

COPY

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of  
RAMBUS INCORPORATED,  
a corporation.

PUBLIC

Docket No. 9302



UNITED STATES DEPARTMENT OF JUSTICE'S  
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS

Non party United States Department of Justice, Antitrust Division ("DOJ") hereby


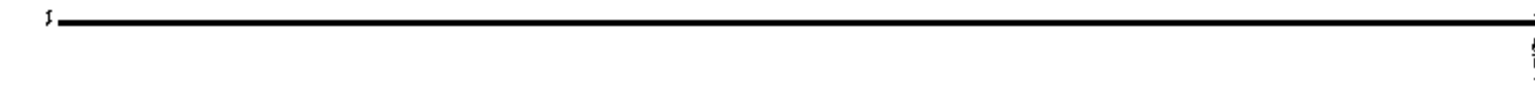



[REDACTED]

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inferred from the nature of the documents themselves.” H.P. Hood & Sons, 58 F.T.C. at 1188.

In this case, the injury is documented in the United States Department of Justice’s Confidential Motion to Limit Discovery Relating to the DRAM Grand Jury, as well as in the Declaration of R.



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Docket No. 9302

ORDER GRANTING UNITED STATES DEPARTMENT OF JUSTICE

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IT IS FURTHER ORDERED that the United States Department of Justice's Confidential Motion to Limit Discovery Relating to the DRAM Grand Jury, as well as the Declaration of R. Hewitt Pate, will not be disclosed to any party in this action.

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James P. Timony  
Chief Administrative Law Judge

Date: \_\_\_\_\_



INTRODUCTION<sup>1</sup>



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with the DOI concerning the DP AM stand issue identification. The individual number 662-200-1



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grand jury investigation are completely irrelevant to the allegations in the FTC complaint.

**B. Request for All Documents Produced to the Grand Jury Is Prohibited**



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Amendment privilege against self-incrimination or testifying and subjecting themselves to self-incrimination, threats, or retaliation by an employer, competitor, or customer



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relating to communications with the DOJ concerning the DRAM grand jury investigation. This information is irrelevant to Rambus' defense since the subpoena negotiations and other communications occur in a completely different factual and legal context than the FTC's lawsuit.



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[REDACTED]

[REDACTED]

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parties); In re Polypropylene Carpet Antitrust Litigation, 181 F.R.D. 680, 686-89 (N.D. Ga.

1998) (DOJ successfully asserts investigatory privilege over documents inadvertently furnished to defendant after completion of criminal investigation and later obtained from defendant through





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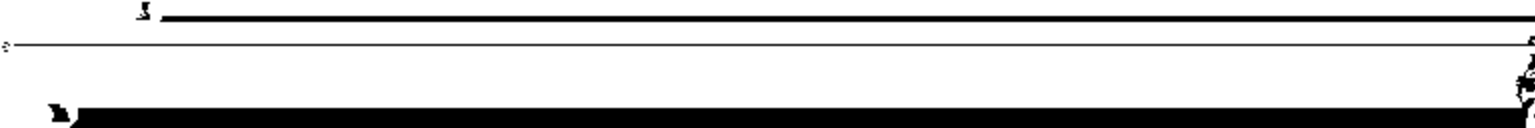
Tuite v. Henry, 98 F.3d 1411, 1418 (D.C. Cir. 1996) (internal citation omitted).

The ultra factor is not applicable.

manufacturers," the information is evaluative, not factual. As previously explained, with respect

Rambus is not an actual or potential defendant in the DOJ's DRAM investigation. Nor,

privity to the information at a point when the DOJ is in the thick of its investigation. Thus, one of



DOJ is prohibited from disclosing information concerning the



Mitsubishi Electric & Electronics USA, Inc. to Quash or Narrow Subpoena, Nov. 18, 2002, p.5.

However, we note the FTC's assessment that, at best, factors driving DRAM pricing are "of subsidiary importance to the overall litigation." DOJ Mot. to Intervene at Ex. B. Moreover, even if it turns out that increases in prices of DRAM chips and modules are partly attributable to collusion by DRAM manufacturers, this does not necessarily translate into a finding that Rambus' allegedly excessive royalties were not also a contributing factor to increased downstream prices.

**Ninth Factor: Whether the information sought is available through other discovery or from other sources**

As previously discussed, the DOJ seeks a modest limitation on discovery. We do not

locate any "silver bullets," rather than receiving them on a silver platter. See United States v.



UPAM investigation. Rambus has no legitimate need for these materials for its defense. There is

virtually no possibility that they will lead to admissible evidence.

**Tenth Factor: The importance of the information sought to Rambus' defense**

Collins v. Shearson/American Express, Inc., 112 F.R.D. 227, 229-30 (D.D.C. 1986). In the give-and-take inherent in negotiating subpoena compliance, and other requests for information, crystallizing one side's thoughts by putting them on paper should be expected and encouraged;

whom the Division intends to interview in the course of its criminal investigation. For the same reasons that the balance of interests favors maintaining the privileged status of documents exchanged between third parties and the Division, so too should the privilege apply to deposition testimony regarding communications with the DOJ concerning the grand jury investigation. The investigatory privilege would be rendered utterly meaningless if information contained in protected documents could alternatively be obtained by deposition.

**B. Discovery Request for All Grand Jury Documents Is Prohibited under Federal Rule**

rule of secrecy for disclosures pursuant to an order of "a court preliminary to or in conjunction with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E)(i). Under this exception, the secrecy of grand jury materials must be maintained unless the party seeking disclosure can demonstrate "compelling necessity" or "particularized need" for disclosure. Miller, 687 F.2d at 1088. The court must weigh the need for continued secrecy against the party's need for the documents.

The secrecy requirement does not apply to documents created for a purpose other than the

grand jury's investigation when such documents are specifically sought "for [their] own sake --

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considerations. The DOJ does not contend that business documents are beyond the reach of

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from their employer, competitors, or customers, and encourage non-cooperating witnesses to

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stay discovery entirely or to narrow the range of discovery so as not to impinge upon the criminal proceedings." (emphasis added).

In this case, the DOJ has a strong interest in protecting the secrecy and integrity of the


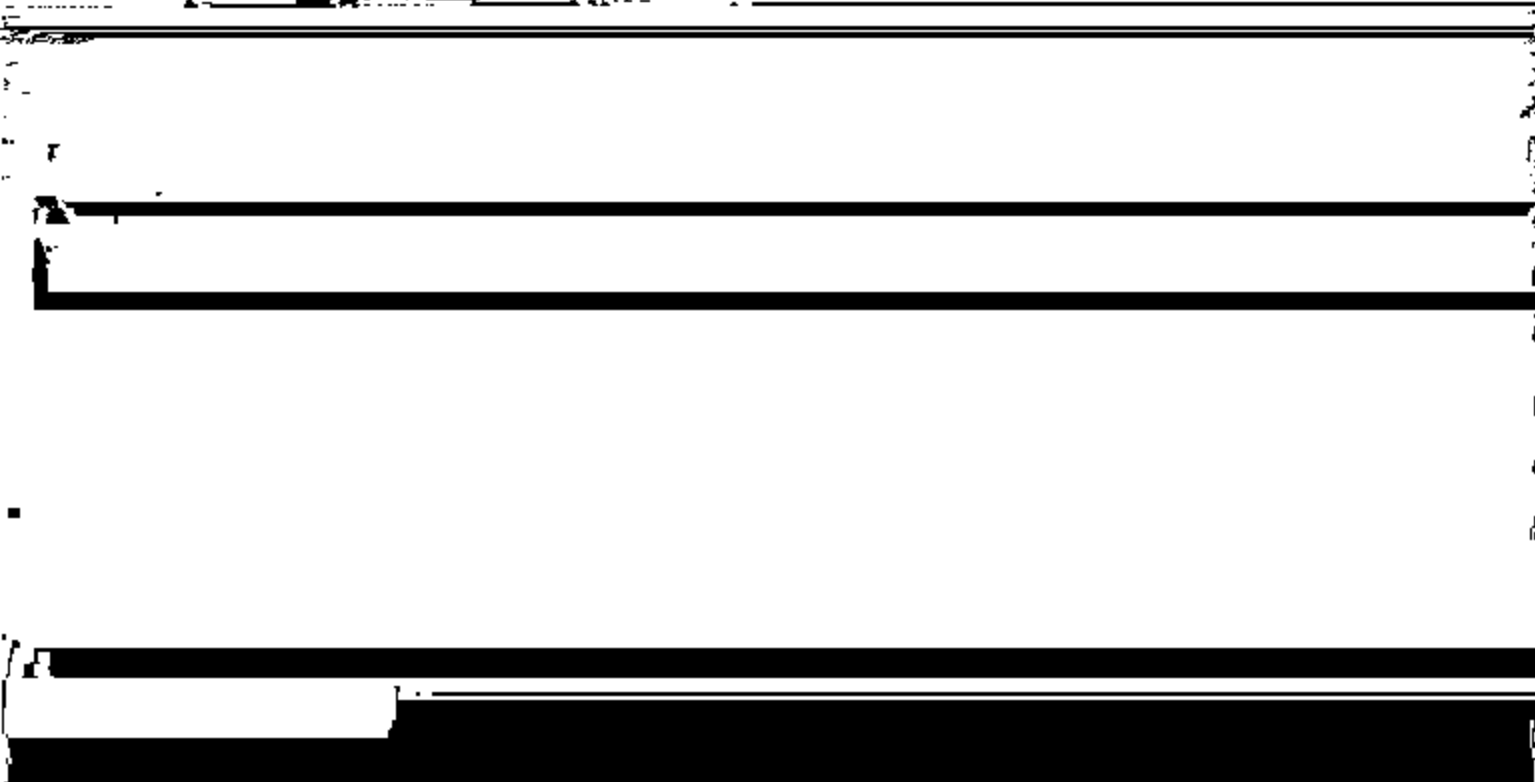
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**CONCLUSION**

Maintaining the confidentiality of matters before the DRAM grand jury is of paramount



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**ORDER GRANTING UNITED STATES DEPARTMENT OF JUSTICE'S  
MOTION TO LIMIT DISCOVERY RELATING TO THE DRAM GRAND JURY**

Upon consideration of the Motion of the United States Department of Justice, Antitrust Division ("DOJ") to Limit Discovery Relating to the DRAM Grand Jury, dated December 27, 2002,

IT IS HEREBY ORDERED that the DOJ's Confidential Motion to Limit Discovery Relating to the DRAM Grand Jury is GRANTED;

IT IS FURTHER ORDERED that any discovery relating to any communications with the DOJ concerning the ongoing DRAM grand jury investigation is prohibited;

IT IS FURTHER ORDERED that discovery requests of materials produced to the grand jury are prohibited;

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