

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RULE 3.22(f) DECLARATION OF STEVEN M. PERRY IN SUPPORT
OF RAMBUS INC.'S MOTION TO COMPEL MITSUBISHI ELECTRIC
& ELECTRONICS USA, INC. TO COMPLY WITH THIS COURT'S
ORDER TO PRODUCE DOCUMENTS RESPONSIVE TO THE
SUBPOENA SERVED BY RAMBUS INC.**

I, Steven M. Perry, declare:

1. I am a member of the State Bar of California and a member of the law firm of Munger, Tolles & Olson LLP, co-counsel for respondent Rambus Inc. ("Rambus") in this matter. I submit this declaration in support of Rambus Inc.'s Motion To Compel Mitsubishi Electric & Electronics USA, Inc. To Comply With This Court's Order To Produce Documents Responsive To The Subpoena Served By Rambus Inc. I have personal knowledge of the facts set forth in this declaration. I make this Declaration pursuant to Rule 3.22(f) of the Rules of Practice.

2. On November 12, 2002, Your Honor denied the motion to quash filed by Mitsubishi Electric & Electronics USA, Inc. ("Mitsubishi") and ordered Mitsubishi to comply with Rambus's subpoena within ten days (*i.e.*, by November 22, 2002).

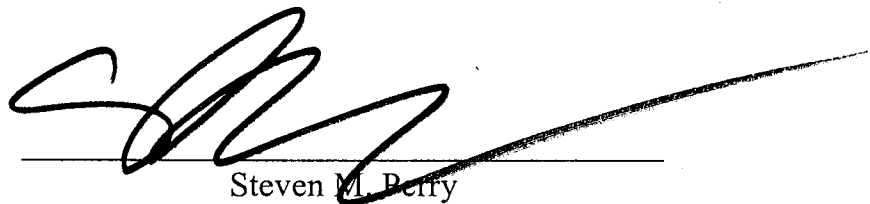
3. Mitsubishi failed to meet the November 22, 2002 deadline, and it has instead taken the position that it will undertake to produce documents in due course, as they become available for review. For example, although Rambus requested that the review and

production of the files of Sam Chen (Mitsubishi's longtime JEDEC representative) be expedited, Mitsubishi refused to produce those documents until Mr. Chen could review them. *See* my December 2, 2002 letter to Mitsubishi counsel John Calkins, attached as exhibit A, and Mr. Calkins' response, attached as exhibit B. Because Mitsubishi has *still* not produced Mr. Chen's files, despite repeated requests, we were forced to postpone his deposition from December 17, 2002 until January 2003. *See* my December 3, 2002 and December 10, 2002 letters to Mr. Calkins, attached as exhibits C-D, respectively.

4. Mitsubishi has also failed to produce responsive documents from the files of Mitsubishi's corporate parent, Mitsubishi Electronic Corporation, despite Your Honor's orders requiring production. All that Mitsubishi has done, apparently, is "advise" its parent company of Your Honor's November 26, 2002 order denying Mitsubishi's request for an interlocutory appeal and "ask" if the parent will produce responsive documents. *See* the December 3, 2002 letter from John Calkins to me, attached as exhibit B, p. 2. We have informed Mitsubishi's counsel that this is unacceptable and have requested the production of the documents in question. Mitsubishi has not produced any such documents and has not stated any intention of doing so. Mitsubishi has also failed to provide a privilege log. *See* the December 17, 2002 e-mail from Rambus counsel B.J. Watrous to Mr. Calkins and my December 17, 2002 letter to Mr. Calkins, attached as exhibits E-F, respectively.

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

Executed on December 20, 2002 at Los Angeles, California.



Steven M. Perry

Exhibit A

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VIA FAX AND FEDEX

John Calkins, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, California 94111-4067

Re: Mitsubishi

Dear Mr. Calkins:

As you know, this firm represents Rambus in connection with an FTC proceeding in which Rambus subpoenaed various categories of documents from your client, Mitsubishi. After obtaining several extensions of time to respond to the subpoena, Mitsubishi filed a motion on October 30, 2002 to quash it. In an order dated November 12, 2002, Judge Timony denied Mitsubishi's motion and ordered Mitsubishi to comply with the subpoena within ten days (i.e., by November 22, 2002).

I have reviewed the correspondence and e-mail traffic relating to Mitsubishi's compliance with the subpoena, and I am writing to raise our serious concerns in that regard. I understand that a limited number of boxes of documents were made available to a team of Rambus lawyers last week, and that certain documents were tagged for copying by an outside copying service. However, I understand that Mitsubishi is refusing to make those copies available to us until an unspecified day next week. In addition, I understand that Mitsubishi is refusing to produce the bulk of its responsive documents until some time next week.

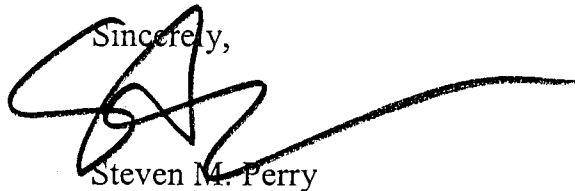
Given the deadlines that we face in this proceeding, Mitsubishi's refusal to comply with the subpoena and with Judge Timony's order is unacceptable. Moreover, the refusal to comply impacts our ability to take Mr. Chen's deposition, as previously scheduled, on

December 17, 2002. We are considering whether to reschedule that deposition for the last part of December. While ordinarily I would not require witnesses and opposing counsel to appear for depositions over the holidays, we cannot afford any further delay.

We want to avoid returning to Judge Timony for further enforcement orders. In that regard, please confirm today that Mitsubishi will do the following: (1) release to Rambus by this Wednesday, December 4, 2002, the documents that were flagged and copied last week; (2) make available all remaining documents responsive to the subpoena, including the MELCO documents that were ordered to be produced, no later than December 6, 2002; and (3) release the documents that are tagged and copied as a result of the December 6 review to Rambus by no later than December 11, 2002.

Rambus reserves all of its rights and remedies in regard to this issue.

Sincerely,

A handwritten signature in black ink, appearing to be "SMP", with a long horizontal flourish extending to the right.

Steven M. Perry

SMP:ei

Exhibit B

December 3, 2002

Direct: (415) 393-2120
john.calkins@bingham.com**VIA FACSIMILE**

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Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071-1560

Re: In the Matter of Rambus Incorporated, Docket No. 9302

bingham.com

Dear Mr. Perry:

Boston
Hartford
London
Los Angeles
New York
San Francisco
Silicon Valley
Singapore
Walnut Creek
Washington

I write in response to your letter dated December 2, 2002 concerning the production of documents in response to the subpoena duces tecum issued by your client, Rambus, on our client, Mitsubishi Electric & Electronics USA, Inc. ("MEUS") in the above-referenced FTC proceeding. Because your letter refers to our client as "Mitsubishi," we wish to remind you at the outset that we do not represent Mitsubishi Electric Corporation ("MELCO").

Your letter states that a "limited number" of boxes of documents were made available to "a team of Rambus lawyers last week." To be more precise, in accordance with an agreement reached between counsel for MEUS and Rambus, MEUS made 19 boxes of documents available to two attorneys for Rambus, B.J. Watrous and Danica Ray, for review beginning last Monday. The tagged documents – a total of 5,767 pages, according to Mr. Watrous – were returned to our client's Sunnyvale office late Wednesday morning, less than one day before Thanksgiving and allowing less than one business day for review by our client before the date of your letter accusing our client of delay. MEUS has at no time "refus[ed] to make those copies available to [Rambus] until an unspecified time next week," as your letter states. On the contrary, as I told Mr. Watrous yesterday, MEUS expects to review these documents by Wednesday, December 4, 2002 and make them available to Rambus the following day. In light of the Thanksgiving holiday, this review and production schedule is more than reasonable.

MEUS has undertaken significant effort in a very short time to comply with the subpoena and will continue doing so. Beyond providing the 19 boxes of

Steven M. Perry, Esq.

December 3, 2002

Page 2

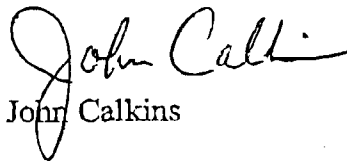
Bingham McCutchen LLP
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documents last week, MEUS has contacted sales offices and facilities throughout the country in an effort to locate responsive documents. At this time, MEUS expects to have approximately three additional boxes of documents available for review by Friday, December 6. As I explained to Mr. Watrous last Wednesday and again yesterday, Sam Chen, MEUS's most knowledgeable employee concerning many of the documents responsive to the subpoena, was out of the office all last week and continues to be away from the office much of this week. With Mr. Chen's assistance, MEUS should be able to identify and make available for review additional documents next week. As such, we propose that it would be more efficient for Rambus's lawyers to return during the week of December 9, when such additional documents would be available for their review. If Rambus's lawyers nonetheless wish to review additional documents in Sunnyvale this Friday and have copies of tagged documents delivered to MEUS by noon on Monday, December 9, MEUS will endeavor to review the copied documents by the close of business on Wednesday, December 11 and to make them available to Rambus the following day.

MELCO has been advised of Judge Timony's November 26 order denying interlocutory appeal and asked if it will provide documents responsive to the subpoena to MEUS to produce for Rambus's inspection.

Finally, MEUS reaffirms that Mr. Chen will be available for deposition on December 17, as previously scheduled in accordance with Rambus's request. In light of the above, if Rambus still wishes to reschedule this deposition, please be advised that MEUS will be closed for business from December 24, 2002 through January 3, 2003 for the holidays, and Mr. Chen will not be available for deposition during that time.

Sincerely yours,



John Calkins

Exhibit C

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Re: Mitsubishi

Dear Mr. Calkins:

I am writing in response to your letter of today's date. While I will not respond to each point in your letter, I wanted to make it clear that Mitsubishi is not in compliance with Judge Timony's orders in this case, and that Rambus reserves all of its rights and remedies in connection with Mitsubishi's failure to comply with those orders. As for the question of whether or not Mitsubishi has refused to make copies available to Rambus of documents that Rambus had flagged for copying and production, the e-mail traffic on that issue is clear and speaks for itself.

We will plan on deposing Mr. Chen on December 17, as currently scheduled. We will closely monitor the ongoing production process, and reserve the right to postpone that deposition if the circumstances warrant.

Sincerely,

Steven M. Perry

SMP:ei

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December 10, 2002

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San Francisco, California 94111-4067

Re: Mitsubishi and Chen Objections to Rambus Subpoenas

Dear Mr. Calkins:

In light of Judge Timony's rulings in this matter, we were surprised yesterday to receive objections by Mitsubishi and its former employee, Mr. Chen, to Rambus's subpoena to Mr. Chen. Please confirm today that no documents were withheld as a result of the objections. Alternatively, please call me today to set up a meet and confer. We intend to move promptly to compel production of the documents requested in the subpoena, since all of them fall within the parameters of relevancy set out in Judge Timony's prior orders.

In addition, we are still quite concerned about Mitsubishi's unwillingness or inability to comply with Judge Timony's orders. I understand that we have not yet received any documents from Japan, and we have not yet received any of Mr. Chen's emails regarding the many relevant subject matters and issues with which he has had extensive involvement. This is unacceptable to us. We will be moving Mr. Chen's deposition and will reset it at a time convenient for us. I have informed the FTC of the postponement. If you wish to discuss this further, please call me.

Sincerely,



Steven M. Perry

SMP:ei

878305.1

Exhibit E

-----Original Message-----

From: Watrous, Bruce "BJ"
Sent: Tuesday, December 17, 2002 9:10 AM
To: 'john.calkins@bingham.com'
Cc: Cunningham, Sean; Watrous, Bruce "BJ"
Subject: Mitsubishi Documents

John:

I left you a phone message, but wanted to follow-up via email to again memorialize my requests.

To begin, I wanted to let you know that we did receive four additional Mitsubishi documents from Terry Cross last week and are reviewing those documents.

In addition, I wanted to follow-up on at least three outstanding issues. While by no means an exhaustive list of what is presently due to Rambus under its subpoena of Mitsubishi, we have yet to see the following:

1. Mr. Chen's personal correspondence (including emails),
2. Any documents from your client's corporate parent in Japan, and
3. A privilege log explaining and defending those documents removed from your prior productions.

One month ago, on Nov. 18, 2002, Judge Timony issued his first order requiring the production of documents responsive to Rambus' subpoena of Mitsubishi. Since that time, I think you would agree that we have been quite accommodating and understanding in working with you to obtain the documents that are due our client. However, our patience is growing strained. This is compounded by my understanding from prior conversations (please correct me if I am wrong) that Mitsubishi will be "shut-down" for at least one week during the Christmas and New Years holidays. In preparation for that time, I trust that you and your client are working with your Japanese counterparts and Mr. Chen to ensure that you collect and produce responsive documents in advance of the holiday break.

We are eager to obtain all non-privileged documents that are rightly due to Rambus under its subpoena. Please call me at your earliest convenience to provide me with an update on these outstanding issues. I hope to hear from you by the 3pm today, Tuesday, Dec. 17.

Thank you. -BJ

Bruce "BJ" Watrous
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12/17/2002

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December 17, 2002

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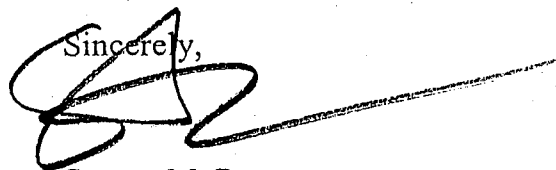
VIA FACSIMILE

John Calkins, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, California 94111-4067

Re: Mitsubishi Document Production

Dear Mr. Calkins:

I am writing to follow up on an e-mail that you received today from Mr. Watrous of the Gray, Cary firm, which also represents Rambus in this matter. Given our prior efforts to obtain compliance by Mitsubishi with Judge Timony's orders, and given the lack of compliance to date, we will have no choice but to return to Judge Timony if Mr. Watrous' requests are not satisfied.

Sincerely,

Steven M. Perry

SMP:ei

PROOF OF SERVICE BY FACSIMILE/FEDERAL EXPRESS

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071.

On December 20, 2002, I served the foregoing document described as: **RULE 3.22(f) DECLARATION OF STEVEN M. PERRY IN SUPPORT OF RAMBUS INC.'S MOTION TO COMPEL MITSUBISHI ELECTRIC & ELECTRONICS USA, INC. TO COMPLY WITH THIS COURT'S ORDER TO PRODUCE DOCUMENTS RESPONSIVE TO THE SUBPOENA SERVED BY RAMBUS INC.** on the designated parties in this action by having a true copy thereof transmitted by facsimile machine to the number listed below. I caused the facsimile machine to print a record of the transmission, a copy of which is attached to this declaration.

On December 20, 2002, I also served a copy of the aforementioned document on the designated parties in this action by Federal Express overnight courier service. I am "readily familiar" with the firm's practice of collection and processing correspondence for delivery to an employee of Federal Express. Under that practice it would be delivered to an employee of Federal Express on that same day at Los Angeles, California with charges to be billed to Munger, Tolles & Olson's account for delivery to the office of the addressee on December 23, 2002 in the ordinary course of business.

By Facsimile and FedEx

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Executed on December 20, 2002, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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

Eunice Ikemoto