

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

DATED: December 26, 2002 Respectfully submitted,

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**REPLY BY RESPONDENT RAMBUS INC. IN SUPPORT
OF ITS MOTION TO COMPEL SAMSUNG ELECTRONICS
AMERICA, INC. TO PRODUCE CERTAIN DOCUMENTS
WITHHELD ON PRIVILEGE GROUNDS**

I. INTRODUCTION

Respondent Rambus Inc. (“Rambus”) respectfully submits this reply brief in support of its Motion To Compel Samsung Electronics America, Inc. To Produce Certain Documents Withheld On Privilege grounds. This reply brief addresses the new issues raised in the opposition brief filed on December 23, 2002 by various members of the ADT Consortium.

II. ARGUMENT

**A. Neither The Case Law Nor The Declarations Submitted In
Opposition To The Motion To Compel Support The Broad
Claims Of A Joint Defense Privilege.**

The ADT Consortium Members assert in their opposition brief that the documents listed on the revised privilege log attached to the brief fall within four categories:

- (1) documents containing legal advice from the Sughrue Mion law firm, which firm had been retained jointly by the ADT Consortium Members (nos. 3, 9, 59, 84, 100, 103 and 109);
- (2) documents that contain “confidential communications related to draft contracts between the ADT member companies and third parties” (nos. 50, 53, 55, 57, 60, 61, 68, 106, 108 and 110);
- (3) documents containing advice provided by a Micron lawyer, Mr. Ashmore,

“regarding inviting participation by third parties in ADT” (nos. 93 and 98); and

- (4) documents that contain “communications relating to drafts of contracts among the ADT member companies” (nos. 6-8, 10-39, 49-51, 73, 84 and 90).

Opposition, pp. 6-11.

Rambus withdraws its motion to compel as to categories 1, 2 and 3, subject to the conditions described in section IIB, below. The documents falling within category 4, however, are not protected by any privilege and should be produced. The case law make

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consideration in which both parties' interests converged does not lessen the significance of their divergent interests.”

Id. (emphasis added).

In addition, none of the three declarations submitted with the opposition brief addresses the particular documents that fall within category 4 or explains why the parties' negotiation of a “business proposition between themselves should be deemed privileged.

Id. Accordingly, the claims of privilege as to the category 4 documents should be overruled, and the documents should be ordered produced.

B. The Implied Request To Intervene By The ADT Consortium Members Should Be Approved Only On Conditions

The joint opposition brief asserts that the various ADT Consortium Members share a “joint interest in maintaining the privilege of documents reflecting the advice of counsel to the Consortium. While the ADT Consortium Members make no formal request to intervene under Rule 3.14, they necessarily seek such relief from Your Honor in order to present their views on these issues.

Under Rule 3.14, intervention may be permitted “upon such terms as are provided by law or as otherwise may be deemed proper.” Here, intervention should be conditioned upon terms that will expedite further proceedings and (hopefully) reduce the need for additional motion practice. Each of the ADT Consortium Members has received a subpoena for ADT-related documents. While some such documents have been produced, Rambus believes that none of the ADT Consortium Members has provided Rambus with a privilege log listing the ADT-related documents.

Given that almost 50% of the 112 ADT-related documents that Samsung logged were ultimately produced as non-privileged

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