

**ORIGINAL**

**PUBLIC**

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

COMMISSIONERS: Deborah Platt Majoras, Chairman  
Pamela Jones Harbour



William E. Kovacic  
J. Thomas Rosch

SECRETARY

**In the Matter of**

**RAMBUS INC.,**

**a corporation.**

**Docket No. 9302**

**OPPOSITION BY RAMBUS INC. TO MOTION OF  
AMERICAN ANTITRUST INSTITUTE, INC.  
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

I. INTRODUCTION

Respondent Rambus Inc. ("Rambus") respectfully submits this opposition to

the motion by American Antitrust Institute, Inc. (hereinafter "the AAI") for leave to file an amicus brief in connection with the remedy phase of this proceeding. The AAI's motion and proposed brief are procedurally and substantively improper, and the motion for leave to file the brief should be denied.

II. AAI'S BRIEF IS UNTIMELY, AND ITS CONSIDERATION WOULD BE INAPPROPRIATE AND PREJUDICIAL

The Commission's July 31, 2006 Order established a simultaneous briefing schedule relating to remedy issues, pursuant to which both parties filed principal briefs on September 15, 2006 and reply briefs on September 29, 2006. Although all of the other third parties who sought leave to file amicus briefs in this matter filed their motions for leave on September 15, 2006, when the parties' principal briefs were due, the AAI chose to wait until September 29, 2006. In defending its delay, the AAI claims that it was

the Federal Rules “are not applicable to the Commission” and that “[e]ven if the Commission followed Rule 29, it would not aid VTC,” for Rule 29 would have required that the amicus brief be filed no later than seven days after the petitioner’s principal brief. *Id.* at n.3, *citing* Federal Rule of Appellate Procedure 29(e) (requiring all amicus briefs, even those claiming to be neutral, to be filed no later than seven days after appellant’s opening brief).<sup>1</sup>

The Commission’s holding in *North Carolina* is not applicable here. *Id.* at 100.

does not apply here, and the rule that *does* apply, 16 C.F.R. § 3.52(j), required the AAI to file its motion on September 15, 2006, as the other *amici* did. Even if Rule 29 *did* apply,

moreover, the AAI’s brief would still be untimely. *Id.* at 100.

responsive pleading.”). Given the nature of the arguments made in the AAI’s brief, the bulk of that prejudice would be felt by Rambus.<sup>2</sup>

Moreover, while the Commission may be in a better position than Rambus to identify institutional concerns, it seems likely that an order allowing the AAI to file its untimely amicus brief in this case will encourage it and other amici in other future cases to file briefs after the parties’ principal briefs have been filed, leading to ancillary litigation regarding the nature of the amicus brief, as well as requests by the parties for further briefing and concomitant delay.

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<sup>2</sup> The AAI claims that its brief is neutral and does not “support[ ] a particular outcome for or against either party.” AAI Brief at 1. In fact, the brief, which is based on an incomplete and misleading description of the record evidence, argues that the Commission should strive for “costless” standards that are not “undermined by the incentives to innovate created by patent policy.” Brief at 1-2. The AAI’s brief also suggests that the Commission place on Rambus the burden of showing by clear and convincing evidence that “but for the incorporation of Rambus’s technology into the JEDEC standards, there would have been materially less demand for JEDEC-compliant devices”. *Id.* at 7. Such



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**CERTIFICATE OF SERVICE**

I, Helena T. Doerr, hereby certify that on October 5, 2006, I caused a true and correct copy of the *Opposition By Rambus Inc. To Motion Of American Antitrust Institute Inc. For Leave To File Brief As Amicus Curiae* to be served on the following

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A handwritten signature in cursive script, appearing to read "Helena T. Doerr". The signature is written in black ink and is positioned above a horizontal line.

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Helena T. Doerr