UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

[redacted]

WASHINGTON, DC

Discovery for a Limited Purpose" (referred-to in this filing as "Order on Motion to Exclude and for Sanctions"), dated November 22, 2005 and your Honor's "Order Denying Respondents' Motion for Leave to Add an Expert Witness and to Reopen Discovery for a Limited Purpose" (referred-to in this filing as "Order on Motion for Leave"), also dated November 22, 2005. Good causes exist for granting this motion.

First, the two orders in question contain an erroneous statement of material fact, that needs to be corrected and considered by the court in ruling on the motions (*i.e.,* that *all* six of the fraudulent studies Complaint Counsel witness Dr. Stephen B. Heymsfield co-authored with Dr. John Darsee were withdrawn by the publications in question, when, in fact, one fraudulent Heymsfield/Darsee publication was not withdrawn [redacted]

[redacted]

Again, in the Order at 3-4, your Honor writes:

> Complaint Counsel has provided a sworn declaration certifying that Complaint Counsel was not aware that Dr. Heymsfield was listed as a co-author on studies that had been published and later withdrawn from publication.

In each instance, as the Presiding Officer, your Honor predicates legal conclusions on the reasonableness of Dr. Heymsfield's failure to list publications that had been withdrawn. As set forth in Respondent Friedlander's Motion, which his Honor apparently did consider, this was clear error. Dr. Heymsfield's admitted inclusion of co-authorship publications that have no bearing on his qualifications as a witness in this proceeding, and admitted exclusion of co-authorship publications that impeach his credibility as a witness, was designed to suppress evidence.

In addition, not all of the studies were withdrawn by Dr. Heymsfield. In fact, Dr. Heymsfield failed to withdraw the following study: Darsee JF, Fulenwider JT, Rikkers LF, Ansley JD, Nordlinger BF, Ivey G, Heymsfield SB, *Hemodynamics of LeVeen shunt pulmonary Edema*, 194(2) Annals of Surgery 189-92 (1981) (

above-referenced published study that he did not ask to be withdrawn. The issue was presented in Respondents' motion (See Reply at 2) and is not addressed in your Honor's Order.

Respondents respectfully request your Honor to assess the significance of Dr

II. DR. HEYMSFELD'S CREDIBILITY WAS NOT ADDRESSED IN THE ORDERS, RESULTING IN MATERIAL PREJUDICE TO THE PRESENTATION OF RESPONDENTS' DEFENSE

In Respondents' respective motions, repeated factual discrepancies and evasive testimony specifically were brought to the Presiding Officer's attention. For example,

[redacted]

Respondents revealed *inter alia* that Dr. Heymsfield: **(1)** failed to list *any* of the publications he co-authored with Dorgan; **(2)** said he had no reason for leaving his tenured [redacted]

professorship at Emory University other than his desire to seek better employment [redacted]

Motion to Exclude (Motion to Exclude at 12-24), Respondents placed Dr. Heymsfield's credibility in issue. The Orders omitted the foregoing facts, as presented in both the Motion to Exclude and in Respondent Friedlander's Motion. The Orders presented no

Motion at 5. Thus, the disclosure of potential impeachment evidence is not only relevant, but necessary to protect the integrity of the FTC's challenged regulatory [redacted]

[redacted]

supposed to discover the truth, but instead is being abused to prosecute protected commercial speech. Id. at 6.

A witness' credibility is central to adjudicative proceedings. Determinations [redacted]

lead him to leave Emory University. He evasively testified by neither admitting

[redacted]

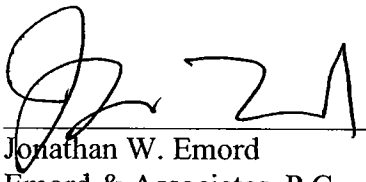
evasively testified that while an author is responsible for an entire article he is not

not amount to material prejudice to the Respondents would be to disregard the importance of credible evidence in the resolution of this proceeding. Respondents must

[redacted]

to be permitted to testify, given the facts and documented circumstances presented in the Motions.

Respectfully submitted,



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Counsel for Respondent Daniel B. Mowrey

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5742 West Harold Gatty Drive

Dated: December 6, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC
A.G. WATERHOUSE, LLC
KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORIES, LLC
BAN LLC d/b/a BASIC RESEARCH LLC
OLD BASIC RESEARCH, LLC
BASIC RESEARCH, A.G. WATERHOUSE, KLEIN-BECKER USA, NUTRA SPORT, and SOVAGE DERMALOGIC LABORATORIES

Docket No. 9318

Washington, D.C. 20580
Email: secretary@ftc.gov

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire
Chief Administrative Law Judge

U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.

Room H-112
Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

BASIC RESEARCH, LLC
A.G. WATERHOUSE, LLC
[redacted]

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC **A.G. WATERHOUSE, LLC** **KLEIN-BECKER USA, LLC** **NUTRASPORT, LLC** **SOVAGE DERMALOGIC LABORATORIES, LLC** **BAN LLC d/b/a BASIC RESEARCH LLC** **OLD BASIC RESEARCH, LLC**	**PUBLIC**

EXHIBIT A

*2003 FTC LEXIS 49, **

In the Matter of RAMBUS INC., a corporation

Docket No. 9302

Federal Trade Commission

2003 FTC LEXIS 49

ORDER DENYING RESPONDENT'S APPLICATIONS FOR REVIEW OF FEBRUARY 26, 2003, ORDER (GRANTING COMPLAINT COUNSEL'S MOTION FOR COLLATERAL ESTOPPEL) AND FEBRUARY 28, 2003, ORDER (GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL [redacted] CLAIMS WERE INVALIDATED ON CRIME-FRAUD GROUNDS AND SUBSEQUENTLY WAIVED); DENYING RESPONDENT'S REQUEST FOR RECONSIDERATION OF THE FEBRUARY 26 ORDER; AND GRANTING RESPONDENT'S REQUEST FOR RECONSIDERATION OF THE FEBRUARY 28 [redacted]

March 26, 2003

ALJ: [*1]

[redacted]

retention policy was created in anticipation of patent infringement litigation concerning

[redacted]

On appeal, the Federal Circuit, in Infineon II, affirmed-in-part, reversed-in-part, vacated-in-part, and remanded the case to the district court. The Federal Circuit reversed and vacated

Respondent's post-trial JMOL on the SDRAM fraud verdict. It affirmed the post-trial JMOL

While the district court awarded attorney fees on the three independent grounds noted

[redacted]

The February 28 Order issued by Judge Timony granted Complaint Counsel's motion and permitted the requested discovery. The Order was not based on the waiver theory advanced

[redacted]

For these reasons, Respondent's Applications for Review for interlocutory appeal of the February 26 and February 28 Orders are DENIED.

B. Reconsideration

question. Motions for reconsideration should be granted only sparingly. Karr v. Castle, 768 F. Supp. 1087, 1090 (D. Del. 1991). Such motions should be granted only where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) a

judgment remains final as to that issue -- "entire mandate [to be] read in toto" to determine circuit court's intent concerning extent of vacatur); Cowgill v. Raymark Industries, Inc., 832

F.2d 798, 802 (3d Cir. 1987)("When a court of appeals [illegible]

the Tenth Circuit. It fails on this point because M&L simply follows the reasoning of the Third Circuit in Haines without considering the impact of its own Circuit Court's decision in

Though the Court might agree with the reasoning of M&L, it is unable to determine if the M&L court ignored Vargas, believed it inapplicable, or simply was unaware of it.

Footnotes

In the context of a grand jury proceeding, there is a substantial societal interest in maintaining the secrecy of the grand jury's investigation. In this regard, to permit an entity the opportunity to rebut a prosecutor's unchallenged presentation of evidence sufficient to establish a prima facie basis for the crime fraud exception could prohibit the "effective

detection, punishment, and deterrence of criminal acts." Laser Industries, 167 F.R.D. at 426. In contrast, in the civil context there is no conflict between the need for secrecy presented

[redacted]

Respondent's actual conduct (waiver issue aside) amounts to a basis for invoking the crime-fraud exception **[*23]** and permitting the discovery sought by Complaint Counsel. In its Opposition to the Respondent's Motion for Reconsideration of the February 28 Order

[redacted]

Complaint Counsel avidly advocated and adopted this theory as its own.

It would be highly inefficient to go through an entire Haines-type proceeding on a waiver theory and then potentially have to go through it a second time on another substantive theory. Rather, to promote judicial economy, the Court intends to address all potential theories in support of invoking the crime-fraud exception in a single proceeding. As a result,

[redacted]

once more outstanding Motion to Compel, it must file a supplemental memorandum, not to

EXHIBIT B

0110017

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

[redacted]

Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

[redacted]

a corporation.

COMPLAINT

[redacted]

13. The introduction of synchronous DRAM offered a potentially promising solution to the memory

18 The JEDEC Manual provides that all JEDEC meetings "shall comply with the current edition of

[redacted]

EIA Legal Guides." These Legal Guides, which are explicitly "incorporated [redacted]

[redacted]

into JEDEC's own governing rules, and currently are posted on JEDEC's [redacted]

required that no standard be drafted to include "patented items" – or "items and processes for

which a patent has been applied" – absent both

(1) a well-supported technical justification for inclusion of the patented item; and

(2) [redacted]

complaint: the JC-42.3 Subcommittee on RAM Devices ("JC-42.3").

26. Beginning in or around 1990, JC-42.3 commenced work on standards relating to the design and architecture of synchronous DRAM, referred to within JC-42.3 as "SDRAM." JEDEC members involved in the SDRAM-related work of JC-42.3 have over time included virtually all

[redacted]

27. During the 1990s, JEDEC issued several SDRAM-related standards, the first of which was

published in November 1993 and was identified as Release 4 of the 21-C Standard.

subcommittee membership for approval through a formal balloting process, pursuant to which written ballots were distributed and received by mail.

e. Votes were then tabulated at the subsequent meeting of the subcommittee, at which [redacted]

proposal.

f. Technically, a two-thirds majority was required, but in practice proposals rarely passed without a consensus of all voting members.

g. Individual proposals, once approved by IC-42.3, were often held at the subcommittee [redacted]

the RDRAM bus was sometimes said to be "multiplexed" or "triply multiplexed."

c. Third, rather than transmitting data, address, and control information separately, as was common in a traditional DRAM architecture, RDRAM transmitted such information

[redacted]

together in groupings, called "packets." For this reason, RDRAM is also sometimes referred to as a "packetized" system.

[redacted]

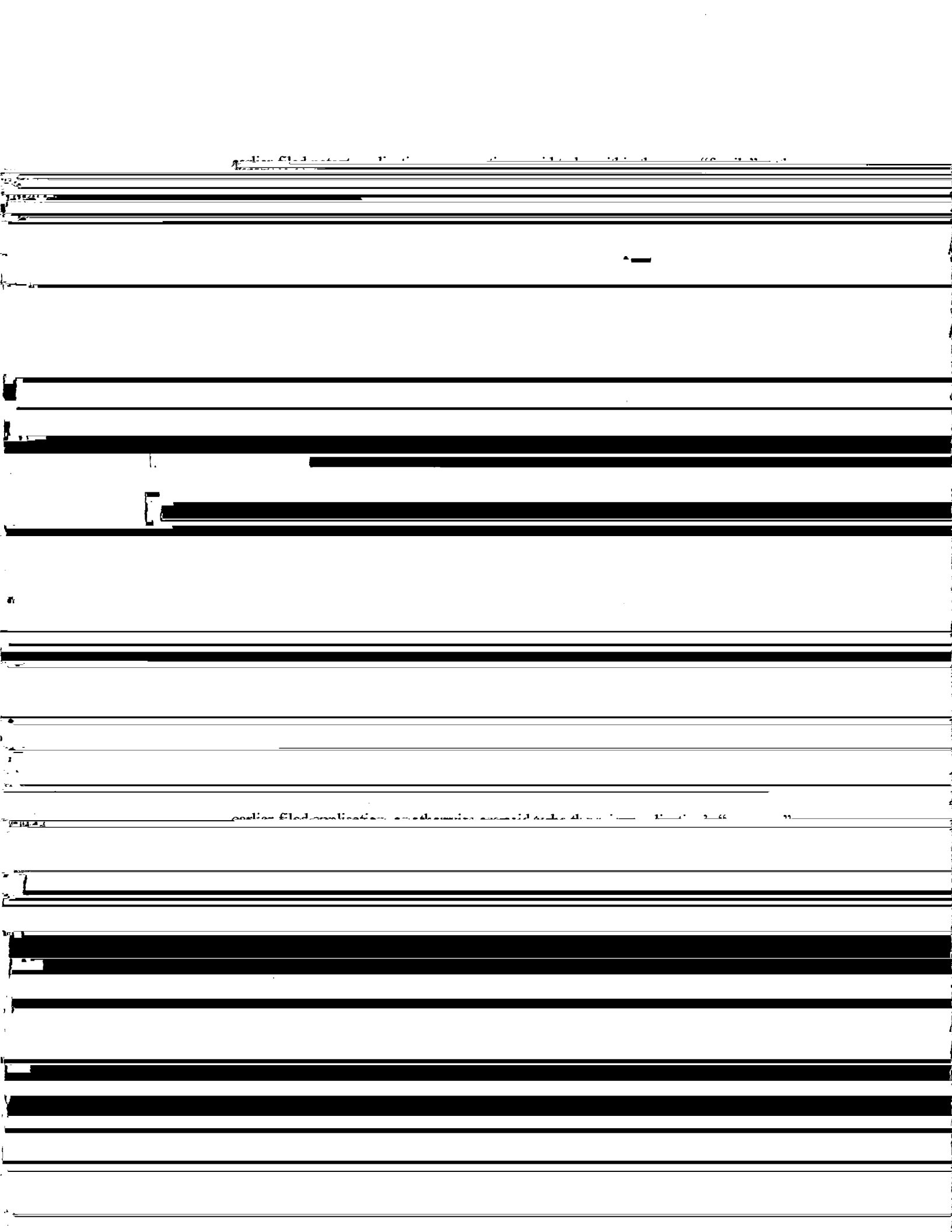
concepts or features, Rambus does not itself manufacture such technologies, choosing instead to license its designs for a fee to downstream memory manufacturers. Beginning in the early 1990s and continuing through the present, Rambus has sought to market and license its proprietary RDRAM technology to manufacturers of computer memory and related products,

[redacted]

to numerous other amended, divisional, or continuation patent applications, all technically the

"progeny" of the '898 application – and eventually resulted in the issuance of numerous Rambus

patents.



42. Shortly after becoming involved in JEDEC, it became apparent to Rambus that JC-42.3 was committed to developing SDRAM standards based on the traditional wide-bus, non-packetized DRAM architecture, relying to the extent possible on non-proprietary technologies. In other words, it was highly unlikely JC-42.3 would be interested in standardizing RDRAM.

[redacted]

perfect Rambus's patent rights over such technologies. In executing these steps, Rambus placed heavy reliance upon two individuals: Richard Crisp, Rambus's designated representative to the JC-42.3 Subcommittee, and Lester Vincent, an attorney with the law firm of Blakely, Sokoloff, Taylor & Zafman, who served as Rambus's outside patent counsel.

[redacted]

54 Throughout its four and one-half years of participation in the JC 42.3 Subcommittee, Rambus

known as programmable burst length allows memory chips to be programmed to adjust this aspect of the memory's operation in order to facilitate compatibility with a variety of different

59. From December 1991 through May 1992, Crisp and other Rambus representatives observed multiple JC-42.3 presentations pertaining to programmable CAS latency and programmable burst length, both of which were proposed to be incorporated in the first JEDEC SDRAM standard. Soon thereafter, in the summer of 1992, Crisp received, and voted upon, a ballot calling for inclusion of both technologies in the standard. This was the only time that Crisp voted on a JEDEC ballot, and he voted "No" for technical reasons that he was called upon to

and did, explain, but without saying anything to suggest that Rambus might possess relevant intellectual property.

60. At the time of these events, Crisp and others within Rambus believed that both programmable CAS latency and programmable burst length were encompassed by the inventions set forth in the specification and drawings of the '898 application and related applications that were then pending at the PTO, and that Rambus – by amending the claims in those pending applications –

[redacted]

such disclosures likely would have impacted the content of the SDRAM standards, the terms on which Rambus would later be able to license any pertinent patent rights, or both.

66. Dual-edge clock is a technology that permits information to be transmitted between the CPU and memory twice with every cycle of the system clock, thereby doubling the rate at which

Subcommittee that it possessed patents or pending patent applications arguably covering (or

wide-bus synchronous DRAM architecture, such disclosures likely would have impacted the

applications that purported to cover, or were being amended to cover, both (1) technologies

included in already published JEDEC standards, and (2) additional technologies then being

considered for inclusion in future JEDEC standards. Moreover, the episode that gave rise to Rambus's September 1995 letter involved discussion of a narrow-bus, multiplexed, packetized SDRAM design – known as "SyncLink" – that bore a strong resemblance to Rambus's own narrow-bus, multiplexed, packetized RDRAM design. As explained elsewhere in this

complaint, the wide-bus, non-packetized synchronous DRAM design adopted by JEDEC differed significantly from Rambus's RDRAM design, and hence from the SyncLink design as well. Thus, to the extent Rambus's September 1995 letter could be interpreted to suggest that

Rambus might possess relevant intellectual property rights, JEDEC's members would naturally have understood that any such rights related to the SyncLink design

[redacted]

additional applications that Rambus believed could be amended to cover products

"[H]ere are our issued patent numbers. you decide for yourselves what does and does not infringe." (*See* Paragraph 75 above.)

85. The list of 23 Rambus patents attached to this letter consisted of 21 U.S. and two foreign (one Taiwanese and one Israeli) patent numbers without

[redacted]

Of the 21 U.S. patents on the list, five fell within the '898 family and the remaining 16

[redacted]

[redacted]

indicate that total sales of DDR SDRAM, on a revenue basis, may account for as large as 40% of all DRAM produced worldwide in 2002, and by 2004 this figure is expected to exceed 50%.

Success of Rambus's Scheme

91. Throughout the late 1990s, as the DRAM industry became increasingly locked in to use of JEDEC-compliant SDRAM, and subsequently DDR SDRAM, Rambus continued the process

of perfecting patent rights on certain technologies incorporated within the JEDEC SDRAM

above, Rambus had succeeded in obtaining licenses covering roughly 50% of total worldwide production of synchronous DRAM technology. At current market prices for SDRAM, such

101. Upon information and belief, Rambus also possesses additional patents and patent applications, some claiming priority back to the '898 application, that it has not yet sought, but could in the future seek, to enforce against memory manufacturers producing JEDEC-compliant SDRAM, absent issuance of the relief requested below.

102. In addition to the foregoing, Rambus is involved in other litigation in various foreign countries relating to foreign patents that cover, or purport to cover, many of the same DRAM-related technologies that are at issue in the U.S. litigation.

103 Notably, while Rambus has licenses covering roughly 50% of the synchronous DRAM industry

Rambus asserts in litigation that all or virtually all synchronous DRAM produced worldwide

107. Added to these complications is the fact that purchasers and other users of JEDEC-compliant SDRAM technology – including manufacturers of computers, chipsets, graphics cards, and motherboards – have themselves become locked in to the JEDEC standards. For this and other reasons, even if the DRAM industry were otherwise able to undertake the complicated and costly task of revising the JEDEC standards to work around Rambus's patent claims, it is unclear whether downstream purchasers of synchronous DRAM would welcome or accept such an action, given the costs that they would be forced to incur in order to conform their own product designs and manufacturing processes to a revised set of standards. Nor is it clear

[redacted]

delay in the introduction of new products that likely would result from the process of changing the standard.

108. Any effort to revise the JEDEC standards on a going-forward basis could also interfere with the ability of DRAM designers, manufacturers, and users to maintain the backwards compatibility

[redacted]

order to address or solve issues, or problems, that arise in the course of developing such chips.

market encompassing the group of complementary technologies and their close substitutes

Thus, in addition, or in the alternative, to the four product markets identified above, there is a fifth well-defined product market that is relevant for purposes of this complaint – namely, a

markets (hereinafter, the "synchronous DRAM technology market")

119. The foregoing conduct by Rambus, during and after its involvement in JEDEC's JC-42.3 Subcommittee, has materially caused or threatened to cause substantial harm to competition and will, in the future, materially cause or threaten to cause further substantial injury to competition and consumers, absent the issuance of appropriate relief in the manner set forth below.

120. The threatened or actual anticompetitive effects of Rambus's conduct include but are not limited to the following:

[redacted]

synchronous DRAM technology;

b. increases in the price, and/or reductions in the use or output, of synchronous DRAM chips, as well as products incorporating or using synchronous DRAMs or related

122. As described in Paragraphs 1-121 above, which are incorporated herein by reference, Rambus has willfully engaged in a pattern of anticompetitive and exclusionary acts and practices

undertaken over the course of the past decade, and continuing even today, whereby it has

Third Violation Alleged

124. As described in Paragraphs 1-121 above, which are incorporated herein by reference, Rambus [redacted]

Notice

Notice is hereby given to the Respondent that the eighteenth day of September, 2002, at 10:00

Notice of Contemplated Relief

equitable, or administrative, as well as any arbitration, mediation, or any other form of private dispute resolution, through or in which Respondent has asserted that any person or entity, by manufacturing, selling, or using JEDEC-compliant SDRAM and DDR SDRAM technology

EXHIBIT C

Nov 29 2005 11:19:28