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FTC Compels Rambus to License Patented Technology and Limits Royalty Rates

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Following its decision last summer that Rambus had violated the antitrust laws by deceiving an industry-wide standard-setting organization, the Federal Trade Commission (FTC) issued its remedial order yesterday.^[1] The Commission's long-awaited order is significant because it (1) places specific limits on Rambus' licensing and patent enforcement activities and (2) sets forth a framework that U.S. courts can follow when fashioning a remedy in future antitrust cases that involve deceptive conduct before standard-setting organizations.

Specifically, the FTC's order (1) compels Rambus to license its patented technology on certain specified terms; (2) places limits on the maximum royalty rates that Rambus can collect for use of its patents; and (3) imposes other significant conduct remedies that limit Rambus' ability to engage in future deceptive conduct relating to standard-setting organizations. The Commission did not require Rambus to surrender past royalties; nor did it limit Rambus' royalties on DDR2 SDRAM technology. Rambus has said it will appeal the decision.

The Commission's Opinion and Remedial Order

The FTC's opinion and final order contain several notable holdings and important restrictions on Rambus' ability to enforce its intellectual property rights:

- **Compulsory Licensing.** The FTC rejected Rambus' contention that the Commission's remedial power was limited to issuing a "cease-and-desist" order prohibiting future deceptive conduct. In order to "stop Rambus from continuing to exploit its illegally acquired monopoly power . . . and terminate the anticompetitive effects of the deceptive course of conduct by which it acquired that monopoly power," the Commission has required Rambus to make available a worldwide, nonexclusive license under its U.S. patents to make, use, and sell JEDEC-compliant DRAM and non-DRAM products.
- **Maximum Royalty Rates.** The order also bars Rambus from collecting or attempting to collect more than certain maximum allowable royalty rates for the sale, manufacture, or use of JEDEC-compliant DRAM and non-DRAM products. Although the FTC held that it was within its power to require royalty-free licensing (and two Commissioners voted in favor of imposing royalty-free licensing obligations), the Commission did not find that the factual circumstances of this case justified such a remedy. The maximum allowable royalty rates that Rambus may now charge licensees (on net sales of JEDEC-compliant DRAM and non-DRAM products) are:
 - From February 2, 2007 – February 2, 2010:
 - 0.25% for JEDEC-Compliant SDRAM
 - 0.50% for JEDEC-Compliant DDR SDRAM
 - 0.50% for JEDEC-Compliant non-DRAM products that comply with SDRAM standards
 - 1.0% for JEDEC-Compliant non-DRAM products that comply with DDR SDRAM standards

- From February 2, 2010, until the expiration of the last of Rambus' relevant patents, the royalty rate is 0.0% on JEDEC-Compliant DRAM and non-DRAM products.

The FTC's order limiting the maximum royalty rate applies to certain U.S. patents and non-U.S. patents (with respect to imports and exports to and from the U.S.) that are owned by Rambus, and bars Rambus from enforcing any royalty agreements now in effect that would exceed these rates. Existing licensees may terminate or rescind their license agreements without penalty, and Rambus must release them from any further payments.

- **Other Conduct Remedies.** The FTC's order also contains several other conduct remedies, including:
 - Rambus is prohibited from making any future misrepresentations or omissions to any standard-setting organization or its members regarding Rambus' patents or patent applications;
 - Rambus is required to employ a Commission-approved compliance officer to ensure that Rambus' patents and patent applications are disclosed to industry standard-setting bodies in which it participates; and
 - Rambus is required to cease and desist from any ongoing or future efforts to pursue patent infringement claims or suits against any person for manufacturing, selling, or otherwise using any JEDEC-Compliant DRAM or non-DRAM product.
- **Remedy Excludes DDR2 SDRAM.** Because the Commission concluded in its liability decision that there was not a sufficient causal link between Rambus' deceptive conduct and the adoption of JEDEC's DDR2 SDRAM standard, the FTC's order does not extend the compulsory licensing and maximum royalty rate provisions to products that are compliant with DDR2. Thus, Rambus remains free to collect royalties for any of its patents that read on this next-generation standard.

Public versions of the Commission's opinion and order are available on the FTC's website.^[2] Rambus has announced that it intends to move for a stay of the Commission's order pending its appeal of both the finding of liability and the remedy. Absent a stay, the Commission's order will become effective in 60 days.

Footnotes:

1: For a description of the Commission's decision on Rambus' liability for violating the antitrust laws, see our legal update, [Overview of FTC's Rambus Decision](#), August 2006.

2: See <http://www.ftc.gov/os/adjpro/d9302/070205opinion.pdf> and <http://www.ftc.gov/os/adjpro/d9302/070205finalorder.pdf>.