

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
RAMBUS INC.,)	Docket No. 9302
)	
a corporation)	
)	

NON-PARTY MICRON TECHNOLOGY INC.’S
MOTION FOR IN CAMERA TREATMENT

Micron Technology, Inc. (“Micron”), which is not a party to the above-captioned action, respectfully requests that this court grant in camera treatment pursuant to 16 CFR 3.45(b) to the documents set forth in Exhibit A produced in this proceeding by Micron in response to subpoenas issued by the Federal Trade Commission and subpoenas issued at the request of Respondent Rambus, Inc. (“Rambus”)¹

As the Court is aware, on April 1, 2003, Micron received notification from Complaint Counsel and counsel for Rambus of their intention to use at trial over 500 documents, many or all of which had been specifically identified as confidential or highly confidential, produced by Micron. Micron sought in camera treatment for a number of those documents, and the Court has granted such treatment for the vast majority of

¹ The documents have been grouped according to the types of competitively sensitive information discussed in this motion. In some cases, documents contain competitively sensitive information relating to multiple categories. In such instances, Micron has attempted to place the document in the most relevant category.

Micron documents for which it was requested. See Additional Order on Non-Party Motions For In Camera Treatment of Documents Listed on Parties' Exhibit Lists, (April 29, 2003); Order Granting in Part, Non-Party Micron Technology Inc.'s Motion for Protective Order (June 11, 2003).

On June 21, 2003, counsel for Rambus informed counsel for Micron via email that Rambus had previously failed to notify Micron of some 64 additional Micron documents appearing on Rambus's trial exhibit list for which Micron might wish to seek in camera treatment. Rambus's email is attached as Exhibit B.

Micron will not seek *in camera* treatment for 32 of the 64 documents Rambus identified in the attachment to its email. Micron hereby requests in camera treatment for the remaining 32 documents on Rambus's list. See Exhibit A.

In camera treatment is warranted for these documents because of the competitive injury that Micron, as a third party, would suffer from their disclosure. This motion is supported by the declaration of Robert Donnelly, the Vice President of Micron's Computing and Consumer Group. ("Donnelly Declaration"), attached as Exhibit C.

ARGUMENT

The rules of this court allow it to place material in camera and thus shield it from the public's access, if disclosure of the material would "likely result in a clearly defined, 'serious injury' to the person requesting in camera treatment." 16 CFR 3.45(b). As to the documents listed in Exhibit A² the requirements of the rule are met because:

² A complete set of the documents for which in camera treatment is requested is being provided along with the copy of the motion served on the Office of Administrative Law Judges.

(1) Micron will suffer serious competitive harm if the documents at issue are disclosed to the public; (2) the information contained in these documents is secret; and (3) the risk of harm is not outweighed by the importance of the information to the matter to be decided by the Commission.

A. Public Disclosure of Confidential and Proprietary Information of the ADT Group and JEDEC Would Cause Serious Competitive Injury to Micron

Several of the documents listed as potential trial exhibits contain confidential information relating to the proceedings and technical discussions of the ADT group.³ For example, document number MFTC229045-65 is a presentation regarding various features proposed for inclusion in future DRAM products. Other documents include meeting minutes and reports of the ADT Board of Directors. See, e.g., MFTC222388-92; MFTC237994-95; MFTC239117-19. As set forth in the Donnelly Declaration, disclosure of these documents threatens to cause Micron serious competitive injury. ADT could potentially lose trade secret protection for its technology, and competitors might gain the ability to copy or exploit the ADT technology. For this reason, the ADT members have agreed to treat ADT proprietary information as confidential and limit its distribution to a need to know basis.

One document, numbered MFTC044034-35, contains a recent and detailed technical discussion relating to DDR2 DRAM memory involving participants in JEDEC. Such discussions are confidential and competitively sensitive. As the allegations against Rambus in this matter demonstrate, companies that develop competing non-JEDEC

³ ADT is a research collaboration of numerous companies, including Micron, Intel, Elpida, Infineon, Hynix, and Samsung, engaged in the development of future advanced DRAM technology.

memory technology could use such information to the competitive detriment of Micron and other JEDEC members.

Micron believes that the duration of in camera treatment for ADT and JEDEC confidential and proprietary information should be 5 years. Micron respectfully reserves the right to request an extension of the in camera treatment period should circumstances warrant.

B. Public Disclosure of Confidential Documents that Discuss Micron's Production and Pricing Will Cause Serious Competitive Injury.

A number of the documents listed as potential trial exhibits contain internal, confidential information relating to the important dimensions of competition. These include sensitive recent documents relating to prices and price plans, production, and product allocation.

As an example of these confidential pricing -related documents, one email from late 2001, discusses Micron's "pricing plan" for various customers in Asia, including a statement that one customer will no longer be afforded "price parity" with other customers. See MU00026836-37. Other documents reflect Micron internal discussions and discussions with Micron sales representatives regarding price setting. See, e.g., MU00181549; MU00251794; MU00310329. In addition, several documents reference limited supplies of particular Micron parts and reflect decisions about which customers are to receive parts. See MU00331012; MU00057151; MU00026836-37; MU00181549.

As set forth in the Donnelly Declaration, public disclosure of this information would cause Micron serious competitive injury. With respect to pricing, the antitrust laws have long recognized the serious competitive injury that may result from public disclosure of confidential pricing information. Disclosure of Micron's confidential

pricing information will provide Micron's competitors with an undue advantage in competing for future sales and will allow Micron's competitors to incite Micron's current customers by suggesting that they have been treated less favorably by Micron than have other Micron customers.

With respect to production decisions and product allocation, Micron competes not only on the quality and performance of its products, but also on its ability to provide products in quantities and on schedules that meet customer demands. Public disclosure of Micron's production plans and capacity constraints could cause it serious competitive injury by allowing its competitors to exploit such information in their dealings with Micron's customers.

Micron believes that with respect to these internal documents, in camera treatment for a limited period of 5 years is appropriate.

C. Disclosure of Draft Micron License Agreements and Related Documents Would Cause Micron Competitive Harm.

Rambus has listed as potential exhibits three documents that relate to a potential patent cross-license agreement between Micron and another company. See MR0138409-10; MR0138412; MR0138413-15. Public disclosure of Micron's license terms or negotiations relating to such terms threatens to cause serious competitive injury to Micron. As set forth in the Donnelly Declaration, competitors would become aware of, and be able to exploit, particular terms of the license.

Micron believes that a 5 year period of in camera treatment is warranted for these licensing related documents.

D. Public Disclosure of Micron's Confidential Customer Communications Would Cause Micron Serious Competitive Injury.

Many of the documents contain confidential information communicated to Micron by customers or other third parties. For example, some documents contain sensitive information concerning prices offered to specific customers. See e.g. MU00033793; MU00312535-61; MU00312531. Other documents contain information about customers' plans and demand forecasts for particular products. See, e.g., MU00310522-23, MU00323350.

As stated in the Donnelly Declaration, public disclosure of this information would cause Micron serious competitive injury. Meeting customer needs and requirements necessarily entails the exchange of confidential customer information. Micron's relationship with current customers – as well as its ability to attract future customers – would be seriously undermined if customers believed that confidential information they provide to Micron would be publicly disclosed.

Micron believes that in camera treatment of this information for an indefinite period of time is warranted for several reasons. First, the information is highly sensitive. Second, Micron has no reasonable means of ascertaining when and if customer information is no longer confidential.

E. The Documents at Issue are Secret

As discussed above and in the Donnelly Declaration, the confidential nature of the documents for which Micron seeks in camera treatment is maintained through various means.

Proprietary information that Micron possesses from the ADT group is protected by a confidentiality provision and distributed on a very limited basis. In addition, documents within Micron that relate to strategic marketing, production, pricing and product development plans are similarly closely guarded and disseminated on a need to know basis. Sensitive customer communications and competitive intelligence are also treated confidentially.”

F. The Risk of Harm to Micron, as a Third Party, is not Outweighed by the Importance of the Information to the Matter to be Decided by the Commission

In camera treatment requests by third parties “deserve special solicitude. As a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” Kaiser Aluminum & Chemical Corp., 103 F.T.C. 500 (1984). Because Micron is a third party to this proceeding and has cooperated with Rambus’ and complaint counsel’s discovery requests, its request for in camera treatment should be looked upon more favorably than the request of a party, which may unfairly seek to shield its own competitive information while receiving the information of the other parties. See H.P. Hood & Sons, Inc., 58 F.T.C. 1184 (1961).

The documents in question appear to be of limited relevance to Rambus’ arguments, as demonstrated by the fact that few, if any, have been used in the hearings to this point.⁴ Even if Rambus does seek to make use of these documents, placing them under in camera protection will not reduce their usefulness to Rambus in making its

⁴ However, Micron understands that a number of these documents have been admitted into evidence by stipulation.

arguments. Under the circumstances, the balance of considerations clearly favors protecting Micron's legitimate interest in the confidentiality of these documents.

CONCLUSION

For the foregoing reasons, Micron's Motion for In Camera Treatment should be granted.

By _____
Richard L. Rosen, Esq.
Wilson D. Mudge, Esq.
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000
Counsel for Micron Technology, Inc.

Dated July 29, 2003

MU00179517

3. The following documents, identified by Bates number, shall receive in camera treatment for an indefinite period.

MU00033793
MU00312531
MU00310522-23
MU00323350
MU00312535-61
MU00311978-81
MU00311977
MU00310759-60
MU00178789

Dated: _____

Chief Judge Stephen J. McGuire

CERTIFICATE OF SERVICE

I, Wilson D. Mudge, hereby certify that, on this the 29th day of July, 2003, I caused copies of the foregoing NON-PARTY MICRON TECHNOLOGY, INC.'S MOTION FOR IN CAMERA TREATMENT to be served by the method indicated upon the following:

Wilson D. Mudge

Via Hand Delivery

Judge Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 106
Washington, D.C. 20580

Richard B. Dagen, Esq.
Assistant Director
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Malcolm L. Catt, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ 6207
Washington, D.C. 20580

By Facsimile and Overnight Delivery

Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
(213) 687-3702 – Facsimile