

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

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

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

**OBJECTIONS BY RESPONDENT RAMBUS INC. TO
COMPLAINT COUNSEL'S RESPONSE TO THE
COMMISSION'S ORDER REGARDING
DESIGNATION OF RECORD PERTAINING TO
SPOILIATION OF EVIDENCE BY RAMBUS;
REQUEST TO SUBMIT ADDITIONAL EXHIBIT**

On December 6, 2004, the Commission ordered the parties to submit a designation of the “portions of the record below” which each deemed relevant to the question of whether Rambus engaged in spoliation of evidence. Rambus timely filed a seven-page statement in response to the Commission’s order. Rambus limited its statement to a description of the relevant evidence in the trial record.

In contrast, Complaint Counsel submitted a 23-page brief and over 200 pages of attachments. Complaint Counsel conceded in their brief that their submission contained more than a “designation of the record” below and addressed “other matters” not referenced in the Commission’s December 6, 2004 order. *See* Brief at 2.

Rambus objects to Complaint Counsel’s submission on the ground that it goes beyond far beyond the limited scope of the request by the Commission and appears to be an effort both to expand the scope of Complaint Counsel’s appeal and to rely upon material that is outside the record. This is improper. *See In the Matter of Chester H. Roth*, 55 F.T.C. 1076, 1959 FTC LEXIS 21 at *9 (1959) (“It is elementary that Commission decisions are to be founded upon the established record.”). Rambus also disagrees with many of Complaint Counsel’s arguments on their merits.

Complaint Counsel’s brief also attached a brief submitted by Infineon Technologies in a pending federal district court action. *See* Brief at 3-4 and Attachments C-D. Rambus has recently filed a response in the federal court action to the brief submitted by Infineon. Rambus attaches that brief (in the redacted version that was filed on January 31, 2005) as Exhibit A and respectfully requests that the Commission accept the brief, *if* the Commission is going to consider the arguments and attachments previously submitted by Complaint Counsel.¹

¹ As Rambus’s response to the Infineon brief makes clear, there is no evidence that Rambus destroyed any documents that would have been “relevant and material to the disposition of the issues in this case. . . ,” IDC 244, nor is there any evidence that such materials were ever deliberately targeted for destruction.

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CERTIFICATE OF SERVICE

I, Kenneth A. Bamberger, hereby certify that on February 4, 2005, I caused true and correct copies of the *Objections By Respondent Rambus Inc. to Complaint Counsel's Response to The Commission's Order Regarding Designation of Record Pertaining to Spoliation of Evidence By Rambus; Request to Submit Additional Exhibit*, to be served on the following persons by hand delivery:

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)
) Docket No. 9302
RAMBUS INC.,)
 a corporation,)
_____)

CERTIFICATION

I, Kenneth A. Bamberger, hereby certify that the electronic copies of the *Objections By Respondent Rambus Inc. to Complaint Counsel's Response to The Commission's Order Regarding Designation of Record Pertaining to Spoliation of Evidence By Rambus; Request to Submit Additional Exhibit*, accompanying this certification are true and correct copies of the paper versions that are being filed with the Secretary of the Commission on February 4, 2005 by other means.

Kenneth A. Bamberger
February 4, 2005