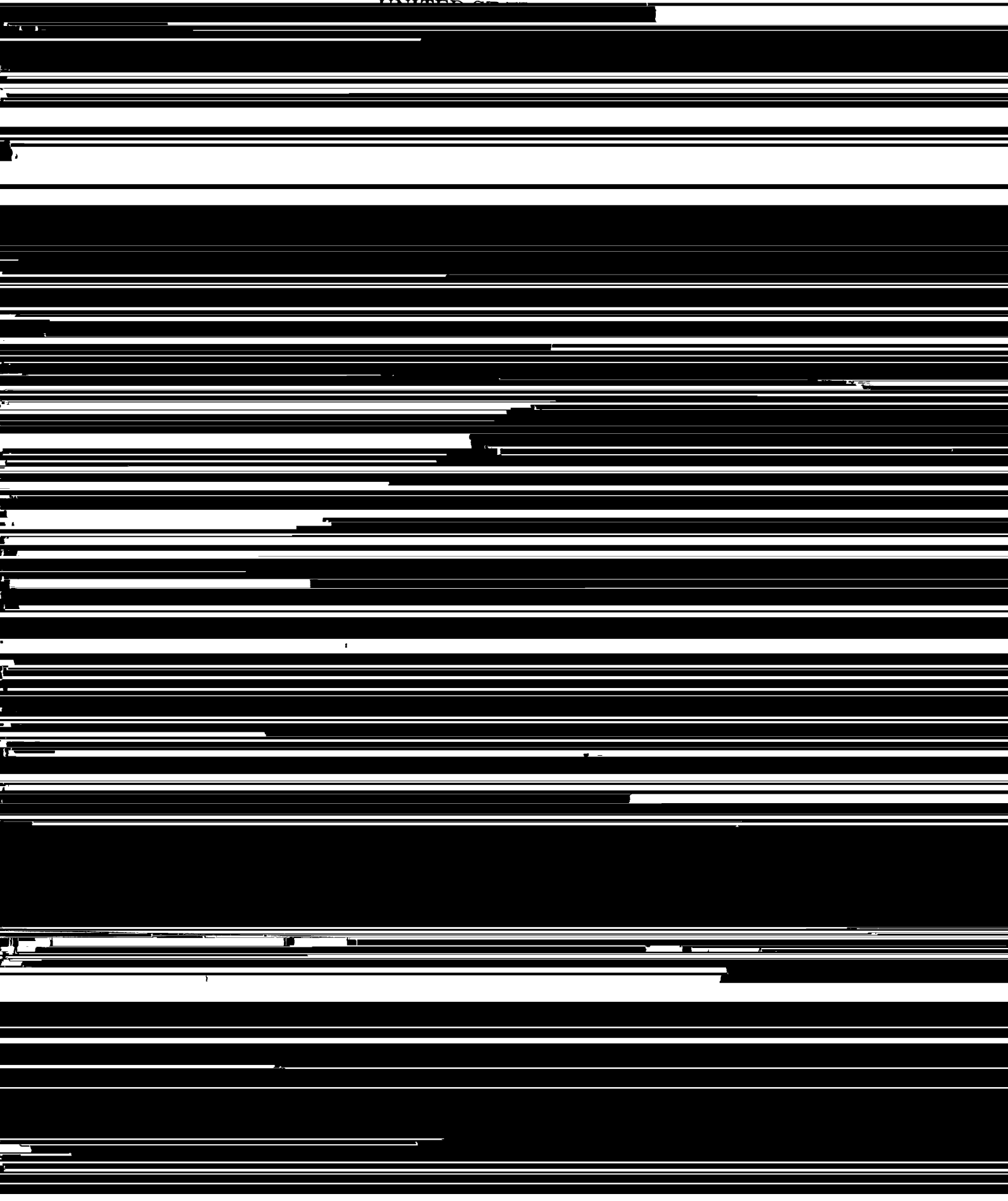distinguishable and, as detailed below, there is substantial case law, which we have

supplied to Rambus' counsel, in support of IBM's position. Finally, Rambus

IBM promptly sought the return of all inadvertently-disclosed, privileged

documents. See Kimball Decl. at ¶ 5.

Thus, IBM has attempted to resolve this matter informally with Rambus outside counsel without success. Kimball Decl at ¶ 15-16.

ARGUMENT

I. <u>The Documents Are Protected By The Attorney-Client Privilege</u>

The inadvertently disclosed documents at issue are protected by the attorney-client privilege. Confidential disclosures by a client to an attorney made in order to

privileged communication and facts that are not confidential, with the latter not

being privileged. Presumably, under Rambus' unique theory, one could ask a

witness "What non-confidential facts did you disclose to your attorney during the

course of seeking legal advice?" Likewise, each sentence in a document which
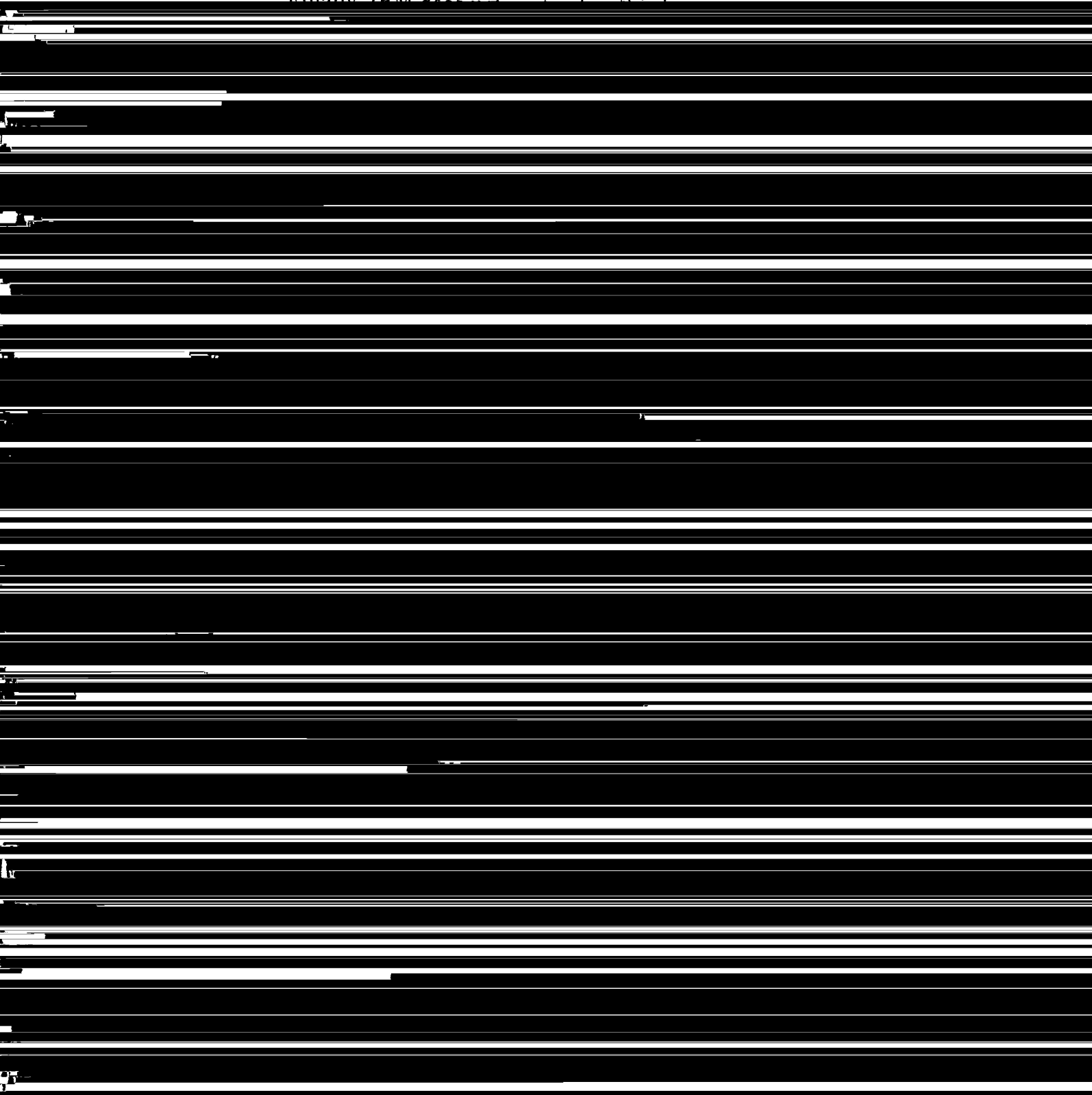
otherwise constitutes a privileged

Finally, IBM does not touch in this

further argued that while the person's state of mind may be discoverable, privileged

communications that reflect that state of mind are not. Id.

CONCLUSION

For the foregoing reasons, IBM requests that the Administrative Law

Judge enter an order compelling Rambus to return IBM's privileged documents.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By:

Corey Roush

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
RAMBUS INCORPORATED)

CERTIFICATION

I hereby certify that the electronic copy of the Motion of Non-Party

IBM to Compel Return of Inadvertently Produced Privileged Material from

Rambus, Inc. being filed with the Secretary of the Commission