

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

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

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

**ORDER GRANTING IN PART AND DENYING IN PART
RESPONDENT'S PETITION FOR RECONSIDERATION OF THE FINAL ORDER
AND GRANTING COMPLAINT COUNSEL'S PETITION FOR RECONSIDERATION
OF PARAGRAPH III.C. OF THE FINAL ORDER**

The Commission issued its Opinion On Remedy and Final Order in this matter on February 2, 2007. The Opinion and Final Order were served on Rambus and its counsel on February 9, 2007, and the Final Order therefore became final and effective on April 12, 2007. 16 C.F.R. § 3.56(a); *accord* 15 U.S.C. § 45(g)(1),(2). On February 16, 2007, Rambus filed a Petition for Reconsideration of the Final Order.¹ On February 26, 2007, Complaint Counsel filed a Petition for Reconsideration of Paragraph III.C. of the Final Order.² The Commission has determined to grant Rambus's Petition in part, and to deny it in part, and to grant Complaint Counsel's Petition. Accordingly,

IT IS ORDERED THAT the Final Order issued by the Commission on February 2, 2007, which became final and effective on April 12, 2007, be, and it hereby is, modified -- as of the date on which this Order is issued -- in the following respects:

¹ On February 16, 2007, Respondent also filed a Motion For Stay of the Final Order Pending Appeal. On March 16, 2007, the Commission granted in part and denied in part that Motion, and in particular stayed enforcement of Paragraphs IV., V.A., VI., and VII. of the Final Order, upon the filing of a timely petition for review of the Final Order in an appropriate court of appeals and until the court of appeals issues its mandate. On April 4, 2007, Respondent filed a petition for review of the Final Order in the Court of Appeals for the District of Columbia Circuit.

² Complaint Counsel also included in the same filing their Response to Rambus's Petition for Reconsideration of the Final Order.

- 1. Subparagraph I.K. is modified to add the following clause to the end of the subparagraph:**

“provided further, however, that when a licensee has not sold the relevant JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product alone during the relevant quarter, Net Sales shall be calculated based on the average gross selling price, less the deductions specified above, reported by all licensees to Rambus during the relevant quarter for the relevant JEDEC-Compliant DRAM Product alone or the relevant JEDEC-Compliant Non-DRAM Product alone.”

- 2. Subparagraph III.C. is modified to delete the following clause from the end of the subparagraph:**

“except to the extent that such failure results from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Compliance Officer.”

- 3. Subparagraph III.E. is modified to delete the clause “on a confidential basis,” from the subparagraph.**

- 4. Subparagraph IV.B. is modified to delete the clause “or rescind” from the subparagraph.**

- 5. Subparagraph V.B. is modified by moving the word “and” from after section 1 to after section 2, and adding the following section 3 to the subparagraph:**

“3. solely at the option of the licensee, a clause providing that the licensee may pay Rambus a flat fee in lieu of running royalties.”

- 6. Paragraph V. is modified to add the following new subparagraph F:**

“F. Rambus shall not release any information used in calculating Net Sales subject to the second proviso of Definition I. K., other than to independent auditors not engaged in the manufacture or sale of JEDEC-Compliant DRAM Products or JEDEC-Compliant Non-DRAM Products. Any such release of information must be subject to terms of a confidentiality agreement that prevents disclosure by the auditor of any individual firm’s prices.”

7. Paragraph VI. is modified to add the following clause to the end of the paragraph:

“Provided, however, that Rambus may seek and collect up to three times the Maximum Allowable Royalty Rate, in satisfaction of a judgment in which a court has specifically allowed increased damages pursuant to 35 U.S.C. § 284 on the ground of willful infringement, and may seek and collect attorney fees as allowed by a court pursuant to 35 U.S.C. § 285.”

8. Paragraph VII. is modified to add the following clause to the end of the paragraph:

“Provided, however, that Respondent may seek and collect up to three times the Maximum Allowable Royalty Rate, in satisfaction of a judgment in which a court has specifically allowed increased damages pursuant to 35 U.S.C. § 284 on the ground of willful infringement, and may seek and collect attorney fees as allowed by a court pursuant to 35 U.S.C. § 285.”

IT IS FURTHER ORDERED THAT the Motion for Leave to Correct Prior Filing [Rambus’s Petition for Reconsideration] that Rambus filed on February 21, 2007 -- and the Motion for Leave to File Reply In Support of Its Petition For Reconsideration of the Commission’s Final Order that Rambus filed on March 7, 2007 -- be, and they hereby are, granted.

IT IS FURTHER ORDERED THAT the Motion For Leave to File Brief As Amici Curiae that Micron Technology, Inc., Samsung Electronics Corp., Ltd., and Hynix Semiconductor, Inc. filed on March 1, 2007 -- and the Motion For Leave to File Response to the Brief As Amici Curiae that Rambus filed on March 9, 2007 -- be, and they hereby are, granted.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

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ISSUED: April 27, 2007

Attachment: Opinion of the Commission