

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

PUBLIC

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

**REQUEST FOR IMMEDIATE CLARIFICATION
OF FEBRUARY 26, 2003 ORDER ON COMPLAINT COUNSEL'S MOTIONS
FOR DEFAULT JUDGMENT AND FOR ORAL ARGUMENT**

On February 26, 2003, Your Honor issued an Order on Complaint Counsel's Motions for Default Judgment and for Oral Argument ("Order"). In that Order, Your Honor identified a total of seven "rebuttable adverse presumptions [that] will exist for the remainder of the administrative proceedings in this matter." Order at 8. Complaint Counsel hereby requests minor clarifications to the Order, as relates to the wording of certain of these presumptions.

The first rebuttable presumption states as follows:

"Rambus knew or should have known from its pre-1996 participation in JEDEC that developing JEDEC standards would require the use of patents held or applied for by Rambus."

From other language in the Order, Complaint Counsel understands this presumption to implicitly state that Rambus knew or should have known, while participating in JEDEC's development of RAM standards, that the JEDEC RAM standards being developed at that time (i.e., prior to mid-1996)

would require the use of patents held or applied for by Rambus.¹ Because these implicit understandings – all directly supported by other language in the Order (*see* footnote 1) – could have potentially significant implications, Complaint Counsel asks Your Honor to clarify the first rebuttable presumption by rewording it as follows:

“While participating in JEDEC’s development of RAM standards, Rambus knew or should have known that the JEDEC RAM standards being developed at that time (i.e., prior to mid-1996) would require the use of patents held or applied for by Rambus.”

Moreover, although the first rebuttable presumption states that “Rambus knew or should have known” that JEDEC’s developing standards would require the use of patents held or applied for by Rambus, Complaint Counsel understands this presumption to implicitly encompass the proposition that “Rambus reasonably believed” that the JEDEC RAM standards would require the use of patents held or applied for by Rambus. Hence, in addition to clarifying the first rebuttable presumption as indicated above, Complaint Counsel asks Your Honor to add an additional rebuttable presumption worded as follows:

“While participating in JEDEC’s development of RAM standards, Rambus reasonably believed that the JEDEC RAM standards being developed at that time (i.e., prior to mid-1996) would require the use of patents held or applied for by Rambus.”

Finally, the first, second, and third rebuttable presumptions all contain the term “patents.” Only

¹ *See, e.g.*, Order at 3 (“In mid-1996, Rambus ceased participating in JEDEC); *id.* (noting that “While participating in JEDEC’s development of RAM standards, Rambus was advised by its counsel that this participation, combined with its failure to disclose the existence of the patents that would be infringed . . . could create an equitable estoppel . . .”) (emphasis added); *id.* at 6 (“prior to Rambus’s decision to cease participating in JEDEC, its counsel indicated that its participation could hamper its potential claims for patent infringement.”) (emphasis added).

the first rebuttable presumption, however, refers to “patents held or applied for by Rambus.” From other language in the Order, Complaint Counsel understands the term “patents” – as used in all three of these presumptions – to include patent applications, or pending patents. *See, e.g.*, Order at 3 (“Rambus never disclosed to other JEDEC participants that it either held or had applied for patents that would be infringed upon by the proposed standards for RAM.”) (emphasis added). Because this implicit understanding – directly supported by other language in the Order – could have potentially significant implications, Complaint Counsel asks Your Honor to clarify the second and third rebuttable presumptions by rewording them, consistent with the first rebuttable presumption, to explicitly refer not simply to patents, but to “patents held or applied for by Rambus.”

Considering Your Honor’s impending retirement, and the fact that this request for clarification simply seeks to conform the language of the rebuttable presumptions to the clear language and meaning of Your Honor’s February 26, 2003 Order as a whole, Complaint Counsel respectfully requests an immediate ruling on this motion. Specifically, Complaint Counsel requests that Your Honor enter the proposed Clarification of Order submitted herewith.²

Respectfully submitted,

M. Sean Royall
Geoffrey D. Oliver

BUREAU OF COMPETITION
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

² In filing this request for immediate clarification of Your Honor’s February 26, 2003 Order, Complaint Counsel expressly reserves the right, at a later time, to seek additional or alternative relief relating to Rambus’s bad-faith destruction of material evidence.

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COUNSEL SUPPORTING THE
COMPLAINT

Dated: February 27, 2003

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In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

**CLARIFICATION
OF FEBRUARY 26, 2003 ORDER ON COMPLAINT COUNSEL'S MOTIONS
FOR DEFAULT JUDGMENT AND FOR ORAL ARGUMENT**

On February 26, 2003, this Administrative Law Court issued an Order on Complaint Counsel's Motions for Default Judgment and for Oral Argument ("Order"), which among other things identified a total of seven "rebuttable adverse presumptions [that] will exist for the remainder of the administrative proceedings in this matter." Order at 8. The Order is hereby clarified and supplemented as follows:

1. The first rebuttable presumption is hereby reworded and superseded. The new language of that rebuttable presumption is as follows: "While participating in JEDEC's development of RAM standards, Rambus knew or should have known that the JEDEC RAM standards being developed at that time (i.e., prior to mid-1996) would require the use of patents held or applied for by Rambus."

2. An additional rebuttable presumption, stating as follows, is hereby added to the Order: "While participating in JEDEC's development of RAM standards, Rambus reasonably believed that the JEDEC RAM standards being developed at that time (i.e., prior to mid-1996) would require the use of

patents held or applied for by Rambus.”

3. Finally, the second and third rebuttable presumptions in the Order, insofar as they refer to Rambus “patents,” shall be understood to refer to “patents held or applied for by Rambus.”

James P. Timony
Administrative Law Judge

Dated: _____