

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

Public

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

**MOTION SEEKING RECOGNITION OF THE COLLATERAL ESTOPPEL EFFECT OF
PRIOR FACTUAL FINDINGS THAT RESPONDENT RAMBUS INC. DESTROYED
MATERIAL EVIDENCE IN ANTICIPATION OF FUTURE LITIGATION**

Complaint Counsel hereby moves for entry of an order recognizing that certain factual findings relating to Respondent Rambus Inc.'s destruction of documents, which were made by the district court in *Rambus Inc. v. Infineon Technologies AG*, 155 F. Supp. 2d 668 (E.D. Va. 2001), *aff'd in part and rev'd in part*, Nos. 01-1449 *et al.*, 2003 WL 187265 (Fed. Cir., Jan. 29, 2003), should be given collateral estoppel effect in this proceeding, and should bar Rambus from relitigating the same factual issues here. We respectfully submit that Your Honor should grant this Motion for the reasons set forth in Complaint Counsel's Supplemental Memorandum in Support of Complaint Counsel's Pending Motion for Default Judgment, Relating to Collateral Estoppel Effect of Prior Factual Finding That Respondent Rambus Inc. Destroyed Material Evidence in Bad Faith, filed February 12, 2003.

Specifically, Complaint Counsel requests that Your Honor give full collateral estoppel effect to the following findings of fact made by the district court in *Infineon*:

- 1) When "Rambus instituted its document retention policy in 1998," it did so, "in part, for the purpose of getting rid of documents that might be harmful in litigation."

- 2) Rambus, at the time it implemented its “document retention policy,” “[c]learly . . . contemplated that it might be bringing patent infringement suits during this timeframe” if its efforts to persuade semi-conductor manufacturers to license “its JEDEC-related patents” “were not successful.”
- 3) Rambus’s “document destruction” was done “in anticipation of litigation.”

Complaint Counsel further requests that Your Honor direct that Rambus shall not be permitted to relitigate these issues in this case.

Based on the forgoing, Complaint Counsel respectfully requests that Your Honor grant the attached Order recognizing that the factual findings with respect to Rambus’s document destruction set forth in *Infineon*, 155 F. Supp. 2d at 681-83, are adopted and established as findings of fact in this proceeding, and that Rambus shall not be permitted to relitigate those issues here.

Respectfully submitted,

M. Sean Royall
Geoffrey D. Oliver
Andrew J. Heimert

BUREAU OF COMPETITION
FEDERAL TRADE COMMISSION
Washington, D.C. 20580
(202) 326-3663
(202) 326-3496 (facsimile)

COUNSEL SUPPORTING THE COMPLAINT

Dated: February 12, 2003

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

In the Matter of

RAMBUS INCORPORATED,

a corporation.

Docket No. 9302

[PROPOSED] ORDER

Upon consideration of the Motion Seeking Recognition of the Collateral Estoppel Effect of Prior Factual Findings That Respondent Rambus Inc. Destroyed Material Evidence In Anticipation of Future Litigation, dated February 12, 2003,

IT IS HEREBY ORDERED that Complaint Counsel's Motion is Granted.

IT IS FURTHER ORDERED that, based upon the doctrine of collateral estoppel, the factual findings with respect to Rambus's document destruction set forth in *Rambus Inc. v. Infineon Technologies AG*, 155 F. Supp. 2d 668, 681-83 (E.D. Va. 2001), are adopted and established as findings of fact in this proceeding, and that Rambus shall not be permitted to relitigate those issues in this case.

IT IS FURTHER ORDERED that I specifically make the following findings of fact:

- 1) When "Rambus instituted its document retention policy in 1998," it did so, "in part, for the purpose of getting rid of documents that might be harmful in litigation."
- 2) Rambus, at the time it implemented its "document retention policy," "[c]learly . . . contemplated that it might be bringing patent infringement suits during this timeframe" if its efforts to persuade semi-conductor manufacturers to license "its JEDEC-related patents" "were not successful."

- 3) Rambus's "document destruction" was done "in anticipation of litigation."

James P. Timony
Chief Administrative Law Judge

Date: _____