

Rambus and Complaint Counsel would need some period of time to respond,¹ this matter likely would not be decided before the end of January, when discovery is scheduled to close.

delay civil discovery. *See Horn v. District of Columbia*, 210 F.R.D. 13, 16 (D.D.C. 2002) (a copy of this case is appended hereto as Exhibit A). *See also United States v. Gieger Transfer Service*, 174 F.R.D. 382, 385 (S.D. Miss. 1997) (“the mere relationship between criminal and civil proceedings, and the resulting prospect that discovery in the civil case could prejudice the criminal proceedings, does not establish the requisite good cause for a stay.”) Therefore, no stay is justified and depositions should proceed.

If, however, Your Honor is considering issuing a limited stay, you should instead stay all deposition discovery (and move out other dates in the Scheduling Order to accommodate this stay) for the following reasons:

- (1) It is pointless, inefficient and wasteful of the resources of all interested parties (Rambus, the Government and third parties) to depose witnesses on the current schedule³ and then to re-depose a large number of those same witnesses after the DOJ’s motion is decided, as would be required under the DOJ’s proposal;
- (2) Rambus has faced substantial discovery delay and obstruction from third parties, making a stay of discovery and a commensurate

³ The current schedule already has been disrupted by the DOJ’s motion, as Micron’s counsel late yesterday unilaterally advised that Micron “will not make ... Steven Appleton available for deposition on Thursday, December 19, 2002,” as previously agreed, but that he will, instead, “be available for deposition in Boise on January 13 or January 16, 2003.” *See* letter from Richard L. Rosen, dated December 17, 2002, appended as Exhibit B.

extension of the deadlines in the Scheduling Order appropriate in any event;⁴

- (3) The Court of Appeals for the Federal Circuit has not yet issued its expected ruling in the Infineon appeal, which raises many of the same issues (such as the scope and clarity of the JEDEC patent policy) that lie at the core of Complaint Counsel's allegations;
- (4) Rambus's own document production to Complaint Counsel was delayed by a lengthy meet-and-confer process, and Rambus is in the process of producing 250,000 or more pages of documents to Complaint Counsel;⁵ and
- (5) Complaint Counsel recently have clarified their prior position on possible harm flowing from a stay, and now have confirmed that any ongoing impact on prices from Rambus's alleged wrongdoing is not likely to be discernable (*see* Mr. Royall's November 19, 2002 letter to Mr. Perry, a copy of which is appended as Exhibit B to Mr. Lynch's declaration filed yesterday in support of the DOJ's motion).

For all of these reasons, Rambus respectfully requests that Your Honor deny the DOJ's motion for an immediate stay. Alternatively, if Your Honor is inclined to grant a

⁴ For example, Mitsubishi has so far refused – despite two Orders from Your Honor – to produce relevant documents from its Japanese parent, or even to produce the files of its own JEDEC representative, and Micron now refuses to produce Mr. Appleton.

⁵ A stay of all depositions, which Rambus suggests would be more appropriate than a partial stay of depositions, would not be intended to delay the continued production of

partial stay of deposition discovery, then Rambus requests that all deposition discovery be stayed until after Your Honor rules on the DOJ's further motion.

Given the urgent nature of these issues and the press of time, such as arise from

DATED: December 18, 2002 Respectfully submitted,

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