PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

REPLY MEMORANDUM BY RESPONDENT RAMBUS INC. IN SUPPORT OF MOTION FOR SUMMARY DECISION (CORRECTED VERSION)

I. INTRODUCTION

Respondent Rambus Inc. ("Rambus") submits this reply memorandum in support of its motion for summary decision. Rambus will address four principal points in this reply: (1) Complaint Counsel's belated efforts to amend the core allegations of the Complaint have no legal effect and must be ignored; (2) even if Complaint Counsel were correct that they need not show a violation of JEDEC's patent policy to prevail, Rambus is still entitled to partial summary decision on the question of whether the JEDEC patent policy was sufficiently clear to form a basis for legal (and particularly antitrust) liability; (3) the law is clear that Complaint Counsel must prove reliance in order to prevail, and Complaint Counsel have failed to satisfy their burden under Rule 3.24(a)(2) to submit substantial evidence that JEDEC members relied on Rambus's "silence"; and (4) partial summary decision is plainly warranted on the issue of whether Rambus breached any disclosure duty with respect to the DDR SDRAM standard.

II. ARGUMENT

A. The Commission – Not Complaint Counsel – Has Sole Authority To Alter Or Amend The Core Allegations Of The Complaint.

Complaint Counsel devote considerable space in their opposition papers to an argument that Rambus's motion is based upon "an exceedingly narrow, and plainly inaccurate, characterization" of the Complaint. Opp., p. 14. In particular, Complaint Counsel contend that *even if Rambus complied in full* with JEDEC's patent disclosure policy, it should still be stripped of its ability to collect millions of dollars in royalties on pioneering patents, whose validity Complaint Counsel do not challenge, because

Rambus's conduct was supposedly "unethical" and "exud[ed] bad faith." *Id*., pp. 12, 22.

This new theory of liability would surprise Judge Timony and the Commission, as it did Rambus. In November 2002, in language almost identical to that in Rambus's motion for summary decision, Judge Timony described the Complaint in this way:

> "The Complaint's *core allegation* is that, through omissions, Rambus intentionally misled the members of JEDEC with regard to the possible scope of Rambus's pending or future patent applications, *in violation of the purported JEDEC patent disclosure policy*. Complaint at ¶¶ 2, 47-55, 70-80. According to the Complaint, had Rambus made the allegedly necessary disclosures, JEDEC could have adopted alternative technologies and avoided Rambus's patented technologies. Complaint at ¶¶ 62, 65, 69. These allegations raise *three fundamental issues: (1) whether the JEDEC disclosure duty is as broad and comprehensive as alleged in the Complaint; (2) whether Rambus actually violated any such duty to disclose imposed by JEDEC rules;* and *(3) whether the alleged failure to disclose was material and caused the competitive injury alleged in the Complaint*."

Opinion Supporting Order Denying Motion by Mitsubishi to Quash or Narrow Subpoena, filed November 18, 2002, p. 4 ("Mitsubishi Op.") (emphasis supplied).

Judge Timony thus clearly understood – as did Rambus – that the Complaint's "core allegation" was that Rambus had violated the JEDEC patent policy, and that two "fundamental issues" were: (1) the scope of the JEDEC disclosure policy and (2) whether Rambus had violated that policy. *Id*. Complaint Counsel said nothing at the time to disabuse Judge Timony of what they would now call "an exceedingly narrow and plainly inaccurate" description of the Complaint. They did not "correct" him because his description was entirely accurate, as Commissioner Muris's September 2002 testimony to Congress – on behalf of the Commission – makes clear:

> "Standards Setting. As technology advances, there will be increased efforts to establish industry standards for the development and manufacture of new products. While the adoption of standards is often procompetitive, the standards setting process, which involves competitors meeting to set product specifications, can be an area for antitrust concern. In a complaint filed in June, the Commission has charged that Rambus, Inc., a participant in an electronics industry standards-setting organization, failed to disclose – *in violation of the organization's rules* – that it had a patent and several pending patent applications on technologies that eventually were adopted as part of the industry standard."

Prepared Statement of the Federal Trade Commission Before the Committee on the Judiciary, Subcommittee on Antitrust, Competition and Business and Consumer Rights, United States Senate, Concerning an Overview of Federal Trade Commission Antitrust Activities, 2002 FTC LEXIS 53 at *29-30 (September 19, 2002) (emphasis supplied).

It is the Commission, not Complaint Counsel, that has "the authority to frame the charges" in a Part III proceeding. *Capital Records Distributing Corp.*, 58 F.T.C. 1170 (1961). In *Champion Home Builders Co.*, 99 F.T.C. 397 (1982), for example, the Complaint alleged that the respondent had failed to disclose material facts to purchasers of its furnaces. Complaint Counsel tried later to argue that respondent had also failed to disclose certain safety hazards, contending, as here, that the Complaint had only "enumerated . . . examples, not an exhaustive list," of misrepresentations. *Id*. The Commission disagreed and held that "[w]here a proposed amendment alters the 'underlying theory' of the original complaint, . . . the Commission must make the determination whether to amend the complaint because only the Commission is authorized to determine whether there is reason to believe that the law has been violated

and whether a proceeding on those amended charges would be in the public interest." *Accord*, *In re Standard Camera Corp.*, 63 F.T.C. 1238 (1962) (holding that where Complaint had charged Respondent with misleading camera purchasers into believing that its cameras were manufactured in the U.S., Complaint Counsel could not proceed – without Commission approval – on a theory that purchasers were misled into believing that cameras were manufactured outside the Soviet bloc).

In short, and because Rambus would be prejudiced by Complaint Counsel's last-minute effort to abandon the "core allegation" that has guided the pre-trial process, Complaint Counsel should not be allowed to avoid the "fundamental issues" that form the basis for this motion.[1]

B. <u>The JEDEC Patent Policy Was So Ambiguously Defined, Inconsistently Explained And Inconsistently Followed That Its Alleged Breach By Rambus Cannot Form The Basis For Antitrust Liability</u>.

Throughout their opposition papers, Complaint Counsel respond to a motion that Rambus did not bring. Rambus does not ask Your Honor to hold as a matter of law that the JEDEC patent policy did, or did not, require the disclosure of patents or patent applications. Rambus does not ask Your Honor to hold as a matter of law that IBM did, or did not, violate the JEDEC patent policy when it announced that its view "has been to ignore [the] patent disclosure rule because their attorneys have advised them that . . . a

[1] Because of an agreed-upon limitation of 16 pages for this reply, Rambus will not here address the legal and factual holes in Complaint Counsel's new theory. While Rambus believes that Complaint Counsel would have no greater success in proving their new case than they have had with their old one, this motion is addressed to the "core allegation" and "fundamental issues" identified by Judge Timony.

listing may be construed as complete," Declaration of Steven M. Perry ("Perry Decl."), ex. 20, or that Hewlett-Packard and Motorola did, or did not, violate the patent policy when they took the position that patent applications were "company confidential" information that need not be disclosed to JEDEC. *Id*., exs. 23-24. Rambus also does not ask Your Honor to hold as a matter of law that the FTC is bound by its own acknowledgment in July 1996 that the EIA's Legal Guides, which governed JEDEC meetings, "*encourage* the early voluntary disclosure of patents, but do not *require* a certification by participating companies regarding potentially conflicting patent interests." *Id*., ex. 29. Similarly, Rambus does not ask Your Honor now to hold that the February 2000 statements by JEDEC Secretary Kenneth McGhee that, as discussed at a JEDEC Board meeting, the disclosure of patent applications goes "one step beyond the patent policy" and disclosure of patents "cannot be required of members at meetings," *id*., ex. 27, are binding on JEDEC as an official statement of its policy.

Instead, Rambus's motion relies upon the overwhelming evidence that the disclosure obligations that are described in the Complaint are not to be found anywhere in writing, were not communicated to JEDEC members at meetings, and were not consistently enforced by JEDEC nor clearly understood by many of its members. Rambus's motion relies upon that evidence – little of which is disputed by Complaint Counsel – as support for the proposition that antitrust liability cannot arise from an alleged breach of those alleged obligations, because the purported JEDEC obligations were too amorphous, ambiguous, and "staggeringly" devoid of necessary details to support the imposition of antitrust remedies. *See* Rambus Mem., pp. 12-16; *see also*

Rambus Inc. v. Infineon Technologies AG, 318 F.3d 1081, 1102 (Fed. Cir. 2003) ("[T]here is a staggering lack of defining details in the EIA/JEDEC patent policy. . . . A policy that does not define clearly what, when, how, and to whom the members must disclose does not provide a firm basis for the disclosure duty necessary for a fraud verdict.").[2]

In response to *that* proposition, Complaint Counsel have little to say. While they cite the testimony of *some* witnesses that members had a responsibility to disclose pending patent applications to JEDEC, that evidence only adds to the cornucopia of different understandings that JEDEC members – and JEDEC leaders – possessed. Complaint Counsel's *principal* argument is that regardless of what its fellow members understood, *Rambus* supposedly understood that the disclosure obligations extended to patent applications. To make that argument, Complaint Counsel miscite deposition testimony by Richard Crisp, Rambus's JEDEC representative between 1992 and 1996. Complaint Counsel contend that Mr. Crisp testified that he understood that JEDEC required *all* members to disclose pending patent applications that related to standards under discussion. Opp., p. 81. Complaint Counsel also tell Your Honor that Rambus's arguments to the contrary are "breathtaking in their sheer audacity." *Id*., p. 80. In fact, the only thing "breathtaking" is Complaint Counsel's misuse of deposition testimony.

[2] In responding to the Federal Circuit's decision in the *Infineon* matter, Complaint Counsel "request[ed]" that Your Honor "give equal consideration to the views expressed by the dissent, as well as the views expressed in Infineon's pending petition for en banc review and . . . three amicus briefs," all of which were attached to Complaint Counsel's brief. Regardless of whether that request was appropriate while the petition for en banc review was pending, it is an invitation to error at this point, as the petition for review was denied on April 4, 2003.

They rely on pages 851-853 of Crisp's 8/10/01 deposition in the *Micron* case, where Mr. Crisp testified that he believes that he saw JEDEC Manual 21-I, and its reference to "pending patents," in 1995. *Id*., pp. 81-82. Complaint Counsel *leave out the very next page* in the transcript, where Crisp describes that he *also* received the *Members' Manual* at the same time and that he concluded, after reviewing *both* manuals, that as the *Members' Manual* expressly stated, only *presenters* were obligated to disclose patent applications. The missing page is attached as Attachment A.[3]

Complaint Counsel's rhetoric and miscitations to testimony do not satisfy its burden of demonstrating a genuine issue of material fact about whether the JEDEC disclosure duty *described in the Complaint* was sufficiently clear to support the extraordinary remedy sought here. Summary decision on this issue should be granted.

C. Complaint Counsel Must Prove That JEDEC And Its Members Relied Upon Rambus's Alleged Omissions.

Complaint Counsel's argument that they need not prove reliance is based on a misunderstanding of both the law and their own case. Complaint Counsel's case rests on the proposition that Rambus's "lack of disclosure . . . . had a material effect on JEDEC's determination to adopt a standard that read on Rambus's patents." Opp., pp. 95-96. As a simple matter of logic and fact, the alleged "lack of disclosure" by

[3] Complaint Counsel concede that Rambus never *presented* its technology for standardization. *See* Complaint Counsel's Rule 3.24(a)(2) Separate Statement, p. 20. Moreover, although not raised in this motion, it should be noted that Rambus had not filed any (undisclosed) patent applications prior to its departure from JEDEC whose claims, if issued, would have necessarily been infringed by the use or manufacture of a JEDEC-compliant SDRAM or DDR SDRAM device.

Rambus could have affected "JEDEC's determination" only if it affected the perceptions and understandings on the basis of which JEDEC made its determination. There is no other mechanism by which the alleged lack of disclosure could have affected that determination. Reliance on the alleged lack of disclosure is thus a necessary step in the chain of causation that Complaint Counsel must prove, as Judge Timony recognized in a prior ruling: "[i]f JEDEC participants were aware that Rambus might obtain patent claims covering technologies being incorporated into the JEDEC standard, Rambus's alleged failure to disclose would be immaterial." Mitsubishi Op., p. 4. *See generally Hardee's of Maumelle v. Hardee's Food Systems, Inc.*, 31 F.3d 573 (7th Cir. 1994) (reliance supplies "the causal link" between defendant's omission and plaintiff's harm).

Complaint Counsel attempt to confuse this straightforward issue with quotations from inapplicable cases. Complaint Counsel argue that they need show only that the lack of disclosure was a "material cause" of JEDEC's decision, Opp., p. 95, and that they "need not exhaust all possible alternative" causes. *Id*. But the cases they cite are addressed to the very different issue that arises when a plaintiff proves that the defendant's conduct in fact contributed to the outcome at issue and the defendant defends on the ground that other factors (what Complaint Counsel and the cases they cite call "alternative sources of injury") also contributed to that outcome or injury. Under those circumstances, the cited cases say that it is enough that the defendant's conduct in fact made a "material" contribution to the injury, even if other factors might also have contributed to it. *See Zenith Radio Corp v Hazeltine Research, Inc.*, 395 U.S. 100 (1969) (Zenith can obtain relief under antitrust laws if illegal restraints in patent pool excluded it

from Canadian market even though other factors might also have impaired its success there); *Law v. NCAA*, 5 F. Supp. 2d 921, 927 (D. Kan. 1998) (once plaintiffs prove defendant's illegal conduct was a material cause of "some" of their injury, the fact that there might also have been other causes goes to remedy).

In sum, none of the cases cited by Complaint Counsel stands for the proposition that they can *dispense* with proving an essential step in the causal connection between the conduct they complain of and the injury they allege; to the contrary, the case law requires Complaint Counsel to prove all such steps in order to establish that the alleged "lack of disclosure" was in fact "a material cause" of "JEDEC's determination." *See generally Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059, 1070-71 (Fed. Cir.1998) (antitrust claim based on fraudulent omission or misrepresentation must include a "clear showing of reliance").

D. Complaint Counsel Have Not Satisfied Their Burden Under Rule 3.24(a)(2) To Submit Substantial Evidence Of Material Disputed Facts On The Reliance Issue.

Rambus's motion seeks summary decision in part on the ground that JEDEC members did not rely on Rambus's "silence" in adopting the SDRAM and DDR SDRAM standards. Rambus placed into the record substantial evidence that JEDEC members knew that Rambus might obtain patent claims covering the technologies at issue here, and that they knew that Rambus had declined to discuss its patent position at JEDEC. *See* Rambus Motion, pp. 37-58 (citations to JEDEC minutes, internal documents of JEDEC members, and deposition testimony by JEDEC committee chairmen that JEDEC was well

aware – as early as 1992 and certainly by 1995 – of potential patent issues involving Rambus's intellectual property and well aware that Rambus "was trying to license their intellectual property for a fee . . . ." Perry Decl., ex. 23.).

In response, it was Complaint Counsel's burden to come forward with substantial admissible evidence that JEDEC members did, *in fact*, rely in some material way on Rambus's conduct. They offer *no* such evidence, however. Instead, they argue that Rambus stymied JEDEC's efforts to learn more about Rambus's intellectual property. For example, they assert that Mr. Crisp's refusal to comment at the May 1992 JEDEC meeting about whether Rambus held patents on the "two-bank" design being considered for inclusion in the SDRAM standard may have lulled JEDEC members into believing that Rambus "had nothing to say." Opp., p. 102. That speculation does nothing, however, to rebut the testimony of IBM's Gordon Kelley – *who had asked the question to Mr. Crisp* – that Crisp's response led him to warn dozens of Siemens and IBM engineers in June 1992 that they "ought to look into patent problems regarding their design of the synchronous DRAM" and that "the patents that may be a problem were held by Motorola and Rambus." Perry Decl., ex. 25. Complaint Counsel's *argument* that Mr. Crisp's refusal to comment "lulled" JEDEC is thus no substitute for *testimony* that it had such an effect, especially in light of Kelly's sworn testimony to the contrary.

In a similar vein, Complaint Counsel attempt to dismiss Rambus's September 1995 statement about whether the "SyncLink" technology infringed Rambus's patents as "vague and misleading." Opp., p. 101. As Your Honor may recall, Rambus informed JEDEC that it "elect[ed] not to make a specific comment on our intellectual property

position relative to the SyncLink proposal. Our presence or silence at committee meetings does not constitute an endorsement of any proposal under the committee's consideration *nor does it make any statement regarding potential infringement of Rambus intellectual property*." Perry Decl., ex. 52-53 (emphasis added). In response, Complaint Counsel offer no affidavit, deposition excerpt, or document to suggest that this statement misled *anyone*. Instead, they simply *argue* that Rambus "once again . . . fraudulently thwarted legitimate attempts by JEDEC and other organizations to determine if there were any 'patent problems' associated with Rambus technology." Opp., p. 101.

Complaint Counsel's rhetoric is no substitute for evidence. Under 16 C.F.R. § 3.24(a)(2), "a party opposing a motion [for summary decision] may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, *must* set forth specific facts showing that there is a genuine issue of fact for trial." (emphasis added). On the question of whether JEDEC members *in fact* relied upon anything Rambus said or did not say while a JEDEC member, Complaint Counsel have not met their burden, and summary decision is appropriate.[4]

E. Partial Summary Decision Is Required As To DDR SDRAM.

In its opening brief, Rambus demonstrated that (1) JEDEC's disclosure duty was triggered *at the earliest* only when a standard was formally proposed for committee consideration, and (2) the first such proposal with respect to the DDR SDRAM standard

[4] Rambus also notes that in the relevant portion of Complaint Counsel's Rule 3.24(a)(2) Separate Statement of Material Facts, they set out very few, if any, *facts* in response to Rambus's Statement of Undisputed Facts and only stated that the particular document or testimony cited by Rambus "speaks for itself." *See* pp. 32-59. The material facts on pages 32-59 should therefore be deemed undisputed.

was Fujitsu's December 1996 "first showing" on DDR SDRAM, which occurred more than a year after Rambus had attended its last JEDEC meeting. Complaint Counsel do not contend that Rambus owed any disclosure obligations to JEDEC after it had withdrawn as a JEDEC member. Thus, to avoid summary decision as to DDR SDRAM, Complaint Counsel were required to produce admissible evidence showing either that the JEDEC disclosure duty was triggered at some point prior to formal proposal of a standard, or that features of the DDR SDRAM standard that were covered by Rambus's patents were formally proposed for standardization before Rambus left JEDEC. Complaint Counsel fall far short of establishing a triable issue of fact on either point.

On the issue of when the JEDEC disclosure duty was triggered, Rambus relied on the testimony of the Chairman of JEDEC 42.3, Gordon Kelley, who stated without qualification that the duty to disclose was triggered only during the formal balloting of a proposed standard. Perry Decl., ex. 16. Complaint Counsel cite exactly *one* piece of evidence in an attempt to show that the duty to disclose was triggered at some earlier point in time: additional testimony from Mr. Kelley himself explaining what his *own* practice was, as IBM's JEDEC representative. Mr. Kelley testified that "Usually what happened – and *I'm thinking of my own instances that happened when I recognized* that a new proposal was going to be impacted by a patent that IBM held that I was aware of, and *I* would then make the committee aware of that as soon as I knew that." *Id.* (emphasis added). Complaint Counsel falsely portray this testimony as a general comment on the "usual practice" at JEDEC (Opp., p. 109), but Mr. Kelley clearly distinguished in his testimony between what his own *personal* practice was as a JEDEC

representative and what the JEDEC rules *required*. *Id*. Because Complaint Counsel offer no evidence that contradicts this testimony, they have failed to raise a triable issue of fact as to when the JEDEC disclosure duty was triggered.[5]

Nor have Complaint Counsel raised a triable issue of fact as to when the DDR SDRAM standard was first formally presented for committee consideration. Rambus demonstrated in its opening brief that as JEDEC's Chairman wrote in 1998, the first JEDEC presentation of what became the DDR SDRAM standard occurred in December 1996. Perry Decl., exs. 77-99. Complaint Counsel's sole response is to argue that certain "technologies" and "concepts" allegedly incorporated into the DDR SDRAM standard were "discuss[ed]" and "debate[d]" at JEDEC before December 1996. That argument, however, was squarely addressed and rejected by all three Federal Circuit panel members in *Infineon*, and by Judge Payne as well, who granted Rambus's motion for JMOL with respect to the DDR SDRAM standard. Both Judge Payne and a unanimous Federal Circuit held that "JEDEC did not begin formal work on the DDR-SDRAM standard until December 1996," so that no duty to disclose arose with respect to the DDR SDRAM standard prior to that time. *Rambus Inc*., 318 F.3d at 1105; *Rambus, Inc. v. Infineon Techs. AG*, 164 F. Supp. 2d 743, 765 (E.D. Va. 2001).

Because these rulings resolve in Rambus's favor the only issues raised by this

[5] Complaint Counsel also place into the record, but do not cite in their brief, some vague testimony by Reese Brown (who maintained the "item log" for JEDEC 42.3 committee presentations) about when he would have "expected" disclosure. Opp., p. 111 n.73. They fail to submit Mr. Brown's very recent and very unequivocal testimony, however, that the policy did not require patent disclosure even *at the time of a first presentation*. *See* attachment B.

motion with respect to the DDR SDRAM standard, Complaint Counsel hope to persuade Your Honor that the rulings are "only marginally relevant to the issues here." Opp., p. 116. The three bases Complaint Counsel offer to support this argument reveal just how little remains of Complaint Counsel's case in the wake of the *Infineon* decision.

First, Complaint Counsel contend that "the ruling involved a different issue of law" – namely, whether the elements of a fraud claim rather than an antitrust claim had been established. Opp., p. 116. However, this motion turns on whether there is any triable issue of *fact* as to when the JEDEC disclosure duty *was triggered* with respect to the DDR SDRAM standard. Both the district court and the Federal Circuit ruled decisively that any such disclosure duty was not triggered until December 1996, long after Rambus had left JEDEC. That factual issue is an essential predicate of both the fraud claim in *Infineon* and the antitrust violations Complaint Counsel have alleged here.[6]

Second, Complaint Counsel assert that the *Infineon* courts' rulings were rendered on "a more limited factual record" than is available here. Opp., p. 116. But Complaint Counsel do not point to any new evidence that calls into question the soundness of those rulings. Judge Payne considered many of the same pre-December 1996 presentations Complaint Counsel rely on (Opp., pp. 111-14) and concluded that they either "took place in relation to the *SDRAM* standardization effort, not to the *DDR SDRAM* standard," or

[6] Complaint Counsel attempt to escape the *Infineon* holding by again asserting (erroneously) that their case does not hinge on proof that Rambus violated JEDEC's disclosure rules. Opp., p. 116 & n.95. Even if that assertion were timely and did not impinge on the Commission's authority to frame the Complaint, Rambus would still be entitled to partial summary decision on the issue framed by its motion: whether Rambus violated any JEDEC disclosure duty with respect to the DDR SDRAM standard. At a minimum, the Court should remove *that* issue from this case.

were made for informational purposes only and thus triggered no disclosure duty of any kind. 164 F. Supp. at 766. Moreover, while Complaint Counsel cite the minutes of certain JEDEC meetings where various presentations were made, they offer no *evidence* to establish that the "technologies" or "concepts" discussed were ever incorporated into the DDR SDRAM standard. Their *argument* that the technologies are "the same" as those later standardized does nothing to meet their burden on this motion.[7]

Indeed, as Rambus pointed out in its opening brief, the only new evidence merely confirms the correctness of the result in *Infineon*. A newly produced March 1998 e-mail from Desi Rhoden (the Chairman of the JEDEC Board of Directors) states that JEDEC's DDR SDRAM standardization work started in December 1996, after Rambus had left JEDEC, and a March 1997 IBM document references the December 1996 date as well. *See* Rambus Motion, p. 61. Complaint Counsel do not address these new items of evidence in their Opposition.

Finally, Complaint Counsel argue that the *Infineon* rulings were rendered under a heightened standard of proof that is not applicable here. Even if this assertion were correct (and Rambus contends otherwise), Complaint Counsel have not identified any respect in which Infineon might have prevailed under a lower standard of proof. The

[7] In fact, the cited presentations do not reflect technologies later incorporated into the DDR SDRAM standard. The September 1994 NEC presentation, for example, involved a "PLL," not the "DLL" later included in the standard. Even assuming the two to be equivalent, as Complaint Counsel may contend, the NEC presentation did not involve a PLL *on the chip*, while the standard later required an *on-chip* DLL. While Rambus could raise similar problems with each of the cited presentations, the point is that Complaint Counsel's mere *assertions* that the features are "the same" are not admissible for any purpose and carry no weight.

evidence introduced at trial in *Infineon*, and the evidence produced here, demonstrates unequivocally that JEDEC's disclosure duty was not triggered with respect to the DDR SDRAM standard until December 1996 at the earliest, and that Rambus had left JEDEC well before then. Thus, regardless of whether the applicable burden of proof is a preponderance of the evidence or a "clear and convincing" standard, Complaint Counsel have not shown that a triable issue of fact exists on the issue whether Rambus violated JEDEC's disclosure rules with respect to the DDR SDRAM standard. Accordingly, the Court should grant partial summary decision for Rambus on this issue.

III. CONCLUSION

For all of the foregoing reasons, Rambus's Motion for Summary Decision should be granted.

DATED: April __, 2003 Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

CERTIFICATION

I, Jacqueline M. Haberer, hereby certify that the electronic copy of the *Reply Memorandum by Respondent Rambus Inc. in Support of Motion for Summary Decision (Corrected Version)* accompanying this certification is a true and correct copy of the paper version that is being filed with the Secretary of the Commission on April 9, 2003 by other means:

Jacqueline M. Haberer
April 9, 2003

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

CERTIFICATE OF SERVICE

I, Jacqueline M. Haberer, hereby certify that on April 9, 2003, I caused a true and correct copy of the *Reply Memorandum by Respondent Rambus Inc. in Support of Motion for Summary Decision (Corrected Version)* to be served on the following persons by hand delivery:

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