

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

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

**THIRD PARTY HYNIX’S REPLY IN SUPPORT OF
MOTION TO AMEND PROTECTIVE ORDER**

Rambus has represented to this Court and to the U.S. District Court for the Northern District of California that it does not oppose establishing a procedure to produce to Hynix *in camera* testimony from the trial of this matter. It is unclear why it opposes this motion. Its objections, however, are entirely procedural, and are easily resolved.

Rambus contends that (a) unspecified *in camera* orders should be amended instead of the Protective Order, (b) the highest level of confidentiality protection should apply to *in camera* testimony (even though the proposed amendment would allow third parties to seek such higher protection), and (c) Hynix did not “meet and confer” on this issue. With this reply Hynix submits a revised proposed order that should put to rest any legitimate concerns Rambus or third parties may have about Rambus’ production of *in camera* material to Hynix.

First, the Commission’s Rules of Practice, 16 C.F.R. § 3.45(a), require only that *in camera* material “be kept confidential and not placed on the public record of the proceeding in which it was submitted.” Neither the rules nor the Court’s *in camera* orders appear to prevent the production of *in camera* testimony pursuant to discovery obligations in a federal court

proceeding, particularly where the material would remain confidential. Here, Hynix has already agreed to honor the level of confidential given to *in camera* material in this matter, so it will not be released to the public.

That said, Hynix has no objection to revising its proposed order so that it both refers to this Court's *in camera* orders and amends the Protective Order. Attached hereto as Exhibit A is a proposed Supplemental Order Re *In Camera* Material and Amendment to Protective Order that expressly supplements to the Court's *in camera* orders. Hynix leaves it to the Court's discretion which procedural vehicle would be more appropriate – an order solely amending the Protective Order or an order that also supplements the *in camera* orders – although it seems Hynix's original proposed amendment to the Protective Order would be adequate.

Second, Hynix has no objection to according the highest level of protection to *in camera* testimony that is available under the Protective Order. Accordingly, the Supplemental Order Re *In Camera* Material and Amendment to Protective Order specifically provides that all *in camera* testimony shall be designated Restricted Confidential Discovery Material.

Third, Hynix and Rambus have been “meeting and conferring” about Rambus' production of pleadings and transcripts from this action since February 2003. The record of these discussions is extensive, and Hynix attaches as Exhibit B a sampling of the most recent discussions. As reflected in the attached correspondence, Hynix and Rambus are currently discussing, for example, the notification to third parties of the pending disclosure of *in camera* materials. (*See* Andrea Jeffries' August 7, 2003 letter, section 1.)

Finally, Rambus suggests that Hynix should notify third parties of the proposed procedure. But it is Rambus that is a party to this proceeding, with access to the *in camera* testimony and the parties that gave it, and subject to the discovery obligations in *Hynix v.*

Rambus. Rambus, not Hynix, was ordered to notify third parties pursuant to the June 13 Order, and it never asserted that third parties should have had a say in the proceedings leading to that order, despite the fact that the order provided for the release of nonpublic pleadings and transcripts from this action containing confidential third party information to Hynix. Moreover, like the June 13 Order, Hynix's proposed order here already provides that third parties will be notified and given the opportunity to be heard before their *in camera* testimony is disclosed to Hynix. Accordingly, third parties should be notified by Rambus after this motion is resolved.

For the foregoing reasons and those set forth in Hynix's opening papers, the proposed order submitted herewith should be executed by this Court.

Dated: August 20, 2003

Respectfully Submitted,

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