UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

**Public Version**

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| In the Matter of<br><br>RAMBUS INCORPORATED,<br><br>a corporation. | Docket No. 9302 |

# COMPLAINT COUNSEL'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY RELATING TO SUBJECT MATTERS AS TO WHICH RAMBUS'S PRIVILEGE CLAIMS WERE INVALIDATED ON CRIME-FRAUD GROUNDS AND SUBSEQUENTLY WAIVED

## I.
## INTRODUCTION

In the *Infineon* litigation, Judge Payne ruled that Rambus Inc. ("Rambus") had forfeited its attorney-client privilege under the crime-fraud exception, and he ordered Rambus to produce documents and testimony "respecting the legal advice provided about disclosures of patents and patent applications to JEDEC by Rambus, Inc., the disclosure policy of JEDEC and about the efforts by Rambus, Inc. to broaden its patents to cover matters pertaining to the JEDEC standards." March 7, 2001, Order, *Rambus v. Infineon* **[Tab 1]**. When its petition for writ of mandamus was denied, Rambus produced documents to Infineon AG ("Infineon") and allowed Infineon to depose a number of witnesses on that subject matter. Rambus litigated the issue a second time in the *Micron* litigation, and lost again. On May 16, 2001, Judge McKelvie ordered Rambus to produce to Micron Technologies, Inc. ("Micron") the materials that were the subject

of Judge Payne's order **[Tab 2]**.[1] In addition to producing the documents pursuant to the court's order, Rambus also permitted witnesses in depositions in the *Micron* litigation to testify regarding the subject matter of the contested documents.

When the issue arose a third time in Rambus's litigation with Hynix Semiconductor Inc. ("Hynix"), Rambus chose not to litigate, but instead voluntarily entered into an agreement whereby it produced not only the contested documents, but also the transcripts of prior testimony on the subject matter (*See* Letter from Basil Culyba to Kenneth Nissly, dated July 10, 2001, attaching June 22, 2001 agreement **[Tab 3]**). Complaint Counsel later received copies of the materials from both Infineon and Hynix.[2] Rambus also did not object to a subpoena to Micron by Hynix of transcripts of depositions taken in the *Micron* case on the subject matters of Judge Payne's March 7, 2001, Order, and Micron produced those materials to Hynix.

Despite this clear indication that Rambus has waived both attorney-client privilege and work-product protection with regard to the subject matter, Rambus has refused to provide

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[1] Complaint Counsel has compiled and submitted together with this memorandum of law all documents, testimony, and other supporting evidence cited herein. Each discrete item referenced in the memorandum has been assigned a tab number – e.g., [Tab 4] – corresponding to the numbered tab, in the accompanying compilation of supporting evidence, behind which the relevant document, testimony, etc. appears.

In addition, Complaint Counsel has prepared a PowerPoint presentation highlighting selected documents and testimony from the broader universe of supporting evidence, and containing hyperlinks to video clips of certain testimony. The PowerPoint presentation has been submitted in both paper form and in electronic form on a compact disk ("CD"). Written instructions regarding how to view the contents of the CD have also been provided

[2] Rambus also produced copies of most or all of these materials directly to Complaint Counsel. Because of the discussions and negotiations that preceded that production, at the present time Complaint Counsel is not arguing that the production to Complaint Counsel independently waived Rambus's privilege.

assurances to Complaint Counsel that Rambus will refrain from asserting privilege claims to obstruct Complaint Counsel's efforts to conduct discovery on the same issues that were probed in the *Infineon* and *Micron* cases and that were the subject of voluntary production in *Hynix*. On the contrary, in response to Complaint Counsel's attempts during a recent meet-and-confer to clarify Rambus's intentions with respect to the crime-fraud materials, Rambus's attorneys stated in a letter dated December 31, 2002: "Rambus does not agree that it is not entitled to assert fully the attorney-client privilege, and all other privileges, in this case." Letter from Gregory P. Stone to M. Sean Royall (Dec. 31, 2002), at 2 **[Tab 4]**.

Rambus's refusal to acknowledge its own previous waivers of privilege needlessly threatens to complicate discovery in this case. Prompt resolution of this issue is important, as depositions of Rambus witnesses are scheduled to commence on Tuesday, January 7, 2003. Absent a ruling from Your Honor confirming that Rambus is not entitled to assert privilege claims on these subject matters, it is highly likely that Rambus will assert privilege objections in these upcoming depositions, which could necessitate a second round of depositions of any witnesses that Complaint Counsel may attempt to question on these subjects. Consequently, Complaint Counsel seeks an expedited ruling from Your Honor clarifying that:

(1) Attorney-client privilege and work-product protection have been waived as to the subject matters of the materials produced in the *Hynix* case, specifically, legal advice pertaining to: (a) "disclosures of patents and patent applications to JEDEC by Rambus, Inc.," (b) "the disclosure policy of JEDEC," (c) "the efforts by Rambus, Inc. to broaden its patents to cover matters pertaining to the JEDEC standards," (d) "the September 2000, presentation made to stockholders, financial analysts and members of the public," (e) "the preparation of the withdrawal letters from JEDEC," and (f) "the drafting of letters relating to the patent disclosures to JEDEC and IEEE, the information and documents relied upon in drafting those letters, patent disclosures to JEDEC and IEEE and the efforts by Rambus, Inc. to

broaden its patent claims to the extent that any of those conversations took place within the context of the drafting of the withdrawal letters..." (March 7, 2001, Order, *Rambus v. Infineon* [Tab 1]).

(2) This waiver includes – but is not limited to – the specific documents produced and testimony given in the *Infineon* and *Micron* cases. It further extends to all communications on the same subject matters, by any person at any time. The fact that a particular witness was not named in Judge Payne's crime-fraud ruling is not a ground for objecting to discovery of communications on the same subject matter.

(3) The waiver extends to all communications on the same subject matters, irrespective of when the communication took place. Because the communications with attorneys were part of an ongoing fraudulent scheme that continued after Rambus left JEDEC, Rambus's waiver of privilege extends to all communications on the subject, regardless of whether the specific consultations took place before or after Rambus withdrew from the organization on June 17, 1996.

In the *Hynix* litigation, consistent with waiver of privilege, Rambus produced the crime-fraud materials to its litigation opponents. Moreover, many of the documents produced pursuant to Judge Payne's crime-fraud ruling are on public record in the Eastern District of Virginia, having been used in open court at the *Infineon* trial. The remainder have also been in possession of Complaint Counsel since the early days of the FTC's investigation and provide crucial evidence to support key elements of the Complaint.

Although this Motion to Compel is based solely on the ground of waiver, Complaint Counsel believes that the same relief we seek here could be justified on alternative grounds. However, because the waiver here is so clear-cut and because we are seeking an expedited ruling, we see no reason that Your Honor needs to reach these alternative grounds. Therefore, we have chosen to reserve them to be raised, if at all, at a later time.

The alternate grounds are twofold: collateral estoppel and crime-fraud. Specifically,

Complaint Counsel submits that Rambus is collaterally estopped from relitigating the issues decided by Judge Payne's March 7 and March 29, 2001 Orders (March 7, 2001, Order, *Rambus v. Infineon* **[Tab 1]**; March 29, 2001, Order, *Rambus v. Infineon* **[Tab 5]**) and by the May 16, 2001, Order in *Micron* (May 16, 2001, Order *Micron v. Rambus* **[Tab 2]**); consequently, Rambus may not claim any privilege with respect to the topics of those orders. The issues of privilege were fully briefed and litigated in the *Infineon* case. Rambus petitioned the Federal Circuit for a writ of mandamus, and this petition was denied, and Rambus has not appealed the admission of the crime-fraud materials into evidence. These issues were briefed and litigated again in *Micron*, without success by Rambus. No purpose would be served from relitigating the issues in the current proceeding.

Moreover, the *Infineon* court's order was entirely correct. In opposing application of the crime-fraud exception, Rambus's sole argument was that Infineon had not made a *prima facie* showing that Rambus engaged in a fraudulent scheme. That argument was never persuasive, but it is entirely unsupportable now that there has been an actual jury verdict that Rambus committed fraud, which was later upheld by the presiding federal district judge applying a clear and convincing evidence standard. Furthermore, the crime-fraud materials themselves clearly bear out the fraudulent scheme that Infineon suspected: they confirm that Rambus's consultations with attorneys were part of a fraudulent scheme that began with Rambus's participation in JEDEC and continues up to the present day, as Rambus has continued to seek the advice of counsel in broadening its patent applications to cover technologies incorporated in the JEDEC standards applications that are based on inventions that Rambus wrongfully failed to disclose

as required by JEDEC's rules. Consequently, the attorney-client privilege never attached to those communications.

## II.
## OVERVIEW OF FACTS

Shortly before trial commenced in the *Infineon* case, Judge Payne granted Infineon's motion to compel certain testimony and documents, which Rambus had sought to withhold on grounds of attorney-client privilege.[3] In ruling on Infineon's Motion to Compel Deposition Testimony and Documents,[4] Judge Payne determined that the attorney-client privilege had been forfeited under the crime-fraud exception or waived as to certain topics, including:

(1) "the legal advice provided about disclosures of patents and patent applications to JEDEC by Rambus, Inc., the disclosure policy of JEDEC and . . . the efforts by Rambus, Inc. to broaden its patents to cover matters pertaining to the JEDEC standards";

(2) "the September 2000, presentation made to stockholders, financial analysts and members of the public";

(3) "the preparation of the withdrawal letters from JEDEC"; and

(4) "the drafting of letters relating to the patent disclosures to JEDEC and IEEE, the information and documents relied upon in drafting those letters, patent disclosures to JEDEC and IEEE and the efforts by Rambus, Inc. to

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[3] For purposes of this motion, Complaint Counsel will use the term "attorney-client privilege" to encompass the work-product doctrine as well.

[4] In the same Order, Judge Payne granted Infineon's Motion to Compel Deposition Testimony Concerning Licensing Issues ("Licensing Issues Motion"). He ruled that Rambus had improperly asserted attorney-client privilege with respect to certain deposition questions asked of Messrs. Neil Steinberg and Geoffrey Tate respecting licensing terms and conditions. Although the two motions were ruled on at the same time, the motions and the grounds for the rulings were distinct. If Rambus asserts similar objections to questions on licensing issues, Compaint Counsel will of course bring a motion similar to the Licensing Issues Motion; but the current motion concerns only the issues raised in Infineon's second motion, the Motion to Compel Deposition Testimony and Documents.

> broaden its patent claims to the extent that any of those conversations took place within the context of the drafting of the withdrawal letters..."

March 7, 2001, Order, *Rambus v. Infineon* **[Tab 1]** (Or. Granting Infineon's Mot. To Compel Deposition Testimony and Documents). Finally, Judge Payne ordered Rambus to produce any previously withheld documents relating to subject matters upon which the Court had granted the Motions to Compel. *Id.*

Judge Payne's March 7, 2001, Order was based on a finding that Infineon had made a *prima facie* showing that Rambus had consulted attorneys in furtherance of an ongoing fraudulent scheme. Specifically, at the hearing, Judge Payne stated for the record:

> The argument here is whether there is a fraudulent scheme. . . . And the argument was whether Rambus was engaged – or there is evidence to show that Rambus was engaged in a fraudulent scheme when it sought the advice of Diepenbrock and Vincent for the purpose of furthering their scheme.
>
> And then the second thing is whether Infineon has showed that the communications with Diepenbrock and Vincent bear a close relationship to the then existing or future scheme to commit the fraud.
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> It is alleged by Infineon that Rambus knowingly, willfully and intentionally misrepresented a material fact by act and by omission and that JEDEC members, including itself, relied on that to its detriment.
>
> There is evidence from which a jury could conclude that Rambus's JEDEC representative did not disclose that Rambus had certain pending patent applications, which related to the SDRAM technologies that were being standardized by JEDEC.
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> There is evidence from which a jury might conclude that Rambus was a JEDEC member and attended JEDEC meetings. And Rambus knew at the time that it had pending patent applications relating to the SDRAM technologies that were being standardized by JEDEC, and that during the same period of time, JEDEC's

> patent policy required the members to disclose known or pending patent applications relating to the standardization efforts.
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> That evidence is supported by the . . . 1992-'97 five year business plan, by the Mooring e-mail, by the Crisp deposition, by the Crisp e-mail, by the testimony of the JEDEC people about the number of votes without disclosure. . . .
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> And it is obvious to me from the record that the legal advice sought from Vincent and Diepenbrock was for the purpose of developing the plan to go forward with patent applications at the same time JEDEC – at the same time Rambus was in the JEDEC meetings and that the legal advice bears close relationship to the subject of the alleged fraudulent scheme. . . .
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> So I find that . . . Infineon . . . has established a *prima facie* case of the existence of a fraudulent scheme of communication with counsel in furtherance of the scheme and that those communications bore a close relationship to the fraud, just by looking at that subject matter upon which the communications have been testified to by Diepenbrock and to a lesser extent by Vincent.

March 6, 2001, Tr. of Hearing re Motion to Compel at 866:12-869:1, *Rambus v. Infineon* **[Tab 6]**.

Judge Payne also found that Infineon "ha[d] established a *prima facie* case of the existence of a fraudulent scheme of communication with counsel in furtherance of the scheme and that those communications bore a close relationship to the fraud . . . ." March 6, 2001, Tr. of Hearing re Motion to Compel at 868:19-23, *Rambus v. Infineon* **[Tab 6]**. In his Order of March 7, 2001, Judge Payne found that "the attorney-client privilege has been forfeited under the crime-fraud exception as to certain topics." He therefore ordered Rambus to allow Infineon to depose several individuals on those topics and further ordered Rambus to "produce any previously withheld documents relating to subject matters upon which the Court ha[d] granted the Motions

to Compel." March 7, 2001, Order, *Rambus v. Infineon* **[Tab 1]**. In the same Order, Judge Payne ruled that Rambus had waived attorney-client privilege on two other topics, and he therefore allowed Infineon to depose Neil Steinberg, a patent attorney and Rambus's Vice President of Intellectual Property, "respecting the September 2000, presentation made to stockholders, financial analysts and members of the public"; and to depose Messrs. Diepenbrock (in-house patent counsel) and Vincent (outside patent counsel) "respecting the preparation of the withdrawal letters from JEDEC" and "respecting the drafting of letters relating to the patent disclosures to JEDEC and IEEE, the information and documents relied upon in drafting those letters, patent disclosures to JEDEC and IEEE and the efforts by Rambus, Inc. to broaden its patent claims to the extent that any of those conversations took place within the context of the drafting of the withdrawal letters." *Id.*

On March 29, 2001, Judge Payne reconsidered and reaffirmed his March 7, 2001, ruling on crime-fraud. March 29, 2001, Order, *Rambus v. Infineon* **[Tab 5]** (Or. Reaffirming March 7, 2001 Order).

Rambus immediately sought a writ of mandamus from the Federal Circuit, which was denied. The Federal Circuit noted the procedural correctness of seeking "a writ of mandamus . . . to prevent the wrongful exposure of privileged communications," *In re Rambus Inc.*, 7 Fed. Appx. 925, 927, 2001 WL 392085 (Fed. Cir. Apr. 4, 2001) (internal quotation marks and citations omitted), but nevertheless denied the writ because "Rambus ha[d] not shown entitlement to a writ of mandamus to overturn the district court's determination that a *prima facie* case of fraud was established." *Id.*

Pursuant to Judge Payne's order, Rambus produced to Infineon at least 86 highly relevant documents, all previously withheld on privilege grounds. These documents included such things as handwritten notes of Lester Vincent, Rambus's outside patent counsel, regarding meetings with various Rambus representatives to discuss JEDEC and broadening Rambus's patent applications, and internal Rambus e-mails and handwritten notes concerning efforts to broaden Rambus's patent applications. Infineon thereafter took six depositions, eliciting testimony regarding communications between Rambus representatives and Rambus's patent attorneys concerning JEDEC and Rambus's efforts to broaden its patent applications, among other things. It is important to note that Judge Payne's crime-fraud ruling was issued after the close of discovery and only three weeks before the start of trial. In all likelihood, had the issue been resolved earlier, many more than six witnesses would have been forced to testify on the subject matters encompassed by the crime-fraud ruling. In any event, both the hearing transcripts and Judge Payne's orders make it clear that Judge Payne intended to grant Infineon the full scope of additional discovery that it requested.

Although Judge Payne originally suggested that he would review the depositions *in camera*, the parties rendered such review unnecessary by stipulating to the Order of April 20, 2001, whereby the court deemed Rambus to have objected on the grounds of attorney-client privilege to each item on an attached list, and the court overruled those objections. *See* Apr. 20, 2001, Stipulated Order, *Rambus v. Infineon* [**Tab 7**]. At trial, many of the documents produced, including handwritten notes of Lester Vincent and e-mails concerning meetings with Vincent, were entered into evidence and were used without restriction in open court. Likewise, witnesses testified in open court on the relevant subject matter, such as communications between Rambus

employees and attorneys regarding attempts to broaden Rambus's patent applications.

The crime-fraud materials fully confirmed the existence of the fraud that Infineon had only suspected prior to piercing the attorney-client privilege. After a full trial on the merits, the jury determined there was clear and convincing evidence that Rambus had committed fraud, and the jury therefore found in favor of Infineon on the company's fraud claims.[5] Judge Payne issued a detailed opinion upholding fraud liability against Rambus, applying a heightened clear and convincing standard of review. *See Rambus, Inc. v. Infineon Technologies AG*, 164 F. Supp. 2d 743 (E.D. Va. 2001). Rambus thereafter appealed the fraud ruling to the Federal Circuit. In its appeal, Rambus repeatedly stressed that the evidence of fraud did not meet the *clear and convincing* standard required by Virginia law. Notably, however, Rambus's appeal nowhere suggests that there were insufficient grounds for the crime-fraud ruling, and Rambus has not appealed the admission of the crime-fraud materials into evidence.

Rambus litigated the issue a second time in the *Micron* litigation. In an exchange of letters, Rambus resisted producing to Micron the remaining documents that had been produced in the *Infineon* litigation. In a telephone hearing held on May 14, 2001, Judge McKelvie ruled that all the materials that had been used in the *Infineon* trial were "public information," "not protected from disclosure," and any privilege that might otherwise have attached was lost; therefore, he ordered Rambus to produce them to Micron, free and clear of any confidentiality limitation. (May 14, 2001, Transcript of teleconference in *Micron v. Rambus*, at 19-20; 24; 30 **[Tab 8]**). Next, he ordered Rambus to produce to Micron the documents that were the subject of Judge

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[5] Judge Payne's decision on JNOV refers to the "clear and convincing" proof standard rulings no fewer than twelve times. *See Rambus, Inc. v Infineon Technologies AG*, 164 F.Supp.2d 743, 746, 748, 751, 752, 754, 755, 758, 766, 767, 770, 776 (E.D. Va. 2001).

Payne's order. Although the order itself was restricted to documents (*see* May 16, 2001 Order, *Micron v. Rambus* **[Tab 2]** ("For the reasons set forth in the telephone conference on May 16, 2001, IT IS HEREBY ORDERED that Rambus Inc. shall produce to Micron Technologies, Inc. the documents identified during the telephone conference.")), the hearing transcript makes clear that Judge McKelvie intended also to include "deposition transcripts where testimony was given about the subject matter" of Judge Payne's orders. (May 16, 2001, Transcript of teleconference in *Micron v. Rambus*, at 24 **[Tab 2]**).[6]

Subsequently, Micron deposed a number of current and former Rambus directors, officers, employees and agents. Although Judge McKelvie's order applied only to documents and testimony previously given, Rambus witnesses testified in *Micron*, without objection, on a wide range of communications between Rambus representatives and in-house and outside counsel. The subjects of this testimony included, among other subjects, communications relating to JEDEC, communications related to amending and broadening Rambus's pending patent applications, and communications relating to Rambus's withdrawal from the IEEE and JEDEC. The documents ordered produced by Judge McKelvie were introduced as exhibits at a number of these depositions, and witnesses testified freely concerning the subject matter reflected in the documents – although attorneys representing Rambus at the depositions objected to a number of

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[6] Rambus also sought clarification from Judge McKelvie that the order applied only to the *Micron* litigation. *Id.* at 27 ("MR. PENDARVIS: . . . "The second point is that I take it from the Court's comment that the use that's to be made of these documents by Micron is limited to this litigation."). Judge McKelvie confirmed this understanding. *Id.* at 30-32. Thus, there can be no question but that the subsequent disclosures were voluntary and not required by Judge McKelvie's order.

questions on other topics on grounds of attorney-client privilege and on occasion instructed witnesses not to answer. *See, e.g.*, Vincent Dep. (7/11/01) 11, 26, *Micron v. Rambus* **[Tab 9]**.

At about the same time, Hynix filed a motion to intervene in the *Rambus v. Infineon* litigation for the purpose of obtaining discovery of the materials subject to Judge Payne's order. Rather than litigating the issue against Hynix, however, Rambus chose to enter into an agreement with Hynix pursuant to which Rambus produced voluntarily to Hynix the documents and deposition transcripts subject to Judge Payne's order. *See* Letter from Basil Culyba to Kenneth Nissly, dated July 10, 2001, attaching June 22, 2001 letter agreement **[Tab 3]**. As part of the arrangement, Hynix agreed that "Rambus' production of documents and deposition testimony under this agreement does not constitute a waiver of any privilege Rambus may otherwise assert in this litigation." *Id.* Hynix subsequently issued a subpoena to Micron to obtain copies of deposition transcripts taken in that litigation, including the deposition transcripts of outside counsel Lester Vincent, in-house counsel Anthony Diepenbrock, and multiple Rambus representatives who testified with respect to communications with Mr. Vincent or Mr. Diepenbrock, including CEO Geoffrey Tate, Vice President Allen Roberts, and Rambus's primary JEDEC representative Richard Crisp, among others. Rambus did not object to the disclosure of this testimony, and Micron produced the transcripts to Hynix.

Pursuant to this voluntary arrangement, Rambus agreed to the disclosure to Hynix a vast amount of detailed information, including handwritten notes taken by outside counsel Lester Vincent of meetings with Rambus representatives, detailed billing records of Mr. Vincent, handwritten notes of various Rambus employees of meetings with counsel, and correspondence between and among Mr. Vincent, in-house counsel Anthony Diepenbrock, and various Rambus

representatives. The transcripts in question include testimony from Mr. Vincent, Mr. Diepenbrock and others regarding legal advice that Messrs. Vincent and Diepenbrock gave Rambus representatives regarding the equitable estoppel risk involved in attending JEDEC meetings, testimony from Mr. Vincent and others regarding communications relating to broadening Rambus's patent claims, and testimony from Messrs. Vincent, Diepenbrock and others regarding communications on the subject of Rambus's withdrawal from JEDEC and IEEE.

These materials make clear that Rambus was concerned about its ability to enforce patents against JEDEC members from the time it first joined JEDEC, and Vincent, and later Diepenbrock, advised that Rambus ran a significant risk of losing the ability to enforce its patents pursuant to the doctrine of equitable estoppel based on its conduct in JEDEC. Vincent's handwritten notes from March 25, 1992, for example, record a conversation between Vincent and Rambus Vice President Allen Roberts. Vincent's notes state, "II. JEDEC -- said need preplanning before accuse others of infringement . . . – advising JEDEC of patent application." Lester Vincent, Handwritten Notes, March 25, 1992, R203251 **[Tab 10]**. His notes of a meeting two days later with Roberts and Richard Crisp, Rambus's primary JEDEC representative, state, "I said there could be equitable estoppel problem if Rambus creates impression on JEDEC that it would not enforce its patent or patent appl[ication]. . . . But cannot mislead JEDEC into thinking that Rambus will not enforce its patent." Lester Vincent, Handwritten Notes, March 27, 1992, R203254 **[Tab 11]**.[7] Vincent and Diepenbrock both testified regarding their advice to Rambus

[7] Vincent's billing records also contain an entry for, "Conference with Richard Crisp and Allen Roberts concerning equitable estoppel issue with respect to JDEC [sic]." Blakely, Sokoloff, Taylor & Zafman, Billing Statements, April 30, 1992, R204568 at R204571 **[Tab 12]**.

representatives concerning the equitable estoppel risk of participating in JEDEC.[8] [9] Diepenbrock testified as to the substance of Vincent's advice,[10] and Richard Crisp summarized his (inaccurate)

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[8] "Q Did you tell Richard Crisp and Allen Roberts that at this March 27th, 1992 meeting, that they should not participate in JEDEC?

A I'm having trouble remembering what I said at this specific meeting beyond this. But I do want to say that I believe at some point early on, and I don't know whether it was at this particular meeting, that I believe I said I didn't think it was a good idea. . . .

Q The downside risk was that somebody was going to raise the issue of equitable estoppel if Rambus attended JEDEC?

A Right. I mean, we were having this meeting about the implications, that's right."

Vincent Dep. (4/11/01) 320:6-321:5, *Rambus v. Infineon* [Tab 13].

[9] "Q Did you discuss with Mr. Crisp whether or not the JEDEC policies, by attending the JEDEC meetings, he was obligated under the JEDEC patent disclosure policies to disclose Rambus patents or patent applications related to what was being discussed at the meetings he attended? . . . .

A We never discussed whether he was under any particular duty or not. We just simply said there was a risk of equitable estoppel or other legal problems if he continued to attend the meetings. We were not presenting legal conclusions. . . .

Q What did you explain?

A I explained that there are certain doctrines in patent laws, equitable doctrines that can render a patent unenforceable. And one of those doctrines is laches, and the other is equitable estoppel, two of them. And that he was running a risk that equitable estoppel, which might have been construed by his actions, would render some or -- some patents that had issued unenforceable, and that we did not want to take that risk."

Diepenbrock Dep. (3/14/01) 147:22-148:25, *Rambus v. Infineon* [Tab 14].

[10] "Q And what did Lester tell you about the Dell decision at that time?

A Well, he said he read it, and he said that Dell had been estopped from enforcing what is I think called the Visa bus patent, which has to do with a graphics bus standard, and that it was a decision that we should look at. And it supported his, apparently, previous statements to Rambus people that they should not participate. He was trying to make the point with me, because I had newly arrived on board, that this was a concern of his. . . .

Q What did he tell you about that prior advice to Rambus about the risks of participating in JEDEC and IEEE SyncLink?

A He told me that he had advised -- previously advised people, before I had arrived apparently, that they shouldn't attend those meetings.

Q Did he tell you why he told them that?

recollection of Vincent's advice and his (accurate) memory of Diepenbrock's advice.[11] Rambus provided all of this material, and more, to Hynix, its litigation opponent, voluntarily.

Similarly, the materials produced to Hynix make clear that, at the time Rambus was attending JEDEC meetings, Rambus representatives (including Richard Crisp, Rambus's primary representative at JEDEC) were working with Lester Vincent, Rambus's outside patent attorney, to draft claims to be added to Rambus's pending patent applications in an attempt to cover the technologies JEDEC was discussing for inclusion in the standard for synchronous DRAMs. Lester Vincent's handwritten notes of a meeting with Rambus Vice President Allen Roberts on either May 2 or May 12, 1992 state, "Richard Crisp wants to add claims to original application

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A Yeah, I think he said there's an equitable estoppel issue."
Diepenbrock Dep. (4/11/01) 262:8-263:12, *Rambus v. Infineon* [Tab 15].

[11] "Q So you had a discussion with Tony about attending JEDEC meetings or attending -- and attending the SyncLink IEEE meetings?
A That's correct.
Q And tell me what Tony said to you.
A Well, I don't remember, you know, precisely the words that he used, but I think the gist of it was he thought we should not go to those meetings.
Q At all?
A That's correct.
Q And what did you say to him?
A Well, I said to him that, you know, based on an earlier conversation I'd had with Lester Vincent, in particular how we should conduct ourselves at those meetings, that I didn't see any reason why we shouldn't continue going. And Lester, after all, was our patent lawyer and Tony was a newly graduated attorney that had just joined the company.
Q What did Tony say to you?
A Well, I don't remember. I just remember that we had to agree to disagree at that point in time.
Q Did Tony tell you why he thought you should stop attending JEDEC meetings or SyncLink IEEE meetings?
A He raised this issue of equitable estoppel as being a concern that he had. . . ."
Crisp Dep. (4/13/01) 804:21-805:20, *Rambus v. Infineon* [Tab 16].

=> add claims to mode register to control latency output timing . . . – check whether original application has blocks (?)."[12] Lester Vincent, Handwritten Notes, May 2 [or 12], 1992, R202989 **[Tab 17]**. Vincent's notes of a meeting with Richard Crisp in September, 1992 state, "– What to include in divisional applications: . . . 2) DRAM - programmable latency via control reg[ister] . . . => so cause problem w/ synch[ronous] DRAM & Ram link . . . 4) using phase lock loops on DRAM," and three pages later, "Richard => will get me copy of the Ramlink spec[ification] & synch DRAM spec[ification]."[13] Lester Vincent, Handwritten Notes, September 25, 1992, R203940, R203943 **[Tab 18]**. An e-mail from Fred Ware to others within Rambus in June 1993, summarizing a conversation with Lester Vincent, states:

> The current status of the additional claims that we want to file on the original (P001) patent follows. . . . (1) Writable configuration register permitting programmable CAS latency. This claim has been written up and filed. This is directed against SDRAMs [synchronous DRAMs] . . . . (3) DRAM with PLL clock generation. This claim is partially written up. . . . This is directed against future SDRAMs and RamLink.

E-mail from Fred Ware to John Dillon, Allen Roberts, Richard Barth, Richard Crisp and Michael Farnwald, June 18, 1993, R202996 **[Tab 19]**. Vincent's notes record a conference with CEO Geoff Tate, Vice President Allen Roberts and CFO Gary Harmon in January 1994, "– enforcement: Sink DRAMS [synchronous DRAMs] – low swing signals - config[urble] register - programmable latency – PLLs." Lester Vincent, Handwritten Notes, January 10, 1994,

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[12] Use of a mode register to control latency and block size were two technologies Crisp has observed being presented at JEDEC.

[13] Ramlink was the name given to the work of another standard-setting group. On-chip phase lock loop, or PLL, is a technology proposed for use at JEDEC between 1994 and 1996, while Rambus was still a JEDEC member.

R203314 **[Tab 20]**. In August 1994, Allen Roberts forwarded within Rambus a copy of a draft patent amendment prepared by Lester Vincent with the cover note, "This is Lester's attempt to work the claims for the MOST/SDRAM defense." Allen Roberts, Handwritten Note, undated, R204436 **[Tab 21]**.

In deposition testimony, Rambus representatives admitted that, after observing presentations for the SDRAM standard in JEDEC, they spoke with Lester Vincent, Rambus's outside patent attorney, and requested that he draft claims covering the technologies proposed for SDRAM in JEDEC. *See, e.g.*, Crisp Dep. (4/13/01) 786:16-787:7, *Rambus v. Infineon* **[Tab 16]**;[14] Crisp Dep. (7/20/01) 487:25-489:3, *Micron v. Rambus* **[Tab 22]**;[15] Vincent Dep.

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[14] "Q Isn't it true that JEDEC -- discussions at JEDEC was one source of information that you relied on when coming up with ideas for new claims that you discussed with Lester Vincent?
A I believe that's true, yes. . . .
Q And when you saw those proposals at JEDEC that you felt were using your ideas, or Rambus's ideas, you went back and spoke with Lester Vincent and you asked him to make sure to add claims to the pending Rambus patent applications to cover those ideas in the SDRAM; right?
A I spoke to my boss Allen Roberts about it, and then I think we ended up having discussions with Lester Vincent."

[15] "Q Now, you also worked with Mr. Vincent on other things that you thought should be protected and which you thought were disclosed in that original 1990 application; correct?
A I believe that's correct, yes.
Q And, among other things, those included the use of a programmable mode register on a DRAM; is that right?
A Well, I think it was a little bit more specific than that.
Q How so?
A I think it was specifically addressing access latency to the device.
Q And is CAS latency one form of access latency?
A Yes. Yes, it is.
Q Did you also discuss with him trying to protect the use of programmable burst length on a DRAM?
A I believe I did, yes.

(4/12/01) 487:12-24, *Rambus v. Infineon* **[Tab 23]**[16]. Similarly, Anthony Diepenbrock testified as to his communications with CEO Geoff Tate concerning Tate's instructions that Diepenbrock search for, identify and fill any holes in Rambus's patent coverage with respect to SDRAM. Diepenbrock Dep. (4/11/01) 235:16-236:11, *Rambus v. Infineon* **[Tab 15]**;[17] Again, Rambus provided all of this material voluntarily to Hynix.

Likewise, the materials Rambus produced to Hynix demonstrate that in-house and outside counsel advised Rambus to cease participation in JEDEC in 1996. In December 1995, outside counsel Lester Vincent sent in-house counsel Anthony Diepenbrock a copy of the Federal Trade

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Q Again, these were things you were trying to protect because you saw that members of JEDEC were discussing incorporating those into the JEDEC SDRAM standard; correct?

A Well, you know, I had information from a lot of different sources, some of the information I had came from things that I observed within JEDEC. But it's certainly true that I did see those talked about within JEDEC. And I felt like those were our inventions, and if we had not protected those that we should."

[16] "Q And you recall that at some point in time during this time frame, you and the other attorneys at Blakely, Sokoloff at Rambus's direction were amending claims and filing new claims particularly targeted to the SDRAMs; right? . . . .

A I see from these documents that we were drafting claims in response to Rambus having us look at specific subject areas that, you know, A) were within the Rambus patent applications and B) that would be pertinent with respect to certain products. And SDRAMs were included in those products."

[17] "Q Tell me what you recall, the steps you outlined with Geoff Tate as part of your job as the new IP lawyer at Rambus. . . .

A THE WITNESS: That I was to survey what had been issued to get an understanding of what was issued and to determine what he called what might be holes in coverage, whether we had, you know, lots of coverage or a little coverage over certain subject matter areas and to assess the claims with regard to the competition.

[ *** REDACTED

*** ]

Commission's proposed consent order in *In the Matter of Dell Computer Corp.* Letter from Lester Vincent to Anthony Diepenbrock, December 19, 1995, R202778 **[Tab 24]**. Lester Vincent's notes to the file in January memorialize his advice to Rambus, "– No further participation in any standards body . . . – do not even get close!!" Lester Vincent, Handwritten Notes, undated, R203881 (triple underline in original) **[Tab 25]**. In-house and outside counsel were involved in reviewing and editing drafts of Rambus's withdrawal letter to JEDEC; the drafts were also among the materials produced by Rambus.[18] Again, Rambus's lawyers and others have also testified regarding the advice that Rambus's lawyers provided to the effect that, in light of the FTC's proposed consent agreement in *In the Matter of Dell Computer Corp.*, Rambus should quit JEDEC. *See, e.g.*, Vincent Dep. (3/14/01) 191:3-11, *Rambus v. Infineon*,

[18] The list of Rambus patents attached to the withdrawal letter sent to JEDEC omitted Rambus's patent number 5,513,327, the single issued patent possessed by Rambus with claims that related to JEDEC's on-going work. *See* Letter from Richard Crisp to Ken McGhee, June 17, 1996, R157080 at R157081 **[Tab 26]**. Most of the early drafts of the withdrawal letter state, "In the spirit of full disclosure . . ." Rambus was attaching a list of "all" of its issued U.S. patents. *See* Draft Letters from Richard Crisp to the Electronic Industries Association (with which JEDEC was associated) **[Tab 27]**, R156926 (March 20, 1996), R156928 (March 20, 1996), R156929 (March 22, 1996). After the '327 patent issued in April 1996, however, the list attached to Rambus's withdrawal letter failed to include that patent, and the final version of Rambus's withdrawal letter did not state, "In the spirit of full disclosure" or that Rambus was disclosing "all" its issued U.S. patents. Letter from Richard Crisp to Ken McGhee, June 17, 1996, R157080 **[Tab 26]**.

**[Tab 28]**;[19] Vincent Dep. (3/14/01) 198:14-23, *Rambus v. Infineon* **[Tab 28]**.[20] And again, Rambus provided all of this information to Hynix voluntarily.

Despite this voluntary production of documents and wide-ranging deposition testimony to Hynix, in the instant litigation, Rambus's counsel has refused to provide Complaint Counsel with satisfactory assurances that we will be able to conduct discovery on those subjects without privilege objections. In fact, based on very recent correspondence from Rambus's counsel, it appears that Rambus intends to use privilege objections to obstruct Complaint Counsel's ability to question Rambus witnesses on the same subject matters covered by Judge Payne's crime-fraud rulings. Specifically, by letter dated December 31, 2002, lead Rambus attorney Gregory Stone stated, "Rambus does not agree that it is not entitled to assert fully the attorney-client privilege, and all other privileges, in this case." Letter from Gregory P. Stone to M. Sean Royall (Dec. 31, 2002), at 2 **[Tab 4]**. This revelation comes at a critical time, considering that Complaint Counsel will begin deposing Rambus witnesses on Tuesday, January 7, 2003. Thus, unless Your Honor resolves this basic issue of privilege promptly, it is highly likely that Rambus will interpose

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[19] "Q That's a fair point. I'm just interested in the discussions regarding withdrawing from JEDEC. What were your discussions with regard to withdrawing from JEDEC at this meeting with Mr. Tate and Sobrino?

A Sobrino. We discussed that in view of either the proposed Dell decision by the FTC or the final decision, I don't remember the timing, that it would be prudent for Rambus to reconsider its participation, if that's what it was, in JEDEC and to withdraw."

[20] "Q So was your concern that Rambus was an intellectual property company, Rambus was attending a standards organization, and in view of Dell, that could be a combination that could lead to an equitable estoppel argument?

A Well, I thought it would be incompatible -- it could potentially be incompatible with Rambus's business model, you know, if somebody were to raise this and they were successful, you know, in what had happened in the Dell case."

privilege objections and necessitate a second round of depositions.

Because of the tight discovery schedule in this case, and in order to avoid the need for a second round of depositions after the close of discovery, Complaint Counsel asks Your Honor to rule promptly on this, granting the requested relief outlined above. *See supra*, at p. 3.

## III.
## ARGUMENT

### A. Rambus Has Waived Any Claim of Privilege With Respect to the Crime-Fraud Documents and Testimony.

#### 1. Rambus's Voluntary Production to Hynix Destroyed Any Possible Claims of Attorney-Client Privilege or Work-Product Protection.

Rambus's voluntary production of these materials to Hynix, its litigation opponent, destroyed any possible claim of attorney-client privilege or work-product protection. The D.C. Circuit has "emphatic[ally] reject[ed]" the doctrine of limited waiver, holding instead that:

> "The client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others, or to invoke the privilege as to communications whose confidentiality he has already compromised for his own benefit. . . . The attorney-client privilege is not designed for such tactical employment."

*In re Subpoenas Duces Tecum*, 738 F.2d 1367, 1370 (D.C. Cir. 1984) (quoting *Permian Corp. v. U.S.*, 665 F.2d 1214, 1221 (D.C. Cir. 1981). Instead, disclosure of the materials to Hynix "irrevocably breached" any remaining confidentiality that those materials might have enjoyed after their court-ordered disclosure to Infineon. *Wichita Land & Cattle Co. v. Am. Fed. Bank*, 148 F.R.D. 456, 459 (D.D.C. 1992).

Disclosure to Hynix, an adversary of Rambus in currently pending litigation, also destroyed potential work-product protection (if any ever attached) as well. "[W]here disclosure

to an adversary constitutes a waiver of attorney-client privilege, it also effects a waiver of the work product rule." *Wichita Land & Cattle,* 148 F.R.D. at 461; *see also Chubb Integrated Sys. Ltd. v. National Bank of Washington,* 103 F.R.D. 52, 63 (D.D.C. 1984). Having voluntarily permitted Hynix to obtain documents prepared by attorneys and transcripts containing extensive testimony regarding communications between Rambus representatives and attorneys on the subjects of JEDEC and Rambus's attempts to broaden its patent applications, among others, Rambus cannot now protect these subject areas from discovery by Complaint Counsel under the work-product doctrine. As the D.C. Circuit has held:

> We are convinced that the health of the adversary system – which spawned the need for protection of an attorney's work product from discovery by an opponent would not be well served by allowing appellants the advantages of selective disclosure to particular adversaries, a differential disclosure often spurred by considerations of self-interest. . . . It would also be inconsistent and unfair to allow appellants to select according to their own self-interest to which adversaries they will allow access to the materials.

*In re Subpoenas Duces Tecum,* 738 F.2d at 1371.

**2. Any Agreements or Stipulations Between Rambus and Hynix Are Ineffective to Preserve Claims of Privilege Vis-a-Vis Complaint Counsel.**

As noted above, Hynix stipulated that certain of the crime-fraud materials – those not used in the *Infineon* trial – would be designated by court order as "CONFIDENTIAL – OUTSIDE COUNSEL ONLY." In the June 22, 2001, letter agreement, Hynix had previously agreed that "Rambus' production of documents and deposition testimony under this agreement does not constitute a waiver of any privilege Rambus may otherwise assert in this litigation." *See* Letter from Basil Culyba to Kenneth Nissly, dated July 10, 2001, attaching June 22, 2001 letter

agreement [Tab 3].

Any agreements or stipulations between Rambus and Hynix are ineffective, as a matter of law, to undo the destruction of privilege wrought by the act of disclosure itself: Rambus's voluntary disclosures to Hynix destroyed the privilege, irrespective of any agreements between those parties that may have purported to preserve the privilege or prevent waiver vis-a-vis third parties. *See Chubb Integrated Sys.*, 103 F.R.D. at 67; *see also In re Columbia/HCA Healthcare Corp. Billing Practices Litig.*, 293 F.3d 289 (6th Cir. 2002) (disclosure to one adversary, despite bilateral agreement that disclosure would not constitute waiver of attorney-client or work-product privilege, was an unconditional waiver of privilege vis-a-vis a third-party adversary).

*Chubb* involved a situation nearly identical to the case at hand. Like Rambus, Chubb was the plaintiff in two separate patent infringement suits involving the same patents. Chubb disclosed privileged documents to one adversary, NCR Corporation, pursuant to an agreement that reserved Chubb's post-inspection right to claim privilege to those same documents. When Chubb purported to raise privilege objections to discovery by its second adversary, National Bank of Washington, the latter argued that the prior disclosure to NCR Corp. had worked a waiver of privilege. The court agreed, holding that the confidentiality agreement between the parties was ineffective to preserve Chubb's privilege. The court reasoned:

> Clearly the disclosures to NCR Corporation constitute a waiver of privileges which might have otherwise attached. Confidentiality is the dispositive factor in deciding whether a communication is privileged. The agreement between Chubb and NCR does not alter the objective fact that the confidentiality has been breached voluntarily. The agreement is for the mutual convenience of the parties, saving the time and cost of pre-inspection screening. That agreement is merely a contract between two parties to refrain from raising the issue of waiver or from otherwise utilizing the

> information disclosed. Plaintiff has no genuine claim of confidentiality to the documents it produced to NCR Corporation.
>
> . . . . Plaintiff now seeks protection of the very same documents disclosed to NCR. In effect, plaintiff is advancing another version of the "limited waiver" theory, based on an agreement in the prior action. We, too, decline to adopt a limited waiver theory.

*Chubb Integrated Sys.*, 103 F.R.D. at 67-68.

Likewise, in the case at hand, Rambus disclosed the materials to Hynix subject to an agreement that disclosure would not waive any privileges Rambus might otherwise assert. Whatever the effect of that agreement in the *Hynix* litigation, it cannot limit Complaint Counsel's right to discovery. The very act of disclosure to Hynix destroyed the privilege vis-a-vis Complaint Counsel, and any conditions and agreements between Rambus and Hynix are ineffective, as a matter of law, to preserve Rambus's claims of privilege vis-a-vis Complaint Counsel.

Because the documents at issue have been disclosed voluntarily to Rambus's litigation opponent, Hynix, and the subject matter has been the focus of extensive deposition testimony (which Rambus also voluntarily disclosed or permitted to be disclosed to its litigation opponent), no privilege can remain, either as to the materials themselves or as to the subject matter. Here, as in *Grand Jury Investigation of Ocean Transport*, "[I]t is clear that the mantle of confidentiality which once protected the documents has been so *irretrievably breached* that an effective waiver of the privilege has been accomplished." 604 F.2d 672, 675 (D.C. Cir.), *cert. denied*, 444 U.S. 915 (1979) (emphasis added).

## B. Rambus' Forfeiture Of Privilege Extends To The Entire Subject Matter, Not Just Individuals.

Judge Payne ruled that the privilege had been waived or forfeited as to "certain topics." In consequence, he compelled production of all documents relating to those topics, and he allowed further depositions on the subject matter. Because the order was made three weeks before the start of trial, Infineon asked to re-depose only a small number of witnesses, and the names of those witnesses were included in Judge Payne's order. Listing the individuals to be deposed was not intended to limit the subject matter of the order; rather, the list included every individual that Infineon sought to redepose in the limited time it had available. *See* March 6, 2001, Tr. of Hearing re Motion to Compel at 869:13-16, *Rambus v. Infineon* **[Tab 6]** ("In addition, to the extent that it's necessary to talk to Mr. Crisp or Mr. Mitchell or Mr. Tate about these topics, the motion is granted to allow them to testify, allow them to be deposed also.")

In the case at hand, Complaint Counsel may wish to question those individuals further or to question other individuals on the same topics. Consequently, Complaint Counsel asks Your Honor to confirm that the effect of Rambus' forfeiture of privilege on the *topics* mentioned by Judge Payne is that Rambus may not interpose a privilege objection as to any communication on those topics. Having been forfeited, the attorney-client communications themselves become unprivileged, and discovery may be obtained from *any* source or any witness, whether or not the witness was mentioned in Judge Payne's order. *See In re Sealed Case*, 877 F.2d 976, 980-81 (D.C. Cir. 1989) ("[A] waiver of the privilege in an attorney-client communication extends 'to all other communications relating to the same subject matter.'") (quoting *In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982)); *see also Chubb Integrated Sys.*, 103 F.R.D. at 63 ("Actual

disclosure of each specific document in issue is not the only means by which a waiver can occur. Voluntary production of certain privileged documents implies a waiver of all communications on the same subject.").

**C. The Subject Matter Of The Waiver Is Not Limited As To Time Frame.**

Because the communications with attorneys were part of an ongoing fraudulent scheme that continued after Rambus left JEDEC, Rambus's waiver of privilege extends to all communications on the subject, regardless of whether the specific consultations took place before or after Rambus left JEDEC. For this reason, Judge Payne's orders were not limited to time frame. As Judge Payne recognized, Rambus's fraud included "the efforts by Rambus, Inc., to broaden its patents to cover matters pertaining to the JEDEC standards." March 7, 2001, Order, *Rambus v. Infineon* [**Tab 1**]. Previously, at the hearing, Infineon had clarified this issue to Judge Payne:

> THE COURT: You keep saying that you want to get discovery of the advice that Rambus received from lawyers about broadening the patent applications. What does that have to do with anything?
>
> MR. RIOPELLE: It is Rambus's position that it wasn't until after they left JEDEC that they made a decision to go back and amend their pending patent applications and broaden those applications to cover other things.
>
> We believe, actually, based upon the business plan and other things that they made that decision long before they left JEDEC and that they broadened their pending patent applications.
>
> THE COURT: So what you want to do is ask what consultations and advices they [Rambus] received from the lawyers Vincent and Diepenbrock on the strategy of broadening patent applications, as originally reflected in the business plan.
>
> MR. RIOPELLE: That is true.

March 6, 2001, Tr. of Hearing re Motion to Compel at 851:25-852:19, *Rambus v. Infineon* **[Tab 6]**. Rambus's efforts to cover the JEDEC standards continued well after it left JEDEC – as Rambus implicitly acknowledges in its Answer. *See* Answer of Respondent Rambus Incorporated, Answer to ¶ 91 **[Tab 29]** ("Rambus avers that the first patent claims issued to it that would arguably be infringed by all products purporting to comply with either JEDEC's SDRAM or DDR SDRAM standards were submitted to the PTO no earlier than November 1998 . . . ."). Likewise, the crime-fraud materials themselves discuss an ongoing scheme to broaden Rambus's patent applications to cover the JEDEC standards; and the crime-fraud materials actually produced include some materials created after Rambus's withdrawal from JEDEC on June 17, 1996. *See, e.g.*, R204353-56, R204357-58, R204380-83. **[Tab 30]**. Consequently, Complaint Counsel asks Your Honor to clarify that all communications that are part and parcel of this ongoing plan relate to the same subject matter, and the waiver of privilege extends to all such communications, regardless of time frame.

## IV.
## CONCLUSION

For all the foregoing reasons, Complaint Counsel requests that this motion be granted and that Your Honor enter an order in the form submitted herewith.

Respectfully submitted,

M. Sean Royall
Geoffrey D. Oliver
Alice W. Detwiler
Mark Nance

BUREAU OF COMPETITION
FEDERAL TRADE COMMISSION
Washington, D.C. 20580
(202) 326-3663
(202) 326-3496 (facsimile)

COUNSEL SUPPORTING THE COMPLAINT

Dated: January 7, 2003

## CERTIFICATE OF SERVICE

I, Beverly A. Dodson, hereby certify that on February 11, 2003, I caused a copy of the attached, *Complaint Counsel's Memorandum In Support Of Motion To Compel Discovery Relating To Subject Matters As To Which Rambus's Privilege Claims Were Invalidated On Crime-Fraud Grounds And Subsequently Waived* (public version), to be served upon the following persons:

by hand delivery to:

Hon. James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

and by electronic transmission (w/o attachments) and overnight courier to:

A. Douglas Melamed, Esq.
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355 South Grand Avenue
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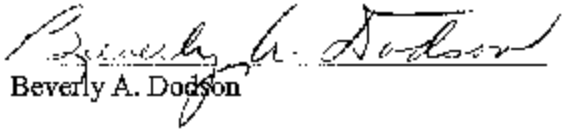
Los Angeles, CA 90071

*Counsel for Rambus Incorporated*



Beverly A. Dodson

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



RAMBUS INC.,

Plaintiff,

v. Civil No. 3:00CV524

INFINEON TECHNOLOGIES AG, et al.

**ORDER**

It is hereby ORDERED that:

(1) for the reasons set forth on the record on February 28, 2001, and having concluded that there exist genuine disputes of material fact, the Motion for Summary Judgment on Defendants' Equitable Estoppel Affirmative Defense Relating to Defendants' DDR SDRAM Products filed by Rambus, Inc. is DENIED;

(2) for the reasons set forth on the record on February 23, 2001, the Motion to Compel Deposition Testimony Concerning Licensing Issues filed by the Defendants is GRANTED so that the Defendants may depose Messrs. Neil Steinberg and Mr. Geoffrey Tate respecting licensing terms and conditions;

(3) for the reasons set forth on the record on February 23, 2001 and March 6, 2001, the Motion to Compel Deposition Testimony and Documents filed by the Defendants is GRANTED in part so that:

(a) the attorney-client privilege has been forfeited under the crime-fraud exception as to certain topics, and therefore the Defendants may conduct depositions of Messrs. Diepenbrock,

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Vincent, Crisp, Mitchell and Tate respecting the legal advice provided about disclosures of patents and patent applications to JEDEC by Rambus, Inc., the disclosure policy of JEDEC and about the efforts by Rambus, Inc. to broaden its patents to cover matters pertaining to the JEDEC standards;

(b) the Defendants may depose Mr. Steinberg respecting the September 2000, presentation made to stockholders, financial analysts and members of the public;

(c) the Defendants may depose Messrs. Diepenbrock and Vincent respecting the preparation of the withdrawal letters from JEDEC; and

(d) the Defendants may depose Messrs. Diepenbrock and Vicent respecting the drafting of letters relating to the patent disclosures to JEDEC and IEEE, the information and documents relied upon in drafting those letters, patent disclosures to JEDEC and IEEE and the efforts by Rambus, Inc. to broaden its patent claims to the extent that any of those conversations took place within the context of the drafting of the withdrawal letters; and

(4) the Motion to Compel Deposition Testimony and Documents filed by the Defendants is DENIED as to any legal advice received by Rambus, Inc. respecting the scope of its patent applications pending from 1991 to 1995;

(5) Rambus shall produce any previously withheld documents relating to subject matters upon which the Court has granted the Motions to Compel;

(6) the depositions shall be taken and defended by experienced attorneys knowledgeable on the subject of attorney-client privilege, particularly Mr. Craig Merritt for Rambus, Inc., and shall be conducted in Richmond, Virginia to the extent that witnesses are under the control of Rambus, Inc. and to the extent that other witnesses are willing to travel to Richmond to be deposed; and

(7) the depositions required by paragraphs 3(a), (b), (c) and (d) shall be conducted and the transcripts shall be placed under seal until reviewed by the Court and, in that respect, counsel shall confer in an effort to narrow the depositions which the Court needs to review and shall respond thereon by March 15, 2001.

The Clerk is directed to send a copy of this Order to all counsel of record by facsimile and by regular mail.

It is so ORDERED.

Robert E. Payne
UNITED STATES DISTRICT JUDGE

Date: March 7, 2001
Richmond, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| MICRON TECHNOLOGY, INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civil Action No. 00-792-RRM |
| | ) | |
| RAMBUS INC., | ) | |
| | ) | |
| Defendant. | ) | |

**ORDER**

For the reasons set forth in the telephone conference on May 16, 2001, IT IS HEREBY ORDERED that Rambus, Inc. shall produce to Micron Technology, Inc. the documents identified during the telephone conference.

UNITED STATES DISTRICT JUDGE

Dated: May 16, 2001

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 MICRON TECHNOLOGY, INC., : CIVIL ACTION

5 Plaintiff :

6 vs. :

7 RAMBUS, INC., :

8 Defendant : NO. 00-792 (RRM)

9 - - -

10 Wilmington, Delaware
Wednesday, May 16, 2001
11 1:05 o'clock, p.m.
*** Telephone conference

12

13 - - -

BEFORE: HONORABLE RODERICK R. McKELVIE, U.S.D.C.J.

14

15 - - -

APPEARANCES:

16

RICHARDS, LAYTON & FINGER
17 BY: FREDERICK L. COTTRELL, III, ESQ.

18 -and-

19 BARTLIT, BECK, HERMAN, PALENCHAR & SCOTT
BY: FRED H. BARTLIT, JR., ESQ. and
20 GLENN E. SUMMERS, ESQ.
(Atlanta, Georgia)

21

-and-

22

23 Valerie J. Gunning
Official Court Reporter

24

25

1 the picture? And that question, it seems to me, should be
2 easy.
3 THE COURT: I think what I'm going to do is
4 order Rambus to produce the documents that we've identified.
5 That is, using the definition that Judge Payne used in
6 adding into the definition, deposition transcripts where
7 testimony was given about the subject matter, where Judge
8 Payne made a finding that there was no privilege.
9 And the basis for that decision and the impact
10 of that decision is, my understanding, at least in part, is
11 as follows: The basis for the decision is, I think, one,
12 we've got a Judge who has already looked at this one time
13 and made a finding that there are sufficient facts to show
14 that the documents should be produced.
15 Two, while there's not a perfect fit between
16 the jury verdict and the issues raised in this case, the
17 jury verdict, I think I could look to the jury verdict as
18 confirming that there appears to have been a factual basis,
19 a sufficient factual basis to find fraud by Rambus for the
20 purpose of finding that they are not entitled to the
21 protection of the attorney/client for these communications.
22 The impact of ordering discovery of these
23 materials isn't in the end a finding on my part that -- at
24 least I don't take it as a finding that the documents will
25 be necessarily admissible, there won't be any privilege

1 If we can, we will do so. And I will certainly
2 endeavor to do so as soon as reasonably possible, but I'm
3 just aware of that logistical issue, so I would ask that
4 the Court simply order that they be produced as soon as
5 reasonably possible, or if you want to set a hard date on
6 it, set by the end of the day on Friday. But we'll
7 certainly endeavor to produce them as soon as we can.
8 THE COURT: I think as soon as possible is
9 fine with me. I don't mean to say the end of the day
10 Friday is a good deadline, but rather than say today, why
11 don't you just produce them as soon as you can?
12 MR. PENDARVIS: Very well. Thank you your
13 Honor.
14 The second point is that I take it from the
15 Court's comment that the use that's to be made of these
16 documents by Micron is limited to this litigation.
17 Would that be equivalent to the sealing order
18 that Judge Payne entered? The order that Judge Payne
19 entered ordered that the documents be produced, but that
20 they be maintained by the parties. That would be, in this
21 case, by Micron, under seal. That is, they are not to
22 disclose them to any third party and to limit use to --
23 it was actually limited to a few lawyers within the firm.
24 But I think if we could have the highest level
25 of outside counsel protection that's envisioned by the

1 with your client.

2 THE COURT: Actually --

3 MR. BARTLIT: Your Honor, we believe in

4 honoring protective orders and we know that if there are

5 any breaches, there's going to be -- there might be hell to

6 pay. And we have been extraordinarily helpful, producing

7 two sets of everything. One set that's marked out. And

8 it's sort of a tail wagging the dog. At this point, the

9 material, which truly ought to be OCO, are trade secrets.

10 And all of these materials, because they -- the nature of

11 them cannot have trade secrets. I've said to Mary, if

12 there's anything specific that you think is a trade secret,

13 let me know and you and I can -- I've got to call Mary and

14 say with my inside counsel, I have to tell them what's in

15 Paragraph 3 of a letter, can I do it, really is both

16 cumbersome and reveals my thought process.

17 If I can just finish, Mary...

18 THE COURT: A couple comments. This is Judge

19 McKelvie.

20 First, with regard to the documents and the

21 information disclosed in open court, I don't think I can

22 make that information or should make that information

23 subject to any confidentiality limitation. So if that

24 was -- if it was in open court and disclosed in open

25 court, I'm not going to impose any limit on the counsel

1 or their clients in using the information. That's one.
2 Two, the interest I'm actually interested in
3 is the question of how a party preserves for appeal a
4 ruling that there's no privilege. And one way to preserve
5 it is to try to contain the use of the information in the
6 litigation so that it -- if the Court of Appeals later
7 determines that the information should have been
8 protected from disclosure, it does not have an impact on
9 the judgment that a fact-finder makes.
10 And that's a little different than confidential
11 or highly confidential, it's a question of how it's going
12 to end up getting used in the litigation.
13 I think I can protect that second interest
14 without seeing the information is designated as highly
15 confidential under the vehicle we've used to date, that
16 is the confidentiality order.
17 So I think the thing to do is to have it
18 produced, direct counsel to maintain it as confidential
19 for the purpose of litigation only. And if the protective
20 order is an easy fit for that, then confidentiality on the
21 protective order sounds likes it would make sense,
22 although it may not have been drafted for the purpose of
23 dealing with this type of problem.
24 So let's start with the idea, if it was in
25 open court, I'm not going to put any limitation on it. If

1 it wasn't in open court, we'll treat it as confidential
2 under the protective order, but not highly confidential,
3 and then begin to identify how we want to define that as
4 we go forward.
5 All right?
6 MR. PENDARVIS: Thank you, your Honor. Dave
7 Pendarvis. That's acceptable to us.
8 THE COURT: Good. Talk to you all tomorrow.
9 MR. BARTLIT: Thank you, your Honor.
10 MS. GRAHAM: Thank you.
11 (Telephone conference concluded at 1:45 p.m.)
12 - - -
13
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19
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21
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25

**Exhibit 3**
**(page 1 redacted)**

HOWREY SIMON ARNOLD & WHITE
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Basil C. Colyba
Partner
202.383.6526
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July 10, 2001

VIA FEDERAL EXPRESS

Kenneth L. Nissly, Esq.
Thelen Reid & Priest, LLP
333 W. San Carlos Street, 17th Floor
San Jose, CA 95110-2701

Re: *Hynix Semiconductor, Inc., et al. v. Rambus, Inc.*, Civ. No. C 00-20905 (N.D. Cal.)

Dear Mr. Nissly:

Pursuant to our letter agreement dated June 22, 2001 (copy attached), enclosed please find copies of (1) the Rambus documents found by the *Infineon* court's March 29, 2001 Order to be subject to the crime-fraud exception to the attorney-client privilege, and (2) the deposition testimony taken in *Infineon* pursuant to that order. The enclosed documents and deposition testimony are specified by document number, and by deponent name and date of testimony, respectively, on Attachment "A" to this letter.

As the letter agreement provides, except for the documents and deposition testimony introduced into evidence on the public record at the *Infineon* trial, which are identified on Attachment "B" to this letter, the documents and deposition testimony enclosed herein shall be subject to the strictest limitations on use and disclosure accorded under the Protective Order in this case.

Pursuant to that Protective Order and the letter agreement, Hynix has agreed to stipulate to the entry of a court order so designating the specified documents and testimony. For your review, I have enclosed a draft stipulation, joint motion and proposed order designating these documents and deposition testimony pursuant to paragraph 9 of the Protective Order as "CONFIDENTIAL – OUTSIDE COUNSEL ONLY." Also, the documents were previously marked "Outside Counsel Only" pursuant to the *Infineon* court's March 29, 2001 Order. Unless you inform me otherwise I will assume that this marking satisfies the requirements under paragraph 10 of the Protective Order in this case.

Finally, until the stipulation and motion are finalized, and the order is entered by the Court, all of the enclosed materials are to be treated as "ATTORNEYS EYES ONLY" pursuant to our letter agreement.

HOWREY
ATTORNEYS AT LAW



If you have any questions or comments, please call.

Sincerely,

Basil C. Culyba
Attorney for Rambus, Inc.

Enclosures


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June 22, 2001

VIA FEDERAL EXPRESS

Kenneth L. Nissly, Esq.
Thelen Reid & Priest, LLP
333 W. San Carlos Street, 17th Floor
San Jose, CA 95110-2701

Re: *Hynix Semiconductor, Inc., et al. v. Rambus, Inc.*, Civ. No. C 00-20905 (N.D. Cal.)

Dear Mr. Nissly:

This confirms Rambus Inc.'s ("Rambus") agreement to produce to Hynix Semiconductor, Inc. ("Hynix") in the above-captioned case certain documents and deposition testimony which are the subject of its Motion to Intervene filed on June 4, 2001 in *Rambus, Inc. v. Infineon Technologies*, Civ. No. 3:00CV524 (E.D. Va).

Specifically, the documents and depositions at issue are those Rambus documents and subsequent related depositions that were found by the *Infineon* court's March 29, 2001 Order to be subject to the crime-fraud exception to the attorney-client privilege, including the documents listed on Attachment A to the Stipulated Order of April 20, 2001 entered in that case.

As part of the discovery in the above-captioned case, Rambus will produce to Hynix (1) the documents listed on Attachment A, (2) the documents produced by Rambus in *Infineon* under the March 29, 2001 Order, but not listed on Attachment A, and (3) the deposition testimony taken pursuant to the March 29, 2001 Order. Except for the documents and related deposition testimony introduced into evidence on the public record at the *Infineon* trial, all documents and deposition testimony identified for production to Hynix under this letter agreement will be subject to the strictest limitations on use and disclosure accorded under the Protective Order in this case. Pursuant to the Protective Order, Hynix agrees to stipulate to the entry of a court order designating such documents and deposition testimony as "ATTORNEYS EYES ONLY."

Hynix agrees that Rambus' production of documents and deposition testimony under this agreement does not constitute a waiver of any privilege Rambus may otherwise assert in this litigation. Hynix further agrees that Rambus' production of documents and deposition testimony under this agreement does not constitute a waiver of any objection or exception Rambus has or may assert to the crime-fraud decision of the *Infineon* court. However, unless the Federal Circuit provides otherwise, Hynix's use of documents and testimony produced pursuant to this agreement shall not be affected by the appeal of the *Infineon* court's crime-fraud decision.



Hynix agrees to withdraw its Motion to Intervene and to inform the *Infineon* court that the matter has been resolved by agreement among the parties.

Sincerely,

Basil C. Culyba
Attorney for Rambus, Inc.

AGREED AND ACCEPTED:

Attorney for Hynix Semiconductor, Inc.

cc: Theodore G. Brown, III, Esq.

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December 31, 2002

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**VIA FACSIMILE AND U.S. MAIL**

M. Sean Royall, Esq.
Federal Trade Commission
600 Pennsylvania Avenue,
Washington, D.C. 20580

Geoffrey D. Oliver, Esq.
Federal Trade Commission
601 New Jersey Avenue
Washington, D.C. 20001

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

Dear Sean and Geoff:

As you know, we have been working hard at scheduling the depositions of various of the witnesses you desire to depose after the first round. As you requested, we moved Mr. Davidow from January 2 to January 21. We also can now confirm the following additional deposition dates and locations:

| Deponent | Date | Location |
|---|---|---|
| Joel Karp | January 14, 2003 (almost certain, but not quite) | FTC Office, San Francisco |
| Billy Garrett | January 16, 2003 | Los Angeles (because of his international travel schedule) |
| William Davidow | January 21, 2003 | FTC Office, San Francisco |
| Neil Steinberg | January 22, 2003 | FTC Office, San Francisco |

| | | |
|---|---|---|
| David Mooring | January 24, 2003 | FTC Office, San Francisco |
| Tony Diepenbrock | January 30, 2003 | FTC Office, San Francisco |
| Mark Horowitz | January 30, 2003 | FTC Office, San Francisco |
| Richard Crisp | January 31, 2003 | FTC Office, San Francisco |

As I have discussed with you previously, because of the press of commitments related to his new job, and in light of the fact that previously has been deposed for eight days and also testified in the *Infineon* trial, Mr. Crisp will agree to appear for only one day of deposition.

As soon as I can confirm dates for any other witnesses, I will.

I also want to confirm what I told you during our recent telephonic meet-and-confer, namely that Rambus does not agree that it is not entitled to assert fully the attorney-client privilege, and all other privileges, in this case.

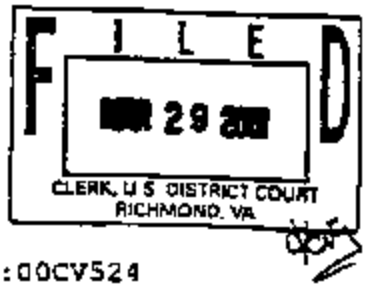
Wishing you a Happy New Year,

Sincerely,

Gregory P. Stone

GPS:cbp

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division




RAMBUS INC.,

Plaintiff,

v. Civil No. 3:00CV524

INFINEON TECHNOLOGIES AG, et al.

Defendants.

**ORDER**

For the reasons set forth on the record on March 28, 2001, it is hereby ORDERED that:

(1) having concluded that newly discovered evidence warrants reassessment of certain aspects of the decision issued on March 6, 2001 ("the March 6 decision") and the Order entered on March 7, 2001 (the March 7 Order"), the Motion For Reconsideration filed by Rambus, Inc. under Fed. R. Civ. P. 60(b)(2) is GRANTED; and

(2) having thusly reconsidered the March 6 decision and the March 7 Order, paragraph 3(a) and the correlative provisions of paragraph 5 of the March 7 Order shall remain in full force and effect as entered and the March 6 decision shall be augmented by the findings and conclusions set forth on the record on March 28, 2001;

(3) Rambus' Motion for Immediate Stay of paragraph 3(a) (and the correlative provisions of paragraph 5) of the March 7 Order is DENIED; provided, however, that no documents shall be produced and

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no depositions shall be taken until April 5, 2001 and such depositions shall, to the extent possible, be conducted in a jury room in the Lewis F. Powell Courthouse, subject to the supervision of the undersigned;

(4) pending further order of this Court or the United States Court of Appeals for the Federal Circuit, all documents and depositions (and deposition transcripts) shall be produced, taken and maintained under seal; and the documents shall be reviewed, and the depositions shall be attended, only by the lead trial lawyer and one assistant for each of the parties who shall not disclose the contents of the documents or the depositions to any person; and the defendants may make no more than two copies of any documents and the copies shall be numbered and accounted for; and

(5) Infineon shall amend its privilege log as to claims of privilege for the late-produced documents so that the log provides a more complete description that will allow Rambus and the Court to assess the validity of any claim of privilege.

The Clerk is directed to send a copy of this Order to all counsel of record by facsimile and by regular mail.

It is so ORDERED.

Oliver E. Payne
UNITED STATES DISTRICT JUDGE

Date: March 29, 2001
Richmond, VA

1 THE CLERK: Civil Action Number 3:00CV524,
2 Rambus, Inc. v. Infineon Technologies, et al.
3 Craig Merritt represents the plaintiff. Mr.
4 Brian C. Riopelle and Mr. Clifford Wilkins represent
5 the defendants. Are counsel ready to proceed?
6 MR. MERRITT: We are, Your Honor.
7 MR. RIOPELLE: We are, Your Honor.
8 THE COURT: All right.
9 MR. RIOPELLE: My understanding, Your Honor,
10 is that we had an hour slated for this. Because of
11 the difficulty with the conference call last night, we
12 are going to try to keep this hearing to an hour so we
13 could go to the rescheduled conference call at 11:30.
14 So I will try to be brief.
15 This is the continuation of the hearing we
16 had previously already discussed --
17 THE COURT: I ruled on the motion to compel
18 on the testimony on the licensing issues, right?
19 MR. RIOPELLE: Yes, you did, Your Honor.
20 THE COURT: Then have I ruled on anything
21 else, other than that? There was another part of the
22 motion. Let me get back to the back here. What did I
23 rule on? How have I ruled on presentation to
24 investors?
25 MR. RIOPELLE: I believe that you said that





1 they had to disclose and answer questions about that.
2 I actually believe you actually said that it was not
3 going to be a limited inquiry since they were going to
4 use these licenses as part of their affirmative case,
5 that we were entitled to know everything about the
6 licenses on the business side of it, obviously, not to
7 go into stuff that we concede is truly attorney-client
8 privilege. But you ruled in our favor on the --
9 THE COURT: That's the license.
10 MR. RIOPELLE: I'm sorry, Your Honor.
11 THE COURT: I was asking about the
12 presentation Mr. Steinberg made to investors. What's
13 your understanding of what happened there, just to
14 help put me back in the picture?
15 MR. RIOPELLE: Yes. You ruled that Mr.
16 Steinberg had to answer questions relating to that
17 presentation.
18 THE COURT: All right. So that leaves us
19 with this exit letter from JEDEC.
20 MR. RIOPELLE: I believe, actually, that you
21 ruled on the withdrawal from JEDEC also.
22 THE COURT: I don't mean to be decided. I
23 mean, that's the next thing we need to make sure where
24 we stand on.
25 MR. RIOPELLE: Oh, I see.





1 THE COURT: What's your understanding of
2 that?
3 MR. RIOPELLE: I believe that you ruled that
4 we can inquire into the preparation of those letters
5 and can obtain any documents related to the
6 preparation of those letters. And just to remind Your
7 Honor, it was in that discussion that we talked about
8 the In re: Under Seal Case, the Judge Irvin opinion
9 that we had the long --
10 THE COURT: In the case that it was based
11 on.
12 MR. RIOPELLE: Yes.
13 THE COURT: All right. Do you agree that
14 that's where -- I don't think I ruled on anything else
15 though, did I?
16 MR. RIOPELLE: No, Your Honor. My notes
17 indicate that we were just getting ready to move to
18 the next issue, which is the patent disclosures to
19 JEDEC and IEEE.
20 THE COURT: Do you agree that that's where
21 we are and that's what happened, Mr. Merritt?
22 MR. MERRITT: Your Honor, I do agree that is
23 where we are in terms of covering the motions. I have
24 in front of me on that third point, the disclosure to
25 JEDEC, the court's ruling from the transcript of that





1 hearing. It's page 67.
2 I think it's a fair characterization of the
3 court's ruling that Messrs. Diepenbrock and Vincent
4 have been instructed to testify about the preparation
5 of those letters. To the extent they prepared them,
6 they have to talk about the preparation of those
7 letters.
8 I don't believe the court has ruled that
9 there was any attorney-client matter other than what
10 is stated right there that they are going to have to
11 talk about. That's what was established to your
12 satisfaction.
13 THE COURT: Well, they are the ones who
14 prepared the letters, as I understand it.
15 MR. MERRITT: Yes, that's right. And they
16 have been ordered to testify about those letters.
17 THE COURT: That's your understanding, too?
18 MR. RIOPELLE: Yes, Your Honor.
19 MR. MERRITT: And if I misunderstood that, I
20 do have the transcript here from Mr. Riopelle.
21 THE COURT: No. I thought that's what you
22 were saying.
23 MR. RIOPELLE: I thought that's what I said,
24 also.
25 THE COURT: But to the extent that there are

1 THE COURT: When?
2 MR. RIOPELLE: I'm sorry?
3 THE COURT: When did they meet?
4 MR. RIOPELLE: He testified that they met
5 during the time -- during the JEDEC time, the 1991 to
6 '95 period.
7 THE COURT: How many times?
8 MR. RIOPELLE: I don't know the answer to
9 that off the top of my head.
10
11 (Discussion off the record.)
12
13 MR. RIOPELLE: I'm informed by co-counsel
14 that the testimony was at least five times.
15 Mr. Tate, during his deposition, admits that
16 they discussed the disclosure policy with their
17 lawyers. But when we asked about that policy, he was
18 instructed not to disclose the substance of the
19 conversations.
20 Mr. Diepenbrock, who was inside counsel at
21 the time, was also instructed not to answer about the
22 disclosure policy. But Mr. Diepenbrock did discuss
23 the interrelationship of Rambus's pending applications
24 and JEDEC's disclosure policy with Mr. Crisp and Mr.
25 Mitchell at the very time of the fraud. And I have





1 that deposition if you will allow me to pull that
2 out.
3 I'm now reading, Your Honor, from the
4 deposition of Mr. Anthony Diepenbrock, which was taken
5 on January 12, 2001. I am reading from pages 78, line
6 6, to page 79, line 22. Actually, I'm going to start
7 my reading from page 78, line 11.
8 Question, "In your work at Rambus after you
9 became aware of the JEDEC disclosure policy relating
10 to patents and patent applications, did you come to
11 draw any conclusions as to whether Richard Crisp or
12 anyone else from Rambus attending JEDEC meetings had a
13 duty to disclose any of the pending Rambus patent
14 applications?"
15 I'm going to omit the objection.
16 The witness asked, "Did I form a
17 conclusion?"
18 Question, "One way or the other, there was a
19 disclosure" -- "One way or the other, whether there
20 was a disclosure obligation."
21 There is another objection, and the witness
22 says, "Yes."
23 "Did you convey that conclusion, whatever
24 it was, to anyone else at Rambus?"
25 The witness says, "Yes."





1 "To whom did you convey the conclusion?"
2 The witness says, "To Richard Crisp and Jeff
3 Mitchell."
4 "During what time period?"
5 "Several months after I arrived and started
6 employment, as I recall."
7 So, Your Honor, we believe that we have made
8 a prima facie showing --
9 THE COURT: Who do you want to depose here,
10 just Diepenbrock? What are we talking about here?
11 What's the scope of what you want to accomplish, the
12 advice given by Diepenbrock to Crisp and Mitchell or
13 what else?
14 MR. RIOPELLE: Well, I believe that this
15 would be a subject matter, disclosure we should be
16 able to go back and talk with them about the advice
17 they got, all the advice they got concerning the
18 obligations under JEDEC, as well as discussions they
19 had with any of their attorneys, whether it was
20 outside counsel, Mr. Vincent, or inside counsel, Mr.
21 Diepenbrock.
22 What I should probably referred to is what
23 exactly we said in our brief.
24 THE COURT: What does this broadening patent
25 applications have to do with this? You keep saying





1 that you want to get discovery of the advice that
2 Rambus received from lawyers about broadening the
3 patent applications. What does that have to do with
4 anything?
5 MR. RIOPELLE: It is Rambus's position that
6 it wasn't until after they left JEDEC that they made a
7 decision to go back and amend their pending patent
8 applications and broaden those applications to cover
9 other things.
10 We believe, actually, based upon the
11 business plan and other things that they made that
12 decision long before they left JEDEC and that they
13 broadened their pending patent applications.
14 THE COURT: So what you want to do is ask
15 what consultations and advices they received from the
16 lawyers Vincent and Diepenbrock on the strategy of
17 broadening the patent applications, as originally
18 reflected in the business plan.
19 MR. RIOPELLE: That is true.
20 THE COURT: Well, did anybody ask these
21 questions and were they instructed not to answer them
22 or what?
23 MR. RIOPELLE: I believe they were -- Mr.
24 Diepenbrock has been -- and Mr. Vincent were
25 instructed not to answer questions relating to

1 The only burden may be for us to make a prima facie
2 showing. Then if we make a prima facie showing, then
3 the crime-fraud exception would apply to these
4 communications.
5 THE COURT: All right.
6 MR. RIOPELLE: And I believe we have put
7 enough evidence to make that prima facie showing.
8 THE COURT: All right. The case law is
9 relatively straightforward. In order to establish the
10 crime-fraud exception, the party asserting it has to
11 make a prima facie showing that the privileged
12 communications fall within the exception to the
13 attorney-client privilege that is created by that
14 crime-fraud doctrine.
15 Here, that means Infineon has to prove that
16 the client, which is Rambus, was engaged in or
17 planning a criminal or fraudulent scheme when they
18 sought the advice of counsel to further the scheme and
19 the documents containing the privileged materials bear
20 a close relationship or testimony, or the information
21 yet to be given by the proposed witness bears a close
22 relationship to the client's extant or future scheme
23 to commit the crime or fraud on which the advice was
24 sought. Everyone agrees that that's what the test
25 is.





1 Rambus, of course -- excuse me. Infineon
2 cites Chaudhry and In re: Grand Jury Proceedings at
3 33 F.3d 348. And it is settled that when a patentee
4 uses attorney's advice to further fraud of some kind,
5 the advice is not cloaked by the privilege. That's
6 the Hercules case.
7 Under In re: Grand Jury Proceeding at 102
8 F.3d 748, Infineon is required to make a prima facie
9 showing that the privileged communications fall within
10 the exception. So that's what we have to assess
11 here.
12 The argument here is whether there is a
13 fraudulent scheme, not a crime. And the argument was
14 whether Rambus was engaged -- or there is evidence to
15 show that Rambus was engaged in a fraudulent scheme
16 when it sought the advice of Diepenbrock and Vincent
17 for the purpose of furthering their scheme.
18 And then the second thing is whether
19 Infineon has showed that the communications with
20 Diepenbrock and Vincent bear a close relationship to
21 the then existing or future scheme to commit the
22 fraud.
23 It is alleged by Infineon that Rambus
24 knowingly, willfully and intentionally misrepresented
25 a material fact by act and by omission and that JEDEC





1 members, including itself, relied on that to its
2 detriment.
3 There is evidence from which a jury could
4 conclude that Rambus's JEDEC representative did not
5 disclose that Rambus had certain pending patent
6 applications, which related to the SDRAM technologies
7 that were being standardized by JEDEC.
8 There is evidence from which a jury might
9 conclude that Rambus was a JEDEC member and attended
10 JEDEC meetings. And Rambus knew at the time that it
11 had pending patent applications relating to the SDRAM
12 technologies that were being standardized by JEDEC,
13 and that during the same period of time, JEDEC's
14 patent policy required the members to disclose known
15 or pending patent applications relating to the
16 standardization efforts.
17 That evidence is supported by the 1997 --
18 1992-'97 five year business plan, by the Mooring
19 e-mail, by the Crisp deposition, by the Crisp e-mail,
20 by the testimony of the JEDEC people about the number
21 of votes without disclosure.
22 And it's also argued that a disclosure of
23 the '703 patent was made with an effort to deflect
24 attention -- as an effort to deflect attention from
25 the other pending applications. And there is evidence





1 from which -- there is no question that the '703
2 patent was disclosed. There is no question that at
3 the time there were other patent applications
4 pending.
5 And it is obvious to me from the record that
6 the legal advice sought from Vincent and Diepenbrock
7 was for the purpose of developing the plan to go
8 forward with patent applications at the same time
9 JEDEC -- at the same time Rambus was in the JEDEC
10 meetings and that the legal advice bears close
11 relationship to the subject of the alleged fraudulent
12 scheme.
13 I think, therefore -- that's appears from
14 the testimony of Mr. Vincent, cited on page 7 and 8,
15 and Mr. Diepenbrock, cited on page 7 and 8 of Rambus's
16 brief, as well as the testimony of -- as well as that
17 which is cited on page 5 and 6 of the rebuttal or
18 reply brief on this issue.
19 So I find that the Rambus -- Infineon,
20 excuse me, has established a prima facie case of the
21 existence of a fraudulent scheme of communication with
22 counsel in furtherance of the scheme and that those
23 communications bore a close relationship to the fraud,
24 just by looking at that subject matter upon which the
25 communications have been testified to by Diepenbrock

1 and to a lesser extent by Vincent.
2 So the motion is granted to permit the
3 deposition of Mr. Vincent and Mr. Diepenbrock about
4 communications with those at Rambus respecting the
5 patent policy and disclosure policy and disclosure
6 obligations of JEDEC, as they pertain to Rambus while
7 it was a member, as well as to inquire into a concept
8 of broadening patent applications to make sure that
9 the JEDEC -- that they recover those things which were
10 being developed under -- excuse me, they recover those
11 matters as to which the then being developed JEDEC
12 standard was directed.
13 In addition, to the extent that it's
14 necessary to talk to Mr. Crisp or Mr. Mitchell or Mr.
15 Tate about those topics, the motion is granted to
16 allow them to testify, allow them to be deposed also.
17 I want those depositions taken by someone
18 who is experienced in taking depositions on this issue
19 and who is up to speed on attorney-client privilege.
20 And I want -- given the history here, I would like to
21 have those depositions taken by, defended by someone
22 who is knowledgable about these matters. I would
23 prefer Mr. Merritt be involved from the standpoint of
24 Rambus.
25 Now, to the extent that these improper





1 instructions not to answer have created a lot of this
2 problem, Mr. Merritt, I would like for you to instruct
3 the people to be careful about that and to read --
4 there is a new rule on it. I think though I told you
5 all that the old rules applied to this case, I
6 believe, didn't I?
7 MR. RIOPELLE: Yes, you did, Your Honor.
8 THE COURT: But the new rule basically
9 models the Ralston-Purina approach taken in the Fourth
10 Circuit, with some minor exceptions. I would like not
11 to see any more of that.
12 If there are documents that relate to or
13 contain information about the topics that we are
14 speaking of that have been withheld, they need to be
15 produced forthwith so they can be used in the
16 deposition.
17 I would like to have these depositions taken
18 under seal. And before I allow any of the testimony
19 to go forward, I'm going to look at the transcript
20 under seal. I don't expect to have to read a lot of
21 deposition objections. I expect straightforward
22 questions by seasoned lawyers, and that's the end of
23 it and no fighting.
24 And I don't know the extent to which any of
25 this is going forward, but before I release this to





1 any public forum, I'm going to take another good close
2 look at all this because it has been -- while there
3 has been a prima facie showing made, it is something
4 that I believe bears some further examination.
5 So I think with those instructions, you can
6 go forward, can't you, Mr. Riopelle?
7 MR. RIOPELLE: Yes, Your Honor, I believe we
8 can.
9 THE COURT: Mr. Merritt.
10 MR. MERRITT: Yes, sir. I guess just one
11 point of clarification. It's probably a silly
12 question because I know every invitation is answered
13 in this case. But you have allowed the deposition of
14 Crisp, Mitchell or Tate to be taken in addition to
15 Vincent and Diepenbrock. Should I assume that
16 Infineon will want to schedule all of those?
17 MR. RIOPELLE: At this point, I think we
18 need to --
19 THE COURT: What's his name, Diepenbrock,
20 said he talked to Crisp and Mitchell.
21 MR. MERRITT: Sir, we already are scheduling
22 Vincent and Diepenbrock and Tate. We have now put
23 Crisp and Mitchell in play as well. I just -- it
24 would help me to be able to tell my client if we
25 should assume everybody is now in play.





1 THE COURT: Not everybody, just those that I
2 have said. There is a big difference between
3 everybody and --
4 MR. RIOPELLE: Right. I guess the answer to
5 the question is that we understand it is limited to
6 these five. I cannot tell you at this point whether
7 we are going to need to depose all five. Some of it
8 depends on the answers, for example, from Mr. Vincent
9 and Mr. Diepenbrock.
10 We also took the deposition of Mr. Crisp
11 yesterday based on other stuff. So we need to go back
12 and look at some of that. So it will be certainly no
13 more than these five and I understand the court's
14 strict instructions.
15 THE COURT: Knowing all of you, you will go
16 back and find some way to try to have more than the
17 five, but you better have a good reason for coming
18 back here for more than the five, such as the lawyer
19 told the president of the company that this was a
20 fraud, something really strong. We are not going to
21 reopen all the discovery. All right. I doubt
22 seriously there will be any testimony of that sort.
23 So is there anything else we need to do?
24 MR. RIOPELLE: No, Your Honor.
25 MR. MERRITT: No, Your Honor.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)



RAMBUS INC.

Plaintiff,

v.

INFINEON TECHNOLOGIES AG, et al.

Defendants.

Civil Action No. 3:00CV524

**STIPULATED ORDER**

WHEREAS, the Court's March 29, 2001 Order sealed certain Rambus documents and depositions as follows:

> pending further order of this Court or the United States Court of Appeals for the Federal Circuit, all documents and depositions (and deposition transcripts) shall be produced, taken and maintained under seal; and the documents shall be reviewed, and the depositions shall be attended, only by the lead trial lawyer and one assistant for each of the parties who shall not disclose the contents of the documents or the depositions to any person; and the defendants may make no more than two copies of any documents and the copies shall be numbered and accounted for;

WHEREAS, the parties have agreed that the documents listed on Attachment A to this Stipulated Order, and any depositions related to those documents, previously subject to the Court's March 29, 2001 Order, may now be disclosed to other members of the parties' respective trial teams on an "Outside Counsel Only" basis but shall not be disclosed to others, either voluntarily or in response to subpoena, without further order of the Court;

247

WHEREAS, the parties agree that Infineon may seek to introduce into evidence the documents listed on Attachment A to this Stipulated Order, as well as the depositions related to those documents, subject to any evidentiary objections which Rambus reserves; and,

WHEREAS, the parties agree that (1) all documents produced under the March 29, 2001 order, but not listed on Attachment A, (2) all documents listed on Attachment A not introduced into evidence during trial, and (3) all portions of deposition testimony not introduced into evidence during trial, will remain under seal and shall not be disclosed beyond "Outside Counsel Only" either voluntarily or in response to subpoena, without further order of the Court;

WHEREAS, the parties agree that nothing in this Stipulation and Order waives Rambus' attorney-client privilege and work product objections to the production or introduction into evidence of the documents listed on Attachment A, and that by entering into this Stipulation, Rambus will be deemed to have objected to each document listed on the grounds of the attorney-client privilege, and the objection will be deemed to have been overruled on the grounds stated in the Court's March 29, 2001 Order;

THEREFORE, it is ORDERED that Rambus' attorney-client privilege and work product objections to the production or introduction into evidence of the documents listed on Attachment A are deemed to have been made and overruled on the grounds stated in the Court's March 29, 2001 Order; that the documents listed on Attachment A to this Stipulated Order and the related depositions may be disclosed to members of the parties' respective trial teams on an "Outside Counsel Only" basis but shall not be disclosed to others, either voluntarily or in response to subpoena, without further order of the Court; that Infineon shall be permitted to introduce the documents listed on Attachment A and related depositions into evidence pending any evidentiary objections by Rambus; and that (1) all documents produced under the March 29, 2001 order, but

not listed on Attachment A, (2) all documents listed on Attachment A not introduced into evidence during trial, and (3) all portions of deposition testimony not introduced into evidence during trial, will remain under seal and shall not be disclosed beyond "Outside Counsel Only" either voluntarily or in response to subpoena, without further order of the Court.

ENTERED this 20th day of April, 2001.

Robert E. Payne
United States District Judge

We ask for this:

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Robert M. Tyler (VSB No. 37861)
Kristen M. Calleja (VSB No. 41319)
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San Diego, California 92101-4297
Telephone: (619) 699-2700
Facsimile: (619) 236-1048

ATTORNEYS FOR PLAINTIFF

## ATTACHMENT A

| Date of document | Bates Range |
|---|---|
| 8/21/95 | R 164799 – 815 |
| 9/12/95 | R 33957 – 58 |
| 9/19/95 | R 33976 – 77 |
| 9/27/95 | R 34000 |
| 10/4/95 | R 34006 |
| 12/13/95 | R 203884 – 895 |
| 12/19/95 | R 202778 |
| 1/3/96 | R 203896 – 899 |
| 1/24/96 | R 204205 |
| 5/10/96 | R 171632 – 33 |
| 5/10/96 | R 171630 – 31 |
| 6/12/96 | R 202537 |
| 6/17/96 | R 204363 – 364 |
| - | R 203843 – 863 |
| 11/95 | R 129267 |
| - | R 204561 – 566 |
| - | R 204568 – 600 |
| - | R 204604 – 648 |
| - | R 204650 – 716 |
| - | R 204729 – 861 |
| - | R 204874 – 953 |
| 12/7/91 | R 202773 |
| 1/31/92 | R 171685 |
| 1/31/92 | R 111821 – 25 |
| 2/19/92 | R 171684 |
| 3/5/92 | R 171683 |
| 3/9/92 | R 171682 |
| 3/25/92 | R 203251 – 52 |
| 3/27/92 | R 203254 |
| 4/7/92 | R 202986 – 87 |
| 5/12/92 | R 202989 |
| 5/29/92 | R 202990 |
| 6/22/92 | R 202991 |
| 9/25/92 | R 203940 |
| 11/6/92 | R 166831 |
| 11/12/92 | R 202992 – 993 |
| 4/22/93 | R 171671 |
| 4/22/93 | R 203782 – 794 |
| 5/4/93 | V 1231 – 1252 |
| 6/18/93 | R 202996 |
| 6/21/93 | R 171670 |
| 6/30/93 | R 171669 |

| | |
|---|---|
| 7/9/93 | R 203126 – 129 |
| 9/3/93 | R 171666 |
| 10/29/93 | R 203082 |
| 11/22/93 | R 171663 |
| 1/10/94 | R 203314 - 315 |
| 4/4/94 | R 171662 |
| 5/5/94 | R 202763 – 764 |
| 5/27/94 | R 130389 |
| 6/14/94 | R 171661 |
| 6/29/94 | R 171659 – 660 |
| 8/1/94 | R 204436 – 449 |
| 11/30/94 | R 203274 |
| 12/2/94 | R 171644 |
| 2/2/95 | R 203055 |
| 2/10/95 | R 203052 – 54 |
| 8/21/95 | V 1253 – 54 |
| 5/17/95 | R 171641 – 42 |
| 5/31/95 | R 203467 |
| 12/8/95 | V 1861 – 87 |
| 1/3/96 | V 1853 – 860 |
| 1/4/96 | V 1850 – 52 |
| - | R 203881 |
| 12/95 | V 1775 – 76 |
| 1/3/96 | R 204376 - 378 |
| 1/15/96 | R 203873 – 876 |
| 2/5/96 | R 204207 – 10 |
| 3/26/96 | R 203871 – 872 |
| 3/27/96 | R 203865 – 867 |
| 3/27/96 | R 203864 |
| 4/16/96 | R 171639 – 40 |
| 7/14/98 | R 203479 |
| 9/4/91 | V 0021 – 23 |
| - | V 1321 – 1329 |
| - | V 1330 – 1376 |
| - | V 1950 – 1996 |
| - | V 1377 – 1408 |
| - | V 1997 – 2028 |
| - | V 2029 – 2050 |
| - | V 1409 – 1430 |
| - | V 1431 – 1483 |
| - | V 1681 - 1770 |
| - | V 1771 – 1845 |
| - | V 0590 – 661 |
| 1/20/92 | R 118758 |
| 7/21/94 | R 33831 |

| | |
|---|---|
| 9/26/95 | R 33997 |

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 MICRON TECHNOLOGY, INC. : CIVIL ACTION

5 Plaintiff :

6 vs. :

7 RAMBUS INC., :

8 Defendant : NO. 00-792 (RRM)

9 - - -

10 Wilmington, Delaware
Monday, May 14, 2001
11 3:50 o'clock, p.m.
*** Telephone conference

12 - - -

13 BEFORE: HONORABLE RODERICK R. McKELVIE, U.S.D.C.J.

14 - - -

15 APPEARANCES:

16 RICHARDS, LAYTON & FINGER
17 BY: FREDERICK L. COTTRELL, III, ESQ.

18 -and-

19 BARTLIT, BECK, HERMAN, PALENCHAR & SCOTT
BY: FRED H. BARTLIT, JR., ESQ.
20 (Atlanta, Georgia)

21 -and-

22

23 Valerie J. Gunning
Official Court Reporter

24

25

1 document was put into evidence in open record. And the
2 only other point I want to make is that the issue before
3 Judge Payne is quite different from the issue before your
4 Honor, and the issue before Judge Payne was could we
5 intervene in that case and come under his protective order
6 at a different time and based on different grounds than
7 the issues to your Honor?
8 And those issues are different and the grounds
9 are different and they're not in conflict.
10 THE COURT: A couple of comments. I don't want
11 to have this case become subject to motion practice before
12 Judge Payne. And on this privilege issue, there are a
13 couple ways of dealing with it. One is we can watch and see
14 what he does on issues and applications to him, which is
15 fine with me.
16 But, two, I think people should operate under
17 the assumption that if documents and communications are
18 disclosed in open court, they're open. And I will take the
19 position that they're not protected from disclosure.
20 Unless they were disclosed in court subject to an order
21 that says that they will be protected from future disclosure,
22 and if that's not the case, then if it's in open court, it
23 is in open court. And even if I might have found that they
24 were otherwise privileged, I think the privilege is lost on
25 them.

1 And so I think we should identify those
2 communications, get them produced and then turn back to
3 the subject of whether there's going to be further relief,
4 either by going back to Judge Payne and revisiting the
5 subject of whether they should be produced to Micron or
6 whether he's going to reconsider whether they should --
7 other documents, other communications, should be privileged,
8 or whether Micron wants to make a direct application to me.
9 But I don't see any reason to slow down the
10 process. If something has been disclosed in open court,
11 my understanding is it's public information.
12 MR. MONAHAN: Your Honor, David Monahan
13 responding to that.
14 First, you said other than if Judge Payne
15 intended something otherwise by his order. I know what
16 he intended by his order, at least at one point was that
17 everything was to remain sealed.
18 All right. Now, what was disclosed in open
19 court?
20 First, you have to go through the transcript,
21 which we aren't even going to have for another week and go
22 item by item as far as what's disclosed.
23 And then as far as what's used, you can -- if
24 there's a line or two read, I don't think that is the same
25 as if the document was or was not flashed on the screen,

1 Infineon's counsel's judgment, but I would have thought
2 that the essence of the communications that are significant
3 for Micron would have been information that was disclosed
4 during the course of trial. And --
5 MR. POWERS: A lot of this is done in a big
6 hurry at the end of the Infinion case.
7 THE COURT: And what I think I will do is, to
8 the extent -- you have a list. Is it attached to your May
9 14th letter that I got today?
10 MR. POWERS: No. To the prior letter a week
11 ago, your Honor.
12 THE COURT: All right. I think what I'm going
13 to do is order Rambus to produce the documents that Micron
14 has identified that were disclosed in open court within X
15 number of days, subject to Rambus showing that those
16 documents weren't, in fact, disclosed in open court. That
17 is, put it to Rambus to show that they are still
18 privileged.
19 MR. POWERS: Your Honor, two questions: First,
20 just to avoid another phone call, is it your Honor's
21 intention that if -- that Rambus -- because I'm worried
22 that counsel for Rambus will say -- what we will get is
23 highly redacted documents. They'll look in the transcript
24 and say only this portion was read. Therefore, they're
25 going to redact the rest of the document. Then we're going

1 what you might see and what the Court said in Virginia,
2 when we asked for an instruction, that said it's all right
3 to write claims on -- with knowledge of a product. The
4 Court said, If I gave that instruction, that would be
5 directing a verdict for Rambus on the fraud issue. So we
6 said, right, fine, because that was exactly what the
7 Court's instructions and how the case was presented allowed
8 this jury to do: Was to come up with a finding of fraud
9 based on a patent lawyer writing amended claims as patent
10 lawyers do every day on inventions that are disclosed in
11 the written specification, on -- based on public
12 information.
13 MR. POWERS: Your Honor, we'll have a piece of
14 paper to you tomorrow on this issue.
15 I think it would make sense to set a specific
16 date for Rambus response so it does not drag out further.
17 MR. MONAHAN: Well, that's great if he wants
18 to submit something to you tomorrow, your Honor. I'm
19 trying to get a feeling for what we're going to be trying
20 whenever we're trying it.
21 THE COURT: If we put aside the discovery
22 dispute for a moment, that is the privilege issue for a
23 moment, I don't start with any set view about whether the
24 trial coming up is necessary or not necessary, and so I
25 was actually interested to hear Mr. Powers' comments on

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE
2 MICRON TECHNOLOGY, INC., |
3 8000 S. Federal Way |
4 Post Office Box 6 |
5 Boise, Idaho 83707-0006 |
6 |
7 Plaintiff, |
8 |
9 vs. | No. 00-792-SRH
10 |
11 RAMBUS INC., |
12 2465 Latham Street |
13 Mountain View, California |
14 94040 |
15 |
16 Defendant. |
17 _____|
18 DEPOSITION OF LESTER J. VINCENT
19 Menlo Park, California
20 Wednesday, July 11, 2001
21 Volume I
22 Reported by:
23 LYNNE M. LEDRAMOIS
24 CSR No. 6311
25 Job No. 26656

5 Q Tell me what you did to prepare for today's
6 deposition.
7 MR. CANNON: Let me caution the witness that I
8 don't want you to divulge any attorney-client work
9 product.
10 THE WITNESS: I reviewed my transcripts of my
11 previous depositions, and I met with counsel.
12 BY MR. CHERENSKY:
13 Q Mr. Cannon and Mr. Ellis?
14 A Yes.
15 Q Did you review documents other than your
16 deposition transcripts?
17 MR. CANNON: Objection, calls for
18 attorney-client work product. Instruct the witness not
19 to answer.

15 Q Did anybody from Raxbus tell you why they were
16 ending the patent prosecution relationship with Blakely
17 and moving at least the one application that -- at
18 least the one case you mentioned over to Penny and
19 Edmonds?
20 MR. CANNON: Objection, calls for
21 attorney-client privileged communication. Instruct the
22 witness not to answer.
23 THE WITNESS: I follow my counsel's
24 instruction.

$\Delta^{15}$ 1534

Telecon 5/25/92

w/ Allen Roberts
by LJV
Re. Rambus. [redacted]900

(I) Another patent Application
— M.V + Fred Ware
⇒ technology

— April 13, 1992

— Address Remapping

— Fred Ware
⇒ Mario ⇒
Similarities ⇒
Similar to Rick Ware
⇒ protocol

⇒ Contact Fred Ware

(II) Jedec
~~Said need implementing patents action~~
~~Future of implementation~~
+ Jedec Committee ⇒
Standards for DRAM's

+ Advising JEDEC of patent application
⇒
~~Rambus~~ Not members of JEDEC
⇒ JEDEC
would license @ 1% royalty
— Talk to Ed
— ~~We~~ will get JEDEC bylaws re patents

EXHIBIT
967
Vincent

R 203251

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COPY 1 OF 2

— Rambus not a member of JEDEC — does not want to be a member

Δ's 1535

w/ Richard Crisp of Allen Roberts (cont)
by LJVincent
re: Rambus. doc

5/2 7/1

- Rambus is member of JEDEC
- Allen is ordering JEDEC bylaws
- Rambus attended meeting w/ 100 others where JEDEC's proposal to establish std for small swing signals for synch DRAM was discussed.
- Rambus did not speak
- Rambus has not asked JEDEC to adopt the std
- No vote has been taken on the std, but Rambus may be asked to vote

- I said there could be equitable estoppel problem if Rambus creates impression on JEDEC that it would not enforce its patent or patent appl
  => strongest case of equitable estoppel is when you say you will not enforce your patent
  => less clear cut if Rambus is merely silent
- But cannot mislead JEDEC into thinking that Rambus will not enforce its patent
- Possibly abstain from voting

EXHIBIT
968
Vincent

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COPY 1 OF 2

R 203254

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN
A PARTNERSHIP INCLUDING
LAW CORPORATIONS

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LOS ANGELES, CALIFORNIA
90025-1026

TELEPHONE (310) 207-3800

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

January 31, 1992
Invoice 112-16849LJV

Ref: 73305

Additional Services Rendered Through December 1991:

Our File .G000 (General Correspondence):

Services rendered in connection with preparation of letter to Allen Roberts enclosing notes for paper to be reviewed by program committee. Conference with Allen Roberts and Jim Gasbarro concerning new patent applications, including travel to and from meeting. Teleconference with David Vornholt concerning disclosure to IBM. Teleconference with Jim Gasbarro concerning invention disclosure write-up.

Lester J. Vincent 2.25 hrs..... $ 483.75

REDACTED

*lcak*

EXHIBIT
965
Vincent

INFINEON
DTX 1523

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COPY 1 OF 2

R 204568

BLAKELY
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90025-1026

TELEPHONE 213-207-3800

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

February 29, 1992
Invoice 201-428LJV

Ref: 73305

Additional Services Rendered Through January 1992:

Our File .P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation and filing of lengthy amendment, including drafting of numerous new claims. Review lengthy patent application. Review voluminous prior art. Prepare supplemental information disclosure statement with respect to prior art not previously submitted. Teleconference with Mike Farmwald concerning arranging meeting. Prepare for meeting with Mike Farmwald concerning Office Action. Meeting with Mike Farmwald concerning amendment, divisional applications, and prior art, including travel from meeting. Teleconference with Mike Farmwald concerning amendment. Conference with Mike Farmwald concerning draft amendment. Teleconference with Mike Farmwald concerning revisions to amendment. Revise amendment. Review of prior art and preparation of supplemental information disclosure statement. Teleconference with Geoff Tate concerning amendment. Conference with Mike Farmwald concerning revisions to amendment. Messages for Richard Crisp concerning review of amendment. Revise supplemental information disclosure statement. Conference with Richard Crisp concerning revisions to amendment. Order additional patents. Organize and collect prior art. Revise and file amendment. Prepare letter to Geoff Tate enclosing a copy of an amendment, supplemental information disclosure statement, and request to approve drawing changes. Teleconference with Mike Farmwald concerning filing of amendment.

Lester J. Vincent 77.50 hrs ..... $ 16,517.50

(continued on page 2)

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TELEPHONE: (310) 207-3800

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

April 30, 1992
Invoice 205-1506L.IV

Ref: 73305

Additional Services Rendered Through March 1992:

Our File G000 (General Services):

REDACTED

Teleconferences with Allen Roberts concerning new patent applications and divisional applications. Prepare letter to Allen Roberts concerning patent applications. Revise patent status report. Teleconference with Allen Roberts concerning meeting to discuss patent application. Teleconferences with Allen Roberts concerning filing of patent applications. Prepare letter to Geoff Tate enclosing copies of recently filed patent applications. Prepare letters to inventors enclosing copies of P002, P004, P018, and P019 patent applications.

Teleconference with Richard Crisp concerning foreign filing requirements. Teleconference with Geoff Tate concerning foreign filing in India and Taiwan.

Teleconference with Allen Roberts concerning patent application for address remapping and concerning JDEC. Conference with Richard Crisp and Allen Roberts concerning equitable estoppel issue with respect to JDEC. Teleconferences with Maria Sobrino concerning patent application for address remapping. Research regarding JDEC question.

Lester J. Vincent 6.75 hrs..... $ 1,451.25

(continued on page 2)

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LOS ANGELES, CALIFORNIA
[illegible]

TELEPHONE [illegible]

A PARTNERSHIP INCLUDING
LAW CORPORATIONS

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

May 30, 1992
Invoice 204-23691JV

Ref: 73305

Additional Services Rendered Through April 1992:

Our File 0000 (General Services):

REDACTED

Review IDEC publications.
Teleconference with Richard Crisp concerning abstracts for patent applications. Prepare letter to Richard Crisp enclosing copies of abstracts. Send letter to Richard Crisp enclosing copies of patents applications filed on March 6, 1992.

Lester J. Vincent 6.25 hrs..... $ 1,343.75

(continued on page 2)

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TELEPHONE (310) [illegible]-3800

A PARTNERSHIP INCLUDING
LAW CORPORATIONS



Our File P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with review of Office Action and docket due dates. Prepare letter to Michael Farmwald enclosing copy of Office Action.

Lester J. Vincent 0.50 hrs..... $ 107.50

Our File P001 PCT (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with teleconference with Maureen Tiernan concerning response to PCT Office Action.

Lester J. Vincent 0.25 hrs..... $ 53.75

Our File P001 ROC (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of letter to associate in Taiwan with respect to payment of annuities.

Lester J. Vincent 0.50 hrs..... $ 107.50

REDACTED

(continued on page 3)

BLAKELY
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June 30, 1992
Invoice 205-29191JV

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

Ref. 73505

Additional Services Rendered Through May 1992:

Our File P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of letter to associate in Taiwan regarding payment of annuity for Taiwanese patent.

Lester J. Vincent 0.50 hrs..... $ 107.50

REDACTED

(continued on page 2)

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PRODUCED UNDER COURT SEAL

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

July 31, 1992
Invoice 206-3322LJV

Ref: 73305

Additional Services Rendered Through June 1992:

Our File G000 (General Correspondence):

Services rendered in connection with teleconference with Richard Crisp concerning status of divisional applications.
Lester J. Vincent . 0.25 hrs..... $ 53.75

REDACTED

(continued on page 2)

Our File P012D (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of letter to Michael Farmwald enclosing copy of Office Action, including review of file and docketing of due dates.

Lester J. Vincent 0.50 hrs..... $ 107.50

REDACTED

(continued on page 3)

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN

[illegible]
[illegible]
LOS ANGELES, CALIFORNIA
[illegible]

TELEPHONE (310) 207-3800

A PARTNERSHIP INCLUDING
LAW CORPORATIONS

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

August 31, 1992
Invoice 207-41521-JV

Ref: 73305

Additional Services Rendered Through July 1992:

REDACTED

OUTSIDE COUNSEL ONLY
PRODUCED UNDER COURT SEAL

BLAKELY
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TAYLOR &
ZAFMAN

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

September 30, 1992
Invoice 208-4757LJV

Ref: 73305

Additional Services Rendered Through August 1992:

REDACTED

*lcak*

OUTSIDE COUNSEL ONLY
PRODUCED UNDER COURT SEAL

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

October 31, 1992
Invoice 209-5393LJV
Ref: 73305

Additional Services Rendered Through September 1992:

Our File P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of amendment and information disclosure statement.
Tom Li 15.25 hrs..... $ 1,906.25

Services rendered in connection with preparation of revisions to amendment. Teleconference with Richard Crisp concerning amendment of claims. Teleconference with Mike Farmwald concerning draft amendment and prior art. Prepare letter to Mike Farmwald enclosing copy of draft amendment. Teleconferences with Mike Farmwald concerning review of amendment. Review and file amendment. Conference with Richard Crisp concerning additional claims to be inserted in divisional applications, including travel to and from meeting.
Lester J. Vincent 5.00 hr..... $ 1,075.00

Our File P001C (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation and filing continuation patent application. Review advisory action.
Lester J. Vincent 1.25 hrs..... $ 268.75

(continued on page 2)

REDACTED

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PRODUCED UNDER COURT SEAL

BLAKELY
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TAYLOR &
ZAFMAN

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SEVENTH FLOOR
LOS ANGELES, CALIFORNIA
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TELEPHONE (310) 207-3800

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

November 30, 1992
Invoice 210-6155LJV

Ref: 73305

Additional Services Rendered Through October 1992:

REDACTED

Our File P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of letter to Geoff Tate regarding PCT application. Teleconference with Allen Roberts concerning foreign filing of P001 case. Voice mail message for Geoff Tate regarding foreign filing. Teleconference with Geoff Tate concerning foreign filing of Rambus P001 PCT patent application. Preparation of letter to associate in the United Kingdom regarding filing of EPO application. Prepare memorandum to Maureen Tiernan regarding filing EPO, Japan, and South Korea patent applications.

Lester J. Vincent 3.00 hrs..... $ 645.00

Services rendered in connection with entering the national stage in the EPO, Japan and Korea.

Maureen J. Tiernan 4.50 hrs..... $ 562.50

(continued on page 2)

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN

[illegible] BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CALIFORNIA
[illegible]

TELEPHONE (310) 207-3800

RAMBUS INC.
2465 Latham Street
Mountain View, California 94040
Attention: Geoff Tate

December 31, 1992
Invoice 211-6745LJV

Ref: 75305

Additional Services Rendered Through November 1992:

Our File G000 (General Correspondence):

Services rendered in connection with preparation of letter to Richard Crisp enclosing copies of patent applications. Review patent status report. Review all Rambus files with respect to submission of declarations. Conference with Tracy Hunt regarding preparation of information disclosure statements. Supervise the filing of information disclosure statements.

Lester J. Vincent 3.00 hrs..... $ 645.00

Our File P001 (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with teleconference with Richard Crisp concerning meeting at Rambus to discuss claims for divisional application.

Lester J. Vincent 0.25 hrs..... $ 53.75

REDACTED

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PRODUCED UNDER COURT SEAL

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN



REDACTED

Our File P006D (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of letter to Michael Farnwald enclosing copy of Office Action and references.

Lester J. Vincent 0.25 hrs..... $ 53.75

(continued on page 3)

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN



Our File P012D (Integrated Circuit I/O Using a High Performance Bus Interface):

Services rendered in connection with preparation of amendment, including rewriting the claims. Revise and file amendment.
Tom Li 18.25 hrs.....$ 3,281.25

Services rendered in connection with conferences with Tom Li concerning his preparation of the amendment. Review and revise the amendment. Conference with Tom Li concerning amendment and prior art. Teleconference with Mike Farmwald concerning filing of amendment.
Lester J. Vincent 2.50 hrs..... $ 537.50

REDACTED

(continued on page 4)

FILED UNDER SEAL - PURSUANT TO COURT ORDER
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

RAMBUS, INC., )
)
Plaintiff, )
)
vs. ) No. 3-00-CV524
)
INFINEON TECHNOLOGIES AG, )
et al., )
)
Defendants. )
)

FILED UNDER SEAL - PURSUANT TO COURT ORDER

DEPOSITION OF LESTER VINCENT

San Jose, California

Wednesday, April 11, 2001

Volume 3

Reported by:
RACHEL FERRIER
CSR No. 6948
Job No. 248023B

6 Q Did you tell Richard Crisp and Allen Roberts
7 that at this March 27th, 1992 meeting, that they should
8 not participate in JEDEC?
9 A I'm having trouble remembering what I said at
10 this specific meeting beyond this.
11 But I do want to say that I believe at some
12 point early on, and I don't know whether it was at this
13 particular meeting, that I believe I said I didn't think
14 it was a good idea.
15 Q And you didn't think it was a good idea because
16 you knew at the time that Rambus didn't want to disclose
17 its patents or patent applications at JEDEC, but
18 intended on enforcing them against third parties; right?
19 A No. It was more of -- it was more of downside
20 risk versus upside potential.
21 Q What's the upside potential?
22 A Well, I don't know. That was the question. It
23 was a question of someone, you know -- it was a question
24 of somebody raising an issue about it, was the downside
25 risk.



1 Q The downside risk was that somebody was going
2 to raise the issue of equitable estoppel if Rambus
3 attended JEDEC?
4 A Right. I mean, we were having this meeting
5 about the implications, that's right.

1 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
2 (Richmond Division)

3
RAMBUS INC., )
4 )
Plaintiff, )
5 )
vs. ) No. 3:00CV52
6 )
INFINEON TECHNOLOGIES AG, )
7 et al., )
)
8 Defendants. )
_____)
9

10

11 CONFIDENTIAL
12

13 CONFIDENTIAL OUTSIDE COUNSEL ONLY

14 VIDEOTAPED

15 DEPOSITION OF ANTHONY DIEPENBROCK

16 Palo Alto, California

17 Wednesday, March 14, 2001

18 Volume 2

19

20

21

22
Reported by:
23 LYNNE M. LEDANOIS
CSR No. 6811
24 Job No. 119279B

25

22 Q Did you discuss with Mr. Crisp whether or not
23 the JEDEC policies, by attending the JEDEC meetings, he
24 was obligated under the JEDEC patent disclosure
25 policies to disclose Rambus patents or patent



1 applications related to what was being discussed at the
2 meetings he attended?
3 A Whether he was -- did we ask whether he was --
4 I missed some of it -- whether we were under a duty?
5 Q Right.
6 A We never discussed whether he was under any
7 particular duty or not. We just simply said there was
8 a risk of equitable estoppel or other legal problems if
9 he continued to attend the meetings. We were not
10 presenting legal conclusions.
11 Q Okay. And I guess what was the risk that you
12 conveyed to him, I mean, did you explain why there was
13 a risk?
14 A Yes.
15 Q What did you explain?
16 A I explained that there are certain doctrines
17 in patent laws, equitable doctrines that can render a
18 patent unenforceable. And one of those doctrines is
19 laches, and the other is equitable estoppel, two of
20 them.
21 And that he was running a risk that equitable
22 estoppel, which might have been construed by his
23 actions, would render some or -- some patents that had
24 issued unenforceable, and that we did not want to take
25 that risk.

FILED UNDER SEAL - PURSUANT TO COURT ORDER
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

RAMBUS, INC., )
)
Plaintiff, )
)
vs. ) No. 3-00-CV524
)
INFINEON TECHNOLOGIES AG, )
et al., )
)
Defendants. )

FILED UNDER SEAL - PURSUANT TO COURT ORDER

DEPOSITION OF ANTHONY DIEPENBROCK

San Jose, California

Wednesday, April 11, 2001

Volume 3

Reported by:
RACHEL FERRIER
CSR No. 6948
Job No. 24802A

16 Q Tell me what you recall, the steps you outlined
17 with Geoff Tate as part of your job as the new IP lawyer
18 at Rambus.
19 MR. SHOHET: Just so I'm clear, the predicate of the
20 first question was with relation to SDRAM, SyncLink, and
21 Mosys. Now it's just a broader question, what were the
22 steps that he understood he was to take with regard to
23 the IP portfolio.
24 Go ahead and answer.
25 THE WITNESS: That I was to survey what had been



1 issued to get an understanding of what was issued and to
2 determine what he called what might be holes in
3 coverage, whether we had, you know, lots of coverage or
4 a little coverage over certain subject matter areas and
5 to assess the claims with regard to the competition.

8 Q And what did Lester tell you about the Dell
9 decision at that time?
10 A Well, he said he read it, and he said that Dell
11 had been estopped from enforcing what is I think called
12 the Visa bus patent, which has to do with a graphics bus
13 standard, and that it was a decision that we should look
14 at.
15 And it supported his, apparently, previous
16 statements to Rambus people that they should not
17 participate. He was trying to make the point with me,
18 because I had newly arrived on board, that this was a
19 concern of his.
20 Q What did Mr. Vincent tell you about his
21 previous conversations with people at Rambus about
22 whether they should participate in JEDEC and IEEE
23 SyncLink?
24 A What did Lester say about -- say that again.
25 Q You said when you spoke to Lester about the



1 Dell decision, it confirmed his earlier advice to Rambus
2 about the risks of participating in these organizations.
3 A Mm-hmm.
4 Q What did he tell you about that prior advice to
5 Rambus about the risks of participating in JEDEC and
6 IEEE SyncLink?
7 A He told me that he had advised -- previously
8 advised people, before I had arrived apparently, that
9 they shouldn't attend those meetings.
10 Q Did he tell you why he told them that?
11 A Yeah, I think he said there's an equitable
12 estoppel issue.

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF VIRGINIA

3 RAMBUS, INC., )
)
4 Plaintiff, )
)
5 vs. )
) No. 3:00CV524
6 INFINEON TECHNOLOGIES AG, )
et al., )
7 ) CONFIDENTIAL

8 Defendants. )

9 _____)

10

11 CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

12

13 VIDEOTAPED DEPOSITION OF RICHARD D. CRISP

14

15 San Jose, California

16

17 Friday, April 13, 2001

18

19 Volume 4

20 Reported by:

21 GINA GLANTZ

22 CSR No. 9795

23 JOB No. 120402

24

25

09:52:19 16 Q. Isn't it true that JEDEC -- discussions at JEDEC
09:52:21 17 was one source of information that you relied on when
09:52:23 18 coming up with ideas for new claims that you discussed
09:52:26 19 with Lester Vincent?
09:52:27 20 A. I believe that's true, yes. I saw our
09:52:34 21 inventions being used there. These people were taking
09:52:37 22 our ideas that, in many cases, we had disclosed to them
09:52:46 23 under NDA, and they were using our ideas on their
09:52:48 24 products. They were cherry-picking.
09:52:48 25 Q. And when you saw those proposals at JEDEC that



09:52:50 1 you felt were using your ideas, or Rambus's ideas, you
09:52:54 2 went back and spoke with Lester Vincent and you asked him
09:52:59 3 to make sure to add claims to the pending Rambus patent
09:53:02 4 applications to cover those ideas in the SDRAM; right?
09:53:05 5 A. I spoke to my boss Allen Roberts about it, and
09:53:08 6 then I think we ended up having discussions with Lester
09:53:11 7 Vincent.

10:28:13 21 Q So you had a discussion with Tony about
10:28:15 22 attending JEDEC meetings or attending -- and attending
10:28:18 23 the SyncLink IEEE meetings?
10:28:20 24 A That's correct.
10:28:21 25 Q And tell me what Tony said to you.



10:28:23 1 A Well, I don't remember, you know, precisely the
10:28:27 2 words that he used, but I think the gist of it was he
10:28:31 3 thought we should not go to those meetings.
10:28:33 4 Q At all?
10:28:34 5 A That's correct.
10:28:34 6 Q And what did you say to him?
10:28:37 7 A Well, I said to him that, you know, based on an
10:28:44 8 earlier conversation I'd had with Lester Vincent, in
10:28:48 9 particular how we should conduct ourselves at those
10:28:51 10 meetings, that I didn't see any reason why we shouldn't
10:28:55 11 continue going. And Lester, after all, was our patent
10:28:58 12 lawyer and Tony was a newly graduated attorney that had
10:29:02 13 just joined the company.
10:29:04 14 Q What did Tony say to you?
10:29:06 15 A Well, I don't remember. I just remember that we
10:29:09 16 had to agree to disagree at that point in time.
10:29:13 17 Q Did Tony tell you why he thought you should stop
10:29:23 18 attending JEDEC meetings or SyncLink IEEE meetings?
10:29:26 19 A He raised this issue of equitable estoppel as
10:29:30 20 being a concern that he had.

Tent.

5/2/00

by Allen Roberts
by LJV
Ex. Rambus 900

- Richard Crisp wants to add claims to original application ⇒
  Add claims to
  mods: registers
  to control latency
  output timing
  depending upon clock -
  specify
  clock cycle

- check whether original application has
  blocks (?)

- Timing Test application -
  maybe need to file by June 1 -
  may be in paper -
  - Allen will check -
  Need to get going on it
  - Jim Cochran

- Dennis also working on
  another appl

EXHIBIT
979
Vincent

INFINEON
DTX 1541

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R 202989

COPY 1 OF 2

Conf

AS 1546 9/25/92

w/ Richard Crisp
by WV
Re. Rambus Pool

— what to include in divisional applications:

1) DRAM - multiple open row addresses

2) DRAM - programmable latency via control reg

3) DRAM - packet oriented comm.
⇒ going into & out
↳ ~~PDIS~~ ↳ should be PDIS's divisional
⇒ so cause problem w/ synch DRAM & Rambus link

4) using phase lock loops on DRAM to control delays inside & outside DRAM

Rambus - spec - created patents of FEE
- no licensing & royalties

EXHIBIT
981
Vincent

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R 203940

COPY 2 OF 2

~~Independently Interpreted~~
~~⇒ Claims 95-105 (P0100)~~
~~+ Claims 114-120 (P0147)~~

⇒ claim 121 ⇒ (P0149D)
last portion important ⇒
predetermined amount
of time that device
must wait
⇒ Emphasis ⇒
multi Indep. claim ⇒
broad ⇒
Concept ⇒ key contains
time one must wait for
access time to
response

- Multiple row addresses -
- Row access time (longer time)
- Column access time

Concurrent DRAM ⇒
Not more than one
row address
⇒ Rambus ⇒
Has more than one
bank

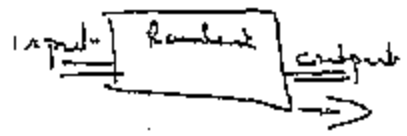
Rambus -
- 2 Arrays w/ one chip
⇒ Higher performance because
fewer message ⇒
2 different address banks

p. 25-26 ⇒
more than one mem array

- Richard Crisp will
check w/ Mike

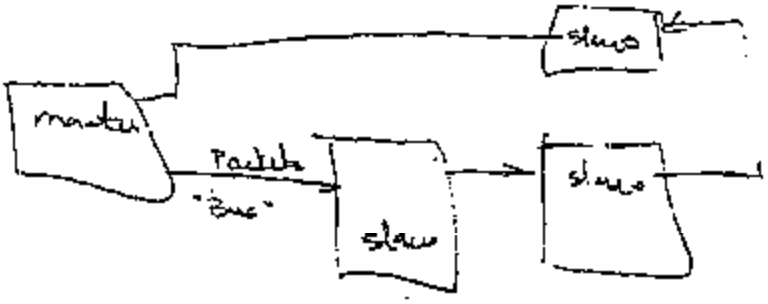
⇒ Packet-Oriented Dram
Claims 46-55 (P006D)

Ramlink ⇒
is pt to pt ⇒
some argue it is not a bus.
⇒ only allows
one device ⇒
ring array ⇒

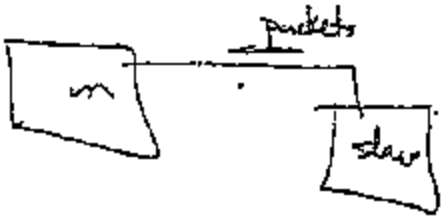



Forwards
packet onward

Ramlink




Rambus



claims ⇒

Add claims that do not use the word "pure" ⇒

Be sure to emphasize request & response packet

⇒ Rub: Rambus computer might not be considered a bus

⇒ Rambus ⇒ wants to claim memory device that receives commands via packets

⇒ Not initialization packets ⇒ we are talking about packets that send & receive packets

⇒ Figs 4 + 5 type packets but do not say which type of packet

Richard ⇒ will get me copy of the Rambus spec & synch DRAM spec.

R 203943

Want to claim eventually to mapping out defective device

Phase lock loops → are different
Delay lock loops
→ Both do same job
Fig 12 – delay lock loop

Deskewing of clocks
from ext clocks →
zero delay input buffer.

p. 57 → discusses Fig 12

Wng's appln – had PLL

– must claim source-synch clocking

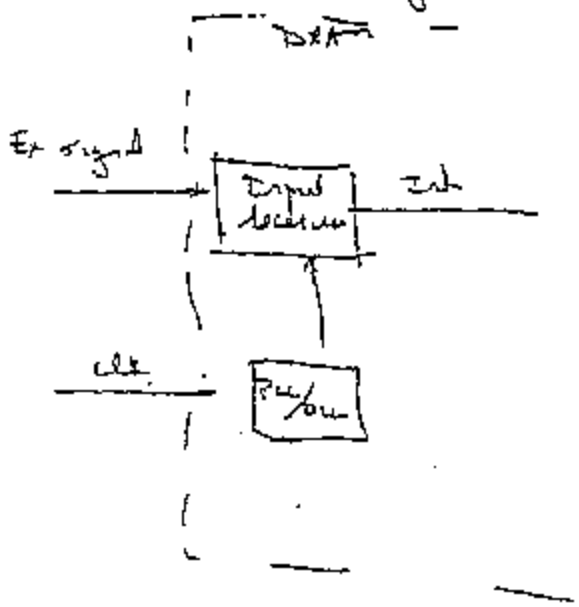
→ Fig 12 → Lect wh

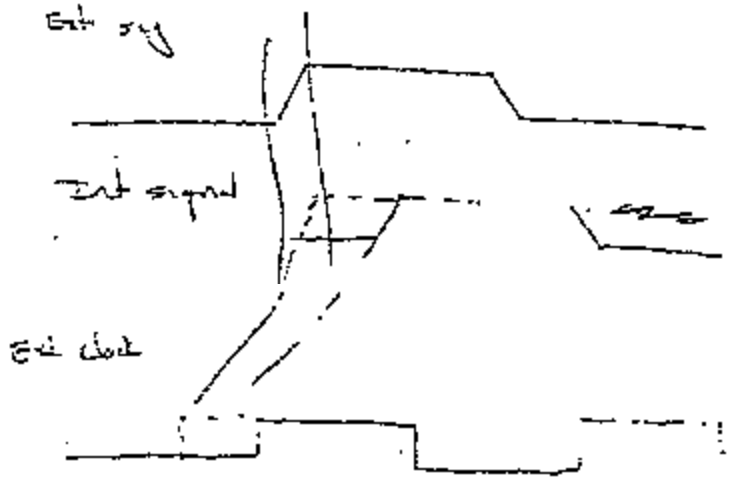
Wng's → PLL on DRAM

→ Many different ways of
designing PLL

→ Want to cover concept of
using concept of
deskewing input

P. 56 → lines 21 – 25
object is correct
Bombas now doing it – different way
⇒ since high speeds want zero delays




move things back in time

⇒ claim usage of such circuit as a DRAM
⇒ set particular PLL

Appr. Policy.

Data & clk driving in same direction ⇒ is same synch. clocking
- ~~[illegible]~~
⇒ SDRAM stuff wanted ahead

R. Rambus.

ul 8 13:37 1993 standard input Page 1

From ware Fri Jun 18 10:16:28 1993
Date: Fri, 18 Jun 93 10:16:26 PDT
From: ware (Fred Ware)
To: dillon, roberts, barth, crisp, farnwald
Subject: patent claim status
Cc: ware
Content-Length: 1668

I spoke with Lester Vincent and Tom Lee (the other one) on the phone yesterday. The current status of the additional claims that we want to file on the original (P001) patent follows. I haven't received their paperwork, so I don't know the exact titles of these claims.

(1) Writable configuration register permitting programmable CAS latency
P014 This claim has been written up and filed. This is directed against SDRAMs.

(2) DRAM communication using a packet-oriented protocol
P013 This claim is partially written up. They need to finish it up and file it. They are not waiting for anything from us. This is directed against RamLink.

(3) DRAM with PLL clock generation
P007 This claim is partially written up. They need to finish it up and file it. They are not waiting for anything from us. This is directed against future SDRAMs and RamLink.

(4) DRAM with multiple open rows
This claim has not been written up. They need to think about it some more, and then meet with us. Lester is doubtful about whether we can extract this claim from the teachings of P001. This is directed against SDRAMs.

Some other ideas which have been suggested within Rambus, but not yet communicated to Lester, are as follows:

(5) DRAM with externally supplied reference voltage for input receivers. This claim would be directed against GTL technology.

(6) DRAM using low-voltage-swing signal levels driven by MOS devices operated in a common-source (open-drain) configuration. This claim would be directed against GTL technology.

(7) Extending the claim for a current-mode drive using a driver with a relatively small output impedance compared with the transmission line impedance. P017 P002 P004

DRAM USING BLOCK ORIENTED PROTOCOL & - PIPELINED ADDRESS BUS 8

DRAM USING TERMINATION P001 CONTROLLED IMPEDANCE BUS 9

INFINEON
DTX 1556

R 202996

OUTSIDE COUNSEL ONLY
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COPY 1 OF 2

EXHIBIT
986
Vincent

by Gary Hammer, Geoff Tate, Allen Roberts

by Vincent
Dr. Rambus, 900

Enforcement.
State Drama

-- Louisiana suits.
— Tying legislation —
Preferentially licensing
— PLLS

- Add to deposition the number of claims

AR.
POIT TCT ⇒
check if allowed 4/20/13

☆ AR Get company name for Gary Hammer

☆ AR Tom Lee's patents must be filed before Valentine's day (TSCC)

EXHIBIT
997
Vincent

INFINEON
DTX 1568

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R 203314

ORIGINAL

⇒ Double check ~~other~~ there are 5 Fred Ware applications ⇒ Need to file all 5 ~~patent~~ applications
⇒ (Ask Maria Schlin about the 3 add'l Fred Ware)

Copy:
Rick, Fred, Dieter
orig → Alan
This is Lester's attempt to write the claims for the MRT / SDRAM defense. Please comment.

Alan.

EXHIBIT
993
Vincent

INFINEON
DTX 1584

OUTSIDE COUNSEL ONLY
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R 204436

COPY 2 OF 2

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN

August 1, 1994

Allen Roberts
RAMBUS, INC.
2465 Larham St.
Mountain View, CA 94040

Via Courier

Re: Rambus, Inc.
U.S. Patent application for: INTEGRATED CIRCUIT I/O USING A PERFORMANCE BUS INTERFACE
Our file no.: 73305.P001C2

Dear Allen:

Enclosed for your review is a draft of a Preliminary Amendment for the above-identified patent application.

Please call either Lester Vincent or me once the Amendment has been reviewed.

Very truly yours,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Scot A. Griffin

SAG/dac

CC with encl.:
Mike Farmwald
Mark Horowitz
Lester J. Vincent

OUTSIDE COUNSEL ONLY
PRODUCED UNDER COURT SEAL

DRAFT

Attorney's Docket No.: 73305.P001C2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|---|---|---|
| In Re Patent Application of: | ) | |
| Michael Farmwald and Mark Horowitz | ) | Examiner: |
| Serial No.: 08/222,645 | ) | Art Unit: 2308 |
| Filed: March 31, 1994 | ) | |
| For: INTEGRATED CIRCUIT I/O USING A HIGH PERFORMANCE BUS INTERFACE | ) | |

Commissioner of
Patents and Trademarks
Washington, D.C. 20231

PRELIMINARY AMENDMENT

Sir:

Applicants respectfully request that prior to examination the above application be amended as follows:

IN THE SPECIFICATION

At page 3, line 9, delete "micro-processor" and substitute –microprocessor–.

At page 6, line 1, delete 4,646,279" and substitute –4,646,270–.

At page 10, line 18, delete "Figure 7 shows" and substitute –Figures 7a and 7b show–.

At page 10, line 21, delete "Figure 8 shows" and substitute –Figures 8a and 8b show–.

At page 11, line 14, insert —Figure 16 is a see-through front view of one of the semiconductor devices of Figure 3—.

At page 34, line 4, after "devices" insert —do—.

At page 41, line 1, delete "or" and substitute —or—.

At page 42, line 19, insert after "technology" —, as shown in Figure 16—.

At page 45, line 17, delete "Fig. 7" and substitute —Figures 7a and 7b—.

At page 47, line 2, delete "Figure 8" and substitute —Figure 8a—.

At page 47, line 5, delete "from left to right" and substitute —from right to left—.

At page 47, line 8, delete "right" and substitute —left—.

At page 47, line 9, delete the first "left" and substitute —right—.

At page 49, line 22, delete "primay" and substitute —primary—.

At page 56, line 2, delete "Figure 11" and substitute —Figure 11—.

At page 60, line 10, after "147" insert —A, B—.

IN THE CLAIMS

Please cancel claims 1-150.

Please add the following new claims:

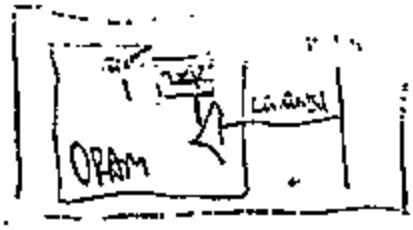
151. A dynamic random access memory (DRAM) capable of being coupled to a bus, the DRAM comprising:

a first circuit for generating a clock signal;

a conductor for coupling the DRAM to the bus; and

a receiver circuit coupled to the conductor and the first circuit, the receiver circuit for latching information received from the





conductor in response to a rising edge of the clock signal and a falling edge of the clock signal.

152. The DRAM of claim 151, wherein the second circuit comprises:

a first input receiver coupled to the conductor and the first circuit, the first input receiver for latching information provided by the bus via the conductor in response to the rising edge of the clock signal; and

a second input receiver coupled to the conductor and the first circuit, the second input receiver for latching information from the bus in response to the falling edge of the clock signal.

153. The DRAM of claim 152, wherein the first circuit generates a first clock signal and a second clock signal that is a complement of the first clock signal, the first input receiver being coupled to receive the first clock signal such that the first input receiver latches information in response to a rising edge of the first clock signal, the second input receiver being coupled to receive the second clock signal such that the second input receiver latches information in response to a rising edge of the second clock signal.

154. The DRAM of claim 153, wherein the first circuit generates the first and second clock signals in response to an externally provided clock signal.

155. The DRAM of claim 151, wherein the first circuit generates the clock signal in response to an externally provided clock signal.

156. The DRAM of claim 151, wherein the DRAM further comprises:

a multiplexer coupled to the first circuit, the multiplexer having an output, a first input, and a second input;

an output driver including an output coupled to the conductor and an input coupled to the output of the multiplexer, the output driver for driving data on the conductor in response to the output of the multiplexer;

a first output line coupled to the first input of the multiplexer, wherein the multiplexer couples the first output line to the output of the multiplexer in response to the rising edge of the clock signal; and

a second output line coupled to the second input of the multiplexer, wherein the multiplexer couples the second output line to the output of the multiplexer in response to the falling edge of the clock signal.

157. The DRAM of claim 156, wherein the output driver is a field effect transistor including a drain coupled to the conductor, a source coupled to system ground, and a gate coupled to output of the multiplexer, the field effect transistor being switched on and off in response to a state of a selected output line provided by the multiplexer.

158. A computer system comprising:

a bus for transferring information;

a first dynamic random access memory (DRAM) coupled to the bus, the first DRAM comprising:

a first circuit for generating a clock signal;

a conductor for coupling the DRAM to the bus; and

a second circuit coupled to the conductor and the first circuit, the second circuit for latching information received from the

conductor in response to a rising edge of the clock signal and a falling edge of the clock signal.

159. The computer system of claim 151, wherein the second circuit comprises:

a first input receiver coupled to the conductor and the first circuit, the first input receiver for latching information provided by the bus via the conductor in response to the rising edge of the clock signal; and

a second input receiver coupled to the conductor and the first circuit, the second input receiver for latching information from the bus in response to the falling edge of the clock signal.

160. The computer system of claim 159, wherein the first circuit generates a first clock signal and a second clock signal that is a complement of the first clock signal, the first input receiver being coupled to receive the first clock signal such that the first input receiver latches information in response to a rising edge of the first clock signal, the second input receiver being coupled to receive the second clock signal such that the second input receiver latches information in response to a rising edge of the second clock signal.

161. The computer system of claim 160, wherein the computer system further includes a third circuit for generating a system clock signal, the first circuit being coupled to receive the system clock signal, the first circuit for generating the first and second clock signals in response to a system clock signal.

162. The computer system of claim 158, wherein the computer system further includes a third circuit for generating a system clock signal, the first circuit being coupled to receive the system clock signal, the first circuit for generating the first and second clock signals in response to the system clock signal.

163. The computer system of claim 162, wherein a bus cycle for the bus is divided into an even cycle corresponding to a rising edge of the system clock signal and an odd cycle corresponding to a falling edge of the system clock signal, the computer system further comprising:

a master coupled to the bus and the third circuit, the master for transferring information to and from the DRAM via the bus, the master for signaling the beginning of an operation to the DRAM only on even cycles.

164. The computer system of claim 162, wherein a bus cycle for the bus is divided into an even cycle corresponding to a falling edge of the system clock signal and an odd cycle corresponding to a rising edge of the system clock signal, the computer system further comprising:

a master coupled to the bus and the third circuit, the master for transferring information to and from the DRAM via the bus, the master for signaling the beginning of an operation to the DRAM only on even cycles.

165. The computer system of claim 158, wherein the DRAM further comprises:

a multiplexer coupled to the first circuit, the multiplexer having an output, a first input, and a second input;

an output driver including an output coupled to the conductor and an input coupled to the output of the multiplexer, the output driver for driving data on the conductor in response to the output of the multiplexer;

a first output line coupled to the first input of the multiplexer, wherein the multiplexer couples the first output line to the output of the multiplexer in response to the rising edge of the clock signal; and

a second output line coupled to the second input of the multiplexer, wherein the multiplexer couples the second output line to the output of the multiplexer in response to the falling edge of the clock signal.

166. The computer system of claim 165, wherein the output driver is a field effect transistor including a drain coupled to the conductor, a source coupled to system ground, and a gate coupled to output of the multiplexer, the field effect transistor being switched on and off in response to a state of a selected output line provided by the multiplexer.

167. A dynamic random access memory (DRAM), comprising:

an array of memory cells connected in rows and columns, the array of memory cells corresponding to a range of addresses, wherein the array of memory cells is subdivided into a plurality of memory sections, each of the memory sections being assigned a portion of the range of addresses;

a plurality of sense amps, each sense amp being coupled to a column of the array of memory cells, each sense amp for sensing data stored in a selected memory cell; and

a plurality of address registers coupled to the array of memory cells, each address register for storing information indicating a portion of the range of addresses that corresponds to a memory section, wherein the plurality of address registers are independently addressed to access data stored in corresponding memory sections.

168. The DRAM of claim 167, wherein the address registers associated with a memory section specify that no portion of the range of addresses is assigned to the memory section, if the memory section is defective.

169. The DRAM of claim 167, wherein the plurality of memory sections correspond to contiguous portions of the range of addresses.

170. The DRAM of claim 167, wherein the columns of each memory section are coupled to a number of sense amps equal to a number of memory cells in a row of the array of memory cells.

171. The DRAM of claim 170, wherein sense amps coupled to columns of a first memory section are for selectively precharging the columns of the first memory section to a value intermediate to logical 0 and 1 when an access mode for the first memory section is a normal mode.

172. The DRAM of claim 171, wherein the sense amps coupled to the columns of the first memory section latch data sensed by the sense amps in a previous memory access operation when the access mode for the first memory section is a page mode, the data latched by the sense amps coupled to

the columns of the first memory section being immediately available for access by subsequent memory operations.

173. The DRAM of claim 172, wherein sense amps coupled to the columns of a second memory section latch data when an access mode for the second memory section is the page mode, the data latched by the sense amps coupled to the columns of the second memory section being immediately available for access by subsequent memory operations.

174. The DRAM of claim 173, wherein each of the first and second memory sections has an independently defined access mode.

175. The DRAM of claim 174, wherein the DRAM includes four memory sections.

176. A dynamic random access memory (DRAM), comprising:

a plurality of conductors for coupling to an external bus, each of the plurality of conductors being multiplexed for receiving address information, control information, and data from the external bus; and

an array of memory cells connected in rows and columns for storing data received from the plurality of conductors.

177. The DRAM of claim 176, further comprising:

a plurality of control registers coupled to the plurality of conductors, the plurality of control registers for storing data that defines an access time of the array of memory cells.

178. The DRAM of claim 177, wherein the data that defines the access time of the array of memory cells is loaded into a control register from the plurality of conductors in response to control information specifying a control register access operation and address information specifying the control register, wherein the address information is received from the plurality of conductors.

## REMARKS

Applicants respectfully request that this Preliminary Amendment be entered prior to examination of the above-identified patent application. Claims 1-150 have been canceled. Claims 151-178 have been added. The specification has been amended. Figure 10 has been amended.

The specification has been amended at pages 3 through 60. The amendments have been made to correct spelling, typographical, and obvious errors. It is submitted that the amendment of the specification does not add new matter.

Accompanying this Preliminary Amendment is (1) a document entitled Request to Approve Drawing Changes and (2) a photocopy of Figure 10 of the drawings with proposed changes marked in red. Applicants respectfully request that the Examiner approve the proposed changes in Figure 10.

Figure 10 has been amended to show that the multiplexer receives both the true and complement internal device clock signals. Support for this amendment is found at page 58, lines 13-23, of the specification. Therefore, it is respectfully submitted that the proposed changes of Figure 10 of the drawings do not add new matter.

New claim 151 recites a "first circuit for generating a clock signal," a "conductor," and a "receiver circuit." Support for the recited "first circuit" may be found in the discussion of clocking that begins at page 46, line 20, of the specification. Further support for a "first circuit" may be found in Figures 8(a), 8(b), and 10 of the drawings. Support for the "conductor" may be found in Figure 10 and the corresponding discussion found in the specification beginning at page 53, line 24. The specification discloses output line 69, and it is submitted that one having ordinary skill in the art would understand that the output line is necessarily manufactured of a conductive material, and therefore a "conductor."

The "receiver circuit" of claim 151 is also disclosed in Figure 10 and at pages 54-59 of the specification. Claims 152-155 depend from claim 151 and further describe the structure and operation of the receiver circuit recited in claim 151. Support for these claims may also be found at Figure 10 and at pages 54-59 of the specification

New claim 156 depends from claim 151 and recites a "multiplexer," an "output driver", a first output line, and a second output line. All of these elements are disclosed in Figure 10 and at pages 54-59 of the specification. Claim 157 further describes the structure of the output driver, and support may similarly be found in Figure 10 and at pages 54-59 of the specification. New claims 158-166 are computer system claims reciting similar elements as disclosed in claims 151-157. Therefore, support may similarly be found where described above.

New claim 167 recites an "array of memory cells," a "plurality of sense amps," and a "plurality of address registers." The address registers are disclosed beginning at page 16, line 10. Figure 11 shows a sense amp. For new

claims 168-175, the page mode and normal mode of the DRAM are discussed beginning at page 24, line 3. Further, the addressing scheme for mapping memory sections to the range of addresses is disclosed beginning at page 16, line 10, of the specification.

New claim 176 recites " a plurality of conductors" and "an array of memory cells." These "plurality of conductors" are described generally at pages 18-19 of the specification. The "control registers" recited in new claim 177 are generally disclosed at pages 23-25 of the specification. The limitations recited by new claim 178 are disclosed at pages 35-39 of the specification.

Applicants therefore submit that new claims 151 through 178 are fully supported by the specification of the application as originally filed and do not add new matter. Entry of this Preliminary Amendment is therefore respectfully requested.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated:_____1994

_____
Scot A. Griffin
Reg. No.: P-38,167

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8598

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

| | |
|---|---|
| MICRON TECHNOLOGY, INC.,<br>8000 S. Federal Way<br>Post Office Box 6<br>Boise, Idaho 83707-0006<br><br>Plaintiff,<br><br>vs.<br><br>RAMBUS INC.,<br>2465 Latham Street<br>Mountain View, California<br>94040<br><br>Defendant. | CONFIDENTIAL<br><br>No. 00-792-RRM<br><br>ORIGINAL<br><br>"For Attorney Eyes Only" |

CONFIDENTIAL ATTORNEY'S EYES ONLY

CONTINUED DEPOSITION OF RICHARD CRISP

Menlo Park, California

Friday, July 20, 2001

Volume III

Reported by:

LYNNE M. LEDANOIS

CSR No. 6811

Job No. 123694

ESQUIRE
DEPOSITION SERVICES

216 East 45th Street, 8th Floor
New York, NY 10017-3304
212.687.8010 • 800.662.3287
Fax 212.557.5972

25 Q Now, you also worked with Mr. Vincent on other

1 things that you thought should be protected and which
2 you thought were disclosed in that original 1990
3 application; correct?
4 A I believe that's correct, yes.
5 Q And, among other things, those included the
6 use of a programmable mode register on a DRAM; is that
7 right?
8 A Well, I think it was a little bit more
9 specific than that.
10 Q How so?
11 A I think it was specifically addressing access
12 latency to the device.
13 Q And is CAS latency one form of access latency?
14 A Yes. Yes, it is.
15 Q Did you also discuss with him trying to
16 protect the use of programmable burst length on a DRAM?
17 A I believe I did, yes.
18 Q Again, these were things you were trying to
19 protect because you saw that members of JEDEC were
20 discussing incorporating those into the JEDEC SDRAM
21 standard; correct?
22 A Well, you know, I had information from a lot
23 of different sources, some of the information I had
24 came from things that I observed within JEDEC. But
25 it's certainly true that I did see those talked about

1 within JEDEC. And I felt like those were our
2 inventions, and if we had not protected those that we
3 should.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

RAMBUS, INC., )
)
Plaintiff, )
)
vs. ) No. 3-00-CV524
)
INFINEON TECHNOLOGIES AG, )
et al., )
)
Defendants. )
)

FILED UNDER SEAL - PURSUANT TO COURT ORDER
DEPOSITION OF LESTER VINCENT
San Jose, California
Thursday, April 12, 2001
Volume 4

Reported by:
RACHEL FERRIER
CSR No. 6948
Job No. 24931

12 Q And you recall that at some point in time
13 during this time frame, you and the other attorneys at
14 Blakely, Sokoloff at Rambus's direction were amending
15 claims and filing new claims particularly targeted to
16 the SDRAMs; right?
17 MR. MONAHAN: That's overly broad, it's compound,
18 assumes facts not in evidence, calls for speculation.
19 THE WITNESS: I see from these documents that we
20 were drafting claims in response to Rambus having us
21 look at specific subject areas that, you know, A) were
22 within the Rambus patent applications and B) that would
23 be pertinent with respect to certain products.
24 And SDRAMs were included in those products.

BLAKELY
SOKOLOFF
TAYLOR &
ZAFMAN

December 19, 1995

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

Anthony B. Diepenbrock III
RAMBUS INC.
2465 Latham Street
Mountain View, California 94040

Re: Industry Standards

Dear Tony:

Enclosed for your review are materials relating to the proposed consent order regarding Dell Computer. As you can see, the Federal Trade Commission charged that Dell restricted competition in the personal computer industry and undermined the standard-setting process by threatening to exercise undisclosed patent rights against computer companies adopting the VL-Bus standard.

Please note that the period for public comment ends January 1, 1996.

Very truly yours,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Lester J. Vincent

LJV/cek

encl.

EXHIBIT 1509
Rachel A. Fenter
CSR No. 6948
Date:
Witness:

EXHIBIT
1008
Vincent

R 202778

OUTSIDE COUNSEL ONLY
PRODUCED UNDER COURT SEAL
FOR THE EYES OF JOHN DESMARAIS, ESQ
AND MICHAEL STADNICK ONLY

COPY 1 OF 2

To File

Fax 1st

B. Rawlins 1-008

Things to Do

- Letter to IEEE stds body by Jan 15, 1996
  - who sends? Coughlin, Fang or me
  - Identify ≡P?
- send letter to Wiggen, Diamond and all companies that are members of standards bodies
- No further participation in any standards body (if there has been any) -- do not even get close!!
- ☆ - threatening letter may start before/DX clock running
- The letter did not request statement as to which patents apply or how
- Remember, we have broad original patent that has issued in Taiwan!

R 203881

OUTSIDE COUNSEL ONLY
PRODUCED UNDER COURT SEAL

ORIGINAL

EXHIBIT
1007
Vincent

Richard Crisp
Rambus Inc.
2465 Latham St
Mountain View, Ca 94040
103 3832

Ken McGhee
Electronic Industries Association (JEDEC)
2500 Wilson Boulevard
Arlington, Va. 22201

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 17, 1996

RE: JEDEC Invoice No. 28002 Dated January 10, 1996

Dear Mr. McGhee:

Rambus Inc. has received the above invoice for the 1996 JEDEC dues for committees JC-15, JC-16, JC42.1, JC-42.3, JC-42.4, and JC-42.5.

I am writing to inform you that Rambus Inc. is not renewing its membership in JEDEC.

Recently at JEDEC meetings the subject of Rambus patents has been raised. Rambus plans to continue to license its proprietary technology on terms that are consistent with the business plan of Rambus, and those terms may not be consistent with the terms set by standards bodies, including JEDEC. A number of major companies are already licensees of Rambus technology. We trust that you will understand that Rambus reserves all rights regarding its intellectual property. Rambus does, however, encourage companies to contact Dave Mooring of Rambus to discuss licensing terms and to sign up as licensees.

To the extent that anyone is interested in the patents of Rambus, I have enclosed a list of Rambus U.S. and foreign patents. Rambus has also applied for a number of additional patents in order to protect Rambus technology.

Very truly yours,
RAMBUS INC.

Richard Crisp

encl.

cc w/encl.:
EIA Dept. 287

June 17, 1996

Rambus U.S. and Foreign Patents

5,319,755
5,355,391
5,432,823
5,268,639
5,357,195
5,325,053
5,408,129
5,473,575
5,243,703
5,254,883
5,390,308
5,446,696
5,422,529
5,451,898
5,337,285
5,434,817
5,430,676
5,485,490
5,488,321
5,499,355
5,499,385
Taiwan No. NI-48411
Israel No. 110,649

EXHIBIT
Defendants 129
11/8/00 akb

Richard Crisp
Rambus Inc
2465 Latham St.
Mountain View, Ca 94040
(415) 903 3800

Electronic Industries Association
Department 287
Washington, DC 20055
(703) 907 7500

March 20, 1996

RE: invoice 28002 (1/10/96)

Rambus Inc has received an invoice for 1996 JEDEC dues (JC-15, JC-16, JC-42.1, JC-42.3, JC-42.4 and JC-42.5 committees).

I am writing to inform you that Rambus Inc does not intend to renew our membership in JEDEC. We feel that our interests are not being served by continuing our involvement with JEDEC. In particular the patent policy of JEDEC is something that we find is consistently applied and at odds with our business model.

As you are aware, Rambus Inc is a technology developer with a primary source of revenue coming from licensing patents and collecting royalties from their use. Accordingly Rambus Inc cannot agree to the terms of the JEDEC patent policy as it limits our ability to solely control the dissemination and use of our intellectual property.

Recently the issue was topical in two JC-42.3 meetings wherein it was asserted in the May 1995 meeting that a particular proposal put before the committee for standardization would not have any burden relative to Rambus Intellectual Property. We stated at the August 1995 meeting that we could not comment on whether or not the proposal would be an infringement or non-infringement of our Intellectual Property. At the same time we pointed out that many companies participating in JEDEC had patents relating to devices which have been standardized by the committee and these patents had not been disclosed to the committee nor had any statements been made to the committee by the patent holders regarding their intent to comply with the patent policy. It is our feeling that the JEDEC patent policy is inconsistently applied to material subject to standardization and is therefore arbitrary and unworkable.

In the spirit of full disclosure, Rambus Inc would like to bring to the attention of JEDEC all issued US patents held by Rambus Inc. The list is complete as of this writing and follows below:

5,243,703 / 5,254,883 5,268,639 5,319,745 5,325,011 5,337,285 5,355,391 / 5,357,195 / 5,390,308 / 5,408,129 / 5,422,539 5,430,676 5,432,823 5,434,817 5,446,696 / 5,451,898 / 5,473,575 / 5,485,490 / 5,488,321

INFINEON
DTX 12

R156925

Sincerely,

Richard Crisp

Second letter:

Richard Crisp
Rambus Inc
2465 Latham St
Mountain View, Ca 94040
(415) 903 3800

Electronic Industries Association
Department 287
Washington, DC 20055
(703) 907 7500

March 20, 1996

RE: invoice 28002 (1/10/96)

Rambus Inc has received an invoice for 1996 JEDEC dues (JC-15 JC-16 JC-42.1, JC-42.3, JC-42.4 and JC-42.5 committees).

I am writing to inform you that Rambus Inc. does not intend to renew our membership in JEDEC. We feel that our interests are not being served by continuing our involvement with JEDEC. In particular the patent policy of JEDEC does not comport with our business model

As you are aware, Rambus Inc is a high speed memory technology developer deriving revenue from licensing fees and royalties. Rambus Inc cannot agree to the terms of the JEDEC patent policy as it limits our ability to conduct business according to our business model

In the spirit of full disclosure, Rambus Inc would like to bring to the attention of JEDEC all issued US patents held by Rambus Inc. The list is complete as of this writing and follows below:

5,243,703 / 5,254,883 / 5,268,639 · 5,319,755 / 5,325,053 5,337,285 · 5,355,391 / 5,357,195 / 5,390,308 / 5,408,129 / 5,422,829 · 5,430,676 / 5,432,823 · 5,434,817 5,446,696 / 5,451,898 / 5,473,575 / 5,485,490 / 5,488,321

Sincerely,

Richard Crisp

Third letter:

OUTSIDE COUNSEL ONLY

EXHIBIT
26
Crisp

R156928

EXHIBIT
1371
Vincent

EXHIBIT
Deposition Exhibit

Richard Crisp
Rambus Inc
2465 Latham St.
Mountain View, Ca 94040
(415) 903 3800

Electronic Industries Association
Department 287
Washington, DC 20055
(703) 907 7500

March 22, 1996

RE: invoice 28002 (1/10/96)

Rambus Inc has received an invoice for 1996 JEDEC dues (JC-15, JC-16, JC-42.1, JC-42.3, JC-42.4 and JC-42.5 committees).

I am writing to inform you that Rambus Inc will not renew our membership in JEDEC.

In the spirit of full disclosure, Rambus Inc would like to bring to the attention of JEDEC all issued US patents held by Rambus Inc. The list is complete as of this writing and follows below:

5,243,703 / 5,254,883 / 5,268,639 5,319,755 / 5,325,053 5,337,285 5,355,391 / 5,357,195 / 5,390,308 / 5,408,129 / 5,422,529 5,430,676 / 5,432,823 / 5,434,817 5,446,696 / 5,451,898 / 5,473,575 / 5,485,490 / 5,488,321

Sincerely,

Richard Crisp

Letter #4

EXHIBIT 882
Rachel A. Ferrier
CSR No. 6948
Date: 6/26/01
Witness:
Diesenbrock

R156929

EXHIBIT
1370
Vincent

1 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
2 (Richmond Division)

3
RAMBUS INC., )
4 )
Plaintiff, )
5 )
vs. ) No. 3:00CV52
6 )
INFINEON TECHNOLOGIES AG, )
7 et al., )
)
8 Defendants. )
_____)
9

10

11 CONFIDENTIAL

12
CONFIDENTIAL OUTSIDE COUNSEL ONLY
13
VIDEOTAPED
14
DEPOSITION OF LESTER VINCENT
15
Palo Alto, California
16
Wednesday, March 14, 2001
17
Volume 2
18

19

20

21

22

23 Reported by:
LYNNE M. LEDANOIS
24 CSR No. 6811
Job No. 119279A
25

3 Q. That's a fair point. I'm just interested in
4 the discussions regarding withdrawing from JEDEC. What
5 were your discussions with regard to withdrawing from
6 JEDEC at this meeting with Mr. Tate and Sobrino?
7 A. Sobrino. We discussed that in view of either
8 the proposed Dell decision by the FTC or the final
9 decision, I don't remember the timing, that it would be
10 prudent for Rambus to reconsider its participation, if
11 that's what it was, in JEDEC and to withdraw.

14 Q So was your concern that Rambus was an
15 intellectual property company, Rambus was attending a
16 standards organization, and in view of Dell, that could
17 be a combination that could lead to an equitable
18 estoppel argument?
19 A Well, I thought it would be incompatible -- it
20 could potentially be incompatible with Rambus's
21 business model, you know, if somebody were to raise
22 this and they were successful, you know, in what had
23 happened in the Dell case.

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Rambus Incorporated, | ) | DOCKET NO. 9302 |
| a corporation. | ) | |
| | ) | |
| | ) | |

## ANSWER OF RESPONDENT RAMBUS INCORPORATED

### Introduction

The Complaint in this action asserts that Respondent Rambus, Inc. ("Rambus") engaged in a pattern of conduct "that served to deceive an industry-wide standard-setting organization." According to the Federal Trade Commission's (FTC's) press release that accompanied the Complaint, the "message" contained in the FTC's Complaint "is this: if you are going to take part in a standards process, be mindful to abide by the ground rules and to participate in good faith."

Putting aside for the moment the question of whether Section 5 of the Federal Trade Commission Act (FTC Act) or any other antitrust law reaches such allegations, the evidence in this case will show that Rambus at all times acted in accordance with JEDEC's written rules for its members. *The Complaint does not allege otherwise.* Instead, the Complaint alleges that the purported requirement that Rambus violated – to disclose a broad range of patent applications – was "commonly known" to JEDEC members as a result of *oral* statements by JEDEC committee chairs during committee meetings. Complaint, ¶ 21.

using RDRAM, but only in very limited end uses, accounting for a relatively small portion (*i.e.*, in the range of 5%) of overall DRAM production.

ANSWER: Rambus admits that various DRAM manufacturers make, use, sell, and/or offer for sale in the United States memory devices that purport to comply with the JEDEC SDRAM and DDR SDRAM standards. Rambus further admits that various DRAM manufacturers manufacture and sell Rambus-compliant products. Otherwise, Rambus is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 of the Complaint and therefore denies those allegations.

90. Leading up to and following the issuance of JEDEC's second-generation SDRAM standard — or DDR SDRAM — in August 1999, DRAM manufacturers and their customers began designing, testing, and (to a limited extent) producing memory and memory-related products incorporating, or complying with, the DDR SDRAM standard. By 2000, DDR SDRAM was beginning to be manufactured in increasing volumes. This trend continued during 2001, and a number of DRAM manufacturers and their customers began to replace first-generation SDRAM and RDRAM with DDR SDRAM for certain high-end uses. Current projections indicate that total sales of DDR SDRAM, on a revenue basis, may account for as large as 40% of all DRAM produced worldwide in 2002, and by 2004 this figure is expected to exceed 50%.

ANSWER: Rambus is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90 of the Complaint and therefore denies those allegations.

91. Throughout the late 1990s, as the DRAM industry became increasingly locked in to use of JEDEC-compliant SDRAM, and subsequently DDR SDRAM, Rambus continued the process of perfecting patent rights on certain technologies incorporated within the JEDEC SDRAM standards. By the late 1990s, Rambus had succeeded in obtaining numerous patents, not expressly limited to a narrow-bus RDRAM architecture, that purported to cover, among other technologies encompassed by the JEDEC standards, programmable CAS latency, programmable burst length, on-chip DLL, and dual-edge clock.

ANSWER: Rambus avers that the first patent claims issued to it that would arguably be infringed by all products purporting to comply with either JEDEC's SDRAM or DDR SDRAM standards were submitted to the PTO no earlier than November 1998 and issued in a U.S. patent no earlier than June 1999. Otherwise, Rambus denies the allegations in Paragraph 91 of the Complaint.

92. In late 1999, Rambus began contacting all major DRAM and chipset manufacturers worldwide asserting that, by virtue of their manufacture, sale, or use of JEDEC compliant SDRAM, they were infringing upon Rambus's patent rights, and inviting them to contact Rambus for the purpose of promptly resolving the issue.

ANSWER: Rambus admits that, in or about November 1999, it began contacting certain memory manufacturers to notify them that, based on analyses of the datasheets of products made by those companies, Rambus believed those products infringed certain of

**Exhibit 30**
**(redacted)**