

Nos. 16-16832 & 16-16905

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

ORACLE USA, INC., a Colorado corporation;  
ORACLE AMERICA, INC., a Delaware corporation;  
ORACLE INTERNATIONAL CORPORATION, a California corporation,

*Plaintiffs-Appellees,*

v.

RIMINI STREET, INC., a Nevada corporation; SETH RAVIN, an individual,

*Defendants-Appellants.*

---

On Appeal from the United States District Court  
For the District of Nevada (Hon. Larry R. Hicks)  
No. 2:10-cv-0106-LRH-VCF

---

**PETITION FOR REHEARING EN BANC  
FOR APPELLANT RIMINI STREET, INC.**

---

Blaine H. Evanson  
Joseph A. Gorman  
Joseph C. Hansen  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, California 90071  
(213) 229-7228  
BEvanson@gibsondunn.com

Mark A. Perry  
Jeremy M. Christiansen  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500  
MPerry@gibsondunn.com

*Attorneys for Defendant-Appellant Rimini Street, Inc.*

## TABLE OF CONTENTS

	<u>Page</u>
RULE 35 STATEMENT .....	1
BACKGROUND .....	2
ARGUMENT .....	4
I. REHEARING IS WARRANTED ON WHETHER NON-TAXABLE COSTS ARE AWARDBLE UNDER THE COPYRIGHT ACT .....	5
II. REHEARING IS ALSO WARRANTED TO CLARIFY THE APPROPRIATE DATE FOR ESTABLISHING THE PREJUDGMENT INTEREST RATE IN COPYRIGHT CASES .....	13
CONCLUSION .....	15

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Arlington Century Sch. Dist. Bd. of Educ. v. Murphy</i> , 548 U.S. 291 (2006).....	1, 9
<i>Artisan Contractors Ass’n of Am., Inc. v. Frontier Ins. Co.</i> , 275 F.3d 1038 (11th Cir. 2001) .....	1, 6
<i>BMG Rights Mgmt. (US) LLC v. Cox Commc’ns, Inc.</i> , No. 17-1353 (4th Cir.) (argued Oct. 25, 2017).....	7
<i>Coles v. Wonder</i> , 283 F.3d 798 (6th Cir. 2002) .....	8
<i>Crawford Fitting Co. v. J. T. Gibbons, Inc.</i> , 482 U.S. 437 (1987).....	1, 5, 11
<i>Dishman v. UNUM Life Ins. Co. of Am.</i> , 269 F.3d 974 (9th Cir. 2001) .....	14
<i>InvesSys, Inc. v. McGraw-Hill Cos.</i> , 369 F.3d 16 (1st Cir. 2004).....	7
<i>Marx v. Gen. Revenue Corp.</i> , 568 U.S. 371 (2013).....	1, 10, 11
<i>Microsoft Corp. v. i4i Ltd. P’ship</i> , 564 U.S. 91 (2011).....	10
<i>Petrella v. Metro-Goldwyn-Mayer, Inc.</i> , 134 S. Ct. 1962 (2014).....	12
<i>Pinkham v. Camex, Inc.</i> , 84 F.3d 292 (8th Cir. 1996) .....	1, 6
<i>Price v. Stevedoring Servs. of Am., Inc.</i> , 697 F.3d 820 (9th Cir. 2012) .....	13
<i>Saavedra v. Korean Air Lines Co.</i> , 93 F.3d 547 (9th Cir. 1996) .....	14

**TABLE OF AUTHORITIES**  
(continued)

	<u>Page(s)</u>
<i>Sears, Roebuck &amp; Co. v. Stiffel Co.</i> , 376 U.S. 225 (1964).....	12
<i>Susan Wakeen Doll Co. v. Ashton Drake Galleries</i> , 272 F.3d 441 (7th Cir. 2001) .....	7
<i>Taniguchi v. Kan Pac. Saipan, Ltd.</i> , 566 U.S. 560 (2012).....	5, 11
<i>Tempest Publ’g, Inc. v. Hacienda Records &amp; Recording Studio, Inc.</i> , 141 F. Supp. 3d 712 (S.D. Tex. 2015).....	10
<i>Trader Joe’s Co. v. Hallatt</i> , 835 F.3d 960 (9th Cir. 2016) .....	11
<i>Twentieth Century Fox Film Corp. v. Entm’t Distrib.</i> , 429 F.3d 869 (9th Cir. 2005) .....	1, 6, 7, 10
<i>United States v. Lindsey</i> , 634 F.3d 541 (9th Cir. 2011) .....	11
<i>W. Va. Univ. Hosps., Inc. v. Casey</i> , 499 U.S. 83 (1991).....	1, 5, 8
 <b>Constitutional Provisions</b>	
U.S. Const. art. I, § 8, cl. 8.....	8
 <b>Statutes</b>	
17 U.S.C. § 505.....	1, 4, 6, 7, 8, 9, 11
28 U.S.C. § 1821 .....	5, 6, 8
28 U.S.C. § 1920.....	3, 5, 6, 7, 8, 9, 10, 11
28 U.S.C. § 1961.....	14
42 U.S.C. § 1988.....	8, 9

**TABLE OF AUTHORITIES**  
(continued)

	<b><u>Page(s)</u></b>
Pub. L. 94-559, 90 Stat. 2641 (Oct. 19, 1976).....	8
<b>Rules</b>	
Fed. R. App. P. 35(a) .....	1
Fed. R. Civ. P. 54(d)(1).....	10

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.