

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No.: 9302

**SAMSUNG, HYNIX, INFINEON, MICRON AND INTEL'S OPPOSITION TO RAMBUS
INC.'S MOTION TO COMPEL SAMSUNG ELECTRONICS AMERICA, INC. TO
PRODUCE CERTAIN DOCUMENTS WITHHELD ON PRIVILEGE GROUNDS**

To the Honorable James P. Timony, Chief Administrative Law Judge:

Samsung Electronics America's Corporation ("Samsung"), Infineon Technologies North America Corp. ("Infineon"), Hynix Semiconductor Inc. ("Hynix"), Intel Corporation ("Intel") and Micron Technology Inc. ("Micron") respectfully submit this Opposition to Rambus Inc.'s ("Rambus") Motion to Compel Samsung Electronics America, Inc. to Produce Certain Documents Withheld on Privilege Grounds ("Motion to Compel"). The documents sought from Samsung by the Rambus subpoena are protected by a joint attorney-client privilege held by the members of the Advance DRAM Technology ("ADT") consortium, including Infineon, Hynix, Micron and Intel. Accordingly, in view of their joint interest in maintaining the privilege of such documents, these companies jointly submit this opposition.

INTRODUCTION

In its motion to compel, Rambus contends that none of the ADT-related documents listed on Samsung's privilege log are the subject of the attorney-client privilege. Rambus' contentions are premised on the belief that none of these documents were created by or

sent to an attorney or contain legal advice provided in furtherance of a joint or common interest of the members of ADT. Rambus is wrong.

Instead, the ADT-related documents for which Samsung and other members of ADT maintain a claim of privilege contain confidential communications relating to legal advice on legal issues of common interest to the members of ADT. This advice was provided either by an outside law firm jointly retained by ADT or by ADT members' in-house legal staffs. As such these communications are protected from discovery under the attorney-client privilege. Attached at Tab A is a revised privilege log for the ADT-related documents demonstrating the privileged nature of these documents. However, should Your Honor believe that additional detail regarding the content of any of these documents is necessary, it is requested that Your Honor inspect such documents *in camera* before ruling on the privilege issues.

I. Procedural Background

In connection with the above-captioned action, Rambus served a subpoena *duces tecum* on Samsung requesting, among other things, documents relating to an industry consortium called ADT. As part of its response to this subpoena, on December 4, 2002, Samsung provided Rambus' counsel with a log of documents withheld from production on privilege and attorney work product grounds. Among the documents listed on the privilege log, 112 documents relate to Samsung's participation in ADT. For this group of documents, Samsung withheld these documents from production on the basis of the joint defense privilege.

The following day, counsel for Rambus and Samsung met to confer about the withheld documents relating to ADT. *See* Motion to Compel, fn 2. At that time, Rambus objected to Samsung's claim of a joint-defense privilege for any of these documents and indicated that it intended to file a motion to compel production of these documents. *See id.* Consistent with its duty as a member of the ADT consortium, Samsung informed Rambus that it

could not unilaterally waive any privileges applicable to these documents and further stated its intention to notify the other interested members of ADT regarding Rambus' anticipated motion to compel.

Samsung provided notice to the consortium members of Rambus' intention to file a motion to compel later that day. However, before the other members of ADT had an opportunity to review the documents in question and provide their input in connection with Samsung's claims of joint privilege, on the following Monday, December 9, 2002, Rambus filed its Motion to Compel. In order for the other ADT members to have an opportunity to confer about Rambus' motion, the parties agreed to an extension of time to respond to the motion until December 23, 2002. Further, the parties agreed that any documents listed on the privilege log to which the ADT members agreed to produce would be produced on December 24, 2002.¹

On December 19, 2002, Infineon's counsel contacted Rambus' counsel to discuss resolving this dispute without further motion practice or involvement by Your Honor. See Declaration of Clifford E. Wilkins Jr. ("Wilkins Decl.") at ¶ 5 (attached hereto at Tab B). Infineon indicated that the deficiencies in the original privilege log identified in Rambus' motion to compel would be remedied by a revised privilege log, which provided more detail regarding the basis for the joint privilege claims for the remaining ADT documents. *Id.*, at ¶ 5. In order to focus, and hopefully eliminate the issues in dispute, Infineon requested that Rambus agree to service of a revised privilege log in lieu of Samsung and other ADT members filing an opposition to Rambus' motion. *Id.* at ¶ 5. Rambus' counsel rejected this proposal and would not consider whether a revised privilege log would settle the issues in dispute. *Id.* at ¶ 5.

¹ Pursuant to this agreement, on December 24, 2002, Samsung will be producing 69 of the ADT-related documents listed on its original privilege log, including 16 documents that have been redacted to protect attorney-client privileged information.

II. The Advanced DRAM Consortium (“ADT”)

All of the documents at issue relate to ADT, a consortium formed in December 1999 by six companies from the DRAM industry: Infineon, NEC (now Elpida), Samsung, Intel, Hyundai (now Hynix), and Micron (collectively “the member companies”). The member companies formed ADT as a vehicle for the cooperative development of future DRAM technologies. To this end, the member companies drafted and signed an agreement governing their relationship through ADT. See Wilkins Decl., Exhibit A.

As an industry consortium, the various administrative, technical, and legal functions of ADT were carried out through the collaborative efforts of the certain executives, engineers and lawyers of the member companies. With regard to legal issues of common interest, the member companies either hired an independent outside counsel or addressed such issues through the coordinated efforts of the members’ in-house legal staffs. For example, the law firm of Sughrue Mion PLLC (“the Sughrue Firm”) was jointly retained to represent the member companies in connection with common legal interests relating to various intellectual property issues. See Declaration of Robert M. Masters (“Masters Decl.”), ¶¶ 2-5 (attached hereto at Tab C). As part of this representation, the member companies agreed to keep all communications and information exchanged among the members in furtherance of their common interests confidential, including all advice of counsel provided by the Sughrue firm. *Id.* at ¶ 10.

Additionally, the member companies regularly analyzed and resolved legal issues of common interest to the ADT members through the cooperative efforts of the members’ internal legal departments. See Declaration of David A. Ashmore (“Ashmore Decl.”), at ¶¶ 5-7 (attached hereto at Tab D). For example, on a number of occasions, Mr. David Ashmore, an attorney with Micron’s in-house legal department provided advice regarding legal issues of common interest to the representatives of the other member companies, such as issues relating to

the participation by third parties in ADT, as well as draft contracts between ADT and third parties and draft contracts among the ADT members regarding the structure and operation of ADT. *Id.* at ¶ 6. Mr. Ashmore provided this advice with the understanding that it was confidential, and that it was intended to further the common legal interests of ADT and its members. *Id.* at ¶ 6. Further, pursuant to confidentiality provisions in the original ADT agreement, the ADT members were obligated to keep such information related to the work of ADT confidential. See Wilkins Decl., Exhibit A, at p 8-9.

ARGUMENT

I. The Joint Representation Privilege Applies to the Withheld Documents

The attorney-client privilege is one of the oldest and most important privileges recognized in the law. See *U.S. v. Schwimmer*, 892 F.2d 237, 243 (2nd Cir. 1992). The privilege is designed to encourage full and frank communications between attorneys and their clients from the consequences or the apprehension of disclosure. *Id.* It is also well recognized that the need to protect the free flow of information from a client to attorney logically exists when multiple parties share a common interest about a legal matter. *Id.* Accordingly, there are several well-recognized exceptions to the general rule that disclosure of other-wise privileged communications to a third party waives any privilege in such communications when such disclosure relates to coordinated efforts between multiple parties regarding a common legal interest. Two of these exceptions are directly applicable in the present situation.

First, a joint representation privilege will apply when a lawyer is retained by multiple clients for representation regarding common legal interests. See e.g., *FDIC v. Ogden Corp.*, 202 F.3d 454, 461 (1st Cir. 2000). In such circumstances, disclosure of privileged communications to more than one client regarding such interests does not waive the privilege. *Id.* (citing 8 John Henry Wigmore, *Wigmore on Evidence* § 2312 at 603-09 (McNaughten rev.

ed. 1961)). Second, such a joint privilege also attaches to communications between lawyers and clients of different parties that are in furtherance of common legal interests, which is commonly known as the “common interest” doctrine. *U.S. v. United Technologies Corp.*, 979 F. Supp. 108, 111 (D. Conn. 1997); *U.S. v. Schwimmer*, 892 F.2d at 243; *see also*, Rambus Motion to Compel at 3. As with all assertions of attorney-client privilege, the underlying communication sought to be protected must itself fall within the attorney-client privilege in order to qualify under these two exceptions. *United Technologies*, 979 F. Supp. at 111; *Schwimmer*, 892 F.2d at 244.

A. Documents Containing Communications Relating To Advice By The Sughrue Firm Are Privileged.

Entries P-3, P-9, P-59, P-84, P-100, P-103, P-108 and P-109 are documents that reflect confidential communications between the member companies regarding the Sughrue law firm’s joint representation of ADT. *See* Exhibit A. These communications relate to legal advice regarding ADT-related intellectual property issues for the common benefit of the members of ADT provided by Mr. Robert Masters, the lead lawyer from the Sughrue firm regarding its joint representation of ADT, as well as by other lawyers at Sughrue. *See* Masters Decl., ¶ 5.

The advice by the Sughrue firm was provided with the understanding that it was privileged and confidential and that it was pursuant to Sughrue’s joint representation of ADT. *See* Masters Decl., ¶ 7. Additionally, the member companies of ADT agreed to keep all communications and information exchanged among the members in furtherance of their common interest, including all advice of counsel, confidential within the membership of ADT. *See* Masters Decl., ¶ 10; Wilkins Decl., Exhibit A, at p. 8-9.

In particular, entries P-3, P-9, P-59, P-84, P-100, P-103 and P-109 all relate to documents containing the minutes of various ADT meetings at which legal advice regarding intellectual property issues of common interest provided by the Sughrue firm was discussed. *See*

Exhibit A.² Further, entries nos. 106 and 108 relate to drafts of documents that were circulated to various member companies' ADT representatives, as well as Mr. Masters for the purpose of obtaining legal advice with regard to issues of common legal interest in the drafts. *See id.*

Because these documents reflect communications relating to requests for or legal advice provided by the Sughrue firm pursuant to the joint representation of the ADT members on issues of common legal interest, they fall within the bounds of the joint representation privilege and are protected from disclosure under the attorney-client privilege. *See Ogden Corp.*, 202 F.3d at 461.

B. The Common Interest Doctrine Protects The Documents Reflecting Communications Between Member Companies and Their Various In-house Counsel Regarding ADT-Related Legal Issues.

The "common interest" doctrine protects the privileged status of attorney-client communications disclosed by one party to another when the parties share a common legal interest. *See United Technologies*, 979 F. Supp. at 111. This interest need not relate to an ongoing or anticipated litigation, but instead may be any legal interest in common. *Id.*; *Schwimmer*, 892 F.2d at 243-44. Thus, even in the absence of an explicit joint retention agreement, communications between one member company and the internal counsel of another member of ADT are privileged so long as (1) the companies share a common legal interest in the communication and (2) the communication reflects the shared legal interest. *United Technologies*, 979 F. Supp. at 111; *Schwimmer*, 892 F.2d at 243.

² These documents are being produced to Rambus in redacted form on December 24, 2002, wherein the portions of the documents relating to either legal advice provided by Sughrue to the ADT members or reflecting requests for legal advice by Sughrue on issues of common legal interest to the ADT have been redacted.

The district court decision in *United States v. United Technologies Corporation* is particularly instructive on the application of the common interest doctrine to the present situation. In *United Technologies*, five companies in the aerospace industry formed a consortium to develop the next generation of jet engine technology. 979 F. Supp. at 110. The companies exchanged legal advice from in-house and outside counsel, and communicated regularly on various legal issues relating to the consortium, including the corporate structure of the consortium and resulting tax liabilities. *Id.* The government contested the companies' privilege claims, arguing, much as Rambus does here, that the companies had only shared commercial interests and therefore the disclosure of legal advice to other members of the consortium vitiated the attorney-client privilege.³ *Id.* at 112. However, the *United Technologies* court recognized that the withheld communications were protected communications on issues of the corporate and tax structure of the consortium that were of common legal interest to the companies as participants in the consortium, and therefore the shared legal advice remained protected under the attorney-client privilege pursuant to the "common interest" doctrine. *Id.* This same rationale applies in the present case.

Here, as in *United Technologies*, the member companies formed the ADT consortium to develop new technology. See Wilkins Decl., Exhibit A, at p. 1. Since ADT

³ Rambus claims that the ADT members only have a common commercial interest and therefore no privilege attaches to their communications, relying on *Bank Brussels Lambert v. Credit Lyonnais S.A.*, 160 F.R.D. 437 (S.D.N.Y. 1995). See Motion to Compel at 4. But in *Bank Brussels*, the withheld documents related to the viability of a transaction shared with others to facilitate a joint business decision. See *id.* at 447-48. However, unlike *Bank Brussels*, in the present situation, the challenged documents are not commercial in nature or directed towards a joint business strategy. Instead, as in the *United Technologies* case, the members of ADT seek to maintain the privilege for documents which relate to their common legal interests in connection with their participation in ADT.

depends entirely on the participation of its members, the member companies share a common legal interest in a number of issues including ADT's structure, contracts with third parties, contracts regarding the structure and operation of ADT, and intellectual property rights. As part of the operations of ADT, it was understood that members' in-house legal departments, including David Ashmore of Micron's in-house legal staff, would provide analysis and advice regarding legal issues of common interest to the members companies. *See Ashmore Decl.*, ¶¶ 5-7. It was further understood that such advice was provided as part of the collaborative efforts of the group and that it was to remain confidential to the members companies' employees whose responsibilities included participation in ADT. *See id.*, at ¶¶ 6-7; *Wilkins Decl.*, Exhibit A, at pp. 8-9.

1. Documents Reflecting Legal Advice From ADT Members' In-House Counsel Regarding Draft Contracts Are Privileged

Among the legal interests in which the ADT members shared a common interest were confidential communications in connection with several draft contracts. *See Ashmore Decl.*, ¶¶ 5-7. These draft contracts fall into two categories: 1) contracts between the ADT member companies and third parties; and 2) contracts among the ADT member companies.

Entries P-50, P-53, P-55, P-57, P-60, P-61, P-68, P-69, P-72, P-81, P-93, P-98, P-106, P-108, and P-110 all contain confidential communications related to draft contracts between the ADT member companies and third parties that were circulated among the member companies for comment and approval. Each of the member companies had a common legal interest regarding the rights of the ADT consortium addressed in these draft contracts. In particular, entries P-50, P-53, P-55, P-57, P-60, P-61, P-68, P-106, and P-110 relate to draft Non-Disclosure Agreements between ADT and third parties, and entries P-69, P-72, P-81, P-93, P-98, and P-108 relate to a draft agreement between the ADT members and potential "Co-developers" that would

also participate in the development efforts of ADT. In the discussions of these draft contracts that are reflected in these documents, the members sought and shared advice of their respective in-house counsel, including the advice of Micron's in-house counsel Mr. Ashmore on several occasions, in connection with issues of common interest to the members of ADT. See Ashmore Decl., ¶¶ 5-7.

Additionally, entries P-6-8, 10-39, 49-51, 73, 84, and 90 contain communications relating to drafts of contracts among the ADT member companies, which were also distributed for comment and approval. Specifically, entries P-6-8, 10-36, 38, 49-51, and 84 relate to drafts of a contract for a potential successor organization to the original ADT consortium to continue the development of DRAM technology. Entries P-37 and P-39 relate to a draft agreement regarding the termination of the original contract that formed ADT. Again, as part of its discussions reflected in these documents regarding the termination of the existing ADT group, as well as the formation of a successor organization, the ADT members shared and requested legal advice from various in-house counsel, including Mr. Ashmore, regarding provisions in these drafts of common legal interest to the ADT members. See Ashmore Decl., ¶¶ 5-7.

Accordingly, for all of these documents reflecting communications regarding draft contracts, the member companies had a shared legal interest in the communications and these communications reflect that shared interest. Thus, these documents are privileged under the "common interest" doctrine. See *United Technologies*, 979 F. Supp. at 111.

2. Documents Reflecting Legal Advice Provided By Or Requested Of In-House Counsel At ADT Meetings Are Privileged

The remaining documents (P-93 and P-98) for which a common interest privilege applies relate to communications during ADT meetings that reflect legal advice provided by Micron's in-house legal counsel, Mr. Ashmore. This advice related to legal issues regarding

inviting participation by third parties in ADT, which was of common legal interests to all the ADT member companies. These communications were made with the understanding that they would remain confidential to the member companies of ADT. See Ashmore Decl., ¶¶ 5-7. As such, under the common interest doctrine, they are also protected by the attorney-client privilege. *United Technologies*, 979 F. Supp. at 111.

C. Rambus' Relevance Arguments Are Inapplicable To The ADT-Related Privileged Documents.

Rambus' assertions that documents relating to ADT are "highly relevant" to this proceeding have no legal impact on whether the withheld documents are protected from discovery. Although in the context of attorney work product, a party may obtain access to otherwise protected materials based on a substantial need argument, no such exception applies in the context of the attorney-client privilege as a matter of law. *Siddall v. Allstate Ins. Co.*, No. 99-17428, 2001 WL 868376, *1 (9th Cir. Apr. 12, 2001) (limiting a plaintiff's substantial need arguments to attorney work-product documents); *Admiral Ins. Co. v. United States District Court for the District of Arizona*, 881 F.2d 1486, 1494 (9th Cir. 1989) (refusing to pierce the attorney-client privilege based on relevance and substantial need arguments). Rambus does not seek protected work product, but instead seeks documents covered by the attorney-client privilege. Accordingly, the degree of relevance of the withheld documents to the present action is immaterial to whether they must be produced.

Further, the basis of relevance alleged by Rambus is that it contends discovery of ADT's technical efforts to design and develop future DRAM technology is necessary in order to rebut the allegations in the Complaint that the industry is "locked-in" to technologies over which Rambus asserts patent rights. However, the documents being produced on December 24, 2002 provides Rambus with just such discovery. These documents relate to the technical discussions

of ADT, which is the very information Rambus seeks through its Motion to Compel. The remaining challenged documents do not relate to such technical discussions, but instead are directed to legal issues of common interest to the ADT member companies.

CONCLUSION

For the reasons set forth above, all of the documents listed on the revised privilege log are protected from discovery by the attorney-client privilege by virtue of the joint representation of the Sughrue firm or under the common interest doctrine. Accordingly, it is respectfully requested that Your Honor deny Rambus' Motion to Compel in its entirety.

Date: December 23, 2002



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing were caused to be served on December 23, 2002 on the following parties:

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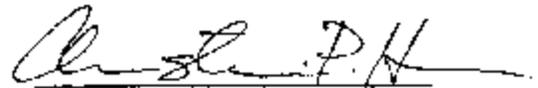
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The document contained in the confidential version has been withheld from the public version pursuant to the Protective Order.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
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a corporation.

Docket No.: 9302

DECLARATION OF CLIFFORD E. WILKINS, JR.

I, Clifford E. Wilkins, Jr. declare as follows:

1. I am member of the State Bar of New York and a partner with the law firm of Kirkland & Ellis and represent non-party Infineon Technologies North America Corporation ("Infineon"). I have personal knowledge of the facts set forth in this declaration.

2. On December 5, 2002, I was informed by outside counsel for Samsung that in response to a subpoena by Rambus, Inc. ("Rambus"), Samsung had provided a log of privileged documents that included a number of documents related to Samsung's participation in a joint development group call the Advanced DRAM Technologies ("ADT") consortium that Samsung asserted were protected under a joint defense privilege. I was also informed that Rambus had indicated to Samsung that it intended to file a motion to compel the ADT-related documents withheld by Samsung.

3. On December 9, 2002 I was informed by outside counsel for Samsung that Rambus had filed a motion to compel the withheld Samsung ADT-related documents.

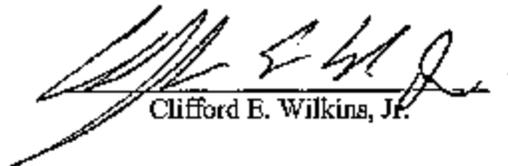
4. I have been informed that Infineon was also a member of the ADT consortium. Attached as Exhibit A is a true and correct copy of the High-Speed DRAM Interface Developer's

Agreement executed on behalf of Infineon on December 21, 1999. Upon information and belief, this agreement was executed by representatives of Hyundai Electronics Industries Co., Ltd (now "Hynix"), Micron Technology, Inc. ("Micron"), NEC Corporation (now "Elpida"), Samsung Electronics ("Samsung") and the Intel Corporation ("Intel"), and formed the basis for the ADT consortium.

5. On December 19, 2002, I contacted Rambus' outside counsel, Steven M. Perry to discuss resolving the dispute over Samsung's ADT-related documents without further motion practice or involvement of the Court. I indicated to Mr. Perry that Infineon, Samsung, Micron, Intel and Hynix had agreed to produce a number of the ADT-related documents withheld by Samsung under a Joint Defense Privilege. I also indicated to Mr. Perry that I believed that any deficiencies in Samsung's original privilege with regard to the ADT-related documents identified in Rambus' Motion to Compel would be remedied by a revised privilege log which provided more detail regarding the basis for the joint privilege claims for the remaining ADT-related documents. I requested that Rambus agree to service of a revised privilege log in lieu of Samsung and other ADT members filing an opposition to Rambus' motion. Mr. Perry rejected this proposal.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and, if called as a witness, I could and would testify hereto.

Executed on December 23, 2002 in New York City, NY


Clifford E. Wilkins, Jr.

The document contained in the confidential version has been withheld from the public version pursuant to the Protective Order in this case.

UNITED STATES OF AMERICA
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DECLARATION OF ROBERT M. MASTERS

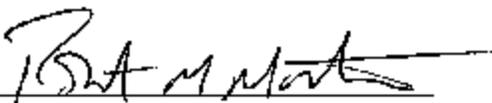
Robert M. Masters declares as follows:

1. I am an attorney with the law firm of Sughrue Mion, PLLC ("Sughrue").
2. Sughrue was retained by a group of companies called Advanced DRAM Technology ("ADT"), as intellectual property counsel, no later than March of 2000.
3. ADT included the following manufacturers: Micron, Samsung, Intel, Infineon, NEC (now Elpida), and Hyundai (now Hynix) (individually referred to herein as "a member company" and collectively referred to herein as "the Parties").
4. The Parties share in the costs, expenses and fees incurred by joint counsel.
5. Sughrue was jointly retained to represent each of the ADT member companies in connection with providing advice on intellectual property matters relating to the work of ADT that was of common legal interests to the Parties.
6. I was ADT's lead patent counsel.
7. Pursuant to Sughrue's joint representation of the member companies, I, as well as other attorneys at Sughrue, provided legal advice to the Parties in regard to ADT related matters. This advice was provided with the understanding that it was privileged and confidential.

8. In addition, the Parties have provided information to Sughrue for the purpose of obtaining legal advice from the attorneys at Sughrue.

9. The communications between attorneys of Sughrue and the Parties have taken place during meetings between counsel and representatives of a member company, as well as in group settings with representatives of the Parties present.

10. The Parties agreed to keep all communications and information exchanged among the members in furtherance of the common interest confidential, including all advice of counsel. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and, if called as a witness, I could and would testify hereto.


Robert M. Masters

Executed on 12/23/02

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DECLARATION OF DAVID A. ASHMORE

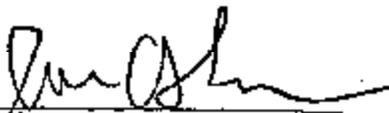
David A. Ashmore declares as follows:

1. I am currently Associate General Counsel, Litigation and Antitrust in the legal department of Micron Technology, Inc.
2. I have been in-house counsel for Micron since May 1999.
3. During my employment with Micron, I worked on legal issues relating to Micron's membership in a joint development group called Advanced DRAM Technology ("ADT").
4. The ADT membership consisted of the following companies: Micron, Infineon, Intel, Samsung, NEC (now Elpida), and Hyundai (now Hynix) (collectively "the Companies").
5. The work I performed relating to ADT included analyzing and providing advice regarding legal issues of common interest to the Companies as members of ADT. The issues for which I provided advice included contractual issues related to draft contracts between ADT and third parties, draft contracts among the ADT members, and amendments of existing ADT contracts.

6. On several occasions, I directly communicated legal advice regarding ADT to representatives of the other Companies with the understanding that such communications were pursuant to the common legal interests of the Companies, and that such communications would be maintained in confidence and disseminated only to individuals within the other Companies that were involved in the work of ADT. In turn, representatives of the other Companies shared legal analysis and advice on issues of common interest relating to ADT with representatives of Micron, including me, who were involved in the work of ADT. I, and to the best of my knowledge, the other representatives of Micron maintained this advice in confidence.

7. I also provided advice to Micron representatives with ADT responsibilities relating to certain issues of common interest to the ADT members with the understanding that it would be transmitted to representatives of the other Companies who also possessed responsibilities relating to ADT. It was my understanding that these representatives agreed to maintain the communications in confidence and limit dissemination of these communications to individuals involved in the work of ADT.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and, if called as a witness, I could and would testify hereto.



David A. Ashmore

Executed on 12/23/2002