

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE LITERARY WORKS IN ELECTRONIC DATABASES COPYRIGHT LITIGATION)))))	Master Docket No. M-21-90 (GBD) (MDL 1379)
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**DECLARATION OF DIANE S. RICE ON BEHALF OF HOSIE RICE LLP (AND
PREDECESSOR FIRMS) IN SUPPORT OF CLASS COUNSEL’S APPLICATION FOR
ATTORNEYS’ FEES AND DISBURSEMENTS**

I, Diane S. Rice, being duly sworn, state as follows:

1. I am a partner of the law firm of Hosie Rice LLP. I submit this declaration in support of my firm and its predecessor firms’ application for an award of attorneys’ fees and reimbursement of expenses. The fourteen year time period covered by this Declaration is from February 2000 (inception of case) through March 28, 2014.

2. For over a decade, Hosie Rice or its predecessor firms, Hosie McArthur LLP and Hosie Frost Large & McArthur LLP (hereinafter “Hosie firms”) has acted as one of Plaintiffs’ Co-Lead Counsel in this class action which includes in recent years serving as A/B Class Counsel. At the time the action was commenced in August 2000, I was a partner in the law firm of Brobeck, Phleger & Harrison, LLP (“Brobeck”), a Co-Lead Counsel firm in this class action. The Hosie firm originally brought in the Brobeck firm to jointly represent the class in 2000. When Gary Fergus, a former Brobeck partner, left Brobeck at the end of 2001 to start his own practice, I substituted in for him as Co-Lead Counsel by agreement of the other Co-Lead Counsel in the action. After Brobeck dissolved in February 2003 over a decade ago, I joined the Hosie firm. I have continued in the role of Co-Lead Counsel from the end of 2001 to the present, now serving as one of the Co-Lead A/B Class Counsel.

3. The Hosie firm took a pioneering role in developing the legal and procedural framework for what would become *MDL 1379*. The Hosie firm first became involved in February 2000. The firm research and drafted the original (*Posner*) nationwide class action complaint, and associated with the well-known Brobeck firm in vigorously protecting authors' works on the internet. The *Posner* complaint was filed in the Northern District of California on August 14, 2000. In September 2000 the *Posner* plaintiffs voluntarily dismissed the case in California and refiled in the Southern District of New York, anticipating consolidation with several after-filed cases in that jurisdiction. After consolidation in *MDL 1379*, the Hosie firm was appointed to the Executive Committee. The tasks that the Hosie firm initially undertook can be summarized as follows: in addition to representing the class, it represented the following named plaintiffs: Michael Castleman, Jay Feldman, Paula McDonald, P/K Associates, Inc., Miriam Raftery, Mary Sherman, Robin Vaughan, the Robert E. Truchhaft and Jessica L. Treuhaft (Jessica Mitford) Trust, and the National Writers Union, an associational plaintiff, worked with class counsel's expert to develop a damage model, coordinated discovery of data from defendants as part of mediation effort assisted in the presentation to defendants on damage model, negotiated with defendants regarding data and information for mediation, strategized with the National Writer's Union, coordinated participation of National Writers Union in mediation, responded to questions from named class members throughout the process and negotiated with defense counsel on a variety of specific issues, and conducted legal research on key issues during negotiations.

4. After I joined the Hosie firm in early 2003, the firm continued to undertake extensive work on the case. This work included several more years of investigation and litigation, followed by three and a half years of highly contentious and complex negotiations,

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which resulted in the original settlement. The Hosie firm researched, briefed and argued issues in connection with the MDL proceeding. By way of example, this work included: negotiations with defendants, consultation with experts in further development of a damage analysis and retention of Copyright experts on issues such as standing for unregistered works; communication with named plaintiffs and class members, weekly strategy teleconferences among Class Counsel and meetings in connection with the organization of plaintiffs' counsel in the consolidated proceeding; research on copyright liability, damage issues, class certification, standing requirements, Berne Convention, willful infringement, the Canadian freelance authors class action, potential claims against the New York Times, standing, license issues, injunctive relief, and spoliation of evidence, the Supreme Court Tasini case, among others. The Hosie firm prepared for and participated in status conferences; negotiated a stipulated scheduling order and case management order with defense counsel. The Hosie firm spent months thereafter working with Co-Lead Counsel on notice and approval-related activities.

5. Hosie Rice participated in the mediation by attending meetings and conference calls with co-counsel clients, the mediators Kenneth Feinberg and James Woodin; prepared mediation briefs and research; took discovery; monitored other related litigation; exchanged settlement proposals, term sheets and mediators' proposals; draft the settlement agreement and notice of class action settlement, proposed order of preliminary settlement approval, summary notice, final judgment and order of dismissal and claim form, and claims administration procedures and memorandum.

6. As Co-Lead Counsel, the Hosie firm also participated in designing and maintaining the official Settlement website located at www.copyrightclassaction.com

("Settlement Website"). In addition to providing Class Members with background about the DECLARATION OF DIANE S. RICE FILED ON BEHALF OF HOSIE RICE LLP (AND ITS PREDECESSOR FIRM) IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND DISBURSEMENTS
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case, information about the Settlement, a list of “frequently asked questions” (“FAQ”), a page to submit comments about the Settlement, and contact information for Class Counsel, the Settlement Website also contains “pdf” versions of the relevant Settlement documents and provides an on-line claims process. Class Members have also contacted Class Counsel directly asking for information about the Settlement or for assistance in submitting their claim forms. To the best of my knowledge, any Class Members who contacted Class Counsel through the Settlement Website, phone, e-mail, or in-person, has received a response to their questions to date. Class Counsel were responsible for representing the plaintiffs’ and the class’s interests in the approval and implementation process.

7. The Hosie firm assisted in the briefing on appeal on behalf of plaintiffs/appellees. After the Second Circuit requested briefs on jurisdictional issues, the Hosie firm along with Co-Lead Counsel briefed and argued that issue and others raised by objectors. After the Second Circuit vacated this Court’s order granting final settlement approval, the Hosie firm assisted in the preparation and filing of the petition for rehearing. On remand to this Court, the Hosie firm participated in the post-remand proceedings, and negotiated and advocated for the Category A and B works. As one of the A/B Class Counsel, it participated in negotiations over two years with C counsel and defense counsel under the revised settlement. It worked with the claims administrator the Garden City Group to obtain data and design the notice campaign and helped draft the settlement documentation and motion for preliminary settlement approval.

8. The Hosie firm as one of A/B Counsel has been involved in all aspects of the original and revised settlements of this matter. This work has included drafting and filing, numerous responses to the settlement objectors’ motions, negotiating the Amended Settlement

Agreement, corresponding and speaking with defense counsel and A/B co-counsel most days of
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the week, assisting on the plaintiffs' motions for preliminary approval, preliminary approval of the amended settlement and final settlement approval, dealing with the claims administrator; responding to questions raised by class representatives and class members.

9. On remand of the case to this Court, A/B Counsel conferred with plaintiffs, defendants, and objectors and entered into settlement negotiations lasting over two years. Some of the issues the A/B Counsel dealt with included definitions of Category A, B, and C subclasses; C claim compensation, claims processing procedures; provisions for payment of administrative costs; notice of the revised settlement; drafting the revised settlement and related documents, including notice, proposed orders and claim administrative guidelines. A/B Counsel worked through all these issues with C counsel and defense counsel; worked with the claims administrator; renegotiated the mediator award; documented the settlement and brought the motion for preliminary settlement approval.

10. The schedule attached hereto as Exhibit 1 is a summary of the amount of time spent by the partners, associates and professional support staff of my firm and predecessor firms who were involved in this litigation. The lodestar calculation is based on using hourly rates for persons still employed by the firm, and hourly rates in effect at the year of departure of all others. The rates used for all timekeepers pre-June 11, 2005 as reflected in prior declarations remains unchanged. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

11. The hourly rate for the partners, associates and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in
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non-contingent matters and/or which have been accepted and approved in other complex class action litigation.

12. From the inception of the case in February 2000 through March 28, 2014, the total number of hours expended by Hosie Rice and its predecessor firms is 2,326.25 hours. The total lodestar for the firm during this time period is \$1,215,035.05, consisting of \$1,143,871.25 for attorneys' time and \$71,163.80 for professional support staff time.

13. As detailed in Exhibit 2, from February 2000 through March 28, 2014, my firm has incurred a total of \$122,310.31 in un-reimbursed expenses in connection with the prosecution of this litigation.

14. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

15. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is the Hosie Rice LLP firm resume and curriculum vitae of Hosie Rice attorneys who worked on the case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on April 8, 2014, in San Francisco, California.

/s/ Diane S. Rice
Diane S. Rice

EXHIBIT 1**In re Literary Works In Electronic Databases Copyright Litigation, MDL No. 1379****HOSIE RICE LLP (AND ITS PREDECESSOR FIRMS HOSIE MCARTHUR LLP AND HOSIE FROST LARGE & MCARTHUR, LLP)****TIME REPORT – Inception through March 28, 2014**

Name	Total Hours	Hourly Rate	Total Lodestar
PARTNERS:			
George Bishop	117.70	495	\$58,261.50
George Frost	128.25	395	\$50,658.75
Spencer Hosie (HFLM/HM)	111.75	500	\$55,875.00
Spencer Hosie (HR)	135.20	800	\$108,160.00
James McCartt	55.60	500	\$27,800.00
Diane Rice (HFLM/HM)	462.60	510	\$235,926.00
Diane Rice (HR)	605.55	800	\$484,440.00
Bruce Wecker	245.50	500	\$122,750.00
ASSOCIATES:			
Darrell Atkinson	8.50	350	\$2,975.00
William Large	3.50	395	\$1,382.50
PARALEGALS:			
Loridel Buss	1.75	125	\$218.75
Mike Carroll (HFLM/HM)	8.5	145	\$1,232.50
Mike Carroll (HR)	4	165	\$660.00
Danica Darling	3.83	105	\$402.15
Thomas Maloney	6.00	165	\$990.00
Jennifer Morrison	6.00	95	\$570.00
Jay Ortaleza	0.25	165	\$41.25
Rich Prater	248.25	145	\$35,996.25
Lynne Rose (HFLM/HM)	96.77	145	\$14,031.65
Lynne Rose (HR)	76.75	165	\$12,663.75
TOTAL LODESTAR	2,326.25		\$1,215,035.05

EXHIBIT 2

In re Literary Works In Electronic Databases Copyright Litigation, MDL No. 1379

**HOSIE RICE LLP (AND ITS PREDECESSOR FIRMS HOSIE MCARTHUR LLP AND
HOSIE FROST LARGE & MCARTHUR, LLP)**

EXPENSE REPORT – Inception through March 28, 2014

<u>CATEGORIES:</u>	<u>AMOUNT:</u>
Internal Reproduction (copies)	\$9,508.31
Commercial Reproduction (outside copies)	\$2,751.03
Court fees (filing costs, etc.)	\$0.00
Court Reporters and Transcripts	\$0.00
Computer Research (Lexis/Westlaw/Pacer)	\$469.28
Long Distance Telephone/Fax/Mobile Phone/Conference Call	\$13.47
Postage/Express Delivery/Messenger	\$1,302.76
Professional Fees (expert, Garden City Group, Inc.)	\$84,619.68
Storage costs	\$149.62
Travel (meals, lodging, transportation, etc.)	\$23,496.16
TOTAL EXPENSES:	\$122,310.31

EXHIBIT 3

HOSIE RICE LLP

Firm Resume and Attorney Curriculum Vitae

HOSIE RICE LLP FIRM RESUME

The lawyers of Hosie Rice LLP try and win difficult cases. In the past two decades, we have recovered billions of dollars in intellectual property, antitrust, energy and business tort cases. We run a plaintiff oriented, contingency fee docket, with an emphasis on intellectual property matters.

We are trial lawyers by preference and design. We like to try cases. We represent inventors, emerging technology companies and technology investors. We understand technology, and understand how to make technology clear to judge and jury alike.

Our practice is nationwide. We have one of the most active Intellectual Property plaintiff dockets of any firm in the country.

Our senior partner, Spencer Hosie, has been consistently listed as a “Northern California Super Lawyer” in the areas of Intellectual Property and Antitrust Litigation. Mr. Hosie has a Martindale Hubbell peer review rating of “AV Preeminent,” and has been profiled by the National Law Journal as one of the 10 most successful US Trial Lawyers. He is a Fellow of the Litigation Counsel of America. Over his career, he has recovered in excess of \$2 billion for his clients.

REPRESENTATIVE CASES

- *MasterObjects v. Google*
- *Zettaset v. Intel*
- *Backflip v. Cisco*
- *Implicit Networks v. Cisco Systems*
- *Implicit Networks v. Citrix Systems*
- *Implicit Networks v. Microsoft Corporation et al.*

Represented a network processing software firm in significant litigation against numerous technology companies. All cases resolved favorably through license or mini-trial.

- *BackWeb Technologies Ltd. v. International Business Machines Corporation*
- *BackWeb Technologies Ltd. v. Microsoft Corporation et al.*

Patent infringement suit involving methods of distributing data over the internet. Resolved favorably through licensing and settlements.

- *Onconome, Inc. v. University of Pittsburgh and Johns Hopkins University*

Represented Onconome, a diagnostics company with a focus on financing the discovery of biomarkers for cancer and other diseases. The two lawsuits alleged biotech research fraud. Both suits resulted in substantial settlements.

- *Cloakworks, Inc. v. Cloakware, Inc. et al.*

Represented the inventor of a computer code obfuscation technology, designed to protect software from reverse engineering and tampering. The cases involved various defendants, including Apple and Symantec, and all were resolved favorably through patent licenses.

- *In Re: Literary Works in Electronic Databases Copyright Litigation*

Co-lead counsel for national Internet copyright infringement class. In March 2010, the U.S. Supreme Court ruled in favor of the class and remanded the case to the Second Circuit for further proceedings.

- *PrivaSys, Inc. v. MasterCard et al.*

Represented an emerging tech company with novel technology in the credit card security area against MasterCard, Visa, American Express, and others. All cases resolved through settlement or mediation, with significant eight figure licenses for our client.

- *Burst.com, Inc. v. Microsoft Corporation*

Represented Burst in a video streaming technology and antitrust matter which resulted in a \$60 million settlement on the eve of an evidence spoliation hearing; a follow-on case against Apple resulted in another significant license.

- *State of Louisiana v. Chevron USA*

Lead counsel representing the State of Louisiana in an oil royalty case. At trial, we recovered \$111 million, one of the top 15 verdicts of 2004. Spencer Hosie also served as lead trial counsel for the State in a series of severance tax disputes; these cases generated more than \$100 million for the State.

- *State of Alaska v. Exxon et al.*

Lead litigation counsel for the State of Alaska in major contract, antitrust, and related disputes, including a top 10 verdict in 1998 (\$257 million) and a top 15 arbitration award (\$82 million) in 2005.

PRESS

“What U.S. Can Teach Europe About Patents”

Tech Europe – WSJ – November 8, 2010

“The best thing that can be said about the American system is that it is better than the alternatives,” said Spencer Hosie, a founding partner of the San Francisco-based Hosie Rice. ‘In this country today, a patent is only as good as the lawyer enforcing the claims. But a good patent, backed by good counsel will, at the end of the day, likely stand up. And this is a good thing – absent patent protecting, why invest money in R&D?’ Mr. Hosie is dismissive of suggestions that software should not be capable of being patented. ‘As to software, I have never understood why software innovations should be any less deserving of patent protection than, say, a new composition of matter or (certainly) a business method.’”

“Patent Trolls and the New Tort Reform: A Practitioner’s Perspective”

I/S: A Journal of Law & Policy for the Information Society – Technology – October 29, 2007. Attached.

Hosie Rice LLP



Diane Rice

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San Francisco, CA 94111
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Complex commercial litigation, with emphasis on intellectual property, product and Internet-related legal matters.

- University of Notre Dame, N.A., *cum laude* 1980
- Notre Dame Law School, J.D., *cum laude* 1983
- Board Member, Advisory Counsel for Notre Dame Law School
- Board Member, Notre Dame Law Association
- Human Rights Watch, Northern California Advisory Board
- Board Member, MOMA, Modern Arts Council
- Board Member, Belvedere Community Foundation

In 1985, Ms. Rice joined the San Francisco law firm of Brobeck, Phleger & Harrison, where she was a partner from 1991-2003. Upon the dissolution of Brobeck, Phleger & Harrison she joined Hosie Rice LLP.

Ms. Rice specializes in complex litigation, class actions, intellectual property and Internet-related legal matters. Her litigation practice primarily addresses disputes involving the interface of science, technology, and the law. Ms. Rice is licensed in California, Florida and Connecticut.

Ms. Rice has most recent worked on these significant cases:

- ***Implicit Networks v. Microsoft Corporation et al.***
Represented a network processing software firm in significant litigation against numerous technology companies. All cases resolved favorably through license or mini-trial.
- ***BackWeb Technologies Ltd. v. Microsoft Corporation et al.***

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Ms. Rice has been a member of the national trial team for Baxter Healthcare Corporation, and has managed a national experts team for American Home Products. For fifteen years she represented Fibreboard Corporation and Pittsburgh Corning Corporation and litigated two of the largest class action trials in the country on their behalf. In a pro bono case, Ms. Rice represented a child who was severely brain damaged as a result of strangulation in a crib and received a \$38 million structured settlement during trial. Her court experience includes over 100 weeks of jury trial.

Ms. Rice has been a faculty member for trial advocacy programs at Stanford, Harvard and the University of San Francisco law schools, as well as a speaker for California Continuing Education of the Bar courses in Trial Skills, Deposition Skills, and Trial Advocacy. She serves as a visiting faculty member of the National Institute of Trial Advocacy. She is often a featured speaker at industry conferences such as Mealey's and the Defense Research Institute Conference.

Hosie Rice LLP



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Spencer Hosie is a nationally recognized top-ranked trial lawyer for complex commercial cases.

Mr. Hosie's practice covers the spectrum of complex commercial cases, with particular focus on intellectual property litigation. Mr. Hosie has been consistently listed as a "Northern California Super Lawyer" for Intellectual Property and Antitrust Litigation. Mr. Hosie has a Martindale Hubbell peer review rating of "AV Preeminent," and has been profiled by the National Law Journal as one of the 10 most successful U.S. Trial Lawyers. He is a Fellow of the Litigation Counsel of America.

Mr. Hosie began his legal career with the San Francisco firm of Heller, Ehrman, White & McAuliffe, with an antitrust and securities defense practice. He started his own firm in 1985, ultimately Hosie, Wes, Sacks & Brelsford, which specialized in intellectual property, energy, and complex litigation. In 1993, he was named one of the "Top 25 Attorneys in the State of California Under 45 Years of Age" by The California Lawyer.

Mr. Hosie's recent record includes these significant cases:

• ***Implicit Networks v. Microsoft Corporation et al.***

Represented a network processing software firm in significant litigation against numerous technology companies. All cases resolved favorably through license or mini-trial.

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• ***State of Louisiana v. Chevron USA***

Lead counsel and lead trial counsel representing the State of Louisiana in a fraud case. At trial, the firm recovered \$111 million, one of the top 15 verdicts of 2004. Mr. Hosie also served as lead trial counsel for the State in a series of severance tax disputes; these cases generated more than \$100 million for the State.

• ***State of Alaska v. Exxon et al.***

Lead litigation counsel for the State of Alaska in major contract, antitrust, and related disputes, including a top 10 verdict (\$257 million) and a top 15 arbitration award (\$82 million) in 2005.

- University of California, Berkeley, B.A., *summa cum laude* 1978
- University of California at Davis, J.D., 1981
Order of the Coif
Editor, Law Review
- Law Clerk to Hon. Edmond W. Burke, Chief Justice, Alaska Supreme Court, 1981-82

Hosie Rice LLP



George Bishop

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gbishop@hosielaw.com

Complex commercial litigation, with emphasis on intellectual property and antitrust.

- University of California, Los Angeles, B.A. summa cum laude 1976
Phi Beta Kappa
- University of Chicago, J.D. 1979

Mr. Bishop specializes in intellectual property and antitrust litigation. His practice also covers a broad array of commercial litigation, including business tort and contract cases, class actions, corporate governance, and state and federal regulatory matters.

Mr. Bishop began his legal career in 1980 with the San Francisco law firm of Furth, Fahrner & Mason, where he was a partner from 1987-2000. Mr. Bishop and the firm represented antitrust plaintiffs and defendants in some of the largest and most significant antitrust cases in the country. These began with the successful defense of the Kellogg Company in the watershed Federal Trade Commission "Shared Monopoly" case, in which the FTC sought to break up Kellogg and other ready-to-eat cereal makers based upon a novel theory that a concentrated industry could constitute a shared monopoly. His diverse commercial litigation practice at his previous firm included representing California wineries in trials and regulatory matters.

Mr. Bishop joined the predecessor to Hosie Rice LLP in 2000. He and his partners represented Burst.com in its successful patent and monopolization suit, *Burst.com v. Microsoft Corp.*, and represented the State of Hawaii in its price-fixing lawsuit against major state gasoline retailers, Earl Anzai, Attorney General for the State of *Hawaii v. Chevron Corp., et al.* Mr. Bishop also represents high-technology clients in intellectual property matters in areas including streaming video, payment card security, cellular location, web conferencing and other Internet technologies, and continues to represent clients in a broad array of commercial litigation.