

ORIGINAL

PUBLIC

UNITED STATES FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION

I. Introduction

The American Antitrust Institute, Inc. ("AAI") replies herewith to the "Opposition by Rambus, Inc. to the Motion of AAI for Leave to File Brief as *Amicus Curiae*" on the issue of remedies dated October 5, 2006 ("Opposition").¹

On May 12, 2004 the AAI filed a motion to participate in this proceeding as *amicus curiae*. The motion was granted by the Commission in an Order dated June 21, 2004. Subsequently, on July 31, 2006, the Commission established a supplementary briefing schedule on the issue of remedy. Pursuant to the schedule the parties were directed to file simultaneous briefs by September 15, 2006 and simultaneous responding briefs by September 29, 2006.

On September 29, 2006 AAI filed a motion for leave to file a responding brief as *amicus curiae*. AAI also conditionally filed its responding brief pursuant to the Commission's Rule 3.52(j), 16 C.F.R. §3.52(j). AAI's responding brief set forth two principles which did not appear to be sufficiently addressed in the initial briefs of the parties or other *amici*.

Rambus, Inc. opposes AAI's responding brief on the grounds that AAI's filing was "untimely" and unfairly "robbed the parties of the ability to respond." Opposition at 2. Rambus further claims that "the bulk of that prejudice would be felt by Rambus" because

¹A "reply" under these circumstances is not expressly contemplated by the Commission's Rules (See Rule 3.22(c), 16 C.F.R. §3.22(c), allowing only for an "Answer" to a motion presented to an Administrative Law Judge or the Commission). However, in analogous circumstances before federal appellate tribunals, the

AAI's brief is "clearly adverse to Bankruptcy..."

II. The AAI's Responding Brief is Not Untimely and Any Potential Prejudice Easily Can Be Cured by Permitting the Parties to File a Brief Responding to the AAI

The Commission's Rule 3.52(j), 16 C.F.R. §3.52(j) states that "an amicus curiae shall file its brief within the time allowed the parties whose position as to affirmance or reversal the amicus brief will support." Because the Commission's Order directed both parties to file simultaneous initial briefs and responding briefs, AAI's responding brief was timely, even if, *arguendo*, the AAI's brief could be construed to support a particular party.

Moreover, although AAI filed a motion for leave to file a responding *amicus* brief on remedies, it is not at all clear that it was required to do so.

III. The AAI's Brief Does Not Advocate For or Against Either Party

Contrary to the averments in the Rambus Opposition, the AAI's responding brief does not necessarily support either party. The brief presents two straightforward principles, *i.e.*, that the royalty rate Rambus should be entitled to collect from practitioners of the relevant JEDEC standards should be calibrated to the degree of openness intended for the standard before it was adopted, and that Rambus ought not be permitted to reap a reward for market demand for the JEDEC standard, as opposed for market demand for Rambus' particular technology.

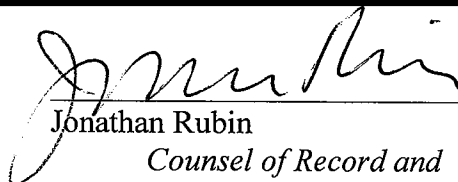
Both principles require the Commission to determine factual matters that are outside

IV. Conclusion

BASED ON THE FOREGOING, the AAI respectfully requests an Order granting it leave to file its brief *amicus curiae* on the issue of remedies.

Respectfully submitted

Albert A. Foer
President
American Antitrust Institute, Inc.
2919 Ellicott Street, N.W.
Washington, D.C. 20008


Jonathan Rubin
*Counsel of Record and
Senior Research Fellow*
Jonathan L. Rubin, P.A.
1717 K Street, N.W., Suite 600

Washington, D.C. 20036
(202) 415-0616

Dated: October 11, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 11, 2006, I caused true and correct copies of

Leave to File Brief as *Amicus Curiae* to be served as described below.

Service by hand delivery of paper copies, including an original, signed version, and 12 photocopies, and by electronic mail, was provided to:

Donald S. Clark
Secretary
Federal Trade Commission