

Interlocutory Orders, etc.

IN THE MATTER OF

RAMBUS INCORPORATED

Docket No. 9302 – Order: July 31, 2006

**ORDER REVERSING AND VACATING INITIAL
DECISION AND ACCOMPANYING ORDER,
SCHEDULING SUPPLEMENTAL BRIEFING ON ISSUES
OF REMEDY, AND DENYING COMPLAINT COUNSEL’S
MOTION FOR SANCTIONS**

This matter having been heard by the Commission upon the appeal of Counsel Supporting the Complaint and the cross-appeal of Respondent, and upon the respective briefs and oral arguments in support of such positions, and the Commission having determined that Respondent has violated Section 5 of the Federal Trade Commission Act – for the reasons stated in the accompanying Opinion – the Commission has therefore determined to reverse and vacate the Initial Decision, to vacate the Order accompanying the Initial Decision, and to direct supplemental briefing on issues of remedy. The Commission has also determined to deny Complaint Counsel’s Motion for Sanctions Due to Rambus’s Spoliation of Documents (Aug. 10, 2005) (“Motion for Sanctions”).

Accordingly,

IT IS ORDERED THAT the Initial Decision dismissing the Complaint in this proceeding be, and it hereby is, **REVERSED** and **VACATED**;

IT IS FURTHER ORDERED THAT all findings and conclusions in the Initial Decision, other than those expressly cited and relied upon in the Opinion accompanying this Order, be, and they hereby are, **SET ASIDE**;

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IT IS FURTHER ORDERED THAT the Order accompanying the Initial Decision and dismissing the Complaint in this proceeding be, and it hereby is, **VACATED**;

IT IS FURTHER ORDERED THAT:

1. On or before September 15, 2006, Rambus and Complaint Counsel each shall file a brief, not to exceed 7,500 words – as measured pursuant to Commission Rule 3.52(b)(2) – addressing appropriate issues relating to remedy in this proceeding;¹ and
2. On or before September 29, 2006, each party may file a responding brief, not to exceed 5,000 words, as measured pursuant to Commission Rule 3.52(b)(2);

IT IS FURTHER ORDERED THAT additional oral argument relating to remedy will be scheduled by further order of the Commission after the receipt of the briefs directed by this Order; and

IT IS FURTHER ORDERED THAT the Motion for Sanctions be, and it hereby is, **DENIED**.

By the Commission.

¹ These briefs shall discuss, without limitation: (1) means for the Commission to determine, based on the existing record, reasonable royalty rates for licensing all technologies applicable to JEDEC-compliant products and covered by relevant Rambus patents; (2) alternative mechanisms and procedures for determining reasonable royalty rates, such as an independent arbitrator, a special master, or an administrative law judge; (3) qualitative characteristics descriptive of appropriate relief, against which specific royalty proposals might be evaluated; and (4) appropriate injunctive and other provisions that should be incorporated in the Final Order in this proceeding.

Interlocutory Orders, etc.

IN THE MATTER OF

RAMBUS INCORPORATED

Docket No. 9302 – Order: August 1, 2006

**ORDER DENYING COMPLAINT COUNSEL’S MOTION
TO REOPEN THE RECORD TO INCLUDE EVIDENCE
THAT CORRECTS MISREPRESENTATION IN
ANSWERING BRIEF**

Complaint Counsel filed their Motion to Reopen the Record to Include Evidence that Corrects Misrepresentation in Answering Brief (July 2, 2004) (“Motion to Reopen”). The moving papers claim that Rambus “misrepresented that a version of the minutes of JEDEC’s February 2000 Board of Directors meeting [RX 1570] . . . had been approved by the JEDEC Chairman of the Board and the General Counsel.” Motion to Reopen at 1. Complaint Counsel further claim that RX 1570 is an “unapproved” version of the minutes and seek leave to reopen the record to admit “two documents and relevant pages of three deposition transcripts to correct the misrepresentation in Rambus’s answering brief.” *Id.* at 1-2. Rambus opposes on the grounds that RX 1570 shows “the necessary leadership approvals *on [its] face.*” Rambus’s Opposition to Complaint Counsel’s Motion to Reopen the Record to Include “Evidence that Corrects Misrepresentation in Answering Brief” at 1 (emphasis in original) (“Rambus’s Opposition”). Rambus further asserts that Complaint Counsel’s claim of surprise at Rambus’s reliance on RX 1570 is contradicted by “their own proposed findings” which were offered “without citation to evidence.” *Id.* at 2. Rambus also points out that Judge McGuire relied on RX 1570 in the Initial Decision in this matter. *Id.* We find that Complaint Counsel has not met its burden to reopen the record.

This is an instance where the oft-repeated maxim that a document speaks for itself is disproved. Complaint Counsel and Rambus chose to place RX 1570, and its virtually identical twin, JX 50, into evidence, Trial Transcript at 2598-2605, without