

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

PUBLIC VERSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**COMPLAINT COUNSEL’S SUPPLEMENTAL RESPONSE TO RESPONDENT
RAMBUS INC.’S SECOND SET OF REQUESTS FOR ADMISSIONS TO THE
FEDERAL TRADE COMMISSION**

Pursuant to Section 3.32 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §3.32, Complaint Counsel submits this Supplemental Response to Respondent Rambus Inc.’s Second Set of Requests For Admissions to the Federal Trade Commission (“FTC”). Complaint Counsel supplements and/or revises its responses to certain requests, as specified below, in its Response to Respondent Rambus Inc.’s Second Set of Requests For Admissions filed on February 7, 2003. Complaint Counsel has made supplemental and/or revised responses to the following: General Objection No. 3 and Requests for Admissions Nos. 55-56, 95, 98-99, 113-116, 140-144, and 159-170. Complaint Counsel has also corrected typographical errors in the following Requests for Admissions Nos.: 29, 31-32, 73, 77, 108, 134, and 147-149. The full text of each request for admission is set out below, followed by Complaint Counsel’s respective specific objections and responses. Complaint Counsel’s provision of a response to any request for admission shall not constitute a waiver of any applicable objection, privilege, or other right. Where required in order to respond to these Requests For Admissions, Complaint Counsel represents that it has undertaken good faith efforts to identify the information that would allow it to admit or deny such requests.

GENERAL OBJECTIONS

The following general objections apply to each request for admission in Respondent

Rambus's Second Set of Requests for Admissions ("RFA") and are in ad

RESPONSES AND SPECIFIC OBJECTIONS TO
REQUESTS FOR ADMISSIONS

Complaint Counsel objects to each and every request for admission on the basis of the general objections stated above. Without waiving and subject to these general objections, Complaint Counsel provides the following responses:

REQUEST FOR ADMISSION NO. 1:

Admit that JEDEC's Manual of Organization and Procedure JEP 21-H was first published in 1988. [JDC 013328-47].

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

The referenced document does not establish the truth of the assertion on which the admission is sought. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 2:

Admit that JEDEC's Manual of Organization and Procedure JEP 21-H contains no reference to the disclosure by JEDEC members of patents. [JDC 013328].

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Complaint Counsel admits that the referenced document contains no express reference to "disclosure by JEDEC members of patents." The referenced document does, however, contain references to the EIA Legal Guidelines, which in turn do discuss patent issues.

REQUEST FOR ADMISSION NO. 3:

Admit that JEDEC's Manual of Organization and Procedure JEP 21-H contains no reference to the disclosure by JEDEC members of patent applications. [JDC 013328].

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Complaint Counsel admits that the referenced document does not, in such words, refer to the requirement of JEDEC members to disclose "patent applications." However, there is

evidence that the term “patent,” as used in the referenced document, was understood by JEDEC members in this time period to encompass both issued and pending patents. On this basis, Complaint Counsel does not admit, and indeed denies, that the referenced document “contains no reference to the disclosure by JEDEC members of patent applications.”

REQUEST FOR ADMISSION NO. 4:

Admit that Rambus and Hewlett-Packard signed a Non-Disclosure Agreement in or about January 1990. [R 196023; RF 0137623].

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Hewlett-Packard in January 1990.

REQUEST FOR ADMISSION NO. 5:

Admit that Rambus and Siemens signed a Non-Disclosure Agreement in or about February 1990. [R 157965; I 252092].

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Siemens in February 1990.

REQUEST FOR ADMISSION NO. 6:

Admit that Rambus and Mitsubishi signed a Non-Disclosure Agreement in or about January 1990. [R 196023; RF 0138777].

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Mitsubishi in January 1990.

REQUEST FOR ADMISSION NO. 7:

Admit that Rambus and Micron Technology signed a Non-Disclosure Agreement in or about March 1990. [R 202037].

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

The referenced document refers to a Rambus-NEC non-disclosure agreement effective in April 1990, but does not directly evidence the existence of such an agreement, nor is Complaint Counsel aware of independent evidence of such an agreement. For this reason, Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 11:

Admit that Rambus filed a patent application with the United States Patent and Trademark Office on April 18, 1990, and that that application was given the number 07/510,898. [R 12896].

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Complaint Counsel admits that the referenced patent was filed with United States Patent and Trademark Office on this date.

REQUEST FOR ADMISSION NO. 12:

Admit that Rambus and Philips signed a Non-Disclosure Agreement in or about May 1990. [PTX 117; RF 0139328].

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Philips in May 1990.

REQUEST FOR ADMISSION NO. 13:

Admit that Rambus and Intel signed a Technology License Agreement in or about July 1990. [R 107597].

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Complaint Counsel admits that the referenced document appears to evidence the signing

of a Technology License Agreement between Rambus and Intel in July 1990.

REQUEST FOR ADMISSION NO. 14:

Admit that Rambus and Hitachi signed a Non-Disclosure Agreement in or about August 1990. [PTX 117; RF 0137666].

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Hitachi in August 1990.

REQUEST FOR ADMISSION NO. 15:

Admit that Rambus and Sony signed a Non-Disclosure Agreement in or about September 1990. [PTX 117].

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

The referenced document refers to a Rambus-Sony non-disclosure agreement effective in September 1990, but does not directly evidence the existence of such an agreement, nor is Complaint Counsel aware of independent evidence of such an agreement. For this reason, Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 16:

Admit that Rambus and Toshiba entered into a technology license in or about October 1990. [PTX 267].

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

The referenced document refers to various license agreements between Rambus and Toshiba, none of which appear to have been entered into on or about October 1990, nor is Complaint Counsel aware of independent evidence of such an agreement entered in that time period. Thus, Complaint Counsel lacks sufficient information to either admit or deny this

request.

REQUEST FOR ADMISSION NO. 17:

Admit that Rambus and Texas Instruments entered into a Non-Disclosure Agreement in or about October 1990. [RF 0140248; PTX 117].

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a non-disclosure agreement between Rambus and Texas Instruments effective October 1990.

REQUEST FOR ADMISSION NO. 18:

Admit that Rambus and Fujitsu entered into a Technology License Agreement in or about October 1990. [R 24137; WSGR 006896].

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Complaint Counsel admits that the referenced documents appear to evidence the signing of a Technology License Agreement between Rambus and Fujitsu in October 1990.

REQUEST FOR ADMISSION NO. 19:

Admit that Rambus and Hewlett-Packard signed a Non-Disclosure Agreement in or about January 1991. [R 69918].

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

The referenced document refers to a Confidential Disclosure Agreement between Rambus and Hewlett-Packard, but the effective date given is January *****. Complaint Counsel is not aware of independent evidence of such an agreement being entered into in or about January 1991. Thus, Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 20:

Admit that Rambus and NEC signed a Semiconductor Technology License Agreement in or about July 1991. [R 108454].

REQUEST FOR ADMISSION NO. 23:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

REQUEST FOR ADMISSION NO. 24:

Admit that Rambus's International Patent Application number WO 91/16680 became publicly available in or about October 1991. [MR 0054322; I 243728].

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Complaint Counsel admits that, based on the information contained in the referenced documents, it would appear that a copy of Rambus's International Patent Application number WO 91/16680 may have become publicly available in or about October 1991. However, Complaint Counsel lacks sufficient information to confirm this fact, and on this basis can neither

admit nor deny the request.

REQUEST FOR ADMISSION NO. 25:

Admit that IBM obtained a copy of Rambus' publicly available International Patent Application on or prior to December 16, 1991. [R 205153].

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Complaint Counsel admits that, based on the information contained in the referenced

the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a ***** by N. Wirth and W. Meyer (April 30, 1992) and that the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced document purports to be an English-language translation of a document originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 33:

Admit that Siemens' JEDEC 42.3 subcommittee representative Willibald Meyer and Siemens' employee N. Wirth wrote on or about April 30, 1992 that "NEC (Rambus licensee) was the first to suggest a leaner "public domain" version based on this: maintain a synchronous control, 2 banks, 4-fold internal data bus, 4 word register at the data output, and possibly LOW level interface (similar to GTL) from the RAMBUS while leaving off the proprietary RAMBUS control protocol." [I 252164].

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

To the extent this request seeks an admission that the quoted statement is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a ***** ***** by N. Wirth and W. Meyer (April 30, 1992), states in part, "NEC (Rambus license *****) was the first to suggest a leaner 'public domain' version based on this: maintain a synchronous control, 2 banks, 4-fold internal data bus, 4 word register at the data output, and possibly LOW level interface (similar to GTL) from the

RAMBUS while leaving off the proprietary RAMBUS control protocol.” [Emphasis added to correct Respondent’s omission of a word.] However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced document purports to be an English-language translation of a document originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 34:

Admit that Siemens’ JEDEC 42.3 subcommittee representative Willibald Meyer and Siemens’ employee N. Wirth wrote on or about April 30, 1992 that “it has become clear that a RAMBUS memory can easily be converted into a SDRAM (1 or 2 banks) or conventional DRAM.” [I 252164].

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

To the extent this request seeks an admission that the quoted statement is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a *****
***** by N. Wirth and W. Meyer (April 30, 1992), and that the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced document purports to be an English-language translation of a document originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 35:

Admit that on or about May 6, 1992, Siemens' JEDEC 42.3 subcommittee representative Willibald Meyer prepared a chart comparing the "pros" and "cons" of synchronous DRAMs, cached DRAMs and Rambus DRAMs, and that one of the two "cons" listed with respect to synchronous DRAMs was that "2-bank sync may fall under Rambus patents." [I 252065].

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

To the extent this request seeks an admission that the quoted statement is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a DRAM comparison chart and that the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced document purports to be an English-language translation of a document originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 36:

Admit that on or about May 6, 1992, the JEDEC 42.3 subcommittee met in New Orleans, Louisiana.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Complaint Counsel admits this request.

REQUEST FOR ADMISSION NO. 37:

Admit that during the May 6, 1992 New Orleans meeting, IBM representative Gordon Kelley asked Richard Crisp if he would care to comment regarding possible Rambus patent

claims with respect to 2 bank synchronous DRAM designs, and Mr. Crisp declined to comment. [R 200474].

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

To the extent this request seeks an admission that the quoted statement is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that, on or about May 6, 1992, *****

“*****

***** . However, Complaint Counsel submits that this language cannot properly be

REQUEST FOR ADMISSION NO. 39:

Admit that the facts set forth in Request For Admission No. 38 were well known to JEDEC 42.3 representatives between 1992 and 1996.

REQUEST FOR ADMISSION NO. 41:

Admit that at the May 1992 JEDEC 42.3 subcommittee meeting in New Orleans, NEC representative Howard Sussman stated that he had reviewed the publicly available copy of Rambus' Internatio

Counsel further admits that, on or about May 6, 1992, *****

*****. Complaint Counsel submits that these statements cannot properly be understood except by reference to the pertinent documents as a whole, which speak for themselves. Complaint Counsel further notes that the referenced ***** document is an English-language translation of a portion of the document that was originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 43:

Admit that Siemens’ JEDEC 42.3 subcommittee representative Willibald Meyer wrote a May 15, 1992 “Summary of JEDEC Meeting” that stated in part that “Siemens and Philips concerned about patent situation with regard to Rambus and Motorola. No comments given. Motorola patents have priority over Rambus’. Rambus patents filed but pending.” [I 211400].

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

To the extent this request seeks an admission that the quoted statement is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the ***** document, which appears to be a report written by Willibald Meyer on the *****

*****. Complaint Counsel submits that these statements cannot properly be understood except by reference to the pertinent document as a whole, which speak for itself. Complaint Counsel further notes that the referenced ***** document purports to be an English-language translation of a portion of the document that was originally

written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 44:

Admit that at the May 1992 JEDEC 42.3 subcommittee meeting in New Orleans, subcommittee chairman Jim Townsend presented viewgraphs that quoted in part, as follows, from EIA Publication EP-3-F, the Manual for Committee, Subcommittee, and Working Group Chairman and Secretaries:

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***** and that the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced ***** document purports, in part, to be an English-language translation of a document originally written in German. Complaint Counsel does not admit that, and has no basis to know whether, the referenced translation is accurate. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 48:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

REQUEST FOR ADMISSION NO. 49:

Admit that in or about September 1992, Siemens' JEDEC 42.3 subcommittee representative Willibald Meyer prepared a memo or chart that stated in part that Rambus was "[a] deadly menace to the established computer industry." [I 247957].

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be presentation charts and the request correctly quotes a portion of the language from the referenced document, which appears to have been drafted by Willibald Meyer. However, Complaint Counsel submits

that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 50:

Admit that on or about October 12, 1992, JEDEC 42.3 subcommittee chairman Jim Townsend circulated to various JEDEC representatives an article from the October 1992 issue of IEEE Spectrum magazine entitled “Don’t Lose Your Patent Rights,” which article stated in part as follows:

“KEEP IT UNDER YOUR HAT. In the United States, if an invention is publicly disclosed more than one year before a patent application is filed, one is not entitled to the patent – the invention is considered to be in the public domain.

* * *

Moreover, premature disclosure can severely jeopardize non-U.S. rights. While the inventor may enjoy a one-year grace period in the United States, many countries – including Belgium, Greece, Great Britain, Spain and Taiwan – require absolute novelty. Any disclosure before the filing of a patent application will bar rights to a patent.”

[I 189547].

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be an article entitled “Don’t lose your patent rights!” and that the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or

deny this request.

REQUEST FOR ADMISSION NO. 51:

Admit that prior to the adoption of the JEDEC SDRAM standard in 1993, Rambus had no claims in any pending patent application that, if issued, would have necessarily been infringed by the manufacture or use of any device manufactured in accordance with the JEDEC SDRAM standard.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

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REQUEST FOR ADMISSION NO. 53:

Admit that on or about December 9, 1992, Motorola took the position that it would only agree to the JEDEC patent policy with respect to those JEDEC standards which were “voted for

because their attorneys have advised them that if they do then a listing may be construed as complete.” [JDC 001538].

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be the meeting minutes from the March 3, 1993 JEDEC 42.3 subcommittee meeting in Scottsdale, Arizona and the request correctly quotes a portion of the language from the referenced document. Complaint Counsel is aware of other evidence relating to this particular JEDEC meeting and the statements of individuals who were present at the meeting. Because we are not in a position to admit that the statement referenced by this request, as characterized in the JEDEC minutes, is fully accurate, or even the most accurate evidence on this subject, we lack sufficient evidence to admit or deny this request.

REQUEST FOR ADMISSION NO. 56:

Admit that IBM’s position as stated in request no. 55 was consistent with the JEDEC patent policy in effect at the time.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Complaint Counsel reasserts the objections stated in response to RFA No. 55. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it provides no definition for the term “JEDEC patent policy,” which has been defined by Rambus in different ways at different times. *Compare* Rambus Motion for Summary Decision at 23 (using term “JEDEC patent policy” to refer to JEDEC’s patent disclosure rules), *with id.* at 44 (using term “JEDEC patent policy” to refer to JEDEC’s rules disallowing the use of technologies subject to known patents or patent applications in JEDEC standards, absent advance licensing assurances). Subject to these objections, Complaint Counsel otherwise states that it lacks

sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 57:

Admit that at the May 19, 1993 JEDEC 42.3 subcommittee meeting in Chicago, the committee approved SDRAM standard 21-C after it learned of a Hitachi patent (no. 5,083,296) that in part “covers the basic specification for SDRAM.” [JDC 001622].

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted,

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Complaint Counsel states that liability in this case does not depend on the validity of the claims in the '703 patent and admits that Complaint Counsel makes no direct contentions on the issue of validity or invalidity of this patent.

REQUEST FOR ADMISSION NO. 62:

Admit that the issuance of the '703 Patent was disclosed by Rambus at the September 23, 1993 JEDEC 42.3 subcommittee meeting in Boston, Massachusetts. [JDC 001684].

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Complaint Counsel lacks sufficient information to either admit or deny this request, as stated.

REQUEST FOR ADMISSION NO. 63:

Admit that after its disclosure to JEDEC, Rambus's '703 Patent appeared on Mr. Townsend's Patent Tracking List and was characterized as involving "sync clock." [JDC 001782].

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Complaint Counsel admits that Rambus's '703 was added to JEDEC's "Patent Tracking List" following the February 23, 1993 meeting of the JEDEC 42.3 subcommittee, and that the words "sync clock" were included in the "Subject" column of the "Patent Tracking List" with reference to this patent.

REQUEST FOR ADMISSION NO. 64:

Admit that after the disclosure of the '703 Patent to JEDEC, no EIA officer, representative or employee asked any questions of Rambus regarding the scope, application or validity of the '703 Patent.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 65:

Admit that after the disclosure of the '703 Patent to JEDEC, no JEDEC officer, representative or employee asked any questions of Rambus regarding the scope, application or validity of the '703 Patent.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 66:

Admit that EIA Secretary Ken McGhee sent a letter in March 1994 to Jim Townsend, the chair of JEDEC's 42.3 subcommittee, that stated in part that JEDEC's legal counsel "didn't think it was a good idea to require people at JEDEC standards meetings to sign a document assuring anything about their company's patent rights for the following reasons:

- 1) It would have a chilling effect at future meetings
- 2) A general assurance wouldn't be worth that much anyway
- 3) It needs to come from a VP or higher within the company – engineers can't sign such documents
- 4) It would need to be done at each meeting slowing down the business at hand."

[JDC 014052].

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a letter from

Ken McGhee to Jim Townsend and that the request correctly quotes a portion of the language

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel further notes that the referenced ***** document purports, in part, to be an English-

RESPONSE TO REQUEST FOR ADMISSION NO. 70:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint

REQUEST FOR ADMISSION NO. 75:

Admit that on or about June 13, 1995, Rambus employee Richard Crisp informed

Hewlett-Packard employee Hans Wiggers that:

“[r]egarding patents, I have stated to several persons that my

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REQUEST FOR ADMISSION NO. 76:

Admit that the minutes of the August 21, 1995 meeting of the IEEE 1596.7 task group state in part as follows:

“Richard Crisp, of RamBus, informed us that in their opinion both RamLink and SyncLink may violate RamBus patents that date back as far as 1989. Others commented that the RamLink work was public early enough to avoid problems, and thus might invalidate such patents to the same extent that they appear to be violated. However, the resolution of these questions is not a feasible task for this committee, so it must continue with the technical work at hand.”

[HR905_081903].

RESPONSE TO REQUEST FOR ADMISSION NO. 76:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be the minutes of the August 21, 1995 meeting of the IEEE 1596.7 task group and the request correctly quotes a portion of the language from the referenced document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 77:

Admit that at a September 11, 1995 JEDEC meeting in Crystal City, Virginia, Rambus provided the following prepared statement:

“At the last JEDEC meeting it was noted that the subject of the Synlink DRAM proposal bears a strong resemblance to Rambus DRAMs and so I was asked to make a comment about the Rambus intellectual property position as it may relate to the Synlink proposal.

The first Rambus patents were filed more than five years ago, with development starting years before. We have confirmed that the first Ramlink and Syclick committee meetings and draft proposals occurred years after Rambus began development.

Today there is no finalized Synlink specification or DRAMs to analyze for potential infringement. Best case, it will be several years before they will exist. So to fully determine Synlink patent risk, this committee should look not just to Rambus but also internally.

For example, we are aware of 13 US patents relating to SDRAMs which were issued to member companies of this committee. All were active participants in the SDRAM standardization process. Included in this list are Hitachi, Mitsubishi, Mosaid, Motorola, Oki, Samsung, TI and Toshiba.

Additionally, Synlink is being sponsored by an organization with a less stringent patent policy than JEDEC. Under the bylaws of the IEEE working groups, attendees represent themselves only, not their employers. Furthermore they are free to patent whatever they desire, and are not bound to relinquish any of their rights to their patents by presenting their ideas for standardization.

Therefore, we conclude that products defined by committees are not guaranteed to be free of patent encumbrances.

At this time, Rambus elects to not make a specific comment on our intellectual property position relative to the Synlink proposal. Our presence or silence at committee meetings does not constitute an endorsement of any proposal under the committee's consideration nor does it make any statement regarding potential infringement of Rambus intellectual property."

[JDC 002265].

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language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

u REQUEST FOR ADMISSION

REQUEST FOR ADMISSION NO. 80:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 80:

REQUEST FOR ADMISSION NO. 81:

Admit that on or about December 7, 1995, Rambus and Micron signed a Non-Request for Admission No. 75-070-D-0015

Crisp attended the 42.3 subcommittee meeting in December 1995 in Dallas, Texas. [JDC 002308].

RESPONSE TO REQUEST FOR ADMISSION NO. 82:

Complaint Counsel admits this request.

REQUEST FOR ADMISSION NO. 83:

Admit that the minutes of the January 11, 1996 meeting of the SyncLink Consortium contain the following statement:

“Rambus has 16 patents already with more pending. Rambus says their patents may cover our SyncLink approach even though our method came out of early RamLink work. Micron is particularly concerned to avoid the Rambus patents, though all of us share this concern.”

[HR905_135808].

RESPONSE TO REQUEST FOR ADMISSION NO. 83:

To the extent this request seeks

language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 86:

Admit that the ANSI Patent Policy did not in 1996 require the disclosure of patent applications.

RESPONSE TO REQUEST FOR ADMISSION NO. 86:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, the term “ANSI Patent Policy” is not defined. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 87:

Admit that the ANSI Patent Policy has never required the disclosure of patent applications.

RESPONSE TO REQUEST FOR ADMISSION NO. 87:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, the term “ANSI Patent Policy” is not defined. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 88:

Admit that the ANSI Patent Policy does not today require the disclosure of patent applications.

RESPONSE TO REQUEST FOR ADMISSION NO. 88:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, the term “ANSI Patent Policy” is not defined. Complaint Counsel otherwise lacks

sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 89:

Admit that in January 1996, the EIA informed the FTC in writing that “allowing patented technology in standards is procompetitive.” [1/22/96 letter to FTC].

RESPONSE TO REQUEST FOR ADMISSION NO. 89:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the request correctly quotes a portion of the language from the referenced document, which appears to be a January 22, 1996 letter from Dan Bart

REQUEST FOR ADMISSION NO. 91:

Admit that in January 1996, the EIA informed the FTC in writing that:

“The early disclosure policies of EIA and TIA have worked well to highlight possible patents and ensure that they will be available for licensing by the time the standard is published. Even if knowledge of a patent comes later in time due to the pending status of a patent while the standard was being created, the important issue is the license availability to all parties on reasonable, non-discriminatory terms.”

[1/22/96 letter to FTC].

RESPONSE TO REQUEST FOR ADMISSION NO. 91:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the request correctly quotes a portion of the language from the referenced document, which appears to be a January 22, 1996 letter from Dan Bart of EIA to Mr. Clark of the FTC. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself.

REQUEST FOR ADMISSION NO. 92:

Admit that the EIA has refused to opine as to whether patent license terms and royalty rates are or are not “reasonable.”

RESPONSE TO REQUEST FOR ADMISSION NO. 92:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it specifies no time period and does not identify to whom EIA allegedly expressed such a refusal. As stated, Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 93:

Admit that JEDEC has refused to opine as to whether patent license terms and royalty rates are or are not “reasonable.”

RESPONSE TO REQUEST FOR ADMISSION NO. 93:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it specifies no time period and does not identify to whom JEDEC allegedly expressed such a refusal. As stated, Complaint Counsel lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 94:

Admit that in January 1996, the EIA informed the FTC that the “EIA, TIA, and ANSI IPR policies relate to essential patents.” [1/22/96 letter to FTC].

RESPONSE TO REQUEST FOR ADMISSION NO. 94:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the request correctly quotes a portion of the language from the referenced document, which appears to be a January 22, 1996 letter from Dan Bart of EIA to Mr. Clark of the FTC. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself.

REQUEST FOR ADMISSION NO. 95:

Admit that as of January 1996, Rambus held no issued U.S. patents that were essential to the manufacture or use of any device manufactured in compliance with any JEDEC standard.

PROPOSED STIPULATION RELATING TO REQUEST FOR ADMISSION NO. 95:

To Compliant Counsel’s knowledge, as of January 1996, Rambus held no issued U.S.

patents that were essential to the manufacture or use of any device manufactured in compliance with any JEDEC standard.

REQUEST FOR ADMISSION NO. 96:

Admit that in a videotaped presentation at a JEDEC Council meeting in May 1996, Jim Townsend stated that no JEDEC representative ever disclosed the nature of the claims contained in a patent application because such disclosure would corrupt his company's ability to prosecute those claims. [McGhee videotape].

RESPONSE TO REQUEST FOR ADMISSION NO. 96:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects that this request is vague and ambiguous because, among other things, it fails to define the term "JEDEC representative." Complaint Counsel denies this request.

REQUEST FOR ADMISSION NO. 97:

Admit that on or about June 17, 1996, Rambus sent a letter to EIA Secretary Ken McGhee that stated in part as follows:

"I am writing to inform you that Rambus Inc. is not renewing its membership in JEDEC.

Recently at JEDEC meetings the subject of Rambus patents has been raised. Rambus plans to continue to license its proprietary technology on terms that are consistent with the business plan of Rambus, and those terms may not be consistent with the terms set by standards bodies, including JEDEC. A number of major companies are already licensees of Rambus technology. We trust that you will understand that Rambus reserves all rights regarding its intellectual property. Rambus does, however, encourage companies to contact Dave Mooring of Rambus to discuss licensing terms and to sign up as licensees.

To the extent that anyone is interested in the patents of Rambus, I have enclosed a list of Rambus U.S. and foreign patents.

eliminate any duty of a JEDEC member to disclose patent applications in circumstances in which the member intends to amend a pending patent application, believing that, by doing so, it possibly could succeed in covering some aspect or implementation of JEDEC's standards or its standard-setting work, the presence of such an intention would trigger a duty to disclose under JEDEC's rules. Were such circumstances to arise, the patent application in issue would, necessarily, bear a close enough relationship to JEDEC's work to trigger a disclosure obligation, as it plainly would be the case that the application "involved" or, at a minimum, "might be involved in," the work of JEDEC. *See* Complaint Counsel's Response to Rambus Interrogatory No. 8 (November 8, 2002), at 58.

REQUEST FOR ADMISSION NO. 99:

Admit that no JEDEC representative prior to July 1996 ever disclosed to JEDEC an intention "to amend a patent application [where it] believe[s] that, by doing so, it possibly could succeed in covering some aspect or implementation of JEDEC's standards or its standard-setting work." [Complaint Counsel's Response and Objections to Respondent Rambus Inc.'s First Set of Interrogatories, at 58].

RESPONSE TO REQUEST FOR ADMISSION NO. 99:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the term "JEDEC representative." Complaint Counsel is aware of disclosures to JEDEC, prior to 1996, of intentions to file or amend a patent application that could possibly succeed in covering some aspect or implementation of JEDEC's standards or its standard-setting work. Subject to this objection, Complaint Counsel denies this request. *See, e.g.,* *****.

REQUEST FOR ADMISSION NO. 100:

Admit that JEDEC members other than Rambus in the period 1990-1996 held, but did not

disclose to JEDEC, pending patent applications that related to or might have been involved in JEDEC's work.

RESPONSE TO REQUEST FOR ADMISSION NO. 100:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms "JEDEC members," "JEDEC," and "held." Subject to this objection, Complaint Counsel states that it lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 101:

Admit that no JEDEC Manual prior to July 1996 contained any written description of the information that a member should provide when disclosing a patent or patent application to JEDEC pursuant to JEDEC's patent policy.

Complaint Counsel can neither admit nor deny this request.

REQUEST FOR ADMISSION NO. 103:

Admit that Complaint Counsel are not aware of any standards setting organization other than JEDEC that, prior to 1997, required any disclosure of an intention to file a patent application or to amend a patent application.

RESPONSE TO REQUEST FOR ADMISSION NO. 103:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it is unlimited as to time, and the request describes JEDEC's disclosure policies in a manner that does not comport with the evidence and appears to conflict with Rambus's own contentions in this case. Complaint Counsel also objects to this request on the grounds that it is an incomplete hypothetical. Subject to these objections, Complaint Counsel states that it lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 104:

Admit that prior to July 1996, Rambus had no claims in any pending patent application that, if issued, would have necessarily been infringed by the manufacture or use of any device manufactured in accordance with any JEDEC standard.

RESPONSE TO REQUEST FOR ADMISSION NO. 104:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms "would have necessarily been infringed" and "JEDEC standard." Subject to these objections, Complaint Counsel denies this request.

REQUEST FOR ADMISSION NO. 105:

Admit that on or about September 9, 1996, the SyncLink Consortium issued a press release that stated in part that SyncLink DRAMs, or "SLDRAMs," would be "royalty-free."

least some of its design and would pursue licensing royalties from nonmembers. In October of 1996, three additional vendors – all of them Rambus licensees (Hitachi, Oki, and Toshiba) – signed on with the SyncLink industry consortium. [citing industry trade press, e.g., Andrew MacLellan, “DRAM Vendors Draft Memory Standard,” Electronic News (Sept. 9, 1996), at 4; Jack Robertson, “Superfast DRAM Spec OK’d,” Electronic Buyers’ News (July 1, 1996), at 3; Ron Wilson, “‘SyncLink’ to Take on SDRAMs,” Electronic Engineering Times (Apr. 10, 1995), at 1; Jack Robertson, “1-Gbit DRAM War Heats Up,” Electronic Buyers’ News (Oct. 28, 1996), at 22].

Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 107:

Admit that on or about September 17, 1996, a Texas Instruments patent counsel named Gary Honeycutt sent a letter to Farhad Tabrizi about the SyncLink Consortium’s September 9, 1996 press release, which letter stated that Tabrizi had confirmed that SDRAMs would be royalty free only in the sense that copies of the specification could be obtained for free. [R128270].

RESPONSE TO REQUEST FOR ADMISSION NO. 107:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a letter from Gary Honeycutt to Farhad Tabrizi dated September 17, 1996, which states in part, *****

*****. However, Complaint Counsel submits that

REQUEST FOR ADMISSION NO. 108:

Admit that the minutes of the October 1, 1996 meeting of the SyncLink Consortium stated in connection with SyncLink's September 9, 1996 press release that:

“[w]e said this is a royalty free architecture. We didn't mean individual companies would not be able to collect royalties for the use of their property, we just meant that users won't have to pay royalties to the Consortium.”

[HR905_136650].

RESPONSE TO REQUEST FOR ADMISSION NO. 108:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a copy of the minutes from an October 1-2, 1996 meeting of the SyncLink Consortium, which states in part,

[w]e said this is a royalty free architecture. We didn't mean individual companies would not be able to collect royalties for the use of their property, we just meant that users won't have to pay royalties to the Consortium.

However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 109:

Admit that since it was founded, Rambus has been in the business of designing, but not manufacturing, high-bandwidth memory and memory interface technologies. [McAfee Appendix, p. 17].

RESPONSE TO REQUEST FOR ADMISSION NO. 109:

Complaint Counsel admits this request.

REQUEST FOR ADMISSION NO. 110:

Admit that the facts set out in Request no. 109, above, were known to Rambus's licensees in the early 1990's.

RESPONSE TO REQUEST FOR ADMISSION NO. 110:

Complaint Counsel objects to this request as vague and ambiguous because, among other things it fails to define "Rambus's licensees." Subject to this objection, Complaint Counsel states that it lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 111:

Admit that the business history of Rambus is essentially a history of its efforts to secure license agreements with vendors for the development of its designs and to convince equipment manufacturers to incorporate such licensed Rambus designs in their products. [McAfee Appendix, p. 18].

RESPONSE TO REQUEST FOR ADMISSION NO. 111:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel objects to this request as vague and ambiguous because, among other things it fails to define "business history," "vendors," "designs," "equipment manufacturers," and "products." Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that:

Since it was founded in the early 1990s, Rambus has been in the business of designing, but not manufacturing, high-bandwidth memory and memory interface technologies. Without fabrication facilities of its own, Rambus was and is dependent upon other vendors for its revenues; its sole product is intellectual property, which it licenses primarily on a royalty basis to other firms for development, production, and sale. Indeed, as was expressed in 1995 by Subodh Toprani, Rambus vice president of marketing, "We are an intellectual property company, . . . Royalties are what we need to be successful." In a sense, then, the business history of Rambus is essentially a history of its efforts to secure license

threatened to establish unilaterally a *de facto* standard for next-generation DRAMs with any selection of a preferred design for PC main memory.” [citing industry trade press, e.g., David Lammers and Ron Wilson, “Rambus DRAM Gets Intel Boost,” *Electronic Engineering Times* (Dec. 16, 1996), at 1]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. *See* *****

*****.

REQUEST FOR ADMISSION NO. 115:

Admit that in late 1996, the threat of Rambus becoming a bottleneck for DRAM design and a tollbooth for the collection of royalties was a widespread concern for DRAM vendors of main memory. [McAfee Appendix, p. 45].

RESPONSE TO REQUEST FOR ADMISSION NO. 115:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel objects to this request as vague and ambiguous because, among other things it fails to define “bottleneck,” “tollbooth,” “widespread concern,” and “main memory.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that:

Almost immediately, DRAM manufacturers expressed misgivings about the Intel-Rambus development agreement. As one executive from Mitsubishi noted: ‘It’s a mixed blessing. . . . It can help streamline standards and unify direction but if you end up with a single company controlling the fate of all DRAM suppliers, that

doesn't seem so attractive.' Indeed, the threat of Rambus becoming a bottleneck for DRAM design and a tollbooth for collection of royalties was a widespread concern for DRAM vendors of main memory, who operated in a competitive commodity market, maintained razor-thin margins, and faced unforgiving production schedules necessary to amortize huge capital investments in fabrication. . . . [citing industry trade press, e.g., Anthony Cataldo, "DRAM Makers Battle Rambus: But Intel Backs RDRAM Interface," Electronic Buyers' News (Dec. 16, 1996), at 1].

Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee's December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry's point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 116:

Admit that in late 1996, Intel's choices were basically as follows – (1) select Rambus and work with it to make needed modifications, (2) support JEDEC and the DRAM vendors in the development of DDR SDRAM, (3) join the SyncLink consortium and shape its path, or (4) develop its own new DRAM architecture. [McAfee Appendix, p. 53].

RESPONSE TO REQUEST FOR ADMISSION NO. 116:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel objects to this request as vague and ambiguous because, among other things it fails to define "Intel's choices," "DRAM vendors," "shape its path," and "develop its own new DRAM architecture." Complaint Counsel admits that the referenced expert report of Professor McAfee does note that:

Comments in the trade press in 1997 suggest that Intel's selection of RDRAM as its preferred choice for next-generation memory

may have been merely a strategy to spur memory suppliers to meet Intel's aggressive processor needs through the end of the decade, rather than an explicit endorsement of the Rambus technology. Given that Intel's choices were basically as follows – (1) select Rambus and work with it to make needed modifications, (2) support JEDEC and the DRAM vendors in the development of DDR SDRAM, (3) join the SyncLink consortium and shape its path, or (4) develop its own new DRAM architecture – Intel's support for Rambus gave it the potential to bring a new technology to market quickly while at the same time avoiding industry groups over which it did not exercise control. . . . [citing industry trade press, e.g., Steven Przybylski, "Intel Gambles on a Sure DRAM Thing," Electronic Engineering Times (Mar. 31, 1997), at 45].

Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee's December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry's point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 117:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 117:

REQUEST FOR ADMISSION NO. 118:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 118:

REQUEST FOR ADMISSION NO. 119:

Admit that the minutes of the December 3, 1996 SyncLink Consortium meeting state in part that:

“Many suppliers are paranoid over the prospect of a single customer, e.g. Intel having control of market. We can’t resist such a possibility individually. We need some united strategy.”

[HR905_130814].

RESPONSE TO REQUEST FOR ADMISSION NO. 119:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a copy of the December 3-4, 1996 minutes of a SyncLink Consortium meeting and that the document states in part, “Many suppliers are paranoid over the prospect of a single customer, e.g. Intel having control of market. . . . We can’t resist such a possibility individually. We need some united strategy.” [corrected quote] However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 120:

Admit that the minutes of the December 3, 1996 SyncLink Consortium contained the address of a “reflector” that could be used by DRAM manufacturers to communicate among themselves. [HR905_130814].

*****.

REQUEST FOR ADMISSION NO. 123:

Admit that at the January 10, 1997 Tokyo meeting of DRAM manufacturers, a Siemens executive stated that Rambus was “not acceptable.” [HR905_136982].

RESPONSE TO REQUEST FOR ADMISSION NO. 123:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be minutes from a January 14-15, 1997 SyncLink Consortium meeting and that the request correctly quotes a portion of the language from the document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 124:

Admit that one of the attendees at the January 10, 1997 Tokyo meeting of DRAM manufacturers said that “[d]epending on Intel for business is worse than getting on drugs – it’s like someone is sleeping with your wife, and they want you to pay the hotel bill!” [HR905_136982].

RESPONSE TO REQUEST FOR ADMISSION NO. 124:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be minutes from a

January 14-15, 1997 SyncLink Consortium meeting and that the request correctly quotes a portion of the language from the document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 125:

Admit that the minutes of the February 11, 1997 meeting of SLD RAM Inc. (formerly the SyncLink Consortium) stated in part that “Intel won’t change course unless Rambus fails.” [HR905_137061].

RESPONSE TO REQUEST FOR ADMISSION NO. 125:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be minutes from a February 11-12, 1997 SyncLink Consortium meeting and that the request correctly quotes a portion of the language from the document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 126:

Admit that prior to July 1996, there was no proposed standard balloted for approval by a JEDEC committee or subcommittee that included an on-chip PLL.

RESPONSE TO REQUEST FOR ADMISSION NO. 126:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the phrase “proposed standard balloted for approval” and the

term “on-chip PLL.” Subject to this objection, Complaint Counsel denies this request, as stated.

REQUEST FOR ADMISSION NO. 127

REQUEST FOR ADMISSION NO. 130:

Admit that the minutes of the March 13, 1997 JEDEC 42.3 subcommittee meeting stated, in connection with a presentation regarding dual data rate (“DDR”) technology, that “[s]ome on the committee felt that Rambus had a patent on that type of clock design. Others felt that the concept predated Rambus by decades Rambus has also told JEDEC that they do not intend to comply with JEDEC patent policies.” [JDC 002565].

RESPONSE TO REQUEST FOR ADMISSION NO. 130:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be minutes from a March 13-14, 1997 JEDEC 42.3 subcommittee meeting

document associated with that listing. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the full text of the relevant entry, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 132

Micron’s Privilege Log, which lists a March 26, 1997 e-mail from Mr. Munn, Esq. to Kevin Ryan and Terry Lee and that the request correctly quotes a portion of the language from the document associated with that listing. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the full text of the relevant entry, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 134:

Admit that Micron has listed on its privilege log an April 11, 1997 e-mail from Kevin Ryan to Terry Lee and a Micron in-house lawyer that contains a “confidential communication regarding Rambus patents.” [MPL 191].

RESPONSE TO REQUEST FOR ADMISSION NO. 134:

Complaint Counsel admits that the referenced document appears to be listings from Micron’s Privilege Log, which lists an April 11, 1997 e-mail from Kevin Ryan to Terry Lee and David Westergard, Esq. and that the request correctly quotes a portion of the language from the document associated with that listing . However, Complaint Counsel submits that this language cannot properly be understood except by reference to the full text of the relevant entry, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 135:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 135:

REQUEST FOR ADMISSION NO. 136:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 136:

REQUEST FOR ADMISSION NO. 137:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 137:

REQUEST FOR ADMISSION NO. 138:

Admit that Micron has listed on its privilege log an e-mail dated May 28, 1997 from Micron employee D. Cathey to Micron in-house counsel David Westergard containing a

relevant entry, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 140:

Admit that in 1997, there was as yet no clear industry consensus on the next generation DRAM architecture. [McAfee Appendix, p. 117].

RESPONSE TO REQUEST FOR ADMISSION NO. 140:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it fails to define the terms “clear industry consensus” and “next generation DRAM architecture.”

Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that “[i]n 1998, just months before the time Intel had slated RDRAM systems for widespread introduction, there was as yet no clear industry consensus on next generation DRAM architectures. . . .” [citing industry trade press, e.g., Andrew MacLellan, “DRAM Makers Disagree Over Future Memory Technologies,” CMP TechWeb (Mar. 9, 1998)]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 141:

Admit that over the 1997-1998 time period, despite Intel’s stated choice of Rambus for

next-generation PC main memory, industry development of DDR SDRAM and SLDRAM generally kept pace with that of DRDRAM. [McAfee Appendix, p. 65].

RESPONSE TO REQUEST FOR ADMISSION NO. 141:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it fails to define the terms “next-generation PC main memory” and “kept pace.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that “Despite Intel’s stated choice of Rambus for next-generation PC main memory, and despite the difficulties noted above, industry development of DDR SDRAM and SLDRAM generally kept pace with that of Direct RDRAM over the 1997-1998 timeframe.” [citing industry trade press, e.g., Andrew MacLellan and Jack Robertson, “SyncLink Team Eyes ’98 Launch,” Electronic Buyers’ News (June 30, 1997), at 1]. Complaint Counsel further admits that this

Professor McAfee, based on reports in industry trade press, are evidence of the truth of the matters asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it fails to define the terms “JEDEC approval” and “packaging pinout specifications.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that “[t]he production of chips was only helpful insofar as the industry agreed to specifications rigorous enough to ensure widespread interoperability and compatibility. In March of 1998, SDRAM received JEDEC approval for its packaging pinout specifications, which cleared it for a full committee vote later that year. . .” [citing industry trade press, e.g., Andrew MacLellan, “DRAM Makers Disagree Over Future Memory Technologies,” CMP TechWeb (Mar. 9, 1998)]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

*****.

REQUEST FOR ADMISSION NO. 143:

Admit that in 1997 and 1998, supplier resistance to the royalty fees and bottleneck of design control promised in a Rambus-mandated memory market manifested itself as an energized effort in the industry to establish open standards and develop alternative technologies. [McAfee Appendix, p. 49].

RESPONSE TO REQUEST FOR ADMISSION NO. 143:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint

property royalties,” and “manufactured products.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that “... that manufacturers of DRAM had a large and increasing resistance to the payment of intellectual property royalties on their manufactured products over the 1990s. With Texas Instruments already demanding royalties on fundamental DRAM patents, industry tolerance for the payment of new and additional fees was thin, particularly as selling prices for finished DRAM products declined precipitously and manufacturer margins disappeared.” [citing industry trade press, e.g., “Intel Buys Into Micron for RDRAM Assurance,” Electronic Engineering Times (Oct. 19, 1998), at 8; “Rambus on Track, DRAM Vendors Get Aggressive,” Electronic News (Sept. 21, 1998), at 16; Hugh G. Willett, “DRAM Makers Battle Rambus: Collision Course Was Inevitable,” Electronic Buyers’ News (Dec. 16, 1996), at 1]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

*****.

REQUEST FOR ADMISSION NO. 145:

Admit that DRAM manufacturers hold dozens of issued patents relating to the manufacture or use of JEDEC-compliant SDRAM devices.

RESPONSE TO REQUEST FOR ADMISSION NO. 145:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “DRAM manufacturers,” “dozens,” “relating to,” or “JEDEC-compliant SDRAM devices.” Subject to this objection, Complaint Counsel states that it lacks sufficient information to either admit or deny this request, as stated.

REQUEST FOR ADMISSION NO. 146:

Admit that DRAM manufacturers hold dozens of issued patents relating to the manufacture or use of JEDEC-compliant DDR SDRAM devices.

RESPONSE TO REQUEST FOR ADMISSION NO. 146:

Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “DRAM manufacturers,” “dozens,” “relating to,” or “JEDEC-compliant DDR SDRAM devices.” Subject to this objection, Complaint Counsel states that it lacks sufficient information to either admit or deny this request, as stated.

REQUEST FOR ADMISSION NO. 147:

Admit that DRAM manufacturers have little concern regarding the intellectual property described in request nos. 145 and 146 because of patent pools and cross-licenses between and among the DRAM manufacturers.

RESPONSE TO REQUEST FOR ADMISSION NO. 147:

Complaint Counsel objects to this request on the same grounds stated in response to RFAs 145 and 146. In addition, Complaint Counsel objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “little concern,” “patent pools,” or “cross-licenses.” Subject to these objections, Complaint Counsel denies this request, as stated.

REQUEST FOR ADMISSION NO. 148:

Admit that an industry analyst named Bert McComas gave a seminar on April 13, 1998 regarding “Rambus Strategies For DRAM Manufacturers.” [HR 905_127819; Inquest 843].

RESPONSE TO REQUEST FOR ADMISSION NO. 148:

To the extent this request seeks an admission that the quoted language is evidence of the

truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be an e-mail from Bert McComas to Farhad Tabrizi, dated April **, 1998, and a presentation entitled ***** and that the request correctly quotes a portion of the language from the document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 149:

Admit that one of the strategies described by Bert McComas at his April 13, 1998 seminar was to “tape out but do not fully productize or cost reduce DRDRAM.” [Inquest 843].

RESPONSE TO REQUEST FOR ADMISSION NO. 149:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced document appears to be a presentation entitled ***** and that the request correctly quotes a portion of the language from the document. However, Complaint Counsel submits that this language cannot properly be understood except by reference to the document as a whole, which speaks for itself. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request.

REQUEST FOR ADMISSION NO. 150:

Admit that after Mr. McComas gave his Rambus strategy seminar on April 13, 1998, he was invited by SLDRAM, Inc. to speak to SLDRAM, Inc. company executives at a meeting in Monterey, California on or about June 25, 1998. [Tabrizi, p. 175, 178; HR 905_114285].

RESPONSE TO REQUEST FOR ADMISSION NO. 150:

Complaint Counsel admits this request.

REQUEST FOR ADMISSION NO. 151:

Admit that executives from Korean and Japanese DRAM manufacturers were present for Mr. McComas's June 25, 1998 presentation to SLDRAM, Inc. company executives. [Tabrizi, p. 178].

RESPONSE TO REQUEST FOR ADMISSION NO. 151:

Complaint Counsel admits this request.

REQUEST FOR ADMISSION NO. 152:

Admit that at the June 25, 1998 presentation, Mr. McComas stated that he wanted to receive DRAM manufacturers' DRDRAM production estimates in order to create and then send to DRAM manufacturers a combined DRDRAM forecast. [Tabrizi, p. 179].

RESPONSE TO REQUEST FOR ADMISSION NO. 152:

Complaint Counsel objects to this request on the grounds that it is directed at issues as to which Judge Timony, in his January 15, 2003, order has prohibited discovery in this proceeding. Moreover, the request is not calculated to lead to the discovery of admissible evidence, for reasons stated in that order, which states in part, "While proof of price fixing by DRAM manufacturers could show that higher prices downstream would not be entirely due to Rambus' conduct, it is immaterial to the issues in this case, including whether Rambus' conduct alleged in the Complaint could tend to injure competition." On this basis, Complaint Counsel declines to admit or deny this request.

REQUEST FOR ADMISSION NO. 153:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 153:

REQUEST FOR ADMISSION NO. 154:

REDACTED.

RESPONSE TO REQUEST FOR ADMISSION NO. 154:

REQUEST FOR ADMISSION NO. 155:

Admit that after SLDRAM, Inc. became AMI, AMI attempted to provide the same service to its member companies that is referenced in Request No. 154 above. [Tabrizi, p. 180]

RESPONSE TO REQUEST FOR ADMISSION NO. 155:

Complaint Counsel objects to this request on the grounds that it is directed at issues as to

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “commercial quantities,” “RDRAM-compatible system elements,” “widely available,” “targeted introduction dates,” “Rambus’s fate,” “lay in the hands,” “cost-effective fabrication,” “sufficient volumes,” or “demand.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that:

Rambus’s development of Direct RDRAM memories capable of achieving bandwidth of 1.6 GBps and better was of course just one condition for Intel’s selection of the [Rambus] technology for PC main memory. Intel also required that commercial quantities of RDRAM and RDRAM-compatible system elements be widely available by its targeted introduction dates, which meant that much of Rambus’s fate lay in the hands of the manufacturers responsible for successfully implementing cost-effective fabrication of the products in sufficient volumes to meet demand.

Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

*****.

REQUEST FOR ADMISSION NO. 160:

Admit tha

Counsel also objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “production difficulties” or “concern.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that :

All these production difficulties notwithstanding, concerns over the proprietary, royalty-based Rambus technology had been and continued to be the primary concern of industry manufacturers and vendors. Even had there been no engineering difficulties, even had there been no austerity measures at the manufacturers, the inescapable “surcharge” associated with the use of RDRAM would have been enough to make DRAM firms leery of the Rambus solution. [citing industry trade press, e.g., “Intel Buys Into Micron for RDRAM Assurance,” *Electronic Engineering Times* (Oct. 19, 1998), at 8; “Rambus on Track, DRAM Vendors Get Aggressive,” *Electronic News* (Sept. 21, 1998), at 16].

Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. *See* *****

*****.

REQUEST FOR ADMISSION NO. 162:

Admit that in 1998, Intel became increasingly worried that RDRAM and its system elements would not be available in commercial quantities from multiple sources by Intel’s target dates. [McAfee Appendix, p. 111].

RESPONSE TO REQUEST FOR ADMISSION NO. 162:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint

Counsel also objects to this request as vague and ambiguous because, among other things, it

accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 165:

Admit that in the spring of 1999, a trade press report stated that “[c]hip companies, from NEC to Toshiba, said they will refrain from building a large amount of Direct RDRAM production capacity to avoid a possible market glut later this year.” [McAfee Appendix, p. 144].

RESPONSE TO REQUEST FOR ADMISSION NO. 165:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced expert report of Professor McAfee does include the above citation, which is a direct quote from an industry trade press article [Jack Robertson, “Japan Scales Back Rambus Ramp: Memory Makers Delay DRDRAM Expenditures,” Electronic Buyers’ News (Mar. 29, 1999), at 1]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 166:

Admit that in the summer of 1999, a Micron marketing manager told the press that he did not “realistically see how we can sell [RDRAM chips] for less than 50 percent premium any time soon.” [McAfee Appendix, pp. 130-1].

RESPONSE TO REQUEST FOR ADMISSION NO. 166:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Subject to this objection, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that:

[a]ccording to Micron’s marketing manager for DRAM, however, pricing for RDRAM was still at least twice that of standard SDRAM and was not likely to fall below a premium of 50 in the near future. This was due in part to the fact that the RDRAM die size was about 25 percent larger than that for SDRAM and that the Rambus design required more expensive packaging and specialized testing equipment. Worrying that the “biggest concern

REQUEST FOR ADMISSION NO. 167:

Admit that trade press reports in September 1999 stated that prices for Rambus memory were typically around double that of SDRAM prices. [McAfee Appendix, p. 133].

Counsel also objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “price premium” and “commercially viable.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that “[w]hat is important to take away from this discussion is the recognition that – even were the least of these estimates the actual premium hampering RDRAM – any such premium threatened the commercial viability of the Rambus architecture.” [citing industry trade press, e.g., David Lieberman, “Next-gen Memory Modules Ready to Roll,” *Electronic Engineering Times* (Feb. 1, 1999), at 83]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and

and industry participants at the outset of 1999 increasingly believed that volume supply of D-RDRAM -- a necessary but not sufficient condition to drive down the price premium associated with the Rambus technology – was at least a year away.” [citing industry trade press, e.g., Jack Robertson, “Samsung Sees Scant Interest in 600-MHz RDRAM,” CMP TechWeb (June 16, 1999)]. Complaint Counsel further admits that this language, and other similar discussions in Professor McAfee’s December 10 Expert Report of events and perspectives reported in DRAM industry trade press, provides an accurate and reliable statement relating to the industry’s point of view concerning the relative merits of alternative or competing technologies. *See* *****

*****.

REQUEST FOR ADMISSION NO. 170:

Admit that in 1999 and 2000, the failure of DRAM manufacturers to ramp up DRDRAM capacity had the potential to devastate Rambus commercially. [McAfee Appendix, p. 145].

RESPONSE TO REQUEST FOR ADMISSION NO. 170:

To the extent this request seeks an admission that the referenced language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it

trade press, provides an accurate and reliable statement relating to the industry's point of view concerning the relative merits of alternative or competing technologies. See *****

REQUEST FOR ADMISSION NO. 171:

Admit that in 1999 and 2000, the failure of DRAM manufacturers to ramp up DRDRAM capacity was in part the result of concerted action among at least some of the DRAM manufacturers.

RESPONSE TO REQUEST FOR ADMISSION NO. 171:

Complaint Counsel objects to this request on the grounds that it is directed at issues as to which Judge Timony, in his January 15, 2003, order has prohibited discovery in this proceeding. Moreover, the request is not calculated to lead to the discovery of admissible evidence, for reasons stated in that order, which states in part, "While proof of price fixing by DRAM manufacturers could show that higher prices downstream would not be entirely due to Rambus' conduct, it is immaterial to the issues in this case, including whether Rambus' conduct alleged in the Complaint could tend to injure competition." On this basis, Complaint Counsel declines to admit or deny this request.

REQUEST FOR ADMISSION NO. 172:

Admit that in the fall of 1999 and thereafter, Micron and other DRAM manufacturers were predicting that any price premium of DDR SDRAM over SDRAM would be 5% or less. [McAfee Appendix, p. 155].

RESPONSE TO REQUEST FOR ADMISSION NO. 172:

To the extent this request seeks an admission that the quoted language is evidence of the truth of the matter asserted, Complaint Counsel objects on grounds of hearsay. Complaint Counsel also objects to this request as vague and ambiguous because, among other things, it provides no definition for the terms “other DRAM manufacturers,” “predicting,” or “price premium.” Subject to these objections, Complaint Counsel admits that the referenced expert report of Professor McAfee does note that *****

*****. Complaint Counsel otherwise lacks sufficient information to either admit or deny this request, as stated.

