

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

PUBLIC

<p>In the Matter of</p> <p>RAMBUS INC.,</p> <p>a corporation.</p>
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Docket No. 9302

**COMPLAINT COUNSEL'S RESPONSE TO RAMBUS'S MEMORANDUM IN
SUPPORT TO CERTAIN OBJECTIONS TO THE DESIGNATED TESTIMONY
OF JOEL KARP**

Complaint Counsel files this memorandum in response to Respondent's Memorandum in Support of Certain Objections to the Designated Deposition Testimony of Joel Karp. In this response, we address the issues raised by Respondent relating to the admissibility of (1) Mr. Karp's prior declaration in an ITC proceeding, which has been designated as CX 2957¹ [Exhibit A] and has already been admitted into evidence by Order of this Court on May 21, 2003, and (2) Mr. Karp's prior deposition testimony in an ITC proceeding, which has been designated as CX 2051 [Exhibit B].² Rambus's objection to the declaration should be overruled because the declaration is not hearsay

¹ Pages 3 and 4 of CX 2957 are unrelated to pages 1 and 2, and should be viewed as separate documents. For the purposes of our discussion, CX 2957 refers to CX 2957-001 to CX 2957-002.

² The final paragraph of Respondent's Memorandum raises an issue regarding testimony about a trial brief filed on behalf of Samsung in the ITC matter. Complaint Counsel does not intend to offer that brief into evidence. Complaint Counsel suggests that any objections to specific portions of Mr. Karp's testimony relating to statements in the brief be ruled on by Your Honor on a case-by-case basis, as necessary, at the same time as other objections are considered. Exhibit CX 2957 was attached to the brief in question and such testimony is offered only for context. This is consistent with Your Honor's plan of action at the June 3, 2003 proceedings. See Trial Transcript - Vol. 21 (Page 4085:11-19).

and it contains relevant, material, and reliable evidence. In addition, Rambus has waived its objections by stipulating to its admissibility. Rambus's objections to the ITC transcript also should be overruled because not only is it an exhibit in Mr. Karp's subsequent depositions, its subject matter is directly relevant to the current proceedings. In addition, the ITC testimony concerns the declaration, which is not hearsay, and provides context not only about the declaration but also about Mr. Karp's JEDEC participation.

Prior to his employment at Rambus in 1997, Mr. Karp was employed at Samsung. During the 1991-1996 time frame, Mr. Karp represented Samsung at JEDEC meetings and both Mr. Karp's declaration (CX 2957) and his designated ITC deposition testimony (CX 2051) relate to his experiences as a JEDEC representative. Both Mr. Karp's declaration and testimony occurred in 1996, or relatively contemporaneously with his most recent participation in JEDEC activities. The ITC litigation involved a patent dispute between Texas Instruments and Samsung whereby Samsung asserted an equitable estoppel defense, using in part, Mr. Karp's declaration as supporting evidence.³ Mr. Karp's position in that proceeding, as stated in his signed, sworn statement, was in support of royalty-free and open standard setting. This position is diametrically opposed to Rambus's position in this proceeding.

Mr. Karp subsequently joined Rambus as Vice President of Intellectual Property in October 1997. He was either in that position, or held a consulting position, during his depositions in the Infineon, Micron and FTC matters.

³ The ITC proceeding in question was *In the Matter of Certain Electronic Products, Including Semiconductor Products Manufactured by Certain Processes*, Case No. 337-TA-381.

In its supporting Memorandum, Rambus makes two arguments that it believes supports the exclusion of the ITC documents from these proceedings. First, Rambus seeks to exclude the ITC declaration (CX 2957) under Federal Rules of Evidence Rule 801, the “hearsay rule.” Second, Rambus contends that the provisions of 16 C.F.R. § 3.33(g)(1)(ii) bar the admissibility of CX 2051, which is Mr. Karp’s ITC deposition from

TD February 7, 1996. For the following reasons, Complaint Counsel submits that Rambus’s Co0.04F64 -27.6

arguments are without merit. As Complaint Counsel details below, CX 2051 and CX 2957 were discussed at length in the Infineon, Micron, and FTC matters when Mr. Karp *was represented* by Respondent. Complaint Counsel seeks to admit only those portions of Mr. Karp’s ITC testimony that relate to the same subject matter raised in his declaration and in the later depositions. Further, CX 2957 – a signed, sworn statement that may be contradicted by Mr. Karp’s present testimony – was admitted by Order of this later depositions. 224 0 Tl.5 Tw r. ite

question Mr. Karp on this subject matter at the time Mr. Karp was a managing agent of Rambus on the ground that it had been covered in the prior deposition testimony, Respondent now seeks to bar the admission of the very same testimony from the earlier deposition.

1. Mr. Karp's ITC Declaration (CX 2957)

Respondent seeks to exclude the ITC declaration (CX 2957, Bates number SEC00049 to 52) under Federal Rules of Evidence Rule 801.⁵ However, by Order of this Court on May 21, 2003, this document is already in evidence. *See* Exhibit JX-A at 4 and Trial Transcript - Vol. 14 (Page 2603:7-12). Counsel for Rambus did not object when this document was offered into evidence. Respondent even stated that it would not raise any issues regarding the admissibility of these exhibits. *See* Trial Transcript - Vol. 14 (Pages 2597:20 to 2604:5). Specifically, at page 2598 of the Trial Transcript, Gregory Stone (Respondent's lead trial counsel and the attorney who defended Mr. Karp's FTC deposition), informed the Court that Rambus "will not contend on the appeal of this matter at *any level* that the exhibits that are the subject of that stipulation were improperly admitted." Trial Transcript - Vol. 14 (Page 2598:2-5). Exhibit CX 2957 – which is subject to the current Memorandum – was one of those exhibits so listed in the stipulation.

Respondent apparently seeks to vitiate not only an Order of this Court but also its prior agreement with Complaint Counsel regarding the admissibility of certain exhibits – an agreement for which Complaint Counsel bargained in good faith and for which it

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relinquished many objections

and reliability under the Commission's rules of practice, 16 C.F.R. §

2. Mr. Karp's Prior ITC Transcript (CX 2051)

Rambus contends that the provisions of 16 C.F.R. § 3.33(g)(1)(ii) bar the admissibility of Mr. Karp's ITC testimony from August 7, 1996 (CX 2051, Bates number F-SEC 03068 to 112) in its entirety since Mr. Karp was not a "managing agent" at the time of the deposition.⁸ On the contrary, Complaint Counsel is not seeking to admit the deposition in its entirety but only those portions of the deposition that directly relate to the subject matter later discussed in the Infineon, Micron and FTC depositions when Mr. Karp was a "managing agent" and represented by Rambus. The designated testimony should be admitted under 16 C.F.R. § 3.33(g)(1)(ii) since Respondent was "present" and in fact "represented" Mr. Karp in subsequent depositions when specific questions relating to the ITC deposition arose. Respondent not only had an opportunity to defend Mr. Karp but actually deferred to, and in fact objected to, repeating any duplication of the prior testimony on this subject matter. This designated ITC testimony taken in August 1996 is much closer in time to Mr. Karp's actual participation at JEDEC and more probative than his subsequent testimony. It is useful not only to understand the ITC declaration (CX 2957), discussed above, but to more fully understand the later Infineon, Micron, and FTC deposition testimony. CX 2051 is "clearly relevant, material, and reliable evidence" under 16 C.F.R. § 3.43 (b)(1), therefore it should be admitted.

Respondent is correct that Mr. Karp's prior ITC deposition transcript, CX 2051, pre-dates his employment at Rambus. Your Honor ruled previously that Mr. Karp's prior testimony be admitted to the extent that he was a "managing agent" at the time of his

⁸ The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association which is a party, or of an official or employee (other than a special employee) of the Commission, may be used by an adverse party for any purpose. 16 C.F.R. § 3.33(g)(1)(ii).

prior depositions. (*See* Prehearing Conf., April 28, 2003 (Page 97:1-6).) The ITC transcript at issue, while taken when Mr. Karp was not an employee or managing agent of Rambus, was often referred to in Mr. Karp's subsequent depositions and was an exhibit at both his April 9, 2001 Micron deposition ("August 7th, 1996 deposition" or "1996 deposition")

Rambus. Complaint Counsel limited its designations to approximately ten pages of testimony from the 43-page transcript.⁹ These very narrow designations directly relate to the same subject matter subsequently discussed in the later Infineon, Micron, and FTC depositions and more specifically, to CX 2957, as discussed above. Respondent has counter-designated an additional five pages of testimony, assuming its general objection to the admission of this transcript is overruled.¹⁰ For example, some of the highly

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3. Conclusion

For the reasons mentioned above, the Court should not reconsider its admission of the ITC declaration, CX 2957, and should not exclude the designated testimony from Mr. Karp's ITC deposition, CX 2051.

DATED: June 5, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charlotte Manning, hereby certify that on June 5, 2003, I caused a true and correct copy of the Public Version of *Complaint Counsel's Response tss Response*