



AMSTER, ROTHSTEIN & EBENSTEIN LLP PATENT LITIGATION ALERT

FTC CLOSES RAMBUS INVESTIGATION

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On May 14, 2009, after a nine-year investigation, the Federal Trade Commission announced that it was suspending its investigation into the alleged anticompetitive activities of Rambus related to Rambus' involvement with the Joint Electron Device Engineering Counsel ("JEDEC"), a standards-setting body for the electronics industry.

In the complaint filed in June 2002, the FTC accused Rambus of engaging in a "continuous pattern of deceptive, bad-faith conduct." by participating in the work of JEDEC on developing standards for DRAM technologies and failing to disclose that it was actively seeking patent protection for the technologies then under consideration by JEDEC.

The FTC had alleged that during the course of Rambus' participation in JEDEC from 1992 to 1996, Rambus observed multiple presentations concerning technologies for the standards that Rambus knew or believed were either covered by its then-pending patent applications, or could have been covered if claim amendments were made. Rambus' representative at the meetings sent e-mails back to Rambus headquarters expressing his belief that Rambus had pending applications covering some of the technologies being discussed in the meetings or suggesting that the pending applications be amended to cover the technologies under consideration.

Rambus withdrew from JEDEC in 1996, noting that the terms on which it proposed to license its patented technology "may not be consistent with the terms set by . . . JEDEC." Rambus then began to assert its patents against manufacturers of chipsets compliant with the JEDEC standards. At one point, 90% of DRAM production was compliant with the JEDEC standards.

The FTC conducted an investigation and issued an order finding that Rambus' conduct was monopolistic in violation of § 2 of the Sherman Act and constituted unfair competition in violation of § 5(a) of the FTC Act.

The U.S. Court of Appeals for the D.C. Circuit set aside the FTC order, finding that because there was a likelihood that JEDEC would have standardized the same technology even if it had known of Rambus' patent applications, "Rambus's alleged deception cannot be said to have had an effect on competition in violation of the antitrust laws; JEDEC's loss of an opportunity to seek favorable licensing terms is not as such an antitrust harm." The Court further found that the JEDEC patent policy required only disclosure of patents or pending patent rights, not "unfiled work in progress on potential amendments to patent applications." Accordingly, the Court found no violation of the FTC Act.

In November 2008, the FTC petitioned the U.S. Supreme Court for a writ of certiorari to review the decision of the D.C. Circuit. The U.S. Supreme Court denied the petition on February 23, 2009, effectively ending the FTC's investigation of Rambus.

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