

employees (or those of Infineon) to Infineon and (b) any use of those depositions in this action without prior modification of the Protective Order or permission from the FTC . . .”

Rambus has not construed the Protective Order correctly. The Protective Order neither prevents Rambus from providing copies of the depositions at issue to Infineon nor precludes their use in the District Court action. Paragraph 16 of the Protective Order provides a mechanism for granting the request of the District Court. Paragraph 16 requires Rambus to notify “promptly” any other “producing party” that it has received a request for production of these deposition transcripts in another proceeding, in order to allow such party to seek further relief against production. Absent any such objection within ten business days, or further court order, the requested material can and should be produced in accordance with the request in the other proceeding.

The current and former employees and agents of Rambus and Infineon whose depositions are at issue have already received the notice required by Paragraph 16 because they have been represented at all relevant times by litigation counsel for either Rambus or Infineon, both here and in the District Court proceeding. Those counsel received notice of the discovery requests at issue several months ago, and received notice of the September 13th District Court Order on or about that date. Moreover, even if any of the former employees and agents of Rambus could be considered “third parties,” as Rambus has suggested, Rambus should have complied already with its Paragraph 16 obligation to notify those persons, both when it received the discovery requests at issue and when it received the District Court Order. Furthermore, Rambus’s own objection to disclosure of material as to which it is the “producing party” has evidently already been disposed of by the District Court.

This issue has arisen because Rambus is selectively proffering portions of deposition transcripts from the Commission’s administrative proceeding while declining to produce other portions. The District Court seeks disclosure only of information relating to the current and former employees of Rambus and Infineon; it is not seeking disclosure of information about unrelated parties. The District Court has expressly determined that the depositions at issue are relevant and admissible. Furthermore, the confidentiality of the discovery material will be preserved in the District Court action by virtue of protective orders issued by the District Court. Under these circumstances the public interest supports disclosure of the requested information in the District Court litigation. Accordingly,

IT IS ORDERED THAT the District Court’s request that the Commission make available for use in the District Court proceedings depositions of current and former employees of Rambus and Infineon taken in this administrative proceeding be, and it hereby is, **GRANTED**, by means of the Commission’s determination that the Protective Order neither prevents Rambus from providing copies of such depositions -- or of depositions of current or former directors, officers, attorneys, or agents of Rambus or Infineon -- nor precludes their use in the District Court proceedings; and

IT IS FURTHER ORDERED THAT the Secretary shall provide a copy of this Order to each former or current employee, director, officer, attorney, or agent of Rambus and Infineon deposed in this matter (or his or her attorney) by overnight mail, personal delivery, FAX, email or any other method permitted by Rule 4.2(a) of the Commission Rules of Practice, 16 C.F.R.

§ 4.2(a) (2004). Nothing in the Protective Order in this matter shall prevent Rambus from disclosing the requested discovery material to Infineon in the District Court litigation unless a deponent should file with the District Court an objection to the disclosure and the court issues a protective order with respect to such disclosure, and then only with respect to the disclosure covered by such protective order.

By the Commission.

Donald S. Clark
Secretary

ISSUED: October 1, 2004