

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the matter of)	
)	
RAMBUS INCORPORATED,)	Docket No. 9302
)	
a corporation.)	
_____)	

NON-PARTY MICRON TECHNOLOGY, INC.’s
MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

Non-party Micron Technology, Inc. (“Micron”) hereby moves pursuant to § 3.31(d) of the Commission’s Rules of Practice for a protective order prohibiting counsel for Respondent (“Rambus”) from disclosing certain highly confidential and sensitive Micron documents to Rambus in-house counsel and senior officials of Rambus. This Motion is supported by the Declaration of Robert Donnelly, the Vice President of Micron’s Computing and Consumer Group, attached hereto as Exhibit A (the “Donnelly Declaration”). The documents in question were previously granted *in camera* treatment by this Court, which also ruled that they would continue to be governed by the August 5, 2002 Protective Order (“the Protective Order”) if used at trial.¹ Rambus did not object to *in-camera* treatment of these documents. Under the terms of the Protective Order,

¹ Attached hereto as Exhibit B.

Rambus would not be permitted to disclose Restricted Confidential documents to in-house counsel or executives of Rambus.

In a letter dated May 13, 2003, Rambus challenged Micron's Restricted Confidential designations under Protective Order for twenty-one Micron documents. (*See* Rambus' Notice of Non-Opposition By Non-Party Micron Technology (hereinafter "Rambus Notice") at 2).² In addition, Rambus notified Micron that it sought Micron's agreement, under Sections 7(h) and 10(b) of the Protective Order, to disclose each of these twenty-one documents to Rambus's General Counsel, John Danforth, Rambus in-house counsel, Robert Kramer and Paul Anderson, Rambus's CEO, Geoffrey Tate, and Rambus Directors, Mike Farmwald and Mark Horowitz ("Rambus Officials").

As Rambus notes, Micron inadvertently failed to respond to Rambus's letter in writing within the time allotted under the Protective Order. (*See* Rambus Notice at 3). However, Rambus also acknowledges that within one day of the expiration of the time period for written objections, it did receive notice of Micron's intention to object. *See* Declaration of Gregory P. Stone, accompanying Rambus Notice at ¶ 3. Under the circumstances, Rambus has not been prejudiced by Micron's delay in responding.

Micron is prepared to permit Rambus to disclose a limited number of the identified documents to the Rambus Officials as requested. Micron will not oppose disclosure to the Rambus Officials of documents numbered MR0082159-60, MR20005866-67, MR20005991-92, MR20005984-85, MR20005900-03, MR20007331-40, and MR20007326.

² Copies of these twenty-one documents are being provided with the copy of this motion being served on the Office of Administrative Law Judges.

Micron must strenuously oppose Rambus' request to disclose the remaining documents to the Rambus Officials, for reasons explained in detail below. However, as also explained below, as to certain of the remaining documents, Micron will agree to reduce the level of confidentiality to Confidential under the Protective Order, which would permit disclosure to Rambus in-house counsel John Danforth and Robert G. Kramer, but preclude disclosure to the other four Rambus Officials.

II. **ARGUMENT**

As the Court has recognized in granting them *in camera* treatment, the disputed documents to which Rambus seeks access for its senior management contain highly sensitive confidential information relating to Micron's business, and Micron would suffer significant competitive injury if these documents were disclosed to the executives of a rival company such as Rambus. To protect Micron against such injury, and to honor the legitimate expectation of confidentiality under which Micron originally produced these documents, Micron respectfully submits that the Court should affirm the confidentiality of these documents in the manner and to the extent requested by Micron.

A. **Documents Relating to ADT**

Rambus seeks disclosure of five documents relating to the ADT group.³ These documents contain proprietary and technical information relating to DRAM technology

³ The five documents in question are numbered MFTC228549-51, MFTC200502-35, MFTC100000229, MFTC211248-58, MFTC211238-44. ADT is a research collaboration of numerous companies, including Micron.

developed by the ADT group, including highly sensitive, non-public technical, marketing, and planning documents. Many of the documents include detailed descriptions of proposed product features and architecture. Disclosure of these documents would cause Micron serious competitive injury. Rambus officials, particularly business executives but also business lawyers, could exploit the ADT information in the documents by incorporating key features of ADT into Rambus' own designs, or crafting patent claims to cover features of ADT.⁴ To avoid use by others, the ADT members have agreed to treat ADT proprietary information as confidential and limit its distribution to a need to know basis. (*See* Donnelly Decl. ¶ 5)

Accordingly, Micron requests that the Court confirm the Restricted Confidential status of these ADT documents and treat them accordingly at trial.

B. Internal Micron Emails

Rambus has also identified six internal Micron emails that it seeks to disclose to the Rambus Officials. Five of these emails contain sensitive information conveyed to Micron employees in confidence by employees of an important customer and technology partner of Micron.⁵ Micron has a close and important commercial relationship with this customer, which also has influence on system architecture. As described in the Donnelly Declaration, disclosure of any of these documents could undermine Micron's relationship with this customer and disadvantage it as compared to other suppliers. (*See* Donnelly Decl. ¶ 8). In particular, this customer and other customers may decline to share

⁴ Misuse of information by Rambus to tailor its patent claims is part of the anticompetitive conduct of which Rambus is accused in this proceeding.

⁵ The sixth, MR 0082159-60, is substantially the same as the document numbered MR0082227-9 as to which the Court has already denied *in camera* treatment. Micron therefore does not oppose its disclosure to the Rambus Officials.

confidential information with Micron if they believe such information will be disclosed to other companies. In addition, certain of these emails contain potentially embarrassing remarks made by Micron employees in the expectation of confidentiality. (*See* Donnelly Decl. ¶ 8)

As to four of the emails, Micron is willing to reduce the level of protection to Confidential, provided that disclosure of the documents be limited to Rambus in-house counsel Danforth and Kramer, as that designation requires. These four emails are numbered MR0082150-51, MR0082136-37, MR 135139-42 and MR0130011-12. The fifth, MU00049188-90, is more recent than the others, reflects discussions among Micron's most senior executives and contains highly sensitive marketing, strategy, and roadmap information, including roadmaps that extend to the present time. (*See* Donnelly Decl. ¶ 6). Therefore, Micron requests the Court to maintain the Restricted Confidential designation on this email to better protect this even more sensitive material.

C. **Texas Instruments Documents**

Rambus seeks disclosure to the Rambus officials of four sensitive business documents relating to licensing negotiations between Texas Instruments ("TI") and Rambus.⁶ The DRAM related assets of TI were acquired by Micron in 1998. These documents contain confidential internal discussions of TI employees regarding internal licensing strategy, licensing assessment and related technical discussions. (*See* Donnelly Decl. ¶ 7). As a current licensee of Rambus, Micron may suffer commercial harm if these documents were revealed to Rambus, which could use them in future licensing

⁶ These documents are numbered MR20006936-41, MR20006342-43, MR20005748, and MR20007188-89.

negotiations. Accordingly, Micron requests that the protections of the Restricted Confidential designation continue to apply to these documents.

III. CONCLUSION

For the foregoing reasons, Micron respectfully requests that its Motion for Protective Order be granted.

Respectfully submitted,

Richard L. Rosen, Esquire
Wilson D. Mudge, Esquire
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

Dated: May 29, 2003

MFTC228549-51
MFTC200502-35
MFTC10000229
MFTC211248-58
MFTC211238-44

Dated: _____

Chief Judge Stephen J. McGuire

CERTIFICATE OF SERVICE

I, Wilson D. Mudge, hereby certify that, on this the 29th day of May, 2003, I caused copies of the foregoing NON-PARTY MICRON TECHNOLOGY INC'S MOTION FOR PROTECTIVE ORDER and the supporting DECLARATION OF ROBERT DONNELLY to be served by the method indicated upon the following:

Wilson D. Mudge

Via Hand Delivery

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

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

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

By Facsimile and Overnight Delivery

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