

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

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

PUBLIC VERSION

**JOINT MOTION FOR EXTENSIONS OF TIME AND WORD COUNT LIMITS
THROUGHOUT THE APPELLATE BRIEFING SCHEDULE
[EXPEDITED CONSIDERATION REQUESTED]**

Both parties respectfully request that the Commission extend the appellate briefing deadlines and word limits set by Rule of Practice § 3.52.

The record in this case is extremely lengthy and detailed. The trial of this matter lasted 54 days. Forty four witnesses testified live at trial. Fifteen witnesses testified through designated deposition testimony. Over 1,900 exhibits were admitted, and the trial transcript exceeds 11,800 pages. By way of comparison, the recent trial in *In the Matter of Polygram Holding, Inc.* resulted in a record of less than 1,000 transcript pages. Even the largest of the Commission's recent cases, *In the Matter of Chicago Bridge and Iron Company N.V.* and *In the Matter of Schering-Plough Corporation*, each generated fewer than 8,500 transcript pages.

The underlying factual issues in this case are complex. Among the live witnesses at trial were eight expert witnesses, including experts in the fields of patent law and practice, computer design and engineering, semiconductor manufacturing, and economics. The record is replete

with highly technical evidence relating to computer design, memory architectures, and various memory technologies. In addition, the record contains evidence relating to complicated patent issues, including the interpretation of patent applications and issued patents as well as the comparison of specific patent or application claims to memory products or engineering documents. The findings of fact submitted by Judge McGuire number more than 1650 and the initial decision in its entirety takes up 334 pages.

Given these circumstances, the parties ask that the Commission extend the briefing period for the appeal. Specifically, we ask that the Commission extend the period for the appeal brief by an additional 21 days, extend the period for the answering brief (including any cross-appeal brief) by an additional 16 days, and extend the period for a reply brief (in the absence of a cross-appeal) or the rebuttal brief (if there is a cross-appeal) by an additional 7 days.

For the reasons set forth below, we also ask that the Commission expand the word count limitations provided under for the briefs on appeal.

Finally, to allow the parties effectively to brief the issues in this case, the parties request expedited consideration of this motion.

Procedural History

1. The Administrative Complaint in this matter was issued on June 18, 2002.
2. The trial began on April 30, 2003. There were 54 days of trial, with the last day of testimony occurring on August 1, 2003.
3. After extensive post-trial briefing and closing arguments, the record was closed on October 9, 2003.
4. On February 25, 2004, the Secretary issued Judge McGuire's initial decision and order. Complaint Counsel filed a notice of appeal on March 1, 2004.

Request for Extension of Time

5. Both parties respectfully request that the Commission, pursuant to its authority under Rule of Practice § 3.22(d), extend the appellate briefing deadlines that are normally required by Rule of Practice § 3.52. The parties believe that additional time for each of these briefing phases is necessary in order to permit the parties to prepare careful, complete, and quality briefs to assist the Commission in its review of the numerous and complex issues in this case.

6. The parties request that the Commission extend the briefing period as follows:

- Appeal brief: extend by an additional 21 days to April 16, 2004;
- Answering brief (including any cross-appeal brief): extend by an additional 16 days to June 2, 2004;
- Reply brief (in the absence of a cross-appeal): extend by an additional 7 days to June 16, 2004;
- Rebuttal brief (in the event of a cross-appeal): extend by an additional 7 days to July 16, 2004.

7. The parties believe that this proposed schedule would permit more considered briefing of the issues, while still permitting the Commission to complete briefing and schedule oral argument on a reasonably expeditious basis.

Request for Extension of Word Count Limitations

8. The parties believe that, due to the sheer volume of the record in this matter, the technical complexity of much of the evidence in the record, and the number of issues involved, that undue prejudice would result to both parties from complying with the word limits established in the rules for standard cases. Furthermore, the parties believe that an extension of

the standard word limits would better permit the parties to guide the Commission in its de novo¹ consideration of the factual record and legal issues before it.

9. As set forth above, the trial of this matter has been extraordinarily lengthy and complex, even by Commission standards. At the conclusion of trial, the parties submitted over 3,000 pages of proposed findings of fact and reply findings of fact, and post-trial briefs and reply briefs amounted to almost 450 pages. Closing argument lasted over nine hours. Judge McGuire's initial decision (including findings of fact and conclusions of law) totals 334 pages.

10. Due to both the volume of the record and the complexity of the issues involved, the parties submit that they will suffer undue prejudice if they are subject to the standard word limits provided for in Rule 3.52. The parties also respectfully suggest that an extension of the word limits will permit them better to assist the Commission to understand the complex factual and legal issues raised in its de novo review of this matter.

11. The parties respectfully request that the word limits be expanded as follows:

- Appeal brief: 32,750 words
- Answering brief: 32,750 words (if no cross-appeal)
45,750 words (if cross-appeal)
- Reply brief: 32,750 words
- Rebuttal brief: 19,500 words

¹ See Commission Rule of Practice § 3.54(a); *The Coca-Cola Bottling Co. of the Southwest*, 118 F.T.C. 452, 534 (1994).

Date: March 3, 2004

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[PROPOSED] ORDER

On March 3, 2004, Appellant Complaint Counsel and Appellee Rambus, Inc. filed a Joint Motion for Extensions of Time and Word Count Limits. The Commission has determined to grant the motion.

IT IS ORDERED that, pursuant to Rule of Practice § 3.22(d), the appellate briefing deadlines normally required by Rule of Practice § 3.52 are extended as follows:

- Appeal brief: due on April 16, 2004;
- Answering brief (including any cross-appeal brief): due on June 2, 2004;
- Reply brief (in the absence of a cross-appeal): due on June 16, 2004;
- Reply brief (in the event of a cross-appeal): due on July 2, 2004;
- Rebuttal brief (in the event of a cross-appeal): due on July 16, 2004.

IT IS FURTHER ORDERED that the word limits provided for in Rule 3.52 are extended as follows:

- Appeal brief: 32,750 words
- Answering brief: 32,750 words (if no cross-appeal)
45,750 words (if cross-appeal)
- Reply brief: 32,750 words
- Rebuttal brief: 19,500 words

By the Commission.

Donald S. Clark
Secretary

ISSUED: March __, 2004