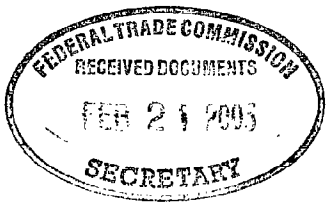
UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



Public Version

In the Matter of RAMBUS INCORPORATED, a corporation.	Docket No. 9302

RESPONSE OF COMPLAINT COUNSEL TO RAMBUS INC.'S OPPOSITION TO [redacted]

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RESPONSE OF COMPLAINT COUNSEL TO RAMBUS INC.'S OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL

I. Despite Rambus's Change in Position with Respect to Pre-1996 Discovery, a Court Order Is Appropriate

Complaint Counsel agrees with Rambus that, since Complaint Counsel prepared and filed

assert fully the attorney-client privilege, and all other privileges, in this case." Letter from Gregory P. Stone to M. Sean Royall (Dec. 31, 2002) at 2. Rather, Rambus now has decided to permit questioning with respect to documents as to which Rambus had originally claimed

litigations. Rambus apparently also has decided to permit witnesses other than those who were questioned in those litigations to testify on the same topics. Mem. in Opp. at 18. Complaint

the large volume of non-privileged material, apparently responsive to document requests issued

[redacted]

In light of the significant volume of highly relevant material, including documents

[redacted]

[1] John Dillon, e-mail, June 16, 1994, R 223772 [Tab 1] ([*** REDACTED

[redacted]

that Rambus "redouble our efforts to get the necessary amendments completed, the new claims added and make

[redacted]

]); Richard Crisp, e-mail, October 25, 1994, R 234245 **[Tab 4]** ([REDACTED

]"); Allen Roberts, e-mail, September 22, 1995, R 233835 **[Tab 5]** [REDACTED ***]

[3]Richard Crisp e-mail, September 23, 1995, R 233837 at R 233838 **[Tab 2]** ("we have not really made the [JEDEC] committees aware" of Rambus patents, suggesting that Rambus "re-evaluate our position relative to what we decide to keep quiet about, and what we say we have,"); Richard Crisp, e-mail, January 22, 1996, R 234662 at

[redacted]

reflecting Rambus's efforts to broaden its patents to cover technology used by JEDEC and its

has produced all documents covered by Judge Payne's order and dated before June 17, 1996.

Even with respect to the pre-June-1996 time period, Complaint Counsel respectfully submits that

Rambus should not be permitted simply to assert that it has produced some documents in the prior litigation, but should be required to confirm, if necessary by conducting a follow-up search, that all documents covered by Judge Payne's order have been produced.

II. Rambus Has Waived Privilege with Respect to the Subject Matter Involved, Which Continues to the Present

Rambus's recent change in position still leaves unresolved the issue of the discovery of documents created, and testimony of witnesses with respect to communications and events

three counts. First, Rambus's production of formerly privileged material to Hynix was voluntary,

that no court did so. Second, the scope of Rambus's waiver of attorney-client privilege extends not just to the specific documents that were disclosed, but to the subject matter of what was disclosed; and the subject matter of Rambus's efforts to broaden its patents to cover JEDEC

if Your Honor were to consider the temporal scope of Judge Payne's order in determining the subject matter of the waiver, Rambus fails to establish that the April 6, 2001, conference on

period from 1991 through June 1996, limits the scope of Judge Payne's order.

A. Rambus's Production to Hynix Was Voluntary, Even If A Court Order Was

matter of any materials produced to Hynix because the production of such materials "was already *required* by prior court order." Mem. in Opp. at 4 (emphasis in original). Rambus misrepresents the nature of the court orders in the *Infineon* and *Micron* litigation. Nothing in either Judge Payne's order or Judge McKelvie's order required Rambus to produce copies of the documents or the subsequent deposition testimony, to Hynix. Rather, Hynix filed a motion to intervene in the *Infineon* litigation and sought a court order to compel Rambus to produce the material in question to it. Rambus could have litigated the issue against Hynix. Had it done so, it likely would have lost, and been ordered to produce the relevant material.[4] The fact of the matter is, however, that it chose not to litigate. Instead, it made a voluntary decision to turn the pre-1996 portion of the material over to Hynix. The likelihood that Rambus would have lost, had it

a "voluntary" disclosure, e.g., In re Bendix Case, 671 F.2d 976 (D.C. Cir. 1989) (cited by Rambus in its Memorandum at 20) (refusing to distinguish between court-ordered disclosure and court-compelled disclosure); *Chubb Integrated Sys.*, 103 F.R.D. 52, 65 n.2 (D.D.C. 1984) ("Voluntary disclosure means the documents were not judicially compelled"). Because Rambus was not compelled to produce the material in question to Hynix by any court order, its decision

[4] Indeed, had Rambus decided to litigate the issue, it is likely that the court would have ordered Rambus to produce the materials to Hynix based on principles of collateral estoppel. This in no way changes the simple fact

[redacted]

Rambus further argues that Rambus preserved its rights to reserve any privilege objections to Hynix's use of such documents, conditioning its disclosure on protections similar to those Judge Payne had set forth in its order. Mem. in Opp. 8-9. However, Rambus's voluntary production to Hynix "irrevocably breached" any remaining confidentiality that those materials may have had after the court ordered disclosure from Infineon. *Wichita Land & Cattle Co. v. Am. Fed. Bank*, 148 F.R.D. 456, 459 (D.D.C. 1992).

[redacted]

by the act of disclosure: Rambus's voluntary disclosures destroyed the privilege, irrespective of any agreements between those parties that may have purported to preserve the privilege. *See Chubb Integrated Sys.*, 103 F.R.D. at 67, *see also In re Columbia/HCA Healthcare Corp. Billing Practices Litig.*, 293 F. 3d 289 (6th Cir. 2002)(disclosure to one adversary, despite bilateral agreements that disclosure would not constitute waiver of attorney-client or work product privilege, was an unconditional waiver of privilege vis-a-vis a third party adversary).

The very act of disclosure to Hynix destroyed the privilege vis-a-vis Complaint Counsel, [redacted] law, to preserve Rambus's claims of privilege vis-a-vis Complaint Counsel. Because the documents at issue have been disclosed voluntarily to Rambus's litigation opponent, Hynix, and the subject matter has been the focus of extensive deposition testimony (which Rambus also

voluntarily disclosed or permitted to be disclosed to its litigation opponent), no privilege can remain, either as to the materials themselves or as to the subject matter.

B. Rambus's Forfeiture of Privilege Extends To The Entire Subject Matter and Is Not Limited to Judge Payne's Order

Rambus's Memorandum spends considerable effort arguing that Judge Payne's order was limited to the time period between December 1991 and June 1996, all the while failing to appreciate that the scope of waiver of privilege is the subject matter of the waiver, not any court order. In other words, quite simply, the scope of Judge Payne's order (even if it were limited in time) does not determine the subject matter with respect to which Rambus has waived its privilege. The subject matter of the disclosure, rather than the time period of Judge Payne's or Judge McKelvie's orders, determines the scope of Rambus's waiver of privilege.

A waiver of the privilege in an attorney-client communication extends "to all other communications relating to the same subject matter." *In re Sealed Case*, 877 F.2d at 980-81 [redacted] means by which a waiver can occur. Voluntary production of certain privileged documents implies a waiver of *all communications on the same subject.*") (emphasis added).

To determine the scope of the waiver of privilege at issue here, it is necessary to consider [redacted] Rambus voluntarily disclosed documents and testimony to Hynix, the primary subject matter for which post-1996 discovery is most important relates to Rambus's efforts to broaden its patent claims to cover matters pertaining to JEDEC standards. It is therefore necessary to consider

whether the subject matter of Rambus's efforts to broaden its patent claims is in any way limited

actively continued to prosecute patent applications covering technology it had observed in JEDEC long after it withdrew from the organization. The success of Rambus's fraudulent scheme to extract royalties from companies manufacturing, selling or using JEDEC-compliant SDRAMs and DDR SDRAMs depended upon Rambus's continuing to prosecute patent applications before the Patent and Trademark Office, obtaining issued patents that it could assert against such companies, and then threatening to sue or in fact suing such companies for patent infringement. Only after successfully prosecuting patent applications and obtaining issued patents covering selected technologies incorporated in the JEDEC standards could Rambus monopolize the technology markets in question and collect monopolistic royalties. Thus, as found by Judge Payne in his Judgment as a Matter of Law, Rambus's fraudulent scheme involved a plan "to attend JEDEC, remain silent about its patent applications, obtain additional patent claims that covered JEDEC technology, and then assert those patents against JEDEC members whose products conformed to the JEDEC standard in order to obtain their assent to license agreements." *Rambus, Inc. v. Infineon Technologies AG*, 2001 WL 913972 (E.D. Va. August 9, 2001) at *17 (emphasis added). While Rambus's efforts to broaden its patents to cover the JEDEC technology started in 1992, not long after Rambus became a member of JEDEC, its efforts remained incomplete at the time it withdrew from JEDEC in June 1996, and it continued

its efforts after it left until, in 1999, it had a number of issued patents that it could assert against the industry.

Specifically, Rambus chose to produce to Hynix, its adversary in litigation, documents relating to meetings between Rambus's outside patent counsel, Lester Vincent, and various Rambus officers and employees, including Mr. Allen Roberts, Rambus's Vice President, and Mr. Richard Crisp, Rambus's primary representative at JEDEC, as well as testimony from various

[redacted]

Vincent from 1992 through late 1995 to develop claims, to be added to the pending Rambus patent applications, specifically directed at SDRAMs, future SDRAMs and other non-Rambus products, and based at least in significant part on information Rambus learned from attending JEDEC meetings.[6] The evidence makes it possible to ascertain Rambus's intent to amend specific pending patent applications to cover programmable CAS latency, programmable burst length, on-chip PLL/DLL and dual edge clock technologies (among others) when used in JEDEC-compliant SDRAMs. This evidence also establishes that Lester Vincent and other attorneys working under his direction drafted amendments to certain of Rambus's pending patent

[5] Complaint Counsel's Motion to Compel at 13-20.

[6] *Id.*

applications to add claims covering these technologies, and to prosecute these amended applications before the Patent and Trademark Office.

One of these applications, Application No. 08/222,646, relating to dual edge clock technology, issued as U.S. Patent No. 5,513,327 while Rambus was still a JEDEC member. A second application, Application No. 07/847,692 which Rambus amended in June 1993 to add claims relating to on-chip PLL/DLL, remained pending in June 1996. After Rambus withdrew from JEDEC, Lester Vincent's law firm continued to prosecute the '692 application on behalf of Rambus, which eventually led to the issuance of U.S. Patent No. 5,657,481 in August 1997.

[redacted]

JEDEC did not issue as patents and were abandoned, but after leaving JEDEC Rambus filed additional patent applications (based on its previous filings) with claims covering the same technologies. For example, Application Nos. 07/847,961, relating to programmable CAS latency and programmable burst length, and 08/469/490, relating to programmable CAS latency, pending while Rambus was a member of JEDEC, did not issue as patents and were abandoned. In February 1997, however, Lester Vincent's law firm filed, on behalf of Rambus, Application No. 08/798,525, specifically described as a continuation of the '961 and '490 applications, among others. The '525 application in turn was amended to add a claim covering programmable CAS latency. The '525 application issued as U.S. Patent No. 5,954,804. In late 1999 and 2000, Rambus asserted the '804 patent against Hitachi, Infineon, Micron and Hynix, and claim 26 of the '804 patent (covering programmable CAS latency) has been placed at issue by Rambus's experts in the *Infineon* and *Micron* litigations. Although Rambus produced to Hynix attorney-client communications describing Rambus's efforts to broaden its patents to cover programmable

CAS latency during the time when the '961, and later '490, applications were pending, Rambus has refused to produce documents on its on-going efforts to cover the identical technology in the '525 application.

[redacted]

covering dual edge clock technology. The '127 application was specifically stated to be a continuation of the '646 application, which had been filed while Rambus was a member of JEDEC and which also had claims covering dual edge clock technology. The '127 application

[redacted]

Again, although Rambus has produced to Hynix attorney-client communications describing Rambus's efforts to broaden its patent application to cover dual edge clock technology during the time when the '646 application was pending, it has attempted to assert privilege with respect to precisely the same type of communications relating to its efforts to cover the same technology in its '127 application.

Thus, by 1999, as a result of its efforts while it was a member of JEDEC and afterwards, Rambus had succeeded in obtaining a number of issued patents covering programmable CAS latency, programmable burst length, on-chip PLL/DLL and dual edge clock technologies that it could assert against companies manufacturing, selling or using JEDEC-compliant SDRAMs and

[redacted]

SDRAMs infringed its patents. Rambus carefully selected only the later-applied-for patents for

its infringement suits against Infineon and others, however, in a transparent attempt to try to isolate the patents it was enforcing from its earlier conduct while a member of JEDEC. Despite its efforts, Rambus cannot escape the fact that the efforts of Rambus officers and employees working closely with and through outside patent counsel to draft, file and prosecute

programmable CAS latency, programmable burst length, on-chip PLL/DLL, dual edge clock, and other technologies in JEDEC-compliant SDRAMs and DDR SDRAMs, commenced while Rambus was a member of JEDEC and continued long after Rambus withdrew from JEDEC. In

compliant SDRAMs and DDR SDRAMs continues to this very day. The actions of Rambus after it withdrew from JEDEC are inextricably linked to its plan to commit on-going fraud.[7]

Court decisions make clear that a waiver of privilege applies not just to particular documents that are disclosed or to the date or dates of the documents but rather to the entire subject matter of the waiver period. Courts have looked to whether the documents sought are "directly related" to the communications revealed. *See In re Sealed Case,* 877 F. 2d at 981.

The court in *Chiron Corp. v. Genentech, Inc.*, 179 F. Supp. 2d 1182, 1186 (E.D. Ca. 2001) stated, "where the law demands a waiver of privilege, the scope of the waiver should not *be unduly circumscribed.* Thus, the court is not inclined to view the scope of the waiver in this

[7] Rambus is likely to argue, and ultimately may seek to introduce some form of unsubstantiated testimony, to the effect that its attempts to file relevant patent applications after June 1996 were entirely unrelated to their efforts before June 1996, and instead were the novel brainchild of a newly-hired patent attorney. The plausibility of such arguments is, to put it mildly, highly suspect. Additionally, however, efforts by Rambus to resist, on grounds of attorney-client or work product privileges, discovery of documents and contemporaneous events and communications relating to Rambus's post-June-1996 efforts to broaden its patent applications to cover technologies used in JEDEC standards should, of course, preclude Rambus from introducing any such unsubstantiated testimony or asserting any such arguments in the future.

case in a fashion that would unfairly keep information from the fact finder which is both relevant

somewhat broad and is, in fact, a "subject matter" waiver – i.e. a waiver of all communications on the same subject matter.'" *Id.* (quoting *Micron Separations, Inc. v. Pall Corp.*, 159 F.R.D. 361, 363 (D. Mass. 1995)); *see also Minnesota Specialty Crops, Inc. v. Minnesota Wild Hockey Club, L.P.*, 210 F.R.D. 673 (D. Minn. 2002).

patent. However, the plaintiff argued, and the court agreed, that the defendant had to produce all documents pertaining to the same subject matter as the potentially infringed patent, including documents referencing another patent that patent counsel relied on in their analysis as well as documents referencing any other patents pertinent to the patent attorney's opinion letter. The court interpreted "subject matter" very broadly and found that many of the documents sought by the plaintiff "serve[d] as a basis" for the opinion letter or were "too related" to the facts of the central patent and had to be produced. *Chiron*, 179 F. Supp.2d at 1187.

The court also interpreted the temporal scope of the waiver broadly. While the defendant argued that the waiver should be cut off at the time of the filing of the infringement action, the

complaint filing should be disclosed." *Id.* at 1188. The court reasoned that this is not a one-time

in this case, Rambus did not stop its on-going fraudulent scheme the moment it left JEDEC, and the temporal scope of the waiver should include the post-June 1996 period.

Other courts have recognized that the scope of waiver can extend to cover a transaction or a scheme as a whole. In *Glenmede Trust Co. v. Hutton*, 56 F. 3d 476 (3d Cir. 1995), the Third Circuit interpreted "subject matter" broadly to include documents pertaining to the entire transaction. The defendant company argued that it had waived its privilege only as to the tax defense. The company objected to production of its attorney's entire file concerning services it received in connection with the transaction at issue. The court ordered production of the *entire* file. The Third Circuit found that the company's waiver encompassed the documents concerning included legal research and other file memoranda. "A waiver of the privilege would be meaningless if it did not encompass all communications between the client and his attorney about the transaction in which he is seeking the attorney's assistance. Here, the tax opinion was directly at issue, and the documents sought by the IRS were communications between the company and its attorneys about the structure of the buy back and the advice of counsel in that regard." *Glenmede Trust Co.*, 56 F. 3d at 487. Several other courts have interpreted the scope of waiver in similarly broad terms. *See also In re: Sealed Case*, 29 F.3d 715, 719 (D.C. Cir. 1994) (emphasis added) ("Waiver extended to *all* conversations between the lawyer and him 'relating to the same subject matter,' specifically including documents in the case files. . . waiver of the privilege in an attorney-client communication extends to *all other communications* relating to the same subject matter."). The court in *Naquin v. Unocal Corp.*, 2002 U.S. Dist. LEXIS 15722 (E.D. La. 2002) conducted a very fact-intensive inquiry and concluded that the scope of the waiver stood between defendant's and plaintiff's interpretation of "subject matter."

Applying this precedent to the scope of Rambus's waiver of privilege, it is clear that the waiver extends to the entire subject matter of Rambus's efforts to broaden its patents to cover technologies used in JEDEC standards. By producing to Hynix documents and testimony relating to communications between Rambus officers and employees, on the one hand, and in-

cover the technologies used by JEDEC, Rambus has waived its rights to claim privilege with respect to this entire subject matter. Thus, Rambus's waiver of privilege extends to all communications on the subject, regardless of whether specific consultations took place before or after Rambus left JEDEC. Rambus's fraudulent scheme to file and prosecute patent applications

it specifically selected the later-broadened patents to assert against manufacturers of JEDEC-compliant SDRAM and DDR SDRAM. Consequently, all communications that are part of this ongoing plan relate to the same subject matter, and the waiver of privilege extends to all such communications, regardless of time frame.

C. The Scope of Judge Payne's Order Is Not Limited To Communications That Occurred Before Rambus Left JEDEC

Even if the court were to look to the scope of Judge Payne's order for guidance, Rambus has failed to establish that his order is limited to the pre-June-1996 time period. Rambus claims

April 6, 2001. The transcript indicates that it was not, however, a considered ruling that served

to limit the scope of the crime-fraud ruling, but rather a pragmatic decision, based on suggestion of counsel, with respect to solving a pressing discovery issue. The telephone conference occurred on a Friday, little more than two weeks before the start of trial. The parties were scheduled to begin depositions pursuant to Judge Payne's crime-fraud ruling the next Monday,

documents to counsel for Infineon right away so they could be used at the scheduled depositions. April 6, 2001, Conference, attached to Mem. in Opp., Tab 2, at 8:12-13. Indeed, Judge Payne's earlier statement that his order required Rambus to "produce *all* legal advice . . . about . . . the efforts of Rambus to broaden its patent to cover matters pertaining to JEDEC standards," *Id.* at

III. Conclusion

Respectfully submitted,

Of Counsel:

Robert P. Davis
Suzanne T. Michel
Jerome Swindell
Cary E. Zuk

M. Sean Royall
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Dated: January 28, 2003

I, Melissa Kassier, am a paralegal employed at the Federal Trade Commission and

Opposition to Complaint Counsel's Motion to Compel, were prepared and assembled under my supervision. The documents are true and correct copies of documents submitted to the Federal Trade Commission.

Melissa Kassier, Paralegal
TYPE OR PRINT NAME AND TITLE

Melissa Kassier
SIGNATURE

CERTIFICATE OF SERVICE

[redacted] attached *Response Of Complaint Counsel To Rambus Inc.'s Opposition To Complaint Counsel's* [redacted] by hand delivery to:

Hon. James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

and by electronic transmission and overnight courier to:

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355 South Grand Avenue
35th Floor
Los Angeles, CA 90071

Counsel for Rambus Incorporated

Beverly A. Dodson

Exhibit 1
(redacted)

[redacted]

Date: Sat, 23 Sep 1995 10:00:15 +0800
From: crisp@jupiter (Richard Crisp Travelling)
To: exec, tonyd
CC: crisp

One other thought I had regarding Tony's worst case scenario regarding estoppel:

[redacted]

Of course I am not convinced that estoppel applies either, as it apparently did not in the case of the Wang SIMM patent (JEDEC standard) nor did it with the 3COM patents (IEEE ethernet standard).

My feeling is that Synclink is not and will not be viable hence it will not end up mattering from the perspective of directly taking our sockets. It is a obstacle to us furthering our Business Development goals of getting more DRAM licensees as it offers a glimmer of hope to the unfortunately clueless product planning people that they will not have to do a deal with the "Devil" (ie Rambus).

If this persists for much longer, it could materially interfere with our ability to bring up critical mass, capacity wise, to support main memory with some margin (protection against one or more partner bailing a la Fujitsu).

Tabrizi in a semi-intoxicated state told me in Las Vegas in March that his intent in pursuing SyncLink was to screw us up in the market. GM Han of Hyundai/Seoul was with us at the time as well as some Korean R&D guy who's name I unfortunately don't remember. I wanted to make sure each of you knew that he had told me this over dinner back at the Vegas JEDEC meeting.

Also I am getting information that they are working on getting Motorola to join up, know also that Moto is intending to re-enter the DRAM business (historically everytime they do that, the bottom falls out of the DRAM [redacted]

[redacted]

So as you can see there several companies that are Rambus have-nots which are dedicating resources to Syclink, and at least one of our partners is moving in that direction as well.

[redacted]

[redacted]

and or opposed). Later, the signalling issues basically replaced the SDRAM/SGRAM interest in that new things were being proposed as a function

[redacted]

perspective of not disclosing our trade secrets any earlier than we are forced to.

As time passed some of the patents issued and then we have not really made the committees aware of this fact except for once, when I did and then later was castigated for doing so.

It seems to me that we should re-evaluate our position relative to what we

[redacted]

So we should tell the world what patents have issued (well at least JEDEC and perhaps SyncLink) to be clean on this. We should also redouble our efforts to get the necessary amendments completed, the new claims added and make damn sure this ship is watertight before we get too far out to sea. The next JEDEC meeting is in December. We can go to any IEEE SyncLink meeting we want to, but not the consortium meetings. IEEE meets about once per month, JEDEC, once per quarter typically. I think that pretty well lays

[redacted]

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2465 Latham St
Mountain View, Ca 94040
415 903 3832 direct
415 965 1528 fax

RH 386332

R 233838
OUTSIDE COUNSEL ONLY

Exhibit 3
(redacted)

Exhibit 4
(redacted)

Exhibit 5
(redacted)

FROM : Richard Crisp <crisp@jupiter>
TO : Geoff Tate <gtate@jupiter>, exec, andy, matt, dillon, crisp
CC : crisp
BCC :
DATE = 01/22/1996
TIME : 11:05:56
SUBJECT : Re: samsung update meeting 96/1/22
ATTACHMENT
[illegible] At 2:07 AM 1/22/96, Geoff Tate wrote:

>**RICHARD**: Mr. Choi said he was very disturbed by a presentation
>mitsubishi gave at JEDEC in december, and that you were in attendance so
>you have it. he said they showed 3dram, sgram, wram, rambus, etc. for
>graphics and unified memory with the conclusion that #1 was 3dram, #2
>sgram, ... and last was rambus. they said they don't care about 3dram
>because it is sole source so it won't go anywhere even if he's right. but
>they think their 8M sgram die size/bit is smaller than their 16M sdram

[redacted]

>competitive test will happen soon when people can sit rambus systems next
>to sdram systems for games and pc's and see actual price and actual
>performance at the system level.

Geoff,
I am certain I gave you and the other executives copies of the Mitsubishi/Forman presentation when I returned from the JEDEC meeting in early December. If you don't remember receiving it and no longer have it, I can give you another copy.

[redacted]

was not originally intending to attend the JEDEC meeting, but happened by luck to have a meeting with Sam Chen/Steve Forman on the Friday preceeding the JEDEC meeting and so Forman showed Craig and me what he was intending to present at the end of our scheduled meeting. Craig really got upset with the numbers, and especially got upset when Forman mentioned that they had talked to "every GUI vendor" around and at least one big one (ATI) told him

[redacted]

me snow up.

[redacted]

back at the factory what the significance was to the nubers presented. I

[redacted]

BODY :

Desi Rhoden, attempted to muzzle me, despite the fact that he permitted another to speak before me criticizing the same presentation on the basis of the relevance of the benchmark and questioning his motives since he was

designed you in" with great sarcasm. Kevin was not pleased to see this presentation at all. To the English speaking audience I would say a few saw

Forman's benchmark is hardly representative of a 3D application. The case he examined was a pathological case that is the worst possible operating condition for RDRAMs. His three channels were running in lockstep, he attempted no concurrency on the channel or channel to channel. He assumed every access was a miss despite the fact that clever designers can get a lot of performance out of the technology by working smart, which Forman is

This is precisely one of the major benefits we get from going to JEDEC

planning and that we need to be able to attend to defend ourselves when attacked like we were last time, and we gain a lot of intelligence at the meetings.

It is easy for Mr. Taylor (of BSTZ) to say we should not go without really hearing all of the issues on both sides of the equation. He was told that

to fear that we have exposure in some possible future litigation.

—Attached is an email from me to Barth in response to the one Barth sent to me after first seeing the presentation that I copied to Exec and to him (as well as others)—

At 2:54 PM 12/7/95, Rick Barth wrote:
>The claims of Mitsubishi were so ridiculous that I had to do the
>calculations:
>
>1996 - 10 x 7 x 16 x 75
>
>reality 2 channels - base 474 MB/s
> refresh 118 MB/s
> drawing 356 MB/s
>

RH 387157

R 234663
OUTSIDE COUNSEL ONLY

[redacted]

> drawing 815 MB/s
>
>claimed RDRAM drawing 226 MB/s
> 3D-RAM drawing [redacted]

[redacted]

>
>reality 3 channels - concurrent 1549 MB/s (@533)
> refresh 393 MB/s
> drawing 1932 MB/s
>
>claimed RDRAM drawing 705 MB/s
> 3D-RAM drawing 1120 MB/s
>
>Presumably they are claiming the best that the 3D-RAM can do. So are

[redacted]

bogus by me, and others asked him what the point was of his presentation.

[redacted]

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