

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

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

)

THIRD PARTY HYNIX'S MOTION TO AMEND PROTECTIVE ORDER

Pursuant to paragraph 23 of the August 5, 2002 Protective Order Governing Discovery Material (“Protective Order”), and the Administrative Law Judge’s suggestion at proceedings in this matter on June 23, 2003, third parties Hynix Semiconductor, Inc., Hynix Semiconductor America Inc., Hynix Semiconductor U.K. Ltd., and Hynix Semiconductor Deutschland GmbH (collectively “Hynix”) make this limited appearance to request that the Protective Order be amended to provide for the prompt production of *in camera* trial transcripts and trial exhibits in response to discovery requests in other proceedings.

In November 2000 and again in January 2003, Hynix served Federal Rule of Civil Procedure 34 document requests in *Hynix Semiconductor, et al. v. Rambus Inc.*, U.S. District Court for the Northern District of California case no. C 00-20950 RMW (“*Hynix v. Rambus*”), on respondent Rambus Inc. (“Rambus”) seeking, among other things, all nonpublic pleadings, filings, briefs, deposition transcripts, deposition exhibits, trial transcripts, trial exhibits, and expert reports from this action in Rambus’ possession, custody or control (the “pleadings and transcripts”). Rambus has made no substantive objection to producing the pleadings and

transcripts, including *in camera* trial transcripts and exhibits. Rambus, however, has delayed producing pleadings and transcripts containing third party confidential information, even though Hynix had agreed to honor the confidentiality protection that information receives under the Protective Order.

The resulting dispute was resolved by order of the Special Master in *Hynix v. Rambus* on June 13, 2003. The Special Master set a July 1 deadline for production of all pleadings and transcripts except that material the production of which a third party had intervened to prevent. (That order is attached hereto as Exhibit A (the “June 13 Order”).) Rambus thereafter brought a motion to “clarify” the June 13 order, arguing it should not cover *in camera* trial testimony and exhibits. On June 23, the day before the hearing on its clarification motion in *Hynix v. Rambus*, Rambus raised the issue with the Administrative Law Judge during trial of this matter, but did not mention the June 13 order. (The transcript of the exchange is attached hereto as Exhibit B.) The following day Rambus cited its conversation with the Administrative Law Judge to the Special Master during the hearing on its motion for clarification. As a result, the Special Master issued another order stating that the June 13 order did not apply to *in camera* trial transcripts and exhibits. Instead, Rambus and Hynix were to “meet and confer” further to establish an appropriate procedure for producing *in camera* transcripts and exhibits.

At the proceedings in this matter on June 23, the Administrative Law Judge suggested that Hynix propose an amendment to the Protective Order to facilitate the production of third party *in camera* material that is not otherwise covered by the Protective Order.

Attached hereto as Exhibit C is a [Proposed] Order Amending Protective Order. Under the amendment, Rambus must provide notice of the impending production of *in camera* trial testimony and any trial exhibits introduced *in camera* that are not otherwise subject to the

Protective Order to the third parties whose testimony and/or documents were submitted *in camera*. The third parties then have ten business days to intervene in *Hynix v. Rambus* to prevent the production. The *in camera* material is otherwise automatically deemed “Confidential Discovery Material” under the Protective Order, without prejudice to the third party seeking a higher level of protection. Hynix has already agreed to honor the provisions of the Protective Order for any third party material subject to it.

The procedure set forth in the proposed amendment is intended to closely follow the procedure set forth in paragraph 16 of the Protective Order for the production in other actions of confidential third party material. Hynix submits that the procedure set forth is the most efficient way to protect third party confidential information without impeding discovery rights and obligations in other actions. Hynix therefore respectfully requests that the Administrative Law Judge permit the amendment to the Protective Order and execute the proposed order.

Dated: August 1, 2003

Respectfully Submitted,

David T. Beddow, Esq.
O’Melveny & Myers

Counsel for Non-Parties
Hynix Semiconductor, Inc., Hynix
Semiconductor America Inc., and
Hynix Semiconductor Deutschland
GmbH

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[PROPOSED] ORDER AMENDING PROTECTIVE ORDER

Upon consideration of third parties Hynix Semiconductor, Inc., Hynix Semiconductor America Inc., Hynix Semiconductor U.K. Ltd., and Hynix Semiconductor Deutschland GmbH's (collectively, "Hynix") Motion to Amend Protective Order, it is hereby ORDERED that Hynix's motion is granted.

The August 5, 2003 Protective Order Governing Discovery Material is hereby supplemented as follows:

16.5. All Third Party *in camera* hearing or trial testimony and all hearing or trial exhibits received *in camera* at the request of a Third Party that is not otherwise subject to this Order (collectively, "Third Party *In Camera* Material") shall be deemed Confidential Discovery Material. If either Party receives a discovery request in another proceeding that may require the disclosure of Third Party *In Camera* Material, the recipient of the discovery request shall promptly notify the Third Party of receipt of such request. Such notification shall be in writing and be received by the Third Party at least ten (10) business days before production, and shall include a copy of the Protective Order, a copy of the Order

Amending Protective Order, and a cover letter that will apprise the Third Party of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any such order requiring production of Third Party *In Camera* Material, or to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose Third Party efforts to challenge the discovery request calling for the production by the recipient of the Third Party *In Camera* Material. Nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission. Nothing in this paragraph shall be construed to limit, restrict, or otherwise affect the ability of the Third Party to seek a higher level of confidentiality treatment under this Order for its Third Party *In Camera* Material.

It is so ordered.

Dated: _____

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing THIRD PARTY HYNIX'S MOTION TO AMEND PROTECTIVE ORDER was served this 1st day of August, 2003, on the following:

The Honorable Stephen J. McGuire (By Hand)
Administrative Law Judge
Federal Trade Commission, Room H-112
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Malcolm L. Catt (By Hand)
Richard B. Dagen - Assistant Director (By Hand)
Federal Trade Commission
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