

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL**



obligations are implicated by the proposed change, the issue of providing notice of the modification to third parties in order that they might be heard on this matter is simply a red herring. Notice of the change can easily be provided through normal means of service. As noted, Complaint Counsel has consented to this modification.

### **ARGUMENT**

Rambus implies that its former employees deposed by the FTC are just like any other third-party witnesses. This is incorrect. Like the current Rambus employees, whose FTC depositions Rambus now consents to produce under a clarification of the Protective Order, these ex-employees

- (a) were deposed by the FTC because they were Rambus employees and were questioned about their time at Rambus.
- (b) were deposed by the FTC about confidential information that is Rambus confidential information.
- (c) were represented at the FTC depositions by the very same outside counsel that represents Rambus -- Munger Tolles and Gray Cary.
- (d) are still represented by Munger Tolles and/or Gray Cary, and I.006.405 Tc((a[(D-005 Tc0.075c

What Rambus does not tell the Commission is that Infineon had no way of providing notice to these ex-employees other than the way it did -- through their counsel -- the same counsel that represented them in depositions in the Richmond litigation with Infineon. *See* ABA Model Rule of Professional Conduct 4.2 (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter...”). *See also In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 556, 561 (N.D. Ga. 1992) (discussing ABA Formal Opinion 91-359’s conclusion “that Rule 4.2 does not prohibit communications with former employees of a defendant corporation as long as the former employees are not *in fact*





## **CONCLUSION**

Infineon respectfully requests that the Commission issue the Order attached to Infineon's Motion for Clarification of the August 2, 2002 Protective Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2004, a true and correct copy of non-party Infineon Technologies, AG's REPLY BRIEF IN SUPPORT OF ITS MOTION FOR CLARIFICATION OF THE AUGUST 2, 2002 PROTECTIVE ORDER was filed personally with the Secretary of the Federal Trade Commission and served on Gregory P. Stone, Munger, Tolles & Olson, LLP, counsel for Respondent Rambus Inc. at 355 South Grand Avenue, 35<sup>th</sup> Floor, Los Angeles, California 90071, and upon Geoffrey D. Oliver, counsel supporting the Complaint, at the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001 by facsimile and overnight delivery.

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Mark L. Kovner