FEDERAL TRADE COMMISSION

I N D E X (PUBLIC RECORD)

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
JAMES L. McGRATH	9239	9268		
DAVID GUSTAVSON	9277	9312	9317	

EXHIBITS	FOR ID	IN EVID	WITHDRAWN
CX			
0044		9270	
2338		9239	
RX			
579		9312	
593		9302	
675		9297	
676		9294	
1073		9259	
1931		9262	
JX			
None			
DX			
None			

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

In the Matter of:)

Rambus, Inc.) Docket No. 9302

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THURSDAY, JULY 17, 2003

9:30 A.M.

TRIAL VOLUME 44

PART 1

PUBLIC RECORD

BEFORE THE HONORABLE STEPHEN J. McGUIRE

Chief Administrative Law Judge

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C.

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P R O C E E D I N G S

JUDGE McGUIRE: This hearing is now in order. Before we get started this morning, counsel on the items we need to take up. Mr. Royall.

MR. ROYALL: Thank you, Your Honor. As you know, I wasn't here yesterday, but Mr. Oliver asked me to come in and deal with something that was left open yesterday. This concerns CX 2338. We wanted to offer a selection of pages as separate admissions. The first would be pages 54 through 76 of CX 2338 and, secondly, pages 77 through 82. And it's our understanding he wanted me to confirm this with you, Your Honor, no portion of this is in camera.

JUDGE McGUIRE: That's correct. That was our understanding from yesterday.

MR. CATT: I think Mr. Perry has something relating to the same document.

JUDGE McGUIRE: Mr. Perry.

MR. PERRY: We have no objection to those, but we would also offer in additional pages from CX 2338. We would offer in pages 32 through 53, which is entitled "Rambus DRAM Strategy," and pages 128 through 140, which is entitled "Hyundai DRDRAM Project Proposal from August '99." And I wanted to note for the record that pages 130 and 137 through 138 are in fact in

camera, although no portion of those was used yesterday.

JUDGE McGUIRE: Okay. Mr. Royall, any opposition?

MR. ROYALL: No, we have no objection.

JUDGE McGUIRE: If not they will be all entered at this time.

(CX Exhibit 2338, pages 32 through 53, pages 54 through 76, pages 77 through 82, and pages 128 through 140 were admitted into evidence.)

At this time the respondent may call its next witness.

MR. STONE: Thank you, Your Honor.

At this time we would call Mr. James McGrath.

JUDGE McGUIRE: Mr. McGrath, if you would please approach and be sworn by the court reporter.

Whereupon--

JAMES L. McGRATH

a witness, called for examination, having been first duly sworn, was examined and testified as follows:

JUDGE McGUIRE: You may have a seat right there, Mr. McGrath.

DIRECT EXAMINATION

BY MR. STONE:

Q. Good morning.

A. Good morning.

Q. Would you state your full name for the record, please?

A. James L. McGrath.

Q. What part of the country do you reside in, Mr. McGrath?

A. Bloomingdale, just outside of Chicago.

Q. Where are you currently employed?

A. Molex.

Q. What kind of business is Molex in?

A. Molex makes interconnects, electronic connectors for computers, telecom.

Q. Are they involved in any way with the business of DRAMs?

A. We don't make DRAMs. We make connectors that accept modules with DRAMs on them.

JUDGE McGUIRE: Can I interject here just so I understand, how is that spelled, Molex?

THE WITNESS: M-o-l-e-x.

JUDGE McGUIRE: I'm sorry, Mr. Stone, go ahead.

BY MR. STONE:

Q. Are you here pursuant to a subpoena, Mr. McGrath?

A. Yes, I am.

Q. Let me go back a little bit and get a little

bit of your background, if I might.

Could you just briefly tell us your educational background?

A. I've got a BS in Engineering Mechanics from the University of Illinois, and a Master's in Management from Kellogg Northwestern.

Q. And when did you first start full-time employment?

A. In 1970.

Q. And what was your first employment?

A. I worked for Illinois Power Company.

Q. And how long were you there?

A. I was there just a short time when I was asked to come and serve my country, so that kind of interrupted that employment.

Q. After your time in the service did you resume full-time employment in the private sector?

A. Yes, I did.

Q. What did you do then?

A. When I came back I worked for a company called Reliable Electric Company in Franklin Park, Illinois.

Q. How long were you there?

A. About three-and-a-half years.

Q. What was your next employment?

A. I moved to a company called TRW Power

Connectors. I stayed there for about two years until TRW ended up closing that division.

Q. And then what did you do after that?

A. I moved to a sister company, TRW Cinch Connectors, and I stayed there for about 13 years.

Q. Then what after that?

A. In 1987 I moved from Cinch to Molex, where I'm still employed.

Q. What was your first position at Molex?

A. Product manager.

Q. After that did you receive a further promotion?

A. I received a series of -- within the product management group a series of keeping the same title but increased responsibilities and getting more products or more technical products, up until like 1992, when I was given the SIMM memory module connector product line, which is a major product line for Molex.

Do you want me to do my whole history?

Q. No. Is SIMM, S-I-M-M?

A. Correct.

Q. When you got responsibility for the SIMM product, was that your first exposure to DRAMs?

A. Yes.

Q. And what year was that?

A. That was October 1992.

Q. What is your current title at Molex?

A. Director of Strategic Products.

Q. Did there come a time when you started attending JEDEC meetings?

A. As soon as I became SIMM product manager, all the connectors that we did at SIMM related to something that JEDEC was doing at the time, so I immediately took over responsibility. Molex was already a member of JEDEC, so I became the JEDEC -- the designated person to attend the JEDEC meetings.

Q. When was that in time? Do you remember a rough date when you started attending?

A. The first meeting I went to -- the first one I could go to was December of 1992.

Q. And have you been attending with some regularity since then?

A. Yes.

Q. When you first started attending were there particular committees or subcommittees of JEDEC that you attended more frequently than others?

A. There are two basic groups that relate to what I do with memory modules. The first one I went to in December of '92 was JC 42, which was the electrical designation or specification of a module, and there's a mechanical group called JC 11. I attend JC 11 much

more regularly than I do JC 42.

Q. I want to ask you about the time period from when you began attending in December of 1992, up until let's say the end of 1996, if I can?

A. Okay.

Q. So that's going to be the focus of my questions.

Based on your involvement in JEDEC during that time period, '92 to '96, did you come to have some understanding of the JEDEC patent policy?

A. I think I did, yes.

Q. And how did you come to that understanding? What were the things that you obtained that understanding from?

A. There was a gentleman, I'm not sure if he held a committee position, his name was Jim Townsend. He would keep track of any patents that were related to the work of JEDEC, and he would have a time slot at every meeting where he would review -- he would -- we did everything with view foils at that time. He would put a view foil of an outline of what the JEDEC patent policy was, and then review any patents that might have any relevance.

Q. Was that the principal source of your understanding, what he would say at the meetings and

his view foils?

A. Yes.

Q. During the time period '92 to '96 did you have an understanding there was an expectation on the part of JEDEC that patents would be disclosed if they fell within certain categories or criteria?

A. Yes.

Q. Did you have an understanding during that time period with respect to whether there was an expectation that patent applications would be disclosed?

A. There was, I think, an expectation that patent applications would be disclosed. I don't recall that that was done very frequently though.

JUDGE McGUIRE: You mean -- when you say that you mean that it was not done often because there weren't that many applications to be disclosed or of the applications that could have been disclosed only some of them that were disclosed to your knowledge?

THE WITNESS: I think it's the second case, only some of them.

JUDGE McGUIRE: Okay. Mr. Stone.

BY MR. STONE:

Q. Do you recall Mr. Townsend ever, in his presentations, saying that patent applications should be disclosed?

A. I don't recall.

MR. CATT: Objection, it's asked and answered.

JUDGE McGUIRE: Sustained.

BY MR. STONE:

Q. In the materials, the foils that you recall Mr. Townsend using during the meetings, did you ever see any reference to patent applications?

A. As I recall there were at times things that were listed just as a patent application on his list.

Q. Was that on something called a tracking list?

A. Yes.

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Mr. Stone to interrupt you, but these are questions that I like to get answered as we approach them so I don't have to go back through it later.

If you don't recall instances where the claims were being discussed, then how would it occur? Did a company stand up and say, yes, we have an application on a concept? How would they explain in those instances where it did occur that they had an application and to the extent that they would offer that information?

THE WITNESS: The way it was done then is the same way it's being done today, is people would just make a comment that they have a patent application and the term would be used such as, "in this technology area," and that was the extent of the disclosure.

JUDGE McGUIRE: Then after that what would happen? Would the chairman or anyone else open the floor up to ask inquiry of that company as to the extent of the invention or --

THE WITNESS: Generally not.

JUDGE McGUIRE: What would happen if anyone else had a comment that they wanted to make or an inquiry as to the overall scope of an application?

THE WITNESS: I don't recall a lot of discussion on those kind of items at all. It was more

just, here's the patent policy, does anybody want to add any more patents to this tracking document list. That was -- it was not a long discussion or a long session in these meetings.

JUDGE McGUIRE: Okay. Mr. Stone.

MR. STONE: Thank you, Your Honor.

BY MR. STONE:

Q. Let me ask you. I put two binders in front of you, Mr. McGrath, and let me ask you if you would to just turn to the first binder. Binder number 1 should be on the top, and turn to JX 22, which is towards the back.

Do you have JX 22 in front of you?

A. Yes, I do.

Q. You see there a number on the bottom on the right-hand corner, that is the exhibit number, and a dash, and that's the page number. If we stay on JX 22 for just a moment and look up at the top.

Do you recognize these to be minutes of a JEDEC meeting?

A. Yes.

Q. Would you receive JEDEC meetings from time to time following meetings you attended?

A. Correct. Yes, sir.

Q. Are these the minutes for the meeting you

attended?

A. Yes. My name was on there so I had to sign in to have it appear.

Q. Okay. Turn if you would then to page 3, and let me draw your attention to paragraph number 3 of this document where it says, "Patent Presentation." And in the first sentence it says, "Mr. Townsend made a presentation (see Attachment A.)" Do you see that reference?

A. Yes, I do.

Q. Was it -- if we now turn to Attachment A, which begins, I believe, on page 12, if you could turn to that page. And directing you to page 12, do you see where it says Attachment A in the upper right corner?

A. Yes.

Q. Would this indicate to you this is the Attachment A referred to earlier?

A. Yes.

Q. Look if you would at pages 12 through -- go at least through page 16, and tell me if you recognize these to be the types of information that Mr. Townsend would show during the time period '92 to '96?

on page 14, if we can. You'll notice there's a patent part way down, about a third of the way down the list, that has Fujitsu as the holder, and under patent number it says "pending"?

A. Okay.

Q. Do you see that reference?

A. Yes.

Q. Was it your understanding in the '92 to '96 time frame that a reference to pending would likely mean a reference to a patent application?

A. Yes.

Q. So with respect to those items listed on this tracking list, where it says pending, that would be your best understanding, is that those referred to applications?

A. Yes.

Q. And your best recollection is that as to those particular items no one ever disclosed the text of any of the claims of those applications?

MR. CATT: Objection, leading.

MR. STONE: Certainly. Let me rephrase.

BY MR. STONE:

Q. Do you recall anyone disclosing the claims of any of those applications at any of the meetings at which you were in attendance?

A. I don't recall that happening, no.

Q. Did you ever identify a patent for anyone during the time frame, '92 to '96?

A. Yeah. There was one time that I did -- our legal group came across something that had to do, I think, with SIMM, and I just took a cover sheet and faxed it to Jim Townsend, because I noticed that patent wasn't on his list.

Q. Was that a patent that had been issued to Molex?

A. No.

Q. It was a patent of some other company?

A. Correct.

Q. Did that patent then show up on the tracking list later?

A. I assume it did. I don't recall. I don't remember.

Q. Okay. Was it your understanding -- did you have an understanding as to what patents -- trying to think how best to the phrase this -- what patents needed to be disclosed? Let me frame it differently.

Did you understand there to be any relationship between whether you might need a license and patent and if you were to practice the standard and whether that patent should be disclosed?

A. My understanding was that if a patent read on the work that JEDEC was doing it was your obligation to disclose it to the group.

Q. Were you present at any meetings where persons from other companies said they had a lot of patents and weren't going to disclose them all?

A. I don't remember anything like that being said, no.

Q. You don't recall that.

Did you know Mr. Kelley from IBM?

A. Gordon Kelley was chairman of the group. I knew Gordon. I didn't know him well.

Q. Okay. Let me ask you to look if you could at JX 25, which is in your next binder, unfortunately, and it's the first tab in your next binder.

A. Okay.

Q. And, again, do you recognize JX 25 as minutes from a JEDEC meeting that was held in 1995?

A. Yes.

Q. And were you in attendance at this meeting?

A. Yes.

Q. Okay. And look again if you would at page 3 of JX 25, down at the bottom under the heading, "Patent Presentation"?

A. Okay.

Q. You see there it references Attachment B?

A. Yes.

Q. If you would turn to page 18 of this document, and looking at pages 18 through 22, are these again the type of foils that you recall Mr. Townsend using during the course of meetings that you attended in the '92 through '96 time frame?

A. Yes. These are very similar to the exhibit you had me look at before.

Q. Okay. I'm going to ask you to look at a couple other documents, Mr. McGrath, and see if you recall seeing these during the time period '92 to '96.

If we could go back to binder 1. I apologize for making you jump binders.

Look at the first document if you would, which is RX 1211.

A. Okay.

Q. Do you recall having been given or seen this document during the time period '92 through '96?

A. When I first took over the JEDEC responsibility

Q. Okay. Did you at any time in the time frame, '92 through '96, look at any of the documents you received with respect to JEDEC to go through and see what any written policies there might be with respect to patents?

A. I generally didn't look at the policies that JEDEC was sending out. I would spend most of my time just reviewing the ballots. That was time consuming enough.

Q. Okay. Was it your understanding -- did you have an understanding -- let me ask it this way -- did you have an understanding as to whether you -- let me rephrase it.

In your experience during the time period '92 through '96 did the JEDEC committee change what it was doing in terms of standards it was developing upon learning of a patent?

A. I don't recall that we ever made a change in direction because of a patent being disclosed.

Q. Do you ever recall any change in direction because of a patent application?

A. No.

Q. As you understood the information that was available about patent applications in the time period, '92 to '96, was there sufficient information to know

what that patent application might ultimately cover, so if you wanted to change direction you would know which way to move?

A. Again, I don't recall that there was a lot of detail discussed on any particular patent in the meetings. Those discussions may have happened outside the meeting, but I don't recall that happening in the meeting.

Q. Okay. And if they happened outside the meeting do you recall ever participating in those discussions?

A. No, I did not.

Q. Okay. Did there -- you knew that for part of the time you were attending JEDEC meetings Rambus was a member?

A. Yes.

Q. And did there come a time you le2e No, I did not.

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Q. Do you recall whether the comments in a general sense were positive, negative, or would you describe them in some other way?

MR. CATT: Objection, vague.

MR. STONE: Let me rephrase.

BY MR. STONE:

Q. How would you describe, if you can generalize, the nature or discussions or comments made about Rambus after it stopped attending meetings?

A. I would say the group was concerned about Rambus technology and concerned that JEDEC hadn't possibly kept up with technology.

JUDGE McGUIRE: Wait a minute. I don't understand that question. You say they were concerned with the technology of Rambus, but JEDEC had not kept up with the technology. So what was the concern then? What was the real concern?

THE WITNESS: Well, the main issue in memory is bandwidth, how many bits per second can I get, can I access. And the JEDEC group had been slowly moving bandwidths up. And when the JEDEC -- I mean when the Rambus technology came out it had just leapfrogged where JEDEC was in speed in bandwidth by a significant amount. So that was some concern that JEDEC had not kept up with memory technology.

JUDGE McGUIRE: But the import of his inquiry was what was the attitude at that time, having had these concerns toward Rambus.

THE WITNESS: Well, I think a lot of the members in JEDEC felt -- I might be using the wrong word here, but threatened, we need to do something about this and come up with an alternative.

JUDGE McGUIRE: Well, was that because they were concerned that this new technology may read on the current standards of JEDEC?

THE WITNESS: I don't recall that ever being an issue. It was more an issue of Rambus technology.

JUDGE McGUIRE: All right, Mr. Stone.

MR. STONE: Thank you, Your Honor.

BY MR. STONE:

Q. Let me ask you if you would in your second binder, Mr. McGrath, maybe I won't have to have you jump any more after this. If you could turn to the second binder and turn to what's marked RX 1073?

A. Okay.

Q. Do you recognize exhibit RX 1073?

A. Yes, I do.

Q. What is it?

A. It's my handwritten notes from one of the JEDEC meetings.

Q. Which JEDEC meeting are these your notes from?
A. December 1997, JC 42.5.
MR. STONE: Your Honor, at this time we would offer RX 1073 into evidence.
JUDGE McGUIRE: Mr. Catt, any objection?
MR. CATT: No objection.
JUDGE McGUIRE: Entered.
(RX Exhibit 1073 was admitted into evidence.)
BY MR. STONE:
Q. These were notes you took during the course of the meeting, or some other time?
A. These could have been the notes I took during the meeting. There were times I would write notes at the meeting and then rewrite them when I got back to the office, for typing and distribution.
Q. So either taken at the time or rewritten at the office, within a few days of the meeting?
A. Correct.
Q. Turn if you would to page 2 of these notes.
MR. STONE: If we could bring up the middle of the page that starts with "Gordon Kelley."
BY MR. STONE:
Q. When you wrote in your notes, "Gordon Kelley comments:" Are the next three lines something that you attributed pretty much word for word for Mr. Kelley?

A. That was pretty much word for word.

Q. Can you tell us what you recall, based on your notes, Mr. Kelley saying at this meeting in 1997?

A. Again, it was a discussion about Rambus technology and how the members of JEDEC needed to get together to come up with a competing technology.

Q. At that meeting when he said -- you wrote in your notes, "Microelectronics Division has contracted with IBM R&D to develop high speed memory." Do you see that first sentence?

A. Yes.

Q. Do you recall what you understood at the time he meant by that?

A. What Gordon was referring to there was something to compete with the Rambus memory technology.

Q. You have quotes around the next sentence that says, "We will not be slave to Rambus."

A. Yes.

Q. Is that your recollection of the words he used at the time?

A. Yes.

Q. Let me ask you, were there discussions at JEDEC meetings of any efforts being made to promote products -- let me ask you specifically.

JEDEC meetings?

A. The SyncLink DRAM did come into JEDEC at some point. It had been a separate committee and was merged into JEDEC.

Q. Did you have an understanding one way or the other as to whether it was thought to be one way of developing a technology to compete with Rambus?

MR. CATT: Objection, vague, "it was thought."

MR. STONE: Let me see if I can rephrase it.

BY MR. STONE:

Q. Did you have an understanding one way or the other as to whether the SyncLink product was one of the technologies you mentioned earlier that JEDEC was trying to develop to compete with Rambus?

A. Yes. SyncLink was being brought into JEDEC in an effort to move the JEDEC technology forward.

Q. Okay. Let me ask you finally if you would turn to the next document in your binder which is RX 1931.

Do you recognize this document as minutes of a JEDEC meeting of 2.3 in December 2001?

A. Yes.

Q. Were you in attendance at this meeting?

A. Yes.

Q. Turn if you would in this document to page 11.

And let me ask you to look at the bottom set of paragraphs under the heading, "CAMD, DDR 2."

Can you explain there it says a second showing -- maybe I should first move this into evidence.

MR. STONE: I would like to move RX 1931 into evidence as a December 2001 JEDEC meeting.

JUDGE McGUIRE: Objection?

MR. CATT: No objection.

JUDGE McGUIRE: If you'll stand, Mr. Catt, when you speak to the Court, it would be much appreciated.

MR. CATT: Excuse me, Your Honor.

JUDGE McGUIRE: Entered.

(RX Exhibit 1931 was admitted into evidence.)

BY MR. STONE:

Q. Mr. McGrath, let me ask you about this particular language. It says there, "A second showing was made by AMD." Do you see that?

A. Yes.

Q. Can you explain to us briefly what the phrase, "a second showing," means?

A. There are different rules of presenting at the different JEDEC groups. JC 42 requires two showings: A preliminary showing to get a proposal or concept out in front of the group, it is generally done quickly,

documents are circulated. Comments are taken, however people want to comment on it, and then the proposal is either revised or done exactly the same at the next meeting, and that's what's called -- there's a first showing and a second showing, in other words.

Q. Okay. And you'll notice here in the next line it says, "It was noted that there may be a patent that affected option one." And then it goes on to say, "the patent was owned by Rambus and they have not indicated they would comply with the JEDEC patent policy." Do you see that discussion?

A. Yes, I do.

Q. Is it consistent with your recollection that there was mention at a meeting in this time period of a Rambus patent?

A. It could have. Specifically indicating -- specific discussions happened -- a lot of these meetings, especially JC 42.3, I am in and out of those meetings, because a lot of those discussions don't apply to me.

Q. Is it a correct statement that independent of the minutes you don't have a recollection one way or the other?

A. Correct.

Q. Could you explain to us then at the bottom

where it says, "AMD moved to issue a ballot on option one, second from Philips. The vote was unanimous." What does that mean to "issue a ballot"?

A. After a second showing the sponsor can move their proposals into part of the JEDEC specification. And in order to do that it has to go in front of all the members through a process called "a ballot" where all the members have an opportunity to review it, vote.

There are several options. They can vote to just approve it, approve with comments, or do not approve, with technical reasons why they won't approve it.

Q. Do you recall any instance where a proposal or showing was rejected because someone mentioned that there might be a Rambus patent that covered it?

A. I don't recall that. I just don't remember.

Q. Are you familiar with the term, "open standards"?

A. Yes.

JUDGE McGUIRE: Mr. Stone, I'm sorry. There must be something in the coffee I had this morning, but I have this great energy to ask questions.

MR. STONE: I want you to do that.

JUDGE McGUIRE: I just want to follow up on what we're seeing here in this item of evidence.

Apparently there are comments here that there was some understanding that there may be a patent held on one of these options by Rambus and they have not indicated that they would comply with the patent policy of JEDEC, but yet then AMD moved the issue to vote on option one, which if I understand it, is the option that there was some comment made at least that that is the option that there may be an outstanding patent on.

Did that cause concern? Because, obviously, it still came up for a vote, and it passed.

I'm curious. What was your understanding at the time as to how these two items coalesced? If there was some concern out there about option one may be covered by a current patent? I just want you if you can to expand on that question.

THE WITNESS: Issues like this that are brought up, occasionally, are not fully resolved at the second showing. It still may go out to ballot and the respondents, all the members have that option of voting, do not approve, and they can list their reasons there.

And, again, I didn't pay any attention to the ballots in JC 42.3. I don't know how this particular ballot turned out, but that happens frequently where let's put it out. In other words, let's poll the

members, because not all the members attend all the meetings.

JUDGE McGUIRE: Right.

THE WITNESS: So this is an opportunity to get everybody involved in the response to this.

JUDGE McGUIRE: Can you recall of having concern yourself about the comment that there may be an outstanding patent as to option one here?

THE WITNESS: Again, this does not affect my business. I was not concerned.

JUDGE McGUIRE: So you had no interest?

THE WITNESS: Exactly.

JUDGE McGUIRE: All right.

BY MR. STONE:

Q. Do you recall at any of the meetings you did attend, any discussions where someone said we can't go forward with that proposal or presentation or showing because of Rambus patents? Were they ever raised so as to stop the process?

MR. CATT: Again, asked and answered, Your Honor.

JUDGE McGUIRE: Sustained.

MR. STONE: Let me see if I can reframe it.

BY MR. STONE:

Q. In your experience and at any of the meetings

you attended did any discussion of Rambus patents ever bring the process of considering a presentation to a halt?

A. Not that I remember, no.

Q. Are you familiar with the concept of "open standards"?

A. Yes.

Q. Is it your understanding -- do you have an understanding whether JEDEC is trying to develop what are called open standards?

A. JEDEC's approach is for open standards, yes.

Q. Is it inconsistent with your understanding of open standards that in order to practice the standard a license fee or a payment of a royalty might be required?

A. As long as the license is open to anybody that asks, that's considered complying with the patent policy and it's therefore open.

MR. STONE: Thank you. I have no further questions at this time of Mr. McGrath, Your Honor.

JUDGE McGUIRE: Okay. At this time entertain cross examination by Complaint Counsel.

MR. CATT: May I have just a minute, Your Honor?

JUDGE McGUIRE: Sure.

on, and during that time frame what I attended mostly. JC 42 was the modules group, JC 42.5.

They would schedule these committee meetings starting on a Monday morning and just go continuously until they got done. Occasionally I would show up early for a JC 42.5 meeting and attend some of the other meetings. I didn't realize the benefit of attending some of these other meetings until about the mid '90s.

Q. In the time period '92 to '96 you basically didn't attend 42.3 meetings at all?

A. I wasn't making an effort to attend those meetings, correct.

Q. So to the degree there were presentations on patent policy at those meetings you wouldn't have seen those presentations?

A. Generally not, because that would normally occur at the beginning of the meeting. If I was in those meetings it was generally at the tail end and then it would go into some of the other committees.

Q. You mentioned that Jim Townsend put slides up at the meetings. There was also a discussion at the presentations, as well; wasn't there?

A. There were discussions about some items that were brought up, articles that were in the press

sometimes Jim would put on.

Q. I would like to show you some minutes now.

May I approach?

JUDGE McGUIRE: Yes. Is it going to be on the screen?

MR. CATT: Yes, it will be on the screen.

JUDGE McGUIRE: Then I don't need hard copy.

BY MR. CATT:

Q. Do you recognize this document?

A. Yes.

Q. Can you tell me what it is?

By the way, this is CX 0044. Can you tell me what this document is?

A. These look like the meeting minutes from the first JEDEC meeting I attended in December 1992.

Q. What JEDEC meeting?

A. This is JC 42.5.

MR. CATT: Your Honor, I would like to move to have the exhibit entered into evidence.

MR. STONE: No objection.

JUDGE McGUIRE: Entered.

(CX Exhibit 0044 was admitted into evidence.)

THE REPORTER: Your Honor, excuse me. I apologize, but I am fighting an ear infection and I am having a little trouble hearing today.

JUDGE McGUIRE: I'll ask everyone to please don't scream, but raise their voice to try to accommodate our court reporter today.

BY MR. CATT:

Q. If you could turn to page 3 of this document. And look at paragraph 4, that presentation. It says, "Mr. Townsend gave a presentation of patent policies of the relevant articles." It mentions Attachment C. I would like you to turn to Attachment C, which I believe it's on page 12.

A. Okay.

Q. On page 12, three-quarters of the way down the page there's a paragraph 8.3.1. It's very difficult to read. I'm sorry, this is the only copy we have. If you could read that.

On the second line down e1BlTTc yold read that.

ousAfn-ui.

A. Thank you. I'm having a hard time reading this.

3 bA this.

A. I would assume that would be every member's intention.

JUDGE McGUIRE: All right. Again, let me expand on that last answer if I could.

You said you had an expectation that everyone would act in good faith and disclose patents. Did that incorporate an understanding that everyone would disclose patent applications as they're being filed? You said earlier in testimony you thought the patent disclosure policy included applications.

THE WITNESS: Yes.

JUDGE McGUIRE: But also this obligation to act in good faith, did that incorporate the idea of disclosing patent applications as they were being developed?

THE WITNESS: Yes, it would. And I look at that as there's two scenarios that can occur in that good faith: One, if I'm the person doing the proposal for this technology and I'm developing technology that I'm going to patent I think it's my responsibility to tell the group that that's what I'm doing.

If I'm developing technology and I'm one of the attendees listening to somebody else present something and -- what I do at that point is I -- I may not know enough information from this first showing or even the

second showing to see where this technology is going, and I don't want to disclose what I'm doing in confidence within the company until I'm sure that these two things are going to cross at some point.

So there's -- the good faith that I'm talking about is if I'm making the presentation, if I'm trying to take JEDEC down this particular technology road, that's what I'm referring to.

JUDGE McGUIRE: All right. Mr. Catt.

BY MR. CATT:

Q. You had an understanding though that no member of JEDEC should be given an unfair advantage by designing technology in some way restricting competition or excluding others from it; correct?

MR. STONE: Objection, Your Honor, leading. I think given a witness who is here pursuant to subpoena who could be declared a hostile witness under Rule 611, that neither party should have an opportunity to lead, or both parties should. Mr. Catt earlier objected to my leading and I tried to refrain from asking leading questions.

JUDGE McGUIRE: Sustained. You can restate it.

BY MR. CATT:

Q. Did you have an understanding that members of JEDEC should be given an unfair advantage in designing

their technology by in some way restricting their competition or excluding others?

A. The patent policy was intended to somewhat level the playing field. In other words, it wasn't that you couldn't have a patent in that technology that JEDEC was doing, it was if you did you needed to disclose it and you were to comply with the patent policy.

You're 25close it andMr. Stone,dany fur

witness?

MR. STONE: No further questions, Your Honor.

JUDGE McGUIRE: All right. Sir, you're excused from this proceeding. Thank you very much for your testimony.

We'll take a short break and come back with your next witness.

MR. PERRY: Your Honor, if I could, we told the next witness to be here at 11:00 o'clock.

JUDGE McGUIRE: Do you think he'll be here by a quarter til?

MR. PERRY: I don't know.

JUDGE McGUIRE: I'm just going to go to my office and someone can come down and get me when he's here, if that takes 10 minutes or half-hour. We'll be on break until then.

MR. PERRY: I do think if we took a somewhat later lunch we would finish him before lunch.

JUDGE McGUIRE: I'm sorry?

MR. PERRY: If we started him at 11:00 I think we would be done by 12:30 or a quarter to 1:00.

JUDGE McGUIRE: Okay. Off the record. (10:27 a.m. - 10:50 a.m.)

(A brief recess was taken.)

JUDGE McGUIRE: This hearing is now in order.

At this time the respondent may call its next witness.

MR. PERRY: Thank you, Your Honor.

Rambus would call Dr. David Gustavson.

JUDGE McGUIRE: Dr. Gustavson, will you please come to the bench and be sworn in by the court reporter.

Whereupon--

DAVID GUSTAVSON

a witness, called for examination, having been first duly sworn, was examined and testified as follows:

JUDGE McGUIRE: All right. Sir, if you will have a seat right in that chair.

DIRECT EXAMINATION

`BY MR. PERRY:

Q. Good morning, sir. I have placed on the table in front of you a copy of your deposition in this matter. Do you recall that I took your deposition?

A. Yes.

Q. And we may need to refer to it during the day. I just wanted to let you know it was there.

I also placed a copy at the Bench.

If I could, before we get started, request that you speak up, because I understand our court reporter is having some difficulty because of an ear infection. I'm going to speak loudly and slowly, and if you could

do the same.

By whom are you completely controlled?

A. I'm an independent consultant at present.

Q. Are you retired?

A. Yes.

Q. What was your immediate past employment before your retirement?

A. I was -- my working title was Research Professor at Santa Clara University.

Q. And before your retirement is it correct that you had worked for many years on the design and development of high speed computer interfaces?

A. Yes.

Q. And you had done that kind of work as a researcher at Stanford University in the 1980s?

A. At the Stanford Linear Accelerator Center.

Q. Is that sometimes abbreviated SLAC?

A. It is.

Q. AND at some point you left Stanford and joined Santa Clara University; RIGHT?

A. Correct.

Q. Was that around 1994?

A. It was.

Q. And when did you leave Santa Clara? When did you retire?

A. I believe it was sometime in 1998.

Q. And you said you've done some consulting work since then; right?

A. That's right.

Q. Is it correct that you've been, or you were at some point in time hired by Micron, to assist Micron in a lawsuit with Rambus?

A. Yes, that's correct.

MR. CATT: Objection, Your Honor, leading question.

JUDGE McGUIRE: Overruled.

THE WITNESS: Yes, that's correct.

BY MR. PERRY:

Q. Are you still retained by Micron to assist in a lawsuit against Rambus?

A. I am.

Q. I am not going to ask you about your work for Micron. None of my questions are intended to get into that, okay.

While you were at Santa Clara University you continued to be involved in the design and development of high speed computer interfaces; right?

A. Yes.

Q. Were you working on a project called RamLink at some point?

A. Yes, I was.

Q. Was there an off-shoot of RamLink called SyncLink that you worked on?

A. Yes, that's correct.

Q. Was RamLink being developed under the auspices of the IEEE?

A. Yes, it was.

Q. Can you just give us a brief description of what you understood the IEEE to be?

A. The IEEE is a professional organization whose members are individual engineers, regardless of what company they work for, and has an educational function to help keep engineers up with the technology, and a standards function which has worldwide acceptance for the quality of the standards that it produces in a wide range of electrical fields.

Q. Thank you. Was RamLink being developed by a working group within that standard setting function of IEEE?

A. Yes, it was.

Q. That was 1596.4; is that right?

A. That's right.

Q. One of the things you did in that working group

A. In the SyncLink consortium I prepared minutes, but in the RamLink group I don't remember specifically.

I performed general services of that sort for a wide range of standards, but usually each standard has someone specifically responsible for chairing and preparing the minutes.

Q. Let me show you a document and see if that helps. I'm going to use RX 579.

May I, Your Honor?

JUDGE McGUIRE: Go ahead.

BY MR. PERRY:

Q. Now, this has a heading that says, "Minutes of the RamLink/SyncLink meeting at SCIzzi, Santa Clara University, June 15, 1995." Do you see that?

A. Yes.

Q. Would you just flip through these and confirm for us that these were prepared by you, if you could?

A. Yes. This appears to have been done by me.

Q. And when it says "RamLink/SyncLink meeting," was that at a period of time when the two projects, RamLink and SyncLink, were being discussed at the same meetings?

A. Apparently so, yes.

Q. Well, I really just want to use this document to establish some time frame. You're free to read as

much of it as you want, but what I would like to do is point you to the paragraph that starts at the very bottom of the first page that references Mr. Wiggers.

Q. And in this time period, June '95, the RamLink standard was already being balloted for standardization; is that correct?

A. That's correct.

Q. But the SyncLink project had just begun?

A. That's correct, except for the SyncLink technology, that was partly included in the RamLink.

Q. Some of the SyncLink technology was borrowed from or came from RamLink?

A. That's correct.

Q. This group was going to try to take the SyncLink project forward?

A. That's correct.

Q. Okay. And I want to show you some documents about that effort to take SyncLink forward, and I'll show you now RX 589.

May I, Your Honor?

Now, this is entitled, "Minutes of the IEEE P1596.7 SyncLink Meeting, August 21, 1995." Do you see that?

A. Yes.

Q. And if you look on the second page you'll see down a tjT(121995." DoA'd)TjT/0Ts 2t arnd I'll I2t5." DoA'd

Q. Do you believe these are minutes taken by you of that meeting?

A. Yes.

Q. Now, this -- is this the same thing as the SyncLink consortium, or is this an IEEE working group?

A. This is an IEEE working group.

Q. Okay. I see that you're listed as an attendee. Do you see that?

A. Yes.

Q. And if you'll look on the first page where it says, "details," you see the main question was how much to modify the RamLink protocol to optimize for SyncLink. Do you see that?

A. Yes.

Q. That's what you were talking about before, which is how do you move the SyncLink project forward?

A. The SyncLink project was essentially modifying the RamLink protocol.

Q. Okay. Just above your name in the list of attendees do you see Richard Crisp's name?

A. Yes.

Q. You understood he was employed by Rambus at the time?

A. I believe so.

Q. If you look on page 2 of the minutes you'll see

a reference to Mr. Crisp, about seven paragraphs down?

A. Yes.

Q. It says, "Richard Crisp of Rambus informed us that in their opinion both RamLink and SyncLink may violate Rambus patents that date back as far as 1989." Do you see that?

A. Yes.

Q. And you put that in the minutes in an effort to reflect what Mr. Crisp had said at the meeting; correct?

A. That's correct.

Q. And then the minutes say, "Others commented that the RamLink work was public early enough to avoid problems and thus might invalidate such patents to the same extent that they appear to be violated." Do you see that?

A. Yes, I do.

Q. Someone at that meeting said that in response to Mr. Crisp's statement; correct?

A. Correct.

Q. Do you remember who said it?

A. No, I don't.

Q. Well, is it correct that you were concerned at the time about Mr. Crisp's statement, at least in part because you thought it might block the RamLink standard

that was being balloted from being approved?

A. I don't know exactly what the dates were, but at some point the IEEE notified the RamLink working group that Rambus had complained about such a possible interference.

Q. Is it correct that as a result of that question being raised by the IEEE that you took a look at some of Rambus' patent applications?

A. Yes.

Q. And those were patent applications by Rambus that had been published in Europe that you looked at; correct?

A. That's right. That was the only information we could find.

Q. You wanted to see what the claims were; right?

A. That's correct.

Q. And you and two engineers from Apple Computer sat at a room in Apple and looked at those Rambus patent applications that had been published in Europe; right?

A. Correct.

Q. The Apple engineers in question were named David James and Glen Stone; right?

A. Correct.

Q. And those two gentlemen had been at this

meeting on August 21, 1995; right?

A. Correct.

Q. Both their names appear on the list of attendees; right?

A. Correct.

Q. And when you -- and you had this meeting with Mr. James and Mr. Stone and looked at the Rambus patent applications in a room at Apple; correct?

A. That's correct.

Q. And when you reviewed those Rambus patent applications with Mr. Stone and Mr. James you concluded that Rambus' claims were so broad that you could not send signals on wires in a memory device without violating those claims; right?

A. That's the conclusion I recall reaching, yes.

Q. And you concluded there was just no way to work around those patent claims that you saw in the applications; correct?

A. Especially since they covered everything we had been doing for the last ten years or so.

Q. But you also concluded that the Rambus claims would not be issued. Was that also part of your conclusion?

A. I assumed, but I had no way of knowing which claims would be and which wouldn't.

Q. Now, you thought at the time it was normal in a patent application to be asking for very broad coverage; right?

MR. CATT: Your Honor, objection, seeking expert testimony.

MR. PERRY: I'm asking for his views at the time, Your Honor.

JUDGE McGUIRE: I'll entertain that question, but I'm not going to let it go too much further.

THE WITNESS: Yes. I understood that to be the normal practice to ask for everything.

BY MR. PERRY:

Q. And at the time you also concluded that Rambus wouldn't get that very broad coverage; right?

A. I assumed that it would not.

Q. Now, you believe that you and these Apple engineers had reviewed the Rambus European patent applications by the middle of January 1996; is that right?

A. That's a plausible date. I don't really remember dates very well.

Q. Let me show you -- let me show you the January 1996 SyncLink minutes, RX 663.

May I, Your Honor?

Now, as of this time the SyncLink consortium

had been formed; correct?

A. It appears so.

Q. What position did you hold in 1996 with the consortium?

A. My official position was secretary. And when we incorporated -- that was later. This wasn't incorporated yet.

Q. After there was an corporation, SLDRAM Inc., did you have an officer position?

A. I was secretary and the CFO.

Q. And one of your duties as secretary of the SyncLink consortium was to take the official minutes during the meeting; right?

A. Correct.

Q. You were trying to prepare minutes as best you could, that the member companies would rely on?

A. Correct.

Q. The minutes after you prepared them were made available to all member companies?

A. Right.

Q. The minutes of the early consortium, back in 1996, those were made available to member companies when they joined later; right?

A. Yes.

Q. If you'll look at page 2 of this exhibit

there's a reference to Rambus. In the first full paragraph it says, "Rambus has 16 patents already, with more pending. Rambus says their patents may cover our SyncLink approach, even though our method came out of early RamLink work." Do you see that?

A. Yes.

Q. Does that refresh your recollection that you believe by this time, January 11, 1996, you and Mr. Stones and Mr. James had done your review of Rambus' European patent application?

A. I believe so, but this comment really wasn't based on that review, I don't think.

Q. I'm just asking if by this time that review had occurred?

A. It would have been well before this time.

Q. All right. Thank you.

Let me show you one more set of early meeting minutes. I believe this will be the first meeting of the consortium, RX 591.

May I?

JUDGE McGUIRE: Go ahead.

BY MR. PERRY:

Q. Just take a look at that, please, and see if that is indeed your minutes of the first meeting of the newly formed SyncLink consortium?

A. Yes, it appears to be.
Q. Now, the first thing that's mentioned is that distribution is restricted. Do you see that?
A. Yes.
Q. Is that distribution of the minutes?
A. Yes, this document.
Q. And was that true of the -- generally true of the minutes that you prepared, that they were restricted to SyncLink members?
A. Only consortium minutes, not IEEE minutes.
Q. The minutes you prepared of the SyncLink consortium were, as you understood it, restricted to SyncLink consortium members?
A. Correct.
Q. I see a reference to Chairman Tabrizi, T-a-b-r-i-z-i, had he been elected chairman of the consortium?
A. Yes.
Q. If you look on page 2 up at the top, I'll let you have a chance to read this paragraph, it's that first paragraph under "Issues to Consider." Have you read that?
A. Yes.
Q. And that says, "Issues to Consider. Clocking: Adaptive delay: Is there enough slack in timing: We

prefer to use delay locked loops rather than phase locked loops. Better handling of power down periods, lower power dissipation." Do you see that?

A. Yes.

Q. Was it your understanding at the time that the use of phase locked loops -- strike that.

Was it your understanding at the time that the use of delay locked loops rather than phase locked loops offered some advantages?

A. Yes.

Q. Now, moving forward, if I could, in time, we were talking about January '96.

Were you aware by that time that the RamLink standard had -- that the balloting of that had been suspended because of a concern over Rambus' patent claims, possible patent claims?

A. That's likely. I don't remember the exact dates.

Q. I can understand that, but let me help you with a document. I'll put up RX 676. I showed you this at your deposition, but you should still take a look at it as much as you need. It appears to have been e-mailed from you and printed out?

A. Yes.

Q. Do you see that it's dated February 6, 1996?

A. Yes.

Q. Did you send this to someone within the IEEE organization?

A. Yes, I did.

Q. And you understood her to have some connection with the standards setting process?

A. Yes.

Q. Now, all I really want to show you here is to refresh your recollection as to when you learned about the issues relating to RamLink. And you're free to read the whole thing, but if I can show you the paragraph, the second from the bottom, that says, "What is the status"?

A. Yes, I see that.

Q. It says, "What is the status of P 1596.4 now?"

Is that P 1596.4, is that a reference to RamLink?

A. Yes, it is.

Q. Then you say, "It's been held up by patent issues for about six months now? Is it dead? Or being sent back to the working group for removal of all material that anyone might object to?"

That's what you wrote to Ms. DeChino?

A. Yes.

Q. Was that a reference to the RamLink standard

being held up by possible Rambus patent claims?

A. That's correct.

MR. PERRY: Your Honor, I would like to move in RX 676.

MR. CATT: No objection.

JUDGE McGUIRE: Entered.

(RX Exhibit 676 was admitted into evidence.)

BY MR. PERRY:

Q. Was it your view at the time that the RamLink standard should not be blocked by those broad claims in Rambus' patent applications that you didn't think would issue?

A. Yes. Those claims would have blocked all the standards of which I was aware.

Q. It was your view the claims should not block the balloting issue of the RamLink standard; correct?

A. That's correct.

Q. If I could show you another e-mail from this time period that I believe you sent, RX 675.

May I?

JUDGE McGUIRE: Go ahead.

BY MR. PERRY:

Q. Is this an e-mail you sent to Mary Lynne Nielsen sometime in February 1996?

A. Yes, it is.

Q. And does this generally have to do with some proposed changes in the IEEE patent policy?

A. Yes, it does.

Q. On the second page of the document there's a reference to a "bombshell" at the top of the page. Do you see that?

A. Yes.

Q. Now I'll just ask you to read through the next couple of paragraphs just to yourself, and then I just have a couple of questions.

A. Uh-huh. Okay.

Q. And what you described as the bombshell was the sentence in the proposed patent policy that, "The working group shall accept the view of the patent holder." Is that right?

A. That's right.

MR. CATT: Your Honor, I object to relevance. This is all about the IEEE disclosure policy. I don't see the relevance on it.

MR. PERRY: Your Honor, this is directly responsive to a slide Mr. McAfee showed and talked about, over our objection. It was his presentation. He was the economist. He talked about the lock-in issue and what patent standard setting organizations could adopt to avoid lock-in.

JUDGE McGUIRE: I will consider this question, but I also have some doubt regarding its weight, but it will stand on its own merit. I'll hear an inquiry on that basis.

MR. CATT: Thank you, Your Honor.

BY MR. PERRY:

Q. Well, let me try to shortcut it then, Dr. Gustavson.

Just describe for us what your concern was about the proposed statement in the proposed IEEE patent policy that if someone said I might have patent claims on that proposal you're working on, the working group had to accept the view of the patent holder as to the validity of the claims?

A. My concern was that any person who wished to block a standard could simply assert that they had patents applied for which would interfere with that standard, and if they refused to say that they would make their patents available on a nondiscriminatory basis to others it would be impossible for the standard to complete. In my view it would make it possible for every standard in the IEEE to be blocked by a single individual.

Q. Was it your concern at the time you wrote this e-mail that Rambus might do just that with respect to

the RamLink proposal, that is refuse to give an agreement to license its patents or patent applications?

A. My recollection is that that's essentially what had happened. Rambus said we have patents applied for that may cover this, and the IEEE's reaction had been, okay, working group redesign the thing so it doesn't violate anything Rambus claims.

We looked at the claims. They covered everything we had covered over the last twenty years. We couldn't do busses, basically. All of the standards would have been out of business if this policy prevailed.

Q. The RamLink standard later did issue, did it not?

A. Yes, it did.

Q. You talked to Mr. Crisp about the RamLink situation?

A. I don't remember specifically.

Q. Let me show you an e-mail, RX 593.

Before I get there, Your Honor, could I move in RX 675?

MR. CATT: No objection.

JUDGE McGUIRE: Entered.

(RX Exhibit 675 was admitted into evidence.)

BY MR. PERRY:

Q. Now, Dr. Gustavson, I suspect you haven't seen this in a long time. It was produced to us by Hans Wiggers, but if you look down at the bottom it appears there is an e-mail from you.

What I would like to give you the opportunity to do is read the e-mail that starts down at the bottom through about halfway through the next page, page 2, before I ask questions.

Let me first establish, you haven't seen this in a long time; right?

A. That's correct.

Q. You and I didn't meet in anticipation of this hearing; right?

A. No.

Q. That's correct, that we didn't meet?

A. That's correct.

Q. Okay. Why don't you take a minute and read that, please.

Just to make the record clear, we're looking at 593. I think the transcript reflects 539, but this is RX 593.

A. Okay.

Q. This is a series of e-mails Mr. Wiggers produced to us, but I'm only going to ask you about a

portion of the e-mail that I just asked you to read, which starts at the bottom of page 1, dated February 23, 1996. Did you in fact send this e-mail to Mr. Wiggers, Mr. Vogley, and Mr. Tabrizi?

A. Yes, it appears so.

Q. As well as Mr. James at Apple; correct?

A. Yes.

Q. And in this e-mail you describe a telephone conversation you had with Richard Crisp from Rambus; correct?

A. Correct.

Q. You say at the bottom of the page, "I had a call from Rambus' Richard Crisp recently." He called you; right?

A. Yes.

Q. You say at the bottom of the page, the carryover line says, "I had heard conflicting reports from IEEE as to whether Rambus had responded to their request for a clear statement 14 you; rirj16

right?

A. Yes.

Q. And he said to you, "Their response was basically to the effect that they were not able to determine at this time whether there was a conflict." Right?

A. Right.

Q. Then it says that, "We discussed the situation re patents, in general, and seemed to be in agreement that standards ought to make no assurance to the eventual user that no patent conflicts are involved."

Do you remember seeming to reach that agreement with Mr. Crisp?

A. I don't recall it as being an agreement with Mr. Crisp, specifically. It was my position that I developed in the course of this, and he seemed not to object to the idea. I think that was more likely.

Q. And then you say at the start of the next paragraph, "As far as I can tell, Crisp and Rambus' positions were entirely reasonable in this regard and so I expect it won't try to interfere with the standardization process. They are going at great lengths to separate themselves from it now." Do you see that?

A. Yes, I do.

Q. Is that something you wrote in this e-mail to describe your views at the time?

A. Yes.

Q. Now, it was after this point in time that the RamLink standard issued; correct?

A. Yes.

Q. And Rambus never said there wasn't a patent problem with RamLink; right?

A. As far as I know.

Q. As far as you know Rambus did not withdraw any of its claims that there might be a patent problem with RamLink; right?

A. That's correct.

Q. And, in fact, the SyncLink consortium members were still concerned in 1997 about lawsuits by Rambus; right?

MR. CATT: Objection, hearsay.

JUDGE McGUIRE: Sustained.

MR. PERRY: I'll show him the minutes, Your Honor.

Let's put up RX 966, but first let me move in RX 593.

MR. CATT: No objection.

JUDGE McGUIRE: Entered.

(RX Exhibit 593 was admitted into evidence) .

MR. PERRY: May I?

JUDGE McGUIRE: Go ahead.

BY MR. PERRY:

Q. Now, if you'll look -- does this appear to you to be minutes of an SLDRAM consortium meeting from July 1997?

A. Yes, it does.

Q. Okay. Look on page 12. And we're using the page numbers on the lower left. There's a lot of page numbers here.

Page 12, the lower left, do you see where it says, "Notes by David Gustavson, consortium secretary"?

A. Yes.

Q. Does that suggest to you you prepared these notes?

A. Yes.

Q. Okay. If you'll look on page 3 -- now it's been a while since you read these minutes; correct?

A. That's correct.

Q. Why don't you just read the first 12 to 13 lines of this and I'll have a couple questions.

A. Okay.

Q. Was it your understanding at the time of this meeting that there was concern among SyncLink consortium members that Rambus would sue individual

companies for patent infringement?

MR. CATT: Your Honor, I don't understand the relevance of this to our case. We are talking about JEDEC, not SyncLink, and the relevance of those patents.

MR. PERRY: I'm happy to explain this, Your Honor.

JUDGE McGUIRE: Let's hear it.

MR. PERRY: This has to do with the but for world.

This consortium, consisting largely of JEDEC representatives, was explicitly warned of Rambus' patents. And an officer of the consortium reviewed the patent applications and believed that they were covered by prior art. The consortium went forward for years, spending time and money to develop the device, despite those warnings. That goes exactly to what these folks would have done if the same kind of explicit warning had been made to JEDEC.

JUDGE McGUIRE: Overruled. I'll hear it on that basis.

BY MR. PERRY:

Q. There was a question pending, and I'll try to re-ask it.

Was it your understanding 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?

A. Yes.

Q. And that's reflected in your minutes of this meeting?

A. Yes.

Q. Now, let me also show you a set of minutes from September 1998. And this will be RX 1275.

May I?

JUDGE McGUIRE: You may.

BY MR. PERRY:

Q. Do you see the date at the top on the first page it appears to be a date created by a computer, 980922. Do you see that?

A. Yes.

Q. Did there come a point in time when you started using a laptop computer to take meeting minutes?

A. Yes.

Q. And is it correct that you prepared the minutes and sent them out in electronic form after a certain point in time?

A. Yes.

Q. And do you see on page 12, again using the numbers in the lower left corner, do you see up at the

top, "Respectfully Submitted, David B. Gustavson, SLDRAM Inc." Do you see that?

A. Yes.

Q. Does that indicate these were minutes you prepared and submitted to SyncLink consortium in September 1998?

A. Yes.

Q. Well, let's look if we could to page 6. Now, again, I'm sure it's been a while since you read these. If you could just read about halfway down the page and I'll have just a couple of questions.

A. Okay.

Q. Now, do you see that the second entry on page 6 says "FT"?

A. Yes.

Q. Was that the way you attributed comments to certain people? Was that your standard style?

A. Yes.

Q. FT was a reference to Mr. Tabrizi; right?

A. Yes, it was.

Q. It says after FT, "Intel, with all their power will make their RDRAM happen from 1999 to 2000, will probably get 40 percent of market over that time frame." Do you see that?

A. Yes.

Q. Is that the substance of the statement Mr. Tabrizi made during this September meeting?

A. Yes.

Q. And then down below that, if you'll go to another reference to FT about ten lines down, do you see where it says, "FT in next six months it will become clear how easy it is to mass produce Rambus." Do you see that?

A. Yes.

Q. And is that the substance of a statement made by Mr. Tabrizi during the September 1998 meeting?

A. If you include the rest of the sentence, yes.

Q. The rest of the sentence being, "if easy AMD will also go Rambus"?

A. Yes.

Q. Now, did there come a time when the SLDRAM consortium changed its name to AMI 2?

A. Yes.

Q. And when that happened was it your understanding that the AMI 2 organization became more marketing focused than the consortium had been?

A. Yes.

Q. And was it right about that time that you stopped attending meetings?

A. Yes.

Q. Let me show you an e-mail that you received on that subject in January 1999 from Desi Rhoden.

This will be RX 1373.

May I?

JUDGE McGUIRE: Yes.

BY MR. PERRY:

Q. Do you see you're listed as a recipient on this long list of e-mail recipients?

A. Yes.

Q. Now, in the January 1999 time frame was that the time frame in which there was discussion going on as to whether to change the focus of the SLDRAM tha

Mr. Rhoden's first paragraph. It talks about the attached slides.

Do you see where it says, "The attached slides are a proposal born out of the discussions that we had at the last executive meeting in Yokohama." Do you see that?

A. Yes.

Q. In the next paragraph it says, "It is evident from the last meeting that the corporation that has been known as SLDRAM will exist under a new name and will have some number of members."

Having seen that does that refresh your recollection of a meeting in Yokohama in December or fall of '98 in which the future direction of the consortium was discussed?

A. Evidently this sets the time point.

Q. You just don't remember from your own memory?

A. Right. The earlier date I gave for my retirement from Santa Clara must be wrong. It must be later than '98.

Q. Did you retire from Santa Clara after you stopped attending the SyncLink meetings?

A. Yes.

Q. Okay. Mr. Rhoden goes on and talks about the proposals, what can be done with the organization to

enhance the total industry acceptance of new standard memory technologies like, and then there's two blocked words. Do you see that?

A. Yes.

Q. I can represent to you that the blocked words are DDR, so reference to DDR and DDR II. Just take my word for that.

A. Okay.

Q. Do you remember discussion of changing the SyncLink consortium into a marketing focus on DDR?

A. Yes, approximately.

Q. Now, the last sentence that Mr. Rhoden says is, "In the DRAM industry we are clearly stronger together than we are individually."

Did you ever talk to Mr. Rhoden, just the two of you, about that concept?

A. I don't recall just two of us. There was the general feeling that there had been no industry representative group for the memory industry and that this might become such a group.

Q. Let me ask you to look at just a couple of the graphs that he attached to the e-mail he sent you, or slides.

If you'll look at page 3 of the document. Do you see the heading is "New Name and New Focus"?

A. Yes.

Q. And then the third subbullet says, "Coordinate industry proliferation and widespread adoption of new memory technology." Do you see that?

A. Yes.

Q. Is that a reference to DDR, as you understood at the time?

MR. CATT: Objection, calls for hearsay.

MR. PERRY: I'm asking for his understanding.

JUDGE McGUIRE: Overruled.

understanding at the time?

A. That's true.

Q. Let's look at one more slide then. The very last one, page 8. It's entitled, "Organization Logistics."

Do you see the fourth bullet point says M12 should be folded under the corporation for antitrust protection." Do you see that?

A. I do.

Q. Had you heard references in past SyncLink meetings to M9 or M11 or M12?

A. I don't remember hearing such.

Q. Did you have an understanding at the time of what Mr. Rhoden meant when he said M12 should be folded under the corporation for antitrust corporation?

MR. CATT: Your Honor, they've had two days with Mr. Rhoden. I don't see any point in this witness talking about something they had two days they could ask him questions about.

MR. PERRY: I did ask Mr. Rhoden. I'm just asking now did he have an understanding. It's my last question.

JUDGE McGUIRE: I'll hear it on that basis.

THE WITNESS: I don't have any recollection of those terms, even, and I don't recall knowing what they

meant at the time. I just don't recall.

MR. PERRY: Thank you. I would like to move in RX 579, which is the first set of minutes.

MR. CATT: No objection.

JUDGE McGUIRE: Entered.

(RX Exhibit 579 was admitted into evidence.)

MR. PERRY: No further questions, Your Honor.

JUDGE McGUIRE: Thank you, Mr. Perry.

Okay. At this time we'll hear the inquiry by Complaint Counsel, Mr. Catt.

CROSS EXAMINATION

BY MR. CATT:

Q. Good afternoon -- good morning, Dr. Gustavson. This is going faster than I expected.

I just have a few questions, so we'll have you out for lunch in a moment.

You testified previously about looking at some European patent applications, Rambus European patent applications; is that correct?

A. Yes.

Q. And in looking at them you wanted to get an idea whether those -- what Rambus was claiming that might affect the RamLink standard; is that correct?

A. Not just RamLink standard, but that was the immediate standard. Every standard I had been involved

with. I was interested in for that purpose.

Q. When you looked at those applications you focused on claims?

A. Yes.

Q. And you did that because you were told that the claims were what mattered in determining coverage?

A. Yes, that's right.

Q. And you didn't read the specification or the descriptive part of the patent for the purpose of trying to predict what features Rambus might claim in the future?

A. No.

Q. In fact, you don't specifically recollect whether you looked at the specification at all?

A. I don't. As I recall they start on the front page, so I probably looked at it, but no.

Q. And you only looked at those patent applications once?

A. That's -- I believe that's correct.

Q. And you never reviewed the claims again with respect to SyncLink?

A. That's correct.

Q. And at the time you looked at the claims you never considered the claims might relate to SDRAMs or DDR SDRAMs?

A. I really wasn't that interested in DRAMs or memory. I was more of a system architect, and coming at this from the background of coherent scalable interface I was interested in high speed communication and busses and system architecture. And particular kinds of DRAMs were just a detail, as far as I was concerned.

Q. You've never been a memory chip -- a DRAM designer, have you?

A. No.

Q. And your role at SyncLink, at the SyncLink consortium was primarily administrative?

A. That's correct. I was asked not to participate in the technical stuff, much to my chagrin, because they wanted only memory company people who knew what they were doing to be involved in that.

Q. Other members of the consortium were doing that work?

A. Yes.

Q. And so you don't know all the considerations that those members were taking into account when they were doing their work on the technical aspects?

A. No, I don't.

Q. The consortium sought patents, didn't it?

A. Yes.

basically. And the term I heard applied to this was "defensive patents."

BY MR. CATT:

Q. The consortium was open to anyone who wanted to join it?

A. That's right.

Q. In fact, Rambus was invited to join the consortium, wasn't it?

A. Yes.

Q. But Rambus never joined?

A. No.

Q. And you're not a member of JEDEC, are you?

A. No, I'm not.

Q. And you've never attended JEDEC?

A. No, I haven't.

Q. And you didn't participate in the standardization of the SDDDDDDDDDDDDDDDDD nevipate in the mvipate isn't.

Q. And 17 dn't participate in th9TjT(15

Q. And you've never attended JEDEC24

you j special expeandsationnever attended JEDEC2 16 TT:

correct?

A. I know I'm a named inventor on some patents. Certainly what you say is approximately correct. I know at some point I had to get a letter from the university, because I had a patent agreement with the university, and the university had to agree to give its rights over. I don't know if that was to the consortium or AMI 2.

Q. Do you have any idea, one way or the other, whether AMI 2 is using the SyncLink patents to try to encourage people to join AMI 2?

A. No, I don't.

JUDGE McGUIRE: One last time.

MR. CATT: No.

JUDGE McGUIRE: Once again, doctor, you're excused from this proceeding. Thank you for your testimony.

Does that conclude respondent's presentation?

MR. PERRY: Yes. You may recall Mr. Oliver saying our schedule was aggressive. It turned out to be wimpy.

JUDGE McGUIRE: Tomorrow you're going to call an expert; is that correct?

MR. STONE: Each of the next three days; Friday, Monday, Tuesday will be expert witnesses. We

think each of them will consume the better part of each of those days. It's a little hard to know, but that's what we're hoping.

JUDGE McGUIRE: Okay. Very well. See you in the morning at 9:30.

MR. STONE: Thank you, Your Honor.

(Hearing adjourned at 11:47 a.m.)

C E R T I F I C A T E O F R E P O R T E R

DOCKET/FILE NUMBER: 9302

CASE TITLE: IN THE MATTER OF RAMBUS

HEARING DATE: JULY 17, 2003

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause to the best of my knowledge and belief.

Dated:

_____

Paula G. Satkin, RPR