

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

RAMBUS INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., et al.,

Defendants.

Case No. CGC 04-431105

JURY INSTRUCTIONS

Dept: 611

Judge: Hon. James J. McBride

1 **Instruction No. 1**
2 **Duties of the Judge and Jury**

3 Members of the jury, you have now heard all the evidence. It is my duty to instruct you
4 on the law that applies to this case. You must follow these instructions as well as those that I
5 previously gave you. You will have a copy of my instructions with you when you go to the jury
6 room to deliberate.

7 You must decide what the facts are. You must consider all the evidence and then decide
8 what you think happened. You must decide the facts based on the evidence admitted in this trial.
9 Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other
10 reference materials. Do not investigate the case or conduct any experiments. Do not contact
11 anyone to assist you, such as a family accountant or lawyer. All jurors must see or hear the same
12 evidence at the same time. Do not read, listen to, or watch any news accounts of this trial. You
13 must not let bias, sympathy, prejudice, or public opinion influence your decision.

14 I will now tell you the law that you must follow to reach your verdict. You must follow
15 the law exactly as I give it to you, even if you disagree with it. If the attorneys have said anything
16 different about what the law means, you must follow what I say.

17 In reaching your verdict, do not guess what I think your verdict should be from something
18 I may have said or done.

19 Pay careful attention to all the instructions that I give you. All the instructions are
20 important because together they state the law that you will use in this case. You must consider all
21 of the instructions together.

22 After you have decided what the facts are, you may find that some instructions do not
23 apply. In that case, follow the instructions that do apply and use them together with the facts to
24 reach your verdict.

25 If I repeat any ideas or rules of law during my instructions, that does not mean that these
26 ideas or rules are more important than the others are. In addition, the order in which the
27 instructions are given does not make any difference.

1 **Instruction No. 2**
2 **Evidence**

3 Sworn testimony, documents, or anything else may be admitted into evidence. You must
4 decide what the facts are in this case from the evidence you have seen or heard during the trial,
5 including any exhibits that I admitted into evidence. You may not consider as evidence anything
6 that you saw or heard when court was not in session, even something done or said by one of the
7 parties, attorneys, or witnesses.

8 What the attorneys say during the trial is not evidence. In their opening statements and
9 closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers
10 say may help you understand the law and the evidence, but their statements and arguments are not
11 evidence.

12 The attorneys' questions are not evidence. Only the witnesses' answers are evidence.
13 You should not think that something is true just because an attorney's question suggested that it
14 was true. However, the attorneys for both sides have agreed that certain facts are true. This
15 agreement is called a stipulation. No other proof is needed and you must accept those facts as
16 true in this trial.

17 Each side had the right to object to evidence offered by the other side. If I sustained an
18 objection to a question, you must ignore the question. If the witness did not answer, you must not
19 guess what he or she might have said or why I sustained the objection. If the witness already
20 answered, you must ignore the answer.

21 During the trial I granted a motion to strike testimony that you heard. You must totally
22 disregard that testimony. You must treat it as though it did not exist.
23
24
25
26
27
28

1 **Instruction No. 3**
2 **Witnesses**

3 A witness is a person who has knowledge related to this case. You will have to decide
4 whether you believe each witness and how important each witness's testimony is to the case.
5 You may believe all, part, or none of a witness's testimony.
6

7 In deciding whether to believe a witness's testimony, you may consider, among other
8 factors, the following:

- 9 (a) How well did the witness see, hear, or otherwise sense what he or she
10 described in court?
11 (b) How well did the witness remember and describe what happened?
12 (c) How did the witness look, act, and speak while testifying?
13 (d) Did the witness have any reason to say something that was not true? Did
14 the witness show any bias or prejudice? Did the witness have a personal relationship with any of
15 the parties involved in the case? Does the witness have a personal stake in how this case is
16 decided?
17 (e) What was the witness's attitude toward this case or about giving
18 testimony?

19 Sometimes a witness may say something that is not consistent with something else he or
20 she said. Sometimes different witnesses will give different versions of what happened. People
21 often forget things or make mistakes in what they remember. Also, two people may see the same
22 event but remember it differently. You may consider these differences, but do not decide that
23 testimony is untrue just because it differs from other testimony.

24 However, if you decide that a witness deliberately testified untruthfully about something
25 important, you may choose not to believe anything that witness said. On the other hand, if you
26 think the witness testified untruthfully about some things but told the truth about others, you may
27 accept the part you think is true and ignore the rest.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

Instruction No. 4
Multiple Parties

The plaintiff in this trial is Rambus.

The defendants in this trial are Micron and Hynix. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of its own defenses. Unless I tell you otherwise, all instructions apply to each defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 5
Nonperson Parties

All parties in this lawsuit are corporations. Each is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions apply to each corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 6
Duty To Abide by Translation Provided in Court

Some deposition testimony was given in Korean. An interpreter provided translation for you at the time that the deposition testimony was given. You must rely solely on the translation provided by the interpreter, even if you understood the language spoken by the witness. Do not retranslate any testimony for other jurors.

1 **Instruction No. 7**
2 **Obligation To Prove – More Likely True Than Not True**

3 A party must persuade you, by the evidence presented in court, that what he or she is
4 required to prove is more likely to be true than not true. This is referred to as “the burden of
5 proof.”

6 After weighing all of the evidence, if you cannot decide that something is more likely to
7 be true than not true, you must conclude that the party did not prove it. You should consider all
8 the evidence, no matter which party produced the evidence.

9 In criminal trials, the prosecution must prove that the defendant is guilty beyond a
10 reasonable doubt. But in civil trials, such as this one, the party who is required to prove
11 something need prove only that it is more likely to be true than not true.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 8**
2 **Direct and Indirect Evidence**

3 Evidence can come in many forms. It can be testimony about what someone saw or heard
4 or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

5 Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane
6 flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who
7 saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred
8 to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet
9 plane flew across the sky.

10 As far as the law is concerned, it makes no difference whether evidence is direct or
11 indirect. You may choose to believe or disbelieve either kind of evidence. Whether it is direct or
12 indirect, you should give every piece of evidence whatever weight you think it deserves.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 9
Party Having Power To Produce Better Evidence

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Instruction No. 10
Failure To Explain or Deny Evidence

You may consider whether a party failed to explain or deny some unfavorable evidence.
Failure to explain or to deny unfavorable evidence may suggest that the evidence is true.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 11
Evidence Admitted for Limited Purpose

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 12
Evidence Applicable to One Party

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

During the trial, I explained that certain evidence could be considered as to only one party.
You may not consider that evidence as to any other party.

During the trial, I explained that certain evidence could be considered as to one or more
parties but not to every party. You may not consider that evidence as to any other party.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 13
Statements by Alleged Co-Conspirators

If you find the existence of a conspiracy, evidence of a statement made by one alleged conspirator may be considered by you against another alleged conspirator if you determine by a preponderance of the evidence:

1. that the statement was made at a time when the person making the statement was participating in the conspiracy;
2. that the statement was made in furtherance of the objectives of the conspiracy; and
3. that the statement was made before or during the time when the party against whom it is offered was participating in the conspiracy.

1 **Instruction No. 14**
2 **Special Instruction No. 1**

3 On May 11, 2005, Hynix Semiconductor, Inc. (“Hynix”) pleaded guilty in the United
4 States District Court for the Northern District of California to the felony of participating in a
5 conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the
6 prices of Dynamic Random Access Memory (“DRAM”) to be sold to certain original equipment
7 manufacturers of personal computers and servers (“OEMs”) from on or about April 1, 1999, to on
8 or about June 15, 2002, in violation of the Sherman Antitrust Act, 15 U.S.C. Section 1.

9 The definition of “DRAM” for purposes of Hynix’s plea was as follows: “DRAM” means
10 dynamic random access memory semiconductor devices and modules, including synchronous
11 dynamic random access memory (“SDRAM”) and double data rate dynamic random access
12 memory (“DDR”) semiconductor devices and modules, but not Rambus dynamic random access
13 memory (“RDRAM”) semiconductor devices and modules.

14 In pleading guilty, Hynix admitted the following facts:

15 The “relevant period” is that period from on or about April 1, 1999, to on or about June
16 15, 2002. During the relevant period, Hynix was a corporation organized and existing under the
17 laws of Korea. Hynix has its headquarters and principal place of business in Ichon, Korea. From
18 April 1, 1999, to approximately March 2001, Hynix did business as Hyundai Electronics
19 Industries Co., Ltd., a corporation organized and existing under the laws of Korea. In
20 approximately October 1999, Hynix acquired LG Semiconductor Co., Ltd., a corporation
21 organized and existing under the laws of Korea.

22 DRAM is the most commonly used semiconductor memory product. DRAM provides
23 high-speed storage and retrieval of electronic information in personal computers, servers, and
24 other devices. During the relevant period, Hynix was a producer of DRAM and was engaged in
25 the sale of DRAM in the United States and elsewhere. During the relevant period, Hynix’s
26 DRAM sales, directly affected by the conspiracy, to OEMs in the United States totaled \$839
27 million.
28

1 During at least certain periods of time during the relevant period, Hynix, through certain
2 officers and employees, participated in a conspiracy in the United States and elsewhere among
3 certain DRAM producers, the primary purpose of which was to fix the price of DRAM sold to
4 certain OEMs. The conspiracy directly affected these OEMs in the United States: Dell Inc.,
5 Hewlett-Packard Company, Compaq Computer Corporation, International Business Machines
6 Corporation, Apple Computer Inc., and Gateway, Inc. In furtherance of the conspiracy, Hynix,
7 through certain officers and employees, engaged in discussions and attended meetings with
8 representatives of certain other DRAM producers and sellers. During these discussions and
9 meetings, agreements were reached to fix the price of DRAM to be sold to certain OEMs.

10 At certain times during the relevant period, DRAM prices decreased significantly.
11 Nevertheless, Hynix and its co-conspirators reached agreements to limit the rate of price declines,
12 which were achieved with varying levels of effectiveness. At other periods, Hynix and its co-
13 conspirators reached agreements on price increases and were able to institute price increases on
14 DRAM sales to certain OEMs.

15 During the relevant period, DRAM sold by one or more of the conspirator firms, and
16 equipment and supplies necessary to the sale of DRAM, as well as payments for DRAM, traveled
17 in interstate and foreign commerce. The business activities of Hynix and its co-conspirators in
18 connection with the sale of DRAM affected by this conspiracy were within the flow of, and
19 substantially affected, interstate and foreign trade and commerce.

20 Acts in furtherance of this conspiracy were carried out within the Northern District of
21 California. DRAM affected by this conspiracy was sold by one or more of the conspirators to
22 OEMs in this District.

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 15
Limited Use of Hynix Plea Evidence

Evidence has been introduced for the purpose of showing that Hynix and certain Hynix executives and employees pled guilty to the felony of participating in a criminal conspiracy to fix the price of certain DRAM products and for the purpose of showing the truth of the facts admitted in the guilty pleas. This evidence may not be considered by you to prove that the individuals or Hynix have a bad character or a disposition to commit crimes. It may be considered by you for the limited purpose of determining if it tends to show any of the following, and that's for you to judge:

That the conduct admitted in the guilty pleas and the conduct alleged by Rambus in this lawsuit were part of a common plan, scheme, or conspiracy;

That the individuals or Hynix had the opportunity to engage in the conduct alleged by Rambus;

That the individuals or Hynix had the means or ability to engage in the conduct alleged by Rambus; or

That the individuals or Hynix had a motive for the commission of the conduct alleged by Rambus.

For the limited purposes for which you may consider this evidence, you must weigh it in the same manner as you do all the other evidence in this case.

You may not consider evidence of these pleas as to Micron.

1 **Instruction No. 16**
2 **Limited Use of Samsung Plea Evidence**

3 Evidence has been introduced for the purpose of showing that Samsung and one Samsung
4 employee pled guilty to the felony of participating in a criminal conspiracy to fix the price of
5 DRAM products. This evidence may not be considered for the purpose of showing the truth of
6 the facts admitted in the guilty pleas. This evidence may not be considered by you to prove that
7 the individual or Samsung have a bad character or a disposition to commit crimes. It may be
8 considered by you for the limited purpose of determining if it tends to show any of the following,
9 and that's for you to judge:

10 That the conduct admitted in the guilty pleas and the conduct alleged by Rambus in this
11 lawsuit were part of a common plan, scheme, or conspiracy;

12 That the individual or Samsung had the opportunity to engage in the conduct alleged by
13 Rambus;

14 That the individual or Samsung had the means or ability to engage in the conduct alleged
15 by Rambus; or

16 That the individual or Samsung had a motive for the commission of the conduct alleged
17 by Rambus.

18 For the limited purposes for which you may consider this evidence, you must weigh it in
19 the same manner as you do all the other evidence in this case.
20
21
22
23
24
25
26
27
28

Instruction No. 17
Penalty or Punishment Irrelevant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You have heard evidence about criminal convictions for violation of federal antitrust laws. You should not speculate about what penalty or punishment may have been assessed for these convictions. It is irrelevant to your decision.

Instruction No. 18
Partial or Redacted Exhibits

Some of the exhibits admitted into evidence have been redacted, that is, copied with parts of a page blocked out, or provided to you without including all pages. The portions provided to you are what has been admitted into evidence. You are not to speculate about what is contained in the portions not provided.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 19**
2 **Privilege and Green Binder Issues**

3 People have a right not to disclose what they told their attorney in confidence. This is
4 called the attorney-client privilege.

5 During this trial you may have heard reference to witnesses exercising this privilege. You
6 are not to infer anything one way or another from a statement that a witness exercised the
7 privilege.

8 During this trial there have been many references to the Green Binder. I remind you that
9 the Green Binder is a shorthand way of referring to orders made before this trial.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 20
Deposition as Substantive Evidence

1
2
3
4 During the trial, you heard testimony shown on video or read from depositions. A
5 deposition is the testimony of a person taken before trial. At a deposition the person is sworn to
6 tell the truth and is questioned by the attorneys. You must consider the deposition testimony that
7 was read to you or you were shown on video in the same way as you consider testimony given in
8 court.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 21
Demonstrative Exhibits

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

During the trial, demonstrative exhibits have been used with a number of witnesses. These demonstrative exhibits were used to help illustrate the testimony of the witnesses who used them. However, unlike the testimony of the witnesses who referred to the demonstrative exhibits, the demonstrative exhibits themselves are not evidence. Also, unlike the actual exhibits which I admitted into evidence, most of the demonstrative exhibits will not be available to you in the jury deliberation room. However, I have decided to allow some of the demonstrative exhibits to be available to you in the jury deliberation room. These demonstrative exhibits will be in a binder clearly labeled “Demonstrative Exhibits.”

Instruction No. 22
Statements of a Party Opponent

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.
2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 23
Expert Witness Testimony

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 24
Experts – Questions Containing Assumed Facts

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

Instruction No. 25
Conflicting Expert Testimony

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

1 **Instruction No. 26**
2 **Opinion Testimony of Lay Witness**

3 Witnesses who were not testifying as experts gave opinions during the trial. You may, but
4 are not required to, accept those opinions. You may give the opinions whatever weight you think
5 is appropriate.

6 Consider the extent of the witness's opportunity to perceive the matters on which the
7 opinion is based, the reasons the witness gave for the opinion, and the facts or information on
8 which the witness relied in forming that opinion. You must decide whether information on which
9 the witness relied was true and accurate. You may disregard all or any part of an opinion that you
10 find unbelievable, unreasonable, or unsupported by the evidence.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 27**
2 **Cartwright Act – Essential Elements**

3 Rambus claims Micron and Hynix agreed with each other and/or with Samsung and/or
4 Infineon to prevent RDRAM from becoming the standard for computer memory. Rambus claims
5 that as part of their agreement, Micron and Hynix agreed with each other and/or with Samsung
6 and/or Infineon to fix RDRAM prices high and DDR prices low. “Price fixing” is an agreement
7 to set, raise, lower, maintain, or stabilize the prices charged or to be charged for a product.
8 Rambus also claims that as part of their agreement, Micron and Hynix agreed with each other
9 and/or with Samsung and/or Infineon not to sell RDRAM in quantities sufficient to allow
10 RDRAM to become the standard for computer memory.

11 To establish this claim, Rambus must prove all of the following:

- 12 1. That Micron and/or Hynix conspired with each other and/or with Samsung
13 and/or Infineon to fix RDRAM prices high and DDR prices low and/or
14 restrict RDRAM output in order to prevent RDRAM from becoming the
15 standard for computer memory;
- 16 2. That the purpose or effect of the conduct of those companies was to
17 restrain competition;
- 18 3. That the anticompetitive effect of the restraint outweighed any beneficial
19 effect on competition;
- 20 4. That Rambus was harmed; and
- 21 5. That the anticompetitive conduct of those companies was a substantial
22 factor in causing Rambus’s harm.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 28
Substantial Factor

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

1 **Instruction No. 29**
2 **“Conspiracy” Explained**

3 A conspiracy is an agreement with an unlawful purpose. An agreement exists if two or
4 more persons or companies combine or join together for a common purpose. Such an agreement
5 can be made orally or in writing or may be implied by the conduct of the parties. No written
6 document or specific understanding is necessary for an agreement to exist. For Micron and/or
7 Hynix to be part of an agreement, they must have known they were joining in an agreement, even
8 if they were not aware of all of its aspects.

9 Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is
10 insufficient to make Micron or Hynix responsible for the harm. If you decide that Micron and/or
11 Hynix joined a conspiracy then that defendant is responsible for all acts done as part of the
12 conspiracy, whether the acts occurred before or after that defendant joined the conspiracy.

13 To prove the existence of an agreement, Rambus must show more than a similarity
14 between conduct of Micron and/or Hynix and the conduct of others. Independent business
15 judgment in response to market forces sometimes leads competitors to act in a similar way
16 because of their individual self-interests. That conduct alone is not enough to prove an
17 agreement. However, similar behavior, along with other evidence suggesting joint conduct, may
18 be used to decide whether there was an agreement.

19 In deciding whether conduct of Micron and/or Hynix was the result of an agreement, you
20 may consider, among other factors, the following:

- 21 (a) The nature of the conduct;
22 (b) The relationship between the parties;
23 (c) Whether the conduct was contrary to the best interests of some of the
24 persons or companies in question;
25 (d) Whether the conduct lacked a legitimate business purpose; and
26 (e) Whether the conduct occurred following communications concerning the
27 subject of the conduct.
28

Instruction No. 30
Exchange of Price Information

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The exchange of price information among competitors is not illegal unless it is part of an agreement to fix prices.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 31
Anticompetitive Versus Beneficial Effects

In deciding whether the challenged restraint had an anticompetitive or beneficial purpose or effect on competition, you should consider the results the restraint was intended to achieve or actually did achieve. In balancing these purposes or effects, you also may consider, among other factors, the following:

- (a) The nature of the restraint;
- (b) The probable effect of the restraint on the business involved;
- (c) The reasonableness of the stated purpose for the restraint;
- (d) The availability of less restrictive means to accomplish the stated purpose;
- (e) The portion of the market affected by the restraint; and
- (f) The extent of the conspirators' market power.

1 **Instruction No. 33**
2 **“Product Market” Explained**

3 Rambus claims that the product market is DRAM interface technology.

4 To define the product market, you must determine which products are in the market in
5 which the alleged conspirators are claimed to have carried out their restraint of trade.

6 A product market consists of all products that can reasonably be used for the same
7 purpose. Products are not in the same product market if users are not likely to substitute one for
8 the other.

9 In deciding whether products are reasonable substitutes, you may consider whether a
10 small increase in the price of one product would cause a considerable number of customers of that
11 product to switch to a second product. If so, these two products are likely to be in the same
12 market. If a significant increase in the price of one product does not cause a significant number
13 of consumers to switch to a second product, these products are not likely to be in the same
14 market.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 34**
2 **“Geographic Market” Explained**

3 Rambus claims that the relevant geographic market is worldwide.

4 A geographic market is the area where buyers turn for alternate sources of supply or
5 where sellers normally sell. The geographic market may or may not be the same as the area
6 where the parties in this case currently compete or do business. It may be smaller or larger than
7 that area.

8 A geographic market may be limited to the area where a product can be shipped and sold
9 profitably. You may consider whether purchasing patterns are so different in the two areas that
10 products sold in one area tend not to be sold in another. For example, this might occur if the cost
11 of transporting a product into or out of the claimed geographic market is large compared to the
12 value of the product.

13 In deciding whether products are in the same geographic market, you may consider
14 whether a small increase in the price of the product in one area would cause a considerable
15 number of customers in that area to buy the product in another area. If so, these two areas are
16 likely to be in the same geographic market. If a significant increase in the price in one area does
17 not cause a significant number of consumers to buy the product in another area, these areas are
18 not likely to be in the same geographic market.
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 35
Intentional Interference With Prospective Economic Relations – Essential Elements

Rambus claims that Micron and/or Hynix conspired with each other and/or with Samsung and/or Infineon to intentionally interfere with an economic relationship between Rambus and Intel that probably would have resulted in an economic benefit to Rambus. To establish this claim, Rambus must prove all of the following:

1. That Rambus was in an economic relationship with Intel that probably would have resulted in an economic benefit to Rambus;
2. That Micron and/or Hynix conspired with each other and/or Infineon and/or Samsung to intentionally interfere with the economic relationship between Rambus and Intel;
3. That those companies knew of that relationship;
4. That those companies intended to disrupt that relationship;
5. That those companies disrupted that relationship by engaging in wrongful conduct in violation of California’s Cartwright Act as explained previously;
6. That the relationship was disrupted;
7. That Rambus was harmed; and
8. That those companies’ wrongful conduct was a substantial factor in causing Rambus’s harm.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 36
Intent

In deciding whether Micron and/or Hynix acted intentionally, you may consider whether they knew that a disruption was substantially certain to result from their conduct.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 37
No Interference With Own Contract

A contracting party cannot be held liable for conspiracy to interfere with its own contract.

1 **Instruction No. 38**
2 **Statute of Limitations – Intentional Interference**

3
4 Defendants contend that Rambus’s claim for intentional interference with prospective
5 economic relations was not filed within the time set by law. In order for Rambus’s claim to be
6 timely, Rambus must prove that (1) the primary objective of the conspiracy to intentionally
7 interfere with Rambus’s prospective economic relations was not completed before May 5, 2002,
8 and (2) a conspirator committed one or more overt acts in the furtherance of the conspiracy on or
9 after May 5, 2002.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 39**
2 **Damages**

3 If you decide that Rambus has proved its claim against Micron and/or Hynix, you also
4 must decide how much money will reasonably compensate Rambus for the harm. This
5 compensation is called “damages.”

6 The amount of damages must include an award for each item of harm that was caused by
7 the conspirators’ wrongful conduct, even if the particular harm could not have been anticipated.

8 Rambus does not have to prove the exact amount of damages that will provide reasonable
9 compensation for the harm. However, you must not speculate or guess in awarding damages.

10 The following are the specific items of damages claimed by Rambus.

- 11 (1) Loss of profits from royalty payments that would have been paid to Rambus by
12 RDRAM manufacturers if RDRAM had become the memory standard; and
13 (2) Loss of profits from royalty payments that would have been paid to Rambus by
14 RDRAM controller manufacturers if RDRAM had become the memory standard.

Instruction No. 40
Lost Profits

To recover damages for lost profits, Rambus must prove it is reasonably certain it would have earned profits but for the wrongful conduct.

To decide the amount of damages for lost profits, you must determine the gross amount Rambus would have received but for the wrongful conduct and then subtract from that amount the expenses Rambus would have had if the wrongful conduct had not occurred.

The amount of the lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 41
Limitation on Damages

1
2
3 The law places limitations on a plaintiff's ability to go too far back in time in recovering
4 damages.

5 For that reason, in this case, Rambus can recover damages only for acts committed after
6 May 4, 2000 that were a substantial factor in causing harm to Rambus after May 4, 2000.

7 You may consider evidence of conduct occurring prior to May 4, 2000 for other purposes,
8 such as determining whether a conspiracy existed as of May 4, 2000.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 42
Multiple Legal Theories

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rambus seeks damages from Defendants under two legal theories. You should consider Rambus’s claim separately under each theory, including damages, as if the other theory does not exist.

The Court will make sure the damages, if any, are not double-counted.

1 **Instruction No. 43**
2 **Punitive Damages**

3 If you decide that Micron and/or Hynix’s conduct caused Rambus harm, you must decide
4 whether that conduct justifies an award of punitive damages. The purposes of punitive damages
5 are to punish a wrongdoer for the conduct that harmed Rambus and to discourage similar conduct
6 in the future.

7 You may award punitive damages against a defendant only if Rambus proves that the
8 defendant engaged in that conduct with malice, oppression, or fraud. To do this, Rambus must
9 prove one of the following by clear and convincing evidence:

- 10 1. That the conduct constituting malice, oppression, or fraud was committed
11 by one or more officers, directors, or managing agents of the defendant,
12 who acted on its behalf;
- 13 2. That the conduct constituting malice, oppression, or fraud was authorized
14 by one or more officers, directors, or managing agents of the defendant; or
- 15 3. That one or more officers, directors, or managing agents of the defendant
16 knew of the conduct constituting malice, oppression, or fraud and adopted
17 or approved that conduct after it occurred.

18 “Malice” means that the defendant acted with intent to cause injury or that the defendant’s
19 conduct was despicable and was done with a willful and knowing disregard of the rights or safety
20 of another. A person acts with knowing disregard when he or she is aware of the probable
21 dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

22 “Oppression” means that the defendant’s conduct was despicable and subjected Rambus
23 to cruel and unjust hardship in knowing disregard of its rights.

24 “Despicable conduct” is conduct that is so vile, base, or contemptible that it would be
25 looked down on and despised by reasonable people.

26 “Fraud” means that the defendant intentionally misrepresented or concealed a material
27 fact and did so intending to harm Rambus.
28

1 An employee is a “managing agent” if he or she exercises substantial independent
2 authority and judgment in his or her corporate decision making such that his or her decisions
3 ultimately determine corporate policy.

4 There is no fixed formula for determining the amount of punitive damages, and you are
5 not required to award any punitive damages. If you decide to award punitive damages, you
6 should consider all of the following in determining the amount:

- 7
- 8 (a) How reprehensible was the defendant’s conduct? In deciding how
9 reprehensible the defendant’s conduct was, you may consider, among other
10 factors:
- 11 1. Whether the conduct caused physical harm;
 - 12 2. Whether the defendant disregarded the health or safety of others;
 - 13 3. Whether Rambus was financially weak or vulnerable and the
14 defendant knew Rambus was financially weak or vulnerable and
15 took advantage of it;
 - 16 4. Whether the defendant’s conduct involved a pattern or practice; and
 - 17 5. Whether the defendant acted with trickery or deceit.
- 18 (b) Is there a reasonable relationship between the amount of punitive damages
19 and Rambus’s harm?
- 20 (c) In view of the defendant’s financial condition, what amount is necessary to
21 punish it and discourage future wrongful conduct? You may not increase
22 the punitive award above an amount that is otherwise appropriate merely
23 because the defendant has substantial financial resources. Any award you
24 impose may not exceed the defendant’s ability to pay.

25
26
27
28
Punitive damages may not be used to punish Defendants for the impact of their alleged
misconduct on persons other than Rambus.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 44
Punitive Damages – Clear and Convincing Evidence Required

Punitive damages must be proved by clear and convincing evidence, which is a higher burden of proof than preponderance of the evidence. This means the party must persuade you that it is highly probable that the fact is true.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 45
Arguments of Counsel Not Evidence of Damages

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

1 **Instruction No. 46**
2 **Jurors Not To Consider Attorney Fees and Court Costs**

3 You must not consider, or include as part of any award, attorney fees or expenses that the
4 parties incurred in bringing or defending this lawsuit.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **Instruction No. 47**
2 **Predeliberation Instructions**

3 When you go to the jury room, the first thing you should do is choose a presiding juror.
4 The presiding juror should see to it that your discussions are orderly and that everyone has a fair
5 chance to be heard.

6 It is your duty to talk with one another in the jury room and to consider the views of all
7 the jurors. Each of you must decide the case for yourself, but only after you have considered the
8 evidence with the other members of the jury. Feel free to change your mind if you are convinced
9 that your position should be different. You should all try to agree. But do not give up your
10 honest beliefs just because the others think differently.

11 Please do not state your opinions too strongly at the beginning of your deliberations.
12 Also, do not immediately announce how you plan to vote. Keep an open mind so that you and
13 your fellow jurors can easily share ideas about the case.

14 You should use your common sense, but do not use or consider any special training or
15 unique personal experience that any of you have in matters involved in this case. Your training or
16 experience is not a part of the evidence received in this case.

17 Sometimes jurors disagree or have questions about the evidence or about what the
18 witnesses said in their testimony. If that happens, you may ask to have testimony read back to
19 you or ask to see any exhibits admitted into evidence that have not already been provided to you.
20 Also, jurors may need further explanation about the laws that apply to the case. If this happens
21 during your discussions, write down your questions and give them to the bailiff. I will do my best
22 to answer them. When you write me a note, do not tell me how you voted on an issue until I ask
23 for this information in open court.

24 Your decision must be based on your personal evaluation of the evidence presented in the
25 case. Each of you may be asked in open court how you voted on each question.

26 While I know you would not do this, I am required to advise you that you must not base
27 your decision on chance, such as a flip of a coin. If you decide to award damages, you may not
28

1 agree in advance to simply add up the amounts each juror thinks is right and then make the
2 average your verdict.

3 You may take breaks, but do not discuss this case with anyone, including each other, until
4 all of you are back in the jury room.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **Instruction No. 48**
2 **Taking Notes During the Trial**

3 If you have taken notes during the trial, you may take your notebooks with you into the
4 jury room.

5 You may use your notes only to help you remember what happened during the trial. Your
6 independent recollection of the evidence should govern your verdict. You should not allow
7 yourself to be influenced by the notes of other jurors if those notes differ from what you
8 remember.

9 At the end of the trial, your notes will be collected and destroyed.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 49
Reading Back of Trial Testimony in the Jury Room

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;
2. The subject of the testimony you would like to have read; and
3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

1 **Instruction No. 50**
2 **Introduction to Verdict Form**

3 I will give you a verdict form with questions you must answer. I have already instructed
4 you on the law that you are to use in answering these questions. You must follow my instructions
5 and the form carefully. You must consider each question separately. Please answer the questions
6 in the order they appear. After you answer a question, the form tells you what to do next. At
7 least nine of you must agree on an answer before you can move on to the next question.
8 However, the same nine or more people do not have to agree on each answer.

9 When you are finished filling out the form, your presiding juror must write the date and
10 sign it at the bottom. Return the form to the clerk when you have finished.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Instruction No. 51
Instruction to Alternate Jurors

As alternate jurors, you are bound by the same rules that govern the conduct of the jurors who are sitting on the panel. You should not form or express any opinion about this case until after you have been substituted in for one of the deliberating jurors on the panel or until the jury has been discharged.

Instruction No. 52
Polling the Jury

1
2
3
4 After your verdict is read in open court, you may be asked individually to indicate
5 whether the verdict expresses your personal vote. This is referred to as “polling” the jury and is
6 done to ensure that at least nine jurors have agreed to each decision.

7 The verdict form that you will receive asks you to answer several questions. You must
8 vote separately on each question. Although nine or more jurors must agree on each answer, it
9 does not have to be the same nine for each answer. Therefore, it is important for each of you to
10 remember how you have voted on each question so that if the jury is polled, each of you will be
11 able to answer accurately about how you voted.

12 Each of you will be provided a draft copy of the verdict form for your use in keeping track
13 of your votes.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28