

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RAMBUS'S MEMORANDUM IN SUPPORT OF CERTAIN OBJECTIONS TO
THE DESIGNATED DEPOSITION TESTIMONY OF JOEL KARP**

Complaint Counsel have designated deposition testimony from a deposition of Joel Karp taken on August 7, 1996, in a matter pending before the United States International Trade Commission that was denominated *In the Matter of Certain Electronic Products, Including Semiconductor Products Manufactured By Certain Processes*, Case No. 337-TA-381. The interested parties in this particular matter were Samsung Electronics Company ("Samsung") and Texas Instruments, Inc. ("TI"). Respondent Rambus Inc. ("Rambus") was not a party to this proceeding and was not represented at the deposition.

At the time of the deposition, Mr. Karp was employed by Samsung. Mr. Karp had no employment relationship with Rambus at the time this deposition was taken. He was not hired by Rambus until October 1997.

Since Mr. Karp is available to testify at this proceeding in person, his deposition testimony is admissible only to the extent that the testimony comes within the provisions of 16 C.F.R. § 3.33(g)(1)(ii), which provides that “[t]he deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association which is a party, or of an official or employee (other than a special employee) of the Commission, may be used by an adverse party for any purpose.” When Complaint Counsel were arguing for the right to introduce Mr. Karp’s deposition testimony under this provision, they argued that depositions taken of Mr. Karp after Mr. Karp left Rambus’s employ should be admitted because Mr. Karp was effectively a managing agent at that time. They did not mention the 1996 ITC deposition of Mr. Karp in their argument, and of course their stated justification for admitting the later depositions cannot apply to that 1996 deposition. In other words, because Mr. Karp was an employee of Samsung rather than Rambus at the time of the 1996 deposition, that deposition may not be offered in this proceeding against Rambus.

Complaint Counsel similarly have designated for use in connection with Mr. Karp’s deposition testimony a copy of a declaration signed by Mr. Karp in the same ITC proceeding in which he was deposed, which declaration is marked as CX-2957 and CX-2965 (the same document with different exhibit numbers). This declaration is hearsay under Rule 801. It is a written, out-of-court statement made by the declarant that is being offered in evidence to prove the truth of the matter asserted. It is not inconsistent with any testimony elicited from Mr. Karp in this proceeding and is not admissible as an admission

by a party, since at the time the declaration was given, Mr. Karp was employed by Samsung. The declaration also does not fall within any of the exceptions set forth in Rule 803. In particular, it is not a record of regularly conducted activities, since the preparation of declarations was not something that was not “a regularly conducted business activity” or something that was part of the “regular practice of that business activity.” There has certainly been no evidentiary showing that preparing and signing declarations such as the one in question are part of the regular business activity of Samsung.

The Court thus should not admit the prior declaration of Mr. Karp (CX-2957 and/or CX-2965), or any testimony regarding that declaration.

Complaint Counsel also have designated testimony regarding a brief filed on behalf of Samsung in the same ITC proceeding previously discussed. There is no showing in the record that Mr. Karp was involved in the drafting or review of this brief or that he had ever seen it prior to the time it was shown to him at his deposition. Accordingly, there is no foundation for questions to be propounded to Mr. Karp regarding this particular brief. Furthermore, the statements in the brief are themselves hearsay, since they are out-of-court statements made by Samsung, which is not a party to this proceeding.

DATED: June 2, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James M. Berry, hereby certify that on June 2, 2003, I caused a true and correct copy of *Rambus's Memorandum in Support of Certain Objections to the Designated Deposition Testimony of Joel Karp* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
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James M. Berry

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CERTIFICATION

I, James M. Berry, hereby certify that the electronic copy of *Rambus's Memorandum in Support of Certain Objections to the Designated Deposition Testimony of Joel Karp* accompanying this certification is a true and correct copy of the paper version that is being filed with the Secretary of the Commission on June 2, 2003 by other means.

James M. Berry
June, 2003