PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of **RAMBUS INC.,** **a corporation.**	**Docket No. 9302**

SUPPLEMENTAL RULE 3.24 SEPARATE STATEMENT IN SUPPORT OF RAMBUS INC.'S MOTION FOR SUMMARY DECISION

Pursuant to Rule 3.24, Respondent Rambus Inc. ("Rambus") respectfully submits this Supplemental Statement of Material Facts as to Which There Is No Genuine Issue. [1]

103. On or about February 20, 2003, Mitsubishi Electric Corporation ("MELCO") produced over 16,000 pages of documents to Rambus. *See* Supplemental Declaration of Steven M. Perry ("Supp. Perry Decl."), ex. 5. Many of these documents were in Japanese. *Id*.

104. Rambus contends in its pending Motion for Summary Decision that JEDEC members understood in the early 1990's that Rambus might assert intellectual property claims over features being considered for use by JEDEC members and/or for incorporation within JEDEC standards. *See* Motion, pp. 34-58.

105. The documents produced by MELCO in late February 2003 include documents relating to MELCO's 1993 review of Rambus's possible future intellectual property claims.

106. As set out below, the MELCO documents show that by June 1993, MELCO had recognized the possibility that Rambus could assert intellectual property claims relating to features included in SDRAM and other DRAM devices.

107. In March 1993, a MELCO "Patent Committee Member" wrote that "[a] need has arisen to evaluate all of the claims in a patent being applied for by Rambus (1 patent, a total number of claims is 150). . . ." Supp. Perry Decl., ex. B.

[1] For convenience purposes, Rambus begins its paragraph numbers in this Supplemental Rule 3.24 statement where the paragraph numbers ended in its original Rule 3.24 statement.

108. A few months later, in June 1993, a MELCO employee named Sakao wrote a memo that asked in part: "What are the threats to the establishment of a RAMBUS patent?" *Id*., ex. C. One answer was:

> "The individual technologies that appear in the RAMBUS patent will be used independently in the future."

Id. The June 10, 1993 memo by Sakao thus acknowledged that Rambus could, based on its original patent application, assert claims over the "individual" use of the various technologies described in that application.

109. In recognition of this possibility, the Sakao memo goes on to say that "[t]here is a need to examine the specifications of the patent claims to determine whether *individual technologies used independently* will infringe on the RAMBUS patent, and for that we will have to obtain the views and interpretations of experts." *Id*. (emphasis added).

110. A MELCO memorandum prepared the following month described MELCO's analysis of Rambus's 150-claim "WIPO" patent application[2] and stated in part that it was "quite predictable" that Rambus would attempt to obtain patents that were *not* tied to, and were "separate from," the particular type of "bus" described in the application. Suppl. Perry Decl., ex. D. The July 13, 1993 memo recommended that because of this possibility, MELCO should "carry out [a] prior art investigation in detail." *Id*. The memo also stated

[2] The existence and public availability of Rambus's WIPO application had been disclosed to JEDEC by a NEC representative at a May 1992 JEDEC meeting. *See* Motion for Summary Decision, p. 43 n. 20.

that MELCO "must thoroughly investigate the DRAM-related claims" and "pay special attention to SDRAM, which is a similar idea." *Id*.

111. In a subsequent analysis of portions of Rambus's WIPO application, dated September 16, 1993, MELCO again recognized that Rambus's intellectual property claims related to features used or proposed in SDRAM devices. With respect to the use of two banks in a DRAM, for example, the MELCO memorandum stated that "[t]his is also being done by SDRAM. Need a prior art." Supp. Perry Decl., ex. E. The memo also acknowledged that "auto precharge" was a feature described in the Rambus WIPO application and that it was "being implemented in SDRAM, etc." *Id*.

DATED: March ___, 2003 Respectfully submitted,

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