

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
)

RAMBUS INCORPORATED,)

a corporation,)
_____)

Docket No. 9302

ORDER DENYING MOTION FOR STAY

I.

On July 5, 2002, Respondent Rambus Inc. ("Rambus") filed a motion to stay, or in the alternative, for an extension of time for filing its answer. Respondent represented that Complaint Counsel authorized Respondent to state that Complaint Counsel consents to a 14 day extension of time for Rambus to file its answer. Complaint Counsel filed its opposition to Rambus' motion to stay on July 15, 2002.

By Order dated July 9, 2002, Rambus' motion for extension of time for filing its answer was granted. By Order dated July 17, 2002, Rambus' motion for leave to file a reply brief in support of its motion to stay was granted and Complaint Counsel's conditional motion for leave to file a surreply brief was denied. Rambus filed its reply brief on July 17, 2002.

For the reasons set forth below, Rambus' motion to stay is DENIED.

II.

The Complaint in this matter was filed on June 18, 2002. Respondent seeks to stay this entire proceeding until fourteen days after the Federal Circuit issues its decision in *Rambus Inc. v. Infineon Technologies AG*, No. 01-1449 (Fed. Cir.). Rambus states that, in this suit Rambus asserted patent infringement claims against Infineon Technologies AG ("Infineon") and that Infineon asserted various affirmative defenses and counterclaims, including allegations that Rambus' non-disclosure of its intention to obtain patents relating to the standards set by the JEDEC Solid State Technology Association ("JEDEC"), originally known as the Joint Electron

Device Engineering Council, violated JEDEC's disclosure rules and constituted fraud. Rambus also states that Micron Technology, Inc. ("Micron") and Hynix Semiconductor, Inc. ("Hynix") each sued Rambus in federal district courts of Delaware and California, respectively, seeking declaratory judgment that their manufacture and sale of SDRAM products compliant with JEDEC standards do not infringe Rambus' patents and accusing Rambus of antitrust violations and unfair competition. The *Micron* and *Hynix* courts each stayed at least part of those proceedings. Rambus argues that the *Infineon* litigation involves similar factual and legal issues to those raised in this litigation and that granting a stay of this litigation pending the Federal Circuit's decision will enable many of the novel and complex legal and factual issues raised in this case to be better focused, facilitate consistency with the Federal Circuit's decision, and allow discovery in this case to be conducted more efficiently.

Commission Rule 3.51(a) which authorizes the Administrative Law Judge to stay an administrative proceeding until resolution of the collateral federal court proceeding does not mandate the stay requested by Respondent in this matter. Rule 3.51(a) sets forth that the pendency of any collateral federal court proceeding that relates to the administrative adjudication shall toll the one-year deadline for filing the initial decision and that the ALJ may stay the administrative proceeding until resolution of the collateral federal court proceeding. 16 C.F.R. § 3.51(a). This part of Rule 3.51(a) was promulgated in 1996 when the Commission also revised its rules to require that an initial decision be filed within one year of service of the administrative complaint, except upon a finding of extraordinary circumstances. FTC Rules of Practice Amendments, 61 Fed. Reg. 50,640, 50,642 (Sept. 26, 1996) (codified at 16 C.F.R. pt. III).

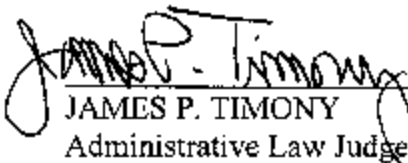
This matter does not present the situation where the Commission itself has instituted a federal court action that is truly collateral to the administrative proceeding, in the sense that it involves both the same subject matter and the same parties, such as a federal court action under Section 13(b) of the FTC Act whereby the Commission seeks to preliminarily enjoin a proposed merger or acquisition while it proceeds with an administrative action analyzing the potential anticompetitive effects of the proposed transaction. See 15 U.S.C. § 53(b). Since it was revised in 1996, the only situations in which Rule 3.51(a) was invoked to stay administrative litigation involved precisely that situation. *In re H.J. Heinz Co.*, 2001 FTC LEXIS 6 (Jan. 17, 2001) (granting unopposed motion to stay administrative litigation pending appeal of denial of preliminary injunction involving a proposed merger); *In re Tenet Healthcare*, FTC Docket No. 9289 (Sept. 15, 1998) (same).

Furthermore, to grant Rambus' motion for a stay of this litigation on the basis that Rambus is involved in private litigation which involves overlapping legal and factual issues is inconsistent with the Commission's objective of reducing the time taken to render decisions in adjudicative proceedings. See 61 Fed. Reg. at 50,640. "The pendency of a case dealing with similar issues is not sufficient grounds for staying or withdrawing a Commission proceeding." *In re Motor Transport Assoc.*, 1986 FTC LEXIS 87, *2 (Nov. 18, 1986) (quoting *New England Motor Rate Bureau, Inc.*, FTC Docket No. 9170 (Interloc. Op., Feb. 9, 1984); *Tristate Household Goods Tariff Conf., Inc.*, FTC Docket No. 9184 (Interloc. Op., March 5, 1984)).

Rambus' stay request is based on the fact that Rambus is involved in private litigation with various third parties involving some of the same underlying events and conduct. Rambus asserts that the Federal Circuit will likely render its decision in the *Infineon* case within the next few months. Although briefing has been completed and oral arguments presented in the *Infineon* case, there is no certainty that the Federal Circuit will issue its decision in the next few months. And, even when issued, the Federal Circuit's decision may not fully dispose of the *Infineon* matter. Further, the Federal Circuit's decision in *Infineon* may not necessarily resolve issues in this litigation. These circumstances weigh against Rambus' request to stay this proceeding. See *In re Butterworth Health Corp.*, 1997 FTC LEXIS 97 (April 26, 1997) (denying motion to stay where decision by Court of Appeals may not have rendered the administrative proceeding unnecessary and where a delay in the administrative proceeding could result in harm to consumers and competition).

III.

Because of the Commission's desire to move expeditiously in these matters and because of the harm to consumers that could result from an indefinite delay should a violation of the FTC Act be found, Respondent's motion to stay this administrative proceeding is DENIED.


JAMES P. TIMONY
Administrative Law Judge

Dated: July 18, 2002