

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

**In the Matter of**

**RAMBUS INC.,**

**a corporation.**

**Docket No. 9302**

**DECLARATION OF STEVEN M. PERRY IN SUPPORT  
OF RAMBUS INC.'S MOTION TO COMPEL  
SAMSUNG ELECTRONICS AMERICA, INC. TO PRODUCE  
CERTAIN DOCUMENTS WITHHELD ON PRIVILEGE GROUNDS**

I, Steven M. Perry, declare:

1. I am a member of the State Bar of California and a member of the law firm of Munger, Tolles & Olson LLP, co-counsel for respondent Rambus, Inc. ("Rambus") in this matter. I submit this declaration in support of Rambus's Motion To Compel Samsung Electronics America, Inc. To Produce Certain Documents Withheld on Privilege Grounds.

I have personal knowledge of the facts set forth in this declaration.

2. On December 4, 2002, in response to a subpoena duces tecum served by Rambus, counsel for Samsung Electronics America, Inc. ("Samsung") provided counsel for Rambus with a privilege log. A true and accurate copy of the privilege log is attached as exhibit A to the "Confidential" version of this declaration.<sup>1</sup>

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<sup>1</sup> Samsung has designated the privilege log as "restricted confidential" pursuant to the protective order issued in this matter. A true copy of the protective order is attached as exhibit B to this declaration. Exhibit C is a letter containing the name, address and telephone number of a Samsung representative who should be notified of the Commission's intent to disclose in a final decision any of the designated confidential information.

3. As indicated on the privilege log, Samsung claims a “joint defense” privilege for 112 documents (P3 to P114). These documents were apparently prepared over a seven month period from August 14, 2000 to March 5, 2001. Of the 112 claims of joint defense privilege, 110 of the claims are directed to documents containing “Confidential communications re: alternative technology.” The remaining 2 privilege claims cover documents containing “agreement[s] on alternative technology.” (P14, P15).

4. Each privilege log entry lists the author and recipients of the respective document. Although various entries identify individuals as holding a Ph.D., e.g., P36, not a single listed individual among the entire set of 112 entries is identified as an attorney.

5. On December 5, 2002, I spoke with Samsung’s counsel, David Healey, about the privilege log. I stated that we did not understand Samsung’s assertions of privilege regarding the “joint defense” documents, particularly since it did not appear that any attorneys had authored or received any of the documents.

6. Samsung’s counsel informed me that the documents in question were prepared in connection with the work of ADT, a multi-party industry group. Counsel also said that Samsung was unlikely to litigate the “joint defense” privilege issue, and that he would inform the other ADT participants of Rambus’s intent to file a motion challenging the privilege claims. Samsung’s counsel sent me a letter on December 5, 2002 confirming his intention to notify other parties of Rambus’s plans. *See* exhibit C.

7. According to a January 17, 2000 press release, ADT consists of a venture by Hyundai MicroElectronics (later Hynix), Infineon Technologies, Micron Technology, Inc., NEC Corporation (later Elpida), Samsung and Intel to “cooperatively develop a high-performance advanced DRAM technology targeted for potential applications in 2003 and beyond. *See* NEC January 17, 2000 press release at <http://www.nec.co.jp/press/en/0001/1701.html>, visited on December 8, 2002. A true copy of this press release is attached to this declaration as exhibit D.

8. In connection with this motion, and at my direction, an associate at Munger, Tolles & Olson conducted a search both on the Internet and in a document database in an effort to identify the individuals listed in the 112 entries for which Samsung claims a joint defense privilege. No attorneys were identified as a result of this search.

9. The search did reveal that most of the individuals listed are, or were in the relevant time period, employed by Samsung, Infineon, Intel, NEC, Elpida, IBM, Micron or Hynix. In addition, at least 10 of the named individuals appear on one or both of the parties' witness lists in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December \_\_\_\_, 2002 at Los Angeles, California.

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Steven M. Perry

**PROOF OF SERVICE BY FACSIMILE/FEDERAL EXPRESS**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071.

On December 9, 2002, I served the foregoing document described as: **DECLARATION OF STEVEN M. PERRY IN SUPPORT OF RAMBUS INC.'S MOTION TO COMPEL SAMSUNG ELECTRONICS AMERICA, INC. TO PRODUCE CERTAIN DOCUMENTS WITHHELD ON PRIVILEGE GROUNDS** on the designated parties in this action by having a true copy thereof transmitted by facsimile machine to the number listed below. I caused the facsimile machine to print a record of the transmission, a copy of which is attached to this declaration.

On December 9, 2002, I also served a copy of the aforementioned document on the designated parties in this action by Federal Express overnight courier service. I am "readily familiar" with the firm's practice of collection and processing correspondence for delivery to an employee of Federal Express. Under that practice it would be delivered to an employee of Federal Express on that same day at Los Angeles, California with charges to be billed to Munger, Tolles & Olson's account for delivery to the office of the addressee on December 10, 2002 in the ordinary course of business.

**By Facsimile and FedEx**

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**By FedEx**

Hon. James P. Timony  
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**By Facsimile and FedEx**

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Houston, Texas 77002-2784  
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Executed on December 9, 2002, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Eunice Ikemoto

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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**CERTIFICATION**

I, Steven M. Perry, hereby certify that the electronic copy of Declaration of Steven M. Perry In Support Of Rambus Inc.'s Motion To Compel Samsung Electronics America, Inc. To Produce Certain Documents Withheld on Privilege Grounds accompanying this certification is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on December 10, 2002 by other means.

Dated: December 9, 2002

/s/  
Steven M. Perry