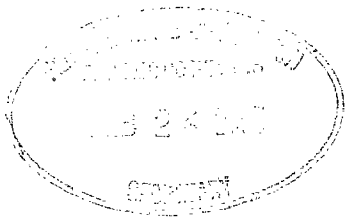
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



| | | |
|---|---|---|
| In the Matter of | ) | |
| RAMBUS INC., | ) | Docket No. 9302 |
| a corporation. | ) | |

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR COLLATERAL ESTOPPEL**

On February 12, 2003, Complaint Counsel filed a motion seeking recognition of the collateral estoppel effect of prior factual findings that Rambus destroyed material evidence. Rambus filed its opposition on February 24, 2003. For the reasons set forth below, Complaint Counsel's motion is GRANTED.

By its motion, Complaint Counsel moves for an entry of an order recognizing that certain factual findings relating to Rambus's destruction of documents, which were made by the district court in *Rambus Inc. v. Infineon Technologies AG*, 155 F. Supp.2d 668 (E.D. Va. 2001), *aff'd in part and rev'd in part*, Nos. 01-1449 *et al.*, 2003 WL 187265 (Fed. Cir. Jan. 29, 2003), should be

[redacted]

same factual issues in this adjudicative proceeding.

Collateral estoppel may be used to bar a party from relitigating an issue on which it has been fully heard and lost. "[A] party who has had one fair and full opportunity to prove a claim and has failed in that effort, should not be permitted to go to trial on the merit of that claim a second time." *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 324-25 (1971). The purpose of the doctrine is to "protect[] adversaries from, the expense and vexation attending multiple lawsuits, conserve[] judicial resources, and, foster[] reliance on

[redacted]

consideration of fairness to a litigant dictates a different result in the circumstances of the particular case.").

Here, all of the bases for collateral estoppel warrant a conclusion that Rambus should be barred from relitigating the question of whether its admitted destruction of very large volumes of business records starting in mid-1998 was done "in part, for the purpose of getting rid of documents that might be harmful" in future anticipated litigation.

In order to advance the efficient administration of justice, "once a court has decided an issue of fact or law necessary to its judgments, that decision may preclude relitigation of the issue

[redacted]

(1979). Here, each of the elements supporting collateral estoppel weighs in favor of applying it to bar Rambus from relitigating its motives for its document destruction and the fact that the document destruction was done at a time when the company anticipated future JEDEC-related

litigation. First, the issue was actually litigated in the *Infineon* case; second, it was actually and necessarily determined in that proceeding; and, third, applying estoppel against Rambus would not "work an unfairness." *E.g., McLaughlin v. Bradlee,* 803 F.2d 1197, 1201 (D.C. Cir. 1986); *Montana,* 440 U.S. at 153; *accord Mother's Restaurant, Inc. v. Mama's Pizza, Inc.,* 723 F.2d 1566, 1571 (Fed. Cir. 1983); *United States v. Weems,* 49 F.3d 528, 531-32 (9th Cir. 1995).

[redacted]

attorney's fees to Infineon. Rambus had the opportunity to appeal the court's ruling, but did not [redacted] fees. *See Infineon III,* 2003 WL 187625, at *21. The question resolved by the district court, and not appealed by Rambus – whether Rambus destroyed documents to prevent their discovery in future anticipated litigation – is directly at issue by Complaint Counsel's Motion for Default [redacted]

The motivation for Rambus's document destruction was considered by the district court and thus meets the second part of the test: the question was actually and necessarily determined. The purpose of this general rule, "is to prevent the incidental or collateral determination of a nonessential issue from precluding reconsideration of that issue in later litigation." *Mother's Restaurant, Inc.*, 723 F.2d at 1571. This means that a court need determine only that "the disposition in the first suit was the basis for the holding with respect to the issue and not 'mere dictum' . . .[or] merely incidental to the first judgment." *McLaughlin,* 803 F.2d at 1204 (internal citations omitted). Although "[d]iscussion of the necessity [redacted] usually framed in terms of determinations that were necessary to the 'judgment' or the 'verdict,'"

"[t]he primary purpose of the rule . . . is to ensure that the finder of fact in the first case took sufficient care in determining the issue." *Pettaway v. Plummer*, 843 F.2d 1041, 1044 (9th Cir. 1991) (internal citations omitted), *overruled on other grounds, Santamaria v. Horsley*, 133 F.2d 1242 (9th Cir.) (en banc), *modified*, 138 F.3d 1280 (9th Cir. 1998).

Here, the objectives of the "necessity" rule have been fully met. Rambus has a full opportunity to litigate the finding that its document destruction was intended to avoid discovery in anticipated litigation, and has an opportunity to appeal the adverse finding. *See Weems*, 49 F.3d at 732 (rejecting argument that lack of appealability precluded collateral estoppel effect of finding); *Ass'n v. Northwestern Fire & Marine Insurance Co.*, 238 N.E.2d 55, 59 (Mass. 1968) ("Such findings may be relied upon if it is clear that the issues underlying them were treated as essential to the prior case by the court and the party to be bound. Stated another way, it is necessary that such findings be the product of full litigation and careful decision."); WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4421, at 556 (2002) ("Preclusion should be deciding the unnecessary issue."). It is thus irrelevant that the trial court might, on remand, conclude that Infineon is not entitled to attorneys' fees because it was not a prevailing party as required for the award of fees pursuant to 35 U.S.C. § 285. Here the trial court and Rambus both adjudicated adverse factual determinations on the ground that a subsequent remand may provide a different reason to vacate the fees award to Infineon for Rambus's litigation misconduct.

Accordingly, full collateral estoppel effect will be given to the following findings of fact made by the district court in *Infineon*:

(1) When "Rambus instituted its document retention policy in 1998," it did so, "in part, for the purpose of getting rid of documents that might be harmful in litigation."

(2) Rambus, at the time it implemented its "document retention policy," "[c]learly . . . contemplated that it might be bringing patent infringement suits during this timeframe" if its efforts to persuade semi-conductor manufacturers to license "its [illegible]"

(3) Rambus's "document destruction" was done "in anticipation of litigation."

James P. Timony

JAMES P. TIMONY
Administrative Law Judge

Dated: February 26, 2003