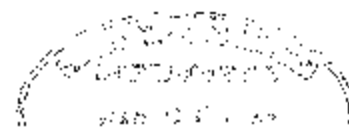


UNITED STATES OF AMERICA



MAR 12 1950

[REDACTED]

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errors" while "trying hard to 'clear the decks'" of open motions in this matter prior to his retirement in late February. Complaint Counsel asserts that Judge Timony's initial rulings were

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

held by Respondent; (2) Respondent did not commit fraud with regard to DDRAM; and (3) that Respondent did commit fraud with regard to SDRAM.

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litigation misconduct could alone justify the award of attorney fees by the district court, under

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The February 28 Order issued by Judge Timony granted Complaint Counsel's motion and permitted the requested discovery. The Order was not based on the waiver theory advanced by

§ 3.23(b). Controlling questions are "not equivalent to merely a question of law which is determinative of the case at hand. To the contrary, such a question is deemed controlling only if it may contribute to the determination, at an early stage, of a wide spectrum of cases." *In re Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 478 at *1 (Nov. 5 1996).

findings thereunder, until a plenary review by the Commission.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

CONFIDENTIAL - SECURITY INFORMATION

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

1. Collateral Estoppel Order

As stated in the February 26 Order:

Collateral estoppel applies to the same issue in a subsequent lawsuit. In this case, the issue is whether the defendant is liable for the plaintiff's injuries. The defendant has already been found liable for the plaintiff's injuries in the February 26 Order. Therefore, the defendant is precluded from relitigating this issue in this lawsuit.

[REDACTED]

[REDACTED]

[REDACTED]

The mandate of the Federal Circuit in *Infinicon II* can be read as being less than a full vacatur of the district court's factual findings as to litigation misconduct by Respondent. It is clear that where an order is not fully vacated by a circuit court's mandate, those portions which

are not specifically vacated are not overturned and remain valid. (Please See: *Chas. E. ...*)

the desired advice refers *not to prior wrongdoing*, but to *future wrongdoing*." *Haines*, 975 F.2d

87-1106 (11-18-87) (11-18-87) (11-18-87) (11-18-87) (11-18-87)

These presumptions arose as a result of the evidence of record in this matter as determined by

Judge Timony. The presumptions include:

- a. Rambus participated in JEDEC through June 1996;
- b. Through this participation, Rambus knew or should have known the JEDEC standards for RAM, as developed through June 1996, would infringe on patents held or applied for by Rambus;

Re: [redacted]

the party seeking discovery. *Vargas* did not direct that its holding is limited only to the grand jury context and inapplicable to civil proceedings. Since Judge Timony, relying on the standard in *Vargas* and the factual presumptions in the February 26 Order on Complaint Counsel's Motion

for Default Judgment, found that Complaint Counsel's Motion for Default Judgment was

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

once a party seeking discovery in a civil matter establishes a *prima facie* case that the crime-

⁴ The decision cited by Respondent. *In re M&I Business Machine Co., Inc.* 167LR 937

[REDACTED]

[REDACTED]

[REDACTED]

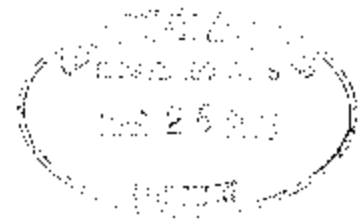
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the Court decides to deny Complaint Counsel's motion, an order will issue accordingly. If after

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of _____)
_____)
RAMBUS INC., _____)
_____)
a corporation. _____)

Docket No. 9302

11

which Respondent's (Rambus, Inc.), privilege claims were invalidated on crime-fraud grounds

errors" while "trying hard to 'clear the decks'" of open motions in this matter prior to his

relating to Respondent's participation, from 1991-96, in an industry standard-setting

The history of the United States is a complex and multifaceted one, spanning over two centuries. It is a story of exploration, discovery, and the pursuit of a better life. From the first European settlers to the present day, the United States has undergone a remarkable transformation, shaped by the actions of countless individuals and the forces of nature.

The United States is a country of many faces, each with its own unique story to tell. It is a land of opportunity, where dreams are often realized. It is a land of diversity, where people from all over the world have found a new home. It is a land of hope, where the future is always within reach.

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held by Respondent; (2) Respondent did not commit fraud with regard to DDRAM; and (3) that Respondent did commit fraud with regard to SDRAM.

The district court also awarded over \$7.1 million in attorney fees to Infineon as the prevailing party in a patent infringement suit pursuant to the authority of 35 U.S.C. § 285. The

district court based the award of attorney fees on three factors: (1) the complexity of the litigation;

litigation misconduct could alone justify the award of attorney fees by the district court, under

35 U.S.C. attorney fees are awarded solely on the basis of litigation misconduct. “(1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

documents in prior litigation involving Hynix was a "*de facto*" compelled production and that

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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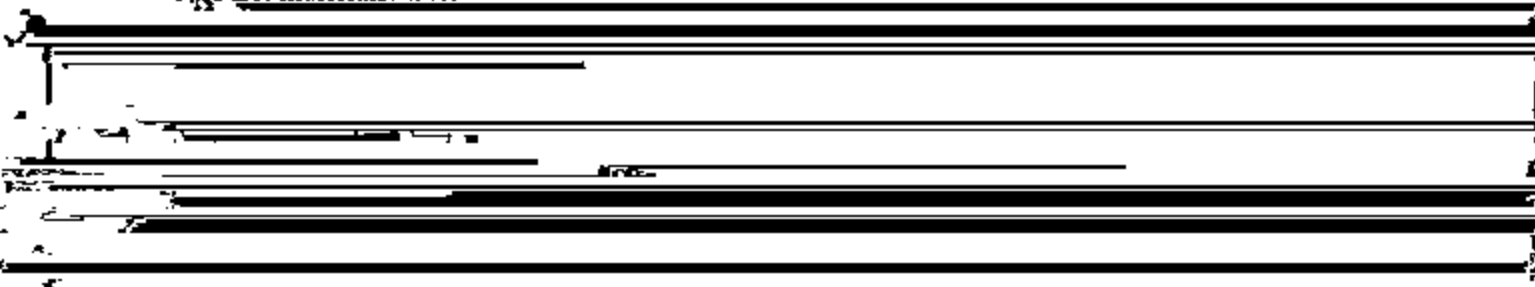
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the "administrative law judge on the scene." Moreover, an interlocutory appeal on this issue would not materially advance the ultimate termination of this dispute.



retirement on February 28, 2003. As a result, this review is not to determine whether the Court agrees with the conclusions reached in these Orders or whether it might have reached a different



1. Collateral Estoppel Order

Collateral estoppel may be used to bar a party from relitigating issues already litigated.

determinations of the trial court intact, the unreversed determinations of the trial court normally

under the present law to the facts already determined to be sufficient to meet the present need

the desired advice refers *not to prior wrongdoing, but to future wrongdoing.*" *Haines*, 975 F.2d 81 at 84 (emphasis in original) *quoting* 8 Wigmore, § 2298.

b. The February 28 Order is Not Clearly Erroneous

The foundation of the February 28 Order is comprised of four factual presumptions set out in the February 26, 2003 Order on Complaint Counsel's Motion for Default Judgment.

These presumptions arose as a result of the evidence of record in this matter as determined by

Judge Timony. The presumptions include:

- a. Rambus participated in JEDEC through June 1996;
- b. Through this participation, Rambus knew or should have known the JEDEC

the party seeking discovery. *Fargas* did not direct that its holding is limited only to the grand jury context and inapplicable to civil proceedings. Since Judge Timony, relying on the standard

fraudulent conduct that began before Respondent dropped out of JBDEC in 1996, this Court cannot conclude that the February 28 Order is clearly erroneous.

c. The February 28 Order Appears Manifestly Unjust

once a party seeking discovery in a civil matter establishes a *prima facie* case that the crime-

⁴ The decision cited by Respondent, *In re M&L Business Machine Co., Inc.*, 167 BR 937 (D. Colo. 1994), does not establish that *Vargas* does not apply to civil proceedings even within the Tenth Circuit. It fails on this point because *M&L* simply follows the reasoning of the Third Circuit.

fraud exception may apply, '[t]he importance of the privilege . . . as well as fundamental concepts of due process require that the party defending the privilege be given the opportunity to

to Respondent. "[T]he privilege [can] be given adequate protection . . . only when the [judge] undertakes a thorough consideration of the issue, with the assistance of counsel on both sides of the dispute." *Laser Industries*, 167 F.R.D. at 428.

⁵ In fact, the February 28 Order never ultimately resolved the waiver issue put forward by

d. Proceeding on the Crime-Fraud Exception Issue

Motion to Compel, it must file a supplemental memorandum, not to exceed twenty-five (25) pages, within ten (10) days of this Order. If Complaint Counsel files a supplemental memorandum, Respondent will then have ten (10) days to file a supplemental opposition

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