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I. INTRODUCTION

In its Motion for Stay of Order Pending Appeal (“Motion for Stay”), respondent Rambus Inc. (“Rambus”) sought a full stay of the Commission’s February 2, 2007, Final Order (“Order”), pursuant to 16 C.F.R. § 3.56, until the final disposition of its appeals in federal courts. Complaint Counsel’s Opposition (“CC Opp.”) largely ignores the points made in Rambus’s Motion for Stay, which demonstrate that the Commission should stay the Order.

Complaint Counsel’s Opposition is based almost entirely on a single, fundamental misapprehension: that Rambus is poised to collect, pending appeal, enormous royalties from the use of Rambus’s patented technologies in DDR2 devices. *See* CC Opp. 3 & Attach. A. This premise is erroneous. At the present time, 70% or more of DDR2 production is unlicensed and results in no royalty income to Rambus. Four of the six largest manufacturers of DDR2 chips (Samsung, Hynix, Micron, and Nanya) are engaged in litigation with Rambus that shows no sign of abating. Hynix continues to infringe Rambus’s patents even though a federal jury – almost one full year ago – rejected Hynix’s invalidity arguments and found that its DDR2 devices infringed Rambus’s patents. Complaint Counsel’s interpretation of the Commission’s Order and opinion on remedy *rewards* past infringers, contrary to law and logic. In short, and as Rambus demonstrated in its Motion to Dismiss, the Commission’s order creates a clear and immediate threat to the “lifeblood” of Rambus, and both the facts and the law support a full stay of the Commission’s order.

Although a full stay remains the proper course, and the only course that would not entail irreparable harm to Rambus, Complaint Counsel propose a partial stay of the Order, combined with an escrow arrangement that would create more problems than it

If, pending appeal, Rambus cannot collect the royalties to which it would otherwise be entitled should the Order be reversed, its lifeblood will be materially reduced in ways that cannot later be repaired. Rambus is a public company that relies on sustained positive cash flow from royalty income (for use of its technologies) to support such things as its on-going core research and development efforts and employee salaries. Any reduction in royalty income will force Rambus to alter its business operations in ways that can never be undone, even if all royalties are later recovered. The serious financial problems created by even a temporary constriction of cash flow would be exacerbated if the Order were construed, as Complaint Counsel suggest, to prevent Rambus from seeking to collect royalties and damages in excess of MAR rates for the period *before* the Order becomes final. *See* CC Resp. PFR 3-5; *cf.* Rambus's Pet. for Reconsideration (Rambus PFR) 2-5.

Further, Complaint Counsel's proposed partial stay and escrow arrangement would not protect Rambus's goodwill. If accepted, that proposal would require disruption of the existing relationships between Rambus and its licensees, as they struggle to work out new payment arrangements. The damage done by such disruptions would not disappear, and is likely to grow still worse if the Commission's decision is reversed on appeal. Additionally, Complaint Counsel's partial stay would in no way ameliorate the irreparable harm to Rambus from the loss of the right to exclude others from using its patented technology during the pendency of the appeal.²

² These harms could be avoided by a complete stay of Paragraphs IV, V.A., VI, and VII of the Order, without any provision of an escrow arrangement. A stay limited to those sections would enable those portions of the Order that concern Rambus's continued participation in standard setting organizations to become effective promptly.

