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RAMBUS UPDATE

SUPREME COURT SAYS "NO-DICE" TO INFINEON

Andrew Updegrove

Infineon's quest to restore its jury verdict, and thereby avoid the requirement to pay an estimated \$45 million a year in royalties to patent owner Rambus, ended in defeat on October 6, when the Supreme Court announced that it would not review the Circuit Court holding in *Infineon v. Rambus*. The *Rambus* case has become one of the most closely-watched cases in standard setting of recent years (The **CSB** has been following this case on a monthly basis since February; see, e.g., **Rambus: Hard Cases Make Bad Law**). After the Circuit Court overturned a jury court's finding of fraud on the part of Rambus, the case became a focus of more than just the directly affected world of chip vendors. Lucash, Gesmer & Updegrove LLP (the host of this site) filed a "friend of the court" brief in support of Infineon on behalf of 10 standard setting organizations representing over 8,600 companies, government agencies and universities in support of Infineon, as did the Attorneys General of 15 States and Puerto Rico (see: **States, SDOs, Consortia all Unite to Support Infineon**).

Day traders, for whom Rambus was a long-term darling, rejoiced over the high Court's decision, and Rambus' stock shot upwards. Meanwhile, Infineon (and the other companies sued by Rambus for refusing to pay up) were left to lick their wounds and consider their next moves.

The story does not, however, end here. The antitrust-based suit brought against Rambus by the FTC entered the final argument stage several weeks ago. A large amount of testimony has been developed in the process of that proceeding that has suggested new dimensions to the case. And the Infineon case itself now returns to the trial court for further consideration within the parameters established by the Circuit Court, and left in place by the Supreme Court.

Hundreds of articles have been written since the Supreme Court's announcement, of which the following are representative of the attention paid in the initial hours after the high Court's announcement.



Rambus Announces Court Denial of Infineon Petition

BusinessWire (10:17 AM, October 6, 2003)

LOS ALTOS, Calif. - Rambus Inc. (Nasdaq:RMBS), a leading provider of chip-to-chip interface products and services, today announced that the United States Supreme Court has issued a ruling denying Infineon Technologies's (NYSE:IFX) petition for a writ of certiorari in the litigation between Infineon and Rambus. This ruling, announced by the Supreme Court today, means that Infineon has exhausted all possible avenues of appeal from the January 29, 2003 ruling of the Court of Appeals for the Federal Circuit. That Federal Circuit ruling favored Rambus. It confirmed the breadth of Rambus's patent claims as asserted against Infineon. It also rejected Infineon's fraud counterclaims, concluding that Rambus had not been shown to have violated the rules of an industry standard setting organization called JEDEC and that those rules showed a "staggering lack of defining details." The Federal Circuit also concluded that Rambus did not have applications or patents that read on any JEDEC standard during the relevant time.

For the full story, see:

http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20031006005477&newsLang=en



Rambus Soars on Supreme Court Ruling

TheStreet.com (2:37 PM, October 6, 2003)

Shares of **Rambus** (RMBS:Nasdaq) vaulted 35% in midafternoon trading following a favorable U.S. Supreme Court decision. The stock climbed \$6.48 to \$25.21 in recent trading. Rambus is at the center of a web of ongoing patent litigation, including an antitrust case filed by the Federal Trade Commission. The complaints have alleged that Rambus deceived an industry standards-setting organization in the early 1990s, helping to set standards in a way that favored its own technologies and later reaping royalties from memory manufacturers. But today, Rambus scored a major victory when the U.S. Supreme Court affirmed an earlier favorable court ruling by declining to hear an appeal in a case involving memory maker **Infineon** (IFX:NYSE).

For the complete story, see: <http://www.thestreet.com/tech/kcswanson/10117556.html>