

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
RAMBUS INC.,
a corporation.

Docket No. 9302

**RAMBUS INC.'S JOINDER IN COMPLAINT
COUNSEL'S REQUEST FOR ORAL ARGUMENT
ON THE MOTION FOR DEFAULT JUDGMENT**

Respondent Rambus Inc. (“Rambus”) hereby joins Complaint Counsel’s request to be heard at oral argument on Complaint Counsel’s motion for default judgment. Oral argument is warranted because Complaint Counsel’s reply brief not only misrepresents the legal standard governing disposition of this motion, but also repeatedly asserts that Rambus has “conceded” facts that are instead sharply in dispute. To take just one example, Complaint Counsel assert that at the time Rambus instituted its document retention policy in July 1998, Rambus was “concerned” that its conduct at JEDEC would lead to “an antitrust enforcement action by the FTC.” Reply Br. at 4. Complaint Counsel have cited *no* evidence

supporting this assertion and Rambus has in no sense “conceded” it to be accurate. It is in fact entirely false.¹

Oral argument is also warranted because the Court of Appeals today issued its ruling in the related case of *Rambus Inc. v. Infineon Technologies AG*, case no. 01-1449 (attached), which impacts many of the issues raised in Complaint Counsel’s pending motion. As just one example, the Court holds squarely that the JEDEC patent policy “erects an objective standard” and did *not* require Rambus to disclose its “subjective belief” that its patent applications might include claims covering technology under discussion at JEDEC meetings. Slip op. at 36. In light of this ruling, Complaint Counsel cannot argue that evidence of Rambus’s subjective views about the claims contained in pending patent applications is determinative or even relevant to the existence of any duty to disclose. As a result, Complaint Counsel cannot claim that they were deprived of necessary evidence as a result of what they (inaccurately) describe as intentional document destruction. At a minimum, the fact that the parties did not have the opportunity to brief the impact of the Federal Circuit’s ruling in connection with this motion means that oral argument is not just warranted, but necessary.

¹ Rambus did not attempt in its opposition to engage in a point-by-point refutation of every baseless factual assertion made by Complaint Counsel; doing so was unnecessary given Complaint Counsel’s burden of proof on factual issues and their utter failure to marshal *any* evidence (real or imagined) on the critical elements of bad faith and prejudice. Complaint Counsel are therefore wrong when they contend that Rambus has “conceded” all factual claims not directly addressed in its opposition.

Oral argument is also warranted because Complaint Counsel have attempted to declare many factual issues to be “conceded” when they have egregiously misrepresented the relevant evidence to the Court. Here is just one illustrative example, which contains the omitted text in bold:

- Complaint Counsel claim Rambus has “conceded” that it feared its conduct at JEDEC would render its patents unenforceable. Reply Br. at 4. As part of their “proof” on this point, Complaint Counsel quote a snippet of deposition testimony from Rambus attorney Lester Vincent to suggest that Rambus was told by its counsel to withdraw from JEDEC. The text that Complaint Counsel *omit* clearly shows that was not the case. See Mem. 21 (quoting Vincent Dep. (3/14/01) 191: 20-23 [Tab 21]) (“given Dell’s decision, my advice was . . . if you do a balancing of the upside potential versus the downside risk, it would be prudent to withdraw ***the downside risk, not necessarily being a final decision but just, you know, the possibility of someone questioning of their participation, if that’s what it was, standing in the back of the room, versus what they would get on the upside from the continued participation***”) (omitted text in bold italics).

This is but one example illustrating the extent to which Complaint Counsel have tried to mislead the Court by presenting a distorted view of the factual record in this case. To ensure that the motion for default judgment is decided on its merits, and for the other reasons stated herein, Your Honor should hear oral argument on Complaint Counsel’s motion.

DATED: January _____, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jacqueline M. Haberer, hereby certify that on January 29, 2003, I caused a true and correct copy of *Rambus Inc.'s Joinder in Complaint Counsel's Request for Oral Argument on the Motion for Default Judgment* to be served on the following persons by hand delivery:

Hon. James P. Timony

M. Sean Royall