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July 16, 2003

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**VIA FACSIMILE**

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101 Second Street, Suite 1800  
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Re: *Hynix Semiconductor, et al. v. Rambus Inc.*  
United States District Court, Northern District  
Case No. C 00-20950 RMW

Dear Geoff:

I write in response to your letters of June 30 and July 14.

1. *In Camera* FTC Trial Exhibits. The record is quite clear that Rambus will produce these materials, and that it has proposed to do so at the end of August. As I stated very clearly at the June 24 hearing, it would be far less burdensome for Rambus to await the close of evidence at the FTC proceeding before compiling the information necessary to adequately notify third parties of the production of *in camera* materials to Hynix. We proposed at that hearing the end of August for this production, assuming that the FTC proceeding is concluded at the end of July. June 24 Tr. at 7:13-8:13 ("We would propose the production of those materials be required, if Your Honor is inclined to impose a deadline, to have those materials produced at the end of August so that we could get all the notification done at one time of all the exhibits admitted at the FTC proceeding . . ."). Hynix has offered no reasonable counter proposal, nor any reason why it would be prejudiced by a production of these materials at that time.

As you recognize in proposing a time frame for the production of *in camera* testimony, it is reasonable "to accommodate a single notification by Rambus by waiting for the production until after the close of evidence." Your reasoning applies equally to *in camera*

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exhibits entered into evidence (exhibits too are being entered on an ongoing basis). Thus, we will adhere to the same procedures for both, as discussed immediately below.

2. In Camera FTC testimony. Your July 14 letter references a proposed amendment to the FTC protective order to permit Rambus to produce transcripts of testimony taken *in camera* to Hynix. I have not been apprised of any proposal, and would appreciate seeing a copy. Assuming that amendment does permit Rambus to produce *in camera* testimony to Hynix, we are amenable to your suggestion that Rambus notify third parties shortly after the close of evidence, and produce all materials except those blocked from production by third parties upon expiration of the notice period. However, we do not believe that one week will provide enough time, particularly given that we believe it to be more efficient and thus plan to provide simultaneous notification of *in camera* exhibits (to the extent not already provided as deposition or pleading exhibits) and *in camera* testimony. Thus, we propose that the notification of both go out within two weeks of the close of evidence, rather than one week.

3. "Missing" FTC Pleadings, Transcripts, and Deposition Exhibits. The first two items on your "Missing Pleadings/Filings" chart, as well as Karp Ex. 5 and McAfee Ex. 1, were withheld based on a lack of clarity by Mosaid as to which materials its intervention motion concerned. The deposition transcripts of John Kelly and Earnest Powell, as well as Rapp Ex. 5 and the Declaration of Charles Donohoe and accompanying exhibits, were inadvertently omitted from our production. You should receive these items by Federal Express today, if you have not already received them, along with a couple of other items that were also withheld due to the lack of clarity with regard to the Mosaid motion.

In reviewing our production, we determined that Roberts Ex. 24 and Horowitz Ex. 13 were inadvertently omitted. We will produce those items to you under separate cover tomorrow. We did not produce to you Steinberg Ex. 21 because we have been unable to locate that exhibit in our files. You will note that we produced to you Steinberg Ex. 20 on June 1, 2003. With respect to Barth Exs. 1-5, our records show that we did provide you with these exhibits. Please review the CDs again.

The remainder of the materials on your list are being withheld on privilege grounds and will be included on our privilege log.

4. Privilege Log. We expect to provide our log to you by August 18 as previously stated. We find your disbelief quite disingenuous in light of the fact that it took Hynix *four months* to produce a privilege log for its production pursuant to Rambus's subpoena in the FTC action, (rolling production completed in December 2002, log not provided until April 2003). To the extent you intend to file a motion with Judge Ambler despite Hynix's dilatory preparation of its logs, please note that we expect this motion, and all future motions for which a hearing is sought to be filed on the 10 day, 5 day, 2 day briefing schedule outlined in the parties' October 2001 stipulation. Rambus will no longer tolerate Hynix's unilateral and improper flouting of this procedure on continually unproven claims that it needs expedited treatment.

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5. Micron and Infineon Pleadings. As mentioned several times previously, this request has had to wait in line behind your request for the FTC materials. We are currently on track to produce what remains to be produced by July 31. Your June 30, 2003 proposed stipulation seems fine, except that it omits our agreement to treat all expert reports whether those of Rambus's experts or those of Micron's experts under the terms of the Micron protective order, as we discussed on May 14. Please make this change and forward to Mr. Stoffelmayr so that we can have it entered with the Court prior to the production.

6. Pre-1996 Privileged Documents. At the May 14 meeting, we asked that you provide us with a list of the documents in your possession that you believe to fall within this category so that we could ascertain what has been produced to you (this occurred, as you may recall, before we replaced Howry as counsel of record). Because we have not yet received that list, we went back to the transmittal letters we received from Howry and found one dated July 10, 2001 from Basil Culyba to Ken Nissley, indicating that certain pre-1996 privileged materials were provided to you. Please let me know if your records reflect otherwise.

7. Hynix's Production of Encrypted Email. We believe that we are entitled to get these emails electronically. Please promptly produce all of the affected emails in .pst format.

8. Outside Counsel Only Treatment of Rambus and Hynix documents. We are in the process of re-reviewing our prior requests for OCO treatment as well as the documents requested by Hynix for OCO treatment. We expect to provide you with a revised list of Rambus documents for which we seek OCO treatment and a list of Hynix documents for which we are willing to grant OCO treatment by June 23.

You previously indicated that there may be documents that were produced to Rambus pursuant to its subpoena in the FTC action for which Hynix would seek OCO treatment. Please get us that list as soon as possible, so that we can evaluate any such requests. If you can get us this list by the end of this week, depending upon the volume, we would be prepared to discuss all of the OCO issues at once on June 24. If that is not workable, please let us know what day would be convenient for the parties to comprehensively discuss all of the OCO requests.

To the extent the parties are unable to agree after a comprehensive discussion, we can file motions to be heard by Judge Ambler. It makes little sense to try to have Judge Ambler resolve this issues in a piecemeal fashion. For this reason, we expect that you will continue treating Rambus's royalty-related documents as OCO until the meet and confer process is concluded and a hearing date is agreed upon.

9. Hynix Request No. 152. At our May 14 meet and confer, Hynix agreed to narrow this request to the time prior to the filing of the FTC Complaint. Rambus agreed to consider this


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more narrowed request, but, this too has had to wait in line behind the FTC production. We will now turn back to it and get you a response by early next week.

10. Documents "Missing" from Rambus Productions. We are still investigating the production gaps that you identified in your June 30 letter. We will produce the most legible copy in our possession of RH431981-982.

Your July 14 letter indicates that you intend to file a motion on issues 5, 6 and 9, above. Such a motion seems premature at this point: Issue 5 seems resolved. Issue 9 will likely be resolved by next week. Any disagreements that involve issue 6 should likely be taken up, if at all, in connection with any issues arising from Rambus's privilege log, which are not yet ripe for resolution. Please let me know if you disagree so that we can discuss the briefing schedule and possible hearing dates.

Sincerely,



Andrea Weiss Jeffries

AWJ:

933800.1

Geoffrey H. Yost  
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August 4, 2003

**VIA FACSIMILE**

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Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 91107

**Re: Hynix Semiconductor, et al. v. Rambus Inc.  
U.S.D.C. Case No. 00-20950 RMW**

Dear Andrea:

This responds to your letters of July 16 and 22.

1. FTC Trial Exhibits. Rambus already represented to Hynix, Judge McGuire, and Judge Ambler that no further notification of third parties is necessary before it produces the *in camera* exhibits. Your July 16 letter now suggests notice *is* required, but does not explain why Rambus represented otherwise to the Court.

There is no good reason to wait until the end of August to produce the trial exhibits. Rambus has identified no *in camera* exhibits about which third parties have not already been notified, so notice to third parties should no longer be an issue. Rambus has known all along from the parties' exhibit lists what all the trial exhibits will be, so the fact that they are being admitted into evidence on an ongoing basis should not delay their production.

In any event, we expect Rambus to have produced all *in camera* trial exhibits by the end of August.

2. In Camera FTC Testimony. As you know, we have filed and served our motion to amend the FTC protective order. In the meantime, we do not understand why it would take two weeks to notify what appears to be only four parties that their *in camera* trial testimony will be produced. Again, we are willing to allow Rambus more time to meet its discovery obligations where it appears reasonably necessary, but it does not seem necessary here. We expect the handful of third parties that have given *in camera* testimony at the FTC trial to be notified of the production as soon as possible after the trial is completed.

3. Missing FTC Pleadings, Exhibits, and Transcripts. Thank you for explaining why some of these documents were missing from the July 2 production. We continue to review the production and will let you know if there is anything else that appears to be missing. Otherwise, we are assuming all the documents that remain unaccounted for will turn up on Rambus' privilege log.

4. Privilege Log. Again, it is unreasonable for Rambus to demand seven weeks or more to prepare its privilege log of documents withheld from the FTC pleadings and transcripts production, particularly considering the number of documents it is withholding. Rambus offers no excuse for the delay. Judging from your insistence that any motion on the subject be briefed according to the regular schedule, it is apparent Rambus is simply stalling, and has offered August 18 as the day it *might* provide a privilege log based on a calculation that it could take that long to resolve a motion to compel on the subject.

We expect to have Rambus' privilege log by or before August 18.

5. Micron and Infineon Pleadings. We have Truc Nguyen's July 30 letter forwarding Rambus' latest production of *Infineon* and *Micron* materials. We will review the production and let you know if anything is missing, and will provide you a list of the additional materials we seek from indexes you provided previously.

We will revise the *Micron* stipulation to address the treatment of expert reports based on Rambus' proposal that documents created in the action be covered by the protective order there.

6. Pre-1996 Privileged Documents. Your response on this issue is unintelligible. Are you saying Rambus has no record of what privileged documents it did and did not produce to Hynix in July of 2001? That does not seem credible.

The documents that should have been produced include those "found by the *Infineon* court's March 29, 2001 Order to be subject to the crime/fraud exception to the attorney-client privilege and . . . the deposition testimony taken in *Infineon* pursuant to that order." That is how your predecessor counsel characterized the July 2001 production. Has Rambus produced to Hynix all such documents, or has it not? Rambus should also confirm it produced to Hynix all the documents produced in *Micron* pursuant to Judge McKelvie's May 16, 2001 order to the extent that production was any different.

As we pointed out in my April 21 letter on this subject, if Rambus is withholding any of these documents, it is in violation of Judge Ambler's January 15, 2003 order. Please respond by August 11.

7. Hynix's Production of Encrypted E-mail. To the extent any of the encrypted or otherwise inaccessible e-mails or attachments that Hynix has produced to Rambus are (a) responsive to Rambus' discovery, (b) relevant, and (c) nonprivileged, we would not oppose producing those documents to Rambus in .pst format. Presumably Rambus will try to open the documents itself.

Of course, counsel for Hynix has been unable to open these e-mails and attachments, so we do not know whether their contents are privileged or even discoverable. As such, it would be inappropriate for Rambus to receive electronic copies of these documents and attempt to open them when counsel for Hynix has had no opportunity to screen them for relevance and privilege.

We therefore propose that Hynix produce to Rambus electronic copies of the e-mails and attachments under the following conditions:

1. The parties select a mutually agreeable, neutral third party to attempt to open these materials. Hynix is willing to split with Rambus the cost of the third party's work.
2. Counsel for Hynix shall have the right and opportunity to review any e-mails or attachments the neutral third party manages to open *before* they are shown to Rambus. The neutral third party must sign an appropriate confidentiality agreement with Rambus and Hynix whereby any e-mails or attachments it manages to open would be disclosed to no one without Hynix's advance, written consent.
3. Rambus agrees in advance that no privilege or protection is waived by the involvement of the neutral third party in attempting to open the e-mail and attachments.

Please let me know if Rambus will accept these conditions. Give me a call should you wish to discuss our proposal.

8. Outside Counsel Only Treatment of Rambus and Hynix Documents. We will separately respond to Truc Nguyen's July 23 and 24 letters on this subject.

9. Request No. 152. We have your letter of July 22. Please respond with a date on which Rambus expects to produce pre-filing communications between Rambus and the FTC.

During our May 14 meeting Hynix had also proposed that Rambus produce communications with the FTC after the complaint was filed to the extent those communications do not solely relate to day-to-day litigation matters. For example, letters between counsel addressing deposition scheduling, discovery meet and confer, or extensions of time would not be produced. On the other hand, a letter between Rambus' counsel and FTC complaint counsel substantively addressing, for example, an expanded FTC investigation, the merits of the parties' respective cases, or settlement should be produced. Please confirm that Rambus will produce all such communications along with the pre-filing communications.

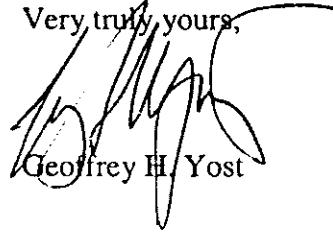
Hynix cannot, nor is it required to, agree in advance that it will not seek more documents responsive to this category than those it currently seeks from Rambus. We can represent that at this time Hynix does not intend to bring a motion to compel on this subject because Rambus appears to be cooperating in producing a narrowed set of documents responsive to the request. Hynix reserves its right to bring such a motion in the event Rambus refuses to produce discoverable material responsive to that request, such as the post-filing communications described above.

Andrea W. Jeffries, Esq.  
August 4, 2003  
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**Thelen Reid & Priest LLP**

We look forward to your prompt response to the foregoing issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Geoffrey H. Yost", with a large, sweeping flourish extending to the right.

Geoffrey H. Yost

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GHY/



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Re: *Hynix Semiconductor, et al. v. Rambus Inc.*  
United States District Court, Northern District  
Case No. C 00-20950 RMW

Dear Geoff:

I write in response to your letter August 4.

1 & 2. In Camera Exhibits and Testimony. You are mistaken in what you claim Rambus represented to Hynix and to the Court(s). In fact, Rambus made it very clear that it had not notified third parties whose exhibits have been admitted at the FTC proceeding *in camera* unless the same exhibits were exhibits to deposition transcripts and/or pleadings generated in the FTC proceeding.<sup>1</sup> As I stated at that hearing:

In terms of dealing with [the *in camera*] materials, we, Rambus, had understood that to be proceeding on a separate track . . . [¶] The notification letters did not include FTC transcripts or FTC exhibits, by that, I mean exhibits admitted at the FTC proceeding, because we understood that to be proceeding on a separate track . . . [¶] [I]o the extent there were certain exhibits admitted at trial that

<sup>1</sup> Because the parties agreed that Rambus would produce only non-public materials, it is only the materials admitted in the FTC proceeding *in camera* that are at issue here. All other exhibits and transcripts are part of the public record.

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did not make their way on to these notification lists because they were not also exhibits to pleadings or exhibits to deposition transcripts, the parties have not been notified about the potential production of those. [¶] That obviously needs to take place.

See June 24, 2003 Tr. at 5-6.

As stated in my July 16 letter, we will endeavor to provide notice to the parties whose *in camera* materials are affected within two weeks after the close of evidence in the FTC trial. Barring intervention by third parties, these documents should thus be produced to Hynix by the end of August.

6. Pre-1996 Privileged Documents. We have been working with Howry, Simon to verify what was produced to Hynix. We simply asked you to assist us in that regard, but you apparently refuse to do so. We will continue to review our production records. To the extent responsive documents have not been produced to Hynix, they do and/or will appear on Rambus's privilege log.

7. Hynix's Production of Encrypted Email. To determine whether we can accept your proposal, we need to understand your basis in the first instance for proposing that Rambus assume any cost to open the emails. It would seem to us that Hynix should have sent these encrypted documents to a third party vendor long ago, had them decrypted and produced to Rambus (rather than simply producing the encrypted versions, which are useless). Having failed to do that, Rambus now seeks to undertake this burden itself. Why should Rambus continue to wait, and then incur out-of-pocket costs for an obligation Hynix has failed to fulfill on its own?

To the extent you can provide legal authority for your cost-splitting proposal, we would also need to understand how long the process would take and how much it would cost before reaching a decision.

Should a procedure like the one you suggest be warranted, Rambus would certainly agree that no privilege or protection is waived by involvement of a neutral third party in attempting to decrypt the documents. Such consent, however, would not constitute any waiver of Rambus's rights to later challenge any assertion of a privilege or protection by Hynix.

Please respond to these questions by early next week so Rambus can determine how to proceed on this issue.

9. Hynix's Request no. 152.

We are presently looking into the burdens associated with your proposed expansion of the agreed upon scope of Request 152 to include

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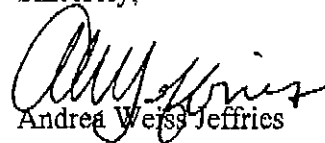
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documents that post date the filing of the Complaint in the FTC proceeding, and will get back to you shortly. However, insofar as communications that may involve settlement, we do not see how the request is reasonably calculated to lead to the discovery of admissible evidence, given that any settlement communications (if they exist) would not be admissible in this case. Accordingly, while we will consider the other aspects of the request, we will not produce any communications relating to settlement.

In addition, we continue to await a response on the deposition dates proposed in my letter of July 22. We expect the witness to be prepared on category 3 of Rambus's March 25, 2003 notice as well as the deficiencies of categories 19 & 20 from our October 18, 2002 notice as outlined in our letter of January 17, 2003. Contrary to the assertions contained in your letter of July 24, 2003, you have previously agreed that you will produce a witness to address these deficiencies as well as new category 3. *E.g.*, letters dated April 24, May 7, May 15, and May 30.

Please be advised that I will be on vacation the week of August 11. Kelly KJaus should be copied on all correspondence during that week.

Sincerely,

  
Andrea Weiss Jeffries