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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 COUNTY OF SAN FRANCISCO

24 RAMBUS INC.,
25
26 Plaintiff,
27
28 vs.
29 MICRON TECHNOLOGY, INC.,
30 et al.,
31 Defendants.
32
33 AND RELATED CROSS-ACTIONS.

CASE NO. 04-431105
**RAMBUS'S SEPARATE STATEMENT OF
DISPUTED FACTS IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
ADJUDICATION DISMISSING RAMBUS'
PURE PRICE-FIXING CAUSE OF ACTION**
Hearing Date: February 23, 2009
Hearing Time: 1:30 p.m.
Department: 304
Judge: Hon. Richard A. Kramer
Complaint filed: May 5, 2004
Trial Date: March 16, 2009

PUBLIC-REDACTED VERSION

1 Pursuant to California Code of Civil Procedure Section 437c(b)(3) and California Rules
 2 of Court 3.1350(h), Plaintiff Rambus Inc. ("Rambus") hereby submits this Response to
 3 Defendants' Separate Statement of Undisputed Material Facts In Support of Defendants' Motion
 4 for Summary Adjudication Dismissing Rambus' Pure Price-Fixing Cause of Action.

5 ISSUE: PLAINTIFF LACKS STANDING TO MAINTAIN A CAUSE OF ACTION FOR
 6 PRICE FIXING BECAUSE ITS ALLEGED INJURY IS NOT PART OF THE INJURY TO
 7 COMPETITION CAUSED BY PURE PRICE FIXING.

	Defendants' Material Facts and Supporting Evidence	Rambus's Response and Supporting Evidence
1. 9 10 11 12	Rambus Inc. designs chip-to-chip memory interface technology for use in computers, consumer electronics and network systems. Complaint (Solouki Decl. Ex. B), ¶ 19. Prospectus, Rambus Inc., May 13, 1997 (Solouki Decl. Ex. C), p. 3.	Undisputed. <i>But see</i> Rambus's Objections To Evidence Submitted In Support Of Defendants' Motion For Summary Adjudication Dismissing Rambus's Pure Price Fixing Cause Of Action ("Rambus's Evidentiary Objections").
2. 14 15 16 17 18	In the early 1990s, Rambus designed a technology called Rambus Dynamic Access Memory, or "RDRAM". Complaint (Solouki Decl. Ex. B) ¶ 5.	Disputed, because some of the technology incorporated into RDRAM was invented during the 1980s. <i>See</i> Exh. 314 (R154183-154201); Exh. 315 (1/22/04 Farmwald Depo. at 53:22-55:23); Exh. 316 (3/5/08 Trial Testimony of Horowitz at 4078:21-4081:24, 4091:9-4095:10); Exh. 317 (3/20:08 Trial Testimony of Farmwald at 5489:23-5490:6).
3. 19 20 21 22 23	Rambus entered into license agreements with certain semiconductor manufacturers, granting them rights to produce and sell memory chips using the RDRAM design. Complaint (Solouki Decl. Ex. B), ¶¶ 45, 46. Deposition of Victor Lee, Feb. 20, 2008 (Solouki Decl. Ex. D), p. 106:12-22.	Undisputed. <i>But see</i> Rambus's Evidentiary Objections.

	Defendants' Material Facts and Supporting Evidence	Rambus's Response and Supporting Evidence
4.	<p>DRAM manufacturers paid Rambus royalties and/or licensing fees for the right to produce and sell memory chips using the RDRAM design.</p> <p>Complaint (Solouki Decl. Ex. B), ¶¶ 45, 46.</p> <p>Report of Richard T. Rapp, Nov. 7, 2008 (Solouki Decl. Ex. E), pp. 17-19.</p>	Undisputed.
5.	<p>Rambus did not manufacture, distribute, or sell DRAM chips.</p> <p>Prospectus, Rambus Inc., May 13, 1997 (Solouki Decl. Ex. C), p. 6.</p> <p>Deposition of Victor Lee, Feb. 20, 2008 (Solouki Decl. Ex. D), p. 169:20-23.</p> <p>Deposition of Steve Chen, Nov. 14, 2007 (Solouki Decl. Ex. F), pp. 354:22-355:6.</p> <p>Deposition of Steven Woo, March 19, 2008 (Solouki Decl. Ex. G), p. 335:5-6.</p> <p>Deposition of Laura Stark, Aug. 21, 2008 (Solouki Decl. Ex. H), p. 246:8-15.</p>	Undisputed. <i>But see</i> Rambus's Evidentiary Objections.
6.	<p>DRAM manufacturers made RDRAM chips and sold them to OEMs and other customers.</p> <p>Complaint (Solouki Decl. Ex. B), ¶ 20.</p> <p>Deposition of Laura Stark, Aug. 21, 2008 (Solouki Decl. Ex. H), pp. 246:8-15.</p>	Undisputed. <i>But see</i> Rambus's Evidentiary Objections.
7.	<p>Rambus considered the DRAM manufacturers to be "consumers" of its technology.</p> <p>Complaint (Solouki Decl. Ex. B), ¶ 20.</p> <p>Trial Testimony of Joel Karp, Micron Technology, Inc. v. Rambus, Inc., Nov. 9, 2007 (Solouki Decl. Ex. I), p. 347:11-17 (DRAM manufacturers operated "downstream" from Rambus).</p>	Undisputed. <i>But see</i> Rambus's Evidentiary Objections.

	Defendants' Material Facts and Supporting Evidence	Rambus's Response and Supporting Evidence
1 2 3 4 5 6	<p>8. In its boycott claim, Rambus alleges that defendants agreed to sabotage RDRAM in order to prevent it from succeeding in the marketplace.</p> <p>Complaint (Solouki Decl. Ex. B), ¶¶ 50, 101, 106.</p>	<p>Undisputed, except for the characterization of Rambus's Complaint as setting forth a "boycott claim." The Complaint speaks for itself.</p>
7 8 9 10 11 12 13 14 15 16 17	<p>9. Rambus has represented in various filings that it also independently relies on a theory of liability predicated on "price fixing in and of itself."</p> <p>Joint Statement of Issues to be Tried, Feb. 5, 2008 (Solouki Decl. Ex. J), p. 11. ("Defendants also purport to complain that 'Rambus has not specified ... whether its claims are predicated on an alleged conspiracy to fix prices in and of itself, as opposed to an alleged conspiracy to fix prices in order to boycott RDRAM.' But Rambus is entitled to pursue both.").</p> <p>Joint Case Management Conference Statement, April 10, 2008 (Solouki Decl. Ex. K), p.2, n.1.</p> <p>Rambus Inc.'s Opposition to Motion for Judgment on the Pleadings, June 19, 2008 (Solouki Decl. Ex. L), pp. 1-2, 6, 8.</p>	<p>Undisputed.</p>
18 19 20 21 22 23 24 25 26 27	<p>10. In its "price-fixing in and of itself" cause of action, Rambus does not seek to recover for any artificially high prices it allegedly paid for DRAM.</p> <p>Complaint (Solouki Decl. Ex. B), ¶¶ 12, 102, 104.</p> <p>Rambus Inc.'s Opposition to Motion for Judgment on the Pleadings, June 19, 2008 (Solouki Decl. Ex. L), pp. 1-2, 6, 8.</p> <p>Rambus Inc.'s Responses to Samsung's Form Interrogatories (Set One) ("Responses to Form Interrogatories") (Solouki Decl., Ex. M), p. 4</p>	<p>Disputed, because Rambus's price-fixing theory does not constitute a cause of action separate from its other theories of liability.</p>

	Defendants' Material Facts and Supporting Evidence	Rambus's Response and Supporting Evidence
11.	<p>In its "price-fixing in and of itself" cause of action, Rambus asserts that it was injured because the allegedly higher prices for RDRAM, and lower prices for alternative technologies, allegedly caused by collusion, resulted in lower demand for RDRAM by defendants' customers, which resulted in lower royalties than Rambus would have received had there been no alleged price-fixing.</p> <p>Complaint (Solouki Decl. Ex. B), ¶¶ 12, 102, 104.</p> <p>Rambus Inc.'s Opposition to Motion for Judgment on the Pleadings, June 19, 2008 (Solouki Decl. Ex. L), pp. 1-2, 6, 8.</p> <p>Responses to Form Interrogatories (Solouki Decl. Ex. M), pp. 3-4, 19-20.</p>	<p>Disputed, because Rambus's price-fixing theory does not constitute a cause of action separate from its other theories of liability.</p>
12.	<p>DRAM purchasers have filed lawsuits against Defendants, alleging that they (the purchasers) paid supracompetitive prices for DRAM as a result of Defendants' alleged price-fixing.</p> <p>E.g., Consolidated Amended Class Action Complaint, In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, M:02-cv-01486-PJH (N.D. Cal. filed Oct. 1, 2003) (Solouki Decl. Ex. O).</p>	<p>Undisputed.</p>

Pursuant to C.C.P. § 437c(b)(3), Rambus sets forth the following additional facts that are material to this motion:

I. Intel's Announcement of RDRAM as the Next Mainstream Memory Standard

1. The DRAM industry tends to adopt a single "mainstream" memory standard at any point in time, *i.e.* a standard that makes up the majority of memory sales. Exh. 89 (12/19/08 Elzinga Supp. Report at 5-6). *See also* Exh. 159 (1/23/09 Elzinga Decl. at 5).

2. Tipping toward one standard is driven in part by the steep decline in costs of manufacturing a particular technology as the manufacturer expands output and gains experience

1 in that technology. Exh. 89 (12/19/08 Elzinga Supp. Report at 5-6). *See also* Exh. 159 (1/23/09
2 Elzinga Decl. at 5).

3 3. Intel, as the dominant seller of chipsets and computer processing units (CPUs),
4 plays a critical role in the choice of the next mainstream memory standard. Exh. 89 (12/19/08
5 Elzinga Supp. Report at 6).

6 4. Because of the prevalence of Intel CPUs, OEM manufacturers demand memory
7 chips that are compatible with Intel CPUs. Consequently, memory manufacturers, seeking to
8 make sales to these OEM manufacturers have a compelling incentive to build chips based on the
9 memory technology that Intel chooses. Basileo Decl., Exh. 29 (11/6/08 Elzinga Report at 16).

10 5. In 1996, Intel announced that its “next generation” microprocessors would be
11 engineered to take advantage of Rambus’s revolutionary DRAM technology, Direct RDRAM,
12 expected to be available in the late 1990’s. Exh. 277 (1/26/09 Declaration of Craig Hampel
13 (“Hampel Decl.”), ¶ 2). *See also* Exh. 8 (Appleton Dep. Exh. 614); Exh. 215 (5/7/08 Appleton
14 Depo. at 20:8-23:20).

15 6. Intel selected Direct RDRAM [REDACTED]
16 [REDACTED] Exh. 27 (Williams Depo. Exh. 2939 at 906DOC00002);
17 Exh. 270 (Williams Depo. at 291:4-294:11).

18 7. In 2000 and 2001, Intel supplied the processors used in roughly 80% of personal
19 computers, and an estimated 60% of *all* DRAM whether deployed in personal computers or other
20 devices. Basileo Decl., Exh. 29 (11/6/08 Elzinga Report at 16). *See also* Exh. 7 (11/20/02
21 Tabrizi Depo Ex. 29) (noting that “PCs are about 70% of the DRAM market); Exh. 263
22 (11/20/02 Tabrizi Depo at 133:1-25).

23 8. Rambus would have earned substantial revenues flowing from RDRAM’s
24 adoption as the next *de facto* memory standard, had that occurred. Exh. 94 (Supplemental
25 Report of Avram S. Tucker at 9-12, 15-23).

26 9. Intel’s announcement that it had selected Direct RDRAM for its “next
27 generation” microprocessors caused industry analysts, DRAM manufacturers and computer
28 makers to predict that RDRAM would capture the majority of DRAM sales. *See, e.g.*, Exh. 91

1 (Bromley Depo. Exh. 3376 at 4) [REDACTED]

2 [REDACTED]; Exh. 217 (8/20/08 Bromley Depo. at 183:3-184:14).

3 10. Industry analysts projected that after the RDRAM became widely used in
4 personal computers, economies of scale would lead to its widespread use in other applications
5 such as consumer electronics, graphics, communications equipment and larger scale servers. *See*
6 Exh. 12 (RF 0161440-69 at RF0161440) (3/13/98 CIBC Oppenheimer report predicting "Direct
7 RDRAM appears most likely to become the mainstream standard."); Exh. 20 (RF 0153103-38 at
8 RF 0153103) (12/2/98 SG Cowen report opining that it was RDRAM's "destiny" to become "the
9 mainstream DRAM technology."); *id.* at RF 0153117 ("Historically, [] one dominant DRAM
10 type emerges and captures the bulk of the market. Thus, if [Rambus] becomes the mainstream
11 PC desktop technology, we would expect, based on historical precedent, that it will also
12 eventually dominate other DRAM markets.").

13 11. In September 1996, Farhad Tabrizi, Hynix's Worldwide Vice President of
14 Marketing, predicted:

15 If Intel implements Rambus, all other applications will move that
16 direction to leverage the strength and volume of the PC market . . .
17 I urge you to please educate others and get their agreement to say
"NO TO RAMBUS AND NO TO INTEL DOMINATION[.]"

18 Exh. 1 (Tabrizi Depo. Exh. 24); Exh. 263 (11/20/02 Tabrizi Depo. at 116:11-120:19). *See also*
19 Exh. 265 (7/17/08 Tabrizi Depo. at 42:8-44:2).

20 12. At a January 1997 meeting of the SynchLink Consortium (also attended by
21 DRAM manufacturers Hynix, Micron, Samsung, and Infineon, among others), a Hynix
22 representative stated:

23 [The Rambus-Intel relationship is] a dooms day scenario for
24 DRAM business: If Intel/Rambus [allowed to] control all IP,
25 DRAM suppliers will be nothing more than foundries, with profits
going into Rintel's [Rambus + Intel's] pockets.

26 Exh. 6 (FTC Trial Exh. RX-0850 at 2). Andreas von Zitzewitz, Infineon's [then Siemens'] Vice
27 President and General Manager of the Memory Products Division, stated: "[This] doomsday
28 scenario is *not* paranoid." *Id.* at 3 (emphasis added).

1 **II. Defendants' Agreement to Say No to Rambus and Intel Domination**

2 13. Following Intel's announcement, Samsung communicated with its competitors
3 that it would prefer not to make "Rambus II," what it had been calling Direct RDRAM. For
4 example, in September 1996, [REDACTED]
5 [REDACTED] Exh. 215 (Appleton Depo. Exh. 616 at MR0129753); Exh.
6 154 (5/7/08 Appleton Depo. at 40:11-44:7).

7 14. Samsung also shared at a January 1997 DRAM manufacturer meeting that it had
8 not signed a license for "Rambus II," favored a non-RDRAM standard, and emphasized business
9 model concerns as "most important." Exh. 120 (Tabrizi Depo. Exh. 18 at HR905_145071); Exh.
10 264 (11/10/03 Tabrizi Depo. at 123:12-124:9).

11 15. Between 1997 and 1999, the Defendants undertook concerted efforts to lay the
12 groundwork necessary to keep the price of Direct RDRAM high and supply low once Intel's
13 RDRAM-enabled chipsets launched in late 1999, knowing that, as Desi Rhoden put it, "Intel
14 won't change course unless Rambus fails." Exh. 155 (11/20/02 Tabrizi Depo. Exh. 31 at 1).

15 16. Hynix's Worldwide Vice President of Marketing has acknowledged under oath
16 [REDACTED]
17 [REDACTED] See Exh. 265
18 (7/17/08 Tabrizi Depo. at 32:9-34:4). See also *id.* at 39:6-12 (acknowledging that [REDACTED]
19 [REDACTED]
20 Mr. Tabrizi similarly testified [REDACTED]
21 [REDACTED] *Id.* at
22 34:13-16. [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 ...
26 [REDACTED]
27 *Id.* at 32:3-8. See also *id.* at 159:20-160:6 (testimony by Tabrizi [REDACTED]
28 [REDACTED]

1 [REDACTED].

2 17. A Micron marketing executive named Jeffrey Mailloux informed Hynix Vice
3 President Tabrizi on February 20, 1998 that he had called a reporter and had told him that
4 RDRAM was “at least 30%” more expensive to manufacture than SDRAM. Mr. Mailloux urged
5 Mr. Tabrizi to make a similar call to the reporter, warned Mr. Tabrizi not to forward his email to
6 anyone, and asked Mr. Tabrizi to “please visit me if I end up in jail. . . .” Exh. 11 (Mailloux
7 Depo. Exh. 415); Exh. 244 (11/17/08 Mailloux Depo at 58:1-59:18).

8 18. Beginning at least by 1998, the Defendants [REDACTED]
9 [REDACTED] See, e.g.,
10 Exh. 156 (Tabrizi Depo. Exh. 735); Exh. 265 (7/17/08 Tabrizi Depo. at 115:17-116:19).

11 19. In the fall of 1998, the conspirators also discussed a proposal to agree to, and
12 monitor compliance with, a “common” roadmap that excluded RDRAM. An October 1998
13 report by Infineon employee Alexander Benedix discusses a Micron proposal to sign “a common
14 roadmap for the big DRAM manufacturers” that did not include RDRAM. Exh. 92 (FTC Trial
15 Exh. RX-2192 at INF-FTC 014425); Exh. 216 (5/12/04 Benedix Depo at 48:14-49:19, 49:25-
16 52:15).

17 20. Hynix Vice President Farhad Tabrizi reported that Hynix presented Intel with
18 inflated projected prices and production volumes for RDRAM and “encourage[d] every DRAM
19 manufacturer to do the same in order to let Intel not generate a Rambus oversupply.” Exh. 92
20 (FTC Trial Exh. RX-2192 at INF-FTC 014424). See also Exh. 16 (FTC Trial Exh. RX-1295 at
21 HR905_122741) (10/18/98 email describing Hynix’s intention to “overstate our Direct Rambus
22 production. . . .”); Exh. 246 (1/19/2005 Martinez Depo at 98:13-100:4); Exh. 19 (Byrd Depo.
23 Exh. 668 at HR905_442286) (Hynix meeting summary [REDACTED]
24 [REDACTED]
25 [REDACTED]); Exh. 218 (5/29/08 Byrd Depo at 130:2-131:22).

26 21. In the fall of 1998, Samsung’s high ranking executives were regularly holding
27 secret meetings with its purported competitors. In September 1998, for example, [REDACTED]
28 [REDACTED] Exh. 122 (Appleton Depo. Exh.

1 623 at MUP00002161); Exh. 215 (5/7/08 Appleton Depo. at 89:13-91:5, 95:17-25). *See also*
2 Exh. 123 (Tabrizi Depo. Exh. 732) (10/21/98 email from Hynix to Samsung, Micron, Infineon
3 and other DRAM manufacturers [REDACTED]
4 [REDACTED]; Exh. 265 (7/17/08 Tabrizi Depo at 107:24-
5 109:4).

6 22. In March 1999, [REDACTED]
7 [REDACTED] *See* Exh. 21 (Appleton Depo. Exh. 624); Exh. 215 (5/7/08 Appleton Depo. at
8 96:1-98:2).

9 23. On April 14, 1999, [REDACTED]
10 [REDACTED] Exh. 157 (Tabrizi Depo. Exh. 737).

11 24. The Defendants also undertook substantial efforts to monitor and “police” one
12 another’s RDRAM-related activities throughout the late 1990’s. *See, e.g.*, Exh. 9 (Appleton
13 Depo. Exh. 618 at 1) (September 1997 email from Micron forcefully criticizing Infineon (then
14 called Siemens) because it had “joined the ‘Dark Side’” and entered into an agreement to license
15 and manufacture Direct RDRAM); Exh. 10 (Tabrizi Depo. Exh. 718A) (12/10/97 email [REDACTED]
16 [REDACTED]); Exh. 264 (7/17/08 Tabrizi Depo. at 35:6-36:5); Exh. 13
17 (Tabrizi Depo. Exh. 719A) (4/11/98 email from Micron to Hynix [REDACTED]
18 [REDACTED]); Exh.
19 265 (7/17/08 Tabrizi Depo. at 39:13-45:3).

20 25. In April 1999, Micron similarly became very concerned about published reports
21 that Samsung was planning to manufacture RDRAM in large volumes. A Micron marketing
22 manager alerted a group of Micron officers and senior managers about one such article that, he
23 said, showed that Samsung had “broken ranks with the other suppliers and sold their soul to the
24 devil,” meaning Rambus. Exh. 22 (Appleton Depo. Exh. 620 at 1); Exh. 258 (10/30/07 Siebert
25 Depo. at 148:2-149:5, 152:13-19); Exh. 244 (1/17/08 Mailloux Depo. at 87:3-88:14). A Micron
26 sales executive responded:

27 These guys are big trouble for us all. If this thing gets into an
28 oversupply mode with RDRAM things could get really ugly. Bob
[Donnelly, Micron Vice President] and Jeff [Mailloux, Micron

1 marketing manager], do these idiots (Samsung in this case)
2 understand what the Rambus/Intel biz-model will do to our
autonomy??!!

3 Exh. 22 (Appleton Depo. Exh. 620 at 1). Mr. Donnelly responded that he had, in fact, made this
4 point with “the officers” of Samsung. *Id.*

5 26. In June 1999, Samsung and the other DRAM suppliers gave Intel substantially
6 higher price projections for RDRAM (and did so in unison). *See* Exh. 110 (Fahey Depo.
7 Exh. 3067 at 219DOC006462) (6/1/99 Intel email [REDACTED]
8 [REDACTED]); Exh. 225 (8/26/08 Fahey
9 Depo. at 391:17-392:12).

10 27. As stated by an industry analyst retained in this case by Micron to provide
11 opinion testimony, the *expectations* of OEMs and others about future DRAM pricing “are
12 important in motivating the PC OEM to adopt [a] new DRAM technology.” Exh. 109 (Expert
13 Report of De Dios at ¶¶ 15-16). Moreover, OEMs form pricing expectations in part by asking
14 the DRAM manufacturers for price projections. *Id.* In this way, high future price projections,
15 especially if coordinated among DRAM manufacturers, will have a substantial impact on the
16 OEMs’ design roadmaps.

17 28. In the period between 1999 and 2002, [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 Exh. 257 (4/25/08 Sadler Depo. at 57:18-20; 57:23-58:3; 58:6-7).

21 **III. Samsung Seeks To Be The Industry Leader in Both DDR And RDRAM**

22 29. As early as 1997, Samsung was developing and promoting DDR. *See* Exh. 6
23 (FTC Trial Exh. RX-850 at 4); Exh. 158 (April 3, 1997 Samsung presentation on SDRAM-II
24 Forum (DDR SDRAM) at FTC/SEC005456). In September 1997, [REDACTED]
25 [REDACTED]
26 [REDACTED] Exh. 137
27 (Quinn Depo. Exh. 376).

1 30. In October 1998, [REDACTED]
2 [REDACTED] Exh. 123 (Tabrizi Depo. Exh. 732); Exh. 265 (7/17/08
3 Tabrizi Depo. at 101:9-105:12, 107:24-109:4, 108:2-109:8).

4 31. On October 19, 1998, members of MX, including C.H. Park and Mian Quddus
5 of Samsung, discussed "noise-creating ideas" aimed to promote DDR and discourage a design
6 win for RDRAM. Those ideas included "carefully planted rumors" to sow doubt about
7 RDRAM, including rumors of a shortage of Rambus parts from DRAM suppliers, shortage of
8 Rambus testers, shortage of Rambus packaging capacity, and Intel's secret plan to control the
9 DRAM market. Exh. 17 (Tabrizi Depo. Exh. 731 at 2); Exh. 265 (7/17/08 Tabrizi Depo. at
10 101:9-106:16).

11 32. Samsung prepared to support both RDRAM and DDR. [REDACTED]
12 [REDACTED] Exh. 93 (Kim Depo. Exh.
13 802); Exh. 238 (9/9/08 I.U. Kim Depo. at 45:14-47:8, 59:19-22).

14 33. In 2001, [REDACTED]
15 [REDACTED]
16 [REDACTED] Exh. 128 (Kang Depo. Exh. 49); Exh. 235 (7/20/07 Kang
17 Depo. at 149:10-150:10, 150:23-151:14). [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED] Exh. 128 at 11.

21 34. Samsung was positioned to succeed no matter which memory technology was
22 chosen. Indeed, from 1999 through the end of 2002, Samsung led in sales of both RDRAM and
23 DDR. For example, Samsung led with 53% of DDR sales by revenue in 2001 and 42% in 2002.
24 Exh. 89 (12/19/08 Elzinga Supp. Report at 26-27, Exh. 1).

25 35. Given Samsung's leading position in both RDRAM and DDR, participation in a
26 conspiracy to limit RDRAM could have been expected to increase Samsung's profitability
27 relative to a Samsung strategy of pushing RDRAM as the main standard. Exh. 89 (12/19/08
28

1 Elzinga Supp. Report at 24-31). *See also* Exh. 159 (1/23/09 Elzinga Decl. at 2-5); *supra* RSS ¶
2 212.

3 36. Samsung's lead in both DDR and RDRAM, and the opportunity it gained to sell
4 RDRAM as a near monopolist, made Samsung's participation in a cartel to relegate RDRAM to
5 a niche product economically rational. Exh. 89 (12/19/08 Elzinga Supp. Report at 24-31). *See*
6 *also* Exh. 159 (1/23/09 Elzinga Decl. at 2-5); *supra* RSS ¶ 212.

7 **IV. The Defendants Had Frequent And Numerous High-Level Discussions About**
8 **Future DRAM Prices In The 1999-2002 Time Period.**

9 37. By May 1999, with the official launch of RDRAM coming closer, Hynix
10 employees and sales executives were discussing a plan to keep Hynix's RDRAM prices high, but
11 they recognized the need to "get the rest of the suppliers to do the same" in order for the scheme
12 to be effective. Exh. 24 (Byrd Depo. Exh. 643); Exh. 218 (5/29/08 Byrd Depo at 22:17-24:2;
13 25:3-27:8). *See also* Exh. 25 (Kim Depo. Exh. 596) (5/24/99 recommendation by Hynix
14 manager Andy Ha that Hynix "get together with Samsung and ask them to suggest [to] Micron to
15 have a joint management meeting for price control in the future."); *id.* (5/24/99 email by Hynix
16 manager D.W. Kim stating that "[o]ne of the advantage of being a big three is to have the
17 controlling power over the price and we need to exercise this" by opening "a communication
18 channel . . . among the big three or four."); Exh. 237 (4/30/08 Kim Depo at 57:9-59:4).

19 38. Michael Sadler, [REDACTED]
20 [REDACTED]
21 [REDACTED] Exh. 257 (4/25/08 Sadler Depo.
22 at 22:25-23:16). As Mr. Sadler testified, [REDACTED]
23 [REDACTED]
24 [REDACTED] *Id.* at 25:3-17; 25:20.

25 39. In the 1999-2002 time period, [REDACTED]
26 [REDACTED]
27 [REDACTED] Exh. 257 (4/25/08 Sadler Depo. at 26:12-16; 26:19-21; 27:1-
28 3; 27:6-14; 27:16-28:17).