

PUBLIC

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION  
RECEIVED DOCUMENTS

**I. INTRODUCTION.**

Respondent Rambus Inc. (“Rambus”) respectfully submits this memorandum in opposition to Complaint Counsel’s motion to reopen the record to admit 17 documents produced by Rambus to Complaint Counsel earlier this year. The documents in question were among a large group of documents provided to Complaint

contain documents that had not previously been reviewed or produced in litigation.

Complaint Counsel ask the Commission to admit the 17 documents (and a Rambus privilege log) because, they say, those documents are “illustrative examples” of



denied.

**II. ARGUMENT.**

**A. The Seventeen Preferred Documents Are Cumulative And In Many**

**Documents Support The Finding That The Initial Decision**

**1. Documents Relating To Rambus's Desire To Amend Its**

Many of the 17 documents at issue here are offered by Complaint Counsel to show that while a JEDEC member, Rambus hoped to amend its pending patent claims, or to file new claims, that would "enhanc[e] claim coverage" and "provide better coverage, if possible," with respect to features used or considered for use in "competitive memory [interface] technologies." Motion to Reopen, pp. 10-11.

Such documents are entirely cumulative. Indeed, Complaint Counsel concede as much and claim only that such documents "provide further illumination." *Id.*,

11. This proposition is understandable for Complaint Counsel's brief on appeal

- Judge McGuire did not base any of his findings or conclusions on the proposition that Rambus was *not*, while a JEDEC member, seeking to obtain intellectual property rights covering technologies under consideration by JEDEC.
- As a consequence, the documents at issue would only be relevant to this appeal if they somehow undermined Judge McGuire's finding that the EIA/JEDEC patent policy did not require the disclosure of intentions to file patent applications

Initial Decision, pp. 115-116 (findings nos. 772-774) and pp. 269-70. *See also Rambus Inc. v. Infineon Technologies AG*

318 F.3d 1081, 1102, 1104 (Fed. Cir. 2003) (holding that the

disclosure of a member's relevant intellectual property or had merely *requested* such disclosure. *See id.*, p. 12, *citing* CX5105; p. 13, *citing* CX5100-5101. The cited documents are cumulative of other record evidence. *See e.g.* CX837. Moreover, as

volunteers were answered by JEDEC Committee Chairman Gordon Kelley at the

Mr. [redacted]'s use of [redacted] indicates this announcement by the [redacted]

Chairman of the JEDEC 42.3 Committee was important confirmation for Rambus that

[redacted] at JEDEC meetings was voluntary, not required. See generally, Initial

Decision 0265 (finding by Judge McGuire that there is "overwhelming evidence from



CX5113 at 1

“Really the major reason for the policy they have in place is that if they were to standardize something that has a patent on it and the patent is necessary to build the device and the patent holder decides to not

CX711 at 16

“Micron says the policy exists due to anti-trust concerns. That if a group of companies wanted to keep out competition they could agree amongst themselves to standardize something that is patented and

destroyed to prevent their use in future litigation. Surely Rambus could not have predicted back in 1998 that its attorney-client privileges would someday be pierced by a federal judge, so that documents ordinarily protected from discovery would become

log (CX 5117) should not be admitted.


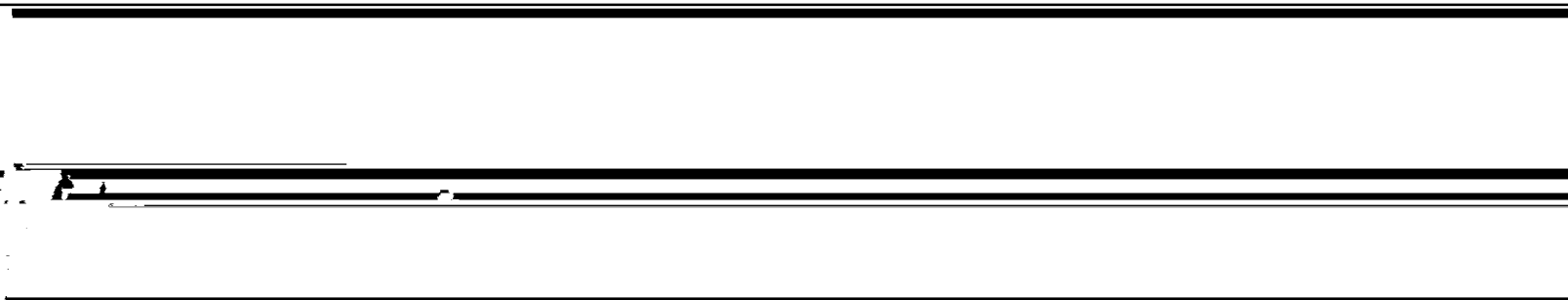


**C. Complaint Counsel's Continued Assertions Regarding The**

**Alleged Prejudice To "A Full And Fair Administrative  
Litigation" Are Unsupported By The Evidence And Wrong.**


Complaint Counsel use their motion to reopen the record, and the largely

JEDEC's files and on Judge McGuire's determination that "after-the-fact testimony of interested witnesses" was not credible. *Id.*

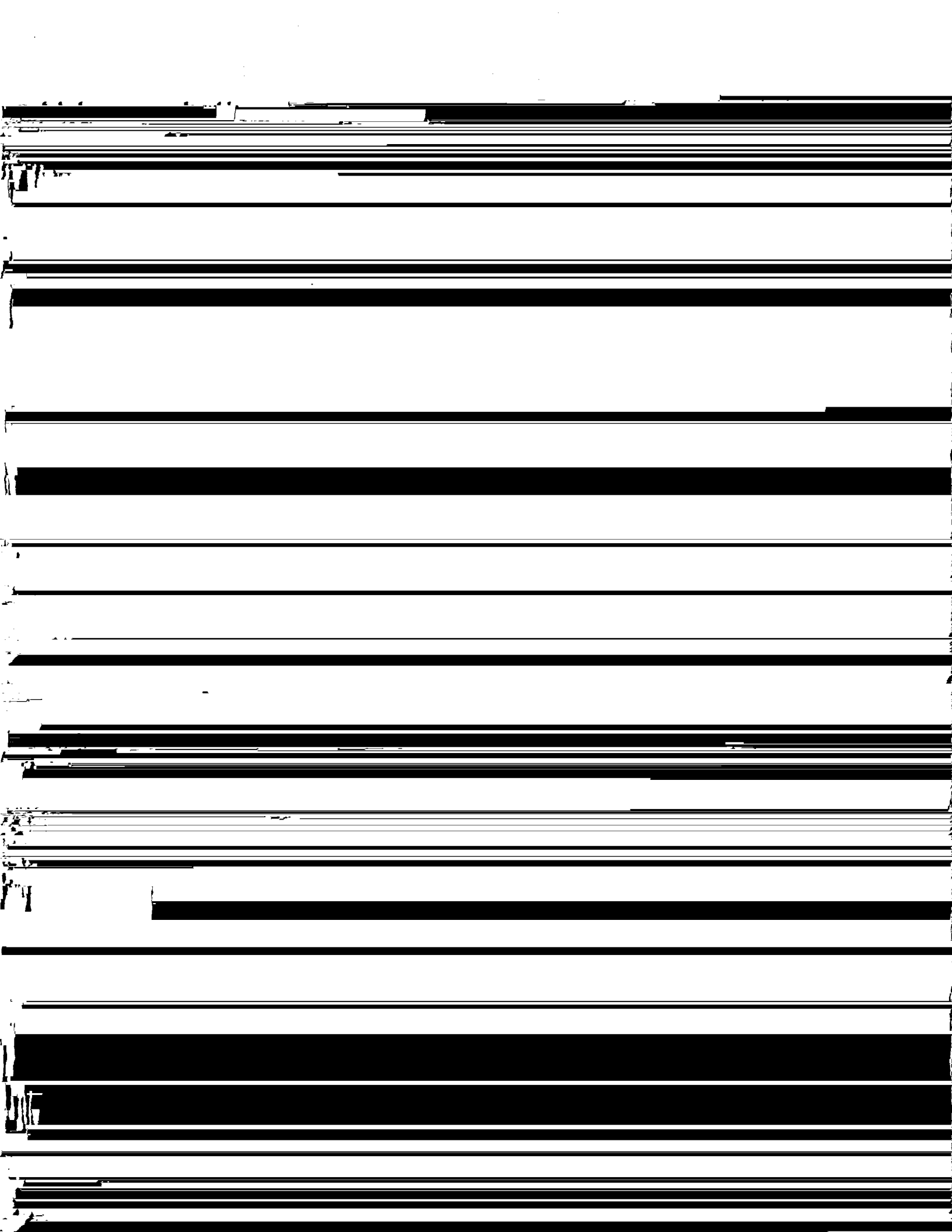
Nothing that might have been contained in Dombus's files could have had any



effect on Judge McGuire's finding that "the disclosure of intellectual property interests [by JEDEC members] was encouraged and voluntary, not required or mandatory." Initial Decision, p. 265. This finding was largely based on "the manuals which discuss the patent policy, a March 1994 memorandum by JEDEC's secretary, the EIA's comments to the FTC in connection with the *Dell* consent decree, JEDEC's internal memoranda, the ANSI patent policy guidelines, the actions of other JEDEC members in not disclosing patents and



JEDEC's reaction thereto, the ballot for voting on technology, and the patent tracking list" all of which constituted "evidence that disclosure of intellectual



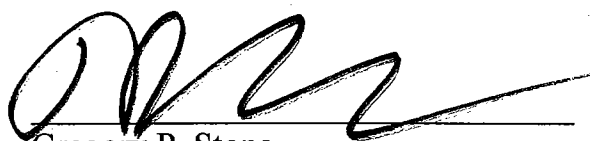
its holding that "the process here has not been prejudiced" by Rambus's alleged destruction of documents. *Id.*, p. 244.

~~For all of the foregoing reasons, Complaint Counsel's motion should be~~

denied.

DATED: October 11, 2005

Respectfully submitted,



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standardizing one item at a time. There is a standard on package type (44 pin TSOP II) for the x8,x9 device and one for the x4 (note that there is not one for the x16). Anyway, it is hard for me to tell what this will become, since I do not have copies of all the existing ballots (I did not attend all the meetings). JEDEC does not, as of yet, have a single specification that can be handed out. It does cover a wide variety of possible implementations (like one or more banks).

**BEFORE THE FEDERAL TRADE COMMISSION**

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

**In the Matter of**

**RAMBUS INC.,**

**a corporation.**

**Docket No. 9302**

**CERTIFICATE OF SERVICE**

I, Helena T. Doerr, hereby certify that on October 11, 2005, I caused a true and correct copy of the *MEMORANDUM BY RESPONDENT RAMBUS INC. IN OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO REOPEN THE RECORD*