

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of)	
)	
RAMBUS INCORPORATED,)	Docket No. 9302
)	
a corporation.)	
)	

DECLARATION OF RICHARD L. ROSEN

I, Richard L. Rosen, declare:

1. I am a member of the firm of Arnold & Porter, co-counsel for non-party Micron Technology, Inc. (“Micron”). I make this declaration in support of Micron’s response to the motion of Rambus, Inc. to compel production of pricing-related documents. I have personal knowledge of the facts set forth in this declaration and would testify to them competently under oath if called as a witness.

The Delaware Litigation

2. My firm is one of the firms representing Micron in a lawsuit that Micron filed against Rambus in August 2002 in the United States District Court for the District of Delaware, C.A. No. 00-792 (the “Delaware Action”). I have received the various requests for production of documents, notices of deposition and other discovery notices in the Delaware action, the correspondence relating to discovery in that case and discovery responses.

3. In the Delaware Action, Micron sued Rambus for violations of the Sherman Act, fraud, breach of contract, equitable estoppel and violations of a Delaware

statute arising from an allegation that Rambus fraudulently failed to disclose patents and patent applications to JEDEC in violation of JEDEC's patent policy. Micron also seeks a declaration that certain Rambus patents are invalid, unenforceable and not infringed.

4. In the Delaware Action, Rambus issued seven sets of document requests to Micron (not including requests to Micron subsidiaries and affiliates), containing over 200 numbered specifications (not counting subparts). In response to those requests, Micron produced approximately 180,000 pages of documents to Rambus.

5. Rambus also served Micron with 4 sets of interrogatories in the Delaware Action, containing 50 separate questions (not counting subparts).

6. Rambus took the depositions of some 49 witnesses in the Delaware Action, including 29 current and former Micron employees, totaling over 250 hours of deposition testimony. Several of these depositions extended over two or three days. Among the witnesses examined by Rambus in the Delaware action were Micron's Chief Executive Officer; members of Micron's Board of Directors; Micron's chief counsel for patent litigation and licensing; Micron's current and former JEDEC representatives; the Micron executives who supervised those JEDEC participants; the Micron technical staff with expertise concerning the relevant technologies; and Micron's key marketing personnel.

7. With the exception of a few outstanding issues, fact discovery has closed in the Delaware Action, and the case is essentially ready for trial.

8. Rambus is represented by the same lead counsel in both the Delaware Action and the FTC proceeding. On July 31, 2002, Micron agreed to allow Rambus to

use documents produced in the Delaware action in the FTC proceeding, subject to appropriate protective orders.

The October 4, 2002 Subpoena

9. After Rambus served its October 4, 2002 subpoena on Micron, I participated in six telephone conferences with counsel for Rambus in an attempt to reduce the burden on Micron and reach an agreement on Micron's compliance with the subpoena. With the exception of the issues raised in Rambus's motion to compel, and one issue that was temporarily held in abeyance, we were able to reach agreement on all other issues and Micron is in the process of producing documents to Rambus pursuant to the subpoena. As of today, Micron has produced over 20,000 pages of documents to Rambus, and expects to produce tens of thousands of pages more in the next week. Micron is also responding to two other subpoenas *duces tecum* served by Rambus.

10. From the beginning of my discussions with counsel for Rambus, I made clear that the broad requests for pricing-related documents that are the subject of this motion to compel were extremely overbroad and burdensome, of no apparent relevance to the case and prejudicial to Micron. In a telephone conference on the evening of October 28, 2002, Rambus's counsel reiterated that the documents in question were being sought for the purpose of establishing that Rambus's royalties did not affect DRAM pricing. In her October 29, 2002 letter memorializing that discussion, a copy of which is attached hereto as Exhibit 1, she wrote that she was willing "to significantly narrow our requests on this topic to capture the narrow issue regarding the effect of Rambus and Rambus's royalties on DRAM chip pricing."

11. Three days later, on November 1, 2002, Rambus's counsel wrote to me retracting her previous position and instead insisting that Micron produce the three categories of documents that are the subject of its motion to compel.

12. On November 4, 2002, I responded to this letter and objected to these requests on the same grounds I had previously stated. In light of Rambus's statement regarding the purpose of the requested discovery, I proposed that Micron respond to specification 58 of the original subpoena, which targeted the documents that would respond directly to what Rambus's counsel had indicated was relevant.

13. In subsequent telephone conversations, Rambus rejected this position and made only one minor modification to its request, dropping the word "reflecting" from its request for documents relating to DRAM pricing.

14. On November 11, 2002, Micron proposed to produce documents sufficient to show, on a quarterly basis, Micron's DRAM prices, costs and royalties paid. This would be in addition to the documents constituting internal and third-party forecasts, analyses and projections of the DRAM industry Micron will be producing in response to another of Rambus's subpoenas. Rambus rejected this proposal and filed the instant motion to compel.

The Grand Jury Subpoena and Class Actions

15. In June 2002, Micron received a subpoena from a federal grand jury investigating potential anticompetitive conduct in the DRAM industry. I understand from published reports that several other DRAM manufacturers received subpoenas from the grand jury.

16. Following the public announcement of the grand jury investigation, 23 purported class actions have been filed in federal and state courts against Micron and other DRAM manufacturers alleging violations of federal and/or state antitrust laws. No discovery has gone forward in any of these cases.

Micron's Pricing Documents

17. I am generally familiar with the process by which Micron negotiates DRAM pricing with its customers and the documents it creates in that process.

18. Micron sells several dozen different types of DRAM chips and modules. It has hundreds of customers, including personal computer manufacturers, memory module manufacturers, hard-disk drive manufacturers, manufacturers of telecommunications equipment, automobile manufacturers, contract electronics manufacturers, and many others. In addition, Micron sells its DRAM products to brokers, distributors and resellers.

19. Micron negotiates each price individually with its customers. In many cases, price negotiations occur more frequently than once a month.

20. Each of these separate price negotiations generates documents discussing and describing the factors that went into determining the price to be quoted and the price eventually agreed to with the customer.

21. In addition, Micron establishes pricing guidelines for each of its products that do not determine actual sales prices but are used as part of the individualized negotiations with customers. These guidelines change from time to time based on market conditions.

22. In its subpoena duces tecum to Micron, as modified by its counsel, Rambus has sought all documents “analyzing or describing the factors that influenced [Micron’s] DRAM pricing decisions between January 1, 1998 and June 18, 2002.” Based on the number of individual price negotiations that took place during that period, Rambus’s demand would cover thousands of individual transactions. The number of sales, marketing and other employees who may have documents responsive to Rambus’s demand would be at least several dozen. The number of pages potentially called for by Rambus’s request is in the hundreds of thousands.

Executed on November 25, 2002, at Washington, D.C.

I declare under penalty of perjury that the foregoing is true and correct.

Richard L. Rosen