

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

**PUBLIC VERSION**

**In the Matter of**

**RAMBUS INC.,**

**a corporation.**

**Docket No. 9302**

**COMPLAINT COUNSEL’S REQUEST FOR LEAVE TO FILE THE ATTACHED  
SUBMISSION REGARDING COMPANY ATTENDANCE  
AT SYNCLINK AND JEDEC 42.3 MEETINGS**

During final argument, on October 6, 2003, Your Honor asked the parties to try to reach agreement on the number of “individuals from JEDEC 42.3 on average [who] may have also attended the other meetings of SyncLink.” (Final Argument, Tr. 11753). The question arose in response to an argument made by respondent that, in the “but-for world,” the result of a proper disclosure to JEDEC could be predicted by examining what the various SyncLink-related organizations had done in response to Richard Crisp’s disclosure to the IEEE SyncLink meeting in August of 1995.<sup>1</sup> Although Complaint Counsel strongly disagrees that this argument is correct (in particular, it seems clear from the record that the “disclosure” made by Mr. Crisp to IEEE SyncLink was inadequate to notify that committee what technologies in their proposed standard

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<sup>1</sup> As Mr. Perry stated during final arguments, “SyncLink matters because it shows us the but-for world. . . . It shows us the but-for world because it's the same people. The SyncLink Consortium is the same companies, the same individuals that were at JEDEC meetings, the same engineers in many respects, and the SyncLink members surely know of likely infringement claims by Rambus.” (Tr. 11676-77).

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<sup>2</sup> An additional problem with Respondent’s “but-for world” analysis is that notwithstanding the actions of the standard setting organizations relating to Synclink, the DRAM industry never adopted the standards that resulted from those organizations.

<sup>3</sup> Your Honor anticipated the difficulty the parties would have in reaching an agreed upon number of individuals in response to your question. As Your Honor stated during final argument, “If you can agree on something, fine. If you can’t, that’s fine, too.” (Final Argument, Tr. 11753-54).

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<sup>4</sup> Complaint Counsel's evaluation of the record indicates that at least eight of the companies listed in Respondent's October 28 Submission sent only representatives to JEDEC who had

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Witnesses testified that, because of this and other differences, they did not believe that Rambus patent rights would cover the latter architecture. CCFF 1571.

<sup>6</sup> A good example of this strategy is illustrated by footnote 2 of Respondent's October 28 Submission where it argues that "the possibility that Rambus would have intellectual property covering SyncLink devices was raised at SyncLink and SLD RAM Inc. meetings long after August 1995," supporting that assertion only with another that "the July 1997 SLD RAM Inc. meeting minutes state that 'Rambus will sue' SyncLink members for patent infringement. (RX 966 at 3)." Respondent fails to note that none of the witnesses asked about this portion of the minutes recalled that statement being made (*see* Lee, Tr. 7010 ("Q. Do you remember somebody making that statement at this meeting, Rambus is going to sue people? A. No, I don't."); Rhoden, Tr. 1256-1257), and that even the author of the minutes did not testify that such a statement had been made in the meeting but simply that the minutes reflected *his understanding* that "in July 1997 there were SyncLink consortium members that were concerned that Rambus would sue individual companies for patent infringement based on the SyncLink device." (Cust. Inv. Dir. 930319304) ~~Respondent's Reply to the author of the minutes,~~

Your Honor's question related to the argument made by Respondent that (1) some standard-setting organization standardized technologies that were subject to a disclosure by Rambus, and that (2) a number of participants of JEDEC also attended meetings of this other organization, so that (3) JEDEC, in the but-for world, would have acted the same way had Rambus disclosed. Therefore, it seems to Complaint Counsel that the appropriate response to Your Honor's question would be a list of those who acted the way Rambus alleges regarding Synlink and who also attended JEDEC meetings. The list should therefore contain the names of all those who attended JEDEC in the relevant time period, who had also standardized a technology that was at least arguably subject to Richard Crisp's "disclosure" at IEEE Synlink. That list is attached.

Respectfully submitted,

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DATED: October 28, 2003

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REGARDING COMPANY ATTENDANCE  
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Complaint Counsel submits the following information regarding overlapping attendance at SyncLink and JC 42.3 meetings. The first item describes the attendees of the IEEE Synclink meeting where the Rambus disclosure occurred. The following items identifies the overlap between that meeting and subsequent JEDEC meetings through 1997.

1. **IEEE RamLink/Synclink Workgroup 3E**

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