

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RESPONDENT RAMBUS INC.'S MEMORANDUM OF LAW
REGARDING APPLICATION FOR ISSUANCE OF
A SUBPOENA AD TESTIFICANDUM ON DR. K. H. OH**

Respondent Rambus Inc. (“Rambus”) respectfully submits this memorandum of law regarding its December 6, 2002 application for the issuance of a Subpoena *Ad Testificandum* to be served on Dr. K. H. Oh. This memorandum will address the issues raised by third party Hynix Semiconductor Incorporated (“Hynix”) in its December 13, 2002 opposition to Rambus’s application.

Hynix’s opposition is based upon a misunderstanding of the underlying facts and applicable law. Hynix relies principally on the Second Circuit’s 1960 decision in *In Re Equitable Plan*, 277 F.2d 319, 320 (2d Cir. 1960), where the court discussed “[t]he rule giving *certain* witnesses . . . immunity from civil process during the period necessarily required for their appearance. . . .” (emphasis added). As the First Circuit very recently explained, however, “the privilege has been limited by the majority of courts to cases in which the party or witness was participating in an *unrelated* litigation at the time that he

was served with process in the forum state.” *Northern Lights Technology, Inc. v. Northern Lights Club*, 236 F.3d 57, 62 (1st Cir. 2001) (citations omitted) (emphasis added). The Second Circuit also acknowledged this limiting principle in *Equitable Plan Company v. American Leduc Petroleum, Ltd.*, 456 F.2d 1170, 1179-80 (2d Cir. 1972), where it upheld the service of a summons and complaint on a witness who had appeared in the jurisdiction in response to a subpoena duces tecum in a related matter. The court explained that immunity from service is *not* required where the “two proceedings involve vindication of the same cluster of rights and interests.” *Id.* at 1180.

In this case, of course, the trial subpoena is sought in the *very same case* in which the deposition is being taken. The relevant case law therefore strongly supports the issuance of the subpoena sought by Rambus.

Considerations of fairness also warrant the issuance of the subpoena. If Dr. Oh is willing to travel to this country at Complaint Counsel’s request to give a deposition in this matter, he should not be immune to Rambus’s request that he be available to testify at the hearing. Rambus is not seeking to serve a trial subpoena on Dr. Oh to “punish” him, as Hynix repeatedly claims. Instead, the issues are fairness and prejudice. Neither the FTC nor Rambus has the ability to force Dr. Oh to come to trial. Complaint Counsel – which has had access to Dr. Oh and close cooperation from Hynix and its counsel – has decided that they will be satisfied by taking deposition testimony. Complaint Counsel presumably knows what that testimony will be. Rambus, on the other hand, does not even know the subject matter, much less the substance, of that testimony. At the deposition, Dr. Oh will give his testimony in response to Complaint Counsel’s

questions. Rambus will be forced then to conduct an immediate and no doubt incomplete examination, and Dr. Oh will then return to Korea, free from any obligation to appear at the hearing.

It may be that Rambus will not need to call Dr. Oh as a trial witness, depending on the nature of his testimony. But fairness requires that it at least be given that option. For these and all of the foregoing reasons, Rambus respectfully requests that Your Honor issue the Subpoena *Ad Testificandum* as requested.

DATED: December 16, 2002 Respectfully submitted,

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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 16, 2002, I served the foregoing document described as:
RESPONDENT RAMBUS INC.'S MEMORANDUM OF LAW REGARDING APPLICATION FOR ISSUANCE OF A SUBPOENA AD TESTIFICANDUM ON DR. K. H. OH 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 16, 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 17, 2002 in the ordinary course of business.

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Executed on December 16, 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

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)
In the Matter of)
)
) Docket No. 9302
RAMBUS INC.,)
)
a corporation,)
_____)

CERTIFICATION

I, Steven M. Perry, hereby certify that the electronic copy of Respondent Rambus Inc.'s Memorandum Of Law Regarding Application For Issuance Of A Subpoena *Ad Testificandum* On Dr. K. H. Oh accompanying this certification is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on December 17, 2002 by other means.

Dated: December 16, 2002

/s/
Steven M. Perry

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**MOTION BY RESPONDENT RAMBUS INC. FOR LEAVE TO FILE
A REPLY BRIEF IN SUPPORT OF ITS AMENDED APPLICATION FOR
THE ISSUANCE OF A SUBPOENA *AD TESTIFICANDUM* ON DR. K.H. OH**

Pursuant to Rule 3.22(c) of the Federal Trade Commission Rules of Practice for Adjudicative Proceedings, respondent Rambus Inc. respectfully requests leave to file a short reply in support of its Amended Application for the Issuance of a Subpoena *Ad Testificandum* on Dr. K. H. Oh. The proposed brief is limited to a discussion of new issues raised by Hynix Semiconductor Incorporated in its opposition brief.

DATED: December 16, 2002 Respectfully submitted,

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/s/
Steven M. Perry