

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

**Commissioners: Deborah Platt Majoras, Chairman  
Pamela Jones Harbour  
Jon Leibowitz  
William E. Kovacic  
J. Thomas Rosch**

**In the Matter of**

**RAMBUS INCORPORATED,**

**a corporation.**

**Docket No. 9302**

**ORDER GRANTING IN PART AND DENYING IN PART  
RESPONDENT'S MOTION FOR STAY OF FINAL ORDER PENDING APPEAL**

The Commission issued its Opinion and Final Order in this matter on February 2, 2007. The Opinion and Final Order were served on Rambus and its counsel on February 9, 2007, and the Final Order will therefore become effective on April 12, 2007. 16 C.F.R. § 3.56(a); *accord* 15 U.S.C. § 45(g)(1),(2). Pursuant to Rule 3.56 of the Commission's Rules of Practice, 16 C.F.R. § 3.56, Respondent Rambus Inc. moved for a stay of the Final Order pending judicial review on February 16, 2007. The Commission has determined to grant Respondent's motion in part and to deny it in part.

Accordingly:

**IT IS ORDERED THAT** enforcement of, and Respondent's obligation to comply with, Paragraphs IV, V.A., VI, and VII of the Final Order in this matter be, and they hereby are, stayed in part, upon the filing of a timely petition for review of the Final Order in an appropriate court of appeals and until the court of appeals issues its mandate, in accordance with the following conditions:

1. Respondent will be permitted to acquire, and to seek to acquire, rights to (but not possession of) fees, royalties, payments, judgments, and other consideration in excess of that permitted by Paragraphs IV, V.A., VI, and VII of the Final Order ("Excess Consideration"), **PROVIDED THAT:**
  - a. all Excess Consideration is (1) collected and held pursuant to an escrow agreement by an escrow agent that has received the approval of the Commission, which approval shall not be unduly delayed, and only in a manner that has received the approval of the Commission, or (2) payable pursuant to a contingent contractual obligation by the party paying such Excess Consideration ("Payer");





**OPINION OF THE COMMISSION ON RESPONDENT'S  
MOTION FOR STAY OF FINAL ORDER PENDING APPEAL**

On February 16, 2007, respondent Rambus Inc. applied for a stay pending appeal of the Commission's Final Order of February 2, 2007. Although Rambus seeks a stay of the Commission's Order in its entirety (Stay Motion at 1), it acknowledges that the harms it alleges in support of its motion could be ameliorated by a partial stay of the Order's provisions regarding Rambus's efforts to enforce its patents and collect royalties, while leaving the provisions that concern Rambus's participation in standard setting organizations immediately effective. Rambus Stay Motion at 15-16; Rambus Reply at 6 n.2. Complaint Counsel do not object to a partial stay, provided that any royalties in excess of the maximum allowable royalty rates ("MARR") are placed in escrow during the pendency of Rambus's appeal. Complaint Counsel Opposition at 5. Rambus, having initially proposed such an arrangement (Stay Motion at 15-16), nonetheless contends that any provision that limits its access to royalty payments in excess of the MARR during the pendency of an appeal could hinder the company's research and development efforts. Rambus further objects to the specific form of escrow that Complaint Counsel propose (Rambus Reply at 5-6), and proposes an alternative form of order to establish an escrow for any royalties that are in excess of the MARR. Rambus Reply at 7, Exhs. A & B.

For the reasons stated below, the Commission conditionally stays Paragraphs IV, V.A., VI, and VII of its Final Order, effective upon the filing of a timely petition for review in an appropriate court of appeals and until the court of appeals issues its mandate. The Commission denies Rambus's application in all other respects.<sup>1</sup>

Applicable Standard

Section 5(g) of the Federal Trade Commission Act ("FTC Act") provides that FTC adjudicative orders, other than divestiture orders, shall take effect automatically "upon the sixtieth day after" the date of service, unless "stayed, in whole or in part and subject to such conditions as may be appropriate, by \* \* \* the Commission" or "an appropriate court of appeals." 15 U.S.C. § 45(g)(2). A party seeking a stay must first apply for such relief to the Commission. Respondent has satisfied this requirement in its February 2 motion.

Pursuant to Rule 3.56(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 3.56(c), an application for a stay must address the following four factors: (1) the likelihood of

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<sup>1</sup> Rambus does not articulate any reasons for staying provisions of the Order that prohibit Rambus, while participating in a standard-setting organization, from, *inter alia*, making any misrepresentations concerning its patents and patent applications and from failing to make any required disclosures regarding its patents and patent applications. Final Order ¶ II. Similarly, Rambus does not contend that a stay is warranted as to provisions of the Order that are designed to facilitate compliance. For these reasons alone, Rambus's request for a broader stay must be denied. *See* 16 C.F.R. § 3.56(c) (requiring stay applicant to "state the reasons a stay is warranted and the facts relied upon" and supply "supporting affidavits or other sworn statements").







