

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAMBUS INC.,

a corporation.

Docket No. 9302

RESPONDENT RAMBUS INC.'S MEMORANDUM  
IN SUPPORT OF CERTAIN OBJECTIONS TO  
DEPOSITION TESTIMONY BY J. REESE BROWN

Complaint Counsel stated on May 12, 2003 that they intended to show designated portions of the deposition testimony of J. Reese Brown on the next day, May 13, 2003.

Respondent Rambus Inc. ("Rambus") submits this memorandum in support of certain of its objections to that testimony. The objections addressed in this memorandum relate to the absence of any foundation for Mr. Brown's testimony relating to the requirements of the JEDEC patent policy.

Mr. Brown has been a consultant to JEDEC since approximately 1985, when he retired from Unisys. In that capacity, he attended JEDEC meetings primarily in order to maintain an "item log" listing the items being considered for standardization. Brown *Infineon Tr.*, p. 6:3-22. Mr. Brown has not been a JEDEC representative since 1985. Nevertheless, in Mr. Brown's deposition in the *Infineon* matter, counsel for Infineon

asked him numerous questions about the purported requirements of the JEDEC patent policy in the 1990's and whether certain presentations at JEDEC meetings did or did not trigger a disclosure obligation on the part of JEDEC members. Infineon's counsel made no effort to lay a foundation for testimony in this area, and he showed Mr. Brown no JEDEC or EIA manuals relating to the patent policy. Rambus's counsel objected to questions about the patent policy as lacking foundation and on other grounds.<sup>1</sup>

In *this* matter, Mr. Brown's deposition was taken again, with both Rambus's counsel and Complaint Counsel asking questions. Mr. Brown's testimony in *this* case makes clear that the foundational objections to his testimony in the *Infineon* case were well taken and that Mr. Brown's testimony had no probative value.

Infineon's counsel had shown Mr. Brown references in JEDEC meeting minutes to various first presentations and surveys and asked him if they would have triggered an obligation on the part of JEDEC members to disclose patent *applications* relating to the subjects of those presentations and surveys. Brown *Infineon* Tr., pp. 89-115. Mr. Brown said repeatedly that he "believed" they would have. *Id.* In this case, however, Complaint Counsel asked Mr. Brown if he recalled "the JEDEC patent policy making any distinction between issued patents and patent applications." Tr., p. 48:17-19 (attached). Mr. Brown testified: "I do not recollect. I would have to read the policy itself to give an intelligent answer to that question." *Id.*, p. 48: 21-23 (attached).

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<sup>1</sup> The testimony in question appears at pp. 89-115 of the Brown transcript in the *Infineon* matter.

Complaint Counsel then showed Mr. Brown the JEDEC Manual, 21-I (in evidence as ex. CX 208), asked him to read the portion relating to intellectual property, and then asked:

“Now, for a first presentation, if the company representative is aware of a patent application that his or her company has that might relate to the first presentation, is that company representative required to disclose that information?”

A. I believe, according to the policy that I read, he is not.”

*Id.*, p. 63:16-23 (attached). Mr. Brown gave the same testimony when asked about survey ballots. *Id.*, p. 62:17-63:1 (attached).

In short, Mr. Brown’s testimony from the *Infineon* matter regarding a purported obligation to disclose patent applications in connection with first presentations and surveys (pp. 89-115 of his deposition) lacked the necessary foundation and lacks any probative value in this case. Mr. Brown was not a JEDEC representative during the relevant time period and had no responsibility for the interpretation or application of the JEDEC patent policy. When finally shown the JEDEC manual, Mr. Brown retracted his prior testimony and testified that members were *not* required to disclose patent applications in response to first presentations and survey ballots. Rambus’s objections should be sustained.

DATED: May \_\_\_\_, 2003

Respectfully submitted,

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**CERTIFICATION**

I, James M. Berry, hereby certify that the electronic copy of *Respondent Rambus Inc.'s Memorandum In Support Of Certain Objections To Deposition Testimony By J. Reese Brown* accompanying this certification is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on May 13, 2003 by other means.

James M. Berry  
May 13, 2003

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BEFORE THE FEDERAL TRADE COMMISSION**

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**CERTIFICATE OF SERVICE**

I, James M. Berry, hereby certify that on May 13, 2003, I caused a true and correct copy of *Respondent Rambus Inc.'s Memorandum In Support Of Certain Objections To Deposition*

*Testimony By J. Reese Brown* to be served on the following persons by hand delivery:

Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
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James. M. Berry