

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of )  
)

RAMBUS INCORPORATED, )  
)

a corporation. )  
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)  
)

DOCKET NO. 9302

DECLARATION OF STEVEN CAPELLA IN SUPPORT OF IBM'S MOTION TO  
COMPEL RETURN OF PRIVILEGED DOCUMENTS

I, Steven Capella, declare as follows:

1. I am currently employed at International Business Machines Corporation ("IBM") as an IP Law Attorney. I was employed in this capacity in February, 2000. I have personal knowledge of the matters set forth in this declaration.

2. I received an e-mail on February 25, 2000 seeking legal advice about [REDACTED]

[REDACTED]

responded to that e-mail on the same day. Also on the same day, Paul Coteus, an IBM employee who had been copied on the first two e-mails, sent me an e-mail on the subject being discussed. I understand that in response to a subpoena served on IBM by Rambus in this action, IBM inadvertently disclosed the second two e-mails in this string of e-mails. The bates number of the document produced is IBM/2 074975-074977.

3. The first e-mail in the string was sent to me, as well as others, for my [REDACTED]

PUBLIC VERSION

mail to be confidential. I responded to that e-mail, and copied the recipients of the initial e-mail (all of whom were IBM employees) with my response. My e-mail was intended to remain confidential and was for the purpose of providing legal advice. Paul Coteus, an IBM employee who received the first two e-mails, responded to my e-mail providing me with confidential information. I understood the purpose of Mr. Coteus' email to be so that I, and Daniel Morris, another IBM lawyer who was copied on the e-mail, could provide further legal advice in response to the initial e-mail. I understood the contents of Mr. Coteus' e-mail to be confidential, and in fact that e-mail was subject to a confidentiality agreement.

