ATTACHMENT A

Rambus's Responses To Complaint Counsel's Corrected Version of Proposed Adverse Inferences

The adverse inferences proposed by Complaint Counsel are riddled with deficiencies. They are unsupported by any evidence in the record. They have no nexus to any documents not preserved by Rambus. Complaint Counsel fail to show that they have suffered any prejudice that would be remedied by imposition of any of the rebuttable adverse inferences. The proposed adverse inferences are argumentative, vague, ambiguous and indefinite as phrased. In many instances, they are simply wrong, and contradicted by available evidence. In other instances, they are inconsistent with what any reasonable person would think the evidence could be. The time available to draft this Attachment A has not been sufficient to set forth completely or in detail all of the deficiencies in Complaint Counsel's proposed additional adverse inferences. Further, since Complaint Counsel have made no effort to justify the inferences, show evidentiary support for the inferences, or demonstrate what nexus there is between a proposed inference and Rambus's document retention program, it has been difficult to know where to start in pointing out the deficiencies. What follows, then, is a sample, an illustration, but not a complete catalogue, of the deficiencies in the 100 additional adverse inferences proposed by Complaint Counsel. By submitting this response we do not mean to reward Complaint Counsel for their failure to carry their burden of demonstrating a nexus between each proposed adverse inference and Rambus's document retention policy or their failure to carry their burden of demonstrating resulting prejudice to Complaint

Counsel that only imposition of the inference would alleviate. Further, we do not mean to suggest by providing this response that Complaint Counsel have satisfied the standards for reconsideration of Judge Timony's Order Re Default Judgment.

Proposed Adverse Inference	**Rambus's Response**
1. From its inception, Rambus's business strategy has been to obtain high royalties through licensing its technology for use in a widely adopted DRAM industry standard.	Rambus's business plans, from Rambus's inception, have been produced and many Rambus witnesses have been questioned about them. No documents regarding business strategy have been shown not to have been preserved. Further, Rambus's licensing efforts, the royalties it has sought and the royalties it has been paid have been fully discovered, including through discovery of Rambus and of third parties. The use of the phrases "high" and "widely" are ambiguous and indefinite and proof would plainly be required to give them meaning.
2. From its inception, Rambus knew that industry standards play a critically important role in the DRAM marketplace.	What Rambus's witnesses know about industry standards, both those established by SSOs and those that were *de facto* standards, has been fully discovered. To the extent such knowledge was memorialized in business plans, those plans have been produced. There is no reason to think that documents not preserved contained information that would shed light on this issue. The use of the phrase "critically important" is ambiguous and indefinite.
3. From its inception, Rambus knew that at any given time there is likely to be only one dominant industry standard for commodity (as opposed to specialized) DRAMs, and that all commodity DRAM producers are forced by market forces to produce products complying with the dominant industry standard.	First of all, this is not true. So, it is unlikely to have been set forth in this way in any Rambus documents, or in any other company's documents. As for the role of standards, many Rambus documents that discuss various views and aspects of that issue have been produced. There is no evidence that any other documents discussing this subject have not been preserved, particularly since the most likely type of document containing such discussion

Proposed Adverse Inference	**Rambus's Response**
	would be a business plan.
4. From its inception, Rambus knew that the most valuable DRAM-related patents are ones that cover technologies that must be used to be in compliance with the dominant industry standard.	This is a quote, out of context, from a document Rambus produced to Complaint Counsel. One would think they would not argue that evidence to support this fact was not preserved.
5. Through most of the 1990s, Rambus's primary business strategy was to establish its proprietary RDRAM architecture as the dominant industry standard for modern DRAM devices, and then to charge high royalties for the use of RDRAM technology.	As noted above, Rambus's strategy has been fully discovered, including from Rambus and the entities with whom it dealt, and attempted to deal. The royalties it has sought, and the royalties it has been paid, have been fully discovered. "High" is ambiguous and indefinite.
6. In or around early 1992, Rambus developed an alternative plan for obtaining high royalties associated with DRAM industry standards — namely, a plan to secure patent rights over alternative standards that were emerging to compete with RDRAM, including but not limited to JEDEC's work on SDRAM standards.	This is not true. Initially, Rambus did not want to license its patents for use in any product other than RDRAM. It did not want to see its inventions implemented in ways that were not subject to Rambus's quality control and that resulted in conflicting product specifications. As we have only recently learned, [redacted]. This was a plan to survive and an effort to realize some of the value inherent in the Farmwald/Horowitz inventions. [redacted], in part because of the DOJ's desire to protect the sanctity of its investigation into DRAM manufacturer price-fixing.
7. From roughly mid-1992 through late 1999 or early 2000, Rambus simultaneously pursued two alternative strategies for obtaining patent rights over widely adopted DRAM industry standards: (1) its public strategy of achieving market success with its RDRAM proprietary technology; and (2) its private and secretive strategy of securing patent rights over	This is not true. *See* no. 6 above.

Proposed Adverse Inference	**Rambus's Response**
JEDEC's RAM standards.	
8. Rambus referred to the second strategy as "playing the IP card" against DRAM markers.	Presumably Complaint Counsel mean makers or manufacturers, rather than markers. In any event, this quote is taken, again out of context, from a document that Rambus produced. Thus, there is no basis for an adverse inference. The evidence that these words were used exists; Complaint Counsel have quoted it here.
9. Rambus's central business objective throughout the 1990s was to work aggressively toward achieving market success for RDRAM, with the understanding that it failed to succeed with RDRAM, it would "play the IP card" — i.e, assert patent claims over competing standards, principally including JEDEC's SDRAM and DDR SDRAM standards.	A portion of this is true; a portion is not. Certainly all the evidence of Rambus's central business objective – memorialized in business plans, Board of Directors minutes, etc. – has been produced. And, after the DRAM manufacturers implemented their boycott of RDRAM and after they persisted in using in SDRAM and later in DDR SDRAM technology they knew Rambus had invented, Rambus was left with no choice but to sue for patent infringement.
10. From roughly late 1996 through sometime in 1999, Rambus placed great hope and confidence in the potential for RDRAM — with the strong backing of Intel — to succeed as the dominant DRAM industry standard.	It is true that Rambus placed great hope and confidence in the potential for RDRAM, as did Intel and many other companies, such as Dell. But, [redacted], Rambus's hopes and confidence were dealt a blow. But, of importance here, all the evidence of this is available. What we have here is simply Complaint Counsel's effort to twist the available evidence into an inference that is misleading and argumentative. It appears that perhaps Complaint Counsel have simply taken their proposed Findings and have asked Your Honor to accept each of them as an adverse inference, despite the fact that the evidence on those Findings, on both sides, is readily available.
11. Rambus' strategy was to conceal its JEDEC-related patents and patent applications unless or until its relationship with Intel "blew	This is not true. Rambus did disclose its patents and its patent application on numerous occasions before [redacted]

Proposed Adverse Inference	Rambus's Response
up."	[redacted]. Further, this was never Rambus's strategy. Also, as noted above, Rambus's strategies have been fully discovered. It also is worth noting that a statement that a relationship "blew up" is not they type of factual finding, or factual inference, that Your Honor or any fact-finder would be likely to make.
12. Rambus's relationship with Intel did "blow up" in 1999, and the same month that this occurred Rambus shifted aggressively to its alternative business strategy of "playing the IP card" — i.e., enforcing JEDEC-related patents — against DRAM makers, and others whose products interoperate with DRAMs (e.g., chipsets).	Again, this is inconsistent with reality. *See* no. 11 above. It also has the same deficiencies as no. 11, including because of the use of the phrases "blow up," "aggressively," "playing the IP card," etc.
13. In enforcing its JEDEC-related patents against DRAM makers, Rambus was determined to charge royalties higher than the royalties that it charged for its proprietary RDRAM technology.	It is a matter of record, and discovery is fulsome and complete with regard to the royalties Rambus has charged, and the royalties it has sought to charge, in different license agreements and with respect to different licensed products. There is absolutely no reason for an adverse inference that addresses this issue.
14. Rambus set its royalties for SDRAM and DDR SDRAM devices at levels (.75% and 3.5%, respectively) that it believed would cause these products to be less competitive vis-a-vis RDRAM.	*See* no. 13 above. Further, this inference misstates the record evidence regarding what Rambus believed.
15. Thus, in asserting JEDEC-related patents, Rambus sought to achieve two primary goals: (1) collecting massive revenues off of the production of DRAMs complying with the industry-dominant JEDEC standards, and (2) reducing competition for its proprietary DRAM architecture.	Again, Rambus's business plans and other planning documents have been produced. What Rambus's goals were has been the subject of comprehensive discovery. The inference proposed by Complaint Counsel is inconsistent with the record evidence and, in any event, not justified by a failure to preserve documents unrelated to this issue.
16. Through its assertion of JEDEC-related	There is no evidence that all of Rambus's

Proposed Adverse Inference	**Rambus's Response**
patents, Rambus also has sought to reduce or eliminate JEDEC's continuing influence over DRAM-related industry standards.	JEDEC-related documents have not been produced. Further, this proposed inference is simply wrong. Rambus's efforts to protect its intellectual property rights and to realize the value of the revolutionary inventions of Farmwald, Horowitz and others at Rambus is not in any fashion directed at JEDEC's continuing influence, unless JEDEC's continuing influence is meant to deny Rambus fair value for its inventions, prevent the superior product from succeeding in the marketplace, or [redacted].
17. Rambus joined JEDEC as part of its business strategy of obtaining high royalties for use of its technology in widely adopted DRAM industry standards.	Discovery on this issue has been comprehensive. The record evidence makes plain that this is not why Rambus joined JEDEC. As with many of Complaint Counsel's proposed adverse inferences, this one simply reflects wishful thinking.
18. Very early on in its JEDEC membership, Rambus considered the possibility of presenting its RDRAM technology to JEDEC as a proposed standard, but later concluded that this approach would be inconsistent with Rambus's licensing-based business model, inasmuch as having RDRAM standardized by JEDEC would restrict Rambus's flexibility in licensing to whomever it wished on whatever terms it wished.	On a couple of occasions, according to Gordon Kelly of IBM, Richard Crisp discussed with him the possibility of presenting RDRAM to JEDEC, but Kelly apparently was insistent that, if he did, he also needed to disclose all patent applications and other intellectual property that Rambus possessed that read on RDRAM. Further, Rambus was concerned that an effort to standardize RDRAM through JEDEC might result in JEDEC members seeking to change the design of the product in ways that Rambus did not think were desirable. Although much more could be said on this topic, it probably suffices to say that Rambus's document retention program has not impacted this issue in the least.
19. Shortly after joining JEDEC, Rambus concluded that the organization's ongoing efforts to develop specifications for a new synchronous DRAM standard would involve use of technologies that Rambus believed to be covered by its existing patent applications, or which could be covered through amendments	Complaint Counsel do not contend that any Rambus JEDEC-related documents were not preserved, and there has been comprehensive discovery as to when and how Rambus began to discover that the DRAM manufacturers were going to take Rambus's inventions and use them in products they were developing,

Proposed Adverse Inference	**Rambus's Response**
to such pending applications.	without any intention, it now appears, of paying a fair royalty to Rambus for that use. [redacted] There is no reason for any inferences on this subject. Rather, Your Honor should hear all of the testimony and review all of the documents on these subjects so that you will be fully advised as to how and why the DRAM manufacturers felt they could freely use Rambus's inventions.
20. From mid-1992 through the present, Rambus has engaged in efforts, in conjunction with its patent attorneys, to amend existing patent applications to cover technology features that were being discussed within JEDEC for potential use in JEDEC's RAM standards.	All of the patents and patent applications that Rambus possesses have been the subject of extensive discovery. All of the amendments to claims are a matter of record, and all of those records are available from the United States Patent and Trademark Office, as well as from Rambus. Those records and the testimony of percipient and expert witnesses makes plain that what Rambus has attempted to do in amending its claims is to fully claim the scope of its inventions, and to do so consistent with the law, including as set forth in *Kingsdown Med. Consultants, Ltd. v Hollister Inc*., 863 F.2d 867, 874 (Fed. Cir. 1988) and its progeny. There is no reason to think that any evidence that bears on this subject has not been preserved. In fact, testimony and exhibits on this subject were presented at length in the *Infineon* trial.
21. Rambus chose to remain in JEDEC for over four years in part because of the benefits it derived from being present to observe JEDEC presentations, witness technology-related debates among JEDEC members, and glean information about the future direction of JEDEC's standardization efforts — such information helped Rambus in its efforts to write new and amended patent claims designed to cover technologies that it knew to be, or expected would be, encompassed by JEDEC's	*See* no. 20 above. Further, why Rambus chose to remain in JEDEC is much more complicated than can be described in one sentence, or even one page, and we will not attempt to explicate that now. What matters, in any event, is that all of the evidence on this issue is available and there is no basis for imposing an adverse inference on this subject.

Proposed Adverse Inference	**Rambus's Response**
RAM standards.	
22. Rambus also remained in JEDEC because it knew that its presence and participation, combined with its pattern of misleading conduct, substantially increased the likelihood that JEDEC would proceed to develop DRAM-related standards incorporating technologies over which Rambus could later assert patent rights.	This is flatly wrong. There is no evidence to support it. Again, this reflects Complaint Counsel's wishful thinking. As set forth briefly in nos. 20 and 21 above, this issue – why Rambus joined and stayed a member of JEDEC – is a subject on which all the material evidence is available and there is no nexus between this issue and Rambus's document retention program.
23. Rambus knew that JEDEC was firmly committed to the principle of developing "open" standards, free to be used by anyone, and unencumbered — wherever possible — by proprietary patent claims.	Again, this is not true, either as to what Rambus understood or as to what JEDEC was committed to doing. Indeed, as drafted by Complaint Counsel, it appears they believe that JEDEC and its members conspired to avoid including patented technology in JEDEC standards, which would be contrary to state and federal antitrust and unfair competition laws, were it true. If Complaint Counsel truly believe this, as Rambus has said all along and as the Department of Justice apparently recognizes, Complaint Counsel obviously have brought the wrong case. In any event, there is no nexus between what JEDEC was committed to doing and what Rambus understood about JEDEC's commitments and Rambus's document retention policy.
24. Rambus knew that JEDEC and its members maintained a commitment to avoid the incorporation of patented technologies into its published standards.	*See* no. 23 above.
25. Rambus knew that JEDEC's rules and procedures imposed upon all participants a duty to participate in good faith.	First of all, JEDEC's rules say nothing about good faith or other amorphous duties conjured up by Complaint Counsel. More to the point, however, as noted above, *see, e.g.,* no. 22, there is no nexus between what Rambus knew of JEDEC's rules and procedures (or, for that matter, what they were in fact) and Rambus's document retention policy.

Proposed Adverse Inference	**Rambus's Response**
26. Rambus knew that JEDEC prohibited the incorporation of patented or patent-pending technology into a standard unless the patent owner, or applicant, committed in advance to license the technology on royalty-free or otherwise reasonable and non-discriminatory terms.	*See* nos. 20-24 above.
27. Rambus also knew that providing such assurances alone did not guarantee that the patented or patent-pending technology would be used in JEDEC's standards.	*See* nos. 20-24 above.
28. Rambus knew that JEDEC would not use any patented or patent-pending technology in its standards (even after securing such assurances) unless, after careful review and consideration, it was determined that use of the patented or patent-pending technology was well justified.	*See* nos. 20-24 above.
29. Rambus knew, throughout its membership in JEDEC, that the organization's rules and procedures required members to disclose any patents or patent applications that related to, or that might be involved in, the standard-setting work being undertaken by JEDEC.	This is not true. It is in direct conflict with the decision of the Federal Circuit in *Rambus Inc. v. Infineon Technologies AG*, 318 F.3d 1081, 1096-1102 (Fed. Cir. 2003). Further, this issue has no nexus with Rambus's document retention policy. *See, e.g.* nos. 20-24 above.
30. Rambus knew, throughout its membership in JEDEC, that these patent disclosure rules and procedures were construed broadly so as to result in disclosure, as early as possible in the JEDEC process.	This is not true. It is in direct conflict with the decision of the Federal Circuit in *Rambus Inc. v. Infineon Technologies AG, supra*, as well as with considerable evidence developed during discovery in this case. Further, this issue has no nexus with Rambus's document retention policy. *See, e.g.* nos. 20-24 above.
31. Rambus knew that, throughout its membership in JEDEC, these patent disclosure rules and procedures were also construed consistently with the overriding duty of all members to participate in good faith, and thus not to take any action that was at odds with the fundamental purposes and principles of JEDEC, including the principle of developing	This is not true. It is in direct conflict with the decision of the Federal Circuit in *Rambus Inc. v. Infineon Technologies AG, supra*. Further, this issue has no nexus with Rambus's document retention policy. *See, e.g.* nos. 20-24 above.

Proposed Adverse Inference	**Rambus's Response**
"open" standards that avoid the use of proprietary patents wherever possible.	
32. Rambus knew, throughout its membership in JEDEC, that JEDEC's patent disclosure rules included the duty to disclose both issued patents and patent applications.	This issue has no nexus with Rambus's document retention policy. *See, e.g.* nos. 20-24 above. As regards a supposed duty to disclose patent applications, *see* Opposition Brief at 14-15. Again, what Complaint Counsel ask Your Honor to infer is directly at odds with the evidence.
33. Rambus knew, throughout its membership in JEDEC, that the failure to disclose pertinent patents and patent applications violated the integrity of JEDEC rules and procedures and subverted the standard-setting process at JEDEC.	*See* nos. 20-24, 29-32.
34. Rambus knew, throughout its membership in JEDEC, that JEDEC's patent disclosure rules were mandatory (not voluntary) and that they applied to all members (not only those who made presentations).	This is flatly wrong and contrary to all the evidence in this case. *See also* nos. 20-24, 29-33.
35. Rambus knew, throughout its membership in JEDEC, that JEDEC's patent disclosure rules required disclosure of patents and applications whenever the holder of the patent, or patent applicant, believed that the patent (or application, if and when issued as a patent) might be infringed by products built in compliance with JEDEC's standards.	This is flatly wrong, contrary to all the evidence in this case, and contrary to the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra*. *See also* nos. 20-24, 29-34.
36. Rambus knew, throughout its membership in JEDEC, that JEDEC's patent disclosure rules required disclosure of patent applications whenever the applicant believed that the underlying content of the application was such that, even without adding any new technical matter to the application, the application's claims could be amended such that (if and when a patent issued containing such amended claims) they might be infringed by products built in compliance with JEDEC's	This is flatly wrong, contrary to all the evidence in this case, and contrary to the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra*. *See also* nos. 20-24, 29-35.

Proposed Adverse Inference	Rambus's Response
standards.	
37. Rambus knew, throughout its membership in JEDEC, that a JEDEC member's duty to disclose patents or patent applications could not be avoided simply by withdrawing from the organization in lieu of disclosure.	This is the wackiest yet. There is no testimony that non-members had a duty to disclose to JEDEC or that when members left JEDEC they had some continuing duty. Judge Payne concluded that there was no duty to disclose after members withdrew from JEDEC and the Federal Circuit panel was unanimous on this point as well. That finding was the basis of Judge Payne's decision to grant JNOV on DDR-SDRAM, and also is the basis of a portion of Rambus's motion for summary decision on this same point. Rambus incorporates hereat by reference its briefs and supporting papers and evidence filed in connection with its motion for summary decision. In short, this proposed inference is flatly wrong and contrary not only to logic and reason, but to all the evidence in this case and the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra*. *See also* nos. 20-24, 29-36.
38. Rambus knew, throughout its membership in JEDEC, that by voluntarily choosing to participate as a member of JEDEC, it was impliedly committing itself to be legally bound by JEDEC's rules and procedures and all other duties and expectations normally incumbent upon JEDEC members.	What does this mean? It is vague, ambiguous, and indefinite. Further, it suggests that duties found somewhere in the ether, *e.g.*, "normally incumbent upon JEDEC members," now create legal bonds. As said so many times before, this issue has no nexus to Rambus's document retention policy. Moreover, it is wrong and conflicts with evidence in this case and aspects of the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra. See also* nos. 20-24, 29-37.
39. Between December 1991 and June 1996, Rambus knew that various members of the JC-42.3 Subcommittee made presentations proposing to incorporate the following technologies or features into JEDEC's DRAM standards: • programmable latency via a control	This is one of Complaint Counsel's more fascinating proposed adverse inferences. At the outset, one might think that Complaint Counsel would be able to prove that various members of JC-42.3 made such presentations. Certainly the evidence of such presentations would be in the minutes of the meetings. One also might think that the companies who supposedly made such presentations would be

Proposed Adverse Inference	**Rambus's Response**
register; • programmable access latency; • a writable configuration register permitting programmable CAS latency; • the use of control registers to contain values which control RAS and CAS access timing; • the use of control registers to contain values; • auto precharge; • auto precharge options available during the column portion of any cycle; • a proposal permitting the user to specify that the bank currently being accessed precharge itself as soon as the burst is completed; • internally precharging a bank without first receiving a separate precharge command; • data output occurring on both edges of an external clock; • output of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • input of a first portion of data in response to a rising edge of a data strobe and a second portion of data in response to a falling edge of a data strobe; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal;	able to offer evidence of them, if they occurred. Why, then, do Complaint Counsel seek an inference that they occurred? They either did, or they didn't, and the evidence one way or the other is independent of Rambus's document retention program. If Complaint Counsel are seeking to determine that Rambus was aware of such presentations, then you would think that they would start by showing, through the minutes and Mr. Crisp's notes and e-mails, whether he was in attendance. Again, this evidence is available. Surely these are matters for trial.

Proposed Adverse Inference	Rambus's Response
• input of a first portion of data synchronously with respect to a first external data strobe and a second portion of data synchronously with respect to a data strobe; • output a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • use of a dual edge clocking scheme which inputs and outputs data synchronously with the rising and falling edge of an external clock; • sampling of data occurring on both edges of an external clock; • data output occurring on the rising edge of an external clock and the falling edge of the external clock; • clocking data on both edges of the clock; • use of both edges of the clock for transmission of address, commands, or data; • a receiver circuit for latching information in response to a rising edge of the clock signal to the falling edge of the clock signal; • on-chip PLL or on-chip DLL circuitry; • phase locked loop circuitry or delay locked loop circuitry to generate an internal clock signal using an external clock signal; • having phase lock loop on DRAM to control delays inside and outside DRAM; • using a PLL/DLL circuit on a DRAM	

Proposed Adverse Inference	**Rambus's Response**
to reduce input buffer skews; • DRAM with PLL clock generation; • using PLL on an SDRAM; and • using a DLL to compensate for the output delay.	
40. Even after withdrawing from JEDEC, Rambus closely monitored JEDEC's ongoing work on SDRAM standards, including work involving specific technologies on which Rambus sought to perfect patent rights.	This proposed inference is vague and ambiguous, particularly in its use of the phrase "closely monitored." It also is not related to Rambus's document retention program, since evidence of what Rambus monitored, just as with evidence of what technologies were invented by Rambus's founders and employees and subject to efforts to perfect patent rights to protect those inventions, is readily available.
41. From late 1991 to mid 1996, while participating in JEDEC's development of RAM standards, Rambus reasonably believed that the JEDEC RAM standards being developed at that time would require the use of patents held or applied for by Rambus.	There is substantial evidence that contradicts various portions of this complex statement, which is ambiguous and indefinite. Further, this is an issue on which there has been substantial discovery and no showing that any material evidence has not been maintained. *See also, e.g.,* nos. 19 and 39 above.
42. From late 1991 to mid 1996, Rambus reasonably believed that the following technologies or ideas, proposed for inclusion in the JEDEC RAM standards during the period of Rambus's participation in JEDEC, were covered by Rambus's then-pending patent applications or could be covered through amendments to such applications: • programmable burst length; • programmable CAS latency; • on-chip PLL or on-chip DLL circuitry; • dual-edge clock; • use of a programmable register operative to store information specifying a	Several points are easily made. First, if some or all of these features were proposed for inclusion in a JEDEC standard, Complaint Counsel should have no trouble proving that fact. *See* no. 39 above. Second, if some or all of these features were covered by Rambus's then-pending patent applications, Complaint Counsel should have no problem proving that fact – the applications are all available and Complaint Counsel has designated an expert witness who is supposed to be able to testify to what applications covered. Third, whether applications were later amended to cover some or all of these features also is a matter easily proven by reference to later applications. Finally, what Rambus believed regarding its patent applications is a matter on which the evidence is available. What that evidence does

Proposed Adverse Inference	**Rambus's Response**
manner in which the semiconductor device is to respond to a read request or a write request; • use of a register to store a value to determine CAS latency, where that value can be changed by programming the mode register; • use of a programmable register to store a value that is representative of a delay time after which the device responds to a read request; • use of a programmable register to store a value which is representative of a delay time, that value being a number of clock cycles of an external clock, after which the SDRAM responds to a read request; • use of a programmable access-time register operative to store information specifying a value indicative of an access time for the device, such that the device waits for the access time before responding to a read request; • use of a register to store a value to determine burst length, where that value can be changed by programming the mode register; • use of a register to store a value to determine block size, where that value can be changed by programming the mode register; • use of a programmable register that receives information that defines an amount of data to be output by the memory device in response to a read request; • programmable block size; • use of a register to store a value that defines an amount of data to be output by the memory device in response to a read request, where that value cart be changed by programming the mode register;	show is that Rambus's beliefs changed over time. At times, for instance, Rambus thought it might have drafted claims to cover certain aspects of its inventions, only to learn later that the claims had not been drawn properly and that further work still was required.

Proposed Adverse Inference	Rambus's Response
• use of a programmable register that receives information that defines an amount of data to be input by the memory device in response to a write request; • use of a programmable register to store a value that defines an amount of data to be input by the memory device in response to a write request; • outputting data on the rising and thc falling edge of a clock signal; • outputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • inputting of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • output of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously	

Proposed Adverse Inference	Rambus's Response
with respect to both a first external clock signal and a second external clock signal; • input of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data input occurring synchronously with respect to both a first and a second external clock signal; • data input and output occurring synchronously with the rising and falling edge of an external clock, according to a dual edge clocking scheme; • inputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • outputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; - inputting a first portion o data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data input occurs synchronously with respect to both the rising edge of the external clock and the falling edge of the external clock signal; • outputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal;	

Proposed Adverse Inference	**Rambus's Response**
• inputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • use of phase locked loop circuitry or delay locked loop circuitry to generate an internal clock signal using an external clock signal; • having a phase lock loop on DRAM to control delays; • using a PLL/DLL circuit on a DRAM to reduce input buffer skews; • using a PLL clock generation; • using a PLL on an SDRAM; • using a DLL to compensate for the output delay in a DRAM; and using an on-chip PLL or DLL to ensure that the data strobe and data coming off of a DRAM chip are sufficiently synchronized to the system clock so that the memory controller can capture that data.	
43. During its participation at JEDEC, Rambus reasonably believed it could perfect its patent rights by amending pending claims of its '898 patent application and later-filed progeny to cover technologies proposed to he incorporated into JEDEC's DRAM-related standards.	*See* no. 42 above.
44. Between December 1991 and June 1996, Rambus attempted to amend its patent claims to cover JEDEC work relating to the following technologies, so that if included in a JEDEC standard, use of such technologies in JEDEC-compliant devices would infringe Rambus patents:	*See* nos. 39, 42 and 43 above. Further, there is no evidence that Rambus's efforts to amend its applications were motivated by a desire to ensure that "if included in a JEDEC standard, use of such technologies in JEDEC-compliant devices would infringe Rambus patents." Rather, as the evidence will establish unequivocally, Rambus was trying to ensure

Proposed Adverse Inference	Rambus's Response
• programmable CAS latency; • programable burst length; • dual edge clock; • on-chip DLL or on-chip PLL circuitry; • using a programmable register operative to store information specifying a manner in which the semiconductor device is to respond to a read request or a write request; • use of a register to store a value to determine CAS latency, where that value can be changed by programming the mode register; • use of a programmable register to store a value that is representative of a delay time after which the device responds to a read request; • use of a register to store .a value to determine CAS latency; • use of a programmable register to store a value which is representative of a delay time, that value being a number of clock cycles of an external clock, after which the SDRAM responds to a read request; • use of a programmable access-time register operative to store information specifying a value indicative of an access time for the device, such that the device waits for the access time before responding to a read request; • use of a register to store a value to determine burst length, where that value can be changed by programming the mode register; • use of a register to store a value to determine block size, where that value can be changed by programming the mode register;	that its patent claims fully covered and protected the scope of its revolutionary inventions so that it would be able to protect those inventions and realize the value of those inventions as the Framers of the Constitution and Congress intended for it to be able to do.

Proposed Adverse Inference	Rambus's Response
• use of a programmable register that receives information that defines an amount of data to be output by the memory device in response to a read request; • programmable block size; • use of a register to store a value that defines an amount of data to be output by the memory device in response to a read request, where that value can be changed by programming the mode register; • use of a programmable register that receives information that defines an amount of data to be input by the memory device in response to a write request; • use of a programmable register to store a value that defines an amount of data to he input by the memory device in response to a write request; • outputting a first portion of data in response to a rising edge of a clock Signal and a second portion of data in response to a falling edge of a clock signal; • inputting of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the	

Proposed Adverse Inference	Rambus's Response
external clock signal and the falling edge of the external clock signal; • output of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously with respect to both a first external clock signal and a second external clock signal; • input of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data input occurring synchronously with respect to both a first and a second external clock signal; • use of a dual edge clocking scheme which inputs and outputs data synchronously with the rising and falling edge of an external clock; • data input and output occurring synchronously with the rising and falling edge of an external clock, according to a dual edge clocking scheme; • outputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • inputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • outputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion	

Proposed Adverse Inference	Rambus's Response
of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • inputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the external clock and the falling edge of the external clock signal; • outputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously with respect to both a first external clock signal and a second external clock signal; • inputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • using a dual edge clocking scheme which inputs and outputs synchronously with the rising and falling of an external clock; • use of phase locked loop circuitry or delay locked loop circuitry to generate an internal clock signal using an external clock signal; • having a phase lock loop on DRAM to	

Proposed Adverse Inference	**Rambus's Response**
control delays; • using a PLL/DLL circuit on a DRAM to reduce input buffer skews; • using a PLL clock generation; • using a PLL on an SDRAM; • using a DLL to compensate for the output delay in a DRAM; and • using an on-chip PLL or DLL to ensure that the data strobe and data coming off of a DRAM chip are sufficiently synchronized to the system clock so that the memory controller can capture that data.	
45. While a member of JEDEC, Rambus intended to enforce its JEDEC-related patents (and, once issued as patents, its JEDEC-related patent applications) against memory manufacturers who produced products compliant with the JEDEC RAM standards.	Again, Rambus's intentions have been fully discovered, and there is no nexus between this issue and Rambus's document retention policy. Also, what is quite clear is that Rambus sought to license its patents and had no intention to "enforce" them until companies such as Infineon, Micron and Hynix refused to take a license and instead insisted on infringing them.
46. In enforcing such JEDEC-related patents, Rambus also intended to charge high royalties.	This is duplicative. *See, e.g.,* nos. 1, 13, 14, and 17. *See also* no. 45.
47. Rambus knew that its very participation in JEDEC, coupled with its failure to make required patent-related disclosures, conveyed a materially false and misleading impression that JEDEC was not at risk of adopting standards that Rambus could later claim to infringe upon its patents.	This, again, is wrong. Since all the evidence that might bear on this issue is available, one can only assume that Complaint Counsel ask Your Honor to infer this because they know they can't prove it. Briefly, Rambus did not fail to make any required patent-related disclosures. *Rambus Inc. v. Infineon Technologies AG, supra.* Further, at no time did Rambus convey a false and misleading impression regarding the future possibility that products later manufactured might infringe Rambus patents. To the contrary, Rambus was very clear about this possibility and all the DRAM manufacturers and many other JEDEC

Proposed Adverse Inference	**Rambus's Response**
	members were well aware of this. The evidence we have obtained from [redacted], including the very recently obtained information from Mitsubishi, make plain that no DRAM manufacturer or other concerned JEDEC member was misled about the risk of future infringement. They took that risk knowingly, [redacted].
48. Rambus also knew that by engaging in various affirmatively misleading conduct, it was reinforcing the materially false and misleading impression that JEDEC was not at risk of adopting standards that Rambus could later claim to infringe upon its patents.	*See, e.g.* no. 47 above. As to whether any JEDEC member relied on any action or omission by Rambus, we have shown in the "no reliance" portion of the motion for summary decision, unrebutted by Complaint Counsel, that there was no reliance.
49. Rambus intended through its conduct —both its actions and omissions — to convey the materially false and misleading impression that JEDEC was not at risk of adopting standards that Rambus could later claim to infringe upon its patents.	*See, e.g.*, nos. 47 and 48 above.
50. Rambus's pattern of misleading conduct — both its actions and omissions — continued for a number of years after it withdrew from JEDEC.	*See, e.g.*, nos. 37 and 47-49.
51. During the time it was a JEDEC members and for a number of years thereafter, Rambus sought to conceal from JEDEC and its members both (1) the fact that it possessed patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards, and (2) the fact that Rambus in the future intended (or at a minimum, reserved the right) to enforce such patents and to demand high royalties.	This is wrong in a variety of respects. First, Rambus's patents, once they issued, were publicly available. Second, Rambus was quite clear about its views that certain products might infringe its patents and that if companies did not license its patents, but chose instead to infringe them, Rambus might have no alternative but to enforce its patents. Its royalties are, of course, fully discovered, and moreover are not "high" when compared to the fair value of the revolutionary inventions in question. Third, it is compound, vague and

Proposed Adverse Inference	**Rambus's Response**
	ambiguous. Fourth, there is no nexus between these issues and Rambus's document retention policy. Finally, this proposed inference is largely duplicative of ones addressed earlier. *See, e.g.*, nos. 1, 13, 14, 17, 37, 45, and 47-49.
52. Rambus knew that, before and during its membership in JEDEC, it never disclosed either to JEDEC or to individual JEDEC members information sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	Politely, this is hogwash. The evidence is quite clear that JEDEC and JEDEC members knew that Rambus was likely to obtain patents on the various inventions it had made, many of which were incorporated in RDRAM, and that if these inventions, or some of them, were incorporated in products manufactured by companies which did not have a license from Rambus to manufacture those products, they might in the future infringe patents that might be issued to Rambus. [redacted] *See also* nos. 47-49 and 51 above.
53. Rambus knew that, after withdrawing from JEDEC — up until the time it began to enforce its JEDEC-related patents — it never disclosed either to JEDEC or to individual JEDEC members information sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	*See* no. 52 and all other responses cited therein.
54. Rambus knew that, in the course of making disclosures to DRAM makers and others in the context of licensing-related discussions involving Rambus's RDRAM architecture, it never disclosed either to JEDEC or to individual JEDEC members information	This is flatly not true. *See, e.g.*, no. 52 and all other responses cited therein.

Proposed Adverse Inference	**Rambus's Response**
sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) he infringed by devices built in accordance with JEDEC standards.	
55. Rambus knew that, through availability of Rambus's foreign patents and patent applications, neither JEDEC nor individual JEDEC members could gather sufficient information to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
56. Rambus knew that, through its disclosure of the '703 patent to JEDEC, it did not provide JEDEC or individual JEDEC members with sufficient information to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
57. Rambus knew that, through its participation in JEDEC, it did nothing that would have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Some of the more pertinent evidence on this point is cited in Rambus's motion for summary decision with respect to the issue of reliance.
58. Rambus knew that the limited disclosures it made to IEEE or the SynkLink Consortium, relating to Rambus patents, would not have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.

Proposed Adverse Inference	**Rambus's Response**
reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	
59. Rambus knew that the limited disclosures it made to JEDEC in a letter concerning the SynkLink technology would not have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
60. Rambus knew that nothing contained in its June 1996 JEDEC withdrawal letter would have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
61. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), JEDEC and its members would seek to work around Rambus's patented or patent-pending technologies.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so.
62. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), JEDEC and its members would have been able to revise JEDEC's DRAM-related standards to work around or avoid Rambus's	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had

Proposed Adverse Inference	**Rambus's Response**
patented or patent-pending technologies.	ample opportunity to do so.
63. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), the most likely result is that JEDEC's DRAM-related standards would have excluded or omitted any technologies covered by Rambus's patented or patent-pending technologies.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so.
64. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), Rambus's patents in the future would derive no value by virtue of any association with thc contents of JEDEC's DRAM standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so. It also is quite clear that Rambus's patents derive their value from the fundamental and revolutionary nature of the inventions that underlie them; their value is unrelated to JEDEC or its standards.
65. During its participation at JEDEC, Rambus knew that there were a variety of commercially viable alternatives to the use of its proprietary technologies in JEDEC's DRAM-related standards.	This is not true. If there were such commercially viable alternatives, then why are they not on the market? More to the point, there is no nexus whatsoever between this proposed adverse inference and Rambus's document retention policy. Proof of this issue is almost wholly in the possession of third parties.
66. Rambus knew that the design objectives served by inclusion of programmable CAS latency, programmable burst length, on-chip PLL/DLL, and dual-edge clock technologies in JEDEC standards likely could have been accomplished through use of alternative DRAM-related technologies available at the time these standards were	This is not true. *See, e.g.*, nos. 52, 64 and 65 above, and the various other responses cited therein.

Proposed Adverse Inference	**Rambus's Response**
being developed	
67. During its participation at JEDEC, Rambus knew that JEDEC and its members would be capable of developing commercially viable alternative standards that avoided Rambus's patents and patent applications.	This is not true. *See, e.g.,* nos. 52, 64 and 65 above, and the various other responses cited therein. For instance, Dr. Farmwald testified at his deposition that he did not believe there were any such alternatives, in part because he had thought about that issue, tried to think of them, and concluded there were none. More to the point, there is no nexus whatsoever between this proposed adverse inference and Rambus's document retention policy. Proof of this issue is almost wholly in the possession of third parties.
68. Rambus knew that the following technologies, among others, were commercially viable alternatives to various Rambus patented or patent-pending technologies: • permanently fixing the GAS latency at a single value; • having the memory controller signal the CAS latency through separate pins on each DRAM device; • setting the CAS latency through the command structure of the read command; • using fixed latency parts; • explicitly identifying the CAS latency in the read or write command; • programming CAS latency by blowing fuses on the DRAM; • scaling GAS latency with clock frequency; • using an existing pin or a new, dedicated pin to identify the latency via two or more different voltage levels asserted by the	This is not true. *See, e.g.,* nos. 52, 64 and 65 above, and the various other responses cited therein. For instance, Dr. Farmwald testified at his deposition that he did not believe there were any such alternatives, in part because he had thought about that issue, tried to think of them, and concluded there were none. More to the point, there is no nexus whatsoever between this proposed adverse inference and Rambus's document retention policy. Proof of this issue is almost wholly in the possession of third parties.

Proposed Adverse Inference	Rambus's Response
memory controller; • using asynchronous DRAM; • fixing the burst length at a single value; • having the memory controller signal the burst length through separate pins on each DRAM device; • setting the burst length through the command structure of the read command; • setting the burst length through the use of a burst interrupt feature; • using a short fixed burst length; • explicitly identifying the burst length in the read or write command; • using a long fixed burst length coupled with the burst-terminate command; • using a burst-EDO style protocol where each CAS pulse toggles out a single column of data; • using an existing pin or a new, dedicated pin to identify the burst length via multiple voltage levels; • moving the PLL/DLL circuitry to the memory controller; • moving the PLL/DLL circuitry to each DIMM; • using a periodic calibration technique; • using a vernier method to measure and account for dynamic changes in skew; • putting the DLL on the memory controller;	

Proposed Adverse Inference	**Rambus's Response**
• use of off-chip (on-module) DLLs; • increasing the speed at which DRAM's could operate; • interleaving data between different DIMM's onto the same data bus; • interleaving data between different banks on each DRAM onto the same data bus; • increasing the width of the data bus; • use of two or mote interleaving memory banks on-chip and assigning a different clock signal to each bank; • keeping each DRAM single data rate and interleaving banks on the module; • increasing the number of pins per DRAM; • increasing the number of pins per module; • doubling the clock frequency; • use of simultaneous bidirectional 110 drivers; and • use of toggle mode.	
69. Rambus consciously chose not to disclose to JEDEC or to JEDEC's members the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards, for a variety of strategic reasons, including • a desire to avoid JEDEC developing alternative standards that worked around Rambus's technology;	This proposed inference appears to be an effort to summarize much of what has gone before. Rambus, in response, incorporates its prior responses, including without limitation its responses to nos. 1, 13, 14, 17, 37, 45, 47-49, 52, 64, and 65.

Proposed Adverse Inference	**Rambus's Response**
• a desire to place Rambus in a position to charge high royalties in the future based on use of Rambus technologies in JEDEC-compliant devices; • a desire to avoid any limitation on its freedom to license its patents to whomever it wished on whatever terms it wished; and • a desire to use its patent leverage over the JEDEC standards to limit competition between RDRAM and JEDEC-compliant DRAM.	
70. Rambus knew that, were it to disclose patents or patent applications to JEDEC, its claimed intellectual property would be used by JEDEC only subject to advance commitments by Rambus that it would license such intellectual property either on royalty-free or other terms unfavorable to Rambus.	This is not true, and is contradicted by many witnesses, including Complaint Counsel's own expert witnesses. Since the underlying fact of what JEDEC would do is subject to proof wholly independent of Rambus, and since such proof has no nexus to Rambus's document retention policy, this is not a proper inference. Further, since the proof demonstrates that this is not what JEDEC would do, or what its rules provide, this is a blatant effort to force Rambus to disprove something that Complaint Counsel have the burden of proving, and apparently now realize they can't prove.
71. Rambus knew that the DRAM industry, including JEDEC member companies, would not consider the royally rates it intended to and later did charge for SDRAM and DDR SDRAM licenses (.75% and 3.5%, respectively) to be fair and reasonable.	This is not true, and the underlying predicate is not true. Further, the evidence that bears on this issue is available from third parties. *See also* no. 70 above. Suffice it to say that many companies took such licenses because they were fair and reasonable, and by comparison to royalties charged by other companies for the right to use inventions that are much less valuable, there rates are very fair and eminently reasonable. For instance, as Professor McAfee admitted, the IBM patent licensing policy is a flat 1% for one patent, 2% for two patents and so on, up to 5% for five patents. [redacted]

Proposed Adverse Inference	**Rambus's Response**
	[redacted]
72. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant legal risks to the enforceability of Rambus 's JEDEC-related patents.	First, there was nothing misleading about the nature of Rambus's participation, as discussed at some length above. Second, what Rambus knew about the *Dell* consent decree and the *Wang* decision (presumably what Complaint Counsel are referring to here) has been fully discovered. So, as with each of the foregoing proposed adverse inferences, there is no nexus between the proposed inference and Rambus's document retention policy.
73. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant risks that Rambus's JEDEC-related patents could be held unenforceable on grounds of equitable estoppel.	*See, e.g.*, no. 72 above.
74. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant risks that Rambus 's JEDEC-related patents also could be held unenforceable on antitrust grounds.	*See, e.g.*, no. 72 above.
75. At least as of December 1995, when Rambus Teamed of the FTC's proposed consent order in In re Dell Computer Corporation, Rambus knew that its conduct at JEDEC violated antitrust laws.	*See, e.g.*, no. 72 above.
76. Throughout most of thc time it participated in JEDEC, Rambus's attorneys encouraged the company to withdraw from JEDEC, because of the legal risks associated with participation.	This is not true. Given Judge Payne's earlier rulings regarding attorney-client privileged communications, there has been full discovery of this issue, as well. Thus, there is no nexus between this proposed inference and Rambus's document retention policy, except perhaps wishful thinking.
77. Until early 1996, Rambus consciously	This also is not true. *See, e.g.*, 72 and 76

Proposed Adverse Inference	**Rambus's Response**
chose to ignore legal advice to withdraw from JEDEC.	above.
78. Rambus knew that joining JEDEC as part of its business strategy of obtaining high royalties for use of its technology in widely adopted DRAM industry standards violated and subverted the purposes, rules, and/or procedures of JEDEC.	First, Rambus did not violate or subvert the purposes, rules and/or procedures of JEDEC. If Complaint Counsel think they can prove otherwise, all the evidence is available to them and unaffected by Rambus's document retention policy. There is no nexus as required by law. *See also, e.g.,* nos. 1, 13, 14, 17, 37, 45, 47-49, 52, 64, 65, 72 and 76 above.
79. Rambus knew that its efforts to amend existing patent applications to cover technology features that were being discussed within JEDEC for potential use within JEDEC RAM standards violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein, including *Kingsdown, supra,* and its progeny.
80. Rambus knew that its intentions, while a member of JEDEC, to enforce its JEDEC-related patents in the future against memory manufacturers who produced products compliant with JEDEC RAM standards violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the reference cited therein.
81. Rambus knew that its plans to license its intellectual property on terms it knew the industry would not consider to be fair and reasonable violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
82. Rambus knew that, by conveying a materially false and misleading impression that .JEDEC was not at risk of adopting standards that Rambus could later claim to infringe upon its patents, it was violating and subverting the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
83. Rambus knew that its failure to make sufficient disclosures to JEDEC that would have alerted JEDEC and its members to the true nature and scope of its patent claims violated and subverted the purposes, rules,	*See* no. 78 above and all the references cited therein.

Proposed Adverse Inference	**Rambus's Response**
and/or procedures of JEDEC.	
84. Rambus knew that its purpose to substantially enhance the value of its patents by not making proper patent-related disclosures violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
85. Rambus knew that, by remaining in JEDEC for over four years in order to glean information that would enable it to write new and amended patent claims designed to cover technologies that it knew to be, or expected would be, encompassed by JEDEC's RAM standards, it was violating and subverting the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
86. Rambus knew that, by withdrawing from JEDEC without revealing its relevant patents and patent applications, it was violating and subverting the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
87. Rambus ultimately withdrew from JEDEC in part because it feared its conduct at JEDEC could render its patents unenforceable on and antitrust and/or equitable estoppel grounds.	*See* no. 78 above and all the references cited therein.
88. Rambus ultimately withdrew from JEDEC in part because it feared its conduct at JEDEC could lead to an FTC antitrust enforcement action.	*See* no. 78 above and all the references cited therein.
89. Rambus ultimately withdrew from JEDEC in part because it feared that continued participation could result in limitations being imposed on Rambus's freedom to licenses its patents to whomever it wished on whatever terms it wished.	*See* no. 78 above and all the references cited therein.
90. Rambus knew that once the DRAM industry (and related industries) had adopted the JEDEC DRAM standards, the industry would become locked into those standards,	This is not true, and discovery form various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to

Proposed Adverse Inference	**Rambus's Response**
rendering it economically infeasible for the industry to attempt to alter or work around the standards in order to avoid paying royalties to Rambus.	accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so. It also is quite clear that Rambus's patents derive their value from the fundamental and revolutionary nature of the inventions that underlie them; their value is unrelated to JEDEC or its standards. Complaint Counsel's "lock-in" theory is without merit. If it had merit, they could prove it independent of Rambus. Seeking an adverse inference of facts wholly within the control of third parties, who now claim to be "locked in" because they can't find another way to go, perhaps because there aren't any as good as what Rambus invented, simply reveals the deficiencies in Complaint Counsel's case.
91. Rambus knew that manufacturers who might attempt to work around the JEDEC RAM standards could be forced to absorb potentially massive revenue losses if, as a result of modifying the JEDEC standards, their introduction of new products were delayed.	This contention, if it could be proven, would be proven by evidence from third parties. Since it can't be proven, Complaint Counsel seek an inference to this effect. For example, DRAM manufacturers don't suffer revenue losses because introduction of a new product has been delayed. Just as they have in the past, they simply keep selling the old product until they are ready to introduce the new one. In fact, DRAM manufacturers introduce new products only when forced to do so by their customers, When they say they prefer evolution to revolution, what they mean is they prefer sticking with old products and never having to improve. If Rambus had not come along with its revolutionary inventions, there would today be a huge bottleneck in data transfer rates between DRAM and CPUs, probably resulting in the sale of many more DRAMs because that would be the only way to speed up the system overall. Of course, the result for the DRAM manufacturers would be much higher revenues, because they would be selling lots more of a very slow and antiquated product. Thus, so long as they are able to band together to prevent progress in the design of

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	DRAM, they are financially benefited. The inference also fails to take account of numerous differences within the DRAM industry, such as between Micron and Samsung. The former seeks to profit from making older technology more efficiently for as long as possible; the latter profits from making newer technologies at higher margins.
92. Rambus knew that purchasers and other users of JEDEC-compliant DRAM technology — including manufacturers of computers, chipsets, graphics cards, and motherboards — would themselves become locked into the JEDEC standards.	They wouldn't be locked in. They aren't locked in. And the market today quite plainly demonstrates no purchaser is locked in. This industry spends hundreds of millions of dollars each year, if not billions of dollars, constantly evolving, improving and cost reducing. *See also* nos. 90 and 91 above.
93. Rambus knew that any effort to work around the JEDEC standard would face innumerable practical and economic impediments, including but not limited to the out-of-pocket costs associated with redesigning, validating, and qualifying DRAM products to conform with a revised set of standards.	This is not true. Among other things, these costs are incurred on a regular basis all the time. There would be no incremental costs that would not be incurred in any event if JEDEC members decided to abandon the use of features that were invented by Rambus. *See also* nos. 90 and 91 above.
94. Rambus knew that it was unclear whether downstream purchasers and other users of SDRAM technology would tolerate the delay in the introduction of new products that likely would result from the process of changing the standard.	This also is not true, as history has proven. The downstream purchasers waited quite a long time, years in fact, for DDR-SDRAM to become available to replace SDRAM. *See also* nos. 90 and 91 above.
95. Rambus knew that, by late 1999 or early 2000, when it first began to enforce its patents against memory manufacturers producing JEDEC-compliant DRAM, the DRAM manufacturers and their customers had become "locked in" to the JEDEC standards.	This is not true. DRAM manufacturers are not locked in to JEDEC standards. They can manufacture parts that are not covered by JEDEC standards, such as RDRAM, and some of them do. In fact, those that are manufacturing and selling RDRAM are making money, as compared to those who are manufacturing and selling DDR-SDRAM or SDRAM and appear to be losing money, even without paying any license fees to Rambus. Further, since they control JEDEC, DRAM manufacturers can change the JEDEC

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	standards whenever they choose. *See also* nos. 90 and 91 above. In any event, there is no nexus between this issue and Rambus's document retention policy.
96. Rambus knew that due to the lock-in effect, it could succeed in extracting exorbitant royalty rates from DRAM makers.	Since there is no lock-in effect, as noted above, and since Rambus's royalties are fair and reasonable, as also noted above, this is nonsensical. The evidence that might bear on this issue also is in the hands of third parties and, to the extent you would expect it to be in Rambus's possession, it has been preserved and produced, *e.g.*, what royalties does Rambus actually charge.
97. Rambus knew that, once industry lock-in occurred, it had the power to exclude DRAM makers from the commodity memory marketplace by refusing to grant them a license.	Again, this is an inference based on a false premise. What is true is that if Rambus does not grant a license to a particular manufacturer, that manufacturer will not legally be entitled to use Rambus's patented inventions. However, Rambus has been willing to license all DRAM manufacturers on reasonable rates. Some of those manufacturers, however, have preferred to keep infringing and to force Rambus to litigation.
98. Rambus knew that, by destroying massive amounts of internal business records, it could substantially increase the chances of its success in future JEDEC-related patent litigation.	This is flatly not true. It is inconsistent with Judge Timony's findings as well. Further, it is apparent, as the recent Federal Circuit decision demonstrates, that Rambus's success in patent infringement litigation is unrelated to documents in its possession. What matters is how the products in question, JEDEC-related or not, are designed, and what Rambus's patents cover.
99. Rambus knew that, by destroying massive amounts of internal business records, it could substantially increase the chances of its success in future JEDEC-related antitrust litigation.	This also is not true. It is inconsistent with Judge Timony's findings and with the conclusions of the Federal Circuit in *Rambus Inc. v. Infineon Technologies AG*. Further, as this exercise has shown, the issues that Complaint Counsel believe are material to this case – all 100 of them – are not issues with respect to which Rambus's document retention policy resulted in relevant documents not being

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	preserved. To the contrary, most of the evidence is in the possession of third parties, and to the extent the evidence is in Rambus's possession, it has been produced and Complaint Counsel rely on it.
100. Rambus knew that, by destroying massive amounts of internal business records, it could substantially increase the chances of its success in any future JEDEC-related FTC enforcement action.	*See* no. 99 above.