 [3] 26:11 72:5 113:3  
**Verbal**  
 [2] 81:1 81:6  
**Verbally**  
 [3] 79:4 79:6 79:10  
**Verblage**  
 [1] 79:7  
**Verdes**  
 [9] 94:23 94:24 95:8 95:25 97:7 111:14 112:7 114:5 216:9  
**Verify**  
 [3] 101:5 114:8 148:23  
**Versus**  
 [2] 145:4 156:1  
**Via**

[2] 34:8 144:24  
**Video**  
 [15] 65:18 65:16 65:24 66:24 77:9 81:15 105:19 136:3 136:22 136:25 143:1 143:7 143:15 144:21 145:2  
**Videoing**  
 [1] 105:10  
**View**  
 [2] 8:6 89:12  
**Violated**  
 [1] 42:20  
**Violation**  
 [1] 164:13  
**Virtual**  
 [1] 64:18  
**Vision**  
 [1] 65:19  
**Visual**  
 [1] 193:4  
**Vocal**  
 [1] 49:4  
**Voluntary**  
 [1] 110:23  
**Vs**  
 [1] 1:8

**W**

**W-2**  
 [1] 4:17  
**Wachovia**  
 [4] 56:25 57:9 57:10 165:12  
**Wage**  
 [1] 119:9  
**Wait**  
 [12] 57:3 60:7 97:20 121:8 124:2 144:12 144:12 145:10 148:7 160:16 174:14 219:12  
**Waive**  
 [1] 239:5  
**Walver**  
 [1] 163:7  
**Walk**  
 [1] 106:10  
**Walked**  
 [1] 110:24  
**Walking**  
 [1] 125:25  
**Wall**  
 [1] 64:10  
**Wants**  
 [5] 108:12 109:19 136:22 196:3 197:11  
**War**  
 [2] 118:22 119:9  
**Warfare**  
 [1] 118:23  
**Warner**  
 [8] 14:7 25:11 60:8 63:4 105:15 128:1 128:10 128:13  
**Wasted**  
 [1] 143:5  
**Wayne**  
 [4] 147:137:8 141:22 141:23  
**Ways**  
 [1] 104:8  
**Web**  
 [2] 81:16 105:5  
**Wednesday**  
 [2] 27:17 27:20  
**Week**  
 [3] 134:5 171:5 196:18  
**Weekly**  
 [1] 164:10  
**Weeks**  
 [9] 27:5 29:8 29:7 36:2 36:4 52:9 52:9 52:14 81:13  
**Weight**  
 [1] 156:14  
**Weird**  
 [3] 128:17 188:12 187:19  
**Welsh**  
 [2] 19:12 19:14

**Werthelmer**  
 [1] 84:21  
**Whatnot**  
 [3] 119:6 129:15 224:18  
**Whatsoever**  
 [3] 28:12 29:1 64:1  
**Wheeler**  
 [127] 12:8 14:15 14:23 14:25 23:9 24:1 24:2 30:11 30:12 30:14 38:12 39:2 39:4 39:6 40:2 53:22 56:12 57:23 59:23 60:11 63:1 63:7 64:24 66:15 76:9 77:6 78:14 78:24 78:25 79:24 80:3 13:81 11:81 20:88 22:88 24:93 19:98 14:98 22:99 18:108 23 110:4 116:11 115:21 115:24 116:20 123:22 124:7 125:1 126:16 128:20 131:15 131:18 132:1 136:2 140:14 140:15 141:6 141:9 142:2 142:15 142:23 143:2 144:11 147:3 149:4 160:19 151:18 155:4 155:7 155:15 157:15 162:17 163:17 164:21 174:12 175:14 175:21 176:3 176:10 176:14 177:10 180:3 180:17 181:20 184:14 184:15 184:17 187:10 188:13 188:22 189:11 189:13 191:24 194:16 196:20 196:25 197:3 197:5 197:7 198:5 198:12 198:19 202:2 203:6 209:24 211:2 211:2 211:19 212:1 213:7 213:16 213:20 219:17 220:16 220:22 223:11 223:14 223:16 224:5 227:17 233:14 233:15 236:15 236:16 236:21 237:9 238:21  
**Wheeler's**  
 [27] 14:9 14:10 23:20 32:21 38:19 39:14 39:23 39:25 46:10 47:21 77:5 78:19 88:18 116:10 124:20 153:2 167:6 174:11 181:25 185:4 188:19 195:9 205:6 205:9 205:14 212:5 214:2  
**Wherein**  
 [1] 201:20  
**Whichever**  
 [1] 123:17  
**Whole**  
 [15] 11:23 20:16 37:15 49:20 86:6 122:2 131:3 131:7 131:9 131:10 131:11 134:14 163:23 166:18 193:5  
**Wicked**  
 [1] 92:10  
**Width**  
 [4] 65:16 65:17 65:25 66:14  
**Wife**  
 [10] 27:24 93:13 94:1 108:3 154:17 118:15 123:19 125:8 132:17 216:21  
**Wild**  
 [1] 12:12  
**Willful**  
 [1] 102:15  
**Willing**  
 [1] 148:24  
**Window**  
 [1] 140:2  
**Wireless**  
 [1] 105:19  
**Wisconsin**  
 [4] 8:12 70:21 99:5 107:4  
**Wise**  
 [1] 76:12  
**Wish**  
 [1] 192:3  
**Withdraw**  
 [1] 201:6  
**Withdraw**  
 [2] 29:12 201:8  
**Witness**  
 [84] 2:18 3:3 8:12 8:16 8:23 20:1 20:13 20:24 40:13 40:17 40:22 41:2 41:7 41:11 41:13 51:7

63:5 66:19 96:18 112:17 116:8  
116:11 116:14 116:19 120:8  
120:8 121:25 122:4 122:10  
122:15 122:17 129:11 129:25  
130:2 130:6 130:13 130:21  
133:22 138:3 147:9 148:8 150:  
6 152:10 152:12 152:17 152:  
24 155:20 165:13 172:7 172:  
25 173:2 174:13 174:16 174:  
23 190:21 198:2 199:9 199:16  
202:18 221:25 222:3 222:25  
239:4 240:9

#### Witnesses

[18] 19:3 22:3 22:4 23:6 23:15  
58:18 61:25 62:5 95:20 112:19  
112:20 112:23 112:25 113:6  
129:10 160:14 199:12 199:16

#### Won

[1] 76:23

#### Wondering

[2] 140:4 140:6

#### Word

[7] 85:3 86:5 111:25 153:3 154:  
1 157:8 238:19

#### Words

[2] 56:5 226:7

#### World

[4] 64:18 65:15 69:1 163:3

#### Worms

[2] 114:25 117:12

#### Worried

[4] 118:6 119:18 141:11 146:2

#### Worry

[11] 112:18 115:3 143:14 188:  
8 188:10 192:22 193:7 194:24  
196:2 195:5 197:4

#### Worth

[3] 66:16 108:15 124:2

#### Wow

[2] 123:20 128:24

#### Write

[4] 103:22 215:13 215:15 223:  
17

#### Writes

[1] 153:4

#### Writing

[15] 40:2 79:4 79:6 81:7 103:4  
153:7 153:7 211:5 220:17 220:  
23 221:4 221:6 221:10 222:7  
222:20

#### Written

[40] 48:25 102:8 104:16 151:  
21 151:23 151:24 162:7 153:  
13 154:11 155:17 157:7 168:8  
158:14 158:21 169:16 169:25  
160:24 161:5 161:17 161:20  
161:22 161:25 170:14 172:14  
185:22 186:15 204:4 211:3  
216:17 216:8 218:11 218:13  
219:2 219:7 219:14 219:24  
219:25 222:1 222:2 222:20

#### Wrongdoing

[1] 141:17

#### Wrongful

[1] 102:15

#### Wrote

[5] 81:20 86:15 89:15 104:24  
222:22

### Y

#### Year

[17] 6:14 13:13 13:15 13:16 32:  
10 34:17 34:20 48:10 59:1 69:  
3 59:7 69:25 70:4 83:3 119:7  
126:19 146:5

#### Year's

[1] 36:8

#### Years

[24] 59:11 59:13 81:15 66:9 65:  
24 67:19 67:20 67:23 67:24 89:  
9 69:21 69:22 69:22 69:23 71:  
22 73:13 73:16 73:18 73:22 73:  
23 146:9 154:15 225:24 229:4

#### Yesterday

[1] 126:1

#### York

[11] 1:5 21:5 44:13 52:21 99:4

104:23 138:7 139:2 140:11

142:7 142:6

#### Yourself

[10] 18:13 21:11 90:23 97:23

97:25 109:5 160:19 168:14

200:10 213:9

### Z

#### Zaccarul

[2] 143:8 145:17

#### Zafman

[1] 54:21

#### Zio

[1] 47:10

#### Zoom

[3] 64:4 64:14 65:3

TO: SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 210  
Palm Beach, Florida 33480

IN RE: Proskauer Rose v. Iviewit.com  
CASE NO.: CA 01-04671 AB

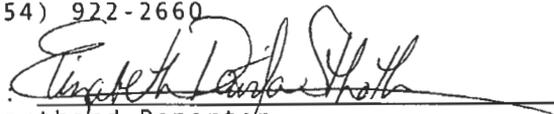
Dear Mr. Selz,

The deposition of ELIOT I. BERNSTEIN in the above-styled cause on January 31, 2003, is now ready for signature of the witness. Please have the witness come to this office and sign the same; or, if you wish to waive the signature of the deposition, please so advise.

If the deposition has not been signed by April 21, 2003, or the signature thereto waived, we shall consider such a delay a refusal to sign under Rule 1. 310(e) of the Florida Rules of Civil Procedure.

If you have any reason which you would like for me to place on the deposition as to the witness' failure to sign the same, please advise.

Very truly yours,  
KEN SCHANZER & ASSOCIATES  
209 North 20th Avenue  
Hollywood, FL 33020  
(954) 922-2660

By:   
Shorthand Reporter  
Elizabeth Davila Saint-Loth

Dated: March 17, 2003  
cc: Counsel of Record

1 MR. SELZ: Yes.

2 THE WITNESS: What did he order?

3 MR. SELZ: Well, basically we have access  
4 to the files from the corporate representation,  
5 Iviewit representation --

6 THE WITNESS: Were they all here in this  
7 conference room? Okay. Then, from what I've  
8 seen --

9 MR. PRUSASKI: From the corporate  
10 representation, not from the personal  
11 representation, because that's between you and  
12 this firm personally.

13 THE WITNESS: No, I don't care about  
14 personal. Right. That's right. I am not  
15 asking for those either.

16 So you are saying to me that all of the  
17 documents were here --

18 MR. PRUSASKI: From the entire file, as  
19 Proskauer keeps it, from the Iviewit  
20 representation.

21 THE WITNESS: Then I'm really scared -- I  
22 would have been really scared, because I would  
23 say destruction of documents has occurred and  
24 there were a lot of things missing.

25 BY MR. PRUSASKI: