ATTACHMENT A

Rambus's Responses To Complaint Counsel's Corrected Version of Proposed Adverse Inferences

The adverse inferences proposed by Complaint Counsel are riddled with deficiencies. They are unsupported by any evidence in the record. They have no nexus to any documents not preserved by Rambus. Complaint Counsel fail to show that they have suffered any prejudice that would be remedied by imposition of any of the rebuttable adverse inferences. The proposed adverse inferences are argumentative, vague, ambiguous and indefinite as phrased. In many instances, they are simply wrong, and contradicted by available evidence. In other instances, they are inconsistent with what any reasonable person would think the evidence could be. The time available to draft this Attachment A has not been sufficient to set forth completely or in detail all of the deficiencies in Complaint Counsel's proposed additional adverse inferences. Further, since Complaint Counsel have made no effort to justify the inferences, show evidentiary support for the inferences, or demonstrate what nexus there is between a proposed inference and Rambus's document retention program, it has been difficult to know where to start in pointing out the deficiencies. What follows, then, is a sample, an illustration, but not a complete catalogue, of the deficiencies in the 100 additional adverse inferences proposed by Complaint Counsel. By submitting this response we do not mean to reward Complaint Counsel for their failure to carry their burden of demonstrating a nexus between each proposed adverse inference and Rambus's document retention policy or their failure to carry their burden of demonstrating resulting prejudice to Complaint

Counsel that only imposition of the inference would alleviate. Further, we do not mean to suggest by providing this response that Complaint Counsel have satisfied the standards

Proposed Adverse Inference	**Rambus's Response**
	would be a business plan.
4. From its inception, Rambus knew that the most valuable DRAM-related patents are ones that cover technologies that must be used to be in compliance with the dominant industry standard.	This is a quote, out of context, from a document Rambus produced to Complaint Counsel. One would think they would not argue that evidence to support this fact was not preserved.
5. Through most of the 1990s, Rambus's primary business strategy was to establish its proprietary RDRAM architecture as the dominant industry standard for modern DRAM devices, and then to charge high royalties for the use of RDRAM technology.	As noted above, Rambus's strategy has been fully discovered, including from Rambus and the entities with whom it dealt, and attempted to deal. The royalties it has sought, and the royalties it has been paid, have been fully discovered. "High" is ambiguous and indefinite.
6. In or around early 1992, Rambus developed an alternative plan for obtaining high royalties associated with DRAM industry standards — namely, a plan to secure patent rights over alternative standards that were emerging to compete with RDRAM, including but not limited to JEDEC's work on SDRAM standards.	This is not true. Initially, Rambus did not want to license its patents for use in any product other than RDRAM. It did not want to see its inventions implemented in ways that were not subject to Rambus's quality control and that resulted in conflicting product specifications. As we have only recently learned, [redacted]. This was a plan to survive and an effort to realize some of the value inherent in the Farmwald/Horowitz inventions. [redacted], in part because of the DOJ's desire to protect the sanctity of its investigation into DRAM manufacturer price-fixing.
7. From roughly mid-1992 through late 1999 or early 2000, Rambus simultaneously pursued two alternative strategies for obtaining patent rights over widely adopted DRAM industry standards: (1) its public strategy of achieving market success with its RDRAM proprietary technology; and (2) its private and secretive strategy of securing patent rights over	This is not true. *See* no. 6 above.

Proposed Adverse Inference	**Rambus's Response**
JEDEC's RAM standards.	
8. Rambus referred to the second strategy as "playing the IP card" against DRAM markers.	Presumably Complaint Counsel mean makers or manufacturers, rather than markers. In any event, this quote is taken, again out of context, from a document that Rambus produced. Thus, there is no basis for an adverse inference. The evidence that these words were used exists; Complaint Counsel have quoted it here.
9. Rambus's central business objective throughout the 1990s was to work aggressively toward achieving market success for RDRAM, with the understanding that it failed to succeed with RDRAM, it would "play the IP card" — i.e, assert patent claims o.25cnalaiCpet tha2rt d1v96st o.25cna75 3u38 rekrims 0.ofer26lworofeluh tverse I5(event	

Proposed Adverse Inference	Rambus's Response
up."	[redacted]. Further, this was never Rambus's strategy. Also, as noted above, Rambus's strategies have been fully discovered. It also is worth noting that a statement that a relationship "blew up" is not they type of factual finding, or factual inference, that Your Honor or any fact-finder would be likely to make.
12. Rambus's relationship with Intel did "blow up" in 1999, and the same month that this occurred Rambus shifted aggressively to its alternative business strategy of "playing the IP card" — i.e., enforcing JEDEC-related patents — against DRAM makers, and others whose products interoperate with DRAMs (e.g., chipsets).	Again, this is inconsistent with reality. *See* no. 11 above. It also has the same deficiencies as no. 11, including because of the use of the phrases "blow up," "aggressively," "playing the IP card," etc.
13. In enforcing its JEDEC-related patents against DRAM makers, Rambus was determined to charge royalties higher than the royalties that it charged for its proprietary RDRAM technology.	It is a matter of record, and discovery is fulsome and complete with regard to the royalties Rambus has charged, and the royalties it has sought to charge, in different license agreements and with respect to different licensed products. There is absolutely no reason for an adverse inference that addresses this issue.
14. Rambus set its royalties for SDRAM and DDR SDRAM devices at levels (.75% and 3.5%, respectively) that it believed would cause these products to be less competitive vis-a-vis RDRAM.	*See* no. 13 above. Further, this inference misstates the record evidence regarding what Rambus believed.
15. Thus, in asserting JEDEC-related patents, Rambus sought to achieve two primary goals: (1) collecting massive revenues off of the production of DRAMs complying with the industry-dominant JEDEC standards, and (2) reducing competition for its proprietary DRAM architecture.	Again, Rambus's business plans and other planning documents have been produced. What Rambus's goals were has been the subject of comprehensive discovery. The inference proposed by Complaint Counsel is inconsistent with the record evidence and, in any event, not justified by a failure to preserve 1) 216 0.75 8153 544.5 216 0.75 81 re f BT 72 204.75 TD (1

Proposed Adverse Inference	**Rambus's Response**
patents, Rambus also has sought to reduce or eliminate JEDEC's continuing influence over DRAM-related industry standards.	JEDEC-related documents have not been produced. Further, this proposed inference is simply wrong. Rambus's efforts to protect its intellectual property rights and to realize the value of the revolutionary inventions of Farmwald, Horowitz and others at Rambus is not in any fashion directed at JEDEC's continuing influence, unless JEDEC's continuing influence is meant to deny Rambus fair value for its inventions, prevent the superior product from succeeding in the marketplace, or [redacted].
17. Rambus joined JEDEC as part of its business strategy of obtaining high royalties for use of its technology in widely adopted DRAM industry standards.	Discovery on this issue has been comprehensive. The record evidence makes plain that this is not why Rambus joined JEDEC. As with many of Complaint Counsel's proposed adverse inferences, this one simply reflects wishful thinking.
18. Very early on in its JEDEC membership, Rambus considered the possibility of presenting its RDRAM technology to JEDEC as a proposed standard, but later concluded that this approach would be inconsistent with Rambus's licensing-based business model, inasmuch as having RDRAM standardized by JEDEC would restrict Rambus's flexibility in licensing to whomever it wished on whatever terms it wished.	On a couple of occasions, according to Gordon Kelly of IBM, Richard Crisp discussed with him the possibility of presenting RDRAM to JEDEC, but Kelly apparently was insistent that, if he did, he also needed to disclose all patent applications and other intellectual property that Rambus possessed that read on RDRAM. Further, Rambus was concerned that an effort to standardize RDRAM through JEDEC might result in JEDEC members seeking to change the design of the product in ways that Rambus did not think were desirable. Although much more could be said on this topic, it probably suffices to say that Rambus's document retention program has not impacted this issue in the least.
19. Shortly after joining JEDEC, Rambus concluded that the organization's ongoing efforts to develop specifications for a new synchronous DRAM standard would involve use of technologies that Rambus believed to be covered by its existing patent applications, or which could be covered through amendments	Complaint Counsel do not contend that any Rambus JEDEC-related documents were not preserved, and there has been comprehensive discovery as to when and how Rambus began to discover that the DRAM manufacturers were going to take Rambus's inventions and use them in products they were developing,

Proposed Adverse Inference	Rambus's Response
to such pending applications.	without any intention, it now appears, of paying a fair royalty to Rambus for that use. [redacted] There is no reason for any inferences on this subject. Rather, Your Honor should hear all of the testimony and review all of the documents on these subjects so that you will be fully advised as to how and why the DRAM manufacturers felt they could freely use Rambus's inventions.
20. From mid-1992 through the present, Rambus has engaged in efforts, in conjunction with its patent attorneys, to amend existing patent applications to cover technology features that were being discussed within JEDEC for potential use in JEDEC's RAM standards.	All of the patents and patent applications that Rambus possesses have been the subject of extensive discovery. All of the amendments to claims are a matter of record, and all of those records are available from the United States Patent and Trademark Office, as well as from Rambus. Those records and the testimony of percipient and expert witnesses makes plain that what Rambus has attempted to do in amending its claims is to fully claim the scope of its inventions, and to do so consistent with the law, including as set forth in *Kingsdown Med. Consultants, Ltd. v Hollister Inc*., 863 F.2d 867, 874 (Fed. Cir. 1988) and its progeny. There is no reason to think that any evidence that bears on this subject has not been p From

Proposed Adverse Inference	**Rambus's Response**
RAM standards.	
22. Rambus also remained in JEDEC because it knew that its presence and participation, combined with its pattern of misleading conduct, substantially increased the likelihood that JEDEC would proceed to develop DRAM-related standards incorporating technologies over which Rambus could later assert patent rights.	This is flatly wrong. There is no evidence to support it. Again, this reflects Complaint Counsel's wishful thinking. As set forth briefly in nos. 20 and 21 above, this issue – why Rambus joined and stayed a member of JEDEC – is a subject on which all the material evidence is available and there is no nexus between this issue and Rambus's document retention program.
23. Rambus knew that JEDEC was firmly committed to the principle of developing "open" standards, free to be used by anyone, and unencumbered — wherever possible — by proprietary patent claims.	Again, this is not true, either as to what Rambus understood or as to what JEDEC was committed to doing. Indeed, as drafted by Complaint Counsel, it appears they believe that JEDEC and its members conspired to avoid including patented technology in JEDEC standards, which would be contrary to state and federal antitrust and unfair competition laws, were it true. If Complaint Counsel truly believe this, as Rambus has said all along and as the Department of Justice apparently recognizes, Complaint Counsel obviously have brought the wrong case. In any event, there is no nexus between what JEDEC was committed to doing and what Rambus understood about JEDEC's commitments and Rambus's document retention policy.
24. Rambus knew that JEDEC and its members maintained a commitment to avoid the incorporation of patented technologies into its published standards.	*See* no. 23 above.
25. Rambus knew that JEDEC's rules and procedures imposed upon all participants a duty to participate in good faith.	

Proposed Adverse Inference	Rambus's Response
"open" standards that avoid the use of proprietary patents wherever possible.	
32. Rambus knew, throughout its membership in JEDEC, that JEDEC's patent disclosure rules included the duty to disclose both issued patents and patent applications.	This issue has no nexus with Rambus's document retention policy. *See, e.g.* nos. 20

Proposed Adverse Inference	Rambus's Response
standards.	
37. Rambus knew, throughout its membership in JEDEC, that a JEDEC member's duty to disclose patents or patent applications could not be avoided simply by withdrawing from the organization in lieu of disclosure.	This is the wackiest yet. There is no testimony that non-members had a duty to disclose to JEDEC or that when members left JEDEC they had some continuing duty. Judge Payne concluded that there was no duty to disclose after members withdrew from JEDEC and the Federal Circuit panel was unanimous on this point as well. That finding was the basis of Judge Payne's decision to grant JNOV on DDR-SDRAM, and also is the basis of a portion of Rambus's motion for summary decision on this same point. Rambus incorporates hereat by reference its briefs and supporting papers and evidence filed in connection with its motion for summary decision. In short, this proposed inference is flatly wrong and contrary not only to logic and reason, but to all the evidence in this case and the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra*. *See also* nos. 20-24, 29-36.
38. Rambus knew, throughout its membership in JEDEC, that by voluntarily choosing to participate as a member of JEDEC, it was impliedly committing itself to be legally bound by JEDEC's rules and procedures and all other duties and expectations normally incumbent upon JEDEC members.	What does this mean? It is vague, ambiguous, and indefinite. Further, it suggests that duties found somewhere in the ether, *e.g.*, "normally incumbent upon JEDEC members," now create legal bonds. As said so many times before, this issue has no nexus to Rambus's document retention policy. Moreover, it is wrong and conflicts with evidence in this case and aspects of the Federal Circuit's decision in *Rambus Inc. v. Infineon Technologies AG, supra. See also* nos. 20-24, 29-37.
39. Between December 1991 and June 1996, Rambus knew that various members of the JC-42.3 Subcommittee made presentations proposing to incorporate the following technologies or features into JEDEC's DRAM standards: • programmable latency via a control	This is one of Complaint Counsel's more fascinating proposed adverse inferences. At the outset, one might think that Complaint Counsel would be able to prove that various members of JC-42.3 made such presentations. Certainly the evidence of such presentations would be in the minutes of the meetings. One also might think that the companies who supposedly made such presentations would be

Proposed Adverse Inference	**Rambus's Response**
register; • programmable access latency; • a writable configuration register permitting programmable CAS latency; • the use of control registers to contain values which control RAS and CAS access timing; • the use of control registers to contain values; • auto precharge; • auto precharge options available during the column portion of any cycle; • a proposal permitting the user to specify that the bank currently being accessed precharge itself as soon as the burst is completed; • internally precharging a bank without first receiving a separate precharge command; • data output occurring on both edges of an external clock; • output of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • input of a first portion of data in response to a rising edge of a data strobe and a second portion of data in response to a falling edge of a data strobe; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal;	able to offer evidence of them, if they occurred. Why, then, do Complaint Counsel seek an inference that they occurred? They either did, or they didn't, and the evidence one way or the other is independent of Rambus's document retention program. If Complaint Counsel are seeking to determine that Rambus was aware of such presentations, then you would think that they would start by showing, through the minutes and Mr. Crisp's notes and e-mails, whether he was in attendance. Again, this evidence is available. Surely these are matters for trial.

Proposed Adverse Inference	Rambus's Response
• input of a first portion of data synchronously with respect to a first external data strobe and a second portion of data synchronously with respect to a data strobe; • output a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • use of a dual edge clocking scheme which inputs and outputs data synchronously with the rising and falling edge of an external clock; • sampling of data occurring on both edges of an external clock; • data output occurring on the rising edge of an external clock and the falling edge of the external clock; •	

Proposed Adverse Inference	**Rambus's Response**
to reduce input buffer skews; • DRAM with PLL clock generation; • using PLL on an SDRAM; and • using a DLL to compensate for the output delay.	
40. Even after withdrawing from JEDEC, Rambus closely monitored JEDEC's ongoing work on SDRAM standards, including work involving specific technologies on which Rambus sought to perfect patent rights.	This proposed inference is vague and ambiguous, particularly in its use of the phrase "closely monitored." It also is not related to Rambus's document retention program, since evidence of what Rambus monitored, just as with evidence of what technologies were invented by Rambus's founders and employees and subject to efforts to perfect patent rights to protect those inventions, is readily available.
41. From late 1991 to mid 1996, while participating in JEDEC's development of RAM standards, Rambus reasonably believed that the JEDEC RAM standards being developed at that time would require the use of patents held or applied for by Rambus.	There is substantial evidence that contradicts various portions of this complex statement, which is ambiguous and indefinite. Further, this is an issue on which there has been substantial discovery and no showing that any material evidence has not been maintained. *See also, e.g.,* nos. 19 and 39 above.
42. From late 1991 to mid 1996, Rambus reasonably believed that the following technologies or ideas, proposed for inclusion in the JEDEC RAM standards during the period of Rambus's participation in JEDEC, were covered by Rambus's then-pending patent applications or could be covered through amendments to such applications: • programmable burst length; • programmable CAS latency; • on-chip PLL or on-chip DLL circuitry; • dual-edge clock; • use of a programmable register operative to store information specifying a	Several points are easily made. First, if some or all of these features were proposed for inclusion in a JEDEC standard, Complaint Counsel should have no trouble proving that fact. *See* no. 39 above. Second, if some or all of these features were covered by Rambus's then-pending patent applications, Complaint Counsel should have no problem proving that fact – the applications are all available and

Proposed Adverse Inference	**Rambus's Response**
manner in which the semiconductor device is to respond to a read request or a write request; • use of a register to store a value to determine CAS latency, where that value can be changed by programming the mode register; • use of a programmable register to store a value that is representative of a delay time after which the device responds to a read request; • use of a programmable register to store a value which is representative of a delay time, that value being a number of clock cycles of an external clock, after which the SDRAM responds to a read request; • use of a programmable access-time register operative to store information specifying a value indicative of an access time for the device, such that the device waits for the access time before responding to a read request; • use of a register to store a value to determine burst length, where that value can be changed by programming the mode register; • use of a register to store a value to determine block size, where that value can be changed by programming the mode register; • use of a programmable register that receives information that defines an amount of data to be output by the memory device in response to a read request; • programmable block size; • use of a register to store a value that defines an amount of data to be output by the memory device in response to a read request, where that value cart be changed by programming the mode register;	show is that Rambus's beliefs changed over time. At times, for instance, Rambus thought it might have drafted claims to cover certain aspects of its inventions, only to learn later that the claims had not been drawn properly and that further work still was required.

Proposed Adverse Inference	Rambus's Response
• use of a programmable register that receives information that defines an amount of data to be input by the memory device in response to a write request; • use of a programmable register to store a value that defines an amount of data to be input by the memory device in response to a write request; • outputting data on the rising and thc falling edge of a clock signal; • outputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • inputting of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • output of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously	

Proposed Adverse Inference	Rambus's Response
with respect to both a first external clock signal and a second external clock signal; • input of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data input occurring synchronously with respect to both a first and a second external clock signal; • data input and output occurring synchronously with the rising and falling edge of an external clock, according to a dual edge clocking scheme; • inputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • outputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; - inputting a first portion o data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data input occurs synchronously with respect to both the rising edge of the external clock and the falling edge of the external clock signal; • outputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal;	

Rambus's Response
See no. 42 above.

cover technol4 DRAM; a24une) Tjn Tjvidencata.) Tt
Tj vic-0.w0.026inf0.0043t

Proposed Adverse Inference	Rambus's Response
• use of a programmable register that receives information that defines an amount of data to be output by the memory device in response to a read request; • programmable block size; • use of a register to store a value that defines an amount of data to be output by the memory device in response to a read request, where that value can be changed by programming the mode register; • use of a programmable register that receives information that defines an amount of data to be input by the memory device in response to a write request; • use of a programmable register to store a value that defines an amount of data to he input by the memory device in response to a write request; • outputting a first portion of data in response to a rising edge of a clock Signal and a second portion of data in response to a falling edge of a clock signal; • inputting of a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • output of a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the	

Proposed Adverse Inference	Rambus's Response
external clock signal and the falling edge of the external clock signal; • output of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously with respect to both a first external clock signal and a second external clock signal; • input of a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data input occurring synchronously with respect to both a first and a second external clock signal; • use of a dual edge clocking scheme which inputs and outputs data synchronously with the rising and falling edge of an external clock; • data input and output occurring synchronously with the rising and falling edge of an external clock, according to a dual edge clocking scheme; • outputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • inputting a first portion of data in response to a rising edge of a clock signal and a second portion of data in response to a falling edge of a clock signal; • outputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion	

Proposed Adverse Inference	Rambus's Response
of data synchronously with respect to a falling edge of the external clock signal; • data output occurring synchronously with respect to both the rising edge of the external clock signal and the falling edge of the external clock signal; • inputting a first portion of data synchronously with respect to a rising edge of an external clock signal and a second portion of data synchronously with respect to a falling edge of the external clock signal; • data input occurring synchronously with respect to both the rising edge of the external clock and the falling edge of the external clock signal; • outputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • data output occurring synchronously with respect to both a first external clock signal and a second external clock signal; • inputting a first portion of data synchronously with respect to a first external clock signal and a second portion of data synchronously with respect to a second external clock signal; • using a dual edge clocking scheme which inputs and outputs synchronously with which inpu TD 0 - 0 -1r7r first external which inputs and outputs synchronously wit	

Proposed Adverse Inference	**Rambus's Response**
control delays; • using a PLL/DLL circuit on a DRAM to reduce input buffer skews; • using a PLL clock generation; • using a PLL on an SDRAM; • using a DLL to compensate for the output delay in a DRAM; and • using an on-chip PLL or DLL to ensure that the data strobe and data coming off of a DRAM chip are sufficiently synchronized to the system clock so that the memory controller can capture that data.	
45. While a member of JEDEC, Rambus intended to enforce its JEDEC-related patents (and, once issued as patents, its JEDEC-related patent applications) against memory manufacturers who produced products compliant with the JEDEC RAM standards.	Again, Rambus's intentions have been fully discovered, and there is no nexus between this issue and Rambus's document retention policy. Also, what is quite clear is that Rambus sought to license its patents and had no intention to "enforce" them until companies such as Infineon, Micron and Hynix refused to take a license and instead insisted on infringing them.
46. In enforcing such JEDEC-related patents, Rambus also intended to charge high royalties.	This is duplicative. *See, e.g.,* nos. 1, 13, 14, and 17. *See also* no. 45.
47. Rambus knew that its very participation in JEDEC, coupled with its failure to make required patent-related disclosures, conveyed a materially false and misleading impression that JEDEC was not at risk of adopting standards that Rambus could later claim to infringe upon its patents.	This, again, is wrong. Since all the evidence that might bear on this issue is available, one can only assume that Complaint Counsel ask Your Honor to infer this because they know they can't prove it. Briefly, Rambus did not fail to make any required patent-related disclosures. *Rambus Inc. v. Infineon Technologies AG, supra.* Further, at no time did Rambus convey a false and misleading impression regarding the future possibility that products later manufactured might infringe Rambus patents. To the contrary, Rambus was very clear about this possibility and all the DRAM manufacturers and many other JEDEC

Proposed Adverse Inference	Rambus's Response
	members were well aware of this. The evidence we have obtained from [redacted], including the very recently obtained information from Mitsubishi, make plain that no DRAM manufacturer or other concerned JEDEC member was misled about the risk of future infringement. They took that risk knowingly, [redacted].
48. Rambus also knew that by engaging in various affirmatively misleading conduct, it was reinforcing the materially false and misleading impression that JEDEC was not at	

ressiat

48. Rambpltendislthroughct.s ng cond in

Proposed Adverse Inference	**Rambus's Response**
	ambiguous. Fourth, there is no nexus between these issues and Rambus's document retention policy. Finally, this proposed inference is largely duplicative of ones addressed earlier. *See, e.g.*, nos. 1, 13, 14, 17, 37, 45, and 47-49.
52. Rambus knew that, before and during its membership in JEDEC, it never disclosed either to JEDEC or to individual JEDEC members information sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	Politely, this is hogwash. The evidence is quite clear that JEDEC and JEDEC members knew that Rambus was likely to obtain patents on the various inventions it had made, many of which were incorporated in RDRAM, and that if these inventions, or some of them, were incorporated in products manufactured by companies which did not have a license from Rambus to manufacture those products, they might in the future infringe patents that might be issued to Rambus. [redacted] *See also* nos. 47-49 and 51 above.
53. Rambus knew that, after withdrawing from JEDEC — up until the time it began to enforce its JEDEC-related patents — it never disclosed either to JEDEC or to individual JEDEC members information sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	*See* no. 52 and all other responses cited therein.
54. Rambus knew that, in the course of making disclosures to DRAM makers and others in the context of licensing-related discussions involving Rambus's RDRAM architecture, it never disclosed either to JEDEC or to individual JEDEC members information	This is flatly not true. *See, e.g.*, no. 52 and all other responses cited therein.

Proposed Adverse Inference	Rambus's Response
sufficient to place them (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that wo uld (or might) he infringed by devices built in accordance with JEDEC standards.	

55. Rambus knew that, through availability of Rambus's foreign patents and patent applications, neither JEDEC nor individual JEDEC members could gather sufficient d)631 and pinged by devices built in accordance with JEDEC standards.

Proposed Adverse Inference	**Rambus's Response**
reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	
59. Rambus knew that the limited disclosures it made to JEDEC in a letter concerning the SynkLink technology would not have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
60. Rambus knew that nothing contained in its June 1996 JEDEC withdrawal letter would have served to place JEDEC or its members (individually or collectively) on notice of the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein.
61. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), JEDEC and its members would seek to work around Rambus's patented or patent-pending technologies.	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so.
62. Rambus knew that, if it had made proper patent-related disclosures to JEDEC (including but not limited to disclosures relating to CAS latency, programable burst length, on-chip PLL/DLL, and dual-edge clock), JEDEC and its members would have been able to revise JEDEC's DRAM-related standards to work around or avoid Rambus's	This is not true, and discovery from various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had

Proposed Adverse Inference	Rambus's Response
memory controller;	

Proposed Adverse Inference	**Rambus's Response**
• use of off-chip (on-module) DLLs; • increasing the speed at which DRAM's could operate; • interleaving data between different DIMM's onto the same data bus; • interleaving data between different banks on each DRAM onto the same data bus; • increasing the width of the data bus; • use of two or mote interleaving memory banks on-chip and assigning a different clock signal to each bank; • keeping each DRAM single data rate and interleaving banks on the module; • increasing the number of pins per DRAM; • increasing the number of pins per module; • doubling the clock frequency; • use of simultaneous bidirectional 110 drivers; and • use of toggle mode.	
69. Rambus consciously chose not to disclose to JEDEC or to JEDEC's members the fact that Rambus possessed (or reasonably believed it possessed) patents and pending patents that would (or might) be infringed by devices built in accordance with JEDEC standards, for a variety of strategic reasons, including • a desire to avoid JEDEC developing alternative standards that worked around Rambus's technology;	This proposed inference appears to be an effort to summarize much of what has gone before. Rambus, in response, incorporates its prior responses, including without limitation its responses to nos. 1, 13, 14, 17, 37, 45, 47-49, 52, 64, and 65.

Proposed Adverse Inference	Rambus's Response
• a desire to place Rambus in a position to charge high royalties in the future based on use of Rambus technologies in JEDEC-compliant devices; • a desire to avoid any limitation on its freedom to license its patents to whomever it wished on whatever terms it wished; and • a desire to use its patent leverage over the JEDEC standards to limit competition between RDRAM and JEDEC-compliant DRAM.	

70.

Proposed Adverse Inference	**Rambus's Response**
74.	[redacted]
72. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant legal risks to the enforceability of Rambus 's JEDEC-related patents.	First, there was nothing misleading about the nature of Rambus's participation, as discussed at some length above. Second, what Rambus knew about the *Dell* consent decree and the *Wang* decision (presumably what Complaint Counsel are referring to here) has been fully discovered. So, as with each of the foregoing proposed adverse inferences, there is no nexus between the proposed inference and Rambus's document retention policy.
73. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant risks that Rambus's JEDEC-related patents could be held unenforceable on grounds of equitable estoppel.	*See, e.g.*, no. 72 above.
74. Throughout most of the time it participated in JEDEC, Rambus knew that the misleading nature of its participation created significant risks that Rambus 's JEDEC-related	

Proposed Adverse Inference	**Rambus's Response**
chose to ignore legal advice to withdraw from JEDEC.	above.
78. Rambus knew that joining JEDEC as part of its business strategy of obtaining high royalties for use of its technology in widely adopted DRAM industry standards violated and subverted the purposes, rules, and/or procedures of JEDEC.	First, Rambus did not violate or subvert the purposes, rules and/or procedures of JEDEC. If Complaint Counsel think they can prove otherwise, all the evidence is available to them and unaffected by Rambus's document retention policy. There is no nexus as required by law. *See also, e.g.,* nos. 1, 13, 14, 17, 37, 45, 47-49, 52, 64, 65, 72 and 76 above.
79. Rambus knew that its efforts to amend existing patent applications to cover technology features that were being discussed within JEDEC for potential use within JEDEC RAM standards violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein, including *Kingsdown, supra,* and its progen 17, 37, 45, Tj 15d/o14.25 tedwhile0.0801 T14 Tc 0.13

Proposed Adverse Inference	**Rambus's Response**
and/or procedures of JEDEC.	
84. Rambus knew that its purpose to substantially enhance the value of its patents by not making proper patent-related disclosures violated and subverted the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
85. Rambus knew that, by remaining in JEDEC for over four years in order to glean information that would enable it to write new and amended patent claims designed to cover technologies that it knew to be, or expected would be, encompassed by JEDEC's RAM standards, it was violating and subverting the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
86. Rambus knew that, by withdrawing from JEDEC without revealing its relevant patents and patent applications, it was violating and subverting the purposes, rules, and/or procedures of JEDEC.	*See* no. 78 above and all the references cited therein.
87. Rambus ultimately withdrew from JEDEC in part because it feared its conduct at JEDEC could render its patents unenforceable on and antitrust and/or equitable estoppel grounds.	*See* no. 78 above and all the references cited therein.
88. Rambus ultimately withdrew from JEDEC in part because it feared its conduct at JEDEC could lead to an FTC antitrust enforcement action.	*See* no. 78 above and all the references cited therein.
89. Rambus ultimately withdrew from JEDEC in part because it feared that continued participation could result in limitations being imposed on Rambus's freedom to licenses its patents to whomever it wished on whatever terms it wished.	*See* no. 78 above and all the references cited therein.
90. Rambus knew that once the DRAM industry (and related industries) had adopted the JEDEC DRAM standards, the industry would become locked into those standards,	This is not true, and discovery form various JEDEC members reveals that it is not true. *See also* no. 52 and all other responses cited therein. Further, if there were better ways to

Proposed Adverse Inference	**Rambus's Response**
rendering it economically infeasible for the industry to attempt to alter or work around the standards in order to avoid paying royalties to Rambus.	accomplish the same benefits to be accomplished by using Rambus's inventions – and there are not – then JEDEC and its members would have done so. They have had ample opportunity to do so. It also is quite clear that Rambus's patents derive their value from the fundamental and revolutionary nature of the inventions that underlie them; their value is unrelated to JEDEC or its standards. Complaint Counsel's "lock-in" theory is without merit. If it had merit, they could prove it independent of Rambus. Seeking an adverse inference of facts wholly within the control of third parties, who now claim to be "locked in" because they can't find another way to go, perhaps because there aren't any as good as what Rambus invented, simply reveals the deficiencies in Complaint Counsel's case.
91. Rambus knew that manufacturers who might attempt to work around the JEDEC RAM standards could be forced to absorb potentially massive revenue losses if, as a result of modifying the JEDEC standards, their introduction of new products were delayed.	This contention, if it could be proven, would be proven by evidence from third parties. Since it can't be proven, Complaint Counsel seek an inference to this effect. For example, DRAM manufacturers don't suffer revenue losses because introduction of a new product has been delayed. Just as they have in the past, they simply keep selling the old product until they are ready to introduce the new one. In fact, DRAM manufacturers introduce new products only when forced to do so by their customers, When they say they prefer evolution to revolution, what they mean is they prefer sticking with old products and never having to improve. If Rambus had not come along with its revolutionary inventions, there would today be a huge bottleneck in data transfer rates between DRAM and CPUs, probably resulting in the sale of many more DRAMs because that would be the only way to speed up the system overall. Of course, the result for the DRAM manufacturers would be much higher revenues, because they would be selling lots more of a very slow and antiquated product. Thus, so long as they are able to band together to prevent progress in the design of

Proposed Adverse Inference	Rambus's Response
	standards whenever they choose. *See also* nos. 90 and 91 above. In any event, there is no nexus between this issue and Rambus's document retention policy.
96. Rambus knew that due to the lock-in effect, it could succeed in extracting exorbitant royalty rates from DRAM makers.	Since there is no lock-in effect, as noted above, and since Rambus's royalties are fair and reasonable, as also noted above, this is

Proposed Adverse Inference	**Rambus's Response**
	preserved. To the contrary, most of the evidence is in the possession of third parties, and to the extent the evidence is in Rambus's possession, it has been produced and Complaint Counsel rely on it.
100. Rambus knew that, by destroying massive amounts of internal business records, it could substantially increase the chances of its success in any future JEDEC-related FTC enforcement action.	*See* no. 99 above.