

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

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

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In the Matter of)	
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RAMBUS INCORPORATED,)	Docket No. 9302
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a corporation.)	
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FINAL ORDER

This matter having been heard by the Commission upon the appeal of Counsel Supporting the Complaint and the cross-appeal of Respondent; and the Commission having determined that Respondent has violated Section 5 of the Federal Trade Commission Act, for the reasons stated in the Opinion of the Commission issued on July 31, 2006; and the Commission having reversed and vacated the Initial Decision, and vacated the Order accompanying the Initial Decision, by Order issued on July 31, 2006, for the reasons stated in the Opinion of the Commission; and the Commission having considered the briefs filed by, and oral arguments presented by, Counsel Supporting the Complaint and Respondent on the issues of remedy, the Commission has now determined to issue a Final Order to remedy Respondent’s violations of Section 5 of the Federal Trade Commission Act. Accordingly,

It is ordered that the following Order to cease and desist be, and it hereby is, entered:

I.

IT IS ORDERED that for purposes of this Order, the following definitions shall apply:

- A. “Action” means any lawsuit or other action, whether legal, equitable, or administrative, as well as any arbitration, mediation, or any other form of private dispute resolution, in the United States or anywhere else in the world.
- B. “Compliance Officer” means the Person employed by Respondent pursuant to Paragraph III. of this Order.
- C. “DRAM” means Dynamic Random Access Memory.
- D. “First Royalty Period” means the period that begins on the date this Order is issued and ends on the date three years after the date this Order is issued.
- E. “JEDEC” means the JEDEC Solid State Technology Association, originally known as the Joint Electron Device Engineering Council, a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia.
- F. JEDEC-Compliant DRAM Product means:
 - 1. JEDEC-Compliant SDRAM and
 - 2. JEDEC-Compliant DDR SDRAM.
- G. JEDEC-Compliant Non-DRAM Product means memory controllers or other non-memory-chip components that comply with:
 - 1. the SDRAM Standards,
 - 2. the DDR SDRAM Standards, or
 - 3. both the SDRAM Standards and the DDR SDRAM Standards.
- H. JEDEC-Compliant DDR SDRAM means any DRAM that complies with the JEDEC DDR SDRAM specification, published as JESD 79, as revised (the “DDR SDRAM Standards”).
- I. JEDEC-Compliant SDRAM means any DRAM that complies with the JEDEC SDRAM Standard, published as JC 21-C, Release 4, as revised; or the JEDEC SDRAM standard, published as JC 21-C, Release 9, as revised (the “SDRAM Standards”).
- J. “Maximum Allowable Royalty Rates” means
 - 1. During the First Royalty Rate Period, the maximum allowable royalty rates shall be no greater than the following percentages of Net Sales of JEDEC-

Compliant DRAM Products or JEDEC-Compliant Non-DRAM Products:

- a. 0.25% for JEDEC-Compliant SDRAM;
 - b. 0.5% for JEDEC-Compliant DDR SDRAM;
 - c. 0.5% for JEDEC-Compliant Non-DRAM Products that comply with SDRAM Standards; and
 - d. 1.0% for JEDEC-Compliant Non-DRAM Products that comply with DDR SDRAM Standards.
2. During the Second Royalty Rate Period, the maximum allowable royalty rate for JEDEC-Compliant DRAM Products and JEDEC-Compliant Non-DRAM Products shall be 0.0%.
 3. Notwithstanding the calculations described in Paragraph I.J.1. and Paragraph I.K., the royalties per unit for JEDEC-Compliant Non-DRAM Products shall be limited to the following:
 - a. For JEDEC-Compliant Non-DRAM Products that comply with the SDRAM Standards, royalties per unit shall not exceed the amount obtained by multiplying .005 by the average net sales per unit for single data rate controllers – as those products are defined in Rambus’s licenses for JEDEC-Compliant Non-DRAM products in effect prior to July 31, 2006 – that all licensees reported to Rambus, pursuant to those licenses, prior to July 31, 2006.
 - b. For JEDEC-Compliant Non-DRAM products that comply with the DDR SDRAM Standards, royalties per unit shall not exceed the amount obtained by multiplying .01 by the average net sales per unit for double data rate controllers – as those products are defined in Rambus’s licenses for JEDEC-Compliant Non-DRAM products in effect prior to July 31, 2006 – that all licensees reported to Rambus, pursuant to those licenses, prior to July 31, 2006.
 4. JEDEC-Compliant Non-DRAM Products that comply with both the SDRAM Standards and the DDR SDRAM Standards shall all be treated, for purposes of calculating the Maximum Allowable Royalty Rates for such products pursuant to Paragraphs I.J.1.-3., as products that comply with DDR SDRAM Standards.

K. “Net Sales” means the gross sales amount invoiced or otherwise charged to customers of a licensee or its subsidiaries, less amounts invoiced for returned goods for which a refund is given, less separately stated charges for insurance, handling, duty, freight, and taxes, where such items are included in the invoiced price, and less credit amounts invoiced; *provided, however*, that (1) for each JEDEC-Compliant DRAM Product sold by the licensee at a combined price covering both the JEDEC-Compliant DRAM Product and a module, board, or system, Net Sales shall be calculated based on the licensee’s average gross selling price for the relevant JEDEC-Compliant DRAM Product alone, during the relevant calendar period, less the deductions specified above; and (2) for each

JEDEC-Compliant Non-DRAM product sold by the licensee at a combined price covering both the JEDEC-Compliant Non-DRAM Product and a board or system, Net Sales shall be calculated based on the licensee's average gross selling price for the relevant JEDEC-Compliant Non-DRAM Product alone, during the relevant calendar period, less the deductions specified above.

- L. "Person" means natural person, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or legal entity, including any governmental entity.
- M. "Relevant Foreign Patents" means all current or future patents issued by a foreign government to Respondent that claim a priority date of June 17, 1996, or before.
- N. "Relevant U.S. Patents" means all current or future United States patents that claim priority back to U.S. Patent Application Number 07/510,898, filed on April 18, 1990, or to any other U.S. Patent Application filed by or on behalf of Rambus on or before June 17, 1996.
- O. "Respondent" or "Rambus" means Rambus Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Rambus Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- P. "Second Royalty Period" means a period to begin on the date after the First Royalty Period expires and to end on the date on which the last of Respondent's Relevant U.S. Patents and Relevant Foreign Patents expires.
- Q. "Standard-Setting Organization" means any group, organization, association, membership or stock corporation, government body, or other entity that, through voluntary participation of interested or affected parties, is engaged in the development, promulgation, promotion or monitoring of product or process standards for the electronics industry, or any segment thereof, anywhere in the world.

II.

IT IS FURTHER ORDERED that, while a member of or a participant in a Standard-Setting Organization, Respondent:

- A. Shall not make any misrepresentation or omission to the Standard-Setting Organization or its members concerning Respondent's patents or patent applications (including, but not limited to, failing to cooperate with the

Compliance Officer in the satisfaction of his or her responsibilities as described in Paragraph III., below);

- B. Shall make complete, accurate, and timely disclosures to the Standard-Setting Organization or its members concerning Respondent's patents or patent applications to the extent the rules, practices, and policies of such Standard-Setting Organization require such disclosure (including, but not limited to, cooperating with the Compliance Officer's satisfaction of his or her responsibilities as described in Paragraph III., below); and
- C. Shall be prohibited from taking any other action or refraining from taking any other action that would lead the Standard-Setting Organization to develop a standard that would infringe a claim in any issued or future Rambus patents without knowledge by the Standard-Setting Organization of Respondent's patents and patent applications and of the potential scope thereof.

III.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the date this Order becomes final, Respondent shall employ, at Respondent's expense, a Compliance Officer, or shall include within the responsibilities of a current employee of Respondent all the responsibilities of a Compliance Officer, as described in this Paragraph III.
 - 1. The employee serving as the Compliance Officer shall be employed subject to the approval of the Commission, which approval Respondent shall seek pursuant to § 2.41(f) of the Commission's Rules of Practice, 16 C.F.R. § 2.41(f).
 - 2. The Compliance Officer shall be the sole representative of Respondent for the purpose of communicating Respondent's existing and potential patent rights related to any standard under consideration by any and all Standard-Setting Organizations of which Respondent is a member or in which Respondent is a participant; *provided, however*, that the Compliance Officer may, subject to the approval of the Commission, delegate a portion of his or her responsibilities to another employee of Respondent if he or she is unable to satisfy his or her responsibilities as described in this Paragraph III. because of the large number of Standard-Setting Organizations of which Respondent is a member or in which Respondent is a participant or because of the large number of standards under consideration by the Standard-Setting Organizations at any one time.

- B. Respondent shall:
1. Provide the Compliance Officer with full and complete access to Respondent's books, records, documents, personnel, facilities and technical information relating to compliance with this Order, or to any other relevant information, as the Compliance Officer may reasonably request;
 2. Assure that the Compliance Officer has all information necessary to satisfy his or her responsibilities as described in this Paragraph III.;
 3. Cooperate with any reasonable request of the Compliance Officer, including, but not limited to, requests to develop or compile data and information for the Compliance Officer's use; and
 4. Take no action to interfere with or impede the Compliance Officer's ability to satisfy his or her responsibilities as described in this Paragraph III.
- C. Failure of the Compliance Officer to satisfy his or her responsibilities as described in this Paragraph III. shall be considered a violation of this Order by Respondent, except to the extent that such failure results from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Compliance Officer.
- D. If at any time the Commission determines that the Compliance Officer has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may require Respondent to employ a substitute to serve as Compliance Officer, or include within a different current employee's job responsibilities those of the Compliance Officer, in the same manner as provided by this Order.
- E. Respondent shall, in its reports to the Commission submitted pursuant to Paragraph IX. of this Order, include a description of all disclosures made to all Standard-Setting Organizations pursuant to this Paragraph III., including the date of the disclosure, the patents and patent applications disclosed, the standards under consideration, and the Standard-Setting Organization to which it was made. The Compliance Officer shall verify each such report and submit supplemental reports directly to the Commission or its staff, on a confidential basis, to the extent the Compliance Officer considers such supplemental reports necessary.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent shall cease any and all efforts by any means, either directly or indirectly, in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, to seek to collect or to collect, under the Relevant U.S. Patents and, with regard to imports or exports to or from the United States, the Relevant Foreign Patents, any fees, royalties or other payments, in cash or in kind, relating to the manufacture, sale, or use of any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product after the date this Order becomes final, that are in excess of the Maximum Allowable Royalty Rates or are otherwise inconsistent with this Order.
- B. Respondent shall allow any party to a license agreement that requires payment, under the Relevant U.S. Patents and, with regard to imports or exports to or from the United States, the Relevant Foreign Patents, of any fees, royalties or other consideration, in cash or in kind, relating to the manufacture, sale, or use of any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product after the date this Order becomes final, that are in excess of the Maximum Allowable Royalty Rates of this Order or are otherwise inconsistent with this Order, to terminate or rescind that license agreement – at the option of the licensee – without penalty, and release that licensee from any further payments pursuant to that license agreement that are in excess of the Maximum Allowable Royalty Rates or are otherwise inconsistent with this Order.

V.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the date this Order becomes final, Respondent shall offer and make available to all interested persons, a worldwide, nonexclusive license under the Relevant U.S. Patents, to make, have made, use, offer to sell, or sell JEDEC-Compliant DRAM Products and JEDEC-Compliant Non-DRAM Products. Such licenses shall not seek to collect any fees, royalties or other consideration, in cash or in kind, in excess of or in addition to the Maximum Allowable Royalty Rates, other than fees in an amount not to exceed the fair market value of any services to be rendered by Respondent to the licensee to the extent such services have been rendered at the request of the licensee.

- B. Notwithstanding the provisions of Paragraph V.A. of this Order, Rambus may include in the licenses offered pursuant to Paragraph V.A.,
1. a requirement that the licensee grant Rambus a royalty-free, nonexclusive license under the licensee's patents to make, have made, use, offer to sell, and sell any product, the manufacture, use, offer to sale, or sale of which would, if not authorized, infringe one of the licensee's patents by reason of the implementation or use of any Rambus interface technology or of any of the licensee's improvements to a Rambus interface technology (or by reason of the use of any apparatus required by (i) any Rambus interface technology or (ii) any of the licensee's improvements to a Rambus interface technology), where such infringement:
 - a. would not have occurred but for the implementation of the Rambus interface technology or the licensee's improvement and
 - b. could not have been avoided by another commercially reasonable implementation or resulted from use of an example included in the Rambus interface technology or in the licensee's improvement; and
 2. a right to sublicense Rambus's rights under the license provided pursuant to Paragraph V.B.1., to any and all of the other licensees of any Rambus interface technology that have provided reciprocal rights through Rambus to the licensee under Paragraph V.A. at no separate, additional royalty or other charge to that licensee, provided that such sublicensed rights shall be limited to the products as to which Rambus receives a license (as identified in Paragraph V.B.1.), and provided further that no sublicense shall be granted for the use of rights with respect to
 - a. semiconductor manufacturing technology, and
 - b. any other portion of any integrated circuit including, without limitation, the core of a memory integrated circuit.
- C. A licensee pursuant to Paragraph V.A. may sublicense to its subsidiaries the rights that arise under a license pursuant to Paragraph V.A. at no additional royalty or charge to the licensee or sublicensee.
- D. The license described in Paragraph V.A. shall continue until expiration of the last to expire of the Relevant U.S. Patents; *provided, however*, that:
1. The licensee may, solely at the option of the licensee, terminate the license at any time upon sixty (60) days' written notice to Respondent; and
 2. If either party defaults in the performance of any material obligation under the license described in Paragraph V.A. and if any such default is not corrected within forty-five (45) days after the defaulting party receives written notice thereof from the non-defaulting party, the non-defaulting party, at its option, may, in addition to any other remedies it may have, terminate the license.

- E. Rambus shall not argue in any Action that a licensee's acceptance of, or participation in, a license pursuant to Paragraph V.A. of this Order bars the licensee from:
1. asserting that any Relevant U.S. Patent or Relevant Foreign Patent is invalid, unenforceable, or not infringed or
 2. offering any defense based on contentions that any Relevant U.S. Patent or Relevant Foreign Patent is invalid, unenforceable, or not infringed.

VI.

IT IS FURTHER ORDERED that Respondent shall cease and desist any and all efforts it has undertaken by any means, either directly or indirectly, in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, including, without limitation, the threat or prosecution of, or assertion of any affirmative defense in, any Action, to the extent that Respondent: (1) has asserted that any Person, by manufacturing, selling, or otherwise using any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product, infringes any Relevant U.S. Patents or by manufacturing, selling, or otherwise using any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product for import or export to or from the United States, infringes any Relevant Foreign Patents and (2) for periods after this Order becomes final, is seeking relief that would result in payments to Respondent in excess of the Maximum Allowable Royalty Rates or that would otherwise be inconsistent with the requirements of this Order.

VII.

IT IS FURTHER ORDERED that Respondent shall not undertake any new efforts by any means, either directly or indirectly, in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, including, without limitation, the threat or prosecution of, or assertion of any affirmative defense in, any Action, pursuant to which Respondent: (1) asserts that any Person, by manufacturing, selling, or otherwise using any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product any time after the date this Order becomes final, infringes any Relevant U.S. Patents or by manufacturing, selling, or otherwise using any JEDEC-Compliant DRAM Product or JEDEC-Compliant Non-DRAM Product for import or export to or from the United States any time after the date this Order becomes final, infringes any Relevant Foreign Patents, and (2) is seeking relief that would result in payments to Respondent in excess of the Maximum Allowable Royalty Rates or would otherwise be inconsistent with the requirements of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the date this Order becomes final, Respondent shall distribute a copy of this Order and the complaint in this matter to JEDEC, to those members of JEDEC that Respondent contacted regarding possible infringement of any of its patents by JEDEC-Compliant DRAM Products or JEDEC-Compliant Non-DRAM Products, and to any other Person that Respondent contacted regarding possible infringement of any of its patents by JEDEC-Compliant DRAM Products or JEDEC-Compliant Non-DRAM Products.
- B. No later than ten (10) days after the date this Order becomes final, Respondent shall distribute a copy of this Order and the complaint in this matter to every officer and director of Respondent, to every employee or agent of Respondent whose responsibilities include acting as Respondent's designated representative to any Standard-Setting Organization, and to every employee or agent having managerial responsibility for any of Respondent's obligations under this Order.
- C. Until ten (10) years after the date this Order becomes final, Respondent shall furnish a copy of this Order and the complaint in this matter to each new officer and director of Respondent and to every new employee or agent of Respondent whose responsibilities will include acting as Respondent's designated representative to any Standard-Setting Organization or who will have managerial responsibility for any of Respondent's obligations under the Order. Such copies must be furnished within thirty (30) days after any such persons assume their position as an officer, director or employee. For purposes of this Paragraph IX.C., "new employee" shall include without limitation any of Respondent's employees whose duties change during their employment to include acting as respondent's designated representative to any Standard-Setting Organization.
- D. Until ten (10) years after the date this Order becomes final, Respondent shall furnish each Standard-Setting Organization of which it is a member and which it joins a copy of this Order, and Respondent shall identify to each such organization the name of the Compliance Officer who will serve as Respondent's designated representative to the Standard-Setting Organization.

IX.

IT IS FURTHER ORDERED that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
 - 1. no later than sixty (60) days after the date this Order becomes final; and
 - 2. annually for ten (10) years on the anniversary of the date this Order becomes final.

- B. Respondents shall include in its reports, among other things required by the Commission, a full description of the efforts being made to comply with this Order, a description of all substantive contacts or negotiations relating to Respondent's participation in any Standard-Setting Organization of which Respondent is a member, the identity of all parties contacted, copies of all written communications to and from such parties, internal documents and communications, and all reports and recommendations concerning Respondent's participation in any Standard-Setting Organization.

- C. Until ten (10) years after the date this Order becomes final, Respondent shall maintain records adequate to describe in detail any action taken in connection with the activities covered by this Order, including, but not limited to, the annual amount of royalties received from each licensee pursuant to Paragraph V. of this Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matter contained in this Order; and

- B. Upon five days' notice to Respondent and without restraint or interference from Respondent, to interview the Compliance Officer and any other of Respondent's officers, directors, or employees, who may have counsel present, regarding any such matters.

XI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to (1) any proposed dissolution of Respondent; (2) any proposed acquisition, merger, or consolidation of Respondent; or (3) any other change in Respondent including, but not limited to, assignment or creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order becomes final.

By the Commission, Commissioner Harbour and Commissioner Rosch dissenting.

Donald S. Clark
Secretary

SEAL

ISSUED: February 2, 2007