

1 FEDERAL TRADE COMMISSION  
 2 I N D E X (PUBLIC RECORD)

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4 WITNESS: DIRECT CROSS REDIRECT RECROSS  
 5 JAMES L. McGRATH 9239 9268

6 DAVID GUSTAVSON 9277 9312 9317

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8 EXHIBITS FOR ID IN EVID WITHDRAWN

9 CX

10 0044 9270

11 2338 9239

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13 RX

14 579 9312

15 593 9302

16 675 9297

17 676 9294

18 1073 9259

19 1931 9262

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22 JX

23 None

24 DX

25 None

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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of: )  
Rambus, Inc. ) Docket No. 9302  
-----)

THURSDAY, JULY 17, 2003  
9:30 A.M.

TRIAL VOLUME 44  
PART 1  
PUBLIC RECORD

BEFORE THE HONORABLE STEPHEN J. McGUIRE  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C.

Reported by: Paula G. Satkin, RPR

For The Record, Inc.  
Waldorf, Maryland  
(301) 870-8025

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 MALCOLM CATT, Attorney

5 M. SEAN ROYALL, Attorney

6 GEOFFREY OLIVER, Attorney

7 JOHN C. WEBER, Attorney

8 Federal Trade Commission

9 601 New Jersey Avenue, N.W.

10 Washington, D.C. 20580-0000

11 (202) 326-3663

12

13

14 ON BEHALF OF THE RESPONDENT:

15 GREGORY P. STONE, Attorney

16 STEVEN M. PERRY, Attorney

17 PETER A. DETRE, Attorney

18 SEAN GATES, Attorney

19 Munger, Tolles & Olson LLP

20 355 South Grand Avenue, 35th Floor

21 Los Angeles, California 90071-1560

22 (213) 683-9255

23

24

25

For The Record, Inc.  
Waldorf, Maryland  
(301) 870-8025

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APPEARANCES:

ON BEHALF OF THE RESPONDENT:

A. DOUGLAS MELAMED, Attorney  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
(202) 663-6090

1 PROCEEDINGS

2 JUDGE McGUIRE: This hearing is now in order.  
3 Before we get started this morning, counsel on the  
4 items we need to take up. Mr. Royall.

5 MR. ROYALL: Thank you, Your Honor. As you  
6 know, I wasn't here yesterday, but Mr. Oliver asked me  
7 to come in and deal with something that was left open  
8 yesterday. This concerns CX 2338. We wanted to offer  
9 a selection of pages as separate admissions. The first  
10 would be pages 54 through 76 of CX 2338 and, secondly,  
11 pages 77 through 82. And it's our understanding he  
12 wanted me to confirm this with you, Your Honor, no  
13 portion of this is in camera.

14 JUDGE McGUIRE: That's correct. That was our  
15 understanding from yesterday.

16 MR. CATT: I think Mr. Perry has something  
17 relating to the same document.

18 JUDGE McGUIRE: Mr. Perry.

19 MR. PERRY: We have no objection to those, but  
20 we would also offer in additional pages from CX 2338.  
21 We would offer in pages 32 through 53, which is  
22 entitled "Rambus DRAM Strategy," and pages 128 through  
23 140, which is entitled "Hyundai DRDRAM Project Proposal  
24 from August '99." And I wanted to note for the record  
25 that pages 130 and 137 through 138 are in fact in

1 camera, although no portion of those was used  
2 yesterday.

3 JUDGE McGUIRE: Okay. Mr. Royall, any  
4 opposition?

5 MR. ROYALL: No, we have no objection.

6 JUDGE McGUIRE: If not they will be all entered  
7 at this time.

8 (CX Exhibit 2338, pages 32 through 53, pages 54  
9 through 76, pages 77 through 82, and pages 128 through  
10 140 were admitted into evidence.)

11 At this time the respondent may call its next  
12 witness.

13 MR. STONE: Thank you, Your Honor.

14 At this time we would call Mr. James McGrath.

15 JUDGE McGUIRE: Mr. McGrath, if you would  
16 please approach and be sworn by the court reporter.  
17 Whereupon--

18 JAMES L. McGRATH

19 a witness, called for examination, having been first  
20 duly sworn, was examined and testified as follows:

21 JUDGE McGUIRE: You may have a seat right  
22 there, Mr. McGrath.

23 DIRECT EXAMINATION

24 BY MR. STONE:

25 Q. Good morning.

1 A. Good morning.

2 Q. Would you state your full name for the record,  
3 please?

4 A. James L. McGrath.

5 Q. What part of the country do you reside in,  
6 Mr. McGrath?

7 A. Bloomingdale, just outside of Chicago.

8 Q. Where are you currently employed?

9 A. Molex.

10 Q. What kind of business is Molex in?

11 A. Molex makes interconnects, electronic  
12 connectors for computers, telecom.

13 Q. Are they involved in any way with the business  
14 of DRAMs?

15 A. We don't make DRAMs. We make connectors that  
16 accept modules with DRAMs on them.

17 JUDGE McGUIRE: Can I interject here just so I  
18 understand, how is that spelled, Molex?

19 THE WITNESS: M-o-l-e-x.

20 JUDGE McGUIRE: I'm sorry, Mr. Stone, go ahead.

21 BY MR. STONE:

22 Q. Are you here pursuant to a subpoena,  
23 Mr. McGrath?

24 A. Yes, I am.

25 Q. Let me go back a little bit and get a little

1 bit of your background, if I might.

2 Could you just briefly tell us your educational  
3 background?

4 A. I've got a BS in Engineering Mechanics from the  
5 University of Illinois, and a Master's in Management  
6 from Kellogg Northwestern.

7 Q. And when did you first start full-time  
8 employment?

9 A. In 1970.

10 Q. And what was your first employment?

11 A. I worked for Illinois Power Company.

12 Q. And how long were you there?

13 A. I was there just a short time when I was asked  
14 to come and serve my country, so that kind of  
15 interrupted that employment.

16 Q. After your time in the service did you resume  
17 full-time employment in the private sector?

18 A. Yes, I did.

19 Q. What did you do then?

20 A. When I came back I worked for a company called  
21 Reliable Electric Company in Franklin Park, Illinois.

22 Q. How long were you there?

23 A. About three-and-a-half years.

24 Q. What was your next employment?

25 A. I moved to a company called TRW Power

1 Connectors. I stayed there for about two years until  
2 TRW ended up closing that division.

3 Q. And then what did you do after that?

4 A. I moved to a sister company, TRW Cinch  
5 Connectors, and I stayed there for about 13 years.

6 Q. Then what after that?

7 A. In 1987 I moved from Cinch to Molex, where I'm  
8 still employed.

9 Q. What was your first position at Molex?

10 A. Product manager.

11 Q. After that did you receive a further promotion?

12 A. I received a series of -- within the product  
13 management group a series of keeping the same title but  
14 increased responsibilities and getting more products or  
15 more technical products, up until like 1992, when I was  
16 given the SIMM memory module connector product line,  
17 which is a major product line for Molex.

18 Do you want me to do my whole history?

19 Q. No. Is SIMM, S-I-M-M?

20 A. Correct.

21 Q. When you got responsibility for the SIMM  
22 product, was that your first exposure to DRAMs?

23 A. Yes.

24 Q. And what year was that?

25 A. That was October 1992.

1 Q. What is your current title at Molex?

2 A. Director of Strategic Products.

3 Q. Did there come a time when you started  
4 attending JEDEC meetings?

5 A. As soon as I became SIMM product manager, all  
6 the connectors that we did at SIMM related to something  
7 that JEDEC was doing at the time, so I immediately took  
8 over responsibility. Molex was already a member of  
9 JEDEC, so I became the JEDEC -- the designated person  
10 to attend the JEDEC meetings.

11 Q. When was that in time? Do you remember a rough  
12 date when you started attending?

13 A. The first meeting I went to -- the first one I  
14 could go to was December of 1992.

15 Q. And have you been attending with some  
16 regularity since then?

17 A. Yes.

18 Q. When you first started attending were there  
19 particular committees or subcommittees of JEDEC that  
20 you attended more frequently than others?

21 A. There are two basic groups that relate to what  
22 I do with memory modules. The first one I went to in  
23 December of '92 was JC 42, which was the electrical  
24 designation or specification of a module, and there's a  
25 mechanical group called JC 11. I attend JC 11 much

1 more regularly than I do JC 42.

2 Q. I want to ask you about the time period from  
3 when you began attending in December of 1992, up until  
4 let's say the end of 1996, if I can?

5 A. Okay.

6 Q. So that's going to be the focus of my  
7 questions.

8 Based on your involvement in JEDEC during that  
9 time period, '92 to '96, did you come to have some  
10 understanding of the JEDEC patent policy?

11 A. I think I did, yes.

12 Q. And how did you come to that understanding?  
13 What were the things that you obtained that  
14 understanding from?

15 A. There was a gentleman, I'm not sure if he held  
16 a committee position, his name was Jim Townsend. He  
17 would keep track of any patents that were related to  
18 the work of JEDEC, and he would have a time slot at  
19 every meeting where he would review -- he would -- we  
20 did everything with view foils at that time. He would  
21 put a view foil of an outline of what the JEDEC patent  
22 policy was, and then review any patents that might have  
23 any relevance.

24 Q. Was that the principal source of your  
25 understanding, what he would say at the meetings and

1 his view foils?

2 A. Yes.

3 Q. During the time period '92 to '96 did you have  
4 an understanding there was an expectation on the part  
5 of JEDEC that patents would be disclosed if they fell  
6 within certain categories or criteria?

7 A. Yes.

8 Q. Did you have an understanding during that time  
9 period with respect to whether there was an expectation  
10 that patent applications would be disclosed?

11 A. There was, I think, an expectation that patent  
12 applications would be disclosed. I don't recall that  
13 that was done very frequently though.

14 JUDGE McGUIRE: You mean -- when you say that  
15 you mean that it was not done often because there  
16 weren't that many applications to be disclosed or of  
17 the applications that could have been disclosed only  
18 some of them that were disclosed to your knowledge?

19 THE WITNESS: I think it's the second case,  
20 only some of them.

21 JUDGE McGUIRE: Okay. Mr. Stone.

22 BY MR. STONE:

23 Q. Do you recall Mr. Townsend ever, in his  
24 presentations, saying that patent applications should  
25 be disclosed?

1 A. I don't recall.

2 Q. You don't recall him doing that?

3 A. I don't recall. He may have, but I just don't  
4 recall.

5 Q. Do you recall him talking about patents?

6 A. Yes.

7 Q. You do recall from time to time that some  
8 patent applications would be mentioned at meetings?

9 A. From time to time somebody would mention that  
10 they had a patent application, yes.

11 Q. Was there ever an instance when a -- let me  
12 back up for a minute.

13 Do you also recall from time to time patents  
14 would be disclosed at the meetings?

15 A. Yes.

16 Q. Was there ever an instance when you recall a  
17 patent was disclosed and someone in the audience or in  
18 attendance said why wasn't this disclosed when it was  
19 an application?

20 A. I don't recall that, no.

21 Q. Was it your understanding from what  
22 Mr. Townsend said that the expectation of disclosure  
23 was limited to patents and did not extend to patent  
24 applications, or did you have a different  
25 understanding?

1 MR. CATT: Objection, it's asked and answered.

2 JUDGE McGUIRE: Sustained.

3 BY MR. STONE:

4 Q. In the materials, the foils that you recall  
5 Mr. Townsend using during the meetings, did you ever  
6 see any reference to patent applications?

7 A. As I recall there were at times things that  
8 were listed just as a patent application on his list.

9 Q. Was that on something called a tracking list?

10 A. Yes.

11 Q. Did he also put up foils that described to some  
12 extent the policy?

13 A. Yes.

14 Q. And do you have any recollection in the time  
15 period, '92 to '96 that any of those foils referenced  
16 patent applications?

17 A. I can't recall specifically what was in those.  
18 I would have to go back and look at my notes.

19 Q. Okay. On the occasions when you do recall a  
20 patent application being disclosed do you recall anyone  
21 disclosing the claims of that patent application, that  
22 is the specific language of the claims?

23 A. I don't recall the claims ever being discussed  
24 on application, no.

25 JUDGE McGUIRE: Well then, again, I'm sorry

1 Mr. Stone to interrupt you, but these are questions  
2 that I like to get answered as we approach them so I  
3 don't have to go back through it later.

4 If you don't recall instances where the claims  
5 were being discussed, then how would it occur? Did a  
6 company stand up and say, yes, we have an application  
7 on a concept? How would they explain in those  
8 instances where it did occur that they had an  
9 application and to the extent that they would offer  
10 that information?

11 THE WITNESS: The way it was done then is the  
12 same way it's being done today, is people would just  
13 make a comment that they have a patent application and  
14 the term would be used such as, "in this technology  
15 area," and that was the extent of the disclosure.

16 JUDGE McGUIRE: Then after that what would  
17 happen? Would the chairman or anyone else open the  
18 floor up to ask inquiry of that company as to the  
19 extent of the invention or --

20 THE WITNESS: Generally not.

21 JUDGE McGUIRE: What would happen if anyone  
22 else had a comment that they wanted to make or an  
23 inquiry as to the overall scope of an application?

24 THE WITNESS: I don't recall a lot of  
25 discussion on those kind of items at all. It was more

1 just, here's the patent policy, does anybody want to  
2 add any more patents to this tracking document list.  
3 That was -- it was not a long discussion or a long  
4 session in these meetings.

5 JUDGE McGUIRE: Okay. Mr. Stone.

6 MR. STONE: Thank you, Your Honor.

7 BY MR. STONE:

8 Q. Let me ask you. I put two binders in front of  
9 you, Mr. McGrath, and let me ask you if you would to  
10 just turn to the first binder. Binder number 1 should  
11 be on the top, and turn to JX 22, which is towards the  
12 back.

13 Do you have JX 22 in front of you?

14 A. Yes, I do.

15 Q. You see there a number on the bottom on the  
16 right-hand corner, that is the exhibit number, and a  
17 dash, and that's the page number. If we stay on JX 22  
18 for just a moment and look up at the top.

19 Do you recognize these to be minutes of a JEDEC  
20 meeting?

21 A. Yes.

22 Q. Would you receive JEDEC meetings from time to  
23 time following meetings you attended?

24 A. Correct. Yes, sir.

25 Q. Are these the minutes for the meeting you

1 attended?

2 A. Yes. My name was on there so I had to sign in  
3 to have it appear.

4 Q. Okay. Turn if you would then to page 3, and  
5 let me draw your attention to paragraph number 3 of  
6 this document where it says, "Patent Presentation."  
7 And in the first sentence it says, "Mr. Townsend made a  
8 presentation (see Attachment A.)" Do you see that  
9 reference?

10 A. Yes, I do.

11 Q. Was it -- if we now turn to Attachment A, which  
12 begins, I believe, on page 12, if you could turn to  
13 that page. And directing you to page 12, do you see  
14 where it says Attachment A in the upper right corner?

15 A. Yes.

16 Q. Would this indicate to you this is the  
17 Attachment A referred to earlier?

18 A. Yes.

19 Q. Look if you would at pages 12 through -- go at  
20 least through page 16, and tell me if you recognize  
21 these to be the types of information that Mr. Townsend  
22 would show during the time period '92 to '96?

23 A. This is typical what Jim would show, especially  
24 the list of patents here.

25 Q. Let's turn to that list of patents that begins

1 on page 14, if we can. You'll notice there's a patent  
2 part way down, about a third of the way down the list,  
3 that has Fujitsu as the holder, and under patent number  
4 it says "pending"?

5 A. Okay.

6 Q. Do you see that reference?

7 A. Yes.

8 Q. Was it your understanding in the '92 to '96  
9 time frame that a reference to pending would likely  
10 mean a reference to a patent application?

11 A. Yes.

12 Q. So with respect to those items listed on this  
13 tracking list, where it says pending, that would be  
14 your best understanding, is that those referred to  
15 applications?

16 A. Yes.

17 Q. And your best recollection is that as to those  
18 particular items no one ever disclosed the text of any  
19 of the claims of those applications?

20 MR. CATT: Objection, leading.

21 MR. STONE: Certainly. Let me rephrase.

22 BY MR. STONE:

23 Q. Do you recall anyone disclosing the claims of  
24 any of those applications at any of the meetings at  
25 which you were in attendance?

1 A. I don't recall that happening, no.

2 Q. Did you ever identify a patent for anyone  
3 during the time frame, '92 to '96?

4 A. Yeah. There was one time that I did -- our  
5 legal group came across something that had to do, I  
6 think, with SIMM, and I just took a cover sheet and  
7 faxed it to Jim Townsend, because I noticed that patent  
8 wasn't on his list.

9 Q. Was that a patent that had been issued to  
10 Molex?

11 A. No.

12 Q. It was a patent of some other company?

13 A. Correct.

14 Q. Did that patent then show up on the tracking  
15 list later?

16 A. I assume it did. I don't recall. I don't  
17 remember.

18 Q. Okay. Was it your understanding -- did you  
19 have an understanding as to what patents -- trying to  
20 think how best to phrase this -- what patents  
21 needed to be disclosed? Let me frame it differently.

22 Did you understand there to be any relationship  
23 between whether you might need a license and patent and  
24 if you were to practice the standard and whether that  
25 patent should be disclosed?

1           A. My understanding was that if a patent read on  
2 the work that JEDEC was doing it was your obligation to  
3 disclose it to the group.

4           Q. Were you present at any meetings where persons  
5 from other companies said they had a lot of patents and  
6 weren't going to disclose them all?

7           A. I don't remember anything like that being said,  
8 no.

9           Q. You don't recall that.

10           Did you know Mr. Kelley from IBM?

11           A. Gordon Kelley was chairman of the group. I  
12 knew Gordon. I didn't know him well.

13           Q. Okay. Let me ask you to look if you could at  
14 JX 25, which is in your next binder, unfortunately, and  
15 it's the first tab in your next binder.

16           A. Okay.

17           Q. And, again, do you recognize JX 25 as minutes  
18 from a JEDEC meeting that was held in 1995?

19           A. Yes.

20           Q. And were you in attendance at this meeting?

21           A. Yes.

22           Q. Okay. And look again if you would at page 3 of  
23 JX 25, down at the bottom under the heading, "Patent  
24 Presentation"?

25           A. Okay.

1 Q. You see there it references Attachment B?

2 A. Yes.

3 Q. If you would turn to page 18 of this document,  
4 and looking at pages 18 through 22, are these again the  
5 type of foils that you recall Mr. Townsend using during  
6 the course of meetings that you attended in the '92  
7 through '96 time frame?

8 A. Yes. These are very similar to the exhibit you  
9 had me look at before.

10 Q. Okay. I'm going to ask you to look at a couple  
11 other documents, Mr. McGrath, and see if you recall  
12 seeing these during the time period '92 to '96.

13 If we could go back to binder 1. I apologize  
14 for making you jump binders.

15 Look at the first document if you would, which  
16 is RX 1211.

17 A. Okay.

18 Q. Do you recall having been given or seen this  
19 document during the time period '92 through '96?

20 A. When I first took over the JEDEC responsibility  
21 I had a lot of documents about JEDEC and took most of  
22 those and put them on the shelf and probably paged  
23 through them, but a specific document I can't remember  
24 whether I really read any one of these in particular at  
25 that time.

1 Q. Okay. Did you at any time in the time frame,  
2 '92 through '96, look at any of the documents you  
3 received with respect to JEDEC to go through and see  
4 what any written policies there might be with respect  
5 to patents?

6 A. I generally didn't look at the policies that  
7 JEDEC was sending out. I would spend most of my time  
8 just reviewing the ballots. That was time consuming  
9 enough.

10 Q. Okay. Was it your understanding -- did you  
11 have an understanding -- let me ask it this way -- did  
12 you have an understanding as to whether you -- let me  
13 rephrase it.

14 In your experience during the time period '92  
15 through '96 did the JEDEC committee change what it was  
16 doing in terms of standards it was developing upon  
17 learning of a patent?

18 A. I don't recall that we ever made a change in  
19 direction because of a patent being disclosed.

20 Q. Do you ever recall any change in direction  
21 because of a patent application?

22 A. No.

23 Q. As you understood the information that was  
24 available about patent applications in the time period,  
25 '92 to '96, was there sufficient information to know

1 what that patent application might ultimately cover, so  
2 if you wanted to change direction you would know which  
3 way to move?

4 A. Again, I don't recall that there was a lot of  
5 detail discussed on any particular patent in the  
6 meetings. Those discussions may have happened outside  
7 the meeting, but I don't recall that happening in the  
8 meeting.

9 Q. Okay. And if they happened outside the meeting  
10 do you recall ever participating in those discussions?

11 A. No, I did not.

12 Q. Okay. Did there -- you knew that for part of  
13 the time you were attending JEDEC meetings Rambus was a  
14 member?

15 A. Yes.

16 Q. And did there come a time you learned that  
17 Rambus was no longer attending meetings?

18 A. Yes.

19 Q. Was there any discussions that you can recall  
20 of Rambus, after Rambus stopped attending meetings?

21 A. Was there a discussion about Rambus in the  
22 JEDEC meeting?

23 Q. Yes. Was Rambus mentioned in meetings after  
24 they stopped attending?

25 A. Yes, they would be.

1 Q. Do you recall whether the comments in a general  
2 sense were positive, negative, or would you describe  
3 them in some other way?

4 MR. CATT: Objection, vague.

5 MR. STONE: Let me rephrase.

6 BY MR. STONE:

7 Q. How would you describe, if you can generalize,  
8 the nature or discussions or comments made about Rambus  
9 after it stopped attending meetings?

10 A. I would say the group was concerned about  
11 Rambus technology and concerned that JEDEC hadn't  
12 possibly kept up with technology.

13 JUDGE McGUIRE: Wait a minute. I don't  
14 understand that question. You say they were concerned  
15 with the technology of Rambus, but JEDEC had not kept  
16 up with the technology. So what was the concern then?  
17 What was the real concern?

18 THE WITNESS: Well, the main issue in memory is  
19 bandwidth, how many bits per second can I get, can I  
20 access. And the JEDEC group had been slowly moving  
21 bandwidths up. And when the JEDEC -- I mean when the  
22 Rambus technology came out it had just leapfrogged  
23 where JEDEC was in speed in bandwidth by a significant  
24 amount. So that was some concern that JEDEC had not  
25 kept up with memory technology.

1           JUDGE McGUIRE: But the import of his inquiry  
2 was what was the attitude at that time, having had  
3 these concerns toward Rambus.

4           THE WITNESS: Well, I think a lot of the  
5 members in JEDEC felt -- I might be using the wrong  
6 word here, but threatened, we need to do something  
7 about this and come up with an alternative.

8           JUDGE McGUIRE: Well, was that because they  
9 were concerned that this new technology may read on the  
10 current standards of JEDEC?

11          THE WITNESS: I don't recall that ever being an  
12 issue. It was more an issue of Rambus technology.

13          JUDGE McGUIRE: All right, Mr. Stone.

14          MR. STONE: Thank you, Your Honor.

15          BY MR. STONE:

16          Q. Let me ask you if you would in your second  
17 binder, Mr. McGrath, maybe I won't have to have you  
18 jump any more after this. If you could turn to the  
19 second binder and turn to what's marked RX 1073?

20          A. Okay.

21          Q. Do you recognize exhibit RX 1073?

22          A. Yes, I do.

23          Q. What is it?

24          A. It's my handwritten notes from one of the JEDEC  
25 meetings.

1 Q. Which JEDEC meeting are these your notes from?

2 A. December 1997, JC 42.5.

3 MR. STONE: Your Honor, at this time we would  
4 offer RX 1073 into evidence.

5 JUDGE McGUIRE: Mr. Catt, any objection?

6 MR. CATT: No objection.

7 JUDGE McGUIRE: Entered.

8 (RX Exhibit 1073 was admitted into evidence.)

9 BY MR. STONE:

10 Q. These were notes you took during the course of  
11 the meeting, or some other time?

12 A. These could have been the notes I took during  
13 the meeting. There were times I would write notes at  
14 the meeting and then rewrite them when I got back to  
15 the office, for typing and distribution.

16 Q. So either taken at the time or rewritten at the  
17 office, within a few days of the meeting?

18 A. Correct.

19 Q. Turn if you would to page 2 of these notes.

20 MR. STONE: If we could bring up the middle of  
21 the page that starts with "Gordon Kelley."

22 BY MR. STONE:

23 Q. When you wrote in your notes, "Gordon Kelley  
24 comments:" Are the next three lines something that you  
25 attributed pretty much word for word for Mr. Kelley?

1 A. That was pretty much word for word.

2 Q. Can you tell us what you recall, based on your  
3 notes, Mr. Kelley saying at this meeting in 1997?

4 A. Again, it was a discussion about Rambus  
5 technology and how the members of JEDEC needed to get  
6 together to come up with a competing technology.

7 Q. At that meeting when he said -- you wrote in  
8 your notes, "Microelectronics Division has contracted  
9 with IBM R&D to develop high speed memory." Do you see  
10 that first sentence?

11 A. Yes.

12 Q. Do you recall what you understood at the time  
13 he meant by that?

14 A. What Gordon was referring to there was  
15 something to compete with the Rambus memory technology.

16 Q. You have quotes around the next sentence that  
17 says, "We will not be slave to Rambus."

18 A. Yes.

19 Q. Is that your recollection of the words he used  
20 at the time?

21 A. Yes.

22 Q. Let me ask you, were there discussions at JEDEC  
23 meetings of any efforts being made to promote  
24 products -- let me ask you specifically.

25 Do you recall any discussions of SDRAM at

1 JEDEC meetings?

2 A. The SyncLink DRAM did come into JEDEC at some  
3 point. It had been a separate committee and was merged  
4 into JEDEC.

5 Q. Did you have an understanding one way or the  
6 other as to whether it was thought to be one way of  
7 developing a technology to compete with Rambus?

8 MR. CATT: Objection, vague, "it was thought."

9 MR. STONE: Let me see if I can rephrase it.

10 BY MR. STONE:

11 Q. Did you have an understanding one way or the  
12 other as to whether the SyncLink product was one of the  
13 technologies you mentioned earlier that JEDEC was  
14 trying to develop to compete with Rambus?

15 A. Yes. SyncLink was being brought into JEDEC in  
16 an effort to move the JEDEC technology forward.

17 Q. Okay. Let me ask you finally if you would turn  
18 to the next document in your binder which is RX 1931.

19 Do you recognize this document as minutes of a  
20 JEDEC meeting of 2.3 in December  
21 2001?

22 A. Yes.

23 Q. Were you in attendance at this meeting?

24 A. Yes.

25 Q. Turn if you would in this document to page 11.

1 And let me ask you to look at the bottom set of  
2 paragraphs under the heading, "CAMD, DDR 2."

3 Can you explain there it says a second  
4 showing -- maybe I should first move this into  
5 evidence.

6 MR. STONE: I would like to move RX 1931 into  
7 evidence as a December 2001 JEDEC meeting.

8 JUDGE McGUIRE: Objection?

9 MR. CATT: No objection.

10 JUDGE McGUIRE: If you'll stand, Mr. Catt, when  
11 you speak to the Court, it would be much appreciated.

12 MR. CATT: Excuse me, Your Honor.

13 JUDGE McGUIRE: Entered.

14 (RX Exhibit 1931 was admitted into evidence.)

15 BY MR. STONE:

16 Q. Mr. McGrath, let me ask you about this  
17 particular language. It says there, "A second showing  
18 was made by AMD." Do you see that?

19 A. Yes.

20 Q. Can you explain to us briefly what the phrase,  
21 "a second showing," means?

22 A. There are different rules of presenting at the  
23 different JEDEC groups. JC 42 requires two showings:  
24 A preliminary showing to get a proposal or concept out  
25 in front of the group, it is generally done quickly,

1 documents are circulated. Comments are taken, however  
2 people want to comment on it, and then the proposal is  
3 either revised or done exactly the same at the next  
4 meeting, and that's what's called -- there's a first  
5 showing and a second showing, in other words.

6 Q. Okay. And you'll notice here in the next line  
7 it says, "It was noted that there may be a patent that  
8 affected option one." And then it goes on to say, "the  
9 patent was owned by Rambus and they have not indicated  
10 they would comply with the JEDEC patent policy." Do  
11 you see that discussion?

12 A. Yes, I do.

13 Q. Is it consistent with your recollection that  
14 there was mention at a meeting in this time period of a  
15 Rambus patent?

16 A. It could have. Specifically indicating --  
17 specific discussions happened -- a lot of these  
18 meetings, especially JC 42.3, I am in and out of those  
19 meetings, because a lot of those discussions don't  
20 apply to me.

21 Q. Is it a correct statement that independent of  
22 the minutes you don't have a recollection one way or  
23 the other?

24 A. Correct.

25 Q. Could you explain to us then at the bottom

1 where it says, "AMD moved to issue a ballot on option  
2 one, second from Philips. The vote was unanimous."  
3 What does that mean to "issue a ballot"?

4 A. After a second showing the sponsor can move  
5 their proposals into part of the JEDEC specification.  
6 And in order to do that it has to go in front of all  
7 the members through a process called "a ballot" where  
8 all the members have an opportunity to review it, vote.

9 There are several options. They can vote to  
10 just approve it, approve with comments, or do not  
11 approve, with technical reasons why they won't approve  
12 it.

13 Q. Do you recall any instance where a proposal or  
14 showing was rejected because someone mentioned that  
15 there might be a Rambus patent that covered it?

16 A. I don't recall that. I just don't remember.

17 Q. Are you familiar with the term, "open  
18 standards"?

19 A. Yes.

20 JUDGE McGUIRE: Mr. Stone, I'm sorry. There  
21 must be something in the coffee I had this morning, but  
22 I have this great energy to ask questions.

23 MR. STONE: I want you to do that.

24 JUDGE McGUIRE: I just want to follow up on  
25 what we're seeing here in this item of evidence.

1           Apparently there are comments here that there  
2 was some understanding that there may be a patent held  
3 on one of these options by Rambus and they have not  
4 indicated that they would comply with the patent policy  
5 of JEDEC, but yet then AMD moved the issue to vote on  
6 option one, which if I understand it, is the option  
7 that there was some comment made at least that that is  
8 the option that there may be an outstanding patent on.

9           Did that cause concern? Because, obviously, it  
10 still came up for a vote, and it passed.

11           I'm curious. What was your understanding at  
12 the time as to how these two items coalesced? If there  
13 was some concern out there about option one may be  
14 covered by a current patent? I just want you if you  
15 can to expand on that question.

16           THE WITNESS: Issues like this that are brought  
17 up, occasionally, are not fully resolved at the second  
18 showing. It still may go out to ballot and the  
19 respondents, all the members have that option of  
20 voting, do not approve, and they can list their reasons  
21 there.

22           And, again, I didn't pay any attention to the  
23 ballots in JC 42.3. I don't know how this particular  
24 ballot turned out, but that happens frequently where  
25 let's put it out. In other words, let's poll the

1 members, because not all the members attend all the  
2 meetings.

3 JUDGE McGUIRE: Right.

4 THE WITNESS: So this is an opportunity to get  
5 everybody involved in the response to this.

6 JUDGE McGUIRE: Can you recall of having  
7 concern yourself about the comment that there may be an  
8 outstanding patent as to option one here?

9 THE WITNESS: Again, this does not affect my  
10 business. I was not concerned.

11 JUDGE McGUIRE: So you had no interest?

12 THE WITNESS: Exactly.

13 JUDGE McGUIRE: All right.

14 BY MR. STONE:

15 Q. Do you recall at any of the meetings you did  
16 attend, any discussions where someone said we can't go  
17 forward with that proposal or presentation or showing  
18 because of Rambus patents? Were they ever raised so as  
19 to stop the process?

20 MR. CATT: Again, asked and answered, Your  
21 Honor.

22 JUDGE McGUIRE: Sustained.

23 MR. STONE: Let me see if I can reframe it.

24 BY MR. STONE:

25 Q. In your experience and at any of the meetings

1       you attended did any discussion of Rambus patents ever  
2       bring the process of considering a presentation to a  
3       halt?

4           A.   Not that I remember, no.

5           Q.   Are you familiar with the concept of "open  
6       standards"?

7           A.   Yes.

8           Q.   Is it your understanding -- do you have an  
9       understanding whether JEDEC is trying to develop what  
10      are called open standards?

11          A.   JEDEC's approach is for open standards, yes.

12          Q.   Is it inconsistent with your understanding of  
13      open standards that in order to practice the standard a  
14      license fee or a payment of a royalty might be  
15      required?

16          A.   As long as the license is open to anybody that  
17      asks, that's considered complying with the patent  
18      policy and it's therefore open.

19           MR. STONE:   Thank you.  I have no further  
20      questions at this time of Mr. McGrath, Your Honor.

21           JUDGE McGUIRE:   Okay.  At this time entertain  
22      cross examination by Complaint Counsel.

23           MR. CATT:   May I have just a minute, Your  
24      Honor?

25           JUDGE McGUIRE:   Sure.

## 1 CROSS EXAMINATION

2 BY MR. CATT:

3 Q. Good morning, Mr. McGrath.

4 A. Good morning.

5 Q. I just have a very few questions. We won't  
6 keep you here much longer.7 I think you talked about Molex being a  
8 manufacturer of connectors; is that correct?

9 A. Yes.

10 Q. Does Molex, are they involved in somehow making  
11 connectors between the DRAM chips and the boards that  
12 the chips get put on?13 A. We don't make the connector that goes between  
14 the DRAM and the board. We make the connector that  
15 that board with the DRAM assemblies are on, what that  
16 plugs into. That's generally referred to as a  
17 "module."18 Q. Okay. I'm going to ask you some questions  
19 about JEDEC, and I'm going to use the same time frame  
20 that we've been talking about, '92 through the end of  
21 '96, for these questions.22 You attended the JC 42 committee on a regular  
23 basis during that time period; is that correct?24 A. I tried to attend JC 42 as often as I could.  
25 JC 11, mechanical group, is the one that I concentrated

1 on, and during that time frame what I attended mostly.  
2 JC 42 was the modules group, JC 42.5.

3 They would schedule these committee meetings  
4 starting on a Monday morning and just go continuously  
5 until they got done. Occasionally I would show up  
6 early for a JC 42.5 meeting and attend some of the  
7 other meetings. I didn't realize the benefit of  
8 attending some of these other meetings until about the  
9 mid '90s.

10 Q. In the time period '92 to '96 you basically  
11 didn't attend 42.3 meetings at all?

12 A. I wasn't making an effort to attend those  
13 meetings, correct.

14 Q. So to the degree there were presentations on  
15 patent policy at those meetings you wouldn't have seen  
16 those presentations?

17 A. Generally not, because that would normally  
18 occur at the beginning of the meeting. If I was in  
19 those meetings it was generally at the tail end and  
20 then it would go into some of the other committees.

21 Q. You mentioned that Jim Townsend put slides up  
22 at the meetings. There was also a discussion at the  
23 presentations, as well; wasn't there?

24 A. There were discussions about some items that  
25 were brought up, articles that were in the press

1 sometimes Jim would put on.

2 Q. I would like to show you some minutes now.

3 May I approach?

4 JUDGE McGUIRE: Yes. Is it going to be on the  
5 screen?

6 MR. CATT: Yes, it will be on the screen.

7 JUDGE McGUIRE: Then I don't need hard copy.

8 BY MR. CATT:

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. Can you tell me what it is?

12 By the way, this is CX 0044. Can you tell me  
13 what this document is?

14 A. These look like the meeting minutes from the  
15 first JEDEC meeting I attended in December 1992.

16 Q. What JEDEC meeting?

17 A. This is JC 42.5.

18 MR. CATT: Your Honor, I would like to move to  
19 have the exhibit entered into evidence.

20 MR. STONE: No objection.

21 JUDGE McGUIRE: Entered.

22 (CX Exhibit 0044 was admitted into evidence.)

23 THE REPORTER: Your Honor, excuse me. I  
24 apologize, but I am fighting an ear infection and I am  
25 having a little trouble hearing today.

1           JUDGE McGUIRE: I'll ask everyone to please  
2 don't scream, but raise their voice to try to  
3 accommodate our court reporter today.

4 BY MR. CATT:

5           Q. If you could turn to page 3 of this document.  
6 And look at paragraph 4, that presentation. It says,  
7 "Mr. Townsend gave a presentation of patent policies of  
8 the relevant articles." It mentions Attachment C. I  
9 would like you to turn to Attachment C, which I believe  
10 it's on page 12.

11          A. Okay.

12          Q. On page 12, three-quarters of the way down the  
13 page there's a paragraph 8.3.1. It's very difficult to  
14 read. I'm sorry, this is the only copy we have. If  
15 you could read that.

16                 On the second line down it states that -- well,  
17 the whole paragraph states the chairperson must -- if  
18 I'm reading this wrong let me know.

19                 "The chairperson must call to the attention of  
20 the members present the requirements contained in the  
21 EIA legal guides and call attention to the obligation  
22 of all participants to inform the committee of any  
23 knowledge they may have of any patents or pending  
24 patents that might be involved in the work they are  
25 undertaking."

1           A. Thank you. I'm having a hard time reading  
2 this.

3           Q. Okay. Do you recollect this presentation being  
4 given?

5           A. Again, this was my first meeting and I was  
6 somewhat overwhelmed by the whole JEDEC process. I'm  
7 sure this was presented as in the minutes here.

8           Q. Okay. Thank you.

9                    Do you understand that JEDEC had a requirement  
10 that its members acted in good faith in attending the  
11 meetings?

12          A. Yes.

13          Q. And what was your understanding as to what was  
14 meant by "good faith"?

15          A. My understanding of that would be if, for  
16 example, I would be making a proposal or presentation  
17 to JEDEC, if I would be developing technology that I  
18 was planning on patenting it was expected that that  
19 would be disclosed to the membership that that was  
20 happening.

21          Q. And so you tried to act in good faith at the  
22 meetings?

23          A. Correct.

24          Q. And was it your understanding that other  
25 members were also acting in good faith?

1           A. I would assume that would be every member's  
2 intention.

3           JUDGE McGUIRE: All right. Again, let me  
4 expand on that last answer if I could.

5           You said you had an expectation that everyone  
6 would act in good faith and disclose patents. Did that  
7 incorporate an understanding that everyone would  
8 disclose patent applications as they're being filed?  
9 You said earlier in testimony you thought the patent  
10 disclosure policy included applications.

11          THE WITNESS: Yes.

12          JUDGE McGUIRE: But also this obligation to act  
13 in good faith, did that incorporate the idea of  
14 disclosing patent applications as they were being  
15 developed?

16          THE WITNESS: Yes, it would. And I look at  
17 that as there's two scenarios that can occur in that  
18 good faith: One, if I'm the person doing the proposal  
19 for this technology and I'm developing technology that  
20 I'm going to patent I think it's my responsibility to  
21 tell the group that that's what I'm doing.

22          If I'm developing technology and I'm one of the  
23 attendees listening to somebody else present something  
24 and -- what I do at that point is I -- I may not know  
25 enough information from this first showing or even the

1 second showing to see where this technology is going,  
2 and I don't want to disclose what I'm doing in  
3 confidence within the company until I'm sure that these  
4 two things are going to cross at some point.

5 So there's -- the good faith that I'm talking  
6 about is if I'm making the presentation, if I'm trying  
7 to take JEDEC down this particular technology road,  
8 that's what I'm referring to.

9 JUDGE McGUIRE: All right. Mr. Catt.

10 BY MR. CATT:

11 Q. You had an understanding though that no member  
12 of JEDEC should be given an unfair advantage by  
13 designing technology in some way restricting  
14 competition or excluding others from it; correct?

15 MR. STONE: Objection, Your Honor, leading. I  
16 think given a witness who is here pursuant to subpoena  
17 who could be declared a hostile witness under Rule 611,  
18 that neither party should have an opportunity to lead,  
19 or both parties should. Mr. Catt earlier objected to  
20 my leading and I tried to refrain from asking leading  
21 questions.

22 JUDGE McGUIRE: Sustained. You can restate it.

23 BY MR. CATT:

24 Q. Did you have an understanding that members of  
25 JEDEC should be given an unfair advantage in designing

1 their technology by in some way restricting their  
2 competition or excluding others?

3 A. The patent policy was intended to somewhat  
4 level the playing field. In other words, it wasn't  
5 that you couldn't have a patent in that technology that  
6 JEDEC was doing, it was if you did you needed to  
7 disclose it and you were to comply with the patent  
8 policy.

9 You're supposed to what's called reasonable and  
10 nondiscriminatory, open the licensing up to anybody  
11 that asks if that particular technology is needed to  
12 implement what JEDEC specifications require.

13 Q. Do you ever recall Rambus ever disclosing any  
14 patents or patent applications at JEDEC?

15 A. I do not.

16 Q. Did you ever make the connection that Rambus'  
17 patents may apply to work that was being undertaken at  
18 JEDEC?

19 A. Not while Rambus was a member of JEDEC, no, I  
20 didn't.

21 MR. CATT: No further questions, Your Honor.

22 JUDGE McGUIRE: I'm sorry, Mr. Catt?

23 MR. CATT: No further questions.

24 JUDGE McGUIRE: Thank you.

25 Mr. Stone, any further questions of the

1 witness?

2 MR. STONE: No further questions, Your Honor.

3 JUDGE McGUIRE: All right. Sir, you're excused  
4 from this proceeding. Thank you very much for your  
5 testimony.

6 We'll take a short break and come back with  
7 your next witness.

8 MR. PERRY: Your Honor, if I could, we told the  
9 next witness to be here at 11:00 o'clock.

10 JUDGE McGUIRE: Do you think he'll be here by a  
11 quarter til?

12 MR. PERRY: I don't know.

13 JUDGE McGUIRE: I'm just going to go to my  
14 office and someone can come down and get me when he's  
15 here, if that takes 10 minutes or half-hour. We'll be  
16 on break until then.

17 MR. PERRY: I do think if we took a somewhat  
18 later lunch we would finish him before lunch.

19 JUDGE McGUIRE: I'm sorry?

20 MR. PERRY: If we started him at 11:00 I think  
21 we would be done by 12:30 or a quarter to 1:00.

22 JUDGE McGUIRE: Okay. Off the record. (10:27  
23 a.m. - 10:50 a.m.)

24 (A brief recess was taken.)

25 JUDGE McGUIRE: This hearing is now in order.

1 At this time the respondent may call its next witness.

2 MR. PERRY: Thank you, Your Honor.

3 Rambus would call Dr. David Gustavson.

4 JUDGE McGUIRE: Dr. Gustavson, will you please  
5 come to the bench and be sworn in by the court  
6 reporter.

7 Whereupon--

8 DAVID GUSTAVSON

9 a witness, called for examination, having been first  
10 duly sworn, was examined and testified as follows:

11 JUDGE McGUIRE: All right. Sir, if you will  
12 have a seat right in that chair.

13 DIRECT EXAMINATION

14 `BY MR. PERRY:

15 Q. Good morning, sir. I have placed on the table  
16 in front of you a copy of your deposition in this  
17 matter. Do you recall that I took your deposition?

18 A. Yes.

19 Q. And we may need to refer to it during the day.  
20 I just wanted to let you know it was there.

21 I also placed a copy at the Bench.

22 If I could, before we get started, request that  
23 you speak up, because I understand our court reporter  
24 is having some difficulty because of an ear infection.  
25 I'm going to speak loudly and slowly, and if you could

1 do the same.

2 By whom are you completely controlled?

3 A. I'm an independent consultant at present.

4 Q. Are you retired?

5 A. Yes.

6 Q. What was your immediate past employment before  
7 your retirement?

8 A. I was -- my working title was Research  
9 Professor at Santa Clara University.

10 Q. And before your retirement is it correct that  
11 you had worked for many years on the design and  
12 development of high speed computer interfaces?

13 A. Yes.

14 Q. And you had done that kind of work as a  
15 researcher at Stanford University in the 1980s?

16 A. At the Stanford Linear Accelerator Center.

17 Q. Is that sometimes abbreviated SLAC?

18 A. It is.

19 Q. AND at some point you left Stanford and joined  
20 Santa Clara University; RIGHT?

21 A. Correct.

22 Q. Was that around 1994?

23 A. It was.

24 Q. And when did you leave Santa Clara? When did  
25 you retire?

1 A. I believe it was sometime in 1998.

2 Q. And you said you've done some consulting work  
3 since then; right?

4 A. That's right.

5 Q. Is it correct that you've been, or you were at  
6 some point in time hired by Micron, to assist Micron in  
7 a lawsuit with Rambus?

8 A. Yes, that's correct.

9 MR. CATT: Objection, Your Honor, leading  
10 question.

11 JUDGE McGUIRE: Overruled.

12 THE WITNESS: Yes, that's correct.

13 BY MR. PERRY:

14 Q. Are you still retained by Micron to assist in a  
15 lawsuit against Rambus?

16 A. I am.

17 Q. I am not going to ask you about your work for  
18 Micron. None of my questions are intended to get into  
19 that, okay.

20 While you were at Santa Clara University you  
21 continued to be involved in the design and development  
22 of high speed computer interfaces; right?

23 A. Yes.

24 Q. Were you working on a project called RamLink at  
25 some point?

1 A. Yes, I was.

2 Q. Was there an off-shoot of RamLink called  
3 SyncLink that you worked on?

4 A. Yes, that's correct.

5 Q. Was RamLink being developed under the auspices  
6 of the IEEE?

7 A. Yes, it was.

8 Q. Can you just give us a brief description of  
9 what you understood the IEEE to be?

10 A. The IEEE is a professional organization whose  
11 members are individual engineers, regardless of what  
12 company they work for, and has an educational function  
13 to help keep engineers up with the technology, and a  
14 standards function which has worldwide acceptance for  
15 the quality of the standards that it produces in a wide  
16 range of electrical fields.

17 Q. Thank you. Was RamLink being developed by a  
18 working group within that standard setting function of  
19 IEEE?

20 A. Yes, it was.

21 Q. That was 1596.4; is that right?

22 A. That's right.

23 Q. One of the things you did in that working group  
24 was prepare minutes of the meetings; right, from time  
25 to time?

1           A. In the SyncLink consortium I prepared minutes,  
2 but in the RamLink group I don't remember specifically.

3           I performed general services of that sort for a  
4 wide range of standards, but usually each standard has  
5 someone specifically responsible for chairing and  
6 preparing the minutes.

7           Q. Let me show you a document and see if that  
8 helps. I'm going to use RX 579.

9           May I, Your Honor?

10          JUDGE McGUIRE: Go ahead.

11          BY MR. PERRY:

12          Q. Now, this has a heading that says, "Minutes of  
13 the RamLink/SyncLink meeting at SCIZZI, Santa Clara  
14 University, June 15, 1995." Do you see that?

15          A. Yes.

16          Q. Would you just flip through these and confirm  
17 for us that these were prepared by you, if you could?

18          A. Yes. This appears to have been done by me.

19          Q. And when it says "RamLink/SyncLink meeting,"  
20 was that at a period of time when the two projects,  
21 RamLink and SyncLink, were being discussed at the same  
22 meetings?

23          A. Apparently so, yes.

24          Q. Well, I really just want to use this document  
25 to establish some time frame. You're free to read as

1 much of it as you want, but what I would like to do is  
2 point you to the paragraph that starts at the very  
3 bottom of the first page that references Mr. Wiggers.  
4 Why don't you read that paragraph to yourself and I'll  
5 have just a few questions.

6 A. Okay.

7 Q. Is it correct as you understood it that  
8 Mr. Wiggers was the chairman of the RamLink working  
9 group at this time in June of '95?

10 A. Yes.

11 Q. And that the RamLink project had been put into  
12 the balloting process at that time within IEEE?

13 A. Yes.

14 Q. Let me ask you to look down on the second page  
15 to the fourth full paragraph, and there's a reference  
16 to a proposed SyncLink project on the second page. And  
17 I just ask you to read that paragraph to yourself.

18 A. Okay.

19 Q. The reference to the proposed SyncLink project,  
20 is that the project that came part of the consortium?

21 A. It was more the consortium ended up being part  
22 of the project.

23 Q. So is it correct that SyncLink was something  
24 that grew out of RamLink?

25 A. That's correct.

1 Q. And in this time period, June '95, the RamLink  
2 standard was already being balloted for  
3 standardization; is that correct?

4 A. That's correct.

5 Q. But the SyncLink project had just begun?

6 A. That's correct, except for the SyncLink  
7 technology, that was partly included in the RamLink.

8 Q. Some of the SyncLink technology was borrowed  
9 from or came from RamLink?

10 A. That's correct.

11 Q. This group was going to try to take the  
12 SyncLink project forward?

13 A. That's correct.

14 Q. Okay. And I want to show you some documents  
15 about that effort to take SyncLink forward, and I'll  
16 show you now RX 589.

17 May I, Your Honor?

18 Now, this is entitled, "Minutes of the IEEE  
19 P1596.7 SyncLink Meeting, August 21, 1995." Do you see  
20 that?

21 A. Yes.

22 Q. And if you look on the second page you'll see  
23 down at the bottom it says, "Minutes taken by  
24 Gustavson." Do you see that?

25 A. Yes.

1 Q. Do you believe these are minutes taken by you  
2 of that meeting?

3 A. Yes.

4 Q. Now, this -- is this the same thing as the  
5 SyncLink consortium, or is this an IEEE working group?

6 A. This is an IEEE working group.

7 Q. Okay. I see that you're listed as an attendee.  
8 Do you see that?

9 A. Yes.

10 Q. And if you'll look on the first page where it  
11 says, "details," you see the main question was how much  
12 to modify the RamLink protocol to optimize for  
13 SyncLink. Do you see that?

14 A. Yes.

15 Q. That's what you were talking about before,  
16 which is how do you move the SyncLink project forward?

17 A. The SyncLink project was essentially modifying  
18 the RamLink protocol.

19 Q. Okay. Just above your name in the list of  
20 attendees do you see Richard Crisp's name?

21 A. Yes.

22 Q. You understood he was employed by Rambus at the  
23 time?

24 A. I believe so.

25 Q. If you look on page 2 of the minutes you'll see

1 a reference to Mr. Crisp, about seven paragraphs down?

2 A. Yes.

3 Q. It says, "Richard Crisp of Rambus informed us  
4 that in their opinion both RamLink and SyncLink may  
5 violate Rambus patents that date back as far as 1989."  
6 Do you see that?

7 A. Yes.

8 Q. And you put that in the minutes in an effort to  
9 reflect what Mr. Crisp had said at the meeting;  
10 correct?

11 A. That's correct.

12 Q. And then the minutes say, "Others commented  
13 that the RamLink work was public early enough to avoid  
14 problems and thus might invalidate such patents to the  
15 same extent that they appear to be violated." Do you  
16 see that?

17 A. Yes, I do.

18 Q. Someone at that meeting said that in response  
19 to Mr. Crisp's statement; correct?

20 A. Correct.

21 Q. Do you remember who said it?

22 A. No, I don't.

23 Q. Well, is it correct that you were concerned at  
24 the time about Mr. Crisp's statement, at least in part  
25 because you thought it might block the RamLink standard

1 that was being balloted from being approved?

2 A. I don't know exactly what the dates were, but  
3 at some point the IEEE notified the RamLink working  
4 group that Rambus had complained about such a possible  
5 interference.

6 Q. Is it correct that as a result of that question  
7 being raised by the IEEE that you took a look at some  
8 of Rambus' patent applications?

9 A. Yes.

10 Q. And those were patent applications by Rambus  
11 that had been published in Europe that you looked at;  
12 correct?

13 A. That's right. That was the only information we  
14 could find.

15 Q. You wanted to see what the claims were; right?

16 A. That's correct.

17 Q. And you and two engineers from Apple Computer  
18 sat at a room in Apple and looked at those Rambus  
19 patent applications that had been published in Europe;  
20 right?

21 A. Correct.

22 Q. The Apple engineers in question were named  
23 David James and Glen Stone; right?

24 A. Correct.

25 Q. And those two gentlemen had been at this

1 meeting on August 21, 1995; right?

2 A. Correct.

3 Q. Both their names appear on the list of  
4 attendees; right?

5 A. Correct.

6 Q. And when you -- and you had this meeting with  
7 Mr. James and Mr. Stone and looked at the Rambus patent  
8 applications in a room at Apple; correct?

9 A. That's correct.

10 Q. And when you reviewed those Rambus patent  
11 applications with Mr. Stone and Mr. James you concluded  
12 that Rambus' claims were so broad that you could not  
13 send signals on wires in a memory device without  
14 violating those claims; right?

15 A. That's the conclusion I recall reaching, yes.

16 Q. And you concluded there was just no way to work  
17 around those patent claims that you saw in the  
18 applications; correct?

19 A. Especially since they covered everything we had  
20 been doing for the last ten years or so.

21 Q. But you also concluded that the Rambus claims  
22 would not be issued. Was that also part of your  
23 conclusion?

24 A. I assumed, but I had no way of knowing which  
25 claims would be and which wouldn't.

1 Q. Now, you thought at the time it was normal in a  
2 patent application to be asking for very broad  
3 coverage; right?

4 MR. CATT: Your Honor, objection, seeking  
5 expert testimony.

6 MR. PERRY: I'm asking for his views at the  
7 time, Your Honor.

8 JUDGE McGUIRE: I'll entertain that question,  
9 but I'm not going to let it go too much further.

10 THE WITNESS: Yes. I understood that to be the  
11 normal practice to ask for everything.

12 BY MR. PERRY:

13 Q. And at the time you also concluded that Rambus  
14 wouldn't get that very broad coverage; right?

15 A. I assumed that it would not.

16 Q. Now, you believe that you and these Apple  
17 engineers had reviewed the Rambus European patent  
18 applications by the middle of January 1996; is that  
19 right?

20 A. That's a plausible date. I don't really  
21 remember dates very well.

22 Q. Let me show you -- let me show you the January  
23 1996 SyncLink minutes, RX 663.

24 May I, Your Honor?

25 Now, as of this time the SyncLink consortium

1 had been formed; correct?

2 A. It appears so.

3 Q. What position did you hold in 1996 with the  
4 consortium?

5 A. My official position was secretary. And when  
6 we incorporated -- that was later. This wasn't  
7 incorporated yet.

8 Q. After there was an corporation, SLDRAM Inc.,  
9 did you have an officer position?

10 A. I was secretary and the CFO.

11 Q. And one of your duties as secretary of the  
12 SyncLink consortium was to take the official minutes  
13 during the meeting; right?

14 A. Correct.

15 Q. You were trying to prepare minutes as best you  
16 could, that the member companies would rely on?

17 A. Correct.

18 Q. The minutes after you prepared them were made  
19 available to all member companies?

20 A. Right.

21 Q. The minutes of the early consortium, back in  
22 1996, those were made available to member companies  
23 when they joined later; right?

24 A. Yes.

25 Q. If you'll look at page 2 of this exhibit

1 there's a reference to Rambus. In the first full  
2 paragraph it says, "Rambus has 16 patents already, with  
3 more pending. Rambus says their patents may cover our  
4 SyncLink approach, even though our method came out of  
5 early RamLink work." Do you see that?

6 A. Yes.

7 Q. Does that refresh your recollection that you  
8 believe by this time, January 11, 1996, you and  
9 Mr. Stones and Mr. James had done your review of  
10 Rambus' European patent application?

11 A. I believe so, but this comment really wasn't  
12 based on that review, I don't think.

13 Q. I'm just asking if by this time that review had  
14 occurred?

15 A. It would have been well before this time.

16 Q. All right. Thank you.

17 Let me show you one more set of early meeting  
18 minutes. I believe this will be the first meeting of  
19 the consortium, RX 591.

20 May I?

21 JUDGE McGUIRE: Go ahead.

22 BY MR. PERRY:

23 Q. Just take a look at that, please, and see if  
24 that is indeed your minutes of the first meeting of the  
25 newly formed SyncLink consortium?

1 A. Yes, it appears to be.

2 Q. Now, the first thing that's mentioned is that  
3 distribution is restricted. Do you see that?

4 A. Yes.

5 Q. Is that distribution of the minutes?

6 A. Yes, this document.

7 Q. And was that true of the -- generally true of  
8 the minutes that you prepared, that they were  
9 restricted to SyncLink members?

10 A. Only consortium minutes, not IEEE minutes.

11 Q. The minutes you prepared of the SyncLink  
12 consortium were, as you understood it, restricted to  
13 SyncLink consortium members?

14 A. Correct.

15 Q. I see a reference to Chairman Tabrizi,  
16 T-a-b-r-i-z-i, had he been elected chairman of the  
17 consortium?

18 A. Yes.

19 Q. If you look on page 2 up at the top, I'll let  
20 you have a chance to read this paragraph, it's that  
21 first paragraph under "Issues to Consider." Have you  
22 read that?

23 A. Yes.

24 Q. And that says, "Issues to Consider. Clocking:  
25 Adaptive delay: Is there enough slack in timing: We

1 prefer to use delay locked loops rather than phase  
2 locked loops. Better handling of power down periods,  
3 lower power dissipation." Do you see that?

4 A. Yes.

5 Q. Was it your understanding at the time that the  
6 use of phase locked loops -- strike that.

7 Was it your understanding at the time that the  
8 use of delay locked loops rather than phase locked  
9 loops offered some advantages?

10 A. Yes.

11 Q. Now, moving forward, if I could, in time, we  
12 were talking about January '96.

13 Were you aware by that time that the RamLink  
14 standard had -- that the balloting of that had been  
15 suspended because of a concern over Rambus' patent  
16 claims, possible patent claims?

17 A. That's likely. I don't remember the exact  
18 dates.

19 Q. I can understand that, but let me help you with  
20 a document. I'll put up RX 676. I showed you this at  
21 your deposition, but you should still take a look at it  
22 as much as you need. It appears to have been e-mailed  
23 from you and printed out?

24 A. Yes.

25 Q. Do you see that it's dated February 6, 1996?

1 A. Yes.

2 Q. Did you send this to someone within the IEEE  
3 organization?

4 A. Yes, I did.

5 Q. And you understood her to have some connection  
6 with the standards setting process?

7 A. Yes.

8 Q. Now, all I really want to show you here is to  
9 refresh your recollection as to when you learned about  
10 the issues relating to RamLink. And you're free to  
11 read the whole thing, but if I can show you the  
12 paragraph, the second from the bottom, that says, "What  
13 is the status"?

14 A. Yes, I see that.

15 Q. It says, "What is the status of P 1596.4 now?"  
16 Is that P 1596.4, is that a reference to  
17 RamLink?

18 A. Yes, it is.

19 Q. Then you say, "It's been held up by patent  
20 issues for about six months now? Is it dead? Or being  
21 sent back to the working group for removal of all  
22 material that anyone might object to?"

23 That's what you wrote to Ms. DeChino?

24 A. Yes.

25 Q. Was that a reference to the RamLink standard

1 being held up by possible Rambus patent claims?

2 A. That's correct.

3 MR. PERRY: Your Honor, I would like to move in  
4 RX 676.

5 MR. CATT: No objection.

6 JUDGE McGUIRE: Entered.

7 (RX Exhibit 676 was admitted into evidence.)

8 BY MR. PERRY:

9 Q. Was it your view at the time that the RamLink  
10 standard should not be blocked by those broad claims in  
11 Rambus' patent applications that you didn't think would  
12 issue?

13 A. Yes. Those claims would have blocked all the  
14 standards of which I was aware.

15 Q. It was your view the claims should not block  
16 the balloting issue of the RamLink standard; correct?

17 A. That's correct.

18 Q. If I could show you another e-mail from this  
19 time period that I believe you sent, RX 675.

20 May I?

21 JUDGE McGUIRE: Go ahead.

22 BY MR. PERRY:

23 Q. Is this an e-mail you sent to Mary Lynne  
24 Nielsen sometime in February 1996?

25 A. Yes, it is.

1 Q. And does this generally have to do with some  
2 proposed changes in the IEEE patent policy?

3 A. Yes, it does.

4 Q. On the second page of the document there's a  
5 reference to a "bombshell" at the top of the page. Do  
6 you see that?

7 A. Yes.

8 Q. Now I'll just ask you to read through the next  
9 couple of paragraphs just to yourself, and then I just  
10 have a couple of questions.

11 A. Uh-huh. Okay.

12 Q. And what you described as the bombshell was the  
13 sentence in the proposed patent policy that, "The  
14 working group shall accept the view of the patent  
15 holder." Is that right?

16 A. That's right.

17 MR. CATT: Your Honor, I object to relevance.  
18 This is all about the IEEE disclosure policy. I don't  
19 see the relevance on it.

20 MR. PERRY: Your Honor, this is directly  
21 responsive to a slide Mr. McAfee showed and talked  
22 about, over our objection. It was his presentation.  
23 He was the economist. He talked about the lock-in  
24 issue and what patent standard setting organizations  
25 could adopt to avoid lock-in.

1           JUDGE McGUIRE: I will consider this question,  
2 but I also have some doubt regarding its weight, but it  
3 will stand on its own merit. I'll hear an inquiry on  
4 that basis.

5           MR. CATT: Thank you, Your Honor.

6 BY MR. PERRY:

7           Q. Well, let me try to shortcut it then,  
8 Dr. Gustavson.

9           Just describe for us what your concern was  
10 about the proposed statement in the proposed IEEE  
11 patent policy that if someone said I might have patent  
12 claims on that proposal you're working on, the working  
13 group had to accept the view of the patent holder as to  
14 the validity of the claims?

15          A. My concern was that any person who wished to  
16 block a standard could simply assert that they had  
17 patents applied for which would interfere with that  
18 standard, and if they refused to say that they would  
19 make their patents available on a nondiscriminatory  
20 basis to others it would be impossible for the standard  
21 to complete. In my view it would make it possible for  
22 every standard in the IEEE to be blocked by a single  
23 individual.

24          Q. Was it your concern at the time you wrote this  
25 e-mail that Rambus might do just that with respect to

1 the RamLink proposal, that is refuse to give an  
2 agreement to license its patents or patent  
3 applications?

4 A. My recollection is that that's essentially what  
5 had happened. Rambus said we have patents applied for  
6 that may cover this, and the IEEE's reaction had been,  
7 okay, working group redesign the thing so it doesn't  
8 violate anything Rambus claims.

9 We looked at the claims. They covered  
10 everything we had covered over the last twenty years.  
11 We couldn't do busses, basically. All of the standards  
12 would have been out of business if this policy  
13 prevailed.

14 Q. The RamLink standard later did issue, did it  
15 not?

16 A. Yes, it did.

17 Q. You talked to Mr. Crisp about the RamLink  
18 situation?

19 A. I don't remember specifically.

20 Q. Let me show you an e-mail, RX 593.

21 Before I get there, Your Honor, could I move in  
22 RX 675?

23 MR. CATT: No objection.

24 JUDGE McGUIRE: Entered.

25 (RX Exhibit 675 was admitted into evidence.)

1 BY MR. PERRY:

2 Q. Now, Dr. Gustavson, I suspect you haven't seen  
3 this in a long time. It was produced to us by Hans  
4 Wiggers, but if you look down at the bottom it appears  
5 there is an e-mail from you.

6 What I would like to give you the opportunity  
7 to do is read the e-mail that starts down at the bottom  
8 through about halfway through the next page, page 2,  
9 before I ask questions.

10 Let me first establish, you haven't seen this  
11 in a long time; right?

12 A. That's correct.

13 Q. You and I didn't meet in anticipation of this  
14 hearing; right?

15 A. No.

16 Q. That's correct, that we didn't meet?

17 A. That's correct.

18 Q. Okay. Why don't you take a minute and read  
19 that, please.

20 Just to make the record clear, we're looking at  
21 593. I think the transcript reflects 539, but this is  
22 RX 593.

23 A. Okay.

24 Q. This is a series of e-mails Mr. Wiggers  
25 produced to us, but I'm only going to ask you about a

1 portion of the e-mail that I just asked you to read,  
2 which starts at the bottom of page 1, dated February  
3 23, 1996. Did you in fact send this e-mail to  
4 Mr. Wiggers, Mr. Vogley, and Mr. Tabrizi?

5 A. Yes, it appears so.

6 Q. As well as Mr. James at Apple; correct?

7 A. Yes.

8 Q. And in this e-mail you describe a telephone  
9 conversation you had with Richard Crisp from Rambus;  
10 correct?

11 A. Correct.

12 Q. You say at the bottom of the page, "I had a  
13 call from Rambus' Richard Crisp recently." He called  
14 you; right?

15 A. Yes.

16 Q. You say at the bottom of the page, the  
17 carryover line says, "I had heard conflicting reports  
18 from IEEE as to whether Rambus had responded to their  
19 request for a clear statement whether Rambus felt the  
20 standard conflicted with their patents." Do you see  
21 that?

22 A. Yes.

23 Q. And you asked Mr. Crisp, "did you respond?"

24 A. Apparently so.

25 Q. And he told you that Rambus had responded;

1 right?

2 A. Yes.

3 Q. And he said to you, "Their response was  
4 basically to the effect that they were not able to  
5 determine at this time whether there was a conflict."  
6 Right?

7 A. Right.

8 Q. Then it says that, "We discussed the situation  
9 re patents, in general, and seemed to be in agreement  
10 that standards ought to make no assurance to the  
11 eventual user that no patent conflicts are involved."

12 Do you remember seeming to reach that agreement  
13 with Mr. Crisp?

14 A. I don't recall it as being an agreement with  
15 Mr. Crisp, specifically. It was my position that I  
16 developed in the course of this, and he seemed not to  
17 object to the idea. I think that was more likely.

18 Q. And then you say at the start of the next  
19 paragraph, "As far as I can tell, Crisp and Rambus'  
20 positions were entirely reasonable in this regard and  
21 so I expect it won't try to interfere with the  
22 standardization process. They are going at great  
23 lengths to separate themselves from it now." Do you  
24 see that?

25 A. Yes, I do.

1 Q. Is that something you wrote in this e-mail to  
2 describe your views at the time?

3 A. Yes.

4 Q. Now, it was after this point in time that the  
5 RamLink standard issued; correct?

6 A. Yes.

7 Q. And Rambus never said there wasn't a patent  
8 problem with RamLink; right?

9 A. As far as I know.

10 Q. As far as you know Rambus did not withdraw any  
11 of its claims that there might be a patent problem with  
12 RamLink; right?

13 A. That's correct.

14 Q. And, in fact, the SyncLink consortium members  
15 were still concerned in 1997 about lawsuits by Rambus;  
16 right?

17 MR. CATT: Objection, hearsay.

18 JUDGE McGUIRE: Sustained.

19 MR. PERRY: I'll show him the minutes, Your  
20 Honor.

21 Let's put up RX 966, but first let me move in  
22 RX 593.

23 MR. CATT: No objection.

24 JUDGE McGUIRE: Entered.

25 (RX Exhibit 593 was admitted into evidence) .

1 MR. PERRY: May I?

2 JUDGE McGUIRE: Go ahead.

3 BY MR. PERRY:

4 Q. Now, if you'll look -- does this appear to you  
5 to be minutes of an SLDRAM consortium meeting from July  
6 1997?

7 A. Yes, it does.

8 Q. Okay. Look on page 12. And we're using the  
9 page numbers on the lower left. There's a lot of page  
10 numbers here.

11 Page 12, the lower left, do you see where it  
12 says, "Notes by David Gustavson, consortium secretary"?

13 A. Yes.

14 Q. Does that suggest to you you prepared these  
15 notes?

16 A. Yes.

17 Q. Okay. If you'll look on page 3 -- now it's  
18 been a while since you read these minutes; correct?

19 A. That's correct.

20 Q. Why don't you just read the first 12 to 13  
21 lines of this and I'll have a couple questions.

22 A. Okay.

23 Q. Was it your understanding at the time of this  
24 meeting that there was concern among SyncLink  
25 consortium members that Rambus would sue individual

1 companies for patent infringement?

2 MR. CATT: Your Honor, I don't understand the  
3 relevance of this to our case. We are talking about  
4 JEDEC, not SyncLink, and the relevance of those  
5 patents.

6 MR. PERRY: I'm happy to explain this, Your  
7 Honor.

8 JUDGE McGUIRE: Let's hear it.

9 MR. PERRY: This has to do with the but for  
10 world.

11 This consortium, consisting largely of JEDEC  
12 representatives, was explicitly warned of Rambus'  
13 patents. And an officer of the consortium reviewed the  
14 patent applications and believed that they were covered  
15 by prior art. The consortium went forward for years,  
16 spending time and money to develop the device, despite  
17 those warnings. That goes exactly to what these folks  
18 would have done if the same kind of explicit warning  
19 had been made to JEDEC.

20 JUDGE McGUIRE: Overruled. I'll hear it on  
21 that basis.

22 BY MR. PERRY:

23 Q. There was a question pending, and I'll try to  
24 re-ask it.

25 Was it your understanding in July 1997 there

1 were SyncLink consortium members that were concerned  
2 that Rambus would sue individual companies for patent  
3 infringement based on the SyncLink device?

4 A. Yes.

5 Q. And that's reflected in your minutes of this  
6 meeting?

7 A. Yes.

8 Q. Now, let me also show you a set of minutes from  
9 September 1998. And this will be RX 1275.

10 May I?

11 JUDGE McGUIRE: You may.

12 BY MR. PERRY:

13 Q. Do you see the date at the top on the first  
14 page it appears to be a date created by a computer,  
15 980922. Do you see that?

16 A. Yes.

17 Q. Did there come a point in time when you started  
18 using a laptop computer to take meeting minutes?

19 A. Yes.

20 Q. And is it correct that you prepared the minutes  
21 and sent them out in electronic form after a certain  
22 point in time?

23 A. Yes.

24 Q. And do you see on page 12, again using the  
25 numbers in the lower left corner, do you see up at the

1 top, "Respectfully Submitted, David B. Gustavson,  
2 SLDRAM Inc." Do you see that?

3 A. Yes.

4 Q. Does that indicate these were minutes you  
5 prepared and submitted to SyncLink consortium in  
6 September 1998?

7 A. Yes.

8 Q. Well, let's look if we could to page 6. Now,  
9 again, I'm sure it's been a while since you read these.  
10 If you could just read about halfway down the page and  
11 I'll have just a couple of questions.

12 A. Okay.

13 Q. Now, do you see that the second entry on page 6  
14 says "FT"?

15 A. Yes.

16 Q. Was that the way you attributed comments to  
17 certain people? Was that your standard style?

18 A. Yes.

19 Q. FT was a reference to Mr. Tabrizi; right?

20 A. Yes, it was.

21 Q. It says after FT, "Intel, with all their power  
22 will make their RDRAM happen from 1999 to 2000, will  
23 probably get 40 percent of market over that time  
24 frame." Do you see that?

25 A. Yes.

1 Q. Is that the substance of the statement  
2 Mr. Tabrizi made during this September meeting?

3 A. Yes.

4 Q. And then down below that, if you'll go to  
5 another reference to FT about ten lines down, do you  
6 see where it says, "FT in next six months it will  
7 become clear how easy it is to mass produce Rambus."  
8 Do you see that?

9 A. Yes.

10 Q. And is that the substance of a statement made  
11 by Mr. Tabrizi during the September 1998 meeting?

12 A. If you include the rest of the sentence, yes.

13 Q. The rest of the sentence being, "if easy AMD  
14 will also go Rambus"?

15 A. Yes.

16 Q. Now, did there come a time when the SLDRAM  
17 consortium changed its name to AMI 2?

18 A. Yes.

19 Q. And when that happened was it your  
20 understanding that the AMI 2 organization became more  
21 marketing focused than the consortium had been?

22 A. Yes.

23 Q. And was it right about that time that you  
24 stopped attending meetings?

25 A. Yes.

1 Q. Let me show you an e-mail that you received on  
2 that subject in January 1999 from Desi Rhoden.

3 This will be RX 1373.

4 May I?

5 JUDGE McGUIRE: Yes.

6 BY MR. PERRY:

7 Q. Do you see you're listed as a recipient on this  
8 long list of e-mail recipients?

9 A. Yes.

10 Q. Now, in the January 1999 time frame was that  
11 the time frame in which there was discussion going on  
12 as to whether to change the focus of the SLDRAM  
13 consortium?

14 A. I would think it was earlier than that, so I'm  
15 surprised that it's that late date.

16 Q. Well, there was -- you may remember there was a  
17 December 1998 meeting in Yokohama about those issues.  
18 I believe you attended that.

19 Do you remember going to a meeting in December  
20 '98, where the DRAM executives talked about what the  
21 consortium would become?

22 A. I know I went to, I think, two of the executive  
23 meetings in Yokohama, but I don't remember specific  
24 dates.

25 Q. Okay. Let me point you to a sentence in

1 Mr. Rhoden's first paragraph. It talks about the  
2 attached slides.

3 Do you see where it says, "The attached slides  
4 are a proposal born out of the discussions that we had  
5 at the last executive meeting in Yokohama." Do you see  
6 that?

7 A. Yes.

8 Q. In the next paragraph it says, "It is evident  
9 from the last meeting that the corporation that has  
10 been known as SLDRAM will exist under a new name and  
11 will have some number of members."

12 Having seen that does that refresh your  
13 recollection of a meeting in Yokohama in December or  
14 fall of '98 in which the future direction of the  
15 consortium was discussed?

16 A. Evidently this sets the time point.

17 Q. You just don't remember from your own memory?

18 A. Right. The earlier date I gave for my  
19 retirement from Santa Clara must be wrong. It must be  
20 later than '98.

21 Q. Did you retire from Santa Clara after you  
22 stopped attending the SyncLink meetings?

23 A. Yes.

24 Q. Okay. Mr. Rhoden goes on and talks about the  
25 proposals, what can be done with the organization to

1 enhance the total industry acceptance of new standard  
2 memory technologies like, and then there's two blocked  
3 words. Do you see that?

4 A. Yes.

5 Q. I can represent to you that the blocked words  
6 are DDR, so reference to DDR and DDR II. Just take my  
7 word for that.

8 A. Okay.

9 Q. Do you remember discussion of changing the  
10 SyncLink consortium into a marketing focus on DDR?

11 A. Yes, approximately.

12 Q. Now, the last sentence that Mr. Rhoden says is,  
13 "In the DRAM industry we are clearly stronger together  
14 than we are individually."

15 Did you ever talk to Mr. Rhoden, just the two  
16 of you, about that concept?

17 A. I don't recall just two of us. There was the  
18 general feeling that there had been no industry  
19 representative group for the memory industry and that  
20 this might become such a group.

21 Q. Let me ask you to look at just a couple of the  
22 graphs that he attached to the e-mail he sent you, or  
23 slides.

24 If you'll look at page 3 of the document. Do  
25 you see the heading is "New Name and New Focus"?

1 A. Yes.

2 Q. And then the third subbullet says, "Coordinate  
3 industry proliferation and widespread adoption of new  
4 memory technology." Do you see that?

5 A. Yes.

6 Q. Is that a reference to DDR, as you understood  
7 at the time?

8 MR. CATT: Objection, calls for hearsay.

9 MR. PERRY: I'm asking for his understanding.

10 JUDGE McGUIRE: Overruled.

11 THE WITNESS: All I would know from that would  
12 have been kind of from general flow of talk in the  
13 room.

14 DDR was certainly commonly mentioned. I  
15 wouldn't understand that to mean any new technology.

16 BY MR. PERRY:

17 Q. Okay. The next sentence says, "Indemnify  
18 member companies from antitrust while still providing a  
19 close working environment for all."

20 Did you have an understanding at that time of  
21 what Mr. Rhoden meant by that concept?

22 A. The truth is that by this time I wasn't  
23 particularly following these things in detail, and I  
24 wasn't very interested.

25 Q. So is the answer that you didn't have an

1 understanding at the time?

2 A. That's true.

3 Q. Let's look at one more slide then. The very  
4 last one, page 8. It's entitled, "Organization  
5 Logistics."

6 Do you see the fourth bullet point says M12  
7 should be folded under the corporation for antitrust  
8 protection." Do you see that?

9 A. I do.

10 Q. Had you heard references in past SyncLink  
11 meetings to M9 or M11 or M12?

12 A. I don't remember hearing such.

13 Q. Did you have an understanding at the time of  
14 what Mr. Rhoden meant when he said M12 should be folded  
15 under the corporation for antitrust corporation?

16 MR. CATT: Your Honor, they've had two days  
17 with Mr. Rhoden. I don't see any point in this witness  
18 talking about something they had two days they could  
19 ask him questions about.

20 MR. PERRY: I did ask Mr. Rhoden. I'm just  
21 asking now did he have an understanding. It's my last  
22 question.

23 JUDGE McGUIRE: I'll hear it on that basis.

24 THE WITNESS: I don't have any recollection of  
25 those terms, even, and I don't recall knowing what they

1 meant at the time. I just don't recall.

2 MR. PERRY: Thank you. I would like to move in  
3 RX 579, which is the first set of minutes.

4 MR. CATT: No objection.

5 JUDGE McGUIRE: Entered.

6 (RX Exhibit 579 was admitted into evidence.)

7 MR. PERRY: No further questions, Your Honor.

8 JUDGE McGUIRE: Thank you, Mr. Perry.

9 Okay. At this time we'll hear the inquiry by  
10 Complaint Counsel, Mr. Catt.

11 CROSS EXAMINATION

12 BY MR. CATT:

13 Q. Good afternoon -- good morning, Dr. Gustavson.  
14 This is going faster than I expected.

15 I just have a few questions, so we'll have you  
16 out for lunch in a moment.

17 You testified previously about looking at some  
18 European patent applications, Rambus European patent  
19 applications; is that correct?

20 A. Yes.

21 Q. And in looking at them you wanted to get an  
22 idea whether those -- what Rambus was claiming that  
23 might affect the RamLink standard; is that correct?

24 A. Not just RamLink standard, but that was the  
25 immediate standard. Every standard I had been involved

1 with. I was interested in for that purpose.

2 Q. When you looked at those applications you  
3 focused on claims?

4 A. Yes.

5 Q. And you did that because you were told that the  
6 claims were what mattered in determining coverage?

7 A. Yes, that's right.

8 Q. And you didn't read the specification or the  
9 descriptive part of the patent for the purpose of  
10 trying to predict what features Rambus might claim in  
11 the future?

12 A. No.

13 Q. In fact, you don't specifically recollect  
14 whether you looked at the specification at all?

15 A. I don't. As I recall they start on the front  
16 page, so I probably looked at it, but no.

17 Q. And you only looked at those patent  
18 applications once?

19 A. That's -- I believe that's correct.

20 Q. And you never reviewed the claims again with  
21 respect to SyncLink?

22 A. That's correct.

23 Q. And at the time you looked at the claims you  
24 never considered the claims might relate to SDRAMs or  
25 DDR SDRAMs?

1           A. I really wasn't that interested in DRAMs or  
2 memory. I was more of a system architect, and coming  
3 at this from the background of coherent scalable  
4 interface I was interested in high speed communication  
5 and busses and system architecture. And particular  
6 kinds of DRAMs were just a detail, as far as I was  
7 concerned.

8           Q. You've never been a memory chip -- a DRAM  
9 designer, have you?

10          A. No.

11          Q. And your role at SyncLink, at the SyncLink  
12 consortium was primarily administrative?

13          A. That's correct. I was asked not to participate  
14 in the technical stuff, much to my chagrin, because  
15 they wanted only memory company people who knew what  
16 they were doing to be involved in that.

17          Q. Other members of the consortium were doing that  
18 work?

19          A. Yes.

20          Q. And so you don't know all the considerations  
21 that those members were taking into account when they  
22 were doing their work on the technical aspects?

23          A. No, I don't.

24          Q. The consortium sought patents, didn't it?

25          A. Yes.

1 Q. And it decided in seeking royalties on those  
2 patents?

3 A. Yes.

4 Q. But it was the purpose behind the patent was to  
5 protect the standard against -- just to predict the  
6 ultimate standard, wasn't it?

7 MR. PERRY: Objection, leading. Calls for  
8 speculation. No foundation.

9 JUDGE McGUIRE: Do you want to comment on that,  
10 Mr. Catt?

11 MR. CATT: I'll rephrase.

12 JUDGE McGUIRE: That's even better.

13 BY MR. CATT:

14 Q. What was the purpose of the consortium  
15 retaining patents?

16 MR. PERRY: Still lacks foundation. He just  
17 established his role was primarily administrative.

18 JUDGE McGUIRE: Overruled.

19 THE WITNESS: We had discovered in our -- our  
20 strategy in previous work had been to put all of our  
21 technology into the public domain as fast as we  
22 developed it in working groups, but we discovered that  
23 that wasn't sufficient anymore and that one had to have  
24 patents so that you could be protected so that no one  
25 could block you from using your own technology,

1 basically. And the term I heard applied to this was  
2 "defensive patents."

3 BY MR. CATT:

4 Q. The consortium was open to anyone who wanted to  
5 join it?

6 A. That's right.

7 Q. In fact, Rambus was invited to join the  
8 consortium, wasn't it?

9 A. Yes.

10 Q. But Rambus never joined?

11 A. No.

12 Q. And you're not a member of JEDEC, are you?

13 A. No, I'm not.

14 Q. And you've never attended JEDEC?

15 A. No, I haven't.

16 Q. And you didn't participate in the  
17 standardization of the SDRAM or DDR SDRAM standards?

18 A. No, I didn't.

19 Q. And you've never read the JEDEC patent  
20 disclosure policy?

21 A. I don't recall having read it.

22 Q. You're not a patent attorney, either, are you?

23 A. No, I'm not.

24 Q. And you don't have any special expertise in  
25 patent disclosure policies either, do you?

1 A. No.

2 MR. CATT: No further questions, Your Honor.

3 JUDGE McGUIRE: Mr. Perry?

4 MR. PERRY: Just a couple.

5 REDIRECT EXAMINATION

6 BY MR. PERRY:

7 Q. You remember you're a named inventor on the  
8 SyncLink patents?

9 A. Yes.

10 Q. You know those SyncLink patents are now  
11 assigned to AMI 2; correct?

12 MR. CATT: Your Honor, he's already testified  
13 he has not.

14 JUDGE McGUIRE: I'm having trouble hearing you,  
15 Mr. Catt.

16 MR. CATT: He's already testified he did not go  
17 to AMI 2, and there's no foundation he would have any  
18 knowledge.

19 JUDGE McGUIRE: You can lay the foundation --  
20 sustained.

21 MR. PERRY: As a named inventor, Your Honor, I  
22 think I have, but I'll try again.

23 BY MR. PERRY:

24 Q. You understand you're a named inventor on some  
25 patents that were originally assigned to SLDRAM Inc.;

1 correct?

2 A. I know I'm a named inventor on some patents.  
3 Certainly what you say is approximately correct. I  
4 know at some point I had to get a letter from the  
5 university, because I had a patent agreement with the  
6 university, and the university had to agree to give its  
7 rights over. I don't know if that was to the  
8 consortium or AMI 2.

9 Q. Do you have any idea, one way or the other,  
10 whether AMI 2 is using the SyncLink patents to try to  
11 encourage people to join AMI 2?

12 A. No, I don't.

13 JUDGE McGUIRE: One last time.

14 MR. CATT: No.

15 JUDGE McGUIRE: Once again, doctor, you're  
16 excused from this proceeding. Thank you for your  
17 testimony.

18 Does that conclude respondent's presentation?

19 MR. PERRY: Yes. You may recall Mr. Oliver  
20 saying our schedule was aggressive. It turned out to  
21 be wimpy.

22 JUDGE McGUIRE: Tomorrow you're going to call  
23 an expert; is that correct?

24 MR. STONE: Each of the next three days;  
25 Friday, Monday, Tuesday will be expert witnesses. We

1 think each of them will consume the better part of each  
2 of those days. It's a little hard to know, but that's  
3 what we're hoping.

4 JUDGE McGUIRE: Okay. Very well. See you in  
5 the morning at 9:30.

6 MR. STONE: Thank you, Your Honor.

7 (Hearing adjourned at 11:47 a.m.)

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3 DOCKET/FILE NUMBER: 9302

4 CASE TITLE: IN THE MATTER OF RAMBUS

5 HEARING DATE: JULY 17, 2003

6

7 I HEREBY CERTIFY that the transcript contained  
8 herein is a full and accurate transcript of the notes  
9 taken by me at the hearing on the above cause to the  
10 best of my knowledge and belief.

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12 Dated:

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Paula G. Satkin, RPR

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