

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INCORPORATED,

Respondent.

Docket No. 9302

**DECLARATION OF ROBERT G. KRAMER IN COMPLIANCE WITH THE
COMMISSION'S DECEMBER 6, 2004 ORDER GRANTING THE MOTION OF NON-
PARTY MITSUBISHI ELECTRIC CORP. TO ENFORCE PROTECTIVE ORDER**

I, Robert G. Kramer, declare and state as follows:

1. I am an attorney admitted to practice in the States of California and New York as well as in the District of Columbia. I also have been admitted to practice before the United States Court of Appeals for the Federal Circuit, the Southern District of New York and the Eastern District of New York. I have been employed by Rambus Inc. ("Rambus") since October 2001. I presently am Director of Litigation at Rambus.

2. I submit this declaration in compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order. Except where otherwise noted, the matters set forth herein are based upon my personal knowledge or upon information that I have gathered from others at Rambus and that I believe to be accurate.

3. I am informed by Rambus's outside counsel that Mitsubishi Electric Corp. ("Mitsubishi") provided certain documents to Rambus's outside counsel in February

2003 (“Mitsubishi’s Discovery Materials”). A number of documents that were part of Mitsubishi’s Discovery Materials were admitted in evidence in this proceeding on May 12 and May 21, 2003. These documents were not admitted *in camera* and access to these documents, once they were admitted, was not restricted; the documents became part of the public record.

4. After Mitsubishi’s Discovery Materials were made available to Rambus’s outside counsel in February 2003, some of those documents were made available to certain of Rambus’s employees, including certain of its inside counsel. Some of these documents were written in Japanese; others had been translated through the efforts of Rambus’s employees, outside counsel and professional translators.

5. Prior to May 21, 2003, certain of Mitsubishi’s Discovery Materials were disclosed and used by Rambus for a purpose other than the purposes of this proceeding. Set forth below is a description of the only such instance known to Rambus or ascertainable by it.

a. In a brief filed on or about April 7, 2003, in connection with an appeal within the European Patent Office (“EPO”) in Case Number: T 0081/03 – 3.5.1, Rambus cited to and attached portions of three documents from Mitsubishi’s Discovery Materials, specifically, MEC 000328-335, MEC 001441, and MEC 001748. In some instances, translations were used. These documents, or their contents, were disclosed to the following persons or entities as the result of the filing of this brief: the EPO’s Technical Board of Appeal 3.5.1; Rambus’s counsel in that proceeding, Jochen Ehlers (Eisenfuhr, Speiser & Partner, Patentanwälte

Rechtsanwälte, Postfach 10 60 78, D-28060 Bremen (DE)), Dr. Marcus Grosch (Schilling & Grosch Rechtsanwälte, 68165 Mannheim (DE)), and Dr. Thomas Klötzel (Thümmel, Schütze & Partner, Urbanstr. 7, D-70182 Stuttgart (DE)); one of Rambus's adversaries in that proceeding, Micron Europe Ltd., Micron House, Wellington Business Park, Dukes Ride, Crowthorne, Berkshire RG45 6LS (GB); another of Rambus's adversaries in that proceeding, Micron Technology, Italia, S.R.L., Via Antonia Pacinotti 5/7, Nucleo Industriale, Building #2, I-67051 Avezzano (AQ) (IT); counsel for these two Micron entities, Christopher Stephen Tunstall, Carpmaels & Ransford, 43 Bloomsbury Square, London WC1A 2RA (GB); another of Rambus's adversaries in that proceeding, Infineon Technologies AG, St.-Martin-Str. 53, D-81541 München (DE); Infineon's counsel, Peter K. Hess, Dipl. -Phys., Patent- und Rechtsanwälte, Bardehle, Pagenberg, Dost, Altenburg, Geissler, Galileiplatz 1, D-81679 München (DE); another of Rambus's adversaries in that proceeding, Hynix Semiconductor Deutschland GmbH, Frankfurter Strasse 107, D-65479 Raunheim (DE); Hynix's counsel, Peter Urner, Dipl. -Phys., Ter Meer Steinmeister 6 Partner GbR, Patentanwälte, Mauerkircherstrasse 45, D-81679 München (DE); another of Rambus's adversaries in that proceeding, Micron Semiconductor Deutschland GmbH, Sternstr. 20, D-85609 Aschheim (DE); and counsel for this Micron entity, Johannes Lang, Dipl. -Ing., Patent- und Rechtsanwälte, Bardehle, Pagenberg, Dost, Altenburg, Geissler, Galileiplatz 1, D-81679 München (DE).

b. I am informed and believe that the brief Rambus filed in this proceeding and its attachments are available to the public if they choose to access it.

c. The three documents cited in and attached to Rambus's April 7, 2003 brief filed with the EPO's Technical Board of Appeal 3.5.1 were admitted in evidence in this proceeding on May 12, 2003 (Exhibits RX-2203, consisting of pages MEC 000327-335 and which included a partial translation, and RX-2214A, consisting of a translation of MEC 001441) and May 21, 2003 (RX-2214, consisting of MEC 001441, RX-2215, consisting of pages MEC 001747-748, and RX-2215A, consisting of a translation of pages MEC 001747-748).

d. In the instance described above, Rambus used the three documents to illustrate that the written description in Rambus's original application, the '898 application in the United States and the WIPO application in certain other countries, was understood by those who reviewed it, such as the Mitsubishi employees who authored the three documents in question, potentially to have a broad application, including to various features that were then contemplated for inclusion in the SDRAM devices under discussion at JEDEC and at various companies, including Mitsubishi. Rambus also used the three documents to demonstrate that when a person of skill in the art reviewed the '898 application or the WIPO application that person recognized and understood that the inventions disclosed in that application were not limited to use with any particular multiplexed bus.

6. Rambus made no other use of any of Mitsubishi's Discovery Materials, other than for the purposes of this proceeding, prior to May 21, 2003.

7. After May 21, 2003, Rambus and its counsel have made use of certain of the documents included in Mitsubishi's Discovery Materials that were admitted in evidence in this proceeding and that were made part of the public record on that date. I have not undertaken to determine all such uses of these particular documents since I understand that Mitsubishi's motion does not seek information regarding these uses because such uses of documents that were admitted and made part of the public record is consistent with the Protective Order entered in this proceeding. I do know, however, that such documents have been used on at least a few occasions. For example, Rambus used MEC01399 in a presentation before the Utility Model Division of the German Federal Patent Court in an appeal in July 2004. I understand that MEC01399 was admitted into evidence in this proceeding on May 12, 2003, as RX-2203, and that after that date it was available to the public.

8. After May 21, 2003, Rambus, through its counsel, did make one use of certain of Mitsubishi's Discovery Materials that had not been admitted in evidence in this proceeding and thus had not been made part of the public record. On February 27, 2004, in connection with the ongoing *Infineon* litigation, Rambus served a subpoena on Mitsubishi Electric & Electronics USA, Inc. ("MEUS") seeking to authenticate certain documents for use in the *Infineon* litigation. All but two of the documents attached to this subpoena had earlier been admitted in evidence in this proceeding. The two exceptions were one page of the document attached to the subpoena at Tab 34 (MEC

3001714) and the document attached to the subpoena at Tab 39 (MEC 403332-334).

These documents were shared with counsel for Infineon and with MEUS as a result of the service of this subpoena. Infineon was represented by Kirkland & Ellis LLP and by McGuire Woods.

9. On May 26, 2004, Magistrate Judge William J. Hibbler of the United States District Court for the Northern District of Illinois granted Rambus's motion to compel Jenner & Block, LLC to produce to Rambus for use in the *Infineon* litigation all of Mitsubishi's Discovery Materials, and use of those materials now is permitted under the terms of the *Infineon* Protective Order. The documents from Mitsubishi's Discovery Materials bearing production numbers MEC 3001714 and MEC 403332-334 are included within the scope of Judge Hibbler's order and can now be used in the *Infineon* litigation under the terms of the *Infineon* Protective Order.

10. Other than as described in paragraphs 5 and 8 above, I am not aware of any use or disclosure by Rambus or its counsel of Mitsubishi's Discovery Materials for a purpose other than the purposes of this proceeding, except to the extent that Rambus has used certain of Mitsubishi's Discovery Materials for purposes other than the purposes of this proceeding, but only after those particular materials had been admitted in evidence in

this proceeding and thereby made a part of the public record in this matter, such as described in paragraph 7 above.

Executed on December 15, 2004, at Los Altos, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Robert G. Kramer

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

CERTIFICATE OF SERVICE

I, Kenneth A. Bamberger, hereby certify that on December 16, 2004, I caused true and correct copies of the *Statement of Rambus Inc. in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, and the attached *Declaration of Robert G. Kramer in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Geoffrey Oliver, Esq.
Assistant Director
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

Donald S. Clark, Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Malcolm L. Catt, Esq.
Attorney
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

I, Kenneth A. Bamberger, hereby certify that on December 16, 2004, I caused true and correct copies of the *Statement of Rambus Inc. in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, and the attached *Declaration of Robert G. Kramer in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, to be served on the following person by Facsimile and Federal Express:

Donald R. Harris, Esq.
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611-7603
Fax No: (312) 840-7777

Kenneth A. Bamberger

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BEFORE THE FEDERAL TRADE COMMISSION

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CERTIFICATION

I, Kenneth A. Bamberger, hereby certify that the electronic copies of *Statement of Rambus Inc. in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, and the attached *Declaration of Robert G. Kramer in Compliance with the Commission's December 6, 2004 Order Granting the Motion of Non-Party Mitsubishi Electric Corp. to Enforce Protective Order*, accompanying this certification are true and correct copies of the paper versions that are being filed with the Secretary of the Commission on December 16, 2004 by other means.

Kenneth A. Bamberger
December 16, 2004