

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

PUBLIC VERSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**COMPLAINT COUNSEL’S REQUEST FOR LEAVE TO FILE THE ATTACHED
SUBMISSION REGARDING COMPANY ATTENDANCE
AT SYNCLINK AND JEDEC 42.3 MEETINGS**

During final argument, on October 6, 2003, Your Honor asked the parties to try to reach agreement on the number of “individuals from JEDEC 42.3 on average [who] may have also attended the other meetings of SyncLink.” (Final Argument, Tr. 11753). The question arose in response to an argument made by respondent that, in the “but-for world,” the result of a proper disclosure to JEDEC could be predicted by examining what the various SyncLink-related organizations had done in response to Richard Crisp’s disclosure to the IEEE SyncLink meeting in August of 1995.¹ Although Complaint Counsel strongly disagrees that this argument is correct (in particular, it seems clear from the record that the “disclosure” made by Mr. Crisp to IEEE SyncLink was inadequate to notify that committee what technologies in their proposed standard

¹ As Mr. Perry stated during final arguments, “SyncLink matters because it shows us the but-for world. . . . It shows us the but-for world because it's the same people. The SyncLink Consortium is the same companies, the same individuals that were at JEDEC meetings, the same engineers in many respects, and the SyncLink members surely know of likely infringement claims by Rambus.” (Tr. 11676-77).

would be covered by Rambus intellectual property (*see* CCFF 1525-1533)), Complaint Counsel agreed to consult with Respondent in an attempt to provide a stipulation.²

Shortly after the final argument, Respondent forwarded, to Complaint Counsel, the list of companies that it subsequently filed on October 28. Complaint Counsel noted to Respondent that the list provided was not an appropriate response to Your Honor's question and provided an alternative list that was intended to more closely track Your Honor's request. It quickly became apparent that neither party was able to agree with the underlying assumptions used by the other party to compile its list. Consequently Complaint Counsel proposed that the parties file a joint submission notifying Your Honor of our inability to agree. Respondent declined that proposal and filed its list in a Submission on October 28.³ Because of the misleading nature of that list (as described briefly below), and the incomplete and misleading characterization in that Submission of the discussions between the parties, Complaint Counsel respectfully asks Your Honor for leave to file the attached Submission.

The reasons that Complaint Counsel could not agree to the list proposed by Respondent all stem from the fact that the list bears little relation to the issue at hand – which was did JEDEC have such a similar list of attendees as Synclink, that it would have acted the same way

² An additional problem with Respondent's "but-for world" analysis is that notwithstanding the actions of the standard setting organizations relating to Synclink, the DRAM industry never adopted the standards that resulted from those organizations.

³ Your Honor anticipated the difficulty the parties would have in reaching an agreed upon number of individuals in response to your question. As Your Honor stated during final argument, "If you can agree on something, fine. If you can't, that's fine, too." (Final Argument, Tr. 11753-54).

Respondent claims that Synlink acted had Rambus made a proper disclosure. It is only the people who knew of Rambus's "disclosure" at IEEE Synlink and still worked to standardize that standard, and who then attended JEDEC, that could even potentially be relevant to the question of whether JEDEC would have done the same thing in the but-for world. The list proposed by Respondent overstates the number of such people in many ways. First, Respondent compiled a list of *companies* rather than people who attended both JEDEC and Synlink. This clearly overstates the number. The fact that one person acted in a particular way under the IEEE rules does not mean that a different person will act the same way under the different set of rules at JEDEC, simply because they worked for the same company.⁴

Second, despite the fact that the August 1995 meeting is the only one where Rambus disclosed any information about whether its intellectual property related to the standard then under discussion, Respondent's Submission includes attendees from later Synlink Consortium and SLD RAM, Inc. meetings. The inclusion of such a broad group in the Submission is misleading for at least two reasons. First, the latter two organizations were working on a *different standard* than the one that was subject to Mr. Crisp's disclosure in August of 1995.⁵

⁴ Complaint Counsel's evaluation of the record indicates that at least eight of the companies listed in Respondent's October 28 Submission sent only representatives to JEDEC who had *never* attended any Synlink meetings. Furthermore, many companies sent multiple representatives to JEDEC, including representatives who were there for a limited, technical purpose. Respondent's submission also fails to indicate how many primary JEDEC representatives also attended Synlink.

⁵ Whereas the IEEE RamLink architecture, like the architecture described in Rambus's patent applications, was triply multiplexed (CCFF 1508, 1512), the SyncLink architecture that was the subject of work in the SyncLink Consortium and SLD RAM Inc. was *doubly* multiplexed. In other words, the architecture subject to work in the SyncLink Consortium and SLD RAM Inc. had shared command and address lines, but separate, dedicated data lines.

Whatever the relevance of what IEEE Synclink did in response to that “disclosure,” it is clear that the actions of organizations standardizing different technologies cannot be relevant since no disclosure was made to those organizations on the technologies *they* were standardizing. Second, there is no reason to think that those who were not there to see Mr. Crisp’s statement would have knowledge of that statement. Despite Respondent’s arguments that SyncLink Consortium and SLD RAM, Inc. members “surely” knew of “likely infringement claims by Rambus” when those organizations worked on their standards, Respondent provided little to no direct evidence of what those members actually knew, relying instead on arguments and inferences spawned from snippets of documents.⁶ Unless participants were actually there to see the Crisp disclosure, or there is some other evidence that they knew of that disclosure, there is no reason to say that they later standardized a technology that they knew was subject to that disclosure.

Witnesses testified that, because of this and other differences, they did not believe that Rambus patent rights would cover the latter architecture. CCF 1571.

⁶ A good example of this strategy is illustrated by footnote 2 of Respondent’s October 28 Submission where it argues that “the possibility that Rambus would have intellectual property covering SyncLink devices was raised at SyncLink and SLD RAM Inc. meetings long after August 1995,” supporting that assertion only with another that “the July 1997 SLD RAM Inc. meeting minutes state that ‘Rambus will sue’ SyncLink members for patent infringement. (RX 966 at 3).” Respondent fails to note that none of the witnesses asked about this portion of the minutes recalled that statement being made (*see* Lee, Tr. 7010 (“Q. Do you remember somebody making that statement at this meeting, Rambus is going to sue people? A. No, I don’t.”); Rhoden, Tr. 1256-1257), and that even the author of the minutes did not testify that such a statement had been made in the meeting but simply that the minutes reflected *his understanding* that “in July 1997 there were SyncLink consortium members that were concerned that Rambus would sue individual companies for patent infringement based on the SyncLink device.” (Gustavson, Tr. 9303-9304). Nor does Respondent note that the author of the minutes, apparently the only witness who even recalled the issue, was not a JEDEC representative and never attended JEDEC himself. (Gustavson, Tr. 9316).

Your Honor's question related to the argument made by Respondent that (1) some standard-setting organization standardized technologies that were subject to a disclosure by Rambus, and that (2) a number of participants of JEDEC also attended meetings of this other organization, so that (3) JEDEC, in the but-for world, would have acted the same way had Rambus disclosed. Therefore, it seems to Complaint Counsel that the appropriate response to Your Honor's question would be a list of those who acted the way Rambus alleges regarding Synlink and who also attended JEDEC meetings. The list should therefore contain the names of all those who attended JEDEC in the relevant time period, who had also standardized a technology that was at least arguably subject to Richard Crisp's "disclosure" at IEEE Synlink. That list is attached.

Respectfully submitted,

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DATED: October 28, 2003

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Complaint Counsel submits the following information regarding overlapping attendance at SyncLink and JC 42.3 meetings. The first item describes the attendees of the IEEE Synclink meeting where the Rambus disclosure occurred. The following items identifies the overlap between that meeting and subsequent JEDEC meetings through 1997.

1. **IEEE RamLink/Synclink Working Group Representative(s) (CX486 at 3):** David James, Glen Stone, Steven Przybylski, Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Hans Wiggers, Farhad Tabrizi, Dave Taylor, Andy Yu, Sam Chen, Richard Crisp, David Gustavson, Billy Vogley.
2. **Overlap with 9/11/1995 JEDEC 42.3 meeting (JX27):** Six attendees (Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Farhad Tabrizi, Sam Chen, Richard Crisp).
3. **Overlap with 12/6/1995 JEDEC 42.3 meeting (JX28):** Six attendees (Adrian Cosoroaba, Danny Yeung, Hans Wiggers, Farhad Tabrizi, Sam Chen, Richard Crisp).
4. **Overlap with 1/31/1996 JEDEC 42.3 meeting (JX29):** Six attendees (Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Hans Wiggers, Farhad Tabrizi, Sam Chen).

5. **Overlap with 3/20/1996 JEDEC 42.3 meeting (JX31):** Five attendees (Adrian Cosoroaba, Hans Wiggers, Farhad Tabrizi, Sam Chen, Bill Vogley).
6. **Overlap with 6/5/1996 JEDEC 42.3 meeting (JX33):** Five attendees (Adrian Cosoroaba, Danny Yeung, Hans Wiggers, Farhad Tabrizi, Bill Vogley).
7. **Overlap with 9/18/1996 JEDEC 42.3 meeting (JX34):** Five attendees (Adrian Cosoroaba, Danny Yeung, Farhad Tabrizi, Sam Chen, Bill Vogley).
8. **Overlap with 12/11/1996 JEDEC 42.3 meeting (JX35):** Five attendees (Adrian Cosoroaba, Danny Yeung, Hans Wiggers, Farhad Tabrizi, Sam Chen).
9. **Overlap with 3/14/1997 JEDEC 42.3 meeting (JX36):** Four attendees (Adrian Cosoroaba, Danny Yeung, Hans Wiggers, Farhad Tabrizi).
10. **Overlap with 4/4/1997 JEDEC 42.3 meeting (JX37):** Five attendees (Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Hans Wiggers, Sam Chen).
11. **Overlap with 6/4/1997 JEDEC 42.3 meeting (JX38):** Five attendees (Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Hans Wiggers, Farhad Tabrizi).
12. **Overlap with 7/17/1996 JEDEC 42.3 meeting (JX39):** Four attendees (Adrian Cosoroaba, Solomon Alemayehu, Danny Yeung, Farhad Tabrizi).
13. **Overlap with 9/10/1997 JEDEC 42.3 meeting (JX40):** Four attendees (Solomon Alemayehu, Hans Wiggers, Farhad Tabrizi, Sam Chen).
14. **Overlap with 12/9/1997 JEDEC 42.3 meeting (JX41):** Two attendees (Adrian Cosoroaba, Hans Wiggers).