

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

**In the Matter of**

**RAMBUS INCORPORATED,**

**Respondent.**

**Docket No. 9302**

**RESPONSE OF RAMBUS INC. TO MOTION OF THIRD-PARTY INFINEON  
TECHNOLOGY FOR CLARIFICATION OF THE AUGUST 2, 2002  
PROTECTIVE ORDER**

The August 2, 2002 Protective Order entered in the above-referenced proceeding provides that “Discovery Material” “shall be used solely

employees to be used in the Infineon litigation as if the depositions had been taken in that case. However, without notice to all third parties whose depositions were taken in this

In the Infineon litigation, Rambus has produced to Infineon many of the documents that it produced in this proceeding and Infineon, which was subpoenaed in this proceeding, also has produced in the Infineon litigation many of the documents that it produced in this matter. Some of the same documents produced by Rambus and Infineon in this proceeding were produced in the Infineon litigation before they were produced in this matter; others were produced in the Infineon litigation after they had been produced here. *See Stone Decl. at ¶3.*

The present Motion relates not to the production of documents, however, but to the production of deposition transcripts that would not exist but for this proceeding. Infineon seeks the production of transcripts of depositions taken in this proceeding of current and former Rambus employees. Rambus has offered to produce to Infineon the transcripts of depositions taken in this proceeding of its current employees, so long as Infineon agrees to comply with the terms of the Protective Order, including the provisions of paragraph 2 of the Protective Order that restrict the use of the transcripts to this proceeding. *Stone Decl. at ¶¶4, 6 & Exs. 1-4.* However, Rambus has declined to produce the transcripts of depositions taken in this proceeding of its former employees, because to do so appears to be inconsistent with the provisions of the Protective Order. *Stone Decl. at ¶¶ 5, 7.*

## **II. ARGUMENT**

The Protective Order prohibits the use in any other proceeding of transcripts of depositions taken in this proceeding. Rambus is willing to consent to amend the Protective Order so that the transcripts of depositions of its current employees, as well as the transcripts of depositions of Infineon's current employees, can be used in the Infineon litigation, subject to the confidentiality provisions of the protective order in that action. Rambus submits herewith a proposed Order to amend the Protective Order accordingly. That leaves in dispute only the issue of whether transcripts of depositions of

former Rambus employees may, consistent with the terms of the Protective Order, be provided to Infineon and used by it in the Infineon litigation.

At the time third parties were deposed in this proceeding, they reasonably would have expected that their deposition testimony would be used only in connection with this proceeding and that information designated as “Confidential” or “Restricted Confidential” would remain subject to the restrictions and limitations of the Protective Order unless such testimony was introduced in evidence during trial. These expectations of third parties should not be disturbed unless the third parties first are given notice and an opportunity to be heard.

Rambus would not object to revising the Protective Order to permit deposition transcripts of all third parties to be used in other proceedings so long as the testimony was subject to confidentiality constraints that provided the same protection as the confidentiality provisions in the Protective Order in this proceeding. However, Rambus does not believe that such changes can be made in the Protective Order without first providing notice to all of the third parties who were deposed in this action and allowing them an opportunity to be heard.

Infineon suggests in its Motion that the District Court in the Infineon litigation ordered Rambus to produce deposition transcripts from this proceeding. To the contrary, and consistent with the interests of comity, the Court in that proceeding has not done so. Rather, it has instructed Infineon to seek an amendment of the Protective Order in this proceeding to enable and authorize Rambus to produce such transcripts. As noted earlier, Rambus will consent to an amendment of the Protective Order that would enable it to produce deposition transcripts of its current employees. However, as Rambus previously has pointed out to Infineon, if Infineon seeks to compel production of deposition transcripts of third parties, including former Rambus employees, then Infineon should provide them with notice and allow them an opportunity to be heard in response to any effort to amend the Protective Order to permit production of such transcripts.

Infineon also seems to imply that it would be prejudiced in some fashion if deposition transcripts from this proceeding are not produced to it.<sup>1</sup> Quite to the contrary,

diminished without first providing those third parties with notice and an opportunity to be heard.

DATED: June 4, 2004

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Rebecca A. Williams, hereby certify that on June 4, 2004, I caused a true and correct copy of the *Response of Rambus Inc. to Motion of Third-Party Infineon Technology for Clarification of the August 2, 2002 Protective Order* and the related *Proposed Order* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire  
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Rebecca A. Williams

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