



public record confidential information contained in the Default Judgment Motion. Complaint Counsel urges that the Commission's rules governing *in camera* treatment of evidence should apply to the materials used in support of the default judgment motion.

Rule 3.22(b) states:

If a party includes in a motion information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file two versions of the motion in accordance with the procedures set forth in § 3.45(e).

16 C.F.R. § 3.22(b). When Rule 3.22(b) was amended in 2001, the Commission stated: “[t]he *in camera* rules do not apply” to “pre-trial motions or other documents that are not being ‘offered into evidence.’” Rules of Practice, Federal Trade Commission, 66 Fed. Reg. 17622, 17625 (April 3, 2001). “Motions that seek pretrial or procedural rulings, and that contain confidential matter, should be handled under the procedures for protective orders, *see* Rule 3.31(d), and should not be confused with *in camera* matters.” *Id.*

The Protective Order entered in this case makes the same distinction between evidence submitted in connection with motions and evidence introduced at trial. Paragraph 17 of the Protective Order states that if confidential material “is contained in any pleading, motion, exhibit or other paper” filed with the Secretary, it must be filed under seal and “shall remain under seal until further order of the Administrative Law Judge.” Paragraph 18, in contrast, governs material to be “introduce[d] as evidence at trial,” and states that with respect to such material a party must apply for an *in camera* order pursuant to 16 C.F.R. § 3.45(b). Thus, the Protective Order itself specifies that the standard for *in camera* treatment of documents applies only to those documents introduced into evidence at trial.

The Protective Order contains specific provisions for challenging confidentiality designations. Paragraph 11. It appears that Complaint Counsel has not complied with these provisions. Rambus maintains that each of the documents it has designated as confidential meet the standard for confidential material as defined in the Protective Order. *See* Protective Order Paragraph 1(n) (defining confidential material as information “which is not generally known and which the Producing Party would not normally reveal to third parties or would normally require third parties to maintain in confidence. . . . Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondents or Third Parties would likely cause substantial commercial harm or personal embarrassment to the disclosing party.”).

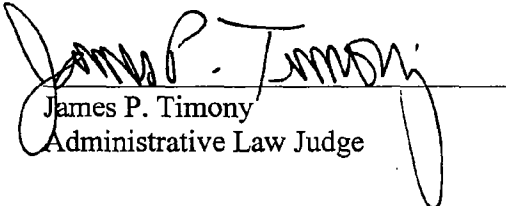
### III.

Rambus represents that it withdraws its confidentiality designations with respect to deposition transcripts that Complaint Counsel has redacted to reflect only the portions cited in Complaint Counsel’s brief. These are: Exhibits 9, 13, 21, 57, 64, 67, 80, 84, 86, 87, 88, 89, 90, 91, 97, 98, 100, 101, and 102. Complaint Counsel may refile its public version of its Default Judgment Motion to include these redacted exhibits.

In addition, Rambus states that it may be willing to withdraw its confidentiality designations with respect to other exhibits if Complaint Counsel agrees to redact the exhibits to reflect only that information used by Complaint Counsel in its Default Judgment Motion. These are: Exhibits 32, 40, 41, 43, 46, 47, 49, 50, 51, 52, 56, 61, 69, 71, 92, 99, 103, 106, 107, and 109.

The parties are to meet and confer after Rambus has had an opportunity to review redacted versions of these exhibits. If Rambus determines to withdraw its confidentiality

designations as to the redacted exhibits, Complaint Counsel may refile its public version of its Default Judgment Motion to include any such redacted exhibits.

  
James P. Timony  
Administrative Law Judge

Dated: February 26, 2003