

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RAMBUS’S OBJECTIONS TO CERTAIN “DEMONSTRATIVE”
EXHIBITS THAT COMPLAINT COUNSEL PROPOSE TO
USE WITH BRIAN SHIRLEY ON JUNE 4, 2003**

On June 3, 2003, Complaint Counsel notified Rambus’s counsel of their intent to use certain charts during the testimony of a Micron employee named Brian Shirley. Mr. Shirley is scheduled to testify on June 4, 2003. A true copy of the charts was submitted to Judge McGuire on June 3, 2003, along with a courtesy copy of this brief.¹

Because the charts are not based on evidence in this record but are rather based on documents that have not been made available to Rambus, their use at trial would be improper. *See* Weinstein’s Federal Evidence, § 1006.06[1] (where summaries of voluminous documents are offered, the opposing party’s “right to examine the underlying records is absolute”). The opposing party has the “absolute” right to review the underlying documents regardless of whether the documents were requested during discovery. *Id.*, citing *U.S. v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002).

¹ The charts were apparently prepared by Micron, which intends to seek *in camera* treatment of them if they are used in the hearing. Because of the request for *in camera* treatment, Rambus has not attached the charts to this brief.

Complaint Counsel cannot avoid the requirement that the underlying documents be provided to Rambus by arguing that the charts are not *themselves* being offered as evidence. It is obvious from the highly detailed nature of the charts that they are not based on Mr. Shirley's personal knowledge and are instead based on Micron internal documents that have *not* been made available to Rambus. Mr. Shirley, who is a fact witness, should testify based on his personal knowledge. He cannot simply read from detailed charts that reflect information located in voluminous, unavailable records. Complaint Counsel should not be permitted to make use of the charts in question.

DATED: June 3, 2003

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CERTIFICATE OF SERVICE

I, James M. Berry, hereby certify that on June 4, 2003, I caused a true and correct copy of *Rambus's Objections To Certain "Demonstrative" Exhibits That Complaint Counsel Propose To Use With Brian Shirley On June 4, 2003* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission, Room H-112
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