

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

<p>In the Matter of</p> <p>RAMBUS INCORPORATED,</p> <p style="padding-left: 40px;">a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 9302</p>
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**ORDER GRANTING DISTRICT COURT REQUEST
TO MAKE DEPOSITIONS AVAILABLE FOR USE IN
RAMBUS INC. v. INFINEON TECHNOLOGIES AG, ET AL.**

On September 13, 2004, The Honorable Robert E. Payne, United States District Judge for the Eastern District of Virginia, issued an order in *Rambus Inc. v. Infineon Technologies AG*, Civil Action No. 3:00cv524 (E.D. Va.) (“District Court Order”), requesting that the Commission make certain depositions taken in this administrative proceeding “available for use in [the federal court] proceedings at the earliest possible time.” The District Court Order states, *inter alia*, that “the depositions of current and former employees of Rambus and Infineon taken in the FTC matter are relevant to issues that are to be litigated” in the federal court action, which is set for trial beginning on October 4, 2004; that the depositions “shall be admissible in this action, provided that, such depositions shall first be made available to counsel in this action by the FTC for use in this action”; and that “the use of such depositions, subject to the applicable Federal Rules of Evidence and the Federal Rules of Civil Procedure, is in the interest of justice and judicial economy . . .”

The Protective Order Governing Discovery Material issued by Administrative Law Judge James P. Timony on August 5, 2002, governs the handling of all discovery material in this matter, including the deposition testimony at issue.¹ In the District Court Order, Judge Payne indicates that Rambus has advised the Court “that it construes the Protective Order in the FTC Matter to preclude (a) it from providing copies of the depositions of its current and former

¹ The interaction between the Protective Order and these depositions is also the subject of a Motion For Clarification Of The August 2, 2002 [sic] Protective Order filed on May 25, 2004 by third party Infineon Technologies AG and its affiliates (“Infineon”). On June 4, 2004, Rambus filed a Response to that Motion and a supporting declaration of its counsel Gregory P. Stone. On June 22, 2004, Infineon filed both a Motion for Leave to File a Reply and the Reply itself. The issuance of this Order renders moot these two motions filed by Infineon and the response filed by Rambus.

employees (or those of Infineon) to Infineon and (b) any use of those depositions in this action without prior modification of the Protective Order or permission from the FTC . . .”

Rambus has not construed the Protective Order correctly. The Protective Order neither prevents Rambus from providing copies of the depositions at issue to Infineon nor precludes their use in the District Court action. Paragraph 16 of the Protective Order provides a mechanism for granting the request of the District Court. Paragraph 16 requires Rambus to notify “promptly” any other “producing party” that it has received a request for production of these deposition transcripts in another proceeding, in order to allow such party to seek further relief against production. Absent any such objection within ten business days, or further court order, the requested material can and should be produced in accordance with the request in the other proceeding.

The current and former employees and agents of Rambus and Infineon whose depositions are at issue have already received the notice required by Paragraph 16 because they have been represented at all relevant times by litigation counsel for either Rambus or Infineon, both here and in the District Court proceeding. Those counsel received notice of the discovery requests at issue several months ago, and received notice of the September 13th District Court Order on or about that date. Moreover, even if any of the former employees and agents of Rambus could be considered “third parties,” as Rambus has suggested, Rambus should have complied already with its Paragraph 16 obligation to notify those persons, both when it received the discovery requests at issue and when it received the District Court Order. Furthermore, Rambus’s own objection to disclosure of material as to which it is the “producing party” has evidently already been disposed of by the District Court.

This issue has arisen because Rambus is selectively proffering portions of deposition transcripts from the Commission’s administrative proceeding while declining to produce other portions. The District Court seeks disclosure only of information relating to the current and former employees of Rambus and Infineon; it is not seeking disclosure of information about unrelated parties. The District Court has expressly determined that the depositions at issue are relevant and admissible. Furthermore, the confidentiality of the discovery material will be preserved in the District Court action by virtue of protective orders issued by the District Court. Under these circumstances the public interest supports disclosure of the requested information in the District Court litigation. Accordingly,

IT IS ORDERED THAT the District Court’s request that the Commission make available for use in the District Court proceedings depositions of current and former employees of Rambus and Infineon taken in this administrative proceeding be, and it hereby is, **GRANTED**, by means of the Commission’s determination that the Protective Order neither prevents Rambus from providing copies of such depositions -- or of depositions of current or former directors, officers, attorneys, or agents of Rambus or Infineon -- nor precludes their use in the District Court proceedings; and

IT IS FURTHER ORDERED THAT the Secretary shall provide a copy of this Order to each former or current employee, director, officer, attorney, or agent of Rambus and Infineon deposed in this matter (or his or her attorney) by overnight mail, personal delivery, FAX, email or any other method permitted by Rule 4.2(a) of the Commission Rules of Practice, 16 C.F.R.

§ 4.2(a) (2004). Nothing in the Protective Order in this matter shall prevent Rambus from disclosing the requested discovery material to Infineon in the District Court litigation unless a