

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)

RAMBUS, INC.)

a corporation.)

Docket No. 9302

**ORDER ON NON-PARTIES' MOTIONS FOR *IN CAMERA* TREATMENT
OF DOCUMENTS LISTED ON PARTIES' EXHIBIT LISTS**

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, a third party and several non-parties have filed motions for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter.¹

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be

¹ In addition to the motions addressed in this Order, there are before the Court the following non-party motions for *in camera* treatment which will not be ripe for review in time for the Court to rule before the start of the evidentiary hearing on April 30, 2003: motion by Samsung Electronics Co. , filed on April 18, 2003; motion by Micron Technology Inc., filed on April 16, 2003; motion by Mosaid Technology Inc., filed April 15, 2003; motion by IBM, filed on April 18, 2003; and motion by Dr. Betty Prince, filed April 16, 2003. **If the parties do not intend to oppose any of these motions, a short statement to that effect will be accepted by the Court no later than 10:00 am Thursday, April 24th, to allow a ruling to be entered before the start of the evidentiary hearing.**

Moreover, Respondent Rambus, Inc., filed a motion for *in camera* treatment on April 17, 2003, which will not be ripe for review in time for the Court to rule before the start of the evidentiary hearing. Thus, in the event that the parties offer into evidence any of the documents for which *in camera* treatment was sought, provisional *in camera* treatment may be accorded such document at the time it is offered pursuant to 16 C.F.R. Sec. 3.45(g)

made by establishing that the documentary evidence is “sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury,” and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those “unusual” cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135 (April 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g., In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (Jan. 21, 1981); *In re International Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission’s work and to provide guidance to persons affected by its actions. *Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). Thus, a heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public’s purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 1990 FTC LEXIS 134 at *2. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant’s business that disclosure would result in serious competitive injury is generally required.

II.

Third party Infineon Technologies North America (Infineon), on April 11, 2003, filed a motion seeking *in camera* treatment for six strategic planning documents containing highly confidential information about Infineon’s business operations as well as its future business plans. Infineon alleges that disclosure of these documents would result in a clearly defined, serious competitive injury to Infineon, particularly considering that Infineon is a third party to this proceeding. The Infineon documents provide such crucial information as Infineon’s plans for pricing, its key customers, projected sales to such customers, manufacturing costs and capital

investments. Attached to Infineon's motion is the declaration of Henry S. Becker and Exhibits A-F (collectively the Infineon documents). Mr. Becker is the Managing Director of Infineon Technologies Richmond. As explained in the Becker declaration, each of these documents contain highly detailed information about Infineon's business operations and strategic planning for its Memory Products Division (Becker Decl. at Sec. 3, 5, 7, 9, 11). These exhibits represent Infineon's main strategic planning documents for its 1998, 1999, 2000 and 2002 fiscal years. No oppositions to this motion have been filed.

Infineon has demonstrated that it has met the burden of each of the tests enunciated in *Bristol Myers*, which weigh in favor of granting Infineon's request for *in camera* treatment. However, it has not met the heavy burden of establishing the unusual circumstances that may warrant indefinite *in camera* treatment or even such treatment for a period of 10 years. Accordingly, its motion is **GRANTED in part and DENIED in part**.

In camera treatment for an extended period of 5 years, to expire on April 23, 2008, is **GRANTED** to the following documents: (1) INF-FTC-012657-991; (2) INF-FTC-010428-785; (3) INF-FTC-009939-10227; (4) INF-FTC-009660-9938; (5) INF-FTC-002474-673; and (6) INF-FTC-010228-427.

III.

Non-party Intel Corporation ("Intel") on April 11, 2003, filed a motion seeking *in camera* treatment for certain confidential documents relating to Intel's strategic plans, confidential financial information, market projections, cost estimates, and similar types of information. In support of its motion, Intel attached the Declaration of James A. Murray, Associate General Counsel and Director, Antitrust and Competition Policy at Intel Corporation.

Document 40037DOCO0821-868 is Intel's July 23, 2002 Memory SLRP ("Strategic Long-Range Plan"). SLRPs contain some of Intel's most sensitive business plans and forecasts. SLRPs are prepared as part of a detailed process of analyzing key long-term strategic issues for the business and proposing for management committee approval action plans to address those issues. They address challenges and actions expected over approximately the next five years, but the issues or actions discussed can have longer time-lines in practice. The July 2002 SLRP reviews Intel's outlook for the memory industry, discusses forecasts for Intel's key microprocessor competitors, sets out Intel's options and strategies for dealing with the memory industry and Intel's platform needs, and recommends a definitive strategy for dealing with memory issues.

Document 40143DOCO1981-02002 is a Memory SLRP update. The document updates Intel's Strategic Long-Range Plan with respect to memory products. The document discusses Intel's view of subjects such as the future of the memory industry in 2005-2008 and prospects for consolidation, the performance of Intel's suppliers, how Intel could lead innovation in memory architecture and Intel's options with respect to future memory products.

Document 40139DOCO2057-02115 is a February 2002 Platform POR (“Plan of Record”). The document discusses, among other things, Intel’s demand for computer memory, Intel’s contract prices for DRAM memory, Intel’s memory pricing forecasts for memory supply and capacity, and Intel’s future plans to try to establish another memory technology.

Document 40131DOCO1320-01331 is an internal Intel email and attachment that sets out Intel’s direct memory costs for Rambus memory and forecasts the supply and demand for memory products. The document also discusses and forecasts the bill of materials costs for an Intel system combined with various types of chipsets and memory, and references margin deltas at specific price points.

Document 40132DOCO0791-00793 is an internal Intel report written by one of Intel’s senior executives . The document discusses Intel’s Strategic Long-Range Plan with respect to several customers and future product releases. Intel asserts that these Plans represents Intel’s long -range forecasts and contain highly sensitive business information.

Document 40132DOCO0985-988 is an internal status report written by one of Intel’s senior executives that discusses numerous issues, including Intel customer initiatives and discussions, analysis of various competitors, and whether and to what extent Intel is likely to meet its financial forecasts.

Document 5056DOCO2010-02013 discusses Intel’s internal evaluation of Rambus memory and specific business strategies and approaches that Intel should adopt with respect to its future products and the memory industry. The document discusses how Intel should analyze and react to future industry initiatives regarding memory products.

Document 5014DOCO0108-00124 is an internal Intel CSD (“Corporate Strategic Direction”) presentation, discussing Intel’s future strategic plans with respect to memory products. Within Intel, a CSD is a review process whereby groups study significant business issues and recommend strategies for consideration by management executives. The document discusses the future health of the memory industry and the impact that the industry is likely to have on Intel’s microprocessor sales. It further discusses Intel’s future price projections for the memory industry and Intel’s objectives with respect to future memory initiatives.

In sum, release of the information in these documents would have serious and adverse competitive impacts on Intel and could adversely affect Intel strategies and decisions regarding future products it intends to build, its plans to innovate with specific technologies in various areas, Intel’s pricing, sales and ultimately prospects for profits. The effects of making the subject documents available to Intel’s competitors would therefore be substantial.

Intel has not met the heavy burden of establishing the unusual circumstances that may warrant indefinite *in camera* treatment for such information. Accordingly, Intel’s motion is **GRANTED in part** and **DENIED in part**. *In camera* treatment for a period of five years, to

expire on April 23, 2008, is granted to the following documents: 40037DOCO0821-868; 40143DOCO1981-02002; 40139DOCO2057-02115; 40131DOCO1320-01331; 40132DOCO0791-00793; 40132DOCO0985-988; 5056DOCO2010-02013; and 5014DOCO0108-00124.

IV.

On April 11, 2003, non-parties Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc., and Hynix Semiconductor Deutschland GmbH (collectively "Hynix"), moved for an order directing *in camera* treatment of certain highly confidential excerpts from Hynix documents that Complaint Counsel propose to enter into evidence at the hearing in this matter. The documents consist of six internal marketing strategy reports. Hynix seeks *in camera* treatment of just those portions of the reports that contain specific cost, price and yield information on the grounds that if this information were revealed to competitors, the result would be direct, immediate, and result in serious injury to Hynix in the marketplace.

The motion by Hynix is supported by a Declaration of D.S. Chung who is the Vice President of Intellectual Property Rights at Hynix Semiconductor, Incorporated. Attached to Chung's declaration are Exhibits A-F which are excerpts of analyses created by the company's internal business units and strategic marketing teams primarily for internal use and limited distribution at the company. Each of these exhibits contain current, detailed cost and price information on DRAMs, specifically SDRAM and/or RDRAM, including but not limited to cost and price premium projections and analyses, manufacturing yield analyses and comparisons, market risk analyses and market performance analyses.

In camera treatment for a period of 5 years, to expire on April 23, 2008, is **GRANTED** to the following numbered pages set forth in Exhibits A-F of the Hynix motion:

- Exhibit A** HR905-089450 through HR905-089455
- Exhibit B** HR905-089400; HR905-089407 through HR905408
- Exhibit C** HR905-089393; HR905-089396
- Exhibit D** HR905-089370; HR905-089373 through HR905-089377
HR905-089379; HR905-089380 through HR905-089384
- Exhibit E** HR905-089282; HR905-089291 through HR905-089292
HR905-089296 through HR905-089301
- Exhibit F** HR905-089272 through HR905-089273

ORDERED.

Stephen J. McGuire
Chief Administrative Law Judge

April 23, 2003

