

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RESPONDENT RAMBUS INC.'S MOTION
FOR IN CAMERA TREATMENT OF CERTAIN
TRIAL EXHIBITS AND DEMONSTRATIVES**

I. INTRODUCTION

Respondent Rambus Inc. (“Rambus”) moves for *in camera* treatment of certain trial exhibits and demonstratives introduced under a provisional *in camera* ruling last week. Rambus also includes in this motion a summary of draft license terms, and four financial forecasts, that were inadvertently omitted from earlier motions seeking *in camera* protections of Rambus’s sensitive business information.

As described more fully below and in the accompanying Declaration of Robert Eulau (“Eulau Decl.”), Rambus’s Chief Financial Officer (“CFO”), each exhibit and demonstrative contains current, highly-sensitive, non-public information that would cause Rambus serious competitive injury if published in this proceeding. In response to

FOR THE UNITED STATES OF AMERICA
FILED
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20540
BY: [Signature] DATE: [Date]

II. BACKGROUND

The documents that require *in camera* treatment fall into four general categories:

A) license agreements; B) settlement letters; C) financial forecasts; and D) trial demonstratives reporting SDR/DDR patent license terms.¹

A. License agreements

Two exhibits – CX1680 (Tab 1)² and CX1681 (Tab 2) – are current Rambus patent license agreements for SDRAM and DDR SDRAM memories and controllers (“licenses”).³ A third exhibit – RX2124 (Tab 3) – summarizes draft license terms to new Rambus products that are not involved in this proceeding.

B. Settlement letters

Three letters, each granted provisional *in camera* treatment during Professor McAfee’s examination, were exchanged as part of settlement discussions between Rambus and Infineon. The first, dated January 31, 2001, was entered as RX2307 (Tab 4). The other two, each dated February 9, 2001, were marked as CX3111 (Tab 5) and CX3112 (Tab 6).⁴

C. Financial forecasts

Four exhibits – CX527 (Tab 7), CX528 (Tab 8), CX529 (Tab 9), and CX530 (Tab 10) – are nearly identical copies, or slightly modified versions, of an internal Rambus

¹ Because these documents contain highly-sensitive, Rambus confidential information, they are filed in a separate confidential appendix.

² Tab references indicate the document’s location in the simultaneously filed confidential appendix.

³ The Court granted these two exhibits provisional *in camera* treatment at the beginning of the hearing on June 25, 2003.

⁴ Complaint Counsel originally marked these documents as CX3092 (RF0203604) and CX3093 (RF0203605-06). On June 30, 2003, Complaint Counsel marked – and the Court entered – RF0203604 as CX3111, and RF0203605-06 as CX3112.

financial document providing forecasts, operating budgets and market share estimates for current Rambus products, extending through 2005 (“financial documents”).

D. Demonstratives

The Court afforded three demonstratives – DX228 (Tab 11), DX242 (Tab 12), and DX244 (Tab 13) – provisional *in camera* treatment during Professor McAfee’s examination. These demonstratives report confidential Rambus license terms.

The sensitive and confidential nature of each of these documents is described in the accompanying, non-public Declaration of Robert Eulau.

III. ARGUMENT

A. Standard.

The documents that are described in this motion clearly warrant *in camera* treatment as provided by Commission Rule 3.45(b), 16 C.F.R. § 3.45(b).

As set forth in *General Foods*

properly acquired or duplicated by others. *See Bristol-Myers*, 90 F.T.C. 455, 456, 1977 FTC LEXIS 25, at *4-5 (Nov. 11, 1977) (citing *Restatement of Torts* § 757, cmt. b at 6 (ALI 1939)).

Using these criteria, the Court should afford *in camera* treatment to the documents in question so that Rambus does not needlessly suffer serious competitive injury from their disclosure in this action.

B.

containing Rambus financial forecasts with much the same information at issue here.⁶

The Court similarly afforded *in camera* treatment to financial and market-related information of third parties.⁷

2. The documents are not widely known.

The information contained in these documents has limited circulation. It is not widely known even within, let alone outside of, Rambus. *See* Eulau Decl. ¶¶ 13-16, 24-29, 33-34 (license agreements), ¶¶ 39-42, 45 (settlement letters), ¶¶ 46-47, 49-50, 52 (financial forecasts), and ¶¶ 13-16, 24-29, 54-58 (demonstratives). Rambus expends significant effort to guard the secrecy of the information in these documents. *Id.*; *see also* Eulau Decl. ¶ 10.

3. The information is highly valuable to Rambus, its competitors, and its existing or future licensees.

The information in these documents is highly valuable to Rambus, to its business partners, and – if disclosed in this proceeding – to Rambus’s competitors or future business partners. *See* Eulau Decl. ¶ 9; ¶ 12, 15, 17-23, 31-33, 35 (license agreements), ¶¶ 38-39, 42-44 (settlement letters), ¶¶ 47, 50-52 (financial forecasts), and ¶¶ 12, 15, 17-23, 54-57 (demonstratives).

For example, because the license agreements, settlement letters and demonstratives contain Rambus’s business partner cost information, it would be inappropriate to publish – to all of these licensees’ competitors – the royalty costs and

⁶ *See, e.g.*, CX531, CX557, CX563, CX564, CX566, CX567, CX610, CX611, CX612, CX617, CX629, CX632 and CX633 (Rambus forecasts, projected operating expenses, estimated royalty revenues, and projected market shares).

⁷ *See, e.g.*, Order On Non-Parties’ Motions For *In Camera* Treatment Of Documents Listed On Parties’ Exhibit Lists, *In re Rambus Inc.*, No. 9302 (Apr. 23, 2003) (Slip Op.); Additional Order On Non-Party Motions For *In Camera* Treatment Of Documents Listed On Parties’ Exhibit Lists, *In re Rambus Inc.*, No. 9302 (Apr. 29, 2003) (Slip Op.).

royalty structures that they hold with Rambus.

4. The information could not easily be acquired by others.

The contents of these exhibits could not easily be acquired by others. *See* Eulau Decl. ¶ 10; ¶¶ 13-16, 18, 24, 28, 33-34 (license agreements), ¶¶ 39-42 (settlement letters), ¶¶ 46, 48-50 (financial fo

Rambus will incorporate into existing and future licenses, the contents of RX2124 will

DATED: July __, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James M. Berry, hereby certify that on July ____, 2003, I caused a true and correct copy of *Respondent Rambus Inc.'s Motion for In Camera Treatment of Certain Trial Exhibits and Demonstratives* be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge

M. Sean Royall, Esq.

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