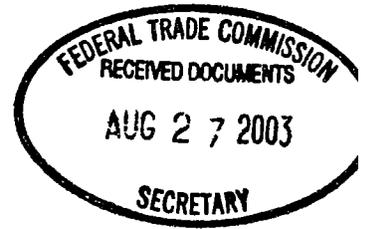


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of )  
)

RAMBUS INCORPORATED, )  
)

Respondent. )  
)

Docket No. 9302

**ORDER ON RESPONDENT'S REQUEST FOR OFFICIAL NOTICE**

**I.**

On July 28, 2003, Respondent Rambus, Inc. filed a Request for Official Notice. Complaint Counsel filed its opposition on August 5, 2003. On August 8, 2003, Respondent filed

a motion for leave to file a reply brief and its reply brief. Respondent's motion for leave to file a reply brief is **GRANTED**. For the reasons set forth below, Respondent's request for official notice is **GRANTED in part and DENIED in part**.

**II.**

Respondent requests the Court to take official notice of 28 issued United States patents

that the Commission “has established through its ‘accumulated knowledge and experience.’”  
Complaint Counsel Opposition at 2. Complaint Counsel further objects to Respondent’s attempt  
to use official notice to seek admission of the patents into evidence.

**III.**

Commission Rule of Practice 3.43(d) states: “When any decision of an Administrative

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent's request for admission of these patents into evidence, "by means of official notice," (Reply at 9) is untimely and inappropriate. As plainly stated by the Commission Rule, official notice relates to "a material fact not appearing in evidence." 16 C.F.R.

[REDACTED]

[REDACTED]

[REDACTED]

§ 3.43(d). See also *Sykes v. Apfel*, 228 F.3d 259, 272 (3<sup>rd</sup> Cir. 2000) (judicial notice as a method to recognize facts that are *outside of* the evidentiary record) (emphasis added); *York v. AT&T Co.*, 95 F.3d 948, 958 (10<sup>th</sup> Cir. 1996) ("Judicial notice is an adjudicative device that alleviates the parties' evidentiary duties at trial, serving as 'a substitute for the conventional method of taking evidence to establish facts.'" (citation omitted). Even if official notice were taken of the substance of the 28 patents, this would not result in the admission of the evidence. See *Winn*

[REDACTED]