

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Docket No. 9302

PUBLIC

In the Matter of

RAMBUS INCORPORATED

COMPLAINT COUNSEL'S RESPONSE TO RAMBUS'S PETITION FOR
RECONSIDERATION OF THE COMMISSION'S FINAL ORDER, AND COMPLAINT
COUNSEL'S PETITION FOR RECONSIDERATION OF PARAGRAPH III.C.

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Dated: February 26, 2007

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

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

<p>In the Matter of</p> <p>RAMBUS INCORPORATED,</p> <p>a corporation.</p>
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Docket No. 9302

PUBLIC

**COMPLAINT COUNSEL’S RESPONSE TO RAMBUS’S PETITION FOR
RECONSIDERATION OF THE COMMISSION’S FINAL ORDER, AND COMPLAINT
COUNSEL’S PETITION FOR RECONSIDERATION OF PARAGRAPH III.C.**

As explained below in more detail, Rambus’s Petition for Reconsideration of the Commission’s Final Order raises one overriding issue: the applicability of the Commission’s Order to Rambus’s prospective efforts to collect royalties or damages in excess of the Maximum Allowable Royalty rates. With respect to the other issues raised by Rambus (apart from Rambus’s motion for a stay or an escrow arrangement, which is addressed in a separate filing), Complaint Counsel do not believe that the Commission’s Order needs to be modified.¹ Complaint Counsel oppose in particular Rambus’s efforts to modify the Commission’s Order to permit Rambus to pursue treble damages and injunctions, to deny the benefits of the Order to

¹ Complaint Counsel agree in principle with Rambus that Rambus should not be required to refund any royalties it has already collected. Complaint Counsel further agree that licensees should have the option of negotiating a fixed fee arrangement if they choose to do so, so long as the fixed fee amounts are equivalent to or less than the Maximum Allowable Royalty amounts. In neither case do Complaint Counsel believe it is necessary to modify the Commission’s Order.

third parties that allege deception by Rambus at JEDEC, and to permit Rambus to collect multiple royalties on systems. Complaint Counsel note that industry members may also wish to file comments to bring additional practical industry experience to bear on the issues raised by Rambus.

I. Applicability of Order to Past Royalties Collected and As Yet Uncollected Royalties

Rambus's Petition raises the question of the applicability of the Commission's Order to Rambus's prospective efforts to collect unlawful monopoly rents, based on manufacture, sale or use of JEDEC-compliant products before the final date of the Order. The Commission has authority to order Rambus to cease and desist all of its prospective efforts to continue to collect the fruits of its unlawful conduct and to harm consumers;² thus, the question is what the

² See, e.g., *Amrep Corp. v. FTC*, 768 F.2d 1171, 1180 (10th Cir. 1985), *cert. denied* 475 U.S. 1034 (1986) (deception case):

The Commission's order does not order Amrep to repay monies to past lot purchasers; it operates only prospectively, and merely prevents Amrep from continuing to profit from its inclusion of an illegal forfeiture clause in its past contracts. Accordingly, we find this portion of the Commission's order to be a proper exercise of its broad remedial discretion, *see Federal Trade Commission v. National Lead Co.*, 352 U.S. at 428-29, and affirm it.

Accord, Southwest Sunsites Inc., 105 F.T.C. 7, 176, 185 (1985), *aff'd* 785 F.2d 1431 (9th Cir. 1986), *cert. denied*, 479 U.S. 828 (1986):

Part IV.C. of the Order was not requested by complaint counsel but is, we believe, necessary to complete the remedial scheme of this section of the Order.

. . . Refrain from seeking to recover, or recovering by any means, from purchasers who were under contract before the date this Order becomes final for the purchase of land [. . .], and who have defaulted or who

Commission, in its discretion, intended its Order to accomplish.

Rambus seeks clarification on the specific question of whether the Order requires Rambus to forego future efforts to collect royalties in excess of the Maximum Allowable Royalty amounts that have already accrued under existing license agreements. Rambus Petition at 2-5.

Directly related, however, is the broader question of whether the Order permits Rambus to continue, possibly for years into the future, its prospective efforts to collect royalties and damages in excess of the Maximum Allowable Royalty amounts for infringement prior to the date the Order becomes final. In its private litigation, Rambus has argued that the Commission's Order imposes no limits on such prospective conduct. *See Rambus's Case Management Conference Statement (Attachment A) at 1-2 (Feb. 16, 2007), Hynix Semiconductor Inc. v.*

become in default, any sums remaining due on their contracts.

See also Orkin Exterminating Co., 108 F.T.C. 263, 382 (1986), *aff'd Orkin Exterminating Co. v. FTC*, 849 F.2d 1354 (11th Cir. 1988) (Commission prohibited Orkin from "Charging, requesting, collecting or accepting under any pre-1975 contract or pre-1975 guarantee any annual renewal fee that is greater than the fee specified therein. . ." but declined to order refunds or other redress).

As the Commission in its remedy decision here recognized, in a number of consent orders it has accepted as a remedy a prohibition on enforcement or mandatory licensing of patents. Opinion of the Commission on Remedy at 10 n. 65 (citing *Dell Computer Corp.*, 121 F.T.C. 616, 620-22 (1996); *Chevron Corp.*, 140 F.T.C. 100 (2005); *Eli Lilly & Co.*, 95 F.T.C. 538, 546-52 (1980); *Xerox Corp.*, 86 F.T.C. 364, 373-83 (1975)). In none of the consent orders cited by the Commission was the enforcement prohibition or mandatory licensing limited to future infringements. [

Redacted

]

Rambus Inc., Case No. CV 20905 (ND Ca.) (“*Hynix v. Rambus*”). Rambus claims that its position is based on the language of Paragraph IV.A of the Order.³ *Id.* In that same litigation, Hynix has interpreted the Commission’s Order to mean that Rambus would be prohibited from future efforts, after the final date of the Order, to collect royalties or damages above the Maximum Allowable Royalty amounts regardless of when infringement occurred. *See* Hynix’s Supplemental Case Management Conference Statement (Attachment B) at 2-3 (Feb. 16, 2007), *Hynix v. Rambus*. This position finds support in the Commission’s Decision, which describes the purpose of Paragraph IV as “to preclude Rambus from continuing to collect monopoly rents with respect to JEDEC-Compliant DRAM or non-DRAM Products,” and does not mention any limitation based on the date of infringement. Opinion of the Commission on Remedy at 28-29.⁴

Because of the enormous financial implications of this issue, to the extent the Commission deems it appropriate, Complaint Counsel urge the Commission to clarify the scope of its Order.⁵ At issue is the potential ability for Rambus, through prospective enforcement

³ In Paragraph IV.A of the Commission’s Order, the absence of a comma between the phrases “relating to the manufacture, sale or use of any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product” and “after the date this Order becomes final” could be read to imply that the limiting clause “after the date this Order becomes final” applies to the timing of third-party conduct (i.e., when a third party manufactures, sells or uses a product), and not to the timing of Rambus’s efforts to collect royalties in excess of the Maximum Allowable Royalty amounts.

⁴ Additionally, Paragraph V (in contrast to Paragraph IV) contains no time limitation. Thus, independent of the interpretation of Paragraph IV, Paragraph V could be read to require Rambus to offer companies a license with respect to past as well as future infringement, subject to the Maximum Allowable Royalty caps.

⁵ Complaint Counsel believe that this request falls within the scope of Rambus’s request for clarification of the applicability of the Commission’s Order to Rambus’s prospective efforts to collect amounts owing under its license agreements. If the Commission were to disagree, however, Complaint Counsel request that the Commission treat this submission as a

efforts, to collect as much as a billion dollars in unlawful monopoly profits after the effective date of the Commission's Order. Indeed, because the vast majority of SDRAM, DDR SDRAM, and related controllers has already been manufactured, used or sold (*see* Attachment C), the amount of monopoly profits that depend on this issue of interpretation greatly exceeds the amount of the relief otherwise achieved in the Commission's Order.⁶

II. Other Issues Raised by Rambus

A. Treble Damages, Injunctions and Attorneys' Fees

Rambus requests that the Commission amend its Order to permit Rambus to actively pursue treble damages, injunctive relief and attorneys' fees despite the royalty caps imposed by the Commission in its Order. Rambus's sole justification is that it wishes to be able to use the threat of severe remedies to force third parties to enter into license agreements. Rambus Petition at 9-11. Modification of the Order, however, is both unnecessary and inappropriate.

On a purely practical level, any threat by Rambus of treble damages or injunctive relief

petition for clarification on this point.

⁶ According to Rambus's calculations, the Commission's relief with respect to all relevant products manufactured, used or sold after the date of the final Order is likely to amount to, at most, []. Motion of Respondent Rambus Inc. For Stay Of Order Pending Appeal at 7. By contrast, Complaint Counsel understands that Rambus plans to continue its prospective pursuit of \$500 million or more in damages (the vast majority of which would be unlawful monopoly profits) with respect to SDRAMs and DDR SDRAMs manufactured, used or sold before the date of the Commission's Order. Likewise, Rambus apparently plans to pursue damages and royalties from manufacturers of SDRAM and DDR controllers, and even of systems containing such products. The amounts at issue are difficult to estimate, but likely to be similar in magnitude to those of DRAMs. (This, of course, is in addition to the [] in royalties that Rambus has already collected, most of which is likely unlawful monopoly profits, but which is beyond the scope of the Commission's Order.) *See* Attachment D.

with respect to future sales of SDRAM and DDR SDRAM will have little, if any, significance. The marketplace has moved on. Except in very rare circumstances, licensing dynamics likely will be driven by the enormous volume of DDR2 and DDR3 products that are beyond the scope of the Order. And of course, Rambus will have full recourse to treble damages, injunctive relief and attorneys' fees with respect to those products. SDRAM and DDR SDRAM royalties will be largely an afterthought. (*See* Attachment A to Complaint Counsel's Response to Motion of Respondent Rambus Inc. For Stay of Order Pending Appeal.)

More importantly for purposes of the Commission's objectives, Rambus's request flatly contradicts the apparent purpose of paragraphs VI and VII of the Commission's Order. Treble damages and injunctive relief are inconsistent with the fundamental purpose of JEDEC – to create standards available for general use throughout the industry and either free of patented technology or, at most, subject to reasonable and non-discriminatory royalty rates. Furthermore, the Commission should resist creating disincentives to parties willing to challenge Rambus's future efforts to enforce its patents. Third parties already face a significant deterrent to challenging Rambus's patents – the costs of litigation, including but not limited to attorneys' fees. The Commission should not add to that deterrent by amending its Order to permit Rambus to pursue treble damages, injunctive relief and attorneys' fees.

B. Allegations of Deception at JEDEC

Rambus asks the Commission to modify its Order to permit Rambus to pursue unlimited remedies against any company that alleges that Rambus engaged in deceptive conduct at JEDEC. Rambus Petition at 11-13. In effect, Rambus hopes the Commission will revise its Order to foreclose future antitrust enforcement against it by discouraging third parties from challenging in

private actions precisely the conduct that the Commission found to be unlawful. (Rambus's request is truly ironic, given that Rambus itself is taking advantage of the antitrust laws to pursue a private, follow-on action to the Department of Justice's criminal price-fixing cases.)

The Commission should not amend its Order to discourage third parties from pursuing any additional remedies for Rambus's conduct that might be available in court,⁷ from litigating issues that the Commission did not decide (such as spoliation of evidence), or even from relitigating issues (such as DDR2 SDRAM) that, with the benefit of new or additional evidence, might be worthy of further review.

C. Multiple Royalties on Systems Incorporating Multiple JEDEC-Compliant Products

Rambus asks the Commission to modify its Order to permit Rambus to collect multiple royalties on systems that incorporate multiple JEDEC-compliant products. Rambus Petition at 13-15. Rambus apparently wants the Commission to permit it to "double-dip" – to collect royalties not only with respect to DRAMs and controllers, but also with respect to systems incorporating DRAMs and controllers. Rambus does not indicate whether it intends to pursue claims of royalties against computer manufacturers, retailers, consumers, or all of the above.

Complaint Counsel opposes Rambus's position as inconsistent with industry practice, the expectations at JEDEC, and the spirit of the Commission's Order. The doctrine of patent exhaustion provides that, if a component manufacturer pays a royalty on a component,

⁷ Rambus's position is especially outrageous if the Order only restricts Rambus's efforts to collect royalties or damages for products manufactured, used or sold after the date of the final Order. The result would be that, to obtain any relief under the Commission's Order, third parties would have to forego any private challenge to Rambus's unlawful conduct and (absent a finding of invalidity or lack of infringement) to pay Rambus's unlawful monopoly rents with respect to products manufactured, used or sold before the date of the final Order.

subsequent down-stream users of that component are protected from repetitive royalty demands. *See, e.g., LG Electronics, Inc. v. Bizcom Electronics, Inc.*, 453 F.3d 1364, 1369 (Fed. Cir. 2006) (“It is axiomatic that the patent exhaustion doctrine, commonly referred to as the first sale doctrine, is triggered by an unconditional sale. . . . ‘[A]n unconditional sale of a patented device exhausts the patentee’s right to control the purchaser’s use of the device thereafter. The theory behind this rule is that in such a transaction, the patentee has bargained for, and received, an amount equal to the full value of the goods’”) (citations omitted). This practice is routinely followed, indeed relied upon, by industry members. The Commission’s Order properly reflects this principle by permitting Rambus to collect royalties against DRAM and component manufacturers, but not downstream users.⁸

Rambus may argue that it has patents that apply to computer systems, i.e., patents separate from those that apply to DRAMs or controllers. In terms of a but-for world, however, there is no reason whatsoever to expect that DRAM and component manufacturers would have negotiated license agreements with Rambus that would have left their customers – OEMs – subject to patent hold-up or even injunctions from Rambus. Rather, DRAM and component manufacturers could have been expected to negotiate license agreements that would protect their

⁸ Rambus may contend that it is sometimes necessary to pursue downstream users if the upstream component manufacturers cannot be reached because, for example, they are located overseas. This concern does not apply here. Rambus has already demonstrated its ability to obtain licenses from or sue not only every major DRAM manufacturer in the world, but major controller manufacturers as well. CCF 1950-2013. Furthermore, Rambus has related patents in all relevant foreign countries, so there is no question of being unable to reach foreign component manufacturers. CCF 1115-1121, 3183-3226.

customers from Rambus's patent claims.⁹

III. Reconsideration of Paragraph III.C.

Complaint Counsel also request that the Commission modify Paragraph III.C. of the Order to delete the words "except to the extent that such failure results from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Compliance Officer." This phrase, which Complaint Counsel have not had the opportunity to address previously, would insulate Rambus from liability for Order violations that result from such behavior by its own employee, whom Rambus must designate as its "Compliance Officer" pursuant to Paragraph III.A. of the Order. Such a result could create incentives that run contrary to the purposes of the Order. Unlike monitors and trustees appointed in other Commission orders, the Compliance Officer will be Rambus's own employee, with financial and other incentives to act in Rambus's interest. Excusing Rambus from the Compliance Officer's egregious or willful conduct could create the perverse situation in which deliberate acts to avoid the disclosures required by Paragraph II. of the Order would not be attributable to Rambus, or actionable by the Commission. It is fully

⁹ Rambus also asks the Commission to modify the Order so that it can recover for the duration of its patents the MAR rates rather than having the rates drop to zero after three years. Rambus Petition at 16-18. Complaint Counsel note that the practical effect of this provision is unclear, as the zero rate is scheduled to take effect on April 12, 2010, just 18 days before most of Rambus's relevant patents are set to expire. Nevertheless, Complaint Counsel agree with the Commission that the Maximum Allowable Royalty rates should decline to zero over time. The Rambus-Samsung agreement is merely one piece of evidence establishing the general proposition that industry members tended to negotiate license agreements in which royalty rates declined substantially over some period of time and over volume. The Commission's conclusion is perfectly reasonable that JEDEC members on average would have succeeded in negotiating a provision that Rambus royalty rates would fall to zero **fourteen years** after the first SDRAM products were introduced in volume and **eleven years** after the first DDR SDRAM products were introduced in volume.

appropriate that Rambus be liable for its Order violations, even if they result from the failure of its Compliance Officer to meet his or her obligations, as the main portion of Paragraph III.C. provides. Rambus should not be excused for actions that it can fully control through its employees. Modifying Paragraph III.C. of the Order as Complaint Counsel requests, will put Rambus in the same position as all respondents – responsible for the actions of its “directors, officers, employees, agents, [and] representatives,” as specified in the definition of “Respondent” in this Order.

If the Commission determines, nonetheless, that Rambus cannot, or should not, be held responsible for the actions of its Compliance Officer, we ask that the Commission delete Paragraph III in its entirety. It is more important that the Order be fully enforceable against Rambus than that Rambus be required to employ a Compliance Officer approved by the Commission.

Respectfully submitted,

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Dated: February 26, 2007

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14
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16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 HYNIX SEMICONDUCTOR INC.; HYNIX
SEMICONDUCTOR AMERICA, INC.;
19 HYNIX SEMICONDUCTOR U.K. LTD.; and
20 HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

21 Plaintiff,

22 vs.

23 RAMBUS INC.,

24 Defendant.

25 AND RELATED CROSS-ACTIONS.
26
27
28

CASE NO. CV 00-20905 RMW

**RAMBUS'S CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: February 16, 2007
Time: 10:30 a.m.
Ctrm: 6
Judge: Hon. Ronald M. Whyte

1 Rambus Inc. ("Rambus") respectfully submits this Case Management Conference
2 Statement in connection with the Court's February 16, 2007 conference in this matter.

3 **I. TRIAL DATE**

4 Hynix counsel Allen Ruby has informed us that his trial conflict with the "Micrel" action
5 will prevent him from commencing trial in this matter on the (tentatively set) March 19, 2007
6 date. The Court has previously set a July 9, 2007 trial date.

7 **II. IMPACT OF FTC DECISION**

8 The FTC released the public version of its remedy opinion on February 5, 2007. Rambus
9 provided the Court with a courtesy copy the same day. The FTC's Order will not be effective
10 until April 2, 2007, at the earliest. *See* 16 C.F.R. § 356. Rambus will file a motion to stay the
11 Commission's Final Order, as well as a Petition for Review in a Court of Appeals.

12 Regardless of whether the FTC's liability decision may be "final" in April for purposes of
13 appeal, however, it is *not* "final" for purposes of Clayton Act § 5(a) and cannot form the basis for
14 *prima facie* findings here, for the reasons set forth in Rambus's prior briefs and in its
15 Supplemental Brief in Opposition to Motion re FTC Findings on Prima Facie Evidentiary Effect,
16 filed on February 8, 2007. *See, e.g., McDonald v. Schweiker*, 726 F.2d 311, 313 (7th Cir. 1983)
17 (observing that "the term 'final judgment,' which appears 151 times in the United States Code,
18 does not have a single fixed meaning" and that when used in Clayton Act § 5(a), it "denotes the
19 judgment that writes *finis* to the entire litigation, after all appellate remedies have either been
20 exhausted or, as here, abandoned").

21 The Commission's Final Order also has no impact on the existing damages award from
22 the patent phase of trial. The Commission stated in its remedy decision that the royalty rate
23 restrictions it was imposing represented a "forward-looking remedy" that was "prospective only."
24 *See* 2/2/07 Order on Remedy at 2, 7. Hynix appears to suggest, however, that the FTC Order bars
25 Rambus from collecting past royalties in excess of the "FTC rates." The paragraph of the Order
26 that Hynix refers to, paragraph IVA, makes very clear that the "Maximum Allowed Royalty
27 Rates" described in the Order apply *only* to "the manufacture, sale or use of [certain defined
28 devices] after the date this Order becomes final" Order at 7. In other words, the FTC rates

1 only apply to infringement occurring *after* the Order becomes effective. Indeed, it is likely that
2 any remedy order affecting past infringement would exceed the Commission's statutory powers.
3 Acknowledging this tension, the Commission distinguished a recent D.C. Circuit decision
4 involving the remedies available under the RICO statute by pointing out that that decision
5 "rejected a disgorgement order, not an order *prospectively* terminating the ill effects of unlawful
6 conduct." 2/3/07 Remedy Opinion at 4 (emphasis added).

7 In short, while the FTC has attempted to cap the royalties Rambus may seek for post-
8 4/2/07 infringement, its Order deliberately does not affect past royalties paid or awarded.
9 Hynix's additional argument – that the Commission has "gutted" the evidentiary value of
10 Rambus's prior license agreements and has rendered them "inadmissible – is the same argument
11 made in Hynix's motion for a new trial on patent damages, which the Court denied.
12 Consequently, as the Court held in denying Hynix's motion, the damages verdict cannot be
13 revisited until after the Phase III trial is concluded (if then).¹

14 This case will be seven years old this summer. Rambus's appeal of the FTC's decision is
15 likely to take eighteen months or more. In light of the § 5(a) finality issue, there is no basis for
16 any further delay based on the FTC's proceedings.

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23 ¹ Nor does the remedy ruling serve any basis for vacating the bond requirement. To the contrary,
24 the FTC's decision to enter a "prospective" remedy order that does not affect past infringement,
25 combined with Hynix's request for a substantial additional trial delay to accommodate its
26 counsel's schedule, supports an increase, not a decrease, in the bond, to reflect Hynix's ongoing
27 infringement.
28

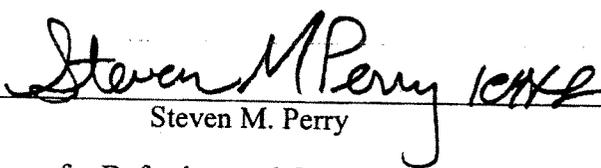
1 **III. OTHER PRE-TRIAL ISSUES**

2 Rambus requests that the Court schedule a Pre-Trial Conference for June 29, 2007 in
3 connection with the July 9, 2007 trial date. In addition, in light of the delay until July 2007 to
4 accommodate Mr. Ruby's trial schedule, Rambus requests leave to file a motion for summary
5 judgment on Hynix's monopolization claim. Rambus proposes that the Court hear the motion on
6 April 6, 2007.²

7
8 DATED: February 14, 2007

MUNGER, TOLLES & OLSON LLP

SIDLEY AUSTIN LLP

9
10
11 By: 

12 Steven M. Perry

13 Attorneys for Defendant and Counterclaim-Plaintiff
14 RAMBUS INC.

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20 ² Rambus's motion will demonstrate that Hynix's portion of the Joint Pre-Trial Statement, along
21 with such decisions as *Illinois Tool Works Inc. v. Independent Ink, Inc.*, 547 U.S. ____, ____, 126
22 S.Ct. 1281, 1291 (2006), make it clear that Hynix cannot make a sufficient showing of market
23 power to defeat summary judgment on its monopolization claim. Hynix does not admit that any
24 of Rambus's patents are valid, nor does it allege that all JEDEC-compliant SDRAMs and DDR
25 SDRAMs infringe any Rambus patent. In addition, Rambus currently has less than 30% of
26 worldwide SDRAM and DDR production under license. As a consequence, while Hynix might
27 have an equitable estoppel defense or even a fraud claim that requires a full trial, it cannot show
28 that Rambus has obtained market power – a strict threshold requirement of an actual
monopolization claim and one that is well suited for summary judgment. *See, e.g., United Air
Lines, Inc. v. Austin Travel Corp.*, 867 F.2d 737, 741-2 (2d Cir. 1989) (affirming summary
judgment because defendant with 31% market share "lacks the market power necessary to
constitute a national monopoly"); *Dimmitt Agri Industries, Inc. v. CPC Intern., Inc.*, 679 F.2d
516, 528-9 (5th Cir. 1982) (reversing jury verdict on monopolization claim in light of defendant's
25% market share); *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945)
(33% share is "certainly" not a monopoly); *Pilch v. French Hospital*, 2000 WL 33223382 at *7
(C.D. Cal. 2000) (same).

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PROOF OF SERVICE BY HAND

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is 560 Mission Street, 27th Floor, San Francisco, California.

On February 14, 2007, I served the following document(s) described as:

RAMBUS'S CASE MANAGEMENT CONFERENCE STATEMENT

by placing a true copy thereof enclosed in sealed envelope addressed as follows:

Geoffrey H. Yost, Esq.
Thelen Reid Brown Raysman & Steiner LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3601

I caused such envelope to be delivered by hand by Wheels of Justice, 657 Mission Street, Suite 502, San Francisco, California, 94105 to the office of the addressee.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 14, 2007, at San Francisco, California.

Teresa Ramirez

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO:

3 I, the undersigned, declare: that I am employed in the aforesaid County; I am over the age
4 of 18 and not a party to the within action; my business address is 560 Mission Street, 27th Floor,
San Francisco, California 94105.

5 On February 14, 2007, I served upon the interested party(ies) in this action the foregoing
6 document(s) described as:

7 **RAMBUS'S CASE MANAGEMENT CONFERENCE STATEMENT**

8
9 By placing the original a true copy thereof enclosed in sealed envelope(s) addressed
as stated on the attached service list.

10 **BY FEDERAL EXPRESS PRIORITY OVERNIGHT DELIVERY (AS INDICATED**
11 **ON SERVICE LIST)** I caused such envelope(s) to be placed for Federal Express
12 collection and delivery at San Francisco, California. I am "readily familiar" with the
13 firm's practice of collection and processing correspondence for Federal Express mailing.
Under that practice it would be deposited with the Federal Express office on that same day
with instructions for overnight delivery, fully prepaid, at San Francisco, California in the
ordinary course of business.

14 **BY MAIL (AS INDICATED ON ATTACHED SERVICE LIST)** I caused such
15 envelope(s) to be deposited with postage thereon fully prepaid in the United States mail at
16 a facility regularly maintained by the United States Postal Service at San Francisco,
17 California. I am "readily familiar" with the firm's practice of collecting and processing
18 correspondence for mailing. Under the practice it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepaid at San Francisco, California in
the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter.

19 **BY ELECTRONIC MAIL (AS INDICATED ON SERVICE LIST)** I caused such
documents to be sent by electronic mail for instantaneous transmittal via telephone line.

20 I declare that I am employed in the office of a member of the Bar of this Court at whose
21 direction the service was made.

22 Executed on February 14, 2007, at San Francisco, California.

23
24 _____
Teresa Ramirez

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SERVICE LIST
Hynix v. Rambus, Inc.
USDC CV-00-20905 RMW

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 17 HYNIX SEMICONDUCTOR DEUTSCHLAND GmbH

18 **UNITED STATES DISTRICT COURT**
 19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

20 HYNIX SEMICONDUCTOR INC.,
 HYNIX SEMICONDUCTOR AMERICA
 21 INC., HYNIX SEMICONDUCTOR U.K.
 LTD., and HYNIX SEMICONDUCTOR
 22 DEUTSCHLAND GmbH,

23 Plaintiffs,

24 v.

25 RAMBUS INC.,

26 Defendant.

Case No. CV 00-20905 RMW

**HYNIX'S SUPPLEMENTAL
 CASE MANAGEMENT
 CONFERENCE STATEMENT**

Date: February 16, 2007
 Time: 10:30 a.m.
 Dept.: 4th Floor, Courtroom 6
 Judge: Hon. Ronald M. Whyte

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I. INTRODUCTION

This action returns for a case management conference on February 16, 2007. At that time, Hynix believes it would be useful to address the following issues:

1. The FTC Order of February 5, 2007
 - a. Overview
 - b. Impact on the Conduct Trial
 - c. Impact on the Patent Verdict
2. Consolidation of Conduct Trials
3. Release of Hynix Security in re Patent Verdict
4. Pending Motions

1. **The FTC Order of February 5, 2007**

a. **Overview**

The FTC made public its final order on February 5, 2007. A copy of the order, opinion of the Commission and dissenting opinions have already been submitted by Rambus.¹ As applicable to this case, the significant components of the FTC Order are:

- The Commission set maximum royalty rates that Rambus can charge for licenses on its patents for JEDEC-Complaint SDR SDRAM and JEDEC-Complaint DDR SDRAM at 0.25% and 0.50%, respectively. These rates apply to U.S. sales and in three years go to 0%. (FTC Order, pp. 2-3)
- Rambus cannot collect or attempt to collect royalties in excess of these rates. (FTC Order, p. 7)
- Rambus is barred from any further prosecution (or assertion as counter-claim) of its infringement allegations against SDR SDRAM and DDR SDRAM. (FTC Order, p. 9)

¹ *In the Matter of Rambus, Inc.*, FTC Dkt. 9302, Final Order (“FTC Order”); Opinion of the Commission on Remedy (“FTC Opinion”); Statement of Commissioner J. Thomas Rosch, Concurring in Part and Dissenting in Part (“Rosch Dissent”) and Remedy Statement of Commissioner Pamela Jones Harbour Concurring in Part and Dissenting in Part (“Harbour Dissent”) (February 5, 2007) available at <http://www.ftc.gov/os/adjpro/d9302/index.htm>.

- 1 • The Commission did not order relief as to DDR2 SDRAM, finding the record
2 before it did not contain sufficient evidence of a causal link between Rambus's
3 conduct and JEDEC's DDR2 standard, noting however "There is no doubt that
4 some relationship exists between Rambus's deceptive conduct and its position in
5 the DDR2 SDRAM market." (FTC Opinion, p. 30)

6 In sum, to restore competition distorted by Rambus's unlawful conduct, the Commission
7 has set stringent boundaries on Rambus's ability to collect royalties. In so doing, the Commission
8 provides guidance to the entire industry, several members of which are parties in actions before
9 this Court, as to the parameters within which the disputed technology can be licensed. Further,
10 although the Commission's majority opinion expressed concern about the sufficiency of the
11 evidence of "lock-in" as it relates to DDR2 SDRAM, a view not shared by the dissent (Harbour
12 Dissent, pp.3-10), Hynix and the defendants in the other actions will be able to demonstrate that
13 the industry was locked-in to the relevant technologies at the time that JEDEC was developing the
14 DDR2 SDRAM standard.² That evidence, along with the prima facie findings, will serve to
15 establish Rambus's violation of § 2 of the Sherman Act and California Business and Professions
16 Code § 17200.

16 **b. Impact on the Conduct Trial**

17 The impact of the FTC findings on the Conduct trial has been fully briefed, argued and
18 submitted.³

19 As for the trial date, when the Conduct trial was stayed in August 2006, the parties met and
20 conferred regarding trial counsels' respective schedules for 2007. The parties, with the Court's
21 approval, tentatively reserved time in March and July for trial, with July 9 being an alternative
22 date due to Hynix's counsel, Allen Ruby, already being set for trial in March, 2007. As it is now

23
24 ² The Commission was careful to note, both in its Opinion and its Order, that its reluctance to
25 extend the findings and remedy to DDR2 SDRAM was based on the record before it; this record
26 was developed in 2003, before the final JEDEC DDR2 SDRAM standard had been published and
27 before DDR2 SDRAM became commercially significant in the market.

28 ³ Rambus recently submitted, without leave of court, a further brief which is addressed herein on
page 7.

1 mid-February and Mr. Ruby is still set for trial in March, July 9 remains a viable date for a Hynix-
2 only Conduct trial, should the Court decide to proceed with four separate Conduct trials in each of
3 the Rambus infringement actions pending before it. *See, section 2, infra.*

4 **c. Impact on the Patent Verdict**

5 The verdict from the patent infringement trial must be vacated as it was based upon
6 inadmissible evidence of licenses which the FTC has now finally determined Rambus obtained
7 only as a result of its anticompetitive conduct.⁴ Now, especially in light of the FTC's decision, the
8 Court should vacate the patent damage award (as reduced by the Court) pending further
9 proceedings.

10 **2. The Court Should Consolidate the Conduct Trials**

11 *In addition to this action*, the Court has pending three other infringement actions
12 brought by Rambus:

13 Rambus v. Hynix, et al., US District Court, ND Cal., Case No. C05-00334 RMW
14 ('334 Action; other parties Samsung and Nanya)

15 Rambus v. Samsung, US District Court, ND Cal., Case No. C05-02298 RMW
16 ('298 Action)

17 Rambus v. Micron, US District Court, ND Cal., Case No. C06-00244 RMW
18 ('244 Action)

19 Each of these actions contain either counterclaims or affirmative defenses that Rambus's conduct at
20 JEDEC constituted a violation of the antitrust laws, in accordance with the findings of the FTC.⁵
21 Now that the FTC has issued its final order, the impact of the prima facie effect of the FTC findings
22 as well as the overlap in evidence in all four actions is obvious. Thus the FTC Order presents the
23 Court with an opportunity, by the exercise of its inherent powers under Rule 42(a), to consolidate the
24 claims and defenses relating to Rambus's unlawful conduct arising out of its participation at JEDEC

25 ⁴ See, Hynix Motion for New Trial on Patent Damages in Light of the FTC's August 2, 2006
26 Opinion, filed December 1, 2006, which the Court denied pending completion of the Conduct
27 trial.

28 ⁵ See, '286 Action, ¶ 287(e); '298 Action, ¶ 149; '244 Action, ¶¶ 96-159.

1 into a single trial. Hynix respectfully suggests that the Court issue an order in all four cases offering
2 the parties an opportunity to be heard and requesting a timetable for a consolidated trial.

3 **3. Release of Hynix Security in re Patent Verdict**

4 As a condition of the stay of the Conduct trial, Hynix was required to secure the patent
5 verdict – a verdict based solely on evidence which the FTC has gutted. As a practical matter,
6 Hynix had no choice at the time but to post a bond secured by letters of credit in the amount of
7 \$192,333,637. The cost of the security to Hynix is not insignificant, exceeding \$800,000.
8 Pursuant to this Court’s Order of August 22, 2006, the stay remained in place until either February
9 2nd or the issuance of the FTC’s order regarding remedy, whichever was first. ⁶ Thus the stay –
10 the basis of the Court’s requirement that Hynix post security - has now expired.

11 Accordingly, Hynix must now be relieved of its obligation to post security for the patent
12 verdict. Given the FTC’s Order and Opinion, the existing patent damage award will never be
13 enforceable. Further, Hynix’s claims against Rambus have yet to be tried – and were stayed, or
14 more properly continued, only as a consequence of the *FTC’s liability order* finding antitrust
15 violations by Rambus. Finally, there simply are no conceivable circumstances as the case is
16 currently postured under which Rambus could execute on the bond. Thus it serves no functional
17 purpose other than to require Hynix to make an expensive showing of “good faith” of its ability to
18 pay the first verdict, a verdict the viability of which has been undermined by the FTC. The
19 requirement of security posted by Hynix in no way furthers the objective of bringing this
20 litigation to a close, either by the Conduct trial or by order of the FTC. The Court’s Order
21 awarding prejudgment interest protects Rambus against delay in recovering any damages to which
22 are properly awarded. There simply is no legitimate reason for the security to remain in place. ⁷

23
24 ⁶ February 2nd was the original date for this case management conference, which subsequently was
extended to February 16th at the Court’s request, extending the stay to February 16th as well.

25 ⁷ Should the Court be inclined to keep the security requirements in place, then Hynix respectfully
26 requests that it be permitted to replace the bond with a letter of credit issued by a world-wide
27 bank, such as CitiBank, which could, should the theoretical need arise, be executed upon in the
U.S.

28

1 **4. Outstanding Motions**

2 On Thursday, February 8, 2007, Rambus, without leave of court or notice to Hynix, filed a
3 Supplemental Brief in Opposition to Hynix's Motion re FTC Findings that Merit Prima Facie
4 Evidentiary Effect in the Conduct Trial. Of course, Hynix's motion had already been fully
5 briefed, argued and submitted. Hynix will be prepared at the case management conference to
6 discuss a briefing schedule in response to Rambus's unbidden pleading, should the Court deem it
7 appropriate.

8 With regard to the Conduct trial, the following motions are pending:

9

10	Motion	Hearing Date
11	1. Hynix's Brief re FTC Findings That Merit Prima Facie Evidentiary Effect in the Conduct Trial	1/26/2007
12		
13	2. Hynix's Motion for Summary Judgment on its Section 17200 Claim and Its Equitable Estoppel Defense	1/26/2007
14		
15	3. Rambus' Motion to Confirm Withdrawal of Jury Demand with Respect to Fraud Claim	2/16/2007
16		

17

18 In addition, on July 20, 2006, Hynix filed eleven motions *in limine* and Rambus filed six
19 motions *in limine*. The Court heard arguments on these seventeen motions *in limine* and issued
20 tentative rulings on August 3, 2006. The following is a list of outstanding motions *in limine* that
21 were filed. Arguments on these motions *in limine* were scheduled for August 17, 2006, but were
22 not heard as Phase III was stayed.

23

24	Hynix Motions	Filed Date
25	1. Motion <i>in Limine</i> to Preclude Rambus from Presenting Evidence or Argument Explaining the Delay in Prosecuting Rambus's Patent Claims	8/3/2006
26		

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1	2.	Motion <i>in Limine</i> pursuant to FRCP 37 to Exclude Rambus Exhibits 6809, 6810, 6811, 6812, and 6813 and any Materials Purportedly Identified in these Exhibits	8/3/2006
2			
3			
4			
5	3.	Motion <i>in Limine</i> to Exclude Certain Evidence and Argument	8/2/2006
6			
7			
8		Rambus's Motion	Date Filed
9	1.	Motion <i>in Limine</i> No. 7 to Preclude Hynix from Calling Nondisclosed Witnesses (H.J. Oh, Abid Ahmad, Charles Donohoe, Richard Heye, Young Park, and J.H. Ahn)	8/3/2006
10			
11			
12	2.	Motion <i>in Limine</i> No. 8 to Exclude Certain Testimony of Roy Weinstein	8/3/2006
13			
14	3.	Motion <i>in Limine</i> No. 9 to Preclude Hynix from Relitigating Issues Relating to Validity that were Decided by the Jury in Phase II and to Exclude Portions of the Testimony of Graham Allan	8/3/2006
15			
16			
17			
18	4.	Motion <i>in Limine</i> No. 10 to Preclude Hynix from Presenting Evidence or Argument Regarding Rambus's Alleged Use of JEDEC Information to Draft Claims to Cover Actual or Potential Products in the Marketplace	8/3/2006
19			
20			
21			
22	5.	Motion <i>in Limine</i> No. 11 to Preclude Hynix from Presenting Evidence or Argument of Rambus's Patent Prosecution Plans or Efforts Prior to August 31, 1994	8/3/2006
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24			
25	6.	Motion <i>in Limine</i> No. 12 to Exclude Testimony of Mark E. Nusbaum	8/3/2006
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	Rambus's Motion	Date Filed
7.	Motion <i>in Limine</i> No. 13 to Exclude Opinion Testimony of Christopher McArdle Regarding "Lock-in" Costs filed by Rambus, Inc.	8/7/2006
8.	Motion <i>in Limine</i> No. 14 to Exclude Opinion Testimony from Christopher McArdle Relating to the Costs of Graham Allan's Proposed Alternative to Rambus Technologies	8/7/2006
9.	Motion <i>in Limine</i> No. 15 to Exclude References To and Questioning About Allegedly Improper Issuance of Stock Options	8/3/2006
10.	Motion <i>in Limine</i> No. 16 to Exclude (1) Evidence and Argument About Any Relevant AntiTrust Market That Was Not Alleged In Hynix's Second Amended Complaint and (2) Opinion Testimony About Any Relevant Market That Was Not Disclosed in Hynix's Expert's Rule 26 Report and Deposition	8/3/2006
11.	Motion <i>in Limine</i> No. 17 to Exclude Evidence or Argument Regarding Prior District Court Comments or Findings Regarding Potential Trial Witness	8/3/2007

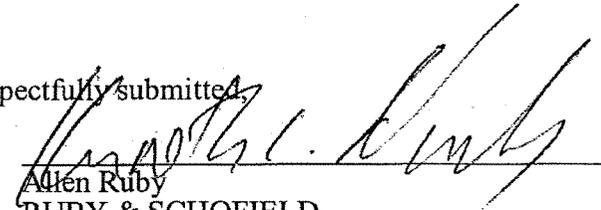
Finally, with regard to the Patent trial, the following post trial motions are pending:

	Motion	Hearing Date
1.	Hynix's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial Regarding Invalidity of Rambus's Asserted Claims for Failure to Satisfy the Written Description Requirement of 35 U.S.C. §112, ¶1	06/27/2006
2.	Hynix's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial Regarding Claims Containing the "Access Time Register" Limitations	06/28/2006

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Motion	Hearing Date
3. Hynix's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial Regarding the Claim Limitation "Delay Locked Loop"	06/28/2006
4. Hynix's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial Regarding the "in Response to a Rising/Falling Edge" Limitation	06/28/2006
5. Hynix's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial Regarding the "Read Request" Claim Limitation	06/28/2006
6. Hynix's Memorandum of Points and Authorities in Support of Its Motion For A New Trial on Invalidity Due To Prior Art	06/27/2006

DATED: February 13, 2007

Respectfully submitted,
By: 
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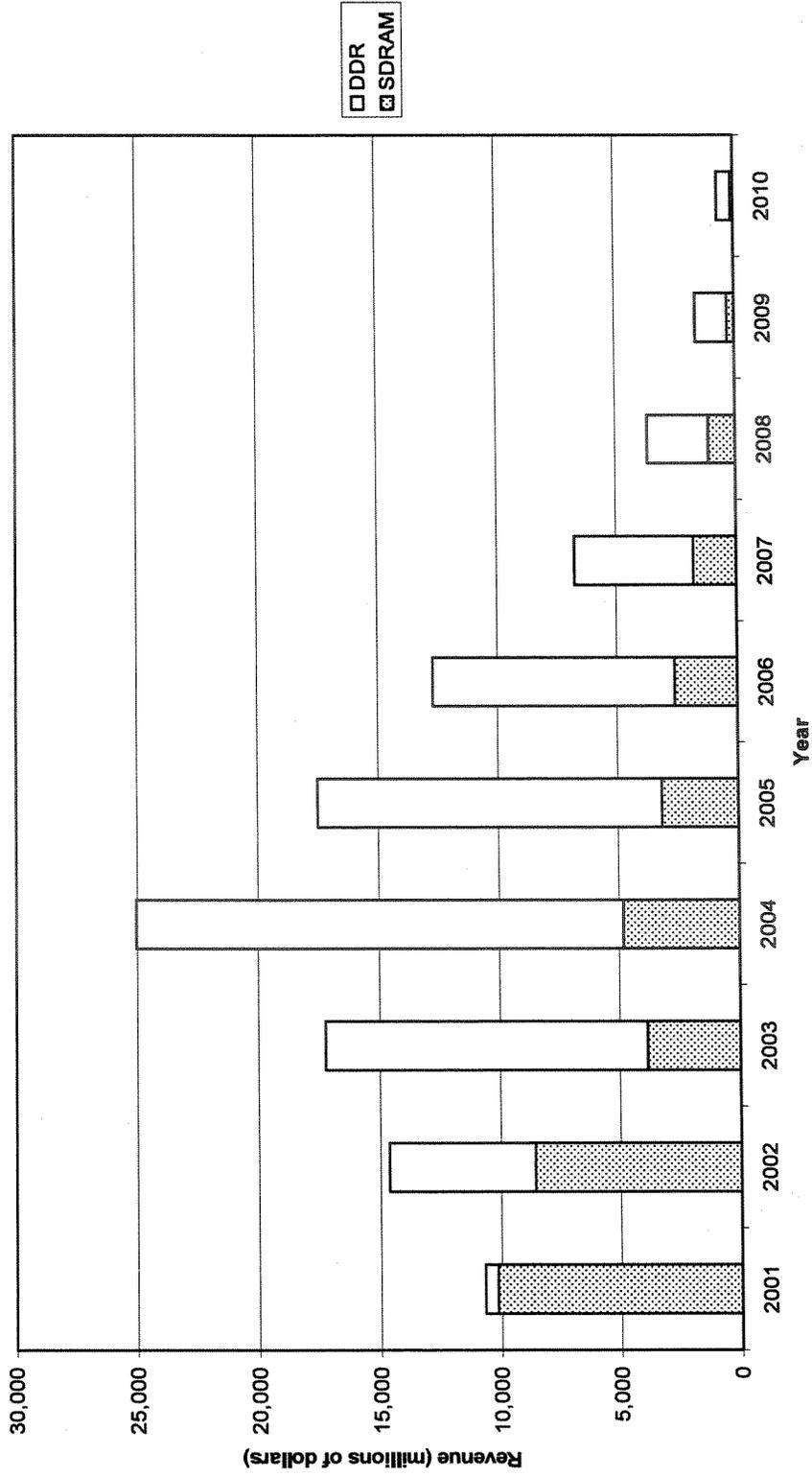
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SV #283199 v1

DDR & SDRAM Revenue



SDRAM and DDR market share breakdown from TAM by Technology (by Mbit) – Q2 2006 Update (iSuppli); total DRAM revenue from Worldwide DRAM Revenue History and Forecast, 2000-2010 (Gartner Dataquest August 2006).

by Mbit) - Q2 2006 Update

Quarterly TAM by technology

	Actual											
	Q1 03	Q2 03	Q3 03	Q4 03	Q1 04	Q2 04	Q3 04	Q4 04	Q1 05	Q2 05	Q3 05	Q4 05
FPI/EDO	0.6%	0.4%	0.3%	0.3%	0.2%	0.2%	0.3%	0.2%	0.1%	0.1%	0.1%	0.1%
RDRAM	3.0%	1.5%	0.9%	0.7%	0.7%	0.4%	0.3%	0.2%	0.4%	0.4%	0.5%	0.4%
SDRAM	25.9%	22.8%	19.9%	19.3%	20.7%	20.2%	17.7%	15.3%	13.5%	12.7%	12.4%	11.8%
DDR	70.0%	75.0%	78.9%	79.8%	77.8%	78.0%	77.0%	74.9%	64.0%	61.0%	54.4%	50.5%
DDR2	0.0%	0.0%	0.0%	0.0%	0.6%	1.3%	4.9%	9.4%	17.2%	21.6%	27.2%	30.8%
DDR3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Graphic	NA											
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Note: portion of DDR266,333,400 mix depends on price premium
SDRAM includes mobile DRAM

Yearly TAM by technology

	2000	2001	2002 A	2003 A	2004 A	2005 A	2006 E	2007 E	2008 E	2009 E	2010 E
FPI/EDO	5.3%	1.6%	0.9%	0.4%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
RDRAM	3.2%	6.7%	4.63%	1.20%	0.37%	0.40%	0.25%	0.15%	0.1%	0.0%	0.0%
SDRAM	91.2%	87.3%	55.2%	22.0%	18.3%	12.6%	8.5%	5.0%	2.8%	1.0%	0.3%
DDR	0.0%	4.4%	39.2%	76.4%	76.8%	56.9%	33.0%	14.0%	6.5%	4.3%	1.8%
DDR2	0.0%	0.0%	0.0%	0.0%	4.4%	24.8%	52.0%	69.0%	63.0%	39.1%	22.9%
>DDR3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	5.0%	21.0%	48.0%	68.0%
Graphic											
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

DDR/SDRAM crossover

DDR2/DDR crossover

* Background color of some cells has been modified to improve readability.

DDR3/DDR2 crossover



Forecast									
Q1 06	Q2 06	Q3 06	Q4 06	Q1 07	Q2 07	Q3 07	Q4 07	Q1 07	Q2 07
0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
0.4%	0.3%	0.3%	0.2%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%
10.5%	9.5%	8.5%	8.0%	6.3%	5.5%	5.0%	4.6%	5.0%	4.6%
45.3%	40.0%	33.0%	25.0%	21.0%	18.0%	14.0%	8.0%	14.0%	8.0%
37.3%	44.0%	52.0%	60.0%	66.0%	69.0%	70.0%	72.0%	70.0%	72.0%
0.0%	0.0%	0.0%	0.0%	0.0%	0.5%	4.0%	8.0%	0.0%	8.0%
6.6%	6.2%	6.3%	6.8%	6.6%	6.4%	6.8%	7.0%	6.6%	6.8%
100%	100%	100%	100%	100%	100%	100%	100%	100%	100%



DDR2/DDR1 crossover

Regional DRAM Application, History and Forecast, 2000-2010

List of Tables

- 9-1 [Worldwide DRAM Revenue History and Forecast, 2000-2010 \(Millions of Dollars\)](#)
- 9-2 [Worldwide DRAM Unit Shipment History and Forecast, 2000-2010 \(Millions of Megabytes\)](#)
- 9-3 [Americas DRAM Revenue History and Forecast, 2000-2010 \(Millions of Dollars\)](#)
- 9-4 [Americas DRAM Unit Shipment History and Forecast, 2000-2010 \(Millions of Megabytes\)](#)
- 9-5 [Japan DRAM Revenue History and Forecast, 2000-2010 \(Millions of Dollars\)](#)
- 9-6 [Japan DRAM Unit Shipment History and Forecast, 2000-2010 \(Millions of Megabytes\)](#)
- 9-7 [EMEA DRAM Revenue History and Forecast, 2000-2010 \(Millions of Dollars\)](#)
- 9-8 [EMEA DRAM Unit Shipment History and Forecast, 2000-2010 \(Millions of Megabytes\)](#)
- 9-9 [Asia/Pacific DRAM Revenue History and Forecast, 2000-2010 \(Millions of Dollars\)](#)
- 9-10 [Asia/Pacific DRAM Unit Shipment History and Forecast, 2000-2010 \(Millions of Megabytes\)](#)

Table 9-1 (Top) (Front Page)

Worldwide DRAM Revenue History and Forecast, 2000-2010 (Millions of Dollars)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2005-2010	CAGR
Electronic Data Processing	26,403.3	9,719	12,662	13,833	20,257	18,850	22,177	25,788	29,310	22,917	26,382	26,382	7.0%
Communications Electronics	1,275	358	468	608	1,426	1,426	1,983	2,582	3,076	2,728	1,916	1,916	6.1%
Consumer Electronics	1,584	674	1,008	1,189	1,657	2,002	3,207	3,969	3,787	2,416	1,749	1,749	-2.7%
Automotive Electronics	79	32	52	75	120	115	137	141	130	95	63	63	-11.4%
Industrial Electronics	1,909	712	1,100	1,574	2,484	2,463	2,690	2,533	2,644	1,965	2,064	2,064	-3.5%
Military/Civil Aerospace Elec	301	131	191	242	374	350	371	375	378	270	280	280	-4.3%
Total	31,551	11,626	15,481	17,521	26,317	25,206	30,565	35,387	39,325	30,392	32,455	32,455	5.2%
Electronic Data Processing	83.7%	83.6%	81.8%	79.0%	77.0%	74.8%	72.6%	72.9%	74.5%	75.4%	81.3%	81.3%	
Communications Electronics	4.0%	3.1%	3.0%	3.5%	5.4%	5.7%	6.5%	7.3%	7.8%	9.0%	5.9%	5.9%	
Consumer Electronics	5.0%	5.8%	6.5%	6.8%	6.3%	7.9%	10.5%	11.2%	9.6%	8.0%	5.4%	5.4%	
Automotive Electronics	0.3%	0.3%	0.3%	0.4%	0.5%	0.5%	0.5%	0.4%	0.3%	0.3%	0.2%	0.2%	
Industrial Electronics	6.1%	6.1%	7.1%	9.0%	9.4%	9.8%	8.8%	7.2%	6.7%	6.5%	6.4%	6.4%	
Military/Civil Aerospace Elec	1.0%	1.1%	1.2%	1.4%	1.4%	1.4%	1.2%	1.1%	1.0%	0.9%	0.9%	0.9%	
Total	100.0%												

Source: Gartner Dataquest (August 2006)

Table 9-2 (Top) (Front Page)

Worldwide DRAM Unit Shipment History and Forecast, 2000-2010 (Millions of Megabytes)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2005-2010	CAGR
Electronic Data Processing	26,679	44,448	60,703	88,242	120,324	182,766	277,793	442,827	696,499	1,035,252	1,526,489	1,526,489	52.9%
Communications Electronics	1,220	1,195	1,963	3,118	6,740	10,969	17,306	29,849	51,756	83,115	131,440	131,440	64.3%

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2010-2010
Consumer Electronics	1,677	3,209	4,922	6,888	9,408	18,103	34,497	58,142	83,222	99,396	123,849	46.9%
Automotive Electronics	88	159	261	436	691	1,074	1,484	2,010	2,736	3,572	4,417	32.7%
Industrial Electronics	1,948	3,008	4,630	8,172	13,448	21,708	31,260	40,570	64,578	96,412	145,274	46.3%
Military/Civil Aerospace Elec	307	564	798	1,257	2,024	3,064	4,322	6,013	9,210	13,253	19,731	45.1%
Worldwide	31,919	52,583	73,277	108,112	152,636	237,683	366,662	579,411	908,000	1,331,000	1,951,200	52.4%
Electronic Data Processing	83.6%	84.5%	82.8%	81.6%	78.8%	76.9%	75.8%	76.4%	76.7%	77.8%	78.2%	
Communications Electronics	3.8%	2.3%	2.7%	2.9%	4.4%	4.6%	4.7%	5.2%	5.7%	6.2%	6.7%	
Consumer Electronics	5.3%	6.1%	6.7%	6.4%	6.2%	7.6%	9.4%	10.0%	9.2%	7.5%	6.4%	
Automotive Electronics	0.3%	0.3%	0.4%	0.4%	0.5%	0.5%	0.4%	0.4%	0.3%	0.3%	0.2%	
Industrial Electronics	6.1%	5.7%	6.3%	7.6%	8.8%	9.1%	8.5%	7.0%	7.1%	7.2%	7.5%	
Military/Civil Aerospace Elec	1.0%	1.1%	1.1%	1.2%	1.3%	1.3%	1.2%	1.0%	1.0%	1.0%	1.0%	
Worldwide	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Source: Gartner Dataquest (August 2006)

Table 9-3 (Top) (Front Page)
Americas DRAM Revenue History and Forecast, 2000-2010 (Millions of Dollars)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2010-2010
Electronic Data Processing	9,584.2	3,086.6	3,714.3	3,618.9	5,206.2	4,792.3	5,329.6	6,091.6	6,829.2	5,300.0	6,130.0	5.1%
Communications Electronics	600.4	143.3	124.5	129.3	316.2	253.1	295.2	321.0	362.1	252.2	180.3	-6.6%
Consumer Electronics	149.6	65.8	115.1	154.8	204.5	217.8	330.0	364.8	300.2	166.3	125.6	-10.4%
Automotive Electronics	8.9	3.0	5.9	8.1	13.5	13.2	15.9	16.7	14.7	9.5	6.2	-14.0%
Industrial Electronics	802.9	300.5	459.9	625.9	956.4	920.5	986.9	927.4	954.9	703.3	730.6	-4.5%
Military/Civil Aerospace Elec	194.1	85.2	124.0	157.3	243.1	234.5	248.7	251.5	253.2	181.2	187.9	-4.3%
Total	11,340.1	3,684.4	4,543.7	4,694.3	6,939.9	6,431.4	7,206.3	7,973.0	8,714.3	6,612.5	7,360.6	2.7%
Electronic Data Processing	84.5%	83.8%	81.8%	77.1%	75.0%	74.5%	74.0%	76.4%	78.4%	80.2%	83.3%	
Communications Electronics	5.3%	3.9%	2.7%	2.8%	4.6%	3.9%	4.1%	4.0%	4.2%	3.8%	2.5%	
Consumer Electronics	1.3%	1.8%	2.5%	3.3%	3.0%	3.4%	4.6%	4.6%	3.4%	2.5%	1.7%	
Automotive Electronics	0.1%	0.1%	0.1%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.1%	0.1%	
Industrial Electronics	7.1%	8.2%	10.1%	13.3%	13.8%	14.3%	13.7%	11.6%	11.0%	10.6%	9.9%	
Military/Civil Aerospace Elec	1.7%	2.3%	2.7%	3.4%	3.5%	3.7%	3.5%	3.2%	2.9%	2.7%	2.6%	
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Source: Gartner Dataquest (August 2006)

Table 9-4 (Top) (Front Page)
Americas DRAM Unit Shipment History and Forecast, 2000-2010 (Millions of Megabytes)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2010-2010
Electronic Data Processing	10,010.5	15,052.1	18,108.6	23,339.4	31,084.5	46,873.9	67,084.7	103,995.6	158,983.9	232,288.3	349,675.4	49.5%
Communications Electronics	569.4	481.3	525.4	679.2	1,528.5	2,091.5	2,919.2	4,330.7	6,972.8	9,170.9	12,472.6	42.9%
Consumer Electronics	161.5	328.1	566.4	894.1	1,168.7	2,012.6	3,696.4	5,500.4	6,816.3	7,542.1	8,766.9	34.2%
Automotive Electronics	9.5	14.6	28.6	46.4	77.6	123.2	177.0	246.2	324.8	390.7	435.5	28.7%
Industrial Electronics	820.5	1,268.1	1,937.2	3,249.5	5,179.0	8,099.2	11,470.9	14,853.3	23,313.0	34,499.2	51,410.7	44.7%
Military/Civil Aerospace Elec	198.0	366.8	518.8	816.9	1,315.5	2,052.5	2,895.9	4,028.4	6,170.6	8,879.5	13,219.5	45.1%

Source: Gartner Dataquest (August 2006)

Table 9-9 (Top) (Front Page)
Asia/Pacific DRAM Revenue History and Forecast, 2000-2010 (Millions of Dollars)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2005-2010 CAGR
Electronic Data Processing	7,100.9	3,271.7	5,231.7	6,303.6	9,303.8	8,793.3	10,613.8	12,464.8	14,395.3	11,398.5	13,252.7	8.6%
Communications Electronics	163.8	76.1	179.9	281.6	623.1	707.6	1,075.9	1,524.7	1,916.7	1,856.9	1,339.0	13.6%
Consumer Electronics	835.9	361.5	541.9	655.1	987.3	1,241.1	2,075.2	2,641.5	2,582.0	1,681.9	1,221.4	-0.3%
Automotive Electronics	3.8	1.9	4.4	7.2	14.9	16.0	21.3	25.9	28.4	23.3	17.1	1.3%
Industrial Electronics	187.2	89.3	165.6	270.0	488.2	519.9	613.4	595.3	659.2	507.5	563.2	1.6%
Military/Civil Aerospace Elec	30.1	13.1	21.0	26.6	44.9	42.0	48.2	52.5	52.9	40.6	42.1	0.1%
Total	8,321.7	3,813.6	6,144.5	7,544.1	11,462.2	11,319.9	14,447.8	17,304.7	19,634.5	15,508.7	16,435.5	7.7%
Electronic Data Processing	85.3%	85.8%	85.1%	83.6%	81.2%	77.7%	73.5%	72.0%	73.3%	73.5%	80.6%	
Communications Electronics	2.0%	2.0%	2.9%	3.7%	5.4%	6.3%	7.5%	8.8%	9.8%	12.0%	8.2%	
Consumer Electronics	10.0%	9.5%	8.8%	8.7%	8.6%	11.0%	14.4%	15.3%	13.2%	10.8%	7.4%	
Automotive Electronics	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.2%	0.2%	0.1%	0.2%	0.1%	
Industrial Electronics	2.3%	2.3%	2.7%	3.6%	4.3%	4.6%	4.3%	3.4%	3.4%	3.3%	3.4%	
Military/Civil Aerospace Elec	0.4%	0.3%	0.3%	0.4%	0.4%	0.4%	0.3%	0.3%	0.3%	0.3%	0.3%	
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

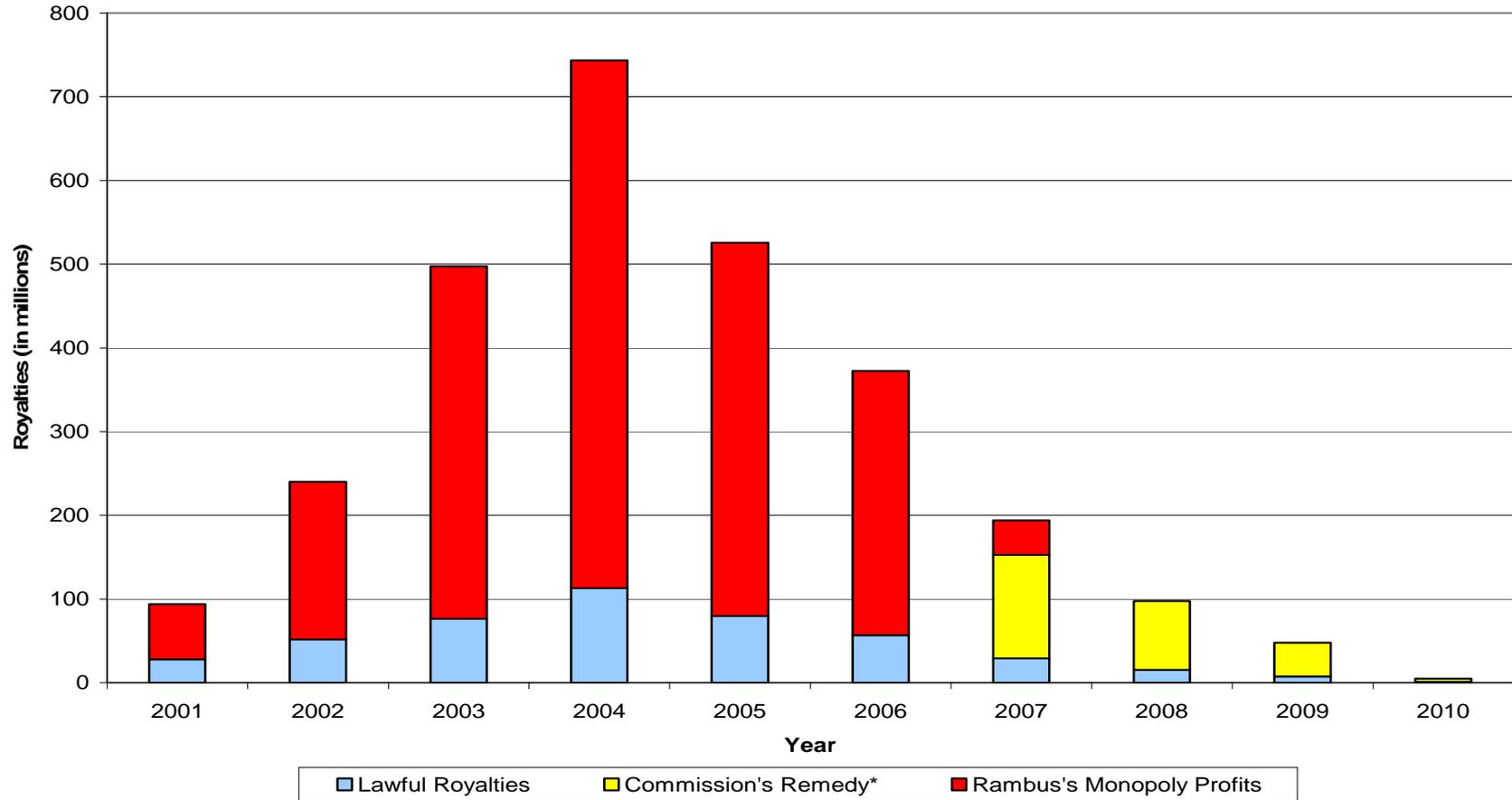
Source: Gartner Dataquest (August 2006)

Table 9-10 (Top) (Front Page)
Asia/Pacific DRAM Unit Shipment History and Forecast, 2000-2010 (Millions of Megabytes)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2005-2010 CAGR
Electronic Data Processing	6,657.5	13,420.9	24,585.7	39,800.0	54,885.1	84,419.4	131,306.2	211,551.1	339,941.0	511,990.1	755,188.0	55.0%
Communications Electronics	150.6	225.3	747.9	1,419.0	2,914.2	5,244.5	9,003.1	16,647.7	30,638.7	52,617.6	86,569.0	75.2%
Consumer Electronics	874.9	1,690.2	2,630.2	3,789.1	5,598.8	11,231.6	22,218.9	38,503.7	56,539.6	68,214.3	86,381.3	50.4%
Automotive Electronics	4.1	9.4	21.5	41.5	86.1	149.7	234.4	374.7	603.8	877.2	1,200.8	51.7%
Industrial Electronics	192.3	377.1	697.2	1,402.3	2,643.0	4,593.2	7,127.1	9,537.3	16,109.0	24,903.7	39,647.2	53.9%
Military/Civil Aerospace Elec	30.7	56.4	87.8	138.2	242.9	367.6	561.9	841.8	1,289.4	1,988.0	2,959.6	51.8%
Total	7,910.1	15,779.3	28,770.3	46,590.1	66,370.1	106,006.0	170,451.6	277,456.3	445,121.5	660,590.9	971,945.9	55.8%
Electronic Data Processing	84.2%	85.1%	85.5%	85.4%	82.7%	79.6%	77.0%	76.3%	76.4%	77.5%	77.7%	
Communications Electronics	1.9%	1.4%	2.6%	3.1%	4.4%	5.0%	5.3%	6.0%	6.9%	8.0%	8.9%	
Consumer Electronics	11.1%	10.7%	9.1%	8.1%	8.4%	10.6%	13.0%	13.9%	12.7%	10.3%	8.9%	
Automotive Electronics	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	
Industrial Electronics	2.4%	2.4%	2.4%	3.0%	4.0%	4.3%	4.2%	3.4%	3.6%	3.8%	4.1%	
Military/Civil Aerospace Elec	0.4%	0.4%	0.3%	0.3%	0.4%	0.4%	0.3%	0.3%	0.3%	0.3%	0.3%	
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Gartner Dataquest (August 2006)

**Commission's Remedy and Rambus's Monopoly Profits
(according to Rambus's interpretation of the Order)**



Lawful royalties were calculated by multiplying total SDRAM and DDR market revenue from 2001 through the first third of 2010 (to account for the expiration of Rambus's patents) by 0.25% and 0.5%, respectively [Attachment C]. Rambus's monopoly profits were determined by multiplying total SDRAM and DDR market revenue from 2001 through the first quarter of 2007 by 0.75% and 3.5%, respectively, and subtracting lawful royalties. Remedy was calculated by multiplying total SDRAM and DDR market revenue from the second quarter of 2007 through the first third of 2010 by 0.75% and 3.5%, respectively, and subtracting lawful royalties.

* Assuming the entire '898 family of patents expires in April 2010 and no other Rambus patents apply.

CERTIFICATE OF SERVICE

I, David C. Horn, hereby certify that on February 26, 2007, I caused a copy of the attached, public version of the *Complaint Counsel's Response to Rambus's Petition for Reconsideration of the Commission's Final Order, and Complaint Counsel's Petition for Reconsideration of Paragraph III.C.*, to be served upon the following persons:

by hand delivery to:

The Commissioners
U.S. Federal Trade Commission
Office of the Secretary, Room H-135
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

by electronic transmission and courier to:

A. Douglas Melamed, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
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