

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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| _____ |) | |
| In the matter of |) | |
| |) | |
| RAMBUS INCORPORATED, |) | Docket No. 9302 |
| |) | |
| a corporation. |) | |
| _____ |) | |

DECLARATION OF RICHARD L. ROSEN

I, Richard L. Rosen, declare:

1. I am a member of the firm of Arnold & Porter, co-counsel for non-party Micron Technology, Inc. (“Micron”). I make this declaration in support of Micron’s response to the motion of Rambus, Inc. to compel production of pricing-related documents. I have personal knowledge of the facts set forth in this declaration and would testify to them competently under oath if called as a witness.

The Delaware Litigation

2. My firm is one of the firms representing Micron in a lawsuit that Micron filed against Rambus in August TD 0.0pel proo,A TSij -3St6Tc 0.4d DM4 0.5756 -0.1003 Tcro in a la4d l

statute arising from an allegation that Rambus fraudulently failed to disclose patents and patent applications to JEDEC in violation of JEDEC's patent policy. Micron also seeks a declaration that certain Ramb

use documents produced in the Delaware action in the FTC proceeding, subject to appropriate protective orders.

The October 4, 2002 Subpoena

9. After Rambus served its October 4, 2002 subpoena on Micron, I participated in six telephone conferences with counsel for Rambus in an attempt to reduce the burden on Micron and reach an agreement on Micron's compliance with the subpoena. With the exception of the issues raised in Rambus's motion to compel, and one issue that was temporarily held in abeyance, we were able to reach agreement on all other issues and Micron is in the process of producing documents to Rambus pursuant to the subpoena. As of today, Micron has produced over 20,000 pages of documents to Rambus, and expects to produce tens of thousands of pages more in the next week. Micron is also responding to two other subpoenas *duces tecum* served by Rambus.

10. From the beginning of my discussions with counsel for Rambus, I made clear that the broad requests for pricing-related documents that are the subject of this motion to compel were extremely overbroad and burdensome, of no apparent relevance to the case and prejudicial to Micron. In a telephone conference on the evening of October 28, 2002, Rambus's counsel reiterated that the documents in question were being sought for the purpose of establishing that Rambus's royalties did not affect DRAM pricing. In her October 29, 2002 letter memorializing that discussion, a copy of which is attached hereto as Exhibit 1, she wrote that she was willing "to significantly narrow our requests on this topic to capture the narrow issue regarding the effect of Rambus and Rambus's royalties on DRAM chip pricing."

11. Three days later, on November 1, 2002, Rambus's counsel wrote to me retracting her previous position and instead insisting that Micron produce the three categories of documents that are the subject of its motion to compel.

12. On November 4, 2002, I responded to this letter and objected to these requests on the same grounds I had previously stated. In light of Rambus's statement regarding the purpose of the requested discovery, I proposed that Micron respond to specification 58 of the original subpoena, which targeted the documents that would respond directly to what Rambus's counsel had indicated was relevant.

13. In subsequent telephone conversations, Rambus rejected this position and made only one minor modification to its request, dropping the word "reflecting" from its request for documents relating to DRAM pricing.

14. On November 11, 2002, Micron proposed to produce documents sufficient to show, on a quarterly basis, Micron's DRAM prices, costs and royalties paid. This would be in addition to the documents constituting internal and third-party forecasts, analyses and projections of the DRAM industry Micron will be producing in response to another of Rambus's subpoenas. Rambus rejected this proposal and filed the instant motion to compel.

The Grand Jury Subpoena and Class Actions

15. In June 2002, Micron received a subpoena from a federal grand jury investigating potential anticompetitive conduct in the DRAM industry. I understand from published reports that several other DRAM manufacturers received subpoenas from the grand jury.

16. Following the public announcement of the grand jury investigation, 23 purported class actions have been filed in federal and state courts against Micron and other DRAM manufacturers alleging violations of federal and/or state antitrust laws. No discovery has gone forward in any of these cases.

Micron's Pricing Documents

17. I am generally familiar with the process by which Micron negotiates DRAM pricing with its customers and the documents it creates in that process.

18. Micron sells several dozen different types of DRAM chips and modules. It has hundreds of customers, including personal computer manufa

22. In its subpoena duces tecum to Micron, as modified by its counsel, Rambus has sought all documents “analyzing or describing the factors that influenced

[Micron's] DRAM pricing decisions between July 1, 1998 and June 30, 2001, and any other documents that would be relevant to the litigation.