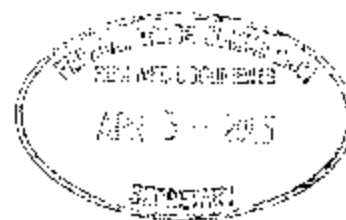


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
RAMBUS INC.,)
)
 a corporation.)

Docket No. 9302

**ORDER DENYING RESPONDENT'S
MOTION FOR PRE-HEARING DETERMINATION
OF ORDER OF ISSUES TO BE TRIED**

Before the Court is Respondent's Motion for Pre-hearing Determination of Order of Issues to Be Tried. Respondent essentially asserts that the trial be bifurcated, with the issue of whether Respondent violated the patent disclosure policy of the Joint Electron Device Engineering Council ("JEDEC") heard and resolved before all other matters. While Respondent initially asserts that this issue could be dispositive, it then asserts the alternative (and considerably less persuasive) argument that a favorable ruling following the proposed initial proceeding could somewhat shorten the trial by helping to focus the testimony of certain

witnesses at the second proceeding.¹

In opposition, Complaint Counsel asserts that JEDEC's patent disclosure policy is not a dispositive issue in this matter. Rather, Complaint Counsel asserts that Respondent's liability may rest on a broader pattern of anti-competitive practices of which the alleged violation of JEDEC's patent disclosure policies is but a single illegal practice. Additionally, Complaint


¹ Even in the absence of bifurcation, the Court urges counsel to focus the trial testimony of witnesses as sharply as possible.

Counsel points out that much of the testimony about JEDEC's policies and proceedings will come from non-party witnesses who, as a result of bifurcation, could be forced to come to Washington to testify twice since the scope of their testimony is far broader than just the patent disclosure policy of JEDEC (or the lack thereof).

While the Court, in appropriate circumstances, has broad discretion to determine the shape of a trial, this is not such a circumstance. It does not appear that the odds of achieving a dispositive result through bifurcation are sufficiently high as to risk requiring the numerous non-party witnesses in this matter to be inconvenienced by having to come to Washington to testify more than once should the first proceeding not terminate these proceedings.² In addition, absent a compelling reason to the contrary, since Complaint Counsel has the burden of proof, it should have wide latitude to present its evidence at trial in the order in which it sees fit.

For the reasons set out above, Respondent has failed to meet its burden of establishing that the trial of this matter should be bifurcated and its Motion for Pre-hearing Determination of Order of Issues to Be Tried is DENIED.

ORDERED:

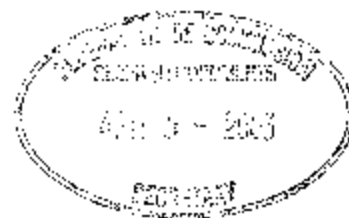


Stephen J. McGuire
Chief Administrative Law Judge

Dated: April 3, 2003

² The Court could eliminate this inconvenience by having the witnesses testify only at the proposed initial proceeding and then, if necessary, incorporate the other aspects of their testimony in the second proceeding. Permitting extended testimony and cross-examination at the initial proceeding would, however, eliminate most if not all of the judicial economy that could be achieved by the proposed bifurcation.

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