

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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

ORDER GRANTING THE MOTION
OF NON-PARTY MITSUBISHI ELECTRIC CORP.
TO ENFORCE PROTECTIVE ORDER

On April 12, 2004, Mitsubishi Electric Corp. (“Mitsubishi”) filed a motion styled “Motion of Non-Party Mitsubishi Electric Corporation To Enforce Protective Order” (“Motion”). The Motion argues that certain documents Mitsubishi produced to Rambus are “Discovery Material” covered by the use restrictions in the August 5, 2002 Protective Order issued by Administrative Law Judge Timony (“Protective Order”), and requests that the Commission issue an order adopting that position and requiring Rambus to advise Mitsubishi when and to whom Rambus or its counsel has disclosed those documents. On April 19, 2004, Rambus filed its answer opposing that Motion, supported by the Declaration of Steven M. Perry. On April 23, 2004, Mitsubishi filed a motion for leave to file a reply along with a copy of that reply. On October 4, 2004, the Commission issued an order inviting Complaint Counsel to file a brief expressing their views on this Motion. Complaint Counsel filed their brief on October 18, 2004. Rambus filed a motion for leave to file a response to Complaint Counsel’s brief, with a copy of the brief attached, on October 26, 2004. Mitsubishi filed a motion for leave to file a response to Rambus’s additional brief, with a copy of the brief attached, on November 9, 2004.¹

To resolve Mitsubishi’s Motion, the Commission must determine whether documents that Rambus obtained from Mitsubishi are covered by the terms of the Protective Order. The record clearly shows that Rambus served a discovery subpoena on Mitsubishi for a variety of documents. Many of the subpoenaed documents were located in Japan and were claimed by Mitsubishi to be beyond the Commission’s jurisdiction. Mitsubishi’s Motion to Quash that subpoena was denied by the Administrative Law Judge on November 12, 2002. Thereafter,

¹ The motions of Rambus and Mitsubishi seeking leave to file additional briefs are hereby **GRANTED**.

Mitsubishi and Rambus negotiated an agreement to resolve their discovery dispute. Pursuant to that agreement, Mitsubishi produced the documents at issue here to Rambus in February, 2003.

Whatever the exact terms of the agreement between Rambus and Mitsubishi, the Commission's discovery process had a substantial impact on Mitsubishi's decision to produce the documents to Rambus. The Commission expressly finds that these disputed materials are "documents produced pursuant to compulsory process or *voluntarily in lieu thereof* . . . by a Third Party in connection with discovery in this Matter" within the meaning of Paragraph 1.m. of the Protective Order (definition of the phrase "Discovery Material") (emphasis supplied). Admissions contained in Rambus's response to this Motion indicate that Rambus has violated the express terms of Paragraph 2 of the Protective Order, which states: "Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose."²

Mitsubishi asks only that the Commission order Rambus to identify fully all of its disclosures of Mitsubishi's Discovery Materials for purposes not permitted by Paragraph 2 of the Protective Order. The extent to which Rambus may have violated the Protective Order cannot be determined on this record and it is not necessary for the Commission to resolve that issue in order to decide this Motion. Accordingly,

IT IS ORDERED THAT the Motion of Non-Party Mitsubishi Electric Corporation To Enforce Protective Order be, and it hereby is, **GRANTED**;

IT IS FURTHER ORDERED THAT, on or before December 16, 2004, Rambus shall file with the Commission and serve upon Mitsubishi a statement under oath identifying and describing fully each use or disclosure by Rambus or its counsel of Mitsubishi's Discovery Materials for a purpose other than the purposes of this Matter. The information identifying and describing each such use or disclosure shall at a minimum include: the name and address of each person or entity to which such materials were disclosed or by which such materials were used; identification of the materials disclosed or used; the reason or purpose for disclosure or use; and the date of the disclosure or use.

By the Commission.

Donald S. Clark
Secretary

ISSUED: December 6, 2004

² It is not necessary to reach the issue of whether any of these materials are or were either "Confidential" or "Restricted Confidential" within the meaning of such Protective Order.