

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the matter of)
)
RAMBUS INC.,)
)
A corporation.)

Docket No. 9302

MOTION OF MICRON TECHNOLOGY, INC., SAMSUNG ELECTRONICS CORPORATION, LTD., AND HYNIX SEMICONDUCTOR, INC. FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

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Pursuant to 16 C.F.R. § 3.52(j), Micron Technology, Inc., Samsung Electronics Corporation, Ltd., and Hynix Semiconductor, Inc. (“Amici”) respectfully move for leave to file a brief as amici curiae in the above-captioned matter.

Amici Curiae Micron Technology, Inc. (“Micron”), Samsung Electronics Corporation, Ltd. (“Samsung”), and Hynix Semiconductor, Inc. (“Hynix”) (collectively “Amici”) are leading global semiconductor companies that design, manufacture, and sell dynamic random access memory (“DRAM”), including single data rate synchronous DRAMs (“SDR” or SDR SDRAMs”) and double data rate synchronous DRAMs (“DDR” or “DDR SDRAMs”). Amici contribute billions of dollars in annual sales to the U.S. and world economy, invest hundreds of millions of dollars in research and development, hold thousands of United States patents, employ thousands of people both in the United States and overseas, and are members of a variety of standard-setting organizations (“SSOs”), including the JEDEC Solid State Technology Association (“JEDEC”). They are among the many firms victimized by Rambus’s unlawful conduct.

On August 2, 2006, the Commission unanimously found that Rambus had “exploited its participation in JEDEC to obtain patents that would cover technologies incorporated into now-ubiquitous JEDEC memory standards, without revealing its patent position to other JEDEC members. As a result, Rambus was able to distort the standard-setting process and engage in an anticompetitive ‘hold up’ of the computer memory industry.” (Opinion of the Commission, August 2, 2006, at 3). Rambus’s deceptive course of conduct gave it unlawful monopoly power in violation of Section 2 of the Sherman Act and Section 5 of the FTC Act. (*Id.*)

On February 5, 2007, the Commission issued its Opinion of the Commission on Remedy (hereinafter “Remedy Opinion”) and accompanying Final Order on the appropriate remedy for

Rambus's anticompetitive conduct (hereinafter "the Order"). The Commission explained that the Order's purpose is "to restore – to the extent possible – the competitive conditions that would have existed but for Rambus's unlawful conduct." (Remedy Opinion at 27.) The Order prohibits Rambus from engaging in future deception in connection with standard-setting activities, and also significantly limits Rambus's ability to collect "fees, royalties, or other payments" relating to SDR and DDR SDRAM.¹

First, the Order sets the "Maximum Allowable Royalty Rates" (hereinafter "Maximum Rates") that Rambus can charge on its patents for JEDEC-Compliant SDR SDRAM at 0.25% and JEDEC-Compliant DDR SDRAM at 0.50%. (Order I.J.1.) Both rates drop to 0% after three years. (Order I.J.2.) Second, the Order prohibits Rambus from collecting or attempting to collect royalties that exceed those rates. (Order at IV.A.) Third, Rambus is barred from further prosecution of infringement actions against persons manufacturing, selling, or using SDR SDRAM and DDR SDRAM for compensation in excess of the Maximum Rates. (*Id.* at VI.) Finally, Rambus must offer any interested person a license to its relevant patents for JEDEC-Compliant SDR and DDR SDRAM products at royalties no greater than the Maximum Rates. (*Id.* V.A.)

As active participants in SSOs and as manufacturers of JEDEC-Compliant DRAMs and related products, Amici have a strong interest in ensuring that the anticompetitive effects of Rambus's willful and intentional violations, as unanimously found by the Commission, are fully remedied, and that the Commission continues to establish strong precedents that protect against standard-setting abuses and deter others from repeating Rambus's egregious anticompetitive conduct.

¹ (Order IV-VI.) The Order also limits Rambus's ability to collect fees, royalties, and payments on certain JEDEC-Compliant Non-DRAM products. (*See Id.*)

Amici previously joined in a brief before the Commission expressing their views on an appropriate remedy for Rambus's conduct.² The Commission accepted that brief on October 19, 2006.³ Amici submit this brief now to urge that the Commission deny the Petition of Respondent Rambus Inc. for Reconsideration of the Commission's Final Order and the Motion of Respondent Rambus Inc. for Stay of Order Pending Appeal, to express their view of the proper construction of that Order, and to request that the Commission clarify the Order to close the door on Rambus's efforts to continue to reap monopoly rents from its unlawful conduct.

WHEREFORE, Amici respectfully request that the Commission grant their joint motion leave to file the attached amici curiae brief.

Dated: March 1, 2007

Respectfully submitted,



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² See Br. of Amici Curiae Nvidia Corporation, et al. on the Issue of the Appropriate Remedy for Rambus's Violations of the FTC Act, Sept. 15, 2006.

³ See Order Granting Mot. for Leave to File Briefs, Amici Curiae, Oct. 19, 2006.

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PROPOSED ORDER

Upon consideration of the Motion of Micron Technology, Inc., Samsung Electronics Corporation, Ltd., and Hynix Semiconductor, Inc. (“Amici”) for Leave to File Brief as Amicus Curiae in Opposition to Rambus’ Motion to Reconsider the Commission’s Remedy Order, the Commission finds that Amici’s brief may assist in its determination of whether to reconsider its Remedy Order in this case. Accordingly,

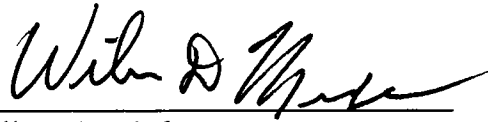
IT IS ORDERED that Amici are granted leave to file their amici curiae brief.

By the Commission.

Issued: _____, 2007

CERTIFICATE OF SERVICE

I, Wilson D. Mudge, hereby certify that, on this the 1st day of March, 2007, I caused copies of the foregoing MOTION OF MICRON TECHNOLOGY, INC., SAMSUNG ELECTRONICS CORPORATION, LTD., AND HYNIX SEMICONDUCTOR, INC. FOR LEAVE TO FILE BRIEF AS AMICI CURIAE to be served by the method indicated below upon the following:



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