

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

Public

In the Matter of RAMBUS INCORPORATED, a corporation.
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Docket No. 9302

**COMPLAINT COUNSEL’S REQUEST FOR CLARIFICATION
OF THE GROUNDS FOR EXCLUDING CERTAIN DEPOSITION
TESTIMONY OF J. REESE BROWN¹**

On May 13, 2003, Respondent Rambus, Inc. (“Rambus”) filed a memorandum in support of objections Rambus raised relating to certain portions of testimony from the April 5, 2001 deposition of J. Reese Brown. (“Rambus Memo” [Tab 1]). Rambus asserted two reasons for its objections. First, Rambus stated that Mr. Brown lacked foundation to testify concerning the JEDEC patent policy because he was not shown a copy of any JEDEC manual during the deposition. (Rambus Memo at 2). In addition, Rambus also asserted that Mr. Brown lacked foundation to interpret the JEDEC patent policy during the relevant time period because he merely a consultant to JEDEC and did not represent any company at JEDEC during the 1990s. (Rambus memo at 1, 3). On May 30, 2003, Your Honor sustained Rambus’s objections. *See* Trial Tr. Vol. 19, page 3880 (ruling that improper foundation laid for pages 89 through 155 of the 2001 deposition [Tab 2]). This memo does not request reconsideration of that ruling, but rather requests clarification for the grounds upon which the objection was sustained.

¹In seeking this request for clarification, Complaint Counsel does not waive its right to seek review of the initial ruling excluding the portions of Mr. Brown’s testimony that Complaint Counsel sought to offer.

If the objection was sustained solely on the basis of lack of foundation for presentation of a JEDEC manual to Mr. Brown, then Complaint Counsel raises no objection to the segments of testimony that Rambus currently intends to introduce into evidence from the January 22, 2003, Brown deposition. Instead, Complaint Counsel would counter designate a small portion of the testimony from the April 22, 2003, deposition to which Rambus did not object, was not included within the scope of Your Honor's May 30, 2003, ruling, and which is within the scope of Rambus's current designations. *See* Deposition of J. Reese Brown, *Rambus v. Infineon*, ("Brown I") at 80:17-81:14 (April 5, 2001 [**Tab 3**]).

If, by contrast, Your Honor's ruling was based, in whole or in part, upon the fact that Mr. Brown was not a JEDEC representative during the 1990s and, therefore, was not competent to interpret the JEDEC patent policy, then consistent with that ruling, it would appear that Rambus's designations would be within the scope of the court's prior ruling and should be excluded by the terms of that ruling. Questions and responses from the 2003 deposition concerning the patent policy are no different from questions in the 2001 deposition with respect to Mr. Brown's status as a consultant. Therefore, such questions and responses should be treated consistently and excluded in total.

For the foregoing reasons, Complaint Counsel requests clarification of Your Honor's May 30, 2003, ruling excluding certain deposition testimony of J. Reese Brown.

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Respectfully submitted,

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COUNSEL SUPPORTING THE COMPLAINT

Dated: July 9, 2003

CERTIFICATE OF SERVICE

I, Beverly A. Dodson, hereby certify that on July 9, 2003, I caused a copy of the attached, *Complaint Counsel's Request for Clarification of the Grounds for Excluding Certain Deposition Testimony of J. Reese Brown*, to be served upon the following persons:

by hand delivery to:

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

and by electronic transmission and overnight courier to:

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