

Rambus' business model in doubt after FTC ruling

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Manhasset, N.Y. -- Rambus Inc. was dealt what could turn out to be a major challenge to its intellectual-property licensing business model last week, when the Federal Trade Commission ruled that the company had unlawfully monopolized the markets for computer memory technologies incorporated into industry standards for DRAM chips.

In effect, the FTC accused Rambus of having engaged in the kind of anti-competitive, monopolistic behavior the technology company has long ascribed to its rivals in the memory chip business.

For years, Rambus has accused major memory chip makers of conspiring to fix prices and en-gage in other anti-competitive practices in an attempt to drive it out of business.

Rambus has also tangled in court with many of those suppliers over patents related to such memory technologies as synchro-nous DRAM, double-data-rate (DDR) SDRAM and DDR2.

Rambus' near-term fate could lie with further decisions by the FTC, which has ordered additional briefings to determine a course of action in regard to the company. According to reports, Rambus could be forced to pay damages as well as lower its prices. Given the company's historically contentious relationship with chip makers, some industry observers believe chip companies could use the FTC decision as leverage to force Rambus to renegotiate terms of its royalty arrangements.

The FTC decision could prove "a plus for those defending against the Rambus patents," said John P. Ward, intellectual-property (IP) attorney and shareholder in the Silicon Valley office of Greenberg Traurig. "The case has the possibility of reopening some issues under this ruling and prompting suppliers to pursue lower [royalty] amounts."

"Presumably, the FTC will try to determine how royalty rates were increased as a result of alleged monopoly," said Josh Krumholz, head of IP for Holland & Knight LLP. "Everyone will wait to see what happens in the remedy phase."

Also taking a wait-and-see attitude was Bob Merritt, vice president of industry association Semico Research Group. "The basic issue is that the FTC objects to Rambus' conduct while Rambus was a member of Jedec," a semiconductor industry standards-setting organization, Merritt said. "The FTC has not yet defined what level of damage was caused by those actions. However, the FTC has in the past established lower royalties when it was determined that some actions were un- acceptable or that

damage had been done to the market. In a previous case, several years ago, the FTC directed that Dell could not collect royalties for certain IP."

Rambus declined to give EE Times details on what it plans to do next. The company said in a statement, "We are disappointed with aspects of the ruling, but are focused on the remedy stage and believe that, if the Commission tries to set royalty rates, we can demonstrate our rates have been reasonable and fair."

The stage for the current controversy was set in 2002, when the FTC filed a complaint questioning Rambus' participation in the Joint Electron Device Engineering Council (Jedec). The FTC accused Rambus of taking part in Jedec's DRAM standards-setting activities for more than four years while secretly developing patents involving specific memory technologies ultimately adopted in Jedec's standards.

The FTC found that, through a course of deceptive conduct, Rambus was able to distort a critical standards-setting process and engage in an anti-competitive "holdup" of the computer memory industry.

Rambus received a reprieve in February 2004, when FTC Administrative Law Judge Stephen J. McGuire dismissed the charges. However, FTC staff appealed to the full commission, which has now overturned the judge's ruling.

The commission's opinion states, "We find that Rambus' course of conduct constituted deception under Section 5 of the FTC Act. Rambus' conduct was calculated to mislead Jedec members by fostering the belief that Rambus neither had, nor was seeking, relevant patents that would be enforced against Jedec-compliant products. ... Under the circumstances, Jedec members acted reasonably when they relied on Rambus' actions and omissions and adopted the SDRAM and DDR SDRAM standards."

Jedec's credibility as a standards-setting body could be tarnished by the Rambus scandal, according to Andrew Norwood, vice president of research for Gartner Dataquest.

"Look at what a sorry state those DRAM vendors have got themselves into," Norwood said. "Consequently, what the industry has lost is its faith in the standardization process, such as DRAM standards-setting activities at Jedec. Memory companies are now so weary of Jedec. That's a real detriment to the whole industry."

Jedec's credibility is just one issue facing Rambus. A more important one, said iSuppli Corp. analyst Nam Hyung Kim, involves its business model. The beleaguered company is trying to optimize its revenue stream through IP licensing. That is unlikely to change, industry observers believe, since Rambus has no manufacturing capability. "Rambus' technology is very good, for sure," Kim said. "But without the support of DRAM suppliers, it cannot dominate the DRAM market."

Kim noted that Samsung, Toshiba and Elpida are among the DRAM suppliers licensing Rambus' IP. But several others--notably Micron Technology Inc. and Hynix Semiconductor Inc.--do not. Both remain embroiled in bitter legal disputes with Rambus.

Not surprisingly, the FTC decision was lauded by Micron, which has traded a number of lawsuits with Rambus, the latest earlier this year.

At an investor's conference last week, Micron chief executive Steve Appleton told EE Times the company is not directly affected by the FTC decision. "The Rambus patent litigation was always about the IP [Internet Protocol] controller interface, not the actual Rambus memory," he said. "We welcome the FTC decision on its own merits for protecting patents."

Rambus' efforts to license its IP to suppliers outside the PC industry, such as companies in the consumer gaming market, have yielded mixed results, said iSuppli's Kim. While game applications require the high-bandwidth DRAM for which Rambus has IP, companies like Microsoft have chosen to use commodity DDR chips instead, Kim noted.

Gartner Dataquest's Norwood added that XDR, the Rambus memory used in game machines and set-tops, still serves a niche market. "It's only 1.5 percent of the total DRAM market, while 50 percent of memory chips produced by the industry are used in PC products," he said.

-- Additional reporting by Junko Yoshida and Nicolas Mokhoff