PUBLIC

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of

RAMBUS INC., Docket No. 9302

a corporation.

REPLY OF RESPONDENT RAMBUS INC. IN SUPPORT OF ITS PETITION FOR RECONSIDERATION OF THE COMMISSION'S FINAL ORDER

MUNGER,E Chairman O5 Tc25 101.84.9598 562.j�-7 T3 Chair-1Tj�0Chairma58 O5 Tc375 91.700.0004 272.5203

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A. The Commission Should Confirm That The Order Does Not Require Rarnbus To Refund Royalties Already Collected Or To Forgo Royalties Already Due Under
Existing Licenses. 1

1. Complaint Counsel Agree That

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INTRODUCTION

On February 16,2007, Respondent Rambus Inc. ("Rambus") filed a Petition for Reconsideration of the Commission's Final Order and, separately, a Motion for Stay of the same Order. Complaint Counsel's responses to Rambus's filings show that Complaint Counsel agree in principle with Rambus on several of the issues raised in Rambus's reconsideration petition. On other issues, Complaint Counsel fail to address Rambus's arguments, misconstrue them, or offer inadequate responses.
A. The Commission Should Confirm That The Order Does Not Require Rambus To Refund Royalties Already Collected

private litigation that the Order requires such refunds.' See Hynix v. Rambur, No. CV 00-20905-RMW, Hearing Tr. 23 (Feb. 16,2007) ("we think that's what the Commission
meant when it talks about rescission") (attached as Ex. 2 to Brief of Amici Curiae in
Opposition to Rambus's Motion to Reconsider the Commission's Remedy Order in the
Matter of Rambus Inc.). The Commission should therefore clarify its Order to prevent
unnecessary litigation; the simplest way to do so is to T 0 Td�(simplest)Tj�3.55 Td�(requires)Tj� t7event

undo or rearrange private parties' rights and obligations vis-A-vis one another before that date. Whether such pre-Order rights and obligations are enforceable may be the

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prior to the effective date of the Commission's Order would effectively turn the Order into a retrospective remedy.
The cases cited by Complaint Counsel provide no basis for such a remedy in this case. Complaint Counsel's citation to consent orders is misplaced. CC Response 3 n.2. Because parties to

who have reneged on their contractual obligations) for pre-effective date use of Rambus's patented technologies. Infringers would be free to invoke the benefits of the Order (i.e., the MAR cap) for past infi-ingement-benefits concededly unavailable to licensees who have already paid royalties to Rambus for use during

Order to achieve this result. The Commission's Order should be modified as explained in Rambus's Petition for Reconsideration.
C. The Commission Should Modify Its Order To Avoid Giving Potential Licensees An Incentive To Infringe Rambus's Patents, By Making
Clear That Rambus May Seek The Full Range Of Judicial Remedies
Traditionally Available In Infringement Actions.
In its Petition for Reconsideration, Rambus asked the Commission to modify Paragraph VII of the Final Order to clarify that Rarnbus is not foreclosed from seeking the infringement remedies to which it is entitled by statute (other than compensatory

damages that would exceed royalties at above-MAR rates). This modification is -.
appropriate for two reasons. First, depriving Rambus of such remedies would create new
incentives for opportunistic manufacturers to refuse to take a license from Rambus at
MAR rates and instead to infringe its patents. Second, such remedies would have been
available to Rambus in the but-for world. Rambus PFR 9-11. Complaint Counsel
respond to the first point by asserting that the "marketplace has moved on" anywTj�-0.0mn�1.95 0008 0 T5e 0 0 12

the present i~sue).~ Complaint Counsel's assertions are no substitute for analysis and therefore should be rejected.
E. The Commission Should Clarify That Rambus May Collect Multiple Royalties On Systems That Incorporate Multiple JEDEC-Compliant
Products.
In its Petition for Reconsideration, Rambus explained that the Commission should revise its Order to make clear that Rambus would be able to collect one royalty for each infringing memory chip and one royalty for each infringing component (such as a controller) that is included in a system. Rambus PFR 13-1 5. Complaint Counsel do not appear to oppose this uncontroversial request. Instead, Complaint Counsel address a different issue--on which Rambus did not seek reconsideration-relating to the
collection of a separate system level royalty-that uses Rambus's system level patent
, . claims, in addition to royalties for each JEDEC-Compliant DRAM and each JEDEC-Compliant controller in a system. CC Response 7-8. Rambus requested only that the andvailabili l e

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F. The Commission Should Clarify That Licensees Have The Option Of Entering Into Fixed-Fee

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- the alternatives available to it, the Commission should not in an antitrust case deny it the . opportunity to choose the alternative it prefers.
G. The Commission Misconstrued The Samsung RDRAM License In
Dropping Royalty Rates To Zero.
In its Petition for Reconsideration, Rambus argued that the Commission mistakenly
relied on the Samsung RDRAM license in ordering MAR