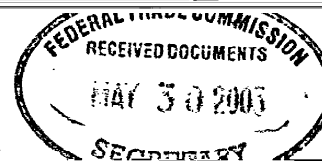


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



Public

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

**COMPLAINT COUNSEL'S RESPONSE TO CERTAIN OBJECTIONS  
BY RAMBUS TO DEPOSITION TESTIMONY BY J. REESE BROWN**

On May 13, 2003, Respondent Rambus, Inc. ("Rambus") filed a memorandum in support of objections Rambus raised relating to certain portions of testimony from the April 5, 2001 deposition of J. Reese Brown.<sup>1</sup> The deposition was taken in the *Infineon* matter and Rambus was represented at the deposition. The questions that are subject to the instant objections are questions posed by Infineon's counsel concerning Mr. Brown's understanding of the JEDEC patent policy. The sole basis of the objections is that Infineon's counsel did not show Mr. Brown JEDEC or EIA manuals concerning the patent policy.<sup>2</sup> Because showing the JEDEC or EIA manuals to a witness during a deposition is not required to obtain a witness's understanding of the patent policy, the objections should be overruled.

~~It is made clear by the testimony of other witnesses, formulaic introduction of manuals~~

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<sup>1</sup> Complaint Counsel understands that Rambus does not object to all of the April 5, 2001, testimony.

<sup>2</sup> ~~Rambus's memorandum also suggests that Mr. Brown's January 22, 2003,~~ deposition testimony in this case is inconsistent with the *Infineon* testimony. That suggestion, however, does not appear to be the basis of the objection. Nor could it be. To the extent any of Mr. Brown's testimony is inconsistent, the Court is able to accord appropriate weight to each answer.

is not required for the Court to accept testimony concerning the understanding of the JEDEC patent policy. For example, the entire direct testimony of Sam Calvin of Intel did not mention a single manual. *See* Trial Tr. Vol. , at 987-1036 (May 6, 2003). Rambus raised not one objection.

that their understanding of the patent policy derived from the presentations given by Jim Townsend. For example, Tom Landgraf, formerly of Hewlett-Packard testified as follows:

Q. How did you learn about the policy?

A. Every single meeting that I attended, the patent policy was --

We had overhead projectors, and the leadership -- the chairman of the committee would -- before we got any business started would show the patent policy and make sure it was read and understood by all of the members. That was a regular basis of operation for every single meeting.

Trial Tr. Vol. 9, at 1694-95 (May 13, 2003). Brett Williams of Micron testified:

Q. Are you familiar with JEDEC's patent policy between late 1991 and 1993?

A. Yes.

Q. Between late 1991 through 1993, how did you learn about JEDEC's patent policy?

A. Mainly by the presentations that were given at every meeting by Mr. Townsend.

Trial Tr. Vol. 4, at 771 (May 5, 2003). Rambus raised no objections to these witnesses testifying concerning their understanding of the patent policy without reference to any manual. Nor should it be allowed to do so. Complaint Counsel's allegations cover not just the written words that appear in the manuals, but also the "common understandings" of the JEDEC participants.

Mr. Brown's foundation for understanding the JEDEC patent policy without reference to

the manual is well established from his deposition. Mr. Brown began attending meetings in 1975, the year of the first meeting of the IC 47 committee. *Deposition of J. Reese Brown, Rambus v. Infineon*, (“Brown I”) at 78 (April 5, 2003). After retiring, Mr. Brown continued actively attending JEDEC meetings as a consultant until 1998. *Id.* His twenty-three years of JEDEC service are more than adequate for him to testify based on his recollection. Moreover, the 2001 testimony is quite reliable because it was taken only three years after Mr. Brown’s regular attendance at JEDEC meetings ceased and it covers the entire span of Rambus’s JEDEC membership. By contrast, much of his testimony in the 2002 deposition concerned discussion of emails and minutes with no testimony that Mr. Brown had even seen the documents he was shown. *See Deposition of J. Reese Brown, In the Matter of Rambus, Inc.*, (“Brown II”) at 30-33 (a question of testimony concerning whether Mr. Brown received or read documents created in 2000).

Mr. Brown’s understanding of the patent policy is clearly established by the substance of his testimony.

Q Can you tell me what the patent policy is?

A Well, there are two parts. One says that whenever material comes up in the committee for discussion and for voting, any members who are aware of any patent position or potential patent positions on the material should and are obligated to reveal that to the committee at that time.

Q When you say “patent positions or potential patent positions” does that mean either issued patent or pending patent applications?

A Issued patents or pending patent material.

Brown I, at 80-81. Ironically, Rambus does not object to this testimony, which contains no reference to any JEDEC or EIA manual.

Finally, Rambus has waived its objections on multiple grounds. First, Rambus was present at the *Infineon* deposition and also chose to not show any manuals to Mr. Brown.<sup>3</sup> Second, Complaint Counsel understands that approximately one hour of the April 5, 2001, Brown video deposition covering the same issues was played for the jury and accepted into

Third, in this proceeding Rambus had full opportunity to question Mr. Brown with respect to the manuals in question, but chose not to do so.<sup>4</sup> Indeed, in *this* proceeding Rambus asked the following question and received the following response:

Q Let's get a *clear* question and answer, then. How did you, Mr. Brown, come to have an understanding of the JEDEC patent policy?

A By attending the meetings over a long period of time, a portion of that as a voting member of the committee, and then after that, as a paid consultant.

Brown II at 30. Clearly, then, Rambus fully understood that there was no need to pepper Mr.

Brown with manuals in order to ascertain his understanding of the JEDEC patent policy.

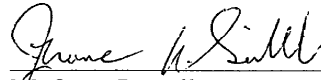
For the foregoing reasons, Rambus's objections to the selected *Infineon* transcript

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In Brown I, Rambus did ask Mr. Brown a series of questions about written information communicated "verbally." Brown I, at 128-29.

<sup>4</sup> Rambus had full knowledge at the time of the deposition that Mr. Brown likely would be unavailable for trial and that Mr. Brown's deposition transcripts in both the *Infineon* matter and this matter would be available for use in this proceeding.

Respectfully submitted,



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M. Sean Royall  
Geoffrey D. Oliver  
Jerome A. Swindell

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**COUNSEL SUPPORTING THE COMPLAINT**

Dated: May 30, 2003

**CERTIFICATE OF SERVICE**

I, Beverly A. Dodson, hereby certify that on May 30, 2003, I caused a copy of the attached, *Complaint Counsel's Response to Certain Objections By Rambus to Deposition Testimony of J. Reese Brown*, to be served upon the following persons:

by hand delivery to:


Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

and by electronic transmission and overnight courier to:

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