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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

4 **In the Matter of**

5 **RAMBUS INCORPORATED,**

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a corporation.

Docket No. 9302

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**NON-PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION
TO RESPONDENT RAMBUS INC.'s MOTION TO COMPEL**

10 **I. INTRODUCTION**

11 Non-party Mitsubishi Electric & Electronics USA, Inc. ("MEUS") hereby
12 opposes the motion to compel filed by Respondent Rambus Inc. ("Rambus") in this proceeding
13 on December 20, 2002. The motion should be denied for a variety of reasons.

14 As an initial matter, Rambus bases its motion solely on a provision in the Federal
15 Trade Commission Rules of Practice for Adjudicative Proceedings ("Rules of Practice")
16 applicable only to parties and, hence, of no moment vis-à-vis MEUS. More fundamentally, the
17 premise that the Rules of Practice authorize the relief Rambus requests here against a non-party
18 is wholly unsupported.

19 In addition, Rambus failed to fulfill its obligation under Rule 3.22(f) of the Rules
20 of Practice to meet and confer with MEUS in an effort in good faith to resolve by agreement the
21 issues raised by this motion prior to filing it. On the contrary, Rambus filed this motion on the
22 very day by which counsel had agreed that MEUS would provide a written response concerning
23 the issues raised by Rambus in this motion. Rambus failed not only to assess that response – as a
24 good faith effort to resolve issues by agreement would require – prior to filing the motion but
25 also to acknowledge in its moving papers its understanding that MEUS was preparing a response
26 and would timely provide it to Rambus that day.

1 Nor is this omission the only material distortion by Rambus of the “facts” upon
2 which its motion is based. For example, Rambus chose not to disclose the fact that MEUS
3 reviewed and produced *thousands* of pages of documents – the majority of MEUS documents
4 responsive to the underlying subpoena – less than ten business days after interlocutory appeal
5 was denied in this proceeding. Declaration Of Terrence H. Cross In Support Of Non-Party
6 Mitsubishi Electric & Electronics USA, Inc.’s Opposition To Respondent Rambus Inc.’s Motion
7 To Compel (“Cross Decl.”), ¶¶ 5-8. Similarly, Rambus claims that “[MEUS] has not produced
8 the files of its longtime JEDEC representative, [Sam] Chen.” Mot. at 2. That claim is false. As
9 explained to Rambus, MEUS has already produced Mr. Chen’s paper correspondence and other
10 paper files. *See* Cross Decl., ¶ 7; Declaration Of John W. Calkins In Support Of Non-Party
11 Mitsubishi Electric & Electronics USA, Inc.’s Opposition To Respondent Rambus Inc.’s Motion
12 To Compel filed in support of this motion (“Calkins Decl.”), ¶ 10, Ex. F.

13 For all these reasons, this motion should be denied.

14 II. FACTS

15 A. Production Of MEUS Documents

16 The subpoena directed to non-party MEUS requires production of all documents
17 generated or received since January 1, 1991 – a period of nearly 12 years – that fall into one of
18 many sweeping categories. Thus, locating, compiling, reviewing, redacting or logging as
19 necessary, and producing documents located throughout MEUS’s organization has proven to be
20 an enormous undertaking. Cross Decl., ¶ 5.

21 MEUS has devoted substantial time and resources to producing documents in this
22 proceeding in a prompt and thorough manner. *Id.* For example, the company’s Assistant
23 General Counsel searched lists of contents for hundreds of boxes of documents in storage near
24 the company’s Sunnyvale facility to identify potentially responsive MEUS documents. *Id.*, ¶ 6.
25 He also worked closely with knowledgeable representatives concerning MEUS offices
26 throughout the country to determine whether those offices have additional responsive documents.

1 *Id.* After locating potentially responsive MEUS documents, the Assistant General Counsel
2 personally reviewed thousands of pages of documents in an effort to produce responsive
3 documents promptly in this proceeding. *Id.*, ¶ 7.

4 As a result of these efforts, MEUS has already produced the majority of its
5 responsive documents to Rambus in two large-scale productions. *Id.*; Calkins Decl., ¶ 3. In late
6 November, MEUS identified and made available to Rambus 19 boxes of potentially responsive
7 documents, resulting in the production of 5,767 pages – each of which the Assistant General
8 Counsel reviewed. Cross Decl., ¶ 7. In early December, the Assistant General Counsel reviewed
9 thousands more pages of documents, resulting in the production of four additional boxes of
10 documents to Rambus. *Id.* These documents included the paper correspondence and other paper
11 files of Sam Chen, who represented MEUS at JEDEC meetings and is its most knowledgeable
12 person concerning JEDEC. *Id.*

13 MEUS continues to identify and review the only responsive documents in the
14 company’s possession that have not yet been produced to Rambus: electronic mail files. *Id.*, ¶ 8.
15 The Assistant General Counsel anticipates completing the search for responsive electronic mail
16 in the near future and producing all such documents (along with a privilege log) in early January,
17 at least a full week in advance of Mr. Chen’s deposition on January 16. *Id.*; *see also* Calkins
18 Decl., ¶ 10, Ex. F. As Rambus was well aware prior to filing its motion on December 20, 2002
19 seeking an order requiring production on or before January 3, 2003, MEUS will be closed for
20 more than one week in connection with the holidays. Cross Decl., ¶ 9 (MEUS closed at noon on
21 December 24, 2002 and will reopen on January 2, 2003); Calkins Decl., ¶¶ 8-9, Exs. D-E
22 (reflecting Rambus’s awareness of this holiday-related shutdown).

23 **B. Efforts To Obtain MELCO Documents For Production**

24 MEUS has no legal right to demand documents from Mitsubishi Electric
25 Corporation (“MELCO”), the Japanese corporate parent of MEUS’s corporate parent. Cross
26 Decl., ¶ 4. Accordingly, after Your Honor denied interlocutory appeal of the finding that MEUS

1 has legal control over documents in MELCO’s exclusive possession (“MELCO documents”) and
2 must therefore produce MELCO documents responsive to Rambus’s subpoena, MEUS asked
3 whether MELCO would provide responsive documents to MEUS for production to Rambus.
4 Calkins Decl., ¶ 5, Ex. A. MELCO has repeatedly declined to provide documents maintained
5 under its exclusive control in Japan to MEUS for production to Rambus in this proceeding. *Id.*,
6 ¶¶ 6-7, Exs. B-C. Because MELCO has denied MEUS access to these documents, MEUS is
7 unable to obtain and produce them.

8 **C. Rambus’s Insincere And Insufficient Effort To Resolve The**
9 **Issues Raised In This Motion By Agreement**

10 The motion addresses three issues: (1) production of remaining MEUS
11 documents (*i.e.*, responsive electronic mail); (2) production of responsive MELCO documents;
12 and (3) a privilege log. Mot. at 2. BJ Watrous, counsel for Rambus, raised the same three issues
13 in electronic mail correspondence on Tuesday, December 17, 2002. Calkins Decl., ¶ 9, Ex. E.
14 That afternoon, John Calkins, counsel for MEUS, spoke with Mr. Watrous, and the two agreed
15 that MEUS would provide a written response later that week (*i.e.*, by Friday, December 20). *See*
16 *id.* (confirming agreement to “send [Mr. Watrous] a letter later this week addressing the three
17 issues [he] raised”). In accordance with that agreement, Mr. Calkins sent Mr. Watrous a letter
18 addressing each of the three issues on December 20, 2002. *Id.*, ¶ 10, Ex. F. That letter stated
19 that “the final production of documents by MEUS will occur in early January – at least a full
20 week in advance of Sam Chen’s deposition on January 16” and that “MEUS will send Rambus a
21 privilege log describing the[] few documents [withheld] and the basis for withholding them in
22 early January, well in advance of Mr. Chen’s deposition.” *Id.*

23 By then, however, Rambus had already prepared and filed its motion. *Id.*, ¶ 11.
24 Rambus did so without assessing the responses to the issues in MEUS’s timely-delivered letter.
25 *Id.* Rambus did so without warning MEUS that it would not wait for a response due that day, as
26 previously agreed – indeed, without any further communications with MEUS whatsoever. *Id.*

1 Rambus did so without disclosing in its moving papers that such an agreement had been reached
2 with MEUS. *Id.* And Rambus did so less than two business days before MEUS would close for
3 the holidays for more than one week, as Rambus knew. *Id.*

4 **III. ARGUMENT**

5 **A. Rambus Cites No Authority Permitting The Relief It Seeks**
6 **Against MEUS.**

7 Rambus brings its motion to compel “[p]ursuant to Rule 3.38(a)(2) of the Federal
8 Trade Commission Rules of Practice For Adjudicative Proceedings.” Mot. at 1. That rule
9 applies exclusively to parties, however, and is inapplicable to MEUS, which is not a party to this
10 proceeding. *See* 16 C.F.R. § 3.38(a)(2) (“If a party fails to respond to or comply as requested
11 with a request for production or access made under § 3.37(a), the discovering party may move
12 for an order to compel production or access in accordance with the request.”) (emphasis added).
13 Moreover, Rambus cannot contend that MEUS has “fail[ed] to respond to or comply as
14 requested with a request for production or access made under § 3.37(a),” a requirement to obtain
15 relief under Rule 3.38(a)(2). *Id.* No such request has been propounded on MEUS in this
16 proceeding. *See* 16 C.F.R. § 3.37(a) (requests for production may be served only “on another
17 party”). Rambus thus bases its motion exclusively on a provision that, on its face, does not apply
18 here. Furthermore, Rambus cites no authority to support its assumption that a party can obtain
19 the particular relief sought in this motion (*i.e.*, an order requiring immediate production of
20 documents to which access has been denied) against a non-party.¹ The motion should be denied.

21

22 ¹ As Rule 3.38(a) addresses parties exclusively, Rule 3.38(b) addresses only parties and
23 their officers and agents. Thus, neither applies to MEUS in this proceeding. Rule 3.38(c) states,
24 in pertinent part, that “in instances where a nonparty fails to comply with a subpoena or order,
25 [the Administrative Law Judge] shall certify to the Commission a request that court enforcement
26 of the subpoena or order be sought.” Rambus has neither demonstrated that court enforcement is
necessary nor requested such relief here.

1 **B. Rambus Failed To Satisfy Its Obligation To Confer With**
2 **MEUS In Good Faith Before Filing This Motion.**

3 Rule 3.22(f) requires the moving party to “confer[] with opposing counsel in an
4 effort in good faith to resolve by agreement the issues raised by the motion” without reaching an
5 agreement before filing the motion. 16 C.F.R. § 3.22(f).

6 Here, rather than complying with this requirement, Rambus filed the motion
7 prematurely even as MEUS was timely responding in writing to correspondence addressing the
8 three issues raised in the motion. In accordance with an agreement reached on December 17 and
9 confirmed in writing on December 18, MEUS provided its written response concerning each of
10 these issues by December 20. Calkins Decl., ¶ 9, Ex. E. Rather than waiting to assess this
11 timely response to determine whether agreement on one or more of the three issues could be
12 reached, Rambus filed its motion on December 20. *Id.*, ¶ 11. Without having seen the response
13 from MEUS, Rambus cannot have known when it filed the motion whether it had been “unable
14 to reach” agreement with MEUS on any of the issues. 16 C.F.R. § 3.22(f). Moreover,
15 unilaterally disregarding a prior agreement and instead filing a motion on the very day that the
16 non-moving non-party promised to – and did – provide a detailed response addressing each issue
17 in the motion undermines any claim that Rambus made a “good faith” effort to resolve these
18 issues. *Id.*

19 Rambus’s conduct in this regard provides an independently sufficient basis for
20 denying its motion. *See, e.g., Prescient Partners, L.P. v. Fieldcrest Cannon, Inc.*, 1998 WL
21 67672 at *4 (S.D.N.Y. Feb. 18, 1998) (denying discovery motion due to failure to satisfy meet
22 and confer requirements).

1 **C. The Requested Relief Is Impracticable And Unwarranted.**

2 **1. MEUS Has Agreed To Provide Much Of What Rambus**
3 **Seeks In A Timely Manner.**

4 The duty to meet and confer in good faith prior to filing a motion exists for a
5 reason: to avoid wasting judicial resources, as Rambus does here. On two of the three issues
6 raised in the motion, the actions Rambus seek to compel vary only slightly from what MEUS has
7 agreed to do. On December 20, MEUS agreed in writing to produce all remaining MEUS
8 documents (*i.e.*, electronic mail) and send Rambus a privilege log in early January. Although
9 Rambus requests an order requiring that MEUS do so no later than January 3, 2003, compliance
10 with such an order would be impracticable. As Rambus knew long before filing its motion,
11 MEUS will not reopen after the holidays until January 2, 2003. MEUS cannot complete its
12 production of responsive MEUS electronic mail and provide a privilege log one day later. For
13 this reason, MEUS agreed to accomplish these tasks in early January, at least a week in advance
14 of Mr. Chen's deposition on January 16. Calkins Decl., ¶ 10, Ex. F. Rambus has shown no
15 compelling need to receive these materials any further in advance of Mr. Chen's deposition.
16 Accordingly, MEUS's written agreement obviates the need for an order.

17 **2. MEUS Cannot Produce MELCO Documents.**

18 Rambus also seeks an order that MEUS must produce all responsive documents in
19 the possession of MELCO in Japan no later than January 3, 2003. In light of the holiday
20 shutdown, the geographical distance, and the size of MELCO, compliance with such an order
21 would be impracticable as well, even if MEUS had the authority to force MELCO to share its
22 documents.

23 Furthermore, as MEUS has maintained consistently throughout its involvement in
24 this proceeding, there is no basis to assume or conclude that MEUS has any such authority, either
25 in the ordinary course of business dealings or in this litigation. Rambus has proffered no
26 evidence that MEUS has authority to obtain documents from MELCO. By contrast, the

1 Assistant General Counsel for MEUS has declared under oath that MEUS has no legal right to
2 demand documents from MELCO. Cross Decl., ¶ 4. The two December 2002 letters from
3 MELCO’s counsel refusing to provide documents in MELCO’s possession in Japan to MEUS
4 for production in this proceeding underscore this fact. See Calkins Decl., ¶¶ 6-7, Exs. B-C.
5 Having tried unsuccessfully to obtain the documents from MELCO, MEUS can do nothing more
6 to comply with Your Honor’s order.²

7 MEUS lacks the power to force production of MELCO documents. Rambus has
8 no basis to argue otherwise. Thus, its request for an order that would require MEUS to do what
9 it cannot should be denied.

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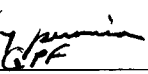
² Rambus’s effort to compel production of MELCO documents in Japan is an attempted end-run around Rule of Practice 3.36, which sets forth the appropriate procedure for obtaining discovery from a non-party foreign corporation, such as MELCO. Specifically, Rule of Practice 3.36(a) requires that an application “for the issuance of a subpoena to be served in a foreign country, *shall be made* in the form of a written motion filed in accordance with the provisions of § 3.22(a).” 16 C.F.R. § 3.36(a) (emphasis added). The party moving for such a subpoena must make four specific showings, including establishing its “good faith belief that the discovery requested would be permitted by treaty, law, custom or practice in the country from which the discovery is sought and that any additional procedural requirements have been or will be met before the subpoena is served.” 16 C.F.R. § 3.36(b)(4). Here, Rambus never made this showing vis-à-vis MELCO, a Japanese corporation.

Indeed, Rambus has made no attempt to comply with Rule 3.36, and has offered no reason why the Rule should be ignored. Instead, Rambus seeks to circumvent these procedural safeguards by compelling MEUS to produce MELCO documents, which MEUS has no legal right to obtain. This attempted end-run should not be permitted. See, e.g., *Lakar Airways Ltd. v. Pan American World Airways, et al.*, 607 F. Supp. 324, 326 (S.D.N.Y. 1985) (granting motion to quash non-party’s subpoenas *duces tecum* on grounds that subpoenas were transparent attempt to circumvent the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters).

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Administrative Law Judge should deny this motion.

3 DATED: December 30, 2002

4 By:  / 

5 David T. Burse
6 John W. Calkins
7 Bingham McCutchen LLP
8 1900 University Avenue
9 East Palo Alto, CA 94303

10 Gerard P. Finn
11 Bingham McCutchen LLP
12 1120 20th Street, NW
13 Suite 800
14 Washington, DC 20036

15 Attorneys for Non-Party
16 Mitsubishi Electric & Electronics USA, Inc.

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1 UNITED STATES OF AMERICA
2 BEFORE FEDERAL TRADE COMMISSION
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4 _____)
5 In the Matter of)

6 RAMBUS INCORPORATED,)

7 a corporation.)
8 _____)

Docket No. 9302

9
10 **RULE 3.22(f) DECLARATION OF TERRENCE H. CROSS IN SUPPORT OF NON-**
11 **PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION TO**
12 **RAMBUS INC.'s MOTION TO COMPEL**

13 I, Terrence H. Cross, declare as follows:

14 1. I am Assistant General Counsel for Mitsubishi Electric & Electronics
15 USA, Inc. ("MEUS"). Except as otherwise indicated below, I make the statements in this
16 declaration based on personal knowledge and, if called as a witness, could and would testify
17 competently thereto.

18 2. This motion relates to a subpoena *duces tecum* served on MEUS by
19 Rambus Incorporated ("Rambus") in a proceeding before the Federal Trade Commission
20 ("FTC") involving Rambus, captioned In the Matter of Rambus Incorporated, Docket No. 9302.
21 Neither MEUS nor any related entity is or has ever been a party to this proceeding.

22 3. MEUS is a Delaware corporation with headquarters in Cypress,
23 California. The company's semiconductor business unit is based in Sunnyvale, California.

24 4. Mitsubishi Electric Corporation ("MELCO") is a Japanese corporation and
25 is the corporate parent of MEUS's corporate parent. MEUS is a separate legal entity with its
26 own headquarters, board of directors, executive management, and legal counsel, and has no legal

1 right to demand or obtain documents from MELCO.

2 5. MEUS has devoted significant time and resources to locating, compiling,
3 reviewing, redacting or logging as necessary, and producing documents located throughout its
4 organization in a good faith effort to comply with the orders issued by Judge Timony in this
5 proceeding.

6 6. For example, to identify potentially responsive MEUS documents, I have
7 searched lists of contents for hundreds of boxes of documents in storage near the company's
8 Sunnyvale facility. I have also worked closely with knowledgeable representatives concerning
9 MEUS offices throughout the country to determine whether those offices have additional
10 responsive documents.

11 7. In the last month alone, I have personally reviewed thousands of pages of
12 documents in an effort to produce responsive documents promptly in this proceeding. In late
13 November, I identified and made available to Rambus 19 boxes of potentially responsive
14 documents, resulting in the production of 5,767 pages – each of which I reviewed. Earlier this
15 month, I reviewed thousands more pages of documents and produced four additional boxes of
16 documents to Rambus. Among these four boxes of documents was the paper correspondence
17 and other paper files of Sam Chen, who represented MEUS at JEDEC meetings and is its most
18 knowledgeable person concerning JEDEC.

19 8. At this stage, I am working with Mr. Chen and others to locate and
20 produce the only responsive documents in MEUS's possession that MEUS has not yet produced:
21 electronic mail files. This time-consuming effort to identify responsive materials on MEUS's
22 servers and in individual employees' e-mail files was delayed by Mr. Chen's absence.
23 Nonetheless, I anticipate completing the search for responsive electronic mail in the near future
24 and producing all such documents – the last MEUS documents to be produced – in early January.

25 9. As Rambus had been apprised prior to filing the instant motion to compel
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1 on December 20, 2002 and seeking an order requiring production on or before January 3, 2003,
2 MEUS will be closed for more than one week in connection with the holidays. In particular,
3 MEUS will close at noon on December 24, 2002 and will reopen on January 2, 2003. I will be
4 away from the office throughout that period.

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

7 Executed this 24th day of December, 2002, at Sunnyvale, California.

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10 Terrence H. Cross
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1 UNITED STATES OF AMERICA

2 BEFORE THE FEDERAL TRADE COMMISSION

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5 In the Matter of
6 RAMBUS INCORPORATED,
7 a corporation.

Docket No. 9302

8
9 **DECLARATION OF JOHN W. CALKINS IN SUPPORT OF NON-PARTY MITSUBISHI**
10 **ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION TO RESPONDENT**
11 **RAMBUS INC.'s MOTION TO COMPEL**

12 I, John W. Calkins, declare as follows:

13 1. I am an attorney with the firm of Bingham McCutchen LLP, counsel for
14 non-party Mitsubishi Electric & Electronics USA, Inc. ("MEUS") in this matter. Except as
15 otherwise indicated below, I make the statements in this declaration based on personal
16 knowledge and, if called as a witness, could and would testify competently thereto.

17 2. This motion relates to a subpoena *duces tecum* purportedly served on
18 MEUS by Rambus Incorporated ("Rambus") in a proceeding before the Federal Trademark
19 Commission ("FTC") involving Rambus, captioned In the Matter of Rambus Incorporated,
20 Docket No. 9302. Neither MEUS nor any related entity is or has ever been a party to this
21 proceeding.

22 3. Along with Terrence Cross, Assistant General Counsel for MEUS, I have
23 coordinated two large-scale productions of MEUS documents to Rambus in the last month. The
24 first production encompassed more than 5,700 pages of documents. The second production
25 encompassed four additional boxes of documents. BJ Watrous of Gray Cary – co-counsel for
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1 Rambus in this proceeding -- has been the primary contact for Rambus in connection with both
2 of these productions.

3 4. I am informed and believe that the thousands of pages of documents
4 already provided to Rambus in these two large-scale productions constitute the majority of
5 MEUS documents responsive to the subpoena. I am informed and believe that the only
6 responsive MEUS documents yet to be produced are electronic mail files, which Mr. Cross and
7 others at MEUS are in the process of reviewing for production to Rambus in early January, along
8 with a privilege log identifying a small number of documents withheld on the basis of the
9 attorney-client privilege and/or the attorney work product doctrine.

10 5. On December 2, 2002, my colleague David Burse sent a letter to Donald
11 Harris of Jenner & Block, counsel for Mitsubishi Electric Corporation ("MELCO"), the Japanese
12 corporate parent of MEUS's corporate parent. The letter explained that the November 26, 2002
13 Order in this proceeding denying MEUS's request for interlocutory appeal required MEUS to
14 produce responsive documents in the possession of MELCO. In this letter, MEUS (which has no
15 legal right to demand documents from MELCO) asked whether MELCO would provide such
16 documents to MEUS for production to Rambus in this proceeding. A true and correct copy of
17 the December 2, 2002 letter from Mr. Burse to Mr. Harris is attached as Exhibit A hereto.

18 6. On December 4, 2002, Mr. Harris sent a letter in response, stating that
19 MELCO would not provide its documents located in Japan to MEUS. A true and correct copy of
20 the December 4, 2002 letter from Mr. Harris to Mr. Burse is attached as Exhibit B hereto.

21 7. On December 10, 2002, Mr. Harris sent another letter to Mr. Burse
22 reiterating that MELCO had declined MEUS's request to provide documents that MELCO
23 maintains under its exclusive control in Japan to MEUS for production to Rambus in this
24 proceeding. A true and correct copy of the December 10, 2002 letter from Mr. Harris to Mr.
25 Burse is attached as Exhibit C hereto.

1 8. On December 3, 2002, I sent a letter to Steven Perry of Munger, Tolles &
2 Olson, co-counsel for Rambus in this proceeding. This letter described the scope of the first
3 large-scale production of documents by MEUS in late November and notified Rambus that
4 MEUS would be closed for business from December 24, 2002 through January 3, 2003 for the
5 holidays. A true and correct copy of my December 3, 2002 letter to Mr. Perry is attached as
6 Exhibit D hereto.

7 9. On December 17 and 18, 2002, I exchanged electronic mail
8 correspondence with Mr. Watrous concerning the production of documents. On December 17,
9 after receiving both an electronic mail message and a telephone message from Mr. Watrous, I
10 called him to discuss the three issues raised in the electronic mail message. During this
11 conversation, I explained (1) that MEUS was in the process of reviewing Sam Chen's electronic
12 mail for production to Rambus, (2) that MELCO had declined to provide documents maintained
13 under in its exclusive control in Japan to MEUS for production to Rambus, and (3) that I would
14 check with Mr. Cross to confirm the basis for withholding 11 pages from the more than 5,700
15 pages of documents produced in late November. I agreed to provide a written response to Mr.
16 Watrous later in the week (*i.e.*, on or before Friday, December 20). On December 18, 2002, I
17 sent an electronic mail message to Mr. Watrous confirming this understanding and requesting
18 clarification of an error in Mr. Watrous's representation of the volume of documents produced
19 by MEUS in its second large-scale production. A true and correct copy of Mr. Watrous's
20 response to my December 18, 2002 electronic mail message to him (reflecting the complete
21 exchange of electronic mail correspondence between us on December 17 and 18) is attached as
22 Exhibit E hereto.

23 10. As agreed, I sent a letter to Mr. Watrous on December 20, 2002 further
24 addressing the three issues enumerated in his December 17, 2002 electronic mail message. A
25 true and correct copy of my December 20, 2002 letter to Mr. Watrous is attached as Exhibit F
26

1 hereto.

2 11. On December 20, 2002 – the date by which I’d agreed to provide a written
3 response to Mr. Watrous concerning the three issues enumerated in his December 17 electronic
4 mail message, and on which I did so – Rambus filed this motion without reviewing that response.
5 Rambus filed this motion on December 20 without warning MEUS that it would not wait for a
6 response due that day, as previously agreed, and without communicating with MEUS at all on
7 December 19 or December 20. Rambus did not disclose in its moving papers that such an
8 agreement had been reached with MEUS. And Rambus filed this motion on December 20, less
9 than two business days before MEUS would close for more than a week in connection with the
10 holidays, as Rambus was aware.

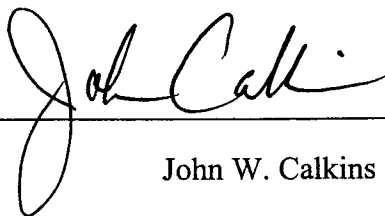
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12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct.

14 Executed this 26th day of December, 2002, at San Francisco, California.

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John W. Calkins

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EXHIBIT A

December 2, 2002

Direct: (650) 849-4824
david.burse@bingham.com

VIA FACSIMILE (312) 840-7777

Bingham McCutchen LLP
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94303-2223

650.849.4400
650.849.4800 fax

Donald R. Harris, Esq.
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611-7603

Re: In the Matter of Rambus Incorporated, Dkt. No. 9302

bingham.com

Dear Don:

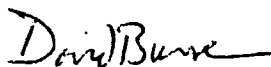
Boston
Hartford
London
Los Angeles
New York
San Francisco
Silicon Valley
Singapore
Walnut Creek
Washington

In his order dated November 26, 2002, the Administrative Law Judge denied Mitsubishi Electric & Electronics USA, Inc.'s ("MEUS's") Appeal of his order dated November 12, 2002, elaborated upon in a decision dated November 18, 2002, that MEUS fully comply with the broad subpoena served on MEUS by Rambus in the above-identified FTC matter.

To comply with the ALJ's order, MEUS is required to produce documents in the possession of Mitsubishi Electric Company ("MELCO") that are responsive to the subpoena. We understand you already have a copy of the subpoena, along with the various orders of Judge Timony.

Please advise us as soon as possible as to whether MELCO will provide responsive documents to MEUS for production to Rambus.

Very truly yours,



David Burse

EXHIBIT B

JENNER & BLOCK

DONALD R. HARRIS
WRITER'S DIRECT DIAL: (312) 923-2777
WRITER'S DIRECT FAX: (312) 840-7777
INTERNET ADDRESS: DHARRIS@JENNER.COM

Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 527-9550
www.jenner.com

Chicago
Lake Forest
Dallas
Washington, DC

December 4, 2002

By Facsimile

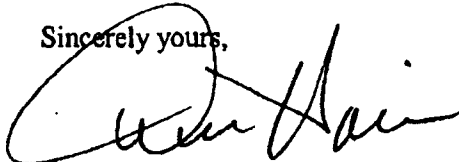
David T. Burse, Esq.
Bingham McCutchen LLP
1900 University Avenue
East Palo Alto, California 94303-2229

Re: *In the Matter of Rambus Incorporated, Docket No. 9302*

Dear David:

In response to your December 2 letter, MELCO will not provide its documents located in Japan to MEUS.

Sincerely yours,



Donald R. Harris

DRH:kt

#866435

Received Time Dec. 4. 3:20PM

TOTAL P.02

EXHIBIT C

JENNER & BLOCK

DONALD R. HARRIS
WRITER'S DIRECT DIAL: (312) 923-2777
WRITER'S DIRECT FAX: (312) 840-7777
INTERNET ADDRESS: DHARRIS@JENNER.COM

Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 222-9350
www.jenner.com

Chicago
Lake Forest
Dallas
Washington, DC

December 10, 2002

David T. Burse, Esq.
Bingham McCutchen LLP
1900 University Avenue
East Palo Alto, California 94303-2229

By Facsimile

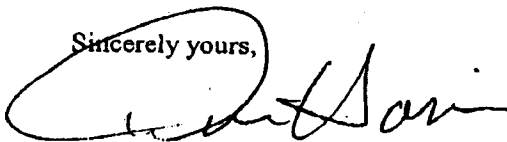
Re: *In the Matter of Rambus Incorporated, Docket No. 9302*

Dear David:

As I advised you on the telephone, Mitsubishi Electric Corporation ("MELCO") will not provide to Mitsubishi Electric & Electronics USA, Inc. ("MEUS") documents that MELCO maintains under its exclusive control in Japan.

You have advised me that the documents in question have been requested in connection with a Federal Trade Commission Subpoena served upon MEUS in F.T.C. Docket No. 9302, involving Rambus, Inc. Although MELCO has declined MEUS's request, I nevertheless note that it appears to me that the subpoena in question is almost unlimitedly broad and extremely burdensome. For example, the Subpoena in question asks for sixty-three categories of documents, and most of the categories request documents for a twelve-year period. In addition, the Subpoena seeks to require the production of a great variety of detailed information about DRAM chips made or sold during a four-and-one-half-year period. (E.g., ¶¶ 51-56, 63.) And Paragraph 12 of the Subpoena requests eleven different categories of documents for a twelve-year period relating to nine separate technologies "or possible technologies" contained in DRAM chips. It is hard to imagine how any subpoena could have been drafted to be broader in scope or more burdensome for a party required to respond than this subpoena.

Sincerely yours,



Donald R. Harris

DRH:kt
#867581

Received Time Dec.10. 8:58AM

TOTAL P.02

EXHIBIT D

December 3, 2002

Direct: (415) 393-2120
john.calkins@bingham.com

VIA FACSIMILE

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

415.393.2000
415.393.2286 fax

Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071-1560

bingham.com

Re: In the Matter of Rambus Incorporated, Docket No. 9302

Dear Mr. Perry:

Boston
Hartford
London
Los Angeles
New York
San Francisco
Silicon Valley
Singapore
Walnut Creek
Washington

I write in response to your letter dated December 2, 2002 concerning the production of documents in response to the subpoena duces tecum issued by your client, Rambus, on our client, Mitsubishi Electric & Electronics USA, Inc. ("MEUS") in the above-referenced FTC proceeding. Because your letter refers to our client as "Mitsubishi," we wish to remind you at the outset that we do not represent Mitsubishi Electric Corporation ("MELCO").

Your letter states that a "limited number" of boxes of documents were made available to "a team of Rambus lawyers last week." To be more precise, in accordance with an agreement reached between counsel for MEUS and Rambus, MEUS made 19 boxes of documents available to two attorneys for Rambus, B.J. Watrous and Danica Ray, for review beginning last Monday. The tagged documents – a total of 5,767 pages, according to Mr. Watrous – were returned to our client's Sunnyvale office late Wednesday morning, less than one day before Thanksgiving and allowing less than one business day for review by our client before the date of your letter accusing our client of delay. MEUS has at no time "refus[ed] to make those copies available to [Rambus] until an unspecified time next week," as your letter states. On the contrary, as I told Mr. Watrous yesterday, MEUS expects to review these documents by Wednesday, December 4, 2002 and make them available to Rambus the following day. In light of the Thanksgiving holiday, this review and production schedule is more than reasonable.

MEUS has undertaken significant effort in a very short time to comply with the subpoena and will continue doing so. Beyond providing the 19 boxes of

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documents last week, MEUS has contacted sales offices and facilities throughout the country in an effort to locate responsive documents. At this time, MEUS expects to have approximately three additional boxes of documents available for review by Friday, December 6. As I explained to Mr. Watrous last Wednesday and again yesterday, Sam Chen, MEUS's most knowledgeable employee concerning many of the documents responsive to the subpoena, was out of the office all last week and continues to be away from the office much of this week. With Mr. Chen's assistance, MEUS should be able to identify and make available for review additional documents next week. As such, we propose that it would be more efficient for Rambus's lawyers to return during the week of December 9, when such additional documents would be available for their review. If Rambus's lawyers nonetheless wish to review additional documents in Sunnyvale this Friday and have copies of tagged documents delivered to MEUS by noon on Monday, December 9, MEUS will endeavor to review the copied documents by the close of business on Wednesday, December 11 and to make them available to Rambus the following day.

MELCO has been advised of Judge Timony's November 26 order denying interlocutory appeal and asked if it will provide documents responsive to the subpoena to MEUS to produce for Rambus's inspection.

Finally, MEUS reaffirms that Mr. Chen will be available for deposition on December 17, as previously scheduled in accordance with Rambus's request. In light of the above, if Rambus still wishes to reschedule this deposition, please be advised that MEUS will be closed for business from December 24, 2002 through January 3, 2003 for the holidays, and Mr. Chen will not be available for deposition during that time.

Sincerely yours,



John Calkins

EXHIBIT E

Calkins, John

From: Calkins, John
Sent: Wednesday, December 18, 2002 10:53 AM
To: 'Watrous, Bruce "BJ"'
Subject: RE: document production

BJ,

Thanks for the clarification.

John

From: Watrous, Bruce "BJ" [mailto:bwatrous@graycary.com]
Sent: Wednesday, December 18, 2002 10:52 AM
To: 'Calkins, John'
Subject: RE: document production

John:

I apologize. We actually received four boxes of Mitsubishi (MEUS bated) documents. - bj

Bruce "BJ" Watrous
Gray Cary. Technology's Legal Edge
401 B Street, Suite 2000
San Diego, CA 92101-4240
phone (619) 699-2639
email bwatrous@graycary.com

-----Original Message-----

From: Calkins, John [mailto:john.calkins@bingham.com]
Sent: Wednesday, December 18, 2002 10:44 AM
To: 'Watrous, Bruce "BJ"'
Cc: Burse, David T.; 'Cross, Terrence'
Subject: document production

BJ,

I write to confirm our conversation yesterday afternoon related to your email below, during which we agreed that I will send you a letter later this week addressing the three issues you raised. I also confirmed that Sam Chen will be available for deposition on January 16, 2003, the date requested by Steven Perry. I understand that you will relay this information to him.

In addition, I wanted to clarify a statement in your email below. You claim to have received "four additional documents from Terry Cross last week," which you are now reviewing. We trust that you received far more than four documents last week, as Whitmont Legal Copy picked up and returned **two boxes** of documents to be copied and delivered to you. If indeed you received only four documents, we suggest that you address this significant disparity with Whitmont.

Best regards,

John

12/30/2002

-----Original Message-----

From: Watrous, Bruce "BJ" [mailto:bwatrous@graycary.com]
Sent: Tuesday, December 17, 2002 9:10 AM
To: 'john.calkins@bingham.com'
Cc: Cunningham, Sean; Watrous, Bruce "BJ"
Subject: Mitsubishi Documents

John:

I left you a phone message, but wanted to follow-up via email to again memorialize my requests.

To begin, I wanted to let you know that we did receive four additional Mitsubishi documents from Terry Cross last week and are reviewing those documents.

In addition, I wanted to follow-up on at least three outstanding issues. While by no means an exhaustive list of what is presently due to Rambus under its subpoena of Mitsubishi, we have yet to see the following:

1. Mr. Chen's personal correspondence (including emails),
2. Any documents from your client's corporate parent in Japan, and
3. A privilege log explaining and defending those documents removed from your prior productions.

One month ago, on Nov. 18, 2002, Judge Timony issued his first order requiring the production of documents responsive to Rambus' subpoena of Mitsubishi. Since that time, I think you would agree that we have been quite accommodating and understanding in working with you to obtain the documents that are due our client. However, our patience is growing strained. This is compounded by my understanding from prior conversations (please correct me if I am wrong) that Mitsubishi will be "shut-down" for at least one week during the Christmas and New Years holidays. In preparation for that time, I trust that you and your client are working with your Japanese counterparts and Mr. Chen to ensure that you collect and produce responsive documents in advance of the holiday break.

We are eager to obtain all non-privileged documents that are rightly due to Rambus under its subpoena. Please call me at your earliest convenience to provide me with an update on these outstanding issues. I hope to hear from you by the 3pm today, Tuesday, Dec. 17.

Thank you. -BJ

Bruce "BJ" Watrous
Gray Cary. Technology's Legal Edge
401 B Street, Suite 2000
San Diego, CA 92101-4240
phone (619) 699-2639
email bwatrous@graycary.com

[INFO] -- Content Manager:

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and

12/30/2002

destroy all copies of the original message.

To contact our email administrator directly, send to postmaster@graycary.com

Thank you.

EXHIBIT F

December 20, 2002

Direct: (415) 393-21210
john.calkins@bingham.com

VIA FACSIMILE AND MAIL

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

415.393.2000
415.393.2286 fax

bingham.com

Boston
Hartford
London
Los Angeles
New York
San Francisco
Silicon Valley
Singapore
Walnut Creek
Washington

BJ Watrous, Esq.
Gray Cary
401 B. Street, Suite 2000
San Diego, CA 92101-4240

Re: In the Matter of Rambus Incorporated, Docket No. 9302

Dear BJ:

As agreed during my conversation with you on the afternoon of December 18, this letter will update you on the progress of the review and production of documents by our client, Mitsubishi Electric & Electronics USA, Inc. ("MEUS"), in the above-referenced FTC proceeding, addressing the three issues raised in your December 18 electronic mail correspondence to me. Because your December 18 email refers to our client as "Mitsubishi" generally, we wish to remind you at the outset that we represent MEUS and do not represent Mitsubishi Electric Corporation ("MELCO").

As a preliminary matter, we remind you that MEUS has devoted substantial time and resources to producing documents in this proceeding, to which it is not a party. As you know, MEUS made available to Rambus 19 boxes of documents in November, resulting in the production of thousands of pages. On December 5, MEUS produced an additional four boxes of documents to Rambus. MEUS continues to search for responsive documents, including those in electronic form, and will produce all remaining responsive documents in its possession as soon as possible. Because MEUS will not be in operation during the holidays, we anticipate that the final production of documents by MEUS will occur in early January – at least a full week in advance of Sam Chen's deposition on January 16.

Your December 18 email raised three issues, each of which is addressed below. First, you inquired about Mr. Chen's personal correspondence (including emails). MEUS believes that all of Mr. Chen's paper correspondence has already been produced. MEUS is reviewing his (and

BJ Watrous, Esq.
December 20, 2002
Page 2

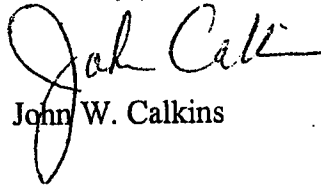
others') electronic correspondence and will produce those documents in early January.

Second, you inquired about documents in the possession of MELCO. MEUS notified MELCO of the November 2002 orders issued by Administrative Law Judge Timony in relation to this matter and asked whether MELCO would provide responsive documents to MEUS for production to Rambus. As I explained during our December 18 conversation, MELCO has responded that it will not provide documents to MEUS that MELCO maintains under its exclusive control in Japan. See Exhibits A and B, attached hereto.

Bingham McCutchen LLP
bingham.com

Third, you inquired about the 11 pages of documents withheld from the thousands of pages produced by MEUS in November. Those pages were withheld based on the attorney-client privilege and/or the attorney work product doctrine. MEUS will send Rambus a privilege log describing these few documents and the basis for withholding them in early January, well in advance of Mr. Chen's deposition.

Sincerely yours,



John W. Calkins

Enclosures

EXHIBIT A

JENNER & BLOCK

DONALD R. HARRIS
WRITER'S DIRECT DIAL: (312) 923-2777
WRITER'S DIRECT FAX: (312) 540-7777
INTERNET ADDRESS: DHARRIS@JENNER.COM

Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 527-9550
www.jenner.com

Chicago
Lake Forest
Dallas
Washington, DC

December 4, 2002

By Facsimile

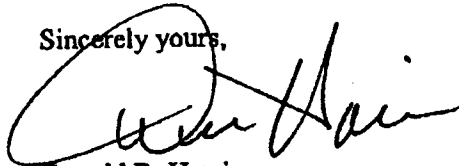
David T. Burse, Esq.
Bingham McCutchen LLP
1900 University Avenue
East Palo Alto, California 94303-2229

Re: *In the Matter of Rambus Incorporated, Docket No. 9302*

Dear David:

In response to your December 2 letter, MELCO will not provide its documents located in Japan to MEUS.

Sincerely yours,



Donald R. Harris

DRH:kt

#866435

Received Time Dec. 4. 3:20PM

TOTAL P.02

EXHIBIT B

JENNER & BLOCK

DONALD R. HARRIS
WRITER'S DIRECT DIAL: (312) 923-2777
WRITER'S DIRECT FAX: (312) 840-7777
INTERNET ADDRESS: DHARRIS@JENNER.COM

Jenner & Block, LLC
One IBM Plaza
Chicago, IL 60611-7603
Tel 312 222-9350
www.jenner.com

Chicago
Lake Forest
Dallas
Washington, DC

December 10, 2002

David T. Burse, Esq.
Bingham McCutchen LLP
1900 University Avenue
East Palo Alto, California 94303-2229

By Facsimile

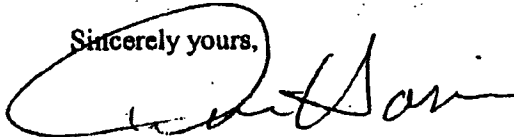
Re: *In the Matter of Rambus Incorporated, Docket No. 9302*

Dear David:

As I advised you on the telephone, Mitsubishi Electric Corporation ("MELCO") will not provide to Mitsubishi Electric & Electronics USA, Inc. ("MEUS") documents that MELCO maintains under its exclusive control in Japan.

You have advised me that the documents in question have been requested in connection with a Federal Trade Commission Subpoena served upon MEUS in F.T.C. Docket No. 9302, involving Rambus, Inc. Although MELCO has declined MEUS's request, I nevertheless note that it appears to me that the subpoena in question is almost unlimitedly broad and extremely burdensome. For example, the Subpoena in question asks for sixty-three categories of documents, and most of the categories request documents for a twelve-year period. In addition, the Subpoena seeks to require the production of a great variety of detailed information about DRAM chips made or sold during a four-and-one-half-year period. (E.g., ¶¶ 51-56, 63.) And Paragraph 12 of the Subpoena requests eleven different categories of documents for a twelve-year period relating to nine separate technologies "or possible technologies" contained in DRAM chips. It is hard to imagine how any subpoena could have been drafted to be broader in scope or more burdensome for a party required to respond than this subpoena.

Sincerely yours,



Donald R. Harris

DRH:kt
#867581

Received Time Dec.10. 8:58AM

TOTAL P.02

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

[PROPOSED] ORDER DENYING MOTION TO COMPEL

Upon due consideration of the motion to compel filed by Respondent Rambus Inc. (“Rambus”) on December 20, 2002 and the answer of non-party Mitsubishi Electric & Electronics USA, Inc. in opposition to that motion,

IT IS HEREBY ORDERED that Rambus’s motion is DENIED.

DATED: _____

James P. Timony
Chief Administrative Law Judge

1 UNITED STATES OF AMERICA

2 BEFORE THE FEDERAL TRADE COMMISSION

3
4 _____)
5 In the Matter of)

6 RAMBUS INCORPORATED,)

7 a corporation.)

Docket No. 9302

8 CERTIFICATION UNDER RULE 4.2(c)(3) REGARDING ELECTRONIC FILING OF
9 NON-PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'S OPPOSITION
10 TO RESPONDENT RAMBUS INC.'S MOTION TO COMPEL

11 In accordance with Rule 4.2(c)(3) of the Rules of Practice for Adjudicative
12 Proceedings before the United States Federal Trade Commission, the non-party filing this
13 opposition to Respondent Rambus Inc.'s motion to compel, Mitsubishi Electric & Electronics
14 USA, Inc., hereby certifies (1) that the electronic copy of all documents related to its opposition
15 to Rambus's motion to compel filed in pdf format is a true and correct copy of the paper original
16 (with all declaration exhibits), (2) that the electronic copy of all documents related to its
17 opposition to Rambus's motion to compel filed in Microsoft Word format is a true and correct
18 copy of the paper original (without declaration exhibits), and (3) that a paper copy with an
19 original signature is being filed with the Secretary of the Commission.
20
21

22 Dated: December 30, 2002

23 

24 Gerard P. Finn

1 **CERTIFICATE OF SERVICE**

2 This is to certify that copies of the foregoing Non-Party Mitsubishi Electric &
3 Electronics USA, Inc.'s Opposition To Respondent Rambus Inc.'s Motion To Compel,
4 Declaration of Terrence H. Cross In Support Of Non-Party Mitsubishi Electric & Electronics
5 USA, Inc.'s Opposition To Respondent Rambus Inc.'s Motion To Compel, Declaration Of John
6 W. Calkins In Support Of Non-Party Mitsubishi Electric & Electronics USA, Inc.'s Opposition
7 To Respondent Rambus Inc.'s Motion To Compel, and Proposed Order Denying To Compel
8 were served on December 30, 2002 by facsimile and by overnight delivery to Munger, Tolles &
9 Olson, LLP, counsel for Respondent Rambus Inc., at 355 South Grand Avenue, 35th Floor, Los
10 Angeles, California 90017, and by overnight delivery to:

11 The Honorable James P. Timony
12 600 Pennsylvania Avenue
13 Federal Trade Commission
14 Washington, D.C. 20580

15 Donald Clark
16 Secretary
17 Federal Trade Commission
18 Washington, D.C. 20580

19 Richard Dagen, Esq.
20 Assistant Director
21 Federal Trade Commission
22 601 New Jersey Avenue, NW
23 Washington, DC 20001

24 Malcolm Catt, Esq.
25 Federal Trade Commission
26 601 New Jersey Avenue, NW
Washington, DC 20001

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Geoffery Oliver, Esq
Federal Trade Commission
601 New Jersey Avenue
Washington, DC 20001

Dated: December 30, 2002



Gerard P. Finn