

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RAMBUS’S REPLY MEMORANDUM IN SUPPORT
OF CERTAIN OBJECTIONS TO THE DESIGNATED
DEPOSITION TESTIMONY OF JOEL KARP**

In their “Response to Rambus’s Memorandum in Support to [sic] Certain Objections to the Designated Testimony of Joel Karp,” Complaint Counsel correctly point out that Mr. Karp’s declaration from the ITC proceeding, CX-2957, has been admitted in evidence. Contrary to Complaint Counsel’s contentions, however, Respondent Rambus Inc. does not ask this Court to overrule or reverse that determination. Rather, Rambus simply asks the Court to sustain objections to questions about that document, which plainly is hearsay. However, if the Court accepts Complaint Counsel’s position that witnesses may be asked about any documents that have been admitted in evidence, then Rambus’s objections to questions about this hearsay document should be overruled.¹

¹ In determining what weight, if any, to give to Mr. Karp’s declaration, CX-2957, the Court should keep in mind that this declaration is hearsay. Complaint Counsel argue that it is not, citing to Rule 801(d)(1)(B), F.R.Evid., but that citation is misplaced. That

Regardless of the Court's ruling on questions directed to Mr. Karp's declaration in the ITC proceeding, made while he was a Samsung employee, Complaint Counsel fail to present any persuasive argument that Mr. Karp's deposition, taken in that same ITC proceeding, is admissible here under the Commission's rules. Whether all or a portion of that transcript is offered, its status remains the same: The deposition was taken of Mr. Karp when he was an employee of Samsung and at a time when he was not in any fashion an officer, director or managing agent of Rambus.

As Complaint Counsel acknowledge, the Court's prior ruling regarding the use of Mr. Karp's prior deposition testimony was limited to testimony that Mr. Karp provided when he was a Rambus "managing agent." Indeed, the argument Complaint Counsel made in support of the use of Mr. Karp's deposition testimony was premised upon the fact that he was at one point in time a Rambus officer and thereafter provided consulting services to Rambus. April 28, 2003 Transcript at 95:2-22. This description of Mr. Karp's status does not apply to that earlier time when Mr. Karp was employed by Samsung.

Simply put, since Mr. Karp is available to testify in person, the Commission's rules do not permit the use of Mr. Karp's deposition taken while he was an employee at Samsung and before he joined Rambus.

exception to the hearsay rule applies only if a prior consistent statement is "offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." No such charge is or could be made here.

The fact that certain questions were asked about this prior ITC deposition at various times during the four days of deposition testimony that Mr. Karp gave in the private actions and in this case does not render that prior deposition admissible. Indeed, Complaint Counsel's argument that Rambus did not object to the use of the ITC deposition at those other depositions is based on a faulty premise. That argument suggests that Rambus should have made such an objection and, indeed, perhaps should have refused to allow Mr. Karp to answer questions about that prior deposition. Hearsay objections, however, are not required to be made at a deposition and generally are discouraged. The better practice is not to make objections at a deposition other than those that go to the form of the question and to preserve all other objections for trial, as Rambus has done.

For these reasons, the Court should not permit the use or introduction of deposition testimony given by Mr. Karp at his ITC deposition.

DATED: June 9, 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.

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CERTIFICATE OF SERVICE

I, James M. Berry, hereby certify that on June 9, 2003, I caused a true and correct copy of Rambus's Reply Memorandum In Support Of Certain Objections To The Designated Deposition Testimony Of Joel Karp 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	M. Sean Royall, Esq. Deputy Director, Bureau of Competition Federal Trade Commission, Room H-372 600 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	Malcolm L. Catt, Esq. Attorney Federal Trade Commission 601 New Jersey Avenue, N.W. Washington, D.C. 20001
Richard B. Dagen, Esq. Assistant Director, Bureau of Competition Federal Trade Commission 601 New Jersey Avenue, N.W. Washington, D.C. 20001	

James M. Berry