

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

In the matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RESPONDENT RAMBUS INC.'S APPLICATION FOR LEAVE TO
FILE (1) SUPPLEMENTAL RULE 3.24 SEPARATE STATEMENT IN
SUPPORT OF RAMBUS INC.'S MOTION FOR SUMMARY DECISION; AND
(2) SUPPLEMENTAL DECLARATION OF STEVEN M. PERRY IN SUPPORT OF
RULE 3.24 SEPARATE STATEMENT IN SUPPORT OF RAMBUS INC.'S
MOTION FOR SUMMARY DECISION**

Respondent Rambus Inc. seeks leave to file a Supplemental Rule 3.24 Separate Statement of Material Facts as to Which There Is No Genuine Issue, as well as a Supplemental Declaration of Steven M. Perry. For the reasons set out herein, good cause exists to allow the filing of supplemental papers in order to bring to Your Honor's attention newly produced Japanese language documents that were not available when Rambus filed its Motion for Summary Decision.

As Rambus points out in its pending Motion for Summary Decision ("Motion"), the Complaint asserts that JEDEC members were lulled by Rambus into believing that Rambus would not assert intellectual property rights over technologies or features being considered for JEDEC standardization. Complaint, ¶¶ 22, 71. In fact, as Rambus explains in its pending motion, there is uncontroverted evidence that JEDEC members were aware in the early 1990's of Rambus's possible intellectual property claims. Motion, pp. 33-58. The impact of this evidence on the Complaint's core theory of liability is clear, as Judge Timony explained in a November 18, 2002 opinion:

"If JEDEC participants were aware that Rambus might obtain patent claims covering technologies being incorporated into the JEDEC standard, Rambus's alleged failure to disclose would be immaterial."

See Opinion Supporting Order Denying Motion of Mitsubishi Electric & Electronics USA, Inc. to Quash or Narrow Subpoena, November 18, 2002 ("Opinion Denying Mitsubishi Motion to Quash"), p. 4.

Judge Timony made this statement in the course of rejecting a motion by Mitsubishi to quash a document subpoena served upon it by Rambus. In his order, Judge Timony ordered Mitsubishi and its Japanese parent company to produce “documents related to Mitsubishi’s evaluation of the scope of Rambus’s intellectual property rights. . . .” *Id.*, p. 4.

Mitsubishi’s Japanese parent company, Mitsubishi Electric Corporation (“MELCO”), refused to comply with Judge Timony’s order, even after a motion for reconsideration was denied. *See* Supplemental Declaration of Steven M. Perry (“Suppl. Perry Decl.”), ¶ 3. After further negotiations, however, MELCO’s counsel agreed to a “voluntary” production by MELCO of certain categories of documents. *Id.*, ¶ 4, ex. A.

On February 20, 2003, MELCO’s counsel delivered to Rambus’s counsel six boxes of MELCO documents. *Id.*, ¶ 5. Many of the documents were in Japanese. *Id.* The delays involved in locating qualified translators and in culling out the relevant documents meant that the MELCO documents were not available for use in connection with the Motion for Summary Decision, which was filed the following week. *Id.*

Rambus will not argue here the importance of these newly produced MELCO documents. It suffices to say that the new documents show *exactly* what Judge Timony referred to when he ordered Mitsubishi and its Japanese parent to produce documents to Rambus, for they show that “JEDEC participants were aware that Rambus might obtain patent claims covering technologies being incorporated into the JEDEC standard,” which means that “Rambus’s alleged failure to disclose [was] immaterial.” *Opinion Denying Mitsubishi Motion to Quash*, p. 4.

For the reasons set out above, good cause exists to allow the filing of Rambus's Supplemental Rule 3.24 Statement and Supplemental Declaration of Steven M. Perry.

DATED: March ____, 2003

Respectfully submitted,

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