

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )  
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RAMBUS INCORPORATED, )  
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Respondent. )  
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Docket No. 9302

**ORDER DENYING HYNIX'S MOTION TO AMEND PROTECTIVE ORDER**

**I.**

On August 1, 2003, third parties Hynix Semiconductor, Inc., Hynix Semiconductor America Inc., Hynix Semiconductor, U.K. Ltd., and Hynix Semiconductor Deutschland GmbH (collectively "Hynix") filed a motion to amend the Protective Order Governing Discovery Material, entered August 5, 2002 ("Protective Order"). Respondent Rambus, Inc. filed its opposition on August 1, 2003. For the reasons set forth below, Hynix's motion to amend the Protective Order is **DENIED**.

**II.**

Hynix previously served Federal Rule of Civil Procedure 34 document requests in *Hynix Semiconductor, et al. v. Rambus Inc.*, U.S. District Court for the Northern District of California case no. C 00-20950 RMW ("*Hynix v. Rambus*") on Rambus, Inc. seeking, among other things, all nonpublic trial transcripts from this action in the possession, custody or control of Rambus. According to Hynix's motion, the Special Master in *Hynix v. Rambus*, on June 13 2003, ordered production of all pleadings and transcripts except that material the production of which a third party had intervened to prevent. ("June 13 order"). Hynix's motion further states that the Special Master in *Hynix v. Rambus* issued a subsequent order stating that the June 13 order did not apply to *in camera* trial transcripts and exhibits in this matter. Instead, according to Hynix, Rambus and Hynix were ordered by the Special Master to "meet and confer" further to establish an appropriate procedure for producing *in camera* transcripts and exhibits.

Hynix filed the instant motion seeking an amendment to the Protective Order entered in this case. The Protective Order creates a category of documents, "Confidential Discovery Material," the disclosure of which may be made only under limited circumstances, as set forth in the Protective Order. Under Hynix's proposed amendment, *in camera* trial testimony and trial exhibits introduced *in camera* that were not otherwise subject to the Protective Order would be treated as "Confidential Discovery Material." The amendment to the Protective Order that Hynix


seeks would enable Complaint Counsel or Respondent, if served a discovery request in other litigation, to disclose third party *in camera* material, upon notification to the third party.

### III.

The Protective Order which Hynix seeks to amend does not govern *in camera* material. Rather, the protection accorded to testimony taken *in camera* is set forth in the Commission's Rules of Practice, § 3.45, 16 C.F.R. § 3.45, and the *in camera* Orders entered by this Court in advance of the taking of such testimony. Under Rule 3.45(a), only the Administrative Law Judge, the Commission, and reviewing courts may disclose *in camera* material, and, only to the extent necessary for the disposition of the proceeding. 16 C.F.R. § 3.45(a). Rule 3.45(c), *Release of in camera material*, sets forth: "*In camera* material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter." 16 C.F.R. § 3.45(c). Rule 4.11 identifies the procedures for Freedom of Information Act requests.

Hynix's attempt to circumvent the *in camera* rules through an amendment to the Protective Order is improper. Accordingly, Hynix's motion is **DENIED**.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

August 27, 2003