

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	<u>PUBLIC</u>
)	
RAMBUS INC.,)	
)	
a corporation)	Docket No. 9302
)	

**NON-PARTY MOSAID TECHNOLOGIES INCORPORATED'S
MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS**

Rambus subpoenaed certain documents from non-party Betty Prince. Among her many positions and experiences in the semiconductor-memory industry, Dr. Prince is a board member of non-party MOSAID Technologies Incorporated. Consequently she had and produced (subject to the protective order) certain internal MOSAID documents, including documents containing sensitive, proprietary, and secret MOSAID information. Rambus has given Dr. Prince notice that it may use some of MOSAID's internal documents during the hearing in this matter. General disclosure of two of these documents is likely to cause serious harm to MOSAID. Therefore, MOSAID respectfully moves for *in camera* treatment of two confidential documents (the "MOSAID Documents").¹

MOSAID requests that, should the harmful effects of the public disclosure of the MOSAID Documents not be clear from the existing record, the Court err on the side of granting

¹ This motion is supported by a Confidential Declaration of William R. Middleton, which has as attachments A & B the documents for which MOSAID seeks *in camera* protection.

the documents *in camera* treatment, with the understanding that this designation will be subject to further review as the case progresses.

Background

MOSAID is a Canadian company located near Ottawa. MOSAID has a substantial portfolio of patents on inventions made by its employees, importantly including patents relating to memory chips. The licensing of these patents to semiconductor companies has become an important part of MOSAID's business. As stated at page 6 of the MOSAID 2002 Annual Report:

Now, with six licenses signed, this newly developed business line has generated more than \$90 million in high-margin revenue for the Company, including \$30,541,000 in this past fiscal year. Even so, this current group of licensees to MOSAID's portfolio represents only about 20% of the commodity DRAM market. Another 11 companies have been advised that, based on investigation of their devices, their products employ patented MOSAID technology, and licensing negotiations have ensued with several of them. Litigation was initiated against Samsung Electronics Co. Ltd., one of the 11 during this past fiscal year when negotiations failed to produce an agreement.

Since the publication of this Annual Report, Infineon Technologies has brought a declaratory-judgment action against MOSAID regarding the same patents at issue in the Samsung litigation. MOSAID is currently engaged in patent-licensing negotiations with a number of companies. Middleton Decl. at ¶ 2-3.

The MOSAID Documents contain information that relates to MOSAID's patent-licensing business. As such, public disclosure of these two documents would cause serious harm to MOSAID.

MOSAID has maintained the confidentiality of the MOSAID Documents precisely to avoid the serious competitive injury that would result upon their public disclosure. These documents have not been disclosed outside MOSAID and were distributed only to MOSAID

board members and officers. Middleton Decl. ¶ 8. Dr. Prince only produced the MOSAID Documents because she was required to do so by a Rambus subpoena. Upon producing the emails Dr. Prince clearly marked them as "Restricted Confidential, Outside Counsel Only" under the protective order. Thus, MOSAID has uniformly treated this highly proprietary information as confidential.

I. The MOSAID Documents Warrant *In Camera* Treatment Under The Federal Trade Commission's Rules Of Practice

The information in the MOSAID Documents is sufficiently material to MOSAID's patent-licensing business and sufficiently secret that disclosure would result in serious competitive injury to MOSAID. The countervailing interest in public disclosure of this information does not outweigh the likelihood of serious competitive injury to MOSAID. Therefore, the MOSAID Documents warrant *in camera* treatment.

A. Disclosure Of The MOSAID Documents Would Result In Serious Competitive Injury To MOSAID

The MOSAID Documents are two emails from Dr. Prince. They include information that relates to MOSAID's ongoing licensing efforts. Public disclosure of this information would result in serious competitive injury to MOSAID. Other companies in the memory business would gain valuable insight into MOSAID's licensing strategy and JEDEC strategy -- all to MOSAID's serious detriment. Specifically, MOSAID seeks to have the following Bates numbered pages given *in camera* treatment: MOSAID Document BP-03667-71 and MOSAID Document BP-03643-44.

B. The Interest In Public Disclosure Of The MOSAID Documents Is Outweighed By The Likelihood Of Serious Competitive Injury To MOSAID, A Third Party In This Proceeding

As a third party, MOSAID's request for *in camera* treatment of its documents deserves "special solicitude." *See Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) (order granting extension of *in camera* treatment to sales statistics over five years old). As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests. *Id.* MOSAID's status as a third-party bystander presents this Court with an appropriate case in which to grant *in camera* treatment.

A public understanding of this proceeding does not depend on access to the documents produced by MOSAID, a third party in this proceeding. Public access to Dr. Prince's emails would not further the aims of the Commission's investigation in this matter. With this motion MOSAID is seeking *in camera* treatment for only two documents. The public record of this proceeding will not suffer if these documents are granted *in camera* treatment. In contrast, MOSAID would suffer serious competitive harm if the MOSAID Documents were publicly disclosed. Thus, the interest in public disclosure of the documents is outweighed by the likelihood of serious competitive injury to MOSAID.

C. The MOSAID Documents Warrant In Camera Treatment Until Confidential Technology Is Licensed And Ongoing Litigation Ends.

To protect MOSAID Technologies ongoing interest in its licensing efforts the two emails should be afforded *in camera* protection indefinitely, until confidential technology is licensed under MOSAID's patents and certain ongoing litigation ends.

II. Conclusion

The MOSAID Documents clearly meet the standard for *in camera* protection under the Commission Rules of Practice and relevant FTC rulings. The information in the MOSAID Documents is sufficiently material to MOSAID's patent-licensing business and sufficiently secret

that disclosure would result in serious competitive injury to MOSAID. Moreover, the countervailing interest in public disclosure of this information does not outweigh the serious likelihood of serious competitive injury to MOSAID, a third party in this proceeding. Accordingly, this Court should grant the designated MOSAID Documents *in camera* protection.

DATED: April 21, 2003

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

**DECLARATION OF WILLIAM R. MIDDLETON IN SUPPORT OF
MOSAID TECHNOLOGIES INCORPORATED'S
MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS**

I, William R. Middleton, declare as follows:

1. I am Senior Corporate Counsel of MOSAID Technologies Incorporated (“MOSAID”).
2. MOSAID Technologies is a corporation under the laws of Ontario, Canada, and located near Ottawa. MOSAID has a substantial portfolio of patents on inventions made by its employees, importantly including patents relating to memory chips. The licensing of these patents to semiconductor companies has become an important part of MOSAID's business. As stated at page 6 of the MOSAID 2002 Annual Report:

Now, with six licenses signed, this newly developed business line has generated more than \$90 million in high-margin revenue for the Company, including \$30,541,000 in this past fiscal year. Even so, this current group of licensees to MOSAID's portfolio represents only about 20% of the commodity DRAM market. Another 11 companies have been advised that, based on investigation of their devices, their products employ patented MOSAID technology, and licensing negotiations have ensued with several of them. Litigation was initiated against Samsung Electronics Co. Ltd., one of the 11 during this past fiscal year when negotiations failed to produce an agreement.

3. Since the publication of this Annual Report, Infineon Technologies has brought a declaratory-judgment action against MOSAID regarding the same patents at issue in the

Samsung litigation. MOSAID is currently engaged in patent-licensing negotiations with a number of companies.

4. The document with control number BP-03667-71 (Attachment A) in this proceeding is an email written by Dr. Prince to MOSAID board members Dick Foss, Tom Csathy, Bob Harland, John Millard, and Debbie Weinstein and copied to MOSAID's CEO George Cwynar. (Mr. Foss subsequently retired from the board.) It forwards an email exchange between Dr. Prince and Peter Gillingham, MOSAID's Vice President and General Manager of the Intellectual Property Division. These emails discuss MOSAID's approach towards licensing confidential technology. These topics are sensitive issues for MOSAID in its patent-licensing business.

5. The public disclosure of this document would seriously hurt MOSAID by revealing sensitive information about MOSAID's licensing strategy. The public disclosure of this email further would seriously hurt MOSAID in its licensing activities in general and in its ongoing litigation.

6. Document BP-03643-44 (Attachment B) is an email exchange between Dr. Prince another MOSAID board member, Dick Foss. It contains sensitive information about MOSAID's patent-licensing activities.

7. The public disclosure of this document would seriously hurt MOSAID in the prosecution and possible settlement of its ongoing litigation.

8. These two documents have not been disclosed outside MOSAID and were distributed only to MOSAID board members and officers.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated April __, 2003, in Kanata, Ontario, Canada.

William R. Middleton

**ATTACHMENTS A& B
REDACTED**

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

In the Matter of)	
)	
RAMBUS INC.,)	
)	
a corporation,)	Docket No. 3902
)	
)	

ORDER

Upon the motion of MOSAID Technologies Incorporated, and for good cause shown, **IT IS HEREBY ORDERED** that the following documents are to be provided *in camera* treatment: BP 03667-71, BP 03643-44, and the Declaration of William R. Middleton dated April 14, 2003.

ORDERED:

Stephen J. McGuire
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I certify that on April 21, 2003, I served by hand delivery and mail NON-PARTY MOSAID TECHNOLOGIES INCORPORATED'S MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS and DECLARATION OF WILLIAM R. MIDDLETON IN SUPPORT OF MOSAID TECHNOLOGIES INCORPORATED'S MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS on the following counsel to the parties to this proceeding:

The ALJ

The Honorable Stephen J. McGuire
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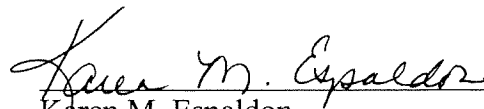
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and by facsimile and mail to:

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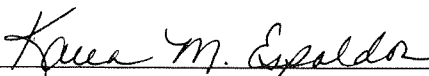
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COPY CERTIFICATION

I certify that the electronic version of the NON-PARTY MOSAID TECHNOLOGIES INCORPORATED'S MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS and DECLARATION OF WILLIAM R. MIDDLETON IN SUPPORT OF NON-PARTY MOSAID TECHNOLOGIES INCORPORATED'S MOTION FOR *IN CAMERA* PROTECTION OF DOCUMENTS filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Dated April 21, 2003

By:



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