

1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION

3
4 In the Matter of

5 RAMBUS INCORPORATED,

6 a corporation.

Docket No. 9302

7
8 **NON-PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION**
9 **TO RESPONDENT RAMBUS INC.'s MOTION TO COMPEL**

10 I. INTRODUCTION

11 Non-party Mitsubishi Electric & Electronics USA, Inc. ("MEUS") hereby
12 opposes the motion to compel filed by Respondent Rambus Inc. ("Rambus") in this proceeding
13 on December 20, 2002. The motion should be denied for a variety of reasons.

14 As an initial matter, Rambus bases its motion solely on a provision in the Federal
15 Trade Commission Rules of Practice for Adjudicative Proceedings ("Rules of Practice")
16 applicable only to parties and, hence, of no moment vis-à-vis MEUS. More fundamentally, the
17 premise that the Rules of Practice authorize the relief Rambus requests here against a non-party
18 is wholly unsupported.

19 In addition, Rambus failed to fulfill its obligation under Rule 2.22(D) of the Rules



1 Nor is this omission the only material distortion by Rambus of the “facts” upon
2 which its motion is based. For example, Rambus chose not to disclose the fact that MEUS
3 reviewed and produced *thousands* of pages of documents – the majority of MEUS documents
4 responsive to the underlying subpoena – less than ten business days after interlocutory appeal
5 was denied in this proceeding. Declaration Of Terrence H. Cross In Support Of Non-Party
6 Mitsubishi Electric & Electronics USA, Inc.’s Opposition To Respondent Rambus Inc.’s Motion
7 To Compel (“Cross Decl.”), ¶¶ 5-8. Similarly, Rambus claims that “[MEUS] has not produced
8 the files of its longtime JEDEC representative, [Sam] Chen.” Mot. at 2. That claim is false. As
9 explained to Rambus, MEUS has already produced Mr. Chen’s paper correspondence and other
10 paper files. See Cross Decl., ¶ 7; Declaration Of John W. Calkins In Support Of Non-Party
11 Mitsubishi Electric & Electronics USA, Inc.’s Opposition To Respondent Rambus Inc.’s Motion
12 To Compel filed in support of this motion (“Calkins Decl.”), ¶ 10, Ex. F.

13 For all these reasons, this motion should be denied.

14 **II. FACTS**

15 **A. Production Of MEUS Documents**

16 The subpoena directed to non-party MEUS requires production of all documents



1 *Id.* After locating potentially responsive MEUS documents, the Assistant General Counsel
2 personally reviewed thousands of pages of documents in an effort to produce responsive
3 documents promptly in this proceeding. *Id.*, ¶ 7.

4 As a result of these efforts, MEUS has already produced the majority of its

6 November, MEUS identified and made available to Rambus 19 boxes of potentially responsive

7 documents resulting from the search of 65,000 pages of MEUS documents.

1 has legal control over documents in MELCO's exclusive possession ("MELCO documents") and

2 must therefore produce MELCO documents responsive to Rambus's subpoena. MEUS asked

3 whether MELCO would provide responsive documents to MEUS for production to Rambus.

4 Calkins Decl., ¶ 5, Ex. A. MELCO has repeatedly declined to provide documents maintained

5 under its exclusive control in Japan to MEUS for production to Rambus in this proceeding. *Id.*,

6 ¶ 6.7. Ex. B-C. Because MELCO has denied MEUS access to these documents, MEUS is

1. [REDACTED] did not disclose in its meeting notes that such an agreement had been reached

2 with MEUS. *Id.* And Rambus did so less than two business days before MEUS would close for

3 [REDACTED]

1 **B. Rambus Failed To Satisfy Its Obligation To Confer With**
2 **MEUS In Good Faith Before Filing This Motion.**

3 Rule 3.22(f) requires the moving party to “confer[] with opposing counsel in an
4 effort in good faith to resolve by agreement the issues raised by the motion” without reaching an
5 agreement before filing the motion. 16 C.F.R. § 3.22(f).

6 Here, rather than complying with this requirement, Rambus filed the motion

8 three issues raised in the motion. In accordance with an agreement reached on December 17 and
9 confirmed in writing on December 18, MEUS provided its written response concerning each of

1 **C. The Requested Relief Is Impracticable And Unwarranted.**

2 **1. MEUS Has Agreed To Provide Much Of What Rambus**
3 **Seeks In A Timely Manner.**

reason: to avoid wasting judicial resources as Rambus does here. On two of the three issues

1 Assistant General Counsel for MELIS has declared under oath that MELIS has no legal right to

1 IV. CONCLUSION

2 For the foregoing reasons, the Administrative Law Judge should deny this motion

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

0 0 1

[REDACTED]

[REDACTED]

2 BEFORE FEDERAL TRADE COMMISSION
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6 RAMBUS INCORPORATED,
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Docket No. 9302

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10 **RULE 3.22(f) DECLARATION OF TERENCE H. CROSS IN SUPPORT OF NON-**
11 **PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION TO**
12 **RAMBUS INC.'s MOTION TO COMPEL**

13 I, Terrence H. Cross, declare as follows:

14 1. I am Assistant General Counsel for Mitsubishi Electric & Electronics
USA, Inc. ("MEUS"). Except as otherwise indicated, I am a

1 right to demand or obtain documents from MELCO.

2 _____ 5. MEUS has devoted significant time and resources to locating, identifying, _____

3 reviewing, redacting or logging as necessary, and producing documents located throughout its
4 organization in a good faith effort to comply with the orders issued by Judge Timony in this
5 proceeding.

6 6. For example, to identify potentially responsive MEUS documents, I have
7 searched lists of contents for hundreds of boxes of documents in storage near the company's

1 on December 20, 2002 and seeking an order requiring production on or before January 3, 2003

2 MEHS will be closed for more than one week in connection with the holidays. In particular,

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9 **DECLARATION OF JOHN W. CALKINS IN SUPPORT OF NON-PARTY MITSUBISHI**
10 **ELECTRIC & ELECTRONICS USA, INC.'s OPPOSITION TO RESPONDENT**
11 **RAMBUS INC.'s MOTION TO COMPEL**

12 I, John W. Calkins, declare as follows:

13 1. I am an attorney with the firm of Bingham McCutchen LLP, counsel for
14 non-party Mitsubishi Electric & Electronics USA, Inc. ("MEUS") in this matter. Except as
15 otherwise indicated below, I make the statements in this declaration based on personal
16 knowledge and, if called as a witness, could and would testify competently thereto.

17 2. This motion relates to a subpoena *duces tecum* purportedly served on
18 MEUS by Rambus Incorporated ("Rambus") in a proceeding before the Federal Trademark

1 Rambus in this proceeding -- has been the primary contact for Rambus in connection with both
2 of these productions.

3 4. I am informed and believe that the thousands of pages of documents
4 already provided to Rambus in these two large-scale productions constitute the majority of
5 MEUS documents responsive to the subpoena. I am informed and believe that the only
6 responsive MEUS documents yet to be produced are electronic mail files, which Mr. Cross and
7 others at MEUS are in the process of reviewing for production to Rambus in early January, along
8 with a privilege log identifying a small number of documents withheld on the basis of the
9 attorney-client privilege and/or the attorney work product doctrine.

10 5. On December 2, 2002, my colleague David Burse sent a letter to Donald

On December 3, 2002, I sent a letter to Steven Perry of Munger, Tolles &

2 Olson, co-counsel for Rambus in this proceeding. This letter described the scope of the first
3 large scale production of documents by MEUS in late November and notified Rambus that

4 MEUS would be closed for business from December 24, 2002 through January 3, 2003 for the
5 holidays. A true and correct copy of my December 3, 2002 letter to Mr. Perry is attached as
6 Exhibit D hereto.

7 9. On December 17 and 18, 2002, I exchanged electronic mail
8 correspondence with Mr. Watrous concerning the production of documents. On December 17,
9 after receiving both an electronic mail message and a telephone message from Mr. Watrous, I

1 hereto.

2 11. On December 20, 2002 – the date by which I'd agreed to provide a written
3 response to Mr. Watrous concerning the three issues enumerated in his December 17 electronic
4 mail message, and on which I did so – Rambus filed this motion without reviewing that response.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT A

BINGHAM McCUTCHEN

December 2, 2002

Direct: (650) 849-4824
david.burse@bingham.com

VIA FACSIMILE (312) 840-7777

EXHIBIT B

JENNER & BLOCK

EXHIBIT C

JENNER & BLOCK

DONALD R. HARRIS

Jenner & Block, LLC

Chicago

December 10, 2002

David T. Burse, Esq.
Bingham McCutchen LLP
1900 University Avenue
East Palo Alto, California 94303-2229

By Facsimile

Re: In the Matter of Bensus Incorporated, Defendant No. 0202

EXHIBIT D

December 3, 2002

Direct: (415) 393-2120
john.calkins@bingham.com

VIA FACSIMILE

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

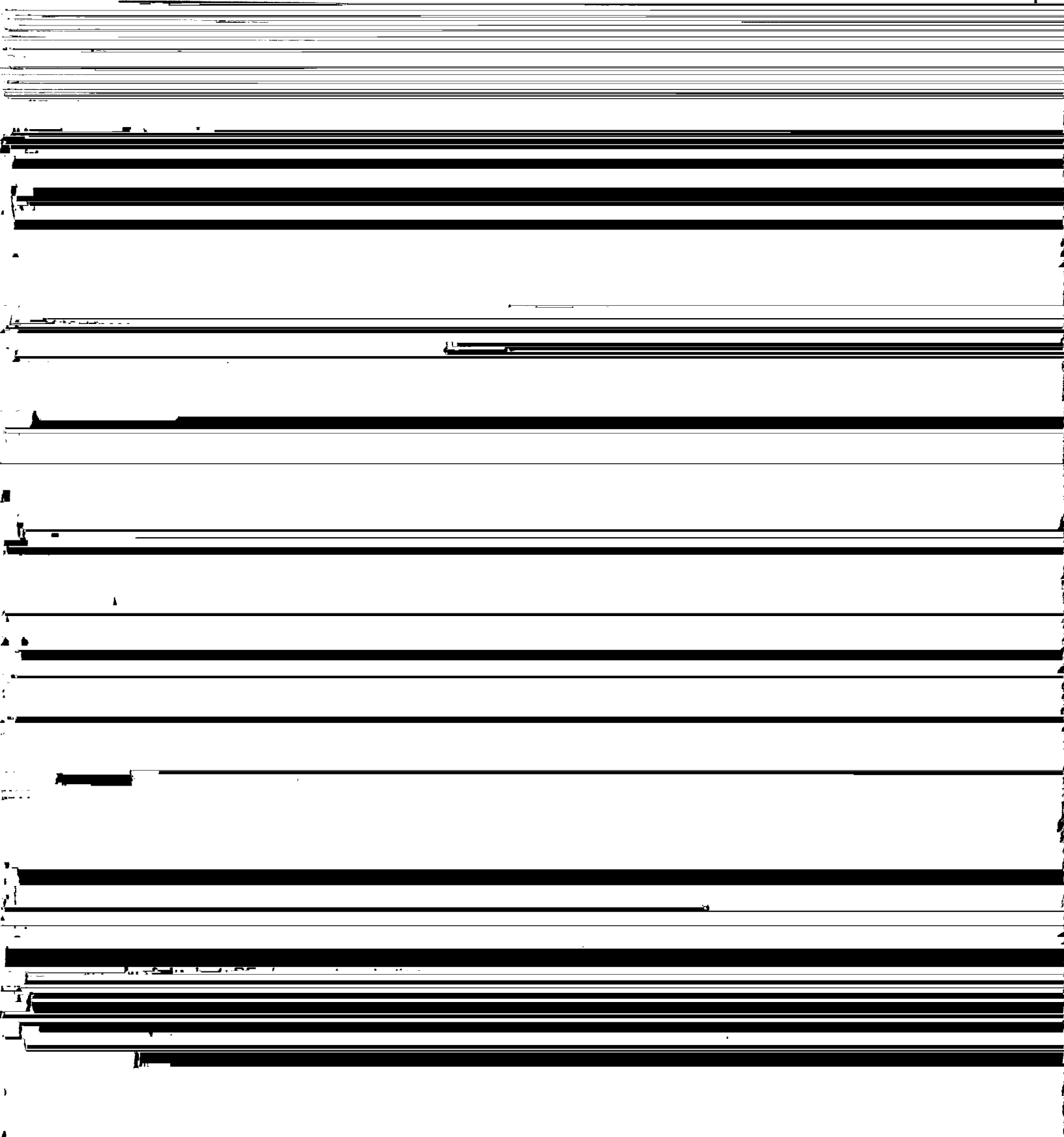
Steven M. Perry, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071-1560

415.393.2000

415.393.2786 fax

EXHIBIT E

Calkins, John



-----Original Message-----

From: Watrous, Bruce "BJ" [mailto:bwatrous@graycary.com]

Sent: Tuesday, December 17, 2002 9:10 AM

To: 'john.calkins@bingham.com'

Cc: Cunningham, Sean; Watrous, Bruce "BJ"

Subject: Mitsubishi Documents

John:

I left you a phone message, but wanted to follow-up via email to again memorialize my requests.

To begin, I wanted to let you know that we did receive four additional Mitsubishi documents from

(In addition, I wanted to follow-up on at least three outstanding issues. While by no means an

destroy all copies of the original message.

To contact our email administrator directly, send to postmaster@graycary.com

Thank you.

EXHIBIT E

December 20, 2002

Direct: (415) 393-21210
john.calkins@bingham.com

VIA FACSIMILE AND MAIL

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA

BJ Watrous, Esq.
Gray Cary

415.393.2000

415.393.2000

EXHIBIT A

JENNER & BLOCK

Jenner & Block, LLC

Chicago

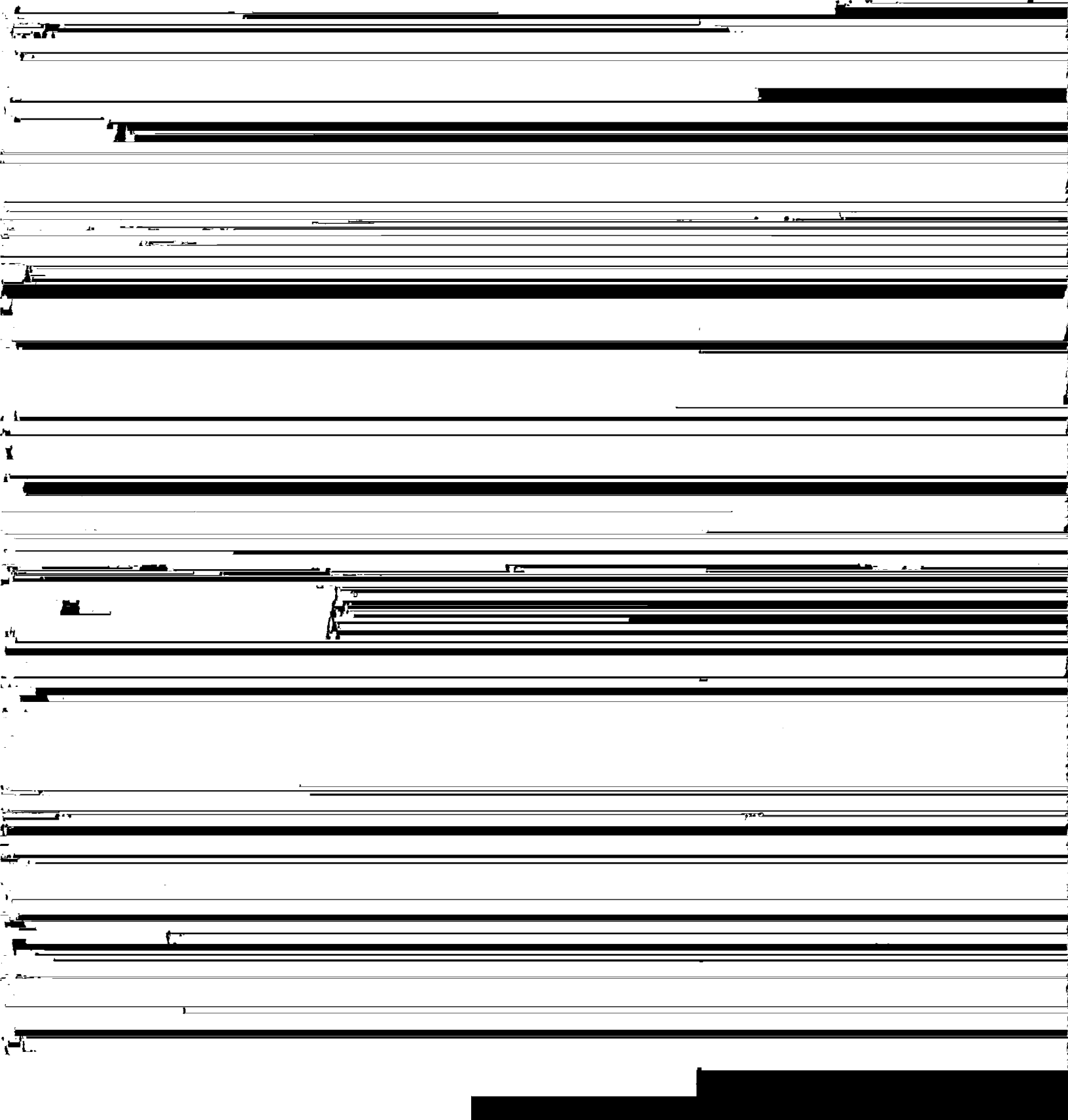
John J. Block

EXHIBIT B

JENNER & BLOCK

Jenner & Block, LLC

Chicago



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UNITED STATES OF AMERICA
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[PROPOSED] ORDER DENYING MOTION TO COMPEL

Plaintiff
Defendant
[REDACTED]

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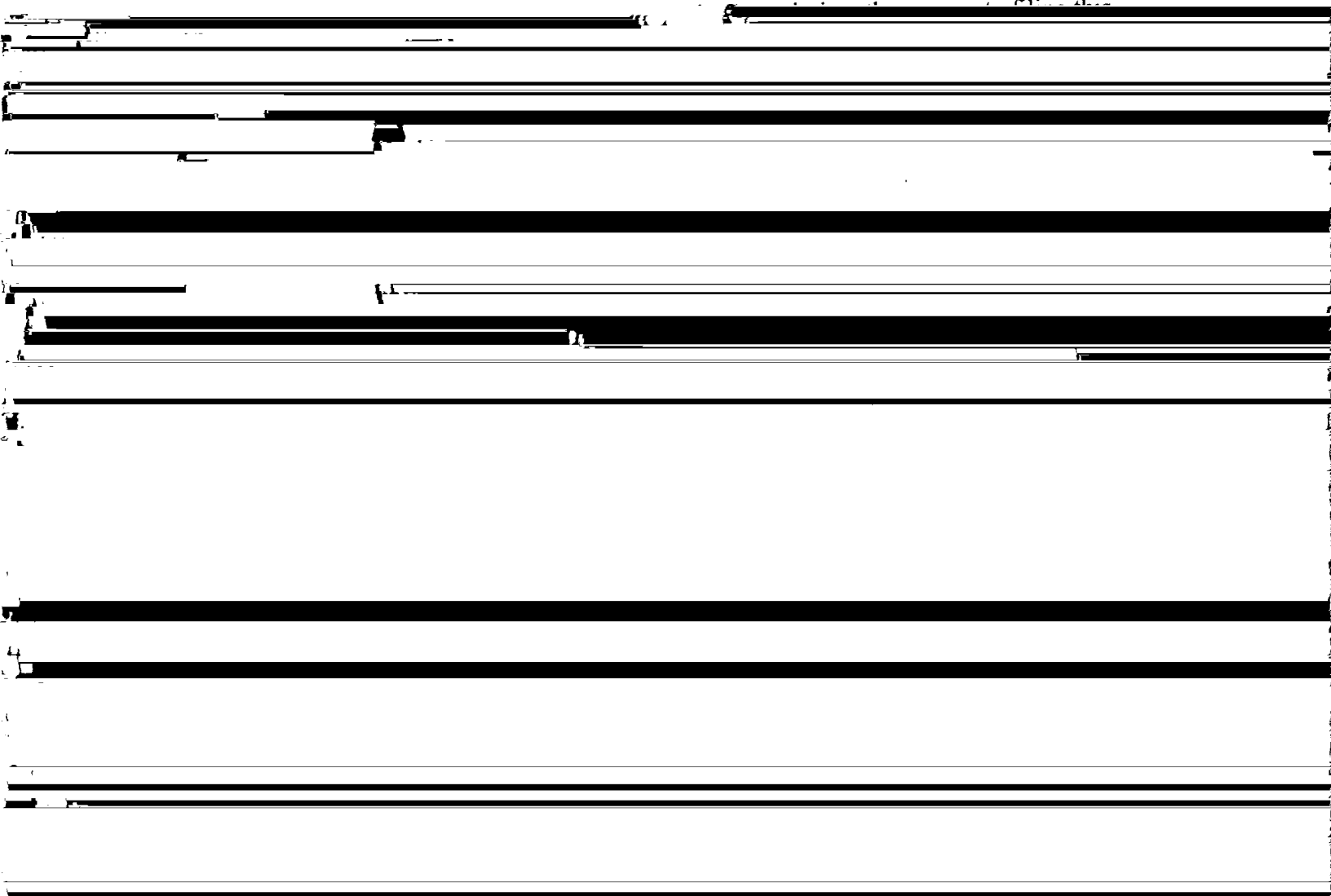
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**CERTIFICATION UNDER RULE 4.2(c)(3) REGARDING ELECTRONIC FILING OF
NON-PARTY MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.'S OPPOSITION
TO RESPONDENT RAMBUS INC.'s MOTION TO COMPEL**

In accordance with Rule 4.2(c)(3) of the Rules of Practice for Adjudicative



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Geoffery Oliver, Esq
Federal Trade Commission
601 New Jersey Avenue
Washington, DC 20001

Dated: December 30, 2002



Gerard P. Finn