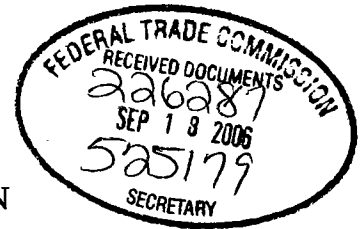


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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DOCKET NO. 9302

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IN THE MATTER OF  
RAMBUS INCORPORATED

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**MOTION OF GESMER UPDEGROVE LLP AND ANDREW UPDEGROVE FOR  
LEAVE TO FILE AMICI CURIAE BRIEF ON THE ISSUE OF THE APPROPRIATE  
REMEDY FOR RAMBUS'S VIOLATIONS OF THE FTC ACT**

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[PUBLIC]

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September 14, 2006

Pursuant to 16 C.F.R. § 3.52(j), *amici curiae* respectfully move for leave to file an *amicus curiae* brief on the issue of the appropriate remedy for Rambus, Inc.'s ("Rambus") violations of the FTC Act.

*Amici curiae* are Gesmer Updegrave LLP and Andrew Updegrave, an attorney with that law firm. Since 1988, *amici curiae* have represented over sixty standard setting organizations (SSOs), as well as other non-profit organizations that support, promote or advocate in favor of open standards, and previously filed *amicus curiae* briefs on a pro bono basis before the Federal Circuit (Docket Nos. 01-1449, 01-1583, 01-1604, 01-1641, 02-1174, 02-1192; Amicus Brief in Support of Combined Petition for Panel Rehearing, and Rehearing En Banc by Defendants-Cross-Appellants), Supreme Court (Docket No. 03-37; Brief of Amici Curiae in Support of Petition for Writ of Certiorari) and the Federal Trade Commission (Docket No. 9302; Brief of Amici Curiae) in connection with the matters at issue in this proceeding. These previously filed briefs were submitted on behalf of large and diverse groups of SSOs. The last named brief was filed on behalf of 11 accredited and unaccredited SSOs, representing over 8,600 commercial, government, university and non-profit members.

*Amicus curiae* Andrew Updegrave has been the principal attorney at Gesmer Updegrave LLP representing each of the clients referred to above, as well as the author of each of the *amicus curiae* briefs referred to above. He has presented invited testimony in joint hearings of the Federal Trade Commission and the Department of Justice on the topic of "Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy." See Federal Trade Commission, Joint hearings of Federal Trade Commission and Department of Justice Antitrust Division (2002), at <http://www.ftc.gov/opp/intellect/>. He currently serves as a Director of the American National Standards Institute (ANSI), which accredits SSOs in the United States and

represents the United States internationally in many standards venues, as a Director of the Free Standards Group, which sets standards for the Linux operating system, and as a member of the Board of Advisors of HL7, an ANSI-accredited SSO that sets standards for clinical and administrative data in healthcare. He has also served as a member of the ANSI revision committee of the United States National Standards Strategy, and is the founder and editor of ConsortiumInfo.org, a free on-line resource with a global audience, which focuses on the topics of standards, standard setting and related intellectual property and other issues, as well as the Consortium Standards Bulletin, an on-line eJournal with thousands of subscribers throughout the world that addresses the same topics.<sup>1</sup>

*Amici curiae* believe that the maintenance of a robust, trusted and effective standard setting infrastructure are fundamental to the welfare of the nation, and indeed to the continued functioning of the modern, technology based, networked world in which we live. Therefore, *amici curiae* have a unique perspective on how the bad-faith conduct of a company such as Rambus will affect, and has already effected, the standard setting process. The proposed *amici curiae* therefore believe that their perspective on this important case affecting all SSOs will be of assistance to the Commission. Accordingly, the aforementioned organizations move for leave to file an *amicus curiae* brief on the issue of the appropriate remedy for Rambus's violations of the FTC Act.

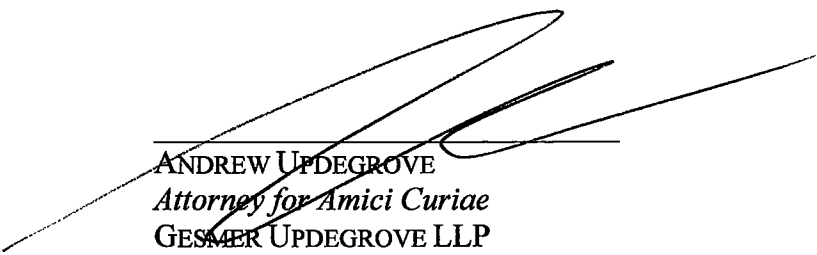
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<sup>1</sup> It must be noted that neither ANSI, the Free Standards Group, nor HL7 has reviewed this motion, or the attached brief. The affiliations and activities above are included only as matters of record intended to indicate the depth of experience and familiarity with standard setting matters of *amici curiae*. Accordingly, no inference may or can be made that any statements made in this brief have been, or would be, endorsed by any of these entities.

Specifically, the proposed *amici curiae* address the matter of the remedy that must be levied by the Commission against Rambus, and the importance that this remedy send a clear message to that company, as well as to all that participate in the standard setting process, that the consequences of bad-faith conduct, if discovered, will significantly exceed the potential gains of engaging in such practices. The *amici curiae* will explain how the remedy imposed by the Commission in this proceeding could serve to either support, or dangerously undermine, the standard setting process, and how the Commission's decision in this regard is likely to affect society and the national interest.

WHEREFORE, the proposed *amici curiae* respectfully request that the Commission grant its motion for leave to file the attached *amicus curiae* brief.

Respectfully submitted,



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Dated: September 14, 2006

## CERTIFICATE OF SERVICE

I hereby certify that, on September 14, 2006, I caused true copies of the foregoing Motion for Leave Brief of Amici Curiae on the Issue of the Appropriate Remedy for Rambus's Violations of the FTC Act, to be served as described below.

Service by overnight delivery of paper copies, including one original, signed version, and 12 copies and by electronic mail, was provided to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room H-159  
Washington, DC 20580

Service of one copy as provided, via first class mail, to:

*Counsel Supporting Complaint*

Richard Dagen, Esq.  
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Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave., NW  
Washington DC 20001

*Administrative Law Judge*

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Chief Administrative Law Judge  
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