

PUBLIC

UNITED STATES FEDERAL TRADE COMMISSION

—————
Docket No. 9302
—————

In the Matter of

RAMBUS INC.,

A CORPORATION

MOTION OF
JEDEC SOLID STATE TECHNOLOGY ASSOCIATION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Daniel I. Prywes
Nathan D. Stump
PEPPER HAMILTON LLP
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
(202) 220-1200

Counsel for Proposed *Amicus Curiae*
JEDEC Solid State Technology Association

April 16, 2004

Pursuant to 16 C.F.R. Section 3.52(j), JEDEC Solid State Technology Association (“JEDEC”) respectfully moves for leave to file the accompanying *amicus curiae* brief in support of Complaint Counsel’s appeal to the Commission of the Initial Decision dated February 23, 2004 (the “Decision”).

JEDEC should be granted leave to file the *amicus* brief because JEDEC and its rules are the epicenter of this case. JEDEC’s views and perspective will assist the Commission in its review of the Decision’s findings respecting JEDEC’s rules. JEDEC’s views and perspective will also assist the Commission in gauging the impact the Initial Decision will have on JEDEC, the information-technology industry, and standard-setting activity generally, if it is not reviewed and corrected.

The Complaint alleged that Rambus Inc. (“Rambus”) violated JEDEC’s patent-disclosure policy and engaged in conduct which violated the antitrust laws and Section 5 of the Federal Trade Commission Act. JEDEC executives and participants testified at the trial, and JEDEC’s patent policy is a central focus of the lengthy Decision which found that JEDEC did not require participants in JEDEC’s standard-setting work, like Rambus, to disclose patents or patent applications.

JEDEC is a non-profit trade association which serves as the semiconductor and solid-state engineering standardization body of the Electronic Industries Alliance (“EIA”). EIA is a trade association that represents all areas of the electronics industry. During the period in question, EIA conducted standard-setting activity through several divisions and units, including JEDEC.

JEDEC develops and maintains technical standards through its 50 committees. About 250 member companies and 1800 individuals actively participate on these committees to

develop and maintain standards to meet industry and user needs for semiconductor devices and integrated circuits. These member companies include both manufacturers and users of these products, and others allied to the field.

JEDEC has been one of the foremost standards development organizations for the semiconductor industry since 1958. JEDEC is an acronym standing for the Joint Electron Device Engineering Council. JEDEC was a division of EIA until 2000, when it was separately incorporated as a non-profit, non-stock corporation.

JEDEC strongly favors the development of standards by all interested parties that are open for use by the entire industry. To achieve such open standards, JEDEC's published patent policy required the early disclosure of relevant patents and applications. JEDEC's published policy stated that JEDEC will in no case issue a standard requiring use of a known patent or patent application "unless all the relevant technical information . . . is known to the formulating committee[,] subcommittee, or working group," and JEDEC receives "written assurance that a license will be made available to all applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination." (CX0208-019.)

JEDEC has a direct interest in this case because it involves the interpretation and application of JEDEC's patent policy. According to the Decision, under JEDEC's patent policy, "the disclosure of intellectual property interests was encouraged and voluntary, not required or mandatory." (Decision, at p. 265.) The Decision also concluded that participants in JEDEC standard-setting activity had no duty of good-faith toward other participants. (Decision, at p. 261.)

JEDEC explains in its proposed *amicus* brief why these conclusions are wrong – and egregiously so. The proposed brief reviews the text of JEDEC's rules, their proper

construction, the context of standard-setting activity at JEDEC, and the principal errors made by the Decision in construing JEDEC's rules. The proposed brief also explains why the Decision, if not corrected, threatens great harm to the computer industry in particular, and to standards-development work in general. JEDEC has a special perspective because its own rules are at issue in this case, and it is familiar with the manner in which standard-setting is conducted in the computer industry. Of course, JEDEC also has a direct interest in ensuring that its patent policy is correctly interpreted and enforced. The Commission should allow JEDEC's voice to be heard in this case, which vitally affects JEDEC's interests.

For the foregoing reasons, the Commission should grant leave to JEDEC to file the accompanying *amicus curiae* brief. A proposed Order is attached.

Complaint Counsel consents to this motion, but Rambus has withheld its consent.

Respectfully submitted,

Daniel I. Prywes
Nathan D. Stump
PEPPER HAMILTON LLP
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
(202) 220-1200

Attorneys for Proposed *Amicus Curiae*
JEDEC Solid State Technology Association

Dated: April 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on April 16, 2004, I caused two copies of the foregoing Motion of JEDEC Solid State Technology Association for Leave to File *Amicus Curiae* Brief, and the proposed *Amicus Curiae* brief, to be served by first-class mail, postage prepaid, on the following:

Counsel Supporting the Complaint:

Geoffrey D. Oliver, Esq.
Bureau of Competition
FEDERAL TRADE COMMISSION
Washington, D.C. 20850

Counsel for Respondent:

Gregory P. Stone, Esq.
MUNGER, TOLLES, OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560

A. Douglas Melamed, Esq.
WILMER, CUTLER & PICKERING LLP
2445 M Street, N.W.
Washington, D.C. 20037

Sean C. Cunningham, Esq.
GARY, CARY, WARE & FREIDENRICH LLP
401 "B" Street, Suite 2000
San Diego, California 92101

Daniel I. Prywes

UNITED STATES FEDERAL TRADE COMMISSION

—————
Docket No. 9302

—————
In the Matter of
RAMBUS INC.,
A CORPORATION

PROPOSED ORDER

Upon consideration of the Motion of JEDEC Solid State Technology Association (“JEDEC”) for Leave to file an *Amicus Curiae* brief in support of Complaint Counsel’s appeal from the Initial Decision in this case, the Commission finds that the proposed *amicus curiae* brief may assist in the determination of the matters presented by this appeal. Accordingly,

IT IS ORDERED that JEDEC is granted leave to file its *amicus curiae* brief.

By the Commission.

—————

Issued:

