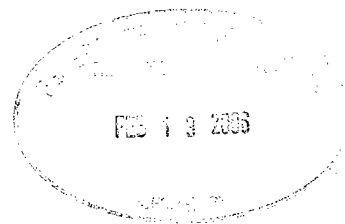


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch



In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

MOTION OF RESPONDENT RAMBUS INC.
FOR ADDITIONAL ORAL ARGUMENT

Respondent Rambus Inc. ("Rambus") requests that the Commission schedule an additional oral argument on the pending appeal from the Initial Decision in this case, pursuant to 16 C.F.R. § 3.54. As the Commission knows, there was a two-hour oral argument on the appeal on December 9, 2004. Several considerations suggest that it would be appropriate for the Commission to have an additional oral argument.

First, two of the five Commissioners have joined the Commission only in the last several weeks. While Rambus recognizes that there is no requirement that new Commissioners participate in an oral argument, a supplemental argument seems especially appropriate in this case because of the complexity of the issues and the size of the record. As the Commission recognized in its April 30, 2004 scheduling order:

"the record in this matter is extremely lengthy and detailed; the trial lasted 54 days, with 44 live witnesses and 15 designated deposition witnesses, more than 1,900 exhibits, and a trial transcript more than 11,800 pages in length; the parties submitted

more than 3,000 pages of proposed findings of fact and reply findings of fact; post-trial briefs and reply briefs amounted to almost 450 pages; the underlying factual issues are complex, and the record contains a large quantity of highly technical evidence relating to computer design, memory architectures, memory technologies, and patent questions; and the Initial Decision is 334 pages long and contains, *inter alia*, more than 1,650 findings of fact.”

Order Granting Motions For Leave To File Briefs *Amici Curiae* And Scheduling Oral Argument,
p. 1.

Second, there have been a number of important developments since the prior oral argument in this case that might be material to the Commission’s decision. These include the following:

- There have been several requests by both parties to reopen or supplement the record, and the Commission has granted a number of these requests in whole or in part. *See* Orders dated February 2, 2006; July 20, 2005; and May 13, 2005.¹
- Both parties have submitted supplemental and amended proposed findings of fact and conclusions of law and responses to the submissions of the other party.
- There has been important new scholarship concerning the issues in this case. *See, e.g.,* Daniel G. Swanson and William J. Baumol, *Reasonable and Nondiscriminatory (RAND) Royalties, Standards Selection, and Control of Market Power*, 73 *Antitrust L. J.* 1, 51-56 (2005) (concluding, *inter alia*, that “[r]equiring innovators to accept disclosure obligations that exceed those required under the patent laws or that are inimical to trade secret protection is costly not

¹ As the February 2, 2006 Order states, the Commission has also given Rambus leave to refile its Motion to Reopen The Record To Admit Newly Obtained Evidence Rebutting Complaint Counsel’s Proposed Findings and Undermining Complaint Counsel’s Proposed Remedy, if and when the San Francisco Superior Court judge presiding over Rambus’s antitrust conspiracy claims amends a protective order to allow Rambus to disclose to the Commission certain evidence of alleged market manipulation by DRAM manufacturers.

only in terms of its direct impact on those whose valuable trade secrets are taken but also through its chilling effect of diminishing future incentives to invest in innovation.”).

- There have been a number of federal court decisions that bear on the issues in this case, such as the Eleventh Circuit’s decision in *Schering-Plough Corp. v. Federal Trade Commission*, 402 F.3d 1056, 1070-71 (11th Cir. 2005), and, more recently, Judge Whyte’s Findings of Fact and Conclusions of Law in *Hynix Semiconductor Inc. et. al v. Rambus Inc.*, Case No. C-00-20905 RMW (N.D. Cal. Jan. 4, 2006), in which Judge Whyte found, like Judge McGuire, both that Rambus had preserved the “material” JEDEC-related documents and had produced them in discovery, and that Rambus had been informed by the “Chairman of the JEDEC committee [that] Rambus attended . . . that JEDEC did not require the disclosure of patent applications.” (A copy of this decision was filed with the Commission on January 5, 2006.)

An additional oral argument would provide the Commission and counsel an opportunity to discuss these developments and to address questions that the Commissioners might have about them.

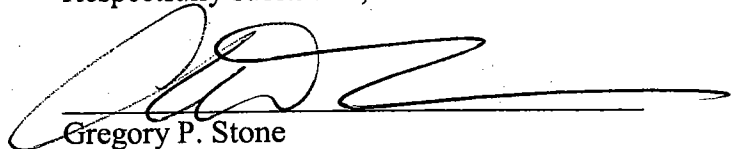
Third, additional oral argument might prove useful to the Commission even apart from the presence of new Commissioners and other new developments since the December 2004 argument. This is obviously a complex and important case. Briefing was initially completed on July 7, 2004, and the case has been pending before the Commission for 14 months since the oral argument. In its Congressional Budget Justification filed earlier this week, the Commission referred to this case as an important part of its agenda of promoting innovation (p. 5); and, in a subsequent comment that appears to apply to this case among others, the Commission noted that some of its cases “focus on areas in which legal standards are not fully developed” and in which liability is not “clear cut.” (p. 44 n.6.) In light of the importance and complexity of the case, the brevity of the December 2004 oral argument, and the amount of time that the case has been

pending before the Commission, it is reasonable to believe that the Commissioners might have questions about the case that were not addressed at the earlier argument and might benefit from an opportunity to hear from counsel for the parties.

Conclusion

Because of the factors summarized above, Rambus believes that the Commission would find it useful to have an additional oral argument in this matter. An additional oral argument would neither require the commitment of excessive resources nor cause any material delay in the resolution of the case. Such an argument would enable all of the Commissioners both to have a shared opportunity to ask counsel about recent developments that bear on the case and to raise any questions that have arisen as they have analyzed the case over the past several months. The Commission could of course specify certain issues that it wishes counsel to address or certain questions that it would like counsel to answer, or it could instead simply permit counsel to make arguments on matters of their choosing.

Respectfully submitted,



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Dated: February 13, 2006

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CERTIFICATE OF SERVICE

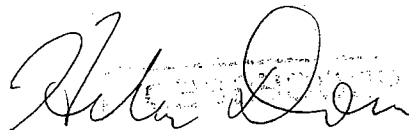
I, Helena T. Doerr, hereby certify that on February 13, 2006, I caused a true and correct copy of *Motion of Respondent Rambus Inc. for Additional Oral Argument* to be served on the following persons by hand delivery:

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