

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



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**COMPLAINT COUNSEL'S MOTION
FOR ENTRY OF SCHEDULING ORDER**

Over the past two weeks, Complaint Counsel and counsel for Respondent Rambus Inc.

in this case. Among other things, it allows ample time for fact discovery; embodies a logical and efficient approach to the sequencing of fact and expert discovery; and places reasonable limits on deposition discovery (*i.e.*, two depositions per side per day, unless otherwise ordered or agreed).

By this motion, Complaint Counsel therefore requests that Your Honor enter the Proposed

Scheduling Order appended hereto as Attachment A. Although Rambus continues to disagree

with certain aspects of this proposed order – principally in relation to the three issues highlighted

above – we submit that Rambus’s concerns are not well founded, and that Rambus’s alternative

proposing an open-ended, unstructured, and inefficient discovery process would needlessly inject complication and inefficiency into this case.

[REDACTED]

[REDACTED]

- the deadline for filing motions for summary decision (from January 3 to January 10) and responses thereto (from January 27 to February 5); and
- the deadline for filing pretrial briefs (from February 7 to February 17).

In addition, Complaint Counsel's revised scheduling proposal extended by several days the proposed dates for the final prehearing conference (from February 18 to February 21) and the hearing start date (from February 24 to February 26).

[REDACTED]

summary decision by three days, from January 10 to January 13. Correspondingly, we have also extended the deadline for filing responses to motions for summary decision by three days, from February 5 to February 8. Second, responding to concerns raised by Rambus we have deleted from the "additional provisions" portion of the proposed order a one-sentence paragraph – paragraph 8 of the July 31 draft (*see* Attachment E) – which read, "Expert witnesses shall not be permitted to testify to opinions and conclusions other than those set forth in their expert reports."

~~4. *Subsequent to the filing of this proposed order, the parties have agreed to a settlement of the case.*~~

two depositions per side per day, unless otherwise ordered or agreed. Rambus rejected this offer, insisting (1) that it should be permitted to conduct at least three depositions per day, and (2) that both fact and expert discovery should continue through the latest possible date, or essentially one month prior to the scheduled hearing. Considering that Rambus has rejected Complaint

[REDACTED]

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[REDACTED]

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securing an agreement, we have elected not to include these features in the proposed order

order. On the other hand, Rambus proposes to conclude fact discovery more than a month later –

[REDACTED]

on being overly aggressive.

[REDACTED]

[REDACTED]

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[REDACTED]

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complications and prolongable delay³ Dambus's view could schedule by extending to the last

possible moment the deadline for completing fact discovery – also creates incentives for counsel

to be dilatory in pursuing needed discovery. By comparison, Complaint Counsel's proposed

December 16 – with the deadline for the final set of expert reports (Complaint Counsel's rebuttal

close of fact discovery, culminating in the close of expert discovery on January 27

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CONCLUSION

For all the above reasons, Complaint Counsel respectfully requests that Your Honor enter a prehearing scheduling order in the form reflected in Attachment A to this motion.

Respectfully submitted,



M. Sean Royall
Geoffrey D. Oliver
Malcolm L. Catt

BUREAU OF COMPETITION

Washington, D.C. 20580
(202) 326-3663
(202) 326-3496 (facsimile)

COUNSEL ON COMPETITION

CERTIFICATE OF SERVICE

U.S. District Court for the District of Columbia, Case No. 00-00000, Document No. 00-00000

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

In the Matter of
RAMBUS INCORPORATED,

a corporation,

Docket No. 9302

**[PROPOSED]
SCHEDULING ORDER**

It is HEREBY ORDERED that this matter shall proceed in accordance with the following Scheduling Order:

EVENT	DATE
Answer filed	7/29
Exchange initial disclosures	8/6

Final prehearing conference	2/21
Hearing begins	2/26

ADDITIONAL PROVISIONS

1. No more than two depositions per side shall be conducted on any day, unless otherwise agreed by the parties or ordered by the Administrative Law Judge.

subpoenas and discovery requests sufficiently in advance of the date for close of discovery that all responses and objections will be due on or before that date, unless otherwise noted. Unless a

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[REDACTED]

From: Sean Royall

1.

Subject: Draft pre-hearing schedule

Doug:

Intel Date

File responses to motions <i>in limine</i>	2/12	1/6 (37)
File final stipulations of law and fact, final stipulations of	2/14	1/8 (37)

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From: Sean Royall
To: drnelamed@wilmer.com; perrysm@mta.com
Date: 7/27/02 2:39PM
Subject: Revised scheduling order

Doug and Steve:

I have attached a revised scheduling order that seeks to accommodate various points that you all raised yesterday, while also retaining the aspects of our prior draft that we feel strongly about. We look forward to discussing this with you Monday morning. Also, we will want to take up sometime soon other provisions

depositions, exhibits, expert discovery, etc.

EVENT	DATE
Deadline to file answer	7/29
Exchange initial disclosures	8/6
Last day for issuing document requests to the parties	8/30
Last day for issuing party interrogatories (except for those related to requests	9/23

Exchange preliminary witness lists (excluding experts)

9/30



To: dmelamed@wilmer.com; pennysm@mto.com
Date: 7/29/02 5:07 PM
Subject: Scheduling order provisions

The attached incorporates our last scheduling proposal (the one I sent over the weekend) in the form of an order including additional provisions of the sort we would contemplate being included in any order in our case. We would like to discuss the additional provisions with you on our next call.

Thanks.

M. Sean Royall
Deputy Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-3663
(202) 326-2884 (fax)
sroyall@ftc.gov

CC: Catt, Malcolm; Oliver, Geoffrey

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Parties exchange Rebuttal Expert Reports and produce or identify documents or other written materials relied upon or considered by the experts

1/3

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in this case that the complainant was able to disclose the identity of a third party that was known

[The body of the document contains several large blacked-out redaction blocks and some faint, illegible text. The redactions appear to be horizontal bars of varying lengths and thicknesses, completely obscuring the text underneath. There are also some smaller, irregular blacked-out shapes scattered throughout the page.]

Administrative Law Judge

Dated:



From: Sean Royall
To: dmelamed@witmer.com; perrysm@mto.com
Date: 7/31/02 1:15PM
Subject: Further revision of proposed scheduling order (with attachment)

Steve and Doug:

In light of our discussion yesterday, we have gone back and revised our proposed schedule and the "additional provisions" at the end of the proposed scheduling order.

As for the schedule itself, we have made changes to accommodate your preference for staggering the identification of witnesses (both fact and expert) and the provision of expert reports. After reviewing the prior schedules approved by Judge Timony that you identified, it appeared to us that two weeks was a reasonable period of time for staggering the deadlines regarding identification of witnesses. With regard to experts, however, we staggered the deadlines by 3 weeks - i.e., your expert reports would be due 3 weeks after ours, and our rebuttal expert reports three weeks after that (the last period coinciding with the year-end holidays).

In response to concerns you raised, we have also revised the additional provisions, adopting most of your

proposed changes. As for paragraph 1, we did delete the second sentence as you requested. We also modified the first sentence to follow verbatim the approach to depositions that was approved by Judge Timony in Intel - i.e., no more than 2 depositions per side per day.

After discussing this, we have concluded that it probably would be helpful to Judge Timony if we filed something focusing him on the remaining areas of disagreement. We expect that we will have something ready to file tomorrow morning. If after reviewing the attachment you have any further thoughts or would like to discuss the matter, please let us know.

Thanks,

Sean

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
RAMBUS INCORPORATED,
a corporation,

Docket No. 9302

[PROPOSED]
SCHEDULING ORDER

It is HEREBY ORDERED that this matter shall proceed in accordance with the following
Scheduling Order:

EVENT	DATE
Answer filed	7/29

Complaint Counsel provides Expert Reports and produces or identifies documents and other written materials relied upon or considered by the experts	11/25
Last day to file requests for admission	12/9
Respondent's Counsel provides Expert Reports and produces or identifies documents and other written materials relied upon or considered by the experts	12/16
Close of discovery other than experts	12/20
Complaint Counsel provides Rebuttal Expert Reports and produces or identifies documents or other written materials relied upon or considered by the experts	1/6
Last day for filing motions for summary decision	1/10
Last day to file motions to compel regarding requests for admission	1/17

Responses and objections will be due on or before that date, unless otherwise noted. If you have

- a. materials fully describing or identifying the background and qualifications of the expert, and all prior cases in which the expert has testified or been deemed an expert;

From: "Perry, Steven" <PerrySM@mfo.com>
To: "sroyall@ftc.gov" <sroyall@ftc.gov>, "golivor@ftc.gov" <golivor@ftc.gov>, "mcatt@ftc.gov" <mcatt@ftc.gov>
Date: 7/29/02 10:02AM
Subject: Rambus's Proposed Schedule - revised

Here's a revised proposed schedule for your review. The "revised FTC date" column reflects the dates you proposed over the weekend. This proposal is subject to change; it has not been reviewed by the client in light of the time difference and the weekend, but I wanted you to have it for the call this morning. The date for the close of discovery is somewhat negotiable, but we are increasingly concerned that our hands are being tied by Micron and Infineon, and we cannot agree to an earlier date unless we can get some comfort that we won't lose a month or more with motions to amend the protective orders in the patent cases (or with subpoenas in this action that duplicate the discovery already taken).

<<Rambus's Proposed Schedule_v1.DOC>>

DRAFT
7/28/02

Rambus's Proposed Schedule

EVENT	RAMBUS DATE	REVISED FTC DATE	REVISED RAMBUS DATE
Deadline to file answer (complaint filed 6/20)	7/29	7/29	7/29
Exchange initial disclosures	8/6	8/6	8/6
Last day for issuing document requests to the parties	8/30	8/30	8/30
Last day for issuing party interrogatories (except for those related to requests for admission)	9/9	9/23	9/23
Exchange of preliminary witness list (excluding experts)	11/13	10/28	10/31