

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**NOTICE OF NON-OPPOSITION BY NON-PARTY MICRON
TECHNOLOGY, INC. TO CERTAIN CONFIDENTIALITY
CHALLENGES**

I. INTRODUCTION

Following the Court's guidance on April 29, 2003, Respondent ("Rambus") notified non-party Micron Technology, Inc. ("Micron") of its disagreement over designations that Micron assigned to twenty-one (21) documents ("Challenged Documents") that have been afforded *in camera* treatment.

Specifically, for each of these twenty-one Micron documents, Rambus challenged Micron's confidentiality designations under Section 11(a) of the August 5, 2002 Protective Order that, on April 29, 2003, the Court ruled governs Rambus's access to third party *in camera* documents used at trial. Rambus also notified Micron that it sought agreement, under Sections 7(h) and 10(b) of the Protective Order, to disclose each of these twenty-one documents to Rambus's General Counsel, John Danforth, Rambus in-house counsel, Robert Kramer and Paul Anderson, Rambus's CEO, Geoffrey Tate, and Rambus Directors, Dr. Mike Farmwald and Professor Mark Horowitz ("Rambus

Personnel”).

Micron has not responded within the time allotted under the Protective Order. By its express terms, Section 10(b) the Protective Order now permits these named Rambus Personnel access to the Challenged Documents. Likewise, under Section 11(a), Micron has not timely preserved its right to maintain its Restricted Confidential designations.

For these reasons, if any of the Challenged Documents should be discussed in Court, Rambus will ask that the Court not exclude these six Rambus Personnel from the hearing.

II. FACTS

On April 29, 2003, the Court afforded *in camera* treatment under Commission Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (“Rule 3.45(b)”) to several documents produced by non-party Micron.¹

On April 29, 2003, the Court also ruled that Rambus’s access to non-party *in camera* documents was governed by the terms of the August 5, 2002 Protective Order in this action, a copy of which it attached to the accompanying Declaration of Adam R. Wichman (“Wichman Decl.”), at Tab 1.²

On May 13, 2003, Rambus, consistent with the terms of the Protective Order, notified Micron in writing that it disagreed with the Restricted Confidential designations that Micron had assigned the Challenged Documents.³ See Wichman Decl. ¶ 4. In the

¹ Additional Order On Non-Party Motions For *In Camera* Treatment Of Documents Listed On Parties’ Exhibit Lists, *In re Rambus Inc.*, Docket No. 9302 (Apr. 29, 2003).

² *In re Rambus Inc.*, Prehearing Conf. Tr., 22:8-25:23 (April 29, 2003). In so ruling, the Court reasoned that the parties and the Court are bound by the terms of the Protective Order, and held that the Court has an obligation to protect any non-party reliance on the Protective Order restrictions continuing at trial when they produced their documents in discovery. See Prehearing Conf. Tr. at 22:11-23:8 (April 29, 2003).

³ A copy of the letter is attached to the Wichman Decl. at Tab 2.

same letter, Rambus notified Micron of its intent, under Sections 7(h) and 10(b) of the Protective Order, to disclose the Challenged Documents to the named Rambus Personnel. *See* Wichman Decl. ¶ 7.

The Federal Express delivery record indicates that counsel for Micron received this letter on May 14, 2003. *See* Wichman Decl. ¶ 8.

Micron provided no response to the May 13 letter. *See* Declaration of Gregory P. Stone (“Stone Decl.”) ¶¶ 2-3.

III. ANALYSIS

Section 10(b) of the Protective Order provides five business days to respond to notice of an intent to disclose Restricted Confidential or Confidential Discovery Material to new persons. *See* Protective Order, Section 10(b). “If the Producing Party [Micron] does not object to the disclosure of the Restricted Confidential ... Discovery Material [Challenged Documents] to the New Person [Rambus Personnel] within five (5) business days, the Disclosing Party [Rambus] may disclose the Restricted Confidential ... Discovery Material [Challenged Documents] to the identified New Person [Rambus Personnel].” *Id.*

Micron did not respond to the Section 10(b) notice within five business days.⁴ Accordingly, under the plain terms of the Protective Order, Rambus may disclose these Challenged Documents to the Rambus Personnel.

Given that the Court ruled that Rambus’s access to *in camera* material will be governed by the Protective Order, Rambus files this pleading to notify the Court that Rambus’s rights with respect to these Challenged Documents have changed.

⁴ Based on Micron’s receipt on May 14, 2003, starting with May 15, 2003 (a Thursday), five business days from receipt expired on May 21, 2003.

In light of this development, if these documents should be used in court, Rambus will ask that the Court not exclude these six Rambus Personnel. The Challenged Documents comprise the following trial exhibits:⁵

<i>Bates range</i>	<i>CX</i>	<i>RX</i>
MR0082159-60	-	0918
MR0082150-51	2702	0923
MR0082136-37	2708	0933
MR 130011-12	2730	-
MU 49188-89	-	1710
MR20005748	-	0695
MR 135139-42	2691	0758
MR20006342-43	-	0844
MR20007188-90	2700	0877
MFTC 200502-35	-	1796
MFTC100000229	-	1840
MFTC 211248-58	2780	-
MFTC 211238-44	2781	-
MFTC 228549-51	-	1677
MR20005866-67	-	0026
MR20005991-92	1596	-
MR20005984-85	1594	-
MR20005900-03	1597	-
MR20007331-40	1615	-
MR20007326	2710	-
MR20006936-41	2707	-

⁵ See Wichman Decl. ¶ 6.

DATED: May 28, 2003

Respectfully submitted,

Gregory P. Stone
Steven M. Perry
Peter A. Detre
Adam R. Wichman
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
(213) 683-9100
(213) 687-3702 (facsimile)
(202) 663-6158
(202) 457-4943 (facsimile)

A. Douglas Melamed
Kenneth A. Bamberger
Jacqueline M. Haberer
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Sean C. Cunningham
John M. Guaragna
GRAY, CARY, WARE & FREIDENRICH LLP
401 "B" Street, Suite 2000
San Diego, California 92101
(619) 699-2700

Attorneys for Respondent Rambus Inc.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

DECLARATION OF ADAM R. WICHMAN IN SUPPORT OF NOTICE OF
NON-OPPOSITION BY NON-PARTY MICRON TECHNOLOGY, INC. TO
CERTAIN CONFIDENTIALITY CHALLENGES

I, Adam R. Wichman, declare as follows:

1. I am an attorney and an associate at Munger, Tolles & Olson LLP, counsel for Respondent Rambus Inc. (“Rambus”) in the above-referenced matter. I have personal knowledge of the matters set forth in this declaration.
2. A true and accurate copy of the August 5, 2002 Protective Order in this action is attached at Tab 1.
3. On April 29, 2003, the Court ordered that several documents produced by non-party Micron Technology, Inc. (“Micron”) be afforded *in camera* treatment in this action.
4. On May 13, 2003, I sent counsel for Micron, by Federal Express, a letter challenging the confidentiality designations that Micron assigned to twenty-one (21) of the documents (“Challenged Documents”) to which the Court afforded *in camera* treatment. A true and accurate copy of that letter is attached at Tab 2.
5. The letter included a copy of the protective order and a copy of each Challenged Document, identified by Bates range.

6. The Challenged Documents comprise the following exhibits in this matter:

<i>Bates range</i>	<i>CX</i>	<i>RX</i>
MR0082159-60	-	0918
MR0082150-51	2702	0923
MR0082136-37	2708	0933
MR 130011-12	2730	-
MU 49188-89	-	1710
MR20005748	-	0695
MR 135139-42	2691	0758
MR20006342-43	-	0844
MR20007188-90	2700	0877
MFTC 200502-35	-	1796
MFTC100000229	-	1840
MFTC 211248-58	2780	-
MFTC 211238-44	2781	-
MFTC 228549-51	-	1677
MR20005866-67	-	0026
MR20005991-92	1596	-
MR20005984-85	1594	-
MR20005900-03	1597	-
MR20007331-40	1615	-
MR20007326	2710	-
MR20006936-41	2707	-

7. The May 13, 2003 letter also sought Micron's consent to disclose these documents to Rambus's General Counsel, John Danforth; Rambus in-house counsel Robert Kramer and Paul Anderson; Rambus's CEO Geoffrey Tate; and Rambus Directors Dr. Mike Farmwald and Professor Mark Horowitz ("Rambus Personnel"), under Sections 7(h) and 10(b) of the Protective Order.

8. Federal Express records indicate that the letter was received on May 14, 2003. A true and accurate copy of the Federal Express proof of delivery is attached at Tab 3.

9. I have received no response from Micron's counsel regarding either: a) the proper confidentiality designation of the Challenged Documents; or b) Rambus's request for Micron's consent to disclose the Challenged Documents to these Rambus Personnel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of May, 2003, at Washington, D.C.

Adam R. Wichman

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

CERTIFICATE OF SERVICE

I, Adam R. Wichman, hereby certify that on May __, 2003, I caused a true and correct copy of *Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges; Declaration Of Adam R. Wichman In Support Of Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges and Declaration of Gregory P. Stone In Support Of Notice of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission, Room H-112
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Donald S. Clark, Secretary
Federal Trade Commission, Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Richard B. Dagen, Esq.
Assistant Director, Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

M. Sean Royall, Esq.
Deputy Director, Bureau of Competition
Federal Trade Commission, Room H-372
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

Richard L. Rosen, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Adam R. Wichman

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

CERTIFICATION

I, Adam R. Wichman, hereby certify that the electronic copy of *Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges; Declaration Of Adam R. Wichman In Support Of Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges and Declaration of Gregory P. Stone In Support Of Notice of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges* accompanying this certification are true and correct copies of the paper versions that are being filed with the Secretary of the Commission on May 28, 2003 by other means.

Adam R. Wichman
May 28, 2003