

reports are attached in full to the confidential Declaration of D.S. Chung in Support of Hynix's Motion for *In Camera* Treatment of Proposed Evidence ("Chung Declaration") as Exhibits A through F.

Hynix produced the reports in this action pursuant to subpoena, but not without securing the "confidential discovery material" level of protection afforded by the Protective Order Governing Discovery Material here. (*See* van Keulen Declaration, ¶ 3, Exhibit C.) Hynix also produced these reports in the related case entitled *Hynix Semiconductor, Inc., et al. v. Rambus Inc.*, United States District Court for the Northern District of California case no. CV 00-20905 RMW ("*Hynix v. Rambus*") (*id.*, ¶ 4), subject to confidential treatment pursuant to the Protective Order in that action. (*See* van Keulen Declaration, Exhibit C.)

Specifically, Hynix seeks to have the following Bates numbered pages from the Chung Declaration exhibits given *in camera* treatment:

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E	HR905_089282	HR905_089298
	HR905_089291	HR905_089299
	HR905_089292	HR905_089300
	HR905_089296	HR905_089301
	HR905_089297	

F	HR905_089272
	HR905_089273

Argument

Hynix is not a party to this proceeding. Its request for *in camera* treatment, therefore, “deserve[s] special solicitude.” (*See In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984).) Moreover, it is unlikely that a “public understanding of this proceeding” will depend on public access to these internal Hynix marketing analyses. (*Id.*)

The Chung Declaration sets forth how release of the subject reports to the public will result in “clearly defined serious injury” to Hynix. (*See Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977).) In particular, were the reports to be introduced into evidence at the hearing of this matter without *in camera* protection, Hynix’s internal analyses regarding its ongoing and future product planning and position in the marketplace would be readily available to its competitors for the first time. (*See*

outside the company except when it is produced in litigation under the protection of the *Hynix v. Rambus* or other applicable protective order. (Chung Declaration, ¶¶ 2, 4, 5, 7; van Keulen Declaration, ¶ 3.)

Second, the information is disclosed only to particular employees of Hynix on a “need to know” basis. (Chung Declaration, ¶ 4.) Although one document, Exhibit E, was shared with selected individuals employed by Rambus, Rambus is not a competitor of Hynix. It is a licensor of DRAM technology to Hynix, and at the time of receiving the information had no apparent interest in injuring Hynix’s ability to compete (thereby threatening its ability to make royalty payments to Rambus).

Third, Hynix takes substantial measures to guard the secrecy of the reports at issue, limiting their dissemination to certain employees and taking every reasonable step to protect their confidentiality in litigation. (Chung Declaration, ¶ 5, 7; van Keulen Declaration, ¶ 3.) It therefore would be extremely difficult for Hynix’s competitors to recreate the information in the reports at issue.

Fourth, the information is all highly valuable to Hynix because it is competitively sensitive. The reports set forth Hynix’s internal “roadmap” for ongoing marketing strategies, which strategies are directed to outperforming the very competitors that would use the information to harm Hynix. (*See id.*, ¶¶ 2, 3, 6.)

Conclusion

In camera treatment of the documents at issue, therefore, is appropriate. Because of the relative longevity of the value in the marketplace of the information in the reports for which Hynix seeks protection (*see* Chung Declaration, ¶ 4), Hynix requests that the documents receive *in camera* treatment for the next ten (10) years. In the alternative, Hynix requests that the

documents receive an initial three (3) years' *in camera* treatment, and that at the end of the three years Hynix be given the opportunity to request an additional period of *in camera* treatment.

Dated: April 11, 2003

Respectfully submitted,

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GmbH

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing HYNIX'S MOTION FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE was served this 11st day of April, 2003, on the following:

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