UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Interim Public Version:
Complaint Counsel contends that none of the Rambus business documents, or testimony of Rambus witnesses, that were cited in its Default Judgment Motion or the Memorandum in Support of that Motion can or should properly, consistent with the Commission's Rule of Practice, be withheld from the public record. Complaint Counsel has given notice to Rambus of this position, and Rambus has sought to contest it. Until such time as these issues can be resolved, Complaint Counsel will continue to withhold from the public record any documents or testimony that Rambus claims to be confidential.

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

COMPLAINT COUNSEL'S CORRECTED REPLY TO RAMBUS INC.'S MEMORANDUM IN OPPOSITION TO MOTION FOR DEFAULT JUDGMENT

TABLE OF CONTENTS

A. Rambus Concedes or Otherwise Fails to Contest the Vast Bulk of Complaint Counsel's Factual Contentions 3

B. Rambus Does Not Dispute the Fundamental Law Governing this Motion 7

C. Rambus Did Destroy Documents in "Bad Faith" 10

D. Complaint Counsel Has Been Substantially Prejudiced by Rambus's Document Destruction 12

E. A Default Judgment Is the Only Appropriate Sanction 14

CONCLUSION 15

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Interim Public Version:
Complaint Counsel contends that none of the Rambus business documents, or testimony of Rambus witnesses, that were cited in its Default Judgment Motion or the Memorandum in Support of that Motion can or should properly, consistent with the Commission's Rule of Practice, be withheld from the public record. Complaint Counsel has given notice to Rambus of this position, and Rambus has sought to contest it. Until such time as these issues can be resolved, Complaint Counsel will continue to withhold from the public record any documents or testimony that Rambus claims to be confidential.

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

COMPLAINT COUNSEL'S CORRECTED REPLY TO RAMBUS INC.'S MEMORANDUM IN OPPOSITION TO MOTION FOR DEFAULT JUDGMENT

Complaint Counsel has moved for a default judgment in this case because the evidence persuasively shows that Respondent Rambus Inc. deliberately set out to – and did – destroy massive amounts of discoverable evidence at a time when it anticipated future litigation (including the possibility of future FTC enforcement actions) and hence had a legal duty to preserve such evidence. In a 109-page filing (hereinafter, "Memorandum in Support" or "CC Mem."), Complaint Counsel has set forth in detail the facts and law that support this motion. In its 27-page opposition ("Opposition Memorandum" or "Rambus Mem."), Rambus all but concedes that the motion should be granted. Rambus's opposition is dedicated largely to attacking an argument

that Complaint Counsel has never made – namely, that the mere adoption of a corporate records retention policy is, in itself, a sanctionable act. With great vigor, Rambus defends the generic proposition that such policies can serve legitimate business purposes, and with this Complaint Counsel does not disagree. But Your Honor should not be fooled by Rambus's attack of this straw man. Careful inspection of Rambus's opposition shows that Complaint Counsel's key factual and legal contentions have gone largely uncontested. As Complaint Counsel explains below, within the legal framework that Rambus acknowledges must govern the resolution of this motion, the conceded facts alone are more than sufficient to warrant entry of a default judgment.

Rambus also attempts to defend against Complaint Counsel's motion on grounds of public policy, suggesting that entry of a default judgment here would deprive the FTC of an opportunity to resolve "doctrinal issues left open by the Commission's consent decree in *Dell*." Rambus Mem. at 2. It speaks volumes that Rambus would resort to making such policy arguments in opposing this motion, while at the same time failing to respond to the vast bulk of Complaint Counsel's factual contentions. In any event, Rambus's argument has no merit. As Complaint Counsel has already explained, granting a default judgment here will not obviate the need for an administrative hearing on remedies, nor will it deprive the Commission of an ability to write a decision addressing the important substantive antitrust issues raised by this case. Indeed, Complaint Counsel submits that to the extent public policy concerns are taken into account in the resolution of this motion, they strongly cut the other way. Few things could be more important to the institutional concerns of the Federal Trade Commission than to send a strong public signal that deliberate destruction of evidence impacting upon the Commission's ability to adjudicate fully and fairly claimed antitrust violations will not be tolerated by an FTC administrative law court, any

more than such conduct is tolerated by any court of law.

A. Rambus Concedes or Otherwise Fails to Contest the Vast Bulk of Complaint Counsel's Factual Contentions

In terms of its factual content, Rambus's opposition rests on only a few propositions. First, Rambus claims that its "document retention" policy was the type of policy that public companies often implement for legitimate reasons. Second, Rambus claims that it was ************************************ not Joel Karp, who originally suggested the idea of adopting a document retention policy. Rambus Mem. at 3-4. Third, Rambus cites to testimony from Joel Karp, who Rambus admits was responsible for developing and implementing the policy, for the proposition that the policy was developed "in part" to destroy documents that might be discoverable in a third-party lawsuit involving Intel. Rambus Mem. at 8. What concerned Karp, according to Rambus, was "the sheer *volume* of th[e] documents" – including "thousands of back-up tapes" – that Rambus might have to produce in such litigation. Rambus Mem. at 8-9 (emphasis in original). So, Rambus claims, this is why Mr. Karp had this large "*volume*" of material destroyed. Finally, Rambus points to selected testimony from some Rambus witnesses who claimed that they were not given specific instructions to destroy, or do not recall destroying, JEDEC-related materials. Rambus Mem. at 13-14.[1]

For purposes of Your Honor's ruling on this motion, far more interesting and important

---

[1] Rambus does not bother to acknowledge, nor does it deny, that one of these employees – Richard Crisp – separately testified that he did in fact destroy JEDEC-related materials pursuant to Rambus's "document retention" policy, along with "a lot" of other documents. CC Mem. at 65-67. Rambus's reliance on Lester Vincent's testimony that he did not destroy JEDEC-related documents is also somewhat misleading, inasmuch as Complaint Counsel has never claimed that Mr. Vincent destroyed or even had JEDEC-related materials. On the other hand, Rambus does not deny Complaint Counsel's actual contentions
****
****
**********************************.

than the handful of factual contentions made by Rambus's opposition are the many, many factual contentions, contained in Complaint Counsel's filings, that Rambus does not contest. Even if Rambus were accurate in the handful of affirmative fact contentions that it has made, such factual claims, combined with the facts that Rambus does not contest, firmly establish the merits of Complaint Counsel's motion.

First of all, Rambus does not contest – and indeed directly admits – that it purposefully set out to and did destroy documents that it believed would be discoverable in future litigation. In fact, Rambus chose to attach to its opposition a document used by Mr. Karp in introducing and explaining the "document retention" policy to Rambus employees. The first few lines of that document read as follows:

> **EMAIL – THROW IT AWAY**
>
> - Email Is Discoverable In Litigation Or Pursuant To A Subpoena
>   - Elimination of email is an integral part of document control
> - In General, Email Messages Should Be Deleted As Soon As They Are Read

See Karp Decl. Exh. B at R 124530.

Secondly, as noted above, Rambus openly admits that a very large *"volume"* of Rambus business files – including "thousands of back-up tapes" – were destroyed pursuant to the company's "document retention" policy. Rambus Mem. at 8-9 (emphasis in original).

These two direct admissions alone are of great significance. Whatever Rambus may claim its motivations were, the fact that Rambus admittedly set out to and did destroy large volumes of discoverable evidence is a serious matter. It is all the more serious, however, when one looks

carefully at the additional facts that Rambus makes no effort to contest. Among other things, Rambus <u>does not contest</u>, and therefore must be taken to <u>concede</u>, that:

- Rambus feared that its "misleading conduct" at JEDEC could render its patents unenforceable on antitrust or equitable estoppel grounds (CC Mem. at 15-21);

- Rambus – at the very time it adopted and implemented its document destruction program – anticipated that it would either institute, or otherwise become enmeshed in, litigation concerning its JEDEC-related patents (CC Mem. at 22-29);

- Rambus was specifically concerned, in this time period, by the prospect that its conduct at JEDEC, and its subsequent efforts to enforce JEDEC-related patents, could result in an antitrust enforcement action by the FTC (CC Mem. at 22-29);

- Rambus – during the same month (August 1998) that it ************ the document destruction program – **************************************

  ****

- **
  ****
  ****
  ****

- **
  ****
  ****
  **, and yet it was Mr. Karp who was given responsibility to develop and implement the company's "document retention" policy (CC Mem. at 56-61);

- **
  ****
  ****

- **
  ****
  ****

- **
  ****
  ****

- **
****
****

- **
****

- **
****

- among others, Richard Crisp – Rambus's principal JEDEC representative – discarded "a lot" of documents pursuant to the company's "document retention" policy, including ************** in his office, and various JEDEC-related materials (CC Mem. at 63-66);

- Mr. Crisp later sarcastically joked, in an internal e-mail, about the fact that important JEDEC-related documents appeared to have "fallen victim to the document retention policy :-)" (CC Mem. at 8-10, 65);

- Anthony Diepenbrock, ***
****
****
****

- **
****
****
****
****

- Rambus's document destruction has impacted many relevant categories of discoverable evidence in this case, which taken together are broad enough to encompass virtually every issue relevant to the determination of Rambus's liability (CC Mem. at 94-98);

- Rambus's lawyers in this case are effectively seeking to capitalize on Rambus's document destruction by claiming that Complaint Counsel's proof on the same categories of evidence that were impacted by the document destruction is inadequate (CC Mem. at 76-79);

- **
****

***; and finally

- **
****
****

Rambus's one attempt to refute a probative piece of evidence is strikingly weak.
****
****
****
****
****
****
****
****

As Your Honor can see, the scope of what Rambus has conceded is truly breathtaking. Rambus seems to believe that, simply by contesting that it acted in bad faith, it can escape any consequence for these admitted actions, and the admitted prejudice that they have caused to Complaint Counsel. Yet, notwithstanding Rambus's professions of good intent, the truth is that the facts that Rambus now must be taken to concede are themselves legally sufficient to establish the level of bad faith and prejudice needed to warrant the issuance of a default judgment. Applying what Rambus concedes is the governing law to these admitted facts, Complaint Counsel respectfully submits that there is no option other than to grant a default judgment.

B. Rambus Does Not Dispute the Fundamental Law Governing this Motion

In the Memorandum in Support, Complaint Counsel provided Your Honor with a detailed

presentation of legal points relevant to the instant motion. In its opposition, Rambus contests very few of Complaint Counsel's legal points and seems to be largely in agreement as to what the law provides as pertains to the potential entry of a default judgment in response to proof that a company has destroyed evidence relevant to anticipated future litigation.

To start with, Rambus does not contest that Your Honor does in fact have authority in this case to order a default judgment based on the types of allegations that Complaint Counsel has made. *See* CC Mem. at 13 n.14.

Nor does Rambus contest Complaint Counsel's assertion that, because Rambus anticipated future litigation at the time its "document retention" policy was put in place,[2] the company had a legal duty to preserve evidence that it knew or should have known would likely be discoverable in such future litigation. *See* CC Mem. at 80-84. Indeed, Complaint Counsel cited Your Honor to no fewer than 10 cases standing for this proposition, and Rambus has not produced a single contrary authority.

Your Honor therefore should conclude, as a starting point for your analysis, that Rambus, during the relevant time period (roughly 1998-2000), did have a legal duty to preserve evidence that might be relevant to or discoverable in the types of litigation that were anticipated, including patent or antitrust suits concerning Rambus's JEDEC-related intellectual property.

Rambus also does not challenge – and hence should be taken to concede – that the existence of a corporate records retention policy does not alter or eliminate the duty to preserve

---

[2] **
********* The key point, of course, is not whether litigation was pending, but whether Rambus <u>anticipated</u> litigation, which Rambus does not deny. Rambus even cites to cases that involve pre-litigation spoliation of evidence. Rambus Mem. at 18 (citing pre-litigation spoliation cases).

evidence bearing on anticipated litigation, where such a duty exists. As Complaint Counsel explained in its memorandum, citing authorities that Rambus does not contest, "any corporate record retention program – even a *bona fide* one – must be suspended in order to preserve relevant or discoverable evidence once the corporation is on notice of potential litigation." *See* CC Mem. at 84 (citing cases in support of this proposition).[3] Accordingly, it is irrelevant whether Rambus's "document retention" policy was, as Rambus claims, typical of policies implemented by other companies. Even if this were true, Rambus implemented such a policy when it had a legal duty to preserve evidence and would be violating that duty if it failed to take actions to ensure that the policy did not result in the destruction of evidence required to be preserved. Yet Rambus has now admitted that it did not take such actions.

Thus, in assessing the merits of Complaint Counsel's motion for default judgment, Your Honor should presume not only that Rambus had a duty to preserve evidence relevant to anticipated future litigation, but further that the company violated that duty when it adopted a "document retention" policy without taking steps to preserve the evidence it was legally obligated to keep. The question then is whether, following controlling legal principles, this conduct by Rambus should lead to a default judgment. Rambus and Complaint Counsel appear to agree that,

---

[3] Indeed, the very articles that Rambus cites emphasize that a legitimate retention policy must require preservation of discoverable material and an inventory of destroyed documents. *See* Patrick R. Grady, *Discovery of Computer Stored Documents and Computer Based Litigation Support Systems: Why Give Up More Than Necessary*, 14 J. Marshall J. Computer & Info. L. 523, 540, n. 95 (1996) ("Skupsky lists eight components <u>necessary for a legally sufficient record retention system</u> [including a provision to] stop destroying records, even when permitted by the records retention programs, when litigation, government investigation, or audit is pending or imminent; [and a provision to] maintain documentation supporting the development and implementation of the records retention program, including . . . [a] listing of records destroyed."). *See also* Christopher V. Cotton, *Document Retention Programs for Electronic Records: Applying a Reasonableness Standard to the Electronic Era*, 24 J. Corp. L. 417, 422 (1999); John M. Fedders & Lauryn H. Guttenplan, *Document Retention and Destruction: Practical, Legal and Ethical Considerations*, 56 Notre Dame L. Rev. 5, 11 (1980).

to grant the motion for default judgment, Your Honor must conclude three things:

1. that Rambus destroyed documents in bad faith;
2. that Complaint Counsel has been prejudiced by the document destruction; and
3. that no lesser sanction would be adequate to remedy the injustice caused by Rambus's actions.

See CC Mem. at 99-100; Rambus Mem. at 17.[4] As explained below, these legal elements, as applied to facts at issue here, require entry of a default judgment against Rambus.

C. Rambus Did Destroy Documents in "Bad Faith"

As noted above, Rambus's opposition to Complaint Counsel's motion depends heavily on Rambus's denial that it implemented its "record retention" policy in bad faith. *See* Rambus Mem. at 17-22. This denial is somewhat misplaced, as even Rambus acknowledges that the issue here is not whether Rambus adopted a policy in bad faith, but rather whether it "destroyed documents relevant to this action willfully and in bad faith." Rambus Mem. at 17. It could be the case, for instance, that the adoption of the policy itself was not in bad faith but that Rambus nonetheless did destroy documents willfully and in bad faith, making a default judgment appropriate. In any event, the thrust of Rambus's denial is the claim that "[a]ll of the documents at issue were destroyed in the ordinary course of business, pursuant to a standard company-wide policy applicable to all categories of documents generated within Rambus." Rambus Mem. at 21. Rambus seems to believe that making such a denial, and supporting it with some proof, is enough

---

[4] Rambus contends that all of these elements must be proved by "clear and convincing evidence." Rambus Mem. at 17. The case that Rambus cites for this proposition – *Capellupo v. FMC Corp.*, 126 F.R.D. 545, 552 (D. Minn. 1989) – does not in fact stand for this proposition. Another case that both Complaint Counsel and Rambus rely upon – *Shepherd v. American Broadcasting Co.*, 62 F.3d 1469, 1472 (D.C. Cir. 1995) – does apply a "clear and convincing" evidence standard, but only as to the first of these three elements (i.e., bad faith). The other two elements, Complaint Counsel submits, are properly subject to a preponderance of evidence standard.

to defeat a finding of bad faith. Yet the fact is that substantially all the evidence that Complaint Counsel has pointed to in order to demonstrate the existence of bad faith (*see* CC Mem. at 84-91) Rambus <u>does not contest</u>, and therefore must be taken to <u>concede</u>.[5]

In fact, the only element of Complaint Counsel's proof of bad faith that Rambus does contest is the contention that Rambus adopted and implemented its "document retention" policy with an intent to deprive opposing litigants of proof.[6] Anticipating such denials, however, Complaint Counsel has argued that the (now admitted) facts at issue here, including

- the massive destruction of evidence;
- ********************************
- **
****

[5] Notably, Rambus does not deny Crisp joking about documents being destroyed.
****
*** It does not deny or attempt to explain Karp's seemingly untruthful or evasive testimony. ***********************************
****
**************** Finally, it offers no real explanation as to why Joel Karp – Rambus's non-lawyer Vice President of Intellectual Property – was the one charged with responsibility for implementing the "document retention" policy.
****
****
****
****
****
****
****
****
****
****
****

[6] What Rambus does explicitly concede is that it intentionally destroyed documents potentially discoverable in third-party litigation. Moreover, it has been established that Rambus, at the time it sought to destroy such documents, anticipated being involved in litigation of its own. Rambus also does not deny, and would be hard-pressed to argue, that information discoverable in a third-party suit would not be relevant in a suit in which it was a party.

****

would alone be sufficient to show that Rambus's document destruction was done in bad faith. *See* CC Mem. at 87-88. Moreover, Complaint Counsel cited to two cases – *Stevenson v. Union Pacific Railroad Co.*, 204 F.R.D. 425, 430-31 (E.D. Ark. 2001), and *Reingold v. Wet 'N Wild Nevada, Inc.*, 113 Nev. 967, 970 (Nev. 1997) – both of which stand for the proposition that precisely this type of conduct "amounts to bad faith." *Stevenson*, 204 F.R.D. at 430-31 (holding, under similar circumstances, that "adherence to the retention policy [without taking steps to preserve relevant evidence] amounts to bad faith"). In its opposition, Rambus does not challenge, or for that matter even discuss, these legal authorities. Nor does it address at all the argument, clearly presented by Complaint Counsel, that a finding of bad faith can and should be made here based on the incontestible (and now clearly uncontested) facts of what occurred, notwithstanding any attempts by Rambus to deny wrongdoing. Because the key facts are not contested, and Complaint Counsel's unchallenged legal contentions demonstrate that these facts prove bad faith, we submit that Your Honor should conclude that this element of the three-part standard has been satisfied.

D. Complaint Counsel Has Been Substantially Prejudiced by Rambus's Document Destruction

Complaint Counsel has pointed out, and Rambus does not deny, that where documents have been destroyed in bad faith and it is impossible ********************************* to reconstruct what was destroyed, courts have held that the burden of proof as to prejudice shifts to the party responsible for the document destruction. *See* CC Mem. at 92-94. In other words, given that Complaint Counsel <u>has</u> demonstrated the existence of bad faith, it is Rambus – not

Complaint Counsel – that bears the burden of showing the absence of prejudice, and it must do so (again, Rambus does not contest this legal proposition) by "clear and convincing evidence." *See* CC Mem. at 92-94. Given that this is the proper legal posture as to this element of the three-prong test, it is clear that Your Honor must find prejudice to exist. This follows because Rambus, erroneously believing that it could defeat Complaint Counsel's proof of bad faith through a mere denial of wrongdoing, has made no attempt to prove the absence of prejudice. Rambus's only argument in this regard in that "Complaint Counsel have failed to prove any prejudice." Rambus Mem. at 22.

Even if, contrary to the controlling and uncontested law cited by Complaint Counsel, Your Honor were to place on us the burden to prove prejudice, this element of the three-part standard would clearly be satisfied. Complaint Counsel unmistakably has proven that it has been prejudiced, and severely so, as a result of Rambus's document destruction, and it has managed to do so even despite the fact that Rambus, admittedly, ********************************. Specifically, Complaint Counsel has identified a significant number of different types of evidence that were destroyed pursuant to Rambus's "document retention" policy, and Rambus has not denied any of Complaint Counsel's contentions in this regard. *See* CC Mem. at 61-68. Moreover, Complaint Counsel has detailed many categories of evidence relevant to this case that have been impacted by Rambus's document destruction. *See* CC Mem. at 94-98. Again, Rambus makes no effort to deny that these categories have been impacted. Finally, Complaint Counsel has explained the palpable injustice that stems from Rambus's lawyers <u>in this case</u> challenging the adequacy of Complaint Counsel's proof relating to the very same categories impacted by destroyed evidence. *See* CC Mem. at 76-79. Rambus does not, and cannot, deny that this

accurately describes the current state of affairs in this case. If this does not suffice to establish prejudice, it is hard to imagine what would.

The only argument that Rambus seems to make to deny the existence of prejudice is its claims that "Complaint Counsel have made no attempt to describe the content of even a single document that once existed which might have bolstered their case had it been preserved." Rambus Mem. at 23. Of course, as the cases Complaint Counsel has cited and that Rambus fails to contest uniformly say, this is not a standard that the victim of bad-faith document destruction should be held to, especially where, as admittedly the case here, massive amounts of evidence were destroyed **. The most the courts seem to require is proof that "documents falling within a category directly pertinent [to the case] were destroyed," *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 110 (S.D. Fla. 1987) (emphasis added), and this Complaint Counsel has shown, and Rambus (by not contesting our proof) has admitted.[7]

E. A Default Judgment Is the Only Appropriate Sanction

The final legal element Your Honor must consider in resolving this motion is whether lesser sanctions than a default judgment would be adequate to cure the injustice resulting from Rambus's document destruction. Complaint Counsel has already explained, in some detail, why lesser sanctions (such as adverse factual inferences) would not be adequate or appropriate in this case. *See* CC Mem. at 99-108. As Your Honor plainly can see from its opposition, however,

---

[7] The fact that Rambus may produce a large volume of paper to Complaint Counsel in this case certainly does not disprove the existence of prejudice. As Complaint Counsel previously has noted, the proper focus must be on the nature and volume of what was destroyed, not on what volume of documents has been produced in discovery. *See* CC Mem. at 98-99.

Rambus has made no attempt to establish the adequacy of lesser sanctions. To be clear, Rambus does argue against the imposition of a default judgment, claiming that this is "unwarranted" here. Rambus Mem. at 27. Yet Rambus makes no argument whatsoever to suggest that, in the event Your Honor concludes that bad faith and prejudice have been established, some sanction less severe than a default judgment would be adequate.

Precisely because there is no dispute here about the adequacy of lesser sanctions – i.e., we contend lesser sanctions are not adequate, and Rambus does not dispute this – Complaint Counsel submits that this element of the three-part test should be resolved in favor of a default judgment for the reasons fully set forth in the earlier memorandum.

CONCLUSION

It is not common that government attorneys in a matter of this significance move for a default judgment. Nor is it common, however, for the government to be presented with facts as egregious and compelling and those at issue here. Complaint Counsel did not manufacture this problem. This is all Rambus's doing. If Complaint Counsel's motion were as meritless and unsupported as Rambus claims, presumably Rambus would have bothered to answer Complaint Counsel's substantial factual and legal contentions. The fact that Rambus has largely avoided answering Complaint Counsel's arguments and contentions is telling.

We know that by filing this motion we have asked Your Honor to take a bold and decisive action. Such action is, however, fully warranted and consistent with the public interest. Rambus's evasive and largely non-responsive opposition vindicates this. More importantly, we submit, Rambus's opposition leaves Your Honor with a clear decisional path. There is simply no factual or legal contention in dispute at this point that would warrant the denial of Complaint

Counsel's motion. We therefore respectfully urge that Your Honor grant the motion for the reasons set forth here and in our prior filings.

If it would assist Your Honor in ruling on the motion, we would like to be heard in oral argument.

Respectfully submitted,

____

M. Sean Royall
Geoffrey D. Oliver
Alice W. Detwiler
Lisa D. Rosenthal
Sarah E. Schroeder

Of Counsel:

Malcolm L. Catt
Robert P. Davis
Andrew J. Heimert
Suzanne T. Michel
Jerome Swindell
John C. Weber
Cary E. Zuk

BUREAU OF COMPETITION
FEDERAL TRADE COMMISSION
Washington, D.C. 20580
(202) 326-3663
(202) 326-3496 (facsimile)

COUNSEL SUPPORTING THE COMPLAINT

Dated: January 28, 2003

CERTIFICATE OF SERVICE

I, Melissa Kassier, hereby certify that on January 28, 2003, I caused a copy of the Interim Public Version of the following materials:

1. Complaint Counsel's Corrected Reply to Rambus Inc.'s Memorandum in Opposition to Motion for Default Judgment,

to be served upon the following persons:

by hand delivery to:

Hon. James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

and by electronic mail and overnight courier to:

A. Douglas Melamed, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1402

Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071

Counsel for Rambus Incorporated

____
Melissa Kassier