

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)
In the Matter of)
)
RAMBUS INCORPORATED,) DOCKET NO. 9302
)
a corporation.)
)
)
_____)

**DECLARATION OF LESLIE Y. KIMBALL IN SUPPORT OF IBM'S MOTION
FOR RETURN OF PRIVILEGED DOCUMENTS INADVERTENTLY
PRODUCED**

I, Leslie Y. Kimball, declare as follows:

1. I am an attorney with Hogan & Hartson, L.L.P., attorneys for International Business Machines Corporation ("IBM"). I have personal knowledge of the matters set forth in this declaration.
2. On November 6, 2002 Rambus served IBM with a subpoena for documents. After negotiating the scope of the subpoena with Rambus, in very late November, 2002, IBM began collecting documents. The review of the documents began the first or second week of December. A very large number of documents needed to be reviewed in a short period of time, as depositions of IBM employees were being taken beginning in the second week in January and IBM was endeavoring to produce as many documents as possible prior to those depositions. Approximately 89 boxes of documents were reviewed and over 158,000 pages of documents produced.
3. Due to the size of the production and the short period of time by which the production was to be completed (which was further complicated by the production being

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done over the holiday period) we discovered that errors were made and privileged documents were inadvertently produced.

4. A process is in place by which attorneys review documents that have been collected pursuant to a subpoena. Each is to obtain a box of documents, then review each document therein to determine: 1) if the document is responsive to the subpoena; 2) the appropriate level of confidentiality that should be assigned to the document, and; 3) whether the document, or a portion thereof, is privileged. In order to determine privilege, several listings of all IBM attorneys working in the capacity as an attorney at various dates in time are to be referenced to determine if one of the authors or recipients of the documents is an attorney. There are different lists that reflect active attorneys as of different dates. As detailed in the declarations of Candice Jones and Michael Erickson, filed herewith, the errors in the production included instances where the attorneys reviewing the documents did not realize that one of the authors or recipients was an attorney and errors in redacting privileged information from documents.
5. On February 15, 2003, I first discovered the inadvertent production of several privileged documents. Consistent with the terms of paragraph 15 of the Protective Order, I notified counsel for the parties of the inadvertent disclosure and requested the return of the documents. A true and correct copy of that letter is attached herewith as Exhibit A. One of the documents cited in that letter is an e-mail between IBM employee Mark Kellogg and IBM attorney Robert Walsh.
6. On March 11, 2003 Rambus responded to my March 7th letter, stating that it would not return the e-mail between Mr. Kellogg and Mr. Walsh, stating that the document reflected Mr. Kellogg's state of mind []

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[] and that his state of mind is not protected by the attorney client privilege. Rambus compared this document to another document produced by IBM (IBM2/ 074976) which was an e-mail between IBM employee Paul Coteus and attorney S. Capella, which was partially redacted prior to production. Rambus also identified additional documents produced by IBM that may be protected by the attorney client privilege. A true and correct copy of this letter is attached herewith as Exhibit B.

7. Upon receipt of this letter, I immediately conducted an investigation into the production of the potentially privileged documents identified by Rambus as well as the redacted document cited by Rambus in its letter. Indeed, all of these documents were privileged and inadvertently produced. I so advised counsel by letter on March 18, 2003 and requested the return of the documents. I also advised Rambus that while IBM does not dispute that Mr. Kellogg's state of mind is not privileged, the communication with an attorney reflecting that state of mind is privileged. A true and correct copy of that letter is attached herewith as Exhibit C.

8. I also conducted a broader investigation, beyond the specific documents identified by Rambus, for privileged documents that may have been inadvertently produced. I discovered that there was a group documents, including IBM/2 074976 - 77, where redaction errors had been made by one of the attorneys involved in the review process. A process is in place by which documents that are partially privileged are put into folders and marked as such. The attorney is to indicate those portions of the document that are privileged and are to be redacted. A paralegal then redacts the information, marks the document as redacted, and then processes for production the redacted version of the document. One attorney participating in the review was under a misimpression of how

this procedure worked. Thus, for a group of documents reviewed by this one attorney, the non-privileged or non-responsive portion of the document was redacted and the privileged, responsive portion was mistakenly produced. (see Declaration of Candice Jones).

9. On March 28, 2003 I sent a letter to counsel advising them that IBM had discovered additional privileged documents that were inadvertently produced as well as advising of the redaction errors. IBM produced a privileged log, revised versions of redacted documents, as well as a few additional documents responsive to the subpoena. A true and correct copy of this letter (without the attachments) is attached herewith as Exhibit D.
10. On March 31, 2003 Rambus responded to my letter of March 28, 2003, again refusing to return the e-mail from Mr. Kellogg to Mr. Walsh and the document from Mr. Coteus to Mr. Capella. Instead, Rambus offered redacted versions of the documents whereby some of the information communicated to the lawyers was redacted but not all. A true and correct copy of that letter is attached as Exhibit E.
11. On April 2, 2002 I sent a letter to Rambus' counsel setting forth the legal authority for the privileged nature of the documents and again requesting the return of the documents. A true and correct copy of that letter is attached as Exhibit F.
12. Between April 3rd and 4th Rambus' counsel and I communicated several times on the issue of privileged documents. That correspondence is attached herewith as exhibits G-H.
13. Meanwhile, on April 3, 2003 John Danforth, Rambus' General Counsel, sent an e-mail to Fred Boehm, an IBM employee, mentioning the issue of the inadvertent

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disclosure of privilege documents. I understand that Rambus has been trying to establish a business relationship with IBM through Mr. Boehm, who is the head of IBM's Intellectual Property Law Department. Mr. Boehm has not been involved in any aspect of IBM's compliance with the subpoena served by Rambus on IBM. Attached herewith as Exhibit I is a true and correct copy of this e-mail, which was forwarded to me. On April 8, 2003 I sent a letter to Rambus' counsel about this inappropriate communication. A copy of that letter is attached as Exhibit J and Rambus' response thereto is attached as Exhibit K.

14. On April 9, 2003 I reviewed the list of IBM documents that Rambus advised it intended to introduce as exhibits at the hearing in this matter. I discovered that not only were the Kellogg and Coteus e-mails over which we had exchanged correspondence on this list, there were also documents identified as privileged and inadvertently produced in my March 28th letter. I also discovered two additional documents, portions of which contained privileged communications, that were identified as potential exhibits.

15. On April 10, 2003 I sent another letter to Rambus' counsel on the two e-mails about which we had been corresponding. I also asked Rambus to immediately state its position on the documents identified in my letter of March 28th. A true and correct copy of that letter is attached as Exhibit L. I also sent a letter to counsel about the two newly discovered documents that contained privileged information, and provided properly redacted versions of those documents. A true and correct copy of that letter is attached as Exhibit M.

16. On April 10th Howard Weber and I had a conversation with Rambus counsel, Mr. Perry, in an effort to resolve this matter. During that conversation Mr. Perry

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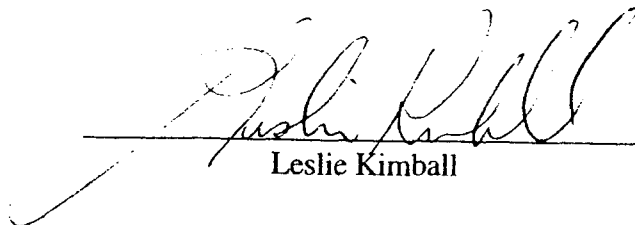
identified several documents about which he had questions, and agreed to return to IBM most of the remaining documents that had been inadvertently disclosed. The two emails from Mr. Kellogg and Mr. Coteus which had been the subject of our prior correspondence, were the two documents about which the parties remained in dispute. Mr. Perry argued that publicly available information communicated in an otherwise privileged communication was not privileged. We asked Mr. Perry for legal authority for this proposition. On April 11, 2003 Mr. Perry provided me citations to three cases.

17. From a review of IBM personnel directories, the email addresses (which by the person's name, location and IBM@IBMUS indicates the person is an employee receiving e-mail on the IBM system) and my personal knowledge, I can confirm that Mark Kellogg, Bob Walsh, Art Kilmer and Gordon Kelley were all employees of IBM at the time document IBM 2/081282 was sent. Also based on personnel directories and the e-mail addresses, I can confirm that Paul Coteus, Steven Capella, Toshiaki Khirihata, Adam Wilson, Nick Van heel, Steven Tomashot, Warren Maul, Daniel P. Morris and George Chiu were all IBM employees at the time document IBM2 074976 was sent. Based on a review of lists of IBM attorneys acting in an attorney capacity as of certain dates, Robert Walsh, Steve Capella and Daniel P. Morris were all lawyers acting in the capacity as a lawyer for IBM at the time the e-mails at issue were sent to them.

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

Executed this 14th day of April, 2003 at White Plains, New York.



Leslie Kimball

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March 7, 2003

Via Facsimile

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Malcolm Catt, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

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

Dear Steve and Malcom,

On February 15th we discovered that several privileged documents inadvertently have been produced to the parties pursuant to Rambus' subpoena to IBM.

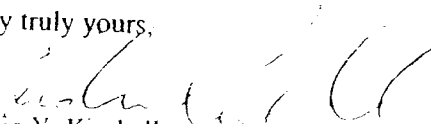
The first is bates numbered 081282. The top portion of the document, the note from Mark Kellogg to Bob Walsh (who is an IBM attorney) is protected by the attorney client privilege.

The second is bates numbered 132877-78 and is protected by the work product doctrine as it is information being sought pursuant to a request by an attorney related to potential litigation.

The third is bates numbered 105243-45 and is protected by the attorney client privilege. This document reflects communications between an assistant in the Intellectual Property Law department and several inventors for information to provide to the attorney drafting a patent application.

Pursuant to paragraph 15 of the Protective Order IBM hereby demands that these documents be returned to IBM.

Very truly yours,


Leslie Y. Kimball

B

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March 11, 2003

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ADAM R. WICHMAN
ROSALIND WANG
JOSEPH J. YARRA
ROSEMARIE T. RING
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ROBERT E. SATYERTHWATE
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OF COUNSEL
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(RETIRED)

A PROFESSIONAL CORPORATION

VIA FACSIMILE AND U.S. MAIL

Leslie Kimball, Esq.
Hogan & Hartson L.L.P.
875 Third Avenue
New York, New York 10022

Re: IBM Document Production

Dear Leslie:

I am writing in response to your March 7, 2003 letter, which requests the return of three documents produced by IBM. Your letter states that each of these documents is protected from discovery by the attorney-client privilege or the work product doctrine.

We will return all known copies of two of the documents (nos. 132877-8 and 105243-5) referenced in your letter. We disagree, however, about the privileged status of (at least) the first paragraph of the third document (081282). [

[] As you may know, the FTC's complaint in this matter does not allege the existence of any written contract between Rambus and JEDEC that contained the disclosure

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Leslie Kimball, Esq.

March 11, 2003

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obligations that Rambus supposedly breached. Instead, the complaint alleges that members' obligations "were commonly known within JEDEC," apparently as a result of oral discussions at JEDEC meetings. [

]

In sum, because we respectfully disagree with your privilege claim, we must decline your request that we return the document. We are, however, willing to meet and confer with you about appropriate redactions of any attorney advice that may appear in the document.

We have also located a somewhat similar document containing an e-mail by Paul Coteus, another longtime JEDEC representative for IBM. In his e-mail (at IBM/2074976), Mr. Coteus states that:

[

]

As noted above, Mr. Coteus's state of mind on this issue is not privileged, as IBM recognized when it redacted a portion of this document (presumably on privilege grounds) but left Mr. Coteus's e-mail intact. [

] are highly probative evidence in this case.

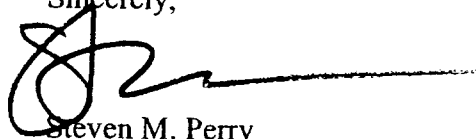
Finally, in the course of reviewing documents produced to us by IBM, we have identified some additional documents as to which you may wish to assert a privilege claim with respect to portions of the documents. Please take a look at the documents listed on Attachment A and let me know if you intend to supply us with redacted versions of these documents (see para. 15 of the Protective Order) or if you believe that they are not

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Leslie Kimball, Esq.
March 11, 2003
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privileged in their entirety. Also, please provide a privilege log with respect to the IBM production, as agreed in your December 30 letter.

Sincerely,

A handwritten signature in black ink, appearing to be "Steven M. Perry", with a long horizontal flourish extending to the right.

Steven M. Perry

SMP:ei

Enclosure

ATTACHMENT A

IBM 2070215

IBM 2070094

IBM 2070020

IBM 2069829

IBM 2069719

IBM 2069717

IBM 2069688

IBM 2118503

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March 18, 2003

Via Facsimile

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Malcolm Catt, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

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

Dear Steve and Malcom,

Thank you for your letter of March 11, 2003. You agreed to return two of the three privileged documents inadvertently produced by IBM. You state that you disagree with the privilege status of the first paragraph of document bates numbered 081282 because it, in your words,

While we are in agreement that the underlying facts contained in privileged communications may not in and of themselves be privileged, the *communication* of those facts to counsel in order to seek legal advice is privileged. Thus, the entirety of document 081282, which constitutes the communications of certain facts by Mr. Kellogg to Mr. Walsh, an IBM attorney, in order to obtain legal advice, is privileged and must be returned. Simply because you believe this information is relevant to the lawsuit does not effect the privileged nature of the communication. If you have authority to support the view that this communication with counsel is not privileged, we will be happy to consider it.

We also thank you for the list of IBM documents that you suspect may have also been inadvertently produced - - this is indeed the case, as is the case with the Paul Coteus document cited in your letter. All of the documents listed below are privileged in their entirety. Below is a list of those documents and the basis upon which the privilege is claimed:

IBM/2 069717-731; 069689-700. These documents are protected by both the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal

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S. Perry
March 18, 2003
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advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM/2 069717-718. These documents are protected both by the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM/2 069829-832. These documents are protected both by the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM/2 070020-021. These documents are protected both by the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM2/070094-096. These documents are protected both by the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM/2 070215-217. These documents are protected both by the attorney client privilege and the work product doctrine. The documents reflect communications with Robert Walsh, and IBM attorney, for the purpose of obtaining legal advice and they were also prepared at the direction of an attorney in anticipation of litigation.

IBM2/118504-505. These documents are protected by the attorney client privilege. The documents reflect communications with Luke Dokla, and IBM attorney, for the purpose of obtaining legal advice.

IBM /2 074976-074977. These documents are protected by the attorney client privilege as they reflect communications between IBM lawyer S. Capella and IBM employees for the purpose of providing legal advice. Additionally, the e-mail from Paul Coteus not only is a communication with Mr. Capella regarding legal advice, it also contains statements of legal advice given by another IBM lawyer, D. Morris.

IBM discovered the inadvertent disclosure of these documents on March 11, 2003. Pursuant to paragraph 15 of the Protective Order IBM hereby demands that these documents be returned to IBM.

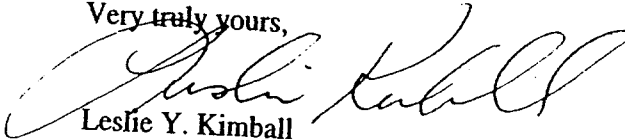
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Given the large number of documents produced in a short period of time, it is possible that there are additional privileged documents that have been inadvertently produced. IBM reserves its right under the protective order to seek the return of any additional privileged documents that may have been inadvertently disclosed upon discovery of the same.

As for the status of the privilege log, we are in the process of finalizing that document and hope to have it to you by the beginning of next week.

Very truly yours,



Leslie Y. Kimball

D

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March 28, 2003

Via Airborne Express

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Washington, D.C. 20001

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

Dear Steve and Malcom,

Upon learning of the privileged documents that were inadvertently produced, we discovered that most of these documents came from a box that was mistakenly not reviewed before being processed. Upon review of that box, we discovered additional privileged documents. The additional privileged documents are:

IBM/2 069686-069687. This document is the cover e-mail to one of the documents already identified as privileged (IBM/2 069688-069700).

IBM/2 070091-070093. This document is protected both by the attorney client privilege and the work product doctrine. The document reflects communications with Mark Chadurjian and Paul Farrar, IBM attorneys, for the purpose of obtaining legal advice in anticipation of litigation.

IBM/2 070212-070214. This document is protected both by the attorney client privilege and the work product doctrine. The document reflects communications with Robert Walsh, an IBM attorney, for the purpose of obtaining legal advice in anticipation of litigation.

IBM/2 081281-081284. This document is protected both by the attorney client privilege and the work product doctrine. The document reflects communications with Robert Walsh, an IBM attorney, for the purpose of obtaining legal advice and was also prepared at the direction of an attorney in anticipation of litigation.

IBM/2 128165-128169. Portions of this document are protected by the attorney client privilege. The document reflects communications with Robert Walsh and Mark

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Page 2

Chadurjian, IBM attorneys, for the purpose of obtaining legal advice. IBM will provide a properly redacted copy of this document.

IBM/2 129247-129250. Portions of this document are protected both by the attorney client privilege and the work product doctrine. The document requests information from several IBM employees to assist Robert Walsh, an IBM attorney, in providing legal advice in anticipation of litigation. IBM will provide a properly redacted copy of this document.

IBM/2 069679-80. This document is protected both by the attorney client privilege and the work product doctrine. The document reflects communications with Robert Walsh, an IBM attorney, for the purpose of providing legal advice in anticipation of litigation.

IBM/2 070142-070143. This document is protected by both the attorney client privilege and work product doctrine. The document reflects communications with Robert Walsh, an IBM attorney, for the purpose of providing legal assistance and in anticipation of litigation.

IBM/2 070257-070258. This document is protected by both the work product doctrine and the attorney client privilege. The document reflects communications with the IP law department for the purpose of providing legal advice and in anticipation of litigation.

IBM/2 128215-128222. Portions of this document are protected both by the attorney client privilege and the work product doctrine. The document reflects the activities of Mark Chadurjian, an IBM IP attorney, in anticipation of litigation. IBM will provide a properly redacted copy of the document.

IBM/2 129424-129429. Portions of this document are protected by the attorney client privilege and the work product doctrine. The document reflects communications with Mark Chadurjian and Paul Farrar, IBM attorneys, for the purpose of obtaining legal advice in anticipation of litigation. IBM will provide a properly redacted copy of the document.

Additionally, IBM discovered that due to a clerical error in the redaction process, a group of documents were not redacted properly, and privileged portions of the documents were inadvertently disclosed. Listed below are the bates numbers for those documents.

IBM/2 006681-82. This document is protected by the attorney client privilege and the work product doctrine. The document reflects communications with and work done for an attorney in anticipation of litigation.

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IBM/2 066838-844. This document is protected by the attorney client privilege as it is information sought by an IBM attorney in connection with filing a patent application.

IBM2/066816-066818. This document is protected by the attorney client privilege as it is information sought by an IBM attorney in connection with filing a patent application.

IBM2/066814-815. This document is protected by the attorney client privilege as it is information sought by an IBM attorney in connection with filing a patent application.

IBM2/066812-813. This document is protected by the attorney client privilege as it is information sought by an IBM attorney in connection with providing legal advice.

IBM2/066715-716. A portion of this document reflects communications with IBM counsel, Robert Walsh, seeking legal advice. A properly redacted copy of the document will be produced.


IBM2 074955-074963; IBM/2 074967-974. This document is protected by the attorney client privilege as it constitutes communications with IBM lawyers in the US and Japan in connection with providing legal advice.

IBM discovered the inadvertent disclosure of these documents on March 19, 2003. Pursuant to paragraph 15 of the Protective Order IBM hereby demands that these documents be returned to IBM. IBM requests that these documents, in addition to the documents previously identified by IBM as having been inadvertently disclosed, be returned to IBM within one week from the date of this letter.

IBM reserves its right under the protective order to seek the return of any additional privileged documents that may have been inadvertently disclosed upon discovery of the same.

Enclosed please find the privilege log, and some additional documents to be produced. Those documents are bates numbered IBM/2 158036-066716.

Very truly yours,


Leslie Y. Kimball

E

MUNGER, TOLLES & OLSON LLP

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March 31, 2003

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E. LEROY TOLLES
(RETIREE)

A PROFESSIONAL CORPORATION

VIA FACSIMILE AND FEDEX
Leslie Kimball, Esq.
Hogan & Hartson LLP
875 Third Avenue
New York, New York 10022

NOTE: This letter contains information designated as "confidential" by IBM.

Re: Rambus

Dear Leslie:

Thank you for your March 18, 2003 letter regarding IBM's production of certain documents. As your letter requested, I have also enclosed the documents listed on "Attachment A" and have instructed my team to destroy all other copies that may turn up in the future. I received an additional letter from you today but have not had time to review it.

We have a disagreement about the privileged status of the two remaining documents (IBM 2074975-7 and IBM 2081281-4). The first document (IBM 2074975-7), is a portion of an e-mail exchange between IBM engineers Toshiaki Kirihata and Paul Coteus and an IBM in-house lawyer named Steven Capella. The first e-mail in the exchange, from Kirihata to Capella, was redacted by IBM prior to production, presumably because it was privileged. Mr. Coteus' e-mail, which was not redacted and which is dated Feb. 25, 2000, states in part that:

IBM 2074976.

1 We do not, by agreeing to your request that we return these documents, acknowledge that they are privileged or that the privilege was not waived.

Leslie Kimball, Esq.
 March 31, 2003
 Page 2

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The second document (IBM 2081281-4) is a series of e-mails by JEDEC Secretary Ken McGhee and IBM engineers Gordon Kelley and Mark Kellogg. Mr. McGhee's e-mail forwarded to Mr. Kelley a letter from Kentron about one of its pending patent applications. Mr. Kelley forwarded the McGhee e-mail to Mr. Kellogg, who then forwarded it to an IBM lawyer named Robert Walsh, along with an e-mail that stated that:

□

□

IBM 2081282. Mr. Kellogg sent a copy of this e-mail to Mr. Kelley. *Id.*

□

□ standing alone, privileged. While Complaint Counsel have not yet weighed in on the issue in this case, I would point out that in the Schering-Plough case, they argued that:

"[t]he attorney-client privilege, like all privileges, should be 'narrowly construed.'" Hawkins v. Stables, 148 F.3d 379, 383 (4th Cir. 1998); Coastal States Gas Corp. v. DOE, 617 F.2d 854, 862 (D.C. Cir. 1980); In re Walsh, 623 F.2d 489, 493 (7th Cir. 1980). Narrow construction is necessary because the privilege withholds relevant information from the fact finder, see United States v. Zolin, 491 U.S. 554, 562 (1989), and is in derogation of the search for truth, see In re Sealed Case, 121 F.3d 729, 749 (D.C. Cir. 1997)."

Complaint Counsel's Opposition To AHP's Motion for Protective Order, In the Matter of Schering-Plough Corp., Docket No. 9297, available at 2001 FTC LEXIS 188 at *15 (Oct. 23, 2001).

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Leslie Kimball, Esq.
 March 31, 2003
 Page 3

In an effort to resolve this dispute without motion practice, and without waiving any arguments that we might have in connection with such a motion, I have enclosed some redacted versions of the documents in question for your review. Please get back to me at your earliest convenience regarding the redactions we have proposed.

You should also consider whether, even if the documents are in part privileged, they would necessarily be subject to Rambus's use at trial because Complaint Counsel – on IBM's behalf – have put the state of mind of IBM's JEDEC representatives at issue in this matter. Complaint Counsel have recently submitted to Judge McGuire excerpts from the depositions of Messrs. Kellogg and Kelley

Complaint Counsel relied upon the deposition excerpts as support for the proposition that "it was very clear to the [JEDEC] membership that disclosure of applicable patents and patent applications . . . was required . . . [and] was an obligation upon the membership." Complaint Counsel's Memorandum In Opposition To Respondent Rambus Inc.'s Motion For Summary Decision, filed March 25, 2003, p. 72.²

I know that Complaint Counsel, not IBM, prepared and filed the summary decision opposition brief. Nevertheless, IBM is among those companies that would benefit from the remedies sought in this matter, and IBM is among those companies – according to Complaint Counsel – on whose behalf this matter was filed. I also know that IBM would likely have made a different decision than Complaint Counsel about whether to submit to

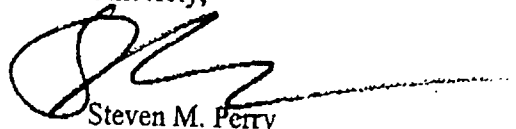
I am sure you can appreciate the unfairness of such a result. In that regard, I have enclosed several pages from a motion in limine filed last week by Complaint Counsel in connection with possible testimony by a former Rambus lawyer. As you can see, Complaint Counsel take the position that "[w]hen privileged communications are 'directly relevant' to testing issues affirmatively raised by a party, that party cannot both testify regarding those issues and use the attorney-client privilege to block discovery of those communications."

Leslie Kimball, Esq.
March 31, 2003
Page 4

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Given that we must file a reply brief on the summary decision motion by next Monday, I hope that you can get back to me in the next few days. Rambus reserves all rights in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Perry". The signature is stylized and somewhat cursive, with a long horizontal line extending to the right.

Steven M. Perry

SMP:ei
Enclosures

cc: Malcolm Catt (w/Attachment A) (via FedEx)

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ATTACHMENT A

IBM 2070215-7
IBM 2070094-6
IBM 2070020-1
IBM 2069829-32
IBM 2069719-31
IBM 2069717-8
IBM 2069688-700
IBM 2118503-5
IBM 2132877-8
IBM 2105243-5

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CONFIDENTIAL-
FTC DOCKET NO. 9302

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REDACTED

Argument

A. Rambus Cannot Affirmatively Introduce Into The Litigation Topics About Which It Refused To Permit Discovery

Courts have routinely held that a party cannot assert legal privileges to frustrate discovery into a matter and then affirmatively place that matter at issue in the litigation. *See, e.g.*, In the Matter of Polygram Holding, Inc., FTC Docket No. 9298 (January 25, 2002)(Order in Limine Regarding the Testimony of Richard Constant); *Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991). "[T]he privilege may implicitly be waived when defendant asserts a claim that in fairness requires examination of protected communications." *Bilzerian*, 926 F.2d at 1292.

The attorney-client privilege "was intended as a shield, not a sword."⁷ *Int'l Tel. & Tel. v. United Tel. Co. of Florida*, 60 F.R.D. 177, 185 (M.D. Fla. 1973). Where a party claims to have a defense based on evidence that is privileged, the party must choose either to waive its claim of privilege or to forego asserting the matter in litigation. *See Belmont Textile Machinery Co. v. Superba*, 48 F. Supp. 2d 521, 523 (W.D.N.C. 1999) (defendant asserting an advice-of-counsel

⁷Judges have taken the same position regarding work-product protection. *See, e.g.*, Order Denying Motion in Limine or For a Protective Order, *Motor Up Corp.*, Dk. 9291, 1999 FTC Lexis 207 at * 7 (Aug. 5, 1999) (work-product doctrine cannot be used "as both a sword and shield") (quoting *Frontier Refining, Inc. v. Gorman-Rupp Co., Inc.*, 136 F.3d 695, 704 (10th Cir. 1998)).

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defense in patent litigation "must either (1) rely on such advice as a defense and thereby waive the attorney-client privilege as to the entire subject area or (2) relinquish the advice-of-counsel defense") (citing *Quantum Corp. v. Tandon Corp.*, 940 F.2d 642, 644 (Fed. Cir. 1991)).

If a party chooses to shield a matter from inquiry pursuant to a privilege, that party is barred from subsequently introducing evidence on that matter. See *Mobil Oil Corp. v. Amoco Chemicals Corp.*, 779 F. Supp. 1429, 1485 n. 43 (D. Del. 1991) ("Amoco's failure to clearly waive the privilege before the close of discovery prevented Mobil from taking any appropriate discovery regarding the [attorneys'] opinions The Court will grant Mobil's motion *in limine* and will not consider the contents of the opinions in deciding the willfulness issue."); see also *Int'l Tel. & Tel.*, 60 F.R.D. at 186 ("[T]he failure of a party to allow pre-trial discovery of confidential matter which that party intends to introduce at trial will preclude the introduction of that evidence.") (citing Fed. R. Civ. P. 37(b)(2)(B)).

Even if the proposed testimony itself does not directly refer to privileged evidence, a defendant cannot introduce testimony and assert privilege if cross examination of the testifying witness must fairly intrude on privileged matters. When privileged communications are "directly relevant" to testing issues affirmatively raised by a party, that party cannot both testify regarding those issues and use the attorney-client privilege to block discovery of those communications. *Bilzerian*, 926 F.2d at 1292. See also *Pereira v. United Jersey Bank*, Nos. 94 Civ. 1565 (LAP) and 94 Civ. 1844 (LAP), 1997 WL 773716, at * 3 (S.D.N.Y. Dec. 11, 1997) (a party cannot assert both a privilege and "a position 'the truth of which can only be assessed by examination of the privileged communication'"). Even if a party's proposed testimony does not directly incorporate privileged information, "[a] defendant may not use the privilege to prejudice his opponent's case" and still expect to testify freely. *Bilzerian*, 926 F.2d at 1292. See also *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) (citing *Bilzerian*).

REDACTED

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April 2, 2003

Via Facsimile

Steven M. Perry, Esq.
Munger, Tolles & Olson, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90017

Malcolm Catt, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

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

Dear Steve and Malcolm,

I am in receipt of Steve's letter of March 31, 2003 regarding the two privileged documents inadvertently produced by IBM that Rambus refuses to return to IBM. As discussed in previous correspondence, a number of privileged documents were inadvertently produced by IBM.

Rambus does not, because it cannot, contend that the disclosure of these documents was anything other than inadvertent.¹ Nor does Rambus contend that these documents are not privileged communications. Rambus' argument for refusing to return the two documents at issue is that they contain information that it contends is relevant to the case. That the documents may be relevant does not, however, override the privilege. *In re Dow Corning Corporation*, 261 F. 3d 280, 286 (2d Cir. 2001). It is black letter law that the communication of facts to an attorney during the course of the attorney providing legal advice is privileged. *Upjohn Company v. United States*, 449 U.S. 383, 397-98, 101 S.Ct. 677, 685-86 (1981) ("A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?')")

Rambus has questioned the redaction of one of the documents at issue. As stated in my letter of March 28th, we discovered that for a group of documents (one of which was IBM 2074975-7) there was a clerical error and in fact non-privileged portions of the documents were redacted and privileged portions of the documents were mistakenly produced (instead of the other way around).

As noted by the Court in *Upjohn*, the purpose of the attorney client privilege "is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the governance of law and administration of justice. The privilege recognizes that sound legal advice or

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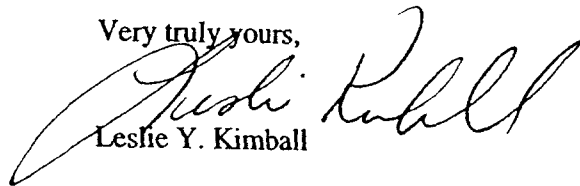
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S. Perry
April, 2 2003
Page 2

Accordingly, the redacted versions of the two documents that Rambus has offered are not acceptable. Rambus is apparently trying to parse the information provided to the attorneys from the legal advice given. This is improper - - the entire communication, no matter how relevant Rambus thinks it may be to the case - - is privileged. *Id.*

Please advise immediately if Rambus will return these privileged documents. If not, pursuant to paragraph 15 of the Protective Order, IBM will bring a motion for the return of the documents.

Very truly yours,



Leslie Y. Kimball

advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Id.* at 449 U.S. 389, 101 S. Ct 682.

Rambus's reference to using the attorney client privilege as a sword and a shield makes no sense in this context. All of the cases cited in the *in limine* brief attached to Rambus's letter involve a party advocating a position based on advice from counsel while at the same time arguing that no discovery could be taken on the issue due to attorney client privilege. In this case, IBM is not a party to this litigation, is not, therefore, advocating any position, is not seeking to justify a position based upon receipt of legal advice, and is not asserting that any factual inquiry in any area should be thwarted. We know that Rambus is very familiar with the law in this area based upon the arguments made by Rambus in its Opposition to Complaint Counsel's Motion to Compel Discovery Relating to Rambus's Document Destruction ("Opposition to Motion to Compel").

Rambus also seems to be arguing that IBM's privilege may be waived by the FTC putting "the state of mind of IBM's JEDEC representatives at issue in this matter." Clearly, the FTC cannot waive a privilege that does not belong to it. If the state of mind of IBM JEDEC representatives is relevant, so be it. That, however, does not justify the production of privileged information. *Upjohn, supra.* Again, Rambus is well aware of the validity of this position, as it argued an identical position in its Opposition to Motion to Compel at pages 8-9 ("a party does not lose the privilege to protect attorney client communications from disclosure in discovery when his or her state of mind is put in issue in the action.") ("Even where a party's state of knowledge is particularly at issue, ... waiver of the privilege should not be implied because the relevant question is not what legal advice was given or what information was conveyed to counsel, but what fact the party knew and when.") and at p. 12 ("Complaint counsel is entitled to inquire about Rambus witnesses' state of mind, but not about their privileged communications (citations omitted)."))

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IN PROFESSIONAL CORPORATION

April 3, 2003

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perrystr@mto.com

VIA FACSIMILE

Leslie Kimball, Esq.
Hogan & Hartson LLP
875 Third Avenue
New York, New York 10022

Re: Rambus

Dear Leslie:

Thank you for your April 2, 2003 letter. Since you requested an immediate reply, and since I will be out of the office this afternoon and Friday, I wanted to get back to you right away. First, while we are precluded by paragraph 15(b) of the protective order from contending, in response to your request for the return of the documents, that their disclosure was inadvertent, that prohibition disappears if a motion is filed. I am sure that you are aware that should IBM bring a motion seeking the return of the documents, paragraph 15(c) of the protective order places the burden squarely upon IBM of showing that production was inadvertent. In that regard, and with respect to your claim in footnote 1 that the non-privileged portions of IBM 2074975-7 were redacted by mistake, we request that you provide us with the portions that you now concede are not privileged, so we can consider your position. I would also request that you respond to the suggestion in my last letter that the redacted versions of the documents that we prepared and provided to you be used instead of the original versions that were produced to us.

As for your statement that Rambus does not contend that the documents are not privileged, I think that you failed to read my past letters. To be clear: we do not believe that you have met the burden of demonstrating that the statements I have referred to in my letters are protected by any privilege. Finally, I am disappointed that you have not addressed the question of how we can best prevent Judge McGuire and the Commission

PUBLIC VERSION

Leslie Kimball, Esq.
April 3, 2003
Page 2

I will be available next week to discuss this with you further.

Sincerely,



Steven M. Perry

SMP:ei

H

PUBLIC VERSION

Leslie Kimball

04/04/2003 12:01 PM

This document expires on
07/04/2005

To: "Perry, Steven" <PerrySM@mto.com>

cc:

From: Leslie Kimball/White Plains/Contr/IBM@IBMUS

Subject: Re: IBM Documents

Agreed.

Leslie Y. Kimball
Hogan & Hartson L.L.P.

914 642-4467, VI 224-4467
"Perry, Steven" <PerrySM@mto.com>



"Perry, Steven"
<PerrySM@mto.com>

04/04/2003 11:41 AM

To: Leslie Kimball/White Plains/Contr/IBM@IBMUS

cc:

Subject: Re: IBM Documents

I left you a voicemail last night regarding this issue, as I did not have access to e-mail. I do not plan on submitting the two docs on Monday, and hope that we can still work something out, as long as you will not point to this decision on my part as any evidence that I agree with your position on the privilege issues.

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

From: Leslie Kimball <lykimbal@us.ibm.com>
To: PerrySM@mto.com <PerrySM@MTO.com>
Sent: Thu Apr 03 14:50:15 2003
Subject: IBM Documents

Steve,

I am in receipt of your letter of today. I am concerned that you did not carefully read my letter of the 2d, as many of the points you raised are discussed. My immediate question is one of timing. At one point you advised that you intended to use the two documents in dispute in a filing that is due on Monday. If that is the case, I will make bring a motion tomorrow (I am not at all concerned with meeting the burden of inadvertent disclosure). In your letter, you suggest that we speak next week in the attempt to further resolve the issue. I of course would prefer to resolve this matter without court intervention. Please advise immediately if you intend to use these documents on Monday or if we have additional time to work at a resolution.

Leslie Y. Kimball
Hogan & Hartson L.L.P.

914 642-4467, t/ 224-4467

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Via Facsimile

April 8, 2003

Steven M. Perry, Esq.
Munger, Tolles & Olson, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90017

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

Steve:

We understand that your client, John Danforth, has contacted Fred Boehm of IBM requesting that they discuss business issues and citing to the fact that privileged documents have been inadvertently produced. This communication raises the following concerns. First, we believe you have an obligation to keep confidential, and not disclose to your client, the contents of the documents to which IBM has claimed privilege until that issue is resolved. Second, it appears that your client is attempting to use the fact of the inadvertent disclosure of privileged documents to its business advantage. We do not believe that such use is appropriate. We have been asked for you to direct your client to desist from communicating with IBM employees regarding any aspect of any litigation involving Rambus in which IBM has been subpoenaed for information, including the FTC action. Any communications must come through us.

Mr. Danforth's communication highlights the fact that we must quickly resolve the issue with respect to the disputed documents. As set forth in my April 2 letter, your proposal to redact portions of the privileged communications, rather than return them in their entirety, is contrary to the clear law on attorney-client privilege and is not acceptable to IBM. In addition, we must understand Rambus'

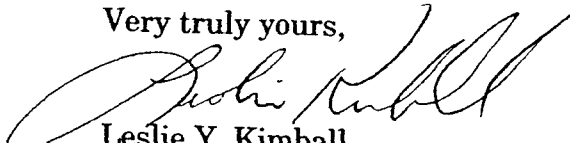
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S. Perry
April 8, 2003
Page 2

position with respect to the documents identified in my letter of March 28. We intend to move to compel the return of these documents if this matter cannot be informally resolved.

Very truly yours,



Leslie Y. Kimball

cc: Fred Boehm

K

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MATHIAS

LA PROFESSIONAL CORPORATION

April 8, 2003

WRITER'S DIRECT LINE

(213) 683-9133
(213) 683-5133 FAX
patysm@mtlo.com

VIA FACSIMILE

Leslie Kimball, Esq.
Hogan & Hartson LLP
875 Third Avenue
New York, New York 10022

Re: Rambus

Dear Leslie:

I have your April 8, 2003 letter, and while I am in an all day meeting, I wanted to get back to you right away. We reject all of the charges and allegations contained in your letter. Mr. Danforth was not attempting to take business advantage of the production of the documents in question. In addition, we have at all times maintained the confidentiality of the documents pursuant to the requirements of the protective order, which I believe you should review. Finally, I agree with you that we would like to resolve this promptly, and I would note that I have been pushing to do so for some time. I am still waiting for answers to many of the questions posed in my previous letters.

I am available at your convenience on Thursday of this week to discuss these issues further.

Sincerely,

[Handwritten signature of Steven M. Perry]

Steven M. Perry

SMP:ei

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April 10, 2003

Steven M. Perry, Esq.
Munger Tolles & Olsen, LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90017

BY FAX

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

Steve:

I am in receipt of your letter of April 8th. First, let me be clear that with respect to documents which IBM has asserted are privileged and inadvertently produced, we believe your obligations are not limited to the disclosure obligations as defined in the protective order - - until privilege issues are resolved, it is inappropriate for you to disclose the documents to your client even if it might otherwise be appropriate to disclose non-privileged documents under the terms of the protective order. In addition, what legitimate purpose could Mr. Danforth have in mind when he referred to privilege issues in his note to Mr. Boehm? Even if Mr. Danforth were permitted to see these documents and even if they are ultimately held to be non-privileged, the protective order limits use of these documents to this matter, which does not include Mr. Danforth's business dealings with Mr. Boehm.

I had hoped that we at least had some common understanding of the attorney-client privilege and how it relates to the two inadvertently produced documents that Rambus refuses to return to IBM. Based on the contents of your letter of April 3rd and your assertion that we have not answered questions raised by Rambus it is apparent that we do not, so I will reiterate the facts of the documents at issue and the black letter law relating to the attorney-client privilege.

WASHINGTON, DC

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First, it is important to recognize the specifics of the documents at issue:

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Instead of agreeing to return these documents, Rambus has proposed redacting from the Kellogg e-mail the second paragraph, which contains the specific request for legal advice, but leaving in the first paragraph, in which Mr. Kellogg provides facts to Mr. Walsh as part of the request for legal advice. In the Coteus e-mail, which is part of a string of e-mails, Rambus proposes redacting the first e-mail in the string in its entirety, and, for the second, keeping in the three sentences which Rambus apparently believes contain information useful to its case, but redacting the additional portions of the e-mail (which in part contain facts that could be construed as harmful to Rambus's position). Not only are the second and third sentences of this e-mail part of a communication in which Mr. Coteus is providing information to IBM lawyers in order for them to provide legal advice, the sentences also disclose prior conversations and legal advice given by another IBM lawyer, Dan Morris.

For the reasons set forth below, the selective redaction rather than return of the documents in their entirety is directly contrary to well settled law.

I. The Documents Are Protected By The Attorney-Client Privilege

Because these communications were made to IBM in-house counsel for the purpose of IBM's counsel providing legal advice, and they were only distributed to IBM personnel, these documents are clearly covered by the attorney client privilege.

Rambus's contention that portions of the privileged communications from IBM employees should nevertheless be disclosed because they are "directly relevant" has no merit as a matter of clear law. Mere relevance is never enough to override the attorney-client privilege. In re Dow Corning Corp., 261 F.3d 280, 286 (2d Cir. 2001).

Rambus argues that, because relevant facts standing alone are not privileged, the communication in which those facts are relayed to an attorney in the course of seeking advice is not privileged. This is simply wrong. As the Supreme Court has explained, "A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?'...." Upjohn Co. v. United States, 449 U.S. 383, 395-96 (1981).¹

IBM does not contend that the underlying facts relayed to counsel are privileged. Rambus is free to seek relevant information regarding the underlying facts expressed in these privileged documents, but Rambus may not do so by using communications protected by the attorney-client privilege. See, e.g., id. at 396 (Government free to question employees regarding facts, but cannot use privileged communications).

Rambus also asserts that unless it can use the privileged communications there is no way to get this evidence before the Court and that this is "unfair." Even if that were true, it is not a basis upon which to violate the privilege. Admiral Insurance Co. v. United States District Court for the District of Arizona, 881 F.2d 1486, 1493 (9th Cir. 1988) (no exception to protections afforded privileged materials because the information sought to be discovered is not available from an unprivileged source).

¹ Rambus's refusal to return the two documents and the arguments advanced for refusing to do so are particularly curious given that in its Opposition to Complaint Counsel's Motion to Compel Discovery Relating to Rambus's Document Destruction, dated February 14, 2003 ("Opposition to Motion to Compel") Rambus itself has advocated against every single such position it now takes. Indeed, Rambus advocated that while facts are not privileged, communications with lawyers are privileged. See Opposition to Motion to Compel, pp 8-9 ("Here, Complaint Counsel are entitled to inquire, and have inquired, into the state of mind of non-attorneys with regard to the development or implementation of Rambus's document retention policy. They cannot, however, further probe into Rambus's confidential attorney client communications.") ("Complaint Counsel is entitled to inquire about Rambus witnesses' state of mind, but not about their privileged communications.") Id. at p.12 (citations omitted).

II. The Documents Were Inadvertently Produced

Rambus cannot seriously contend that the disclosure of these documents was anything other than inadvertent. The lawyer reviewing the Kellogg e-mail did not recognize from the face of the document that Robert Walsh was an attorney and failed to look it up on an attorney list, resulting in the mistaken production of the document. The Coteus e-mail was one of a group of documents that was incorrectly processed so that privileged portions of documents were mistakenly produced rather than redacted. Since Rambus has only questioned the inadvertency of the disclosure of the Cotues e-mail, attached is the declaration of the lawyer who reviewed and mistakenly produced this document. Should it be required to seek court intervention in this matter, IBM will file this declaration, along with others, with its motion to compel the return of the documents.

III. IBM Has not Waived the Privilege

The attorney-client privilege has not been waived for these documents because they were inadvertently produced. Protective Order ¶ 15. Rambus contends that IBM's attorney-client privilege for these documents has been implicitly waived by Complaint Counsel, which has put the state of mind of IBM's employees "at issue", arguing that the privilege cannot be used as "a sword and a shield." As an initial matter, because the privilege belongs to IBM, Complaint Counsel cannot waive a privilege that does not belong to it. See, e.g., In re van Bulow, 828 F.2d 94, 100 (2d Cir. 1987) ("the [attorney-client] privilege belongs solely to the client and may only be waived by him")

Moreover, Rambus's argument is nonsensical in this context. In all of the cases cited in the attachment to Rambus's letter to support its "sword and shield" argument, a party advocated a position based on advice from counsel, and, at the same time, argued that no discovery could be taken on that issue due to the attorney-client privilege. IBM is not a party to the litigation, is not seeking to justify a position based upon receipt of legal advice and is not, as discussed above, asserting that inquiry into any factual area should be thwarted.

Thus, as a matter of clear law, Rambus has no legitimate reason to refuse to return IBM's privileged and inadvertently disclosed documents in their entirety.

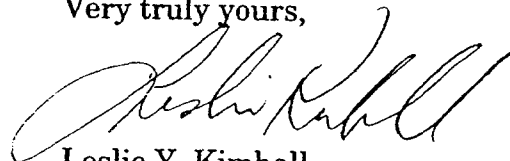
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In addition to the two documents addressed in this letter, please advise as to Rambus' position on the return of the additional documents that IBM identified in its letter of March 28, 2003. In particular, we note that two documents that we requested be returned by that letter is on Rambus' list of exhibits to be used at trial (IBM2/070091-93, IBM2/074955-965).

We look forward to speaking with you at 3:00 p.m (eastern time) today. If we cannot resolve the issue, we intend to file a motion on Friday to compel the return of all inadvertently produced, privileged documents.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leslie Y. Kimball".

Leslie Y. Kimball

Copy to: Malcolm Catt, Esq.

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

<p>In the Matter of</p> <p>RAMBUS INCORPORATED,</p> <p> a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO. 9302</p>
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DECLARATION OF CANDICE JONES IN SUPPORT OF IBM'S MOTION FOR RETURN OF PRIVILEGED DOCUMENTS INADVERTENTLY PRODUCED

I, Candice Jones, declare as follows:

1. I am an associate with Hogan & Hartson, L.L.P., attorneys for International Business Machines Corporation ("IBM") herein. I have personal knowledge of the matters set forth in this declaration.

2. I participated in the review of IBM documents to be produced in response to a subpoena served on it by Rambus. With respect to documents that had both privileged information and either non privileged or nonresponsive information on the same document, which I placed in folders marked "Partial Privileged," I was under the mistaken impression that I was to redact portions of the document that were not responsive/not privileged. I thought that the remaining portion of the document, which was the privileged portion, would remain in the folder and be placed with the wholly privileged documents and not be produced.

3. I later learned that the paralegal who processed these folders for redactions and production processed them consistent with the other documents identified as being partially privileged; that is, the portions identified to be redacted were blocked out and the remaining

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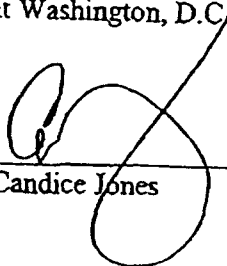
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portion of the document was produced. Thus, for a group of documents that I reviewed, the non-privileged or non-responsive portion was redacted and the privileged portion was mistakenly produced.

4. This is what occurred with respect to document IBM/2 074975-77, attached herewith as exhibit A. I reviewed this document and determined that the first message in the chain of e-mails was not responsive to the subpoena and had that portion redacted (the first message was also privileged). I assumed that the remaining e-mails on this document, which were privileged and responsive, would be placed with the documents withheld from production on the basis of privilege. I only later learned, after the production, that this document was mistakenly produced.

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

Executed this 4th day of April, 2003 at Washington, D.C.



Candice Jones

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April 10, 2003

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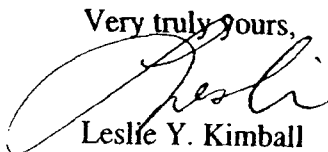
Steven M. Perry, Esq.
Munger, Tolles & Olson, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90017

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

Dear Steve

When we reviewed Rambus' exhibit list we identified two additional documents which have privileged portions that were inadvertently produced. Pursuant to Paragraph 15 of the Protective Order, IBM requests that these documents be returned to IBM and properly redacted versions be substituted in their place. Attached are redacted versions. I would like to discuss these documents in our 3:00 p.m. call.

Very truly yours,



Leslie Y. Kimball

WASHINGTON, DC

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IMPORTANT NOTICE TELECOPY/FACSIMILE COVER LETTER

TO: Steven M. Perry (213) 683-5133

DATE: 4/10/03

FROM: Leslie Kimball (914) 642-4467 (voice)

TIME:

TOTAL NO. OF PAGES, INCLUDING COVER: 10

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MESSAGE:

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