

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

**COMMISSIONERS: Timothy J. Muris, Chairman  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour**

**In the matter of**

**RAMBUS INCORPORATED,  
a corporation**

**Docket No. 9302**

**MOTION OF  
ECONOMICS PROFESSORS AND SCHOLARS**

**Joseph Farrell, University of California, Berkeley  
Jay Pil Choi, Michigan State University  
Aaron S. Edlin, University of California, Berkeley  
Shane Greenstein, Northwestern University  
Bronwyn H. Hall, University of California, Berkeley  
Garth Saloner, Stanford University**

**FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

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**[PUBLIC]**

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**April 15, 2004**

Pursuant to 16 C.F.R. § 3.52(j), Joseph Farrell, Jay Pil Choi, Aaron S. Edlin, Shane Greenstein, Bronwyn H. Hall, and Garth Saloner (collectively “Amici”), respectfully move for leave to file an *amicus curiae* brief in this matter.

The Amici are professors at major universities who have researched and written extensively on the economics of intellectual property, competition policy, and/or compatibility standards.<sup>1</sup> This submission describes what the Amici believe are consensus views on some economic questions that arise in connection with the alleged concealment by Rambus of patents and/or patent applications in the dynamic random access memories (DRAM) industry.

When the intellectual property system works efficiently, it interacts with market mechanisms to ensure that an inventor receives an economically efficient reward. When a standard is adopted without full knowledge of the intellectual property rights associated with it, however, the inventor may be able to “hold up” users of the standard and demand an excessive royalty payment. Economists recognize that economic hold-up can harm competition and consumers. In an important industry such as DRAM, a key input into modern computers, the economic consequences of hold up could be substantial.

Standard-setting organizations (SSOs) sometimes adopt disclosure obligations that might mitigate this hold-up concern, specifying for instance that patents that will be essential to compliance with a proposed standard must be disclosed, and perhaps that the owner must agree to license on reasonable and non-discriminatory terms. However,

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<sup>1</sup> The Amici do not represent and are not being compensated by either party in this action. The primary author was consulted at an early stage by FTC staff; he has been retained by Counsel for Hynix Semiconductor to draft this brief. Other co-signers are not being compensated in any way by Hynix Semiconductor.

economic analysis suggests that SSOs' incentives to craft and enforce such rules may be imperfectly aligned with economic efficiency and the protection of end-users against the effects of patent hold-up. While the Amici do not pretend to offer a general solution to this problem, it seems reasonable at a minimum that where an SSO's rules are ambiguous it is sensible for competition authorities to step in to protect end-users by preventing anticompetitive hold-up from "submarine" behavior that falls in a "gray area" of the SSO's rules.<sup>2</sup> Because the SSO may not have the right incentives to design and enforce disclosure and licensing rules, one need not condone hold-up that harms end-users simply because an SSO's rules do not plainly prohibit it. Based on the foregoing reasons, the Amici respectfully suggest that the attached brief may assist the Commission in addressing the appeal.

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<sup>2</sup> Industry participants often express concern about "submarine patents." A recent FTC Report describes the issue as follows. "The basic scenario is that a patent applicant allows its application to languish in the PTO while watching another company make substantial investments in a technology or product that will infringe the yet-to-be-issued patent. Once the other company's sunk costs are large, the patent applicant obtains the patent, asserts infringement, and 'holds up' the other company, demanding supracompetitive royalties for a license to the 'submarine patent'." Federal Trade Commission (2003), "To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy" at p. 26.

WHEREFORE, the proposed *amici curiae* respectfully request that the Commission grant its motion for leave to file the attached *amicus curiae* brief.

Dated: April 15, 2004

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2004, I served a true and correct copy of the MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF and the accompanying BRIEF OF *AMICUS CURIAE* of the Economics Professors and Scholars, as set forth below:

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David T. Beddow, Esq.

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*One copy by hand delivery to:*

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