PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

DECLARATION OF ANDREA W. JEFFRIES IN SUPPORT OF RAMBUS INC. ANSWER TO MICRON TECHNOLOGY'S MOTION TO LIMIT OR QUASH RAMBUS'S NOVEMBER 6, 2002 SUBPOENAS AD TESTIFICANDUM AND SUBPOENAS DUCES TECUM

I, Andrea W. Jeffries, declare:

1. I am a member of the State Bar of California and a member of the law firm of Munger, Tolles & Olson LLP, co-counsel for respondent Rambus, Inc. ("Rambus") in this matter. I submit this declaration in support of Rambus's Answer to Micron Technology's Motion To Limit Or Quash Rambus's November 6, 2002 Subpoenas Ad Testificandum and Subpoenas Duces Tecum. I have personal knowledge of the facts set forth in this declaration and could and would testify to them competently under oath if called as a witness.

2. By correspondence in August 2002, counsel for Rambus requested that it be permitted to use at the Part III hearing in this matter the prior deposition and trial testimony of witnesses in the three private cases – *Rambus v. Infineon* (E.D. Va.),

Micron v. Rambus (D. Del.), and *Hynix v. Rambus* (N.D. Cal) – under the circumstances set out in Rule 3.33(g)(1)(i)-(iv) of the Commission's Rules of Practice.

3. By reply correspondence in September 2002, Complaint Counsel agreed to permit use by Rambus of the prior deposition and trial testimony for purposes of impeaching a witness who appeared and testified live at the Part III hearing. At that time, however, Complaint Counsel rejected Rambus's request to introduce the transcript of a deposition taken during the private litigation in the event a witness were to be unavailable at the time of the hearing, stating that such introduction of evidence was neither contemplated Rule 3.33(g) of the Commission's Rules of Practice nor by the rules of evidence.

4. I discussed the substance of Micron's motion with counsel for Micron in two teleconferences, one on November 15 and one on November 18. At the time of those discussions, I had no choice but to insist on the ability to duplicate portions of the prior deposition testimony of the Micron witnesses, because Complaint Counsel was then of the view that Rambus could not use the *Micron* testimony in the Part III hearing should a Micron witness become unavailable, because Complaint Counsel had not been present at the *Micron* depositions. I explained this situation to counsel for Micron (Richard Rosen and Jared Bobrow) during our teleconferences.

5. In late November 2002, after the instant motion had already been filed, Complaint Counsel advised Rambus that it had reconsidered its position regarding the use of prior deposition testimony in the private litigation in the Part III hearing, and would now agree to the admissibility of prior trial and deposition testimony from the private litigation (i.e., the three actions referenced in paragraph 2, above) at the Part III hearing should witnesses be unavailable. After some discussion, Rambus and Complaint Counsel agreed to treat the prior testimony of witnesses on the parties' respective witness lists in a manner equivalent to testimony in a deposition conducted pursuant to the Part III rules, and thus eliminated any need to duplicate in a Part III deposition the substance

of a witness's prior testimony. Attached hereto as **Exhibit A** is a true and correct copy of the November 26, 2002 letter from Geoffrey Oliver to Steven Perry confirming this agreement.

6. During our telephone conversation on November 15, 2002, I explained to Micron's counsel that Rambus had sought to ease the burden on Micron and its employees by giving them several weeks notice of the depositions and scheduling the depositions for Boise, Idaho, the site of Micron Technology, Inc. and the workplace of the proposed deponents. I also agreed to limit all of the depositions to one day and to work with Micron's counsel to set dates that would be convenient for the witnesses. During that conversation, Richard Rosen, counsel for Micron, offered to produce Keith Weinstock for deposition, in recognition of the fact that he had not been deposed in the *Micron* case. At no time did Micron's counsel oppose the deposition of Mr. Weinstock, or of any witness, on grounds of relevance.

7. I have reviewed the transcripts of the *Micron* depositions of the proposed deponents. Those depositions were conduced in early-mid 2001, as follows: Steve Appleton was deposed in April and July, 2001; Gene Cloud was deposed in June 2001; Terry Lee was deposed in June and August 2001; Kevin Ryan and Brett Williams were deposed in April 2001; Terry Walther was deposed in May 2001. As indicated above, Keith Weinstock was not deposed in the *Micron* case.

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10. Since the time the above-referenced *Micron* depositions were taken, Rambus has received over 200,000 pages of documents from third parties. Though these documents were not produced by Micron, a substantial number identify one or more of the proposed deponents as authors or recipients or as participants in discussions relevant to the allegations raised by the pleadings in this proceeding. For example, the official meeting minutes of the SyncLink Consortium were not produced by Micron in the *Micron* case, but most, if not all of those minutes contain statements regarding issues central to this case. Attached hereto as **Exhibit C** is a true and correct copy of the minutes of the May 13, 1996 SyncLink Consortium meeting. Those minutes reflect a comment, apparently made by Terry Walther of Micron, regarding the patent disclosure policies of various standards organizations, *including JEDEC*.

11. Micron has produced over 25,000 pages of documents that it did not produce in the *Micron* case, and recently stated that it intends to produce "tens of thousands more." My colleagues and I expect that Rambus will receive additional documents from third parties other than Micron in the next 30 days in response to subpoenas duces tecum that were issued in this proceeding.

12. I participated in several telephone conferences regarding the subpoena duces tecum served by Rambus on Micron on October 4, 2002. That 67-specification subpoena issued to Micron contains nearly identical specifications to the

subpoena duces tecum issued to Mistubishi Electric & Electronics USA, Inc that is the subject of Your Honor's Order Denying Motion Of Mitsubishi Electric & Electronics USA, Inc. To Quash Or Narrow Subpoena.

13. Attached hereto as **Exhibit D** is a true and correct copy of excerpted pages of the deposition of Kevin Ryan, dated April 26, 2001, reflecting one instance of many where Micron's counsel instructed its witnesses not to answer any questions regarding the work of the ADT consortium.

14. Attached hereto as **Exhibit E** is a true and correct copy of a press release announcing the agreement among Intel Corporation and several DRAM manufacturers, including Micron, to cooperatively develop advanced DRAM technology. This group became known as the ADT consortium.

15. With respect to Micron's application to quash specifications 8 and 9 of the individual subpoenas, neither of the issues raised in Micron's motion papers were raised during the telephone conferences aimed at resolved the disputes involved in the instant motion.

Executed on December 3, 2002 at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

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Andrea W. Jeffries