

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INCORPORATED,

Respondent.

Docket No. 9302

DECLARATION OF GREGORY P. STONE IN RESPONSE TO MOTION OF
THIRD-PARTY INFINEON TECHNOLOGY FOR CLARIFICATION OF THE
AUGUST 2, 2002 PROTECTIVE ORDER

I, Gregory P. Stone, declare and state as follows:

1. I am a member of the State Bar of California and a member of the law firm of Munger, Tolles & Olson LLP, counsel for respondent Rambus Inc. (“Rambus”) in this matter. I submit this declaration in support of the Response of Rambus Inc. to Motion of Third-Party Infineon Technology for Clarification of the August 2, 2002 Protective Order. I have personal knowledge of the facts set forth in this declaration.

2. A large number of witnesses, more than seventy, were deposed in this proceeding. Each of those depositions was taken subject to the August 2, 2002 Protective Order entered in this matter. That Protective Order provides that all deposition testimony taken in this proceeding shall be treated as “Discovery Material” subject to the provisions of that Protective Order. *See* Third-Party Infineon Technology’s Motion for Clarification of the August 2, 2002 Protective Order (hereinafter, “Motion”), Exhibit A at 4, ¶1(m).

Among other things, the Protective Order provides that “Discovery Material, or

information derived therefrom shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose.” *Id.* at 6, ¶2. Some of the depositions taken in this proceeding are of current Rambus employees; others are of former Rambus employees. Many others, of course, are of third parties. Most of the deposition transcripts contain material that has been designated as “Confidential Discovery Material” or “Restricted Confidential Discovery Material.” The Protective Order imposes further restrictions on information that has been so designated. *See generally id.* at 8-11, ¶¶ 7-10.

3. There is pending in the United States District Court for the Eastern District of Virginia a lawsuit entitled *Rambus Inc. v. Infineon Technologies AG, et al.*, Civil Action No. 3:00cv524 (hereinafter, the “Infineon litigation”). A protective order has been entered in the Infineon litigation which provides certain protections for confidential information. The protections provided under the terms of the two protective orders are similar and documents that Rambus and Infineon have designated as “Confidential” or “Restricted Confidential” under the terms of the Protective Order in this proceeding have been produced to other party under the terms of the protective order in the Infineon litigation. (By way of background, Infineon produce tens of thousands of pages of documents in this proceeding in response to subpoena, and many of those same documents were produced by Infineon in the Infineon litigation.)

4. The present dispute arises, not with respect to documents, but solely with respect to deposition transcripts. These deposition transcripts would not exist but for this proceeding and the use of these transcripts is strictly limited by the terms of the

Protective Order in this matter. Rambus has offered to produce to Infineon the transcripts of depositions of its current employees taken in this proceeding after any third-party confidential information has been redacted, but only so long as Infineon agrees to comply with the terms of the Protective Order in this matter. Unless and until the Protective Order is modified, deposition transcripts from this proceeding, whether of Rambus employees or third parties, cannot be used in the Infineon litigation. However, Infineon has refused to take possession of the deposition transcripts of Rambus's current employees subject to the provisions and restrictions of the Protective Order in this matter.

5. Consistent with the terms of the Protective Order in this proceeding, Rambus cannot produce to Infineon the deposition transcripts of its former employees. Each of those transcripts has been designated as either "Confidential" or "Restricted Confidential," all or in part. Thus, without the consent of its former employees, who for these purposes must be treated as third parties, Rambus cannot provide those transcripts to others. Moreover, it would be inconsistent with the provisions of the Protective Order, which restrict the use of the transcripts to this proceeding, for Rambus to provide the transcripts to others since the transcripts, in their entirety, are Discovery Material.

6. Rambus has made its position in this regard known to Infineon, and did so in advance of Infineon's filing of the Motion. After Mr. Kovner's letter of May 11, 2004, a copy of which is attached as Exhibit E to the Motion, further communications between Infineon's counsel and Rambus's counsel occurred. Notably, these further communications are not mentioned in Infineon's Motion. For instance, Mr. Kovner sent a further letter on May 20, 2004, a true and correct copy of which is attached hereto as

Exhibit 1. Rambus responded to that letter by an e-mail dated May 21, 2004, a true and correct copy of which is attached hereto as Exhibit 2. Mr. Kovner responded to the May 21 e-mail from Rambus's counsel on that same date. A true and correct copy of his response is attached hereto as Exhibit 3. Rambus's counsel responded to that communication on Monday, May 24, also by e-mail, and a true and correct copy of that e-mail communication is attached hereto as Exhibit 4. These e-mails communications set forth clearly the position Rambus has taken in response to Infineon's Motion, and also make plain that Infineon has refused to accept the transcripts of depositions taken in this proceeding of Rambus's current employees subject to the provisions of the Protective Order in this proceeding.

7. As the Commission is no doubt aware, the use in other proceedings of Discovery Material obtained in this proceeding is before the Commission in connection with the Motion of Non-Party Mitsubishi Electric Corporation to Enforce Protective Order, which motion was filed on or about April 8, 2004. The dispute there is whether materials voluntarily provided to Rambus's counsel and not obtained through the use of process or otherwise in connection with this proceeding are Discovery Materials subject to the Protective Order. Although the Mitsubishi motion may now be moot (since the documents in question have separately been ordered to be produced to Rambus in response to a subpoena issued by Rambus in the Infineon litigation and served on Mitsubishi's counsel), the pending Mitsubishi motion highlights the implications of the restrictions contained in the Protective Order.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
) Docket No. 9302
RAMBUS INCORPORATED,)
)
 a corporation.)

CERTIFICATE OF SERVICE

I, Rebecca A. Williams, hereby certify that on June 4, 2004, I caused a true and correct copy of the *Declaration of Gregory P. Stone in Response to Motion of Third-Party Infineon Technology for Clarification of the August 2, 2002 Protective Order* 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

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

Donald S. Clark, Secretary
Federal Trade Commission
Room H-159
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

Rebecca A. Williams

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
RAMBUS INC.,)	Docket No. 9302
a corporation,)	
_____)	

CERTIFICATION

I, Rebecca A. Williams, hereby certify that the electronic copy of the *Declaration of Gregory P. Stone in Response to Motion of Third-Party Infineon for Clarification of the August 2, 2002 Protective Order* accompanying this certification is a true and correct copy of the paper version that is being filed with the Secretary of the Commission on June 4, 2004 by other means.

Rebecca A. Williams
June 4, 2004