

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**NOTICE OF NON-OPPOSITION BY NON-PARTY MICRON  
TECHNOLOGY, INC. TO CERTAIN CONFIDENTIALITY  
CHALLENGES**

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**I. INTRODUCTION**

Following the Court's guidance on April 29, 2003, Respondent ("Rambus") notified non-party Micron Technology, Inc. ("Micron") of its disagreement over designations that Micron assigned to twenty-one (21) documents ("Challenged Documents") that have been afforded *in camera* treatment.

Specifically, for each of these twenty-one Micron documents, Rambus challenged Micron's confidentiality designations under Section 11(a) of the August 5, 2002 Protective Order that, on April 29, 2003, the Court ruled governs Rambus's access to third party *in camera* documents used at trial. Rambus also notified Micron that it sought agreement, under Sections 7(h) and 10(b) of the Protective Order, to disclose each of these twenty-one documents to Rambus's General Counsel, John Danforth, Rambus in-house counsel, Robert Kramer and Paul Anderson, Rambus's CEO, Geoffrey Tate, and Rambus Directors, Dr. Mike Farmwald and Professor Mark Horowitz ("Rambus

Personnel”).

Micron has not responded within the time allotted under the Protective Order. By its express terms, Section 10(b) the Protective Order now permits these named Rambus Personnel access to the Challenged Documents. Likewise, under Section 11(a), Micron has not timely preserved its right to maintain its Restricted Confidential designations.

For these reasons, if any of the Challenged Documents should be discussed in Court, Rambus will ask that the Court not exclude these six Rambus Personnel from the hearing.

## **II. FACTS**

On April 29, 2003, the Court afforded *in camera* treatment under Commission Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (“Rule 3.45(b)”) to several documents produced by non-party Micron.<sup>1</sup>

On April 29, 2003, the Court also ruled that Rambus’s access to non-party *in camera* documents was governed by the terms of the August 5, 2002 Protective Order in this action, a copy of which it attached to the accompanying Declaration of Adam R. Wichman (“Wichman Decl.”), at Tab 1.<sup>2</sup>

On May 13, 2003, Rambus, consistent with the terms of the Protective Order, notified Micron in writing that it disagreed with the Restricted Confidential designations that Micron had assigned the Challenged Documents.<sup>3</sup> See Wichman Decl. ¶ 4. In the

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<sup>1</sup> Additional Order On Non-Party Motions For *In Camera* Treatment Of Documents Listed On Parties’ Exhibit Lists, *In re Rambus Inc.*, Docket No. 9302 (Apr. 29, 2003).

<sup>2</sup> *In re Rambus Inc.*, Prehearing Conf. Tr., 22:8-25:23 (April 29, 2003). In so ruling, the Court reasoned that the parties and the Court are bound by the terms of the Protective Order, and held that the Court has an obligation to protect any non-party reliance on the Protective Order restrictions continuing at trial when they produced their documents in discovery. See Prehearing Conf. Tr. at 22:11-23:8 (April 29, 2003).

<sup>3</sup> A copy of the letter is attached to the Wichman Decl. at Tab 2.

same letter, Rambus notified Micron of its intent, under Sections 7(h) and 10(b) of the Protective Order, to disclose the Challenged Documents to the named Rambus Personnel. *See* Wichman Decl. ¶ 7.

The Federal Express delivery record indicates that counsel for Micron received this letter on May 14, 2003. *See* Wichman Decl. ¶ 8.

Micron provided no response to the May 13 letter. *See* Declaration of Gregory P. Stone (“Stone Decl.”) ¶¶ 2-3.

### **III. ANALYSIS**

Section 10(b) of the Protective Order provides five business days to respond to notice of an intent to disclose Restricted Confidential or Confidential Discovery Material to new persons. *See* Protective Order, Section 10(b). “If the Producing Party [Micron] does not object to the disclosure of the Restricted Confidential ... Discovery Material [Challenged Documents] to the New Person [Rambus Personnel] within five (5) business days, the Disclosing Party [Rambus] may disclose the Restricted Confidential ... Discovery Material [Challenged Documents] to the identified New Person [Rambus Personnel].” *Id.*

Micron did not respond to the Section 10(b) notice within five business days.<sup>4</sup> Accordingly, under the plain terms of the Protective Order, Rambus may disclose these Challenged Documents to the Rambus Personnel.

Given that the Court ruled that Rambus’s access to *in camera* material will be governed by the Protective Order, Rambus files this pleading to notify the Court that Rambus’s rights with respect to these Challenged Documents have changed.

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<sup>4</sup> Based on Micron’s receipt on May 14, 2003, starting with May 15, 2003 (a Thursday), five business days from receipt expired on May 21, 2003.

In light of this development, if these documents should be used in court,

DATED: May 28

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**DECLARATION OF ADAM R. WICHMAN**

6. The Challenged Documents comprise the following exhibits in this matter:

<i>Bates range</i>	<i>CX</i>	<i>RX</i>
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ day of May, 2003, at Washington, D.C.

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Adam R. Wichman



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**CERTIFICATE OF SERVICE**

I, Adam R. Wichman, hereby certify that on May \_\_, 2003, I caused a true and correct

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**CERTIFICATION**

I, Adam R. Wichman, hereby certify that the electronic copy of *Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges; Declaration Of Adam R. Wichman In Support Of Notice Of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges and Declaration of Gregory P. Stone In Support Of Notice of Non-Opposition By Non-Party Micron Technology, Inc. To Certain Confidentiality Challenges* accompanying this certification are true and correct copies of the paper versions that are being filed with the Secretary of the Commission on May 28, 2003 by other means.

**Adam R. Wichman**  
**May 28, 2003**