

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**RESPONDENT'S MEMORANDUM IN SUPPORT
OF PROFESSOR TEECE'S TESTIMONY
REGARDING ROYALTY RATES**

On July 24, 2003, just a few minutes before Respondent's expert Dr. David Teece took the stand, Complaint Counsel rose to object to Dr. Teece's testimony regarding royalty rates on relevance grounds. Respondent submits this memorandum in support of that testimony.

The exclusion order sought by Complaint Counsel is unwarranted and would be highly prejudicial to Respondent. Complaint Counsel have known of Dr. Teece's testimony for many months, as it is set out in detail in Dr. Teece's January 9, 2003 expert report. Although Complaint Counsel moved *in limine* to exclude other portions of Dr. Teece's testimony, their motion did not mention his testimony on royalty rates. A motion to exclude an entire area of testimony should be made on notice, so that the opposing party may be heard.

Complaint Counsel's objections are not just untimely and procedurally unfair, they are meritless. Complaint Counsel have asserted that royalty rates outside of the semiconductor industry are irrelevant to the question of whether Rambus's SDRAM and DDR SDRAM royalty rates are reasonable. Complaint Counsel are flatly wrong. It is well settled that courts are permitted to and should look to broad surveys of royalty rates in determining the "reasonableness" of a particular rate. In *Ventura v. Titan Sports*, 65 F.3d 725 (8th Cir. 1995), for example, a plaintiff's expert "based his opinion as to the reasonable royalty" of the plaintiff's property "upon a survey of thousands of licensing agreements." The court of appeals in *Ventura* upheld the introduction of the expert's testimony. *Id.* See also *Bose Corp. v. JBL, Inc.*, 112 F.Supp.2d 138 (D. Mass. 2000) (holding that reasonable royalty in patent case was 7% based in part on survey that stated that 5-10% was "the average range in the consumer electronics area.").

Complaint Counsel's challenges to Dr. Teece's testimony go to the weight to be given that testimony, and should not be the basis for a broad exclusion order, especially given that Complaint Counsel have sat on their objections for months. The objections should be overruled.

DATED: July 24, 2003

Respectfully submitted,

Gregory P. Stone
Steven M. Perry
Peter A. Detre
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
(213) 683-9100
(213) 687-3702 (facsimile)
(202) 663-6158
(202) 457-4943 (facsimile)

A. Douglas Melamed
Kenneth A. Bamberger
Jacqueline M. Haberer
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Sean C. Cunningham
John M. Guaragna
GRAY, CARY, WARE & FREIDENRICH
LLP
401 "B" Street, Suite 2000
San Diego, California 92101
(619) 699-2700

Attorneys for Respondent Rambus Inc.

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CERTIFICATE OF SERVICE

I, Patrick E. Odell, hereby certify that on July 24, 2003, I caused a true and correct copy of *Respondent's Memorandum In Support Of Professor Teece's Testimony Regarding Royalty Rates* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission, Room H-112
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Donald S. Clark, Secretary
Federal Trade Commission, Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Richard B. Dagen, Esq.
Assistant Director, Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

M. Sean Royall, Esq.
Deputy Director, Bureau of Competition
Federal Trade Commission, Room H-372
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Malcolm L. Catt, Esq.
Attorney
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

Patrick E. Odell