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E-filed: February 2, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER GRANTING IN PART AND
DENYING IN PART RAMBUS'S RENEWED
MOTION TO STRIKE JURY DEMANDS
WITH RESPECT TO THE FRAUD CLAIMS

[Re Docket No. 2945]

ORDER GRANTING IN PART AND DENYING IN PART RAMBUS'S RENEWED MOTION TO STRIKE JURY DEMANDS
REGARDING THE FRAUD CLAIMS—C-00-20905; C-05-00334; C-06-00244 RMW

United States District Court
For the Northern District of California

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RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG AUSTIN SEMICONDUCTOR,
L.P.,

NANYA TECHNOLOGY CORPORATION,
NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

No. C-05-00334 RMW

[Re Docket No. 966]

RAMBUS INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., and
MICRON SEMICONDUCTOR PRODUCTS,
INC.

Defendants.

No. C-06-00244 RMW

[Re Docket No. 594]

I. THE RENEWED MOTION TO STRIKE

The court previously denied without prejudice Rambus's motion to strike the jury demands of Hynix, Micron and Nanya ("the Manufacturers") on their fraud claims. *See Hynix Semiconductor Inc. v. Rambus. Inc.*, 2007 WL 3284069 (N.D. Cal. Nov. 4, 2007) at *16. The court stated that it would entertain a renewed motion to strike the jury demands if, after the close of discovery, the Manufacturers failed to produce evidence of their claimed actual, but unquantifiable, damages. The court suggested that it would follow the procedure set forth in the Sixth Circuit case of *Hildebrand v. Board of Trustees of Mich. St. Univ.*, 607 F.2d 705 (6th Cir. 1979):

If it becomes clear prior to trial that no genuine issue exists as to any material facts,

1 a district court can grant summary judgment as to some or all issues. This standard
2 can operate to eliminate meritless damages requests and thus moot a jury demand.
3 Under this standard, the district court is free to examine all of the record and not just
4 the pleadings. If a demand for damages is so insubstantial that it cannot meet the
5 standard contained in Rule 56, then it should not be allowed to convert equitable
6 issues into legal ones.

7 *Id.* at 10.

8 With trial about to start, Rambus now renews its motion to strike the jury demands of the
9 Manufacturers' with respect to their fraud claims because they have not produced evidence of actual
10 damages on those claims. For the reasons set forth below, the court denies Rambus's motion with
11 respect to the fraud claims of Hynix and Micron and grants the motion with respect to Nanya's
12 claim. However, the court elects to try the fraud issue as to Nanya with an advisory jury. *See Fed.*
13 *R. Civ. P. 39(c).*

14 **II. ANALYSIS**

15 In the prior *Hynix* order, the court explained that the Manufacturers could not claim their
16 attorneys' fees as compensatory damages for a fraud claim. The "American rule" requires each party
17 to bear its own legal fees. *See Cal. Civ. Code § 1021.* The California Supreme Court closely guards
18 this principle, and is loathe to expand the contexts in which a party can recover its attorneys' fees
19 unless authorized by a statute. *Gray v. Don Miller & Associates, Inc.*, 35 Cal. 3d 498, 507 (1984)
20 (reversing attorneys' fees award in fraud case); *see also Prentice v. N. Am. Title Guar. Corp.*, 59 Cal.
21 3d 618, 620 (1963) ("This section undoubtedly prohibits the allowance of attorney fees against a
22 defendant in an ordinary two-party lawsuit.").

23 The Manufacturers claim, however, that they have a right to a jury because they suffered
24 actual but unquantifiable damages. Fraud requires proof of injury. *See Cal. Civ. Code § 1709;*
25 *Furia v. Helm*, 111 Cal. App. 4th 945, 956 (2003). Nominal damages can be awarded where a
26 plaintiff has proven actual damage has occurred (and therefore has satisfied fraud's damages
27 element), but the plaintiff cannot prove the amount of the actual damage. *See, e.g., Oates v. Glover*,
28 154 So. 786, 787 (Ala. 1934); *McLaughlin v. National Union Fire Ins. Co.*, 23 Cal. App. 4th 1132,
1163 (1994); *Sterling Drug v. Benatar*, 99 Cal. App. 2d 393, 400 (1950). Rambus maintains that
the Manufacturers have not shown in opposition to Rambus's renewed motion that they have

1 suffered any such "actual but unquantifiable" damage.

2 The court finds Hynix's showing marginal but sufficient to support its jury demand. O.C.
3 Kwon, Hynix's senior vice-president, testified that significant management time and efforts was
4 expended as a result of Rambus's conduct which could have otherwise been used for more
5 productive opportunities. This time was spent by the CEO and the "patent team." Kwon Depo. at
6 79:16-20. Kwon also implied that management had to respond to investors' concerns. *Id.* at 83:14-
7 84:20.

8 The Restatement Second of Torts § 914, comment c provides that "a successful party in an
9 action of tort is not entitled to compensation for loss of time, attorney fees or other expenses in the
10 conduct of the litigation." This rule bars recovery for time spent "in the conduct of litigation," but
11 not for time spent dealing with the consequences of an alleged fraud. Indeed, the exclusion of
12 recovery for time spent on litigation implies that one can recover for time spent dealing with other
13 consequences of a tortious act. California law recognizes this distinction, and permits one to recover
14 compensation for time and effort expended in reliance on a defendant's misrepresentation. *Cf. Black*
15 *v. Tobin*, 45 Cal. App. 3d 214, 219-220 (1975) ("it cannot be seriously contended that appellants
16 would have devoted time and energy to prepare for the sale if they had known that the
17 announcement of a public sale was spurious."). Here, Kwon's testimony suggests that some time
18 was spent dealing with Rambus's alleged conduct and not just spent addressing the lawsuits. The
19 sufficiency of Kwon's testimony in supporting a damage claim must be evaluated in light of the
20 principle that "[m]aintenance of the jury, as a fact-finding body is of such importance and occupies
21 so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury
22 trial should be scrutinized with the utmost care." *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500,
23 501 (1959). Given this strong preference for trying cases to juries, the court finds that Kwon's
24 testimony could support a finding of "actual but unquantifiable" damages, and hence a right to jury.

25 Micron has offered some evidence that it spent money looking into the possibility of
26 alternatives to the allegedly infringing technologies. Lee Depo. at 81:17-82:17; 120:13-23. The
27 inference is that, at least to some extent, this time and effort was to avoid Rambus's patents and not
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1 just an effort to enhance performance of products. Similar to Hynix, Micron has sufficiently
2 demonstrated that it is entitled to a jury on its fraud claim.

3 On the other hand, Nanya offered only attorney argument in opposition to Rambus's renewed
4 motion. The court's prior order, as well as the Sixth Circuit's opinion in *Hildebrand*, are clear in
5 requiring a party to set forth admissible evidence in response to a challenge to their right to a jury.
6 *Hynix*, 2007 WL 3284069, at *16. Attorney argument is not admissible evidence. As Nanya's only
7 evidence of claimed damages are attorneys' fees, which are not recoverable in a fraud action,
8 Nanya's jury request is stricken.

9 **III. ADVISORY JURY**

10 The court has the power to try any issue with an advisory jury. Fed. R. Civ. P. 39(c). The
11 court exercises its discretion to do so on Nanya's fraud claim for several reasons. First, many of the
12 facts underlying the fraud claim will be decided by the jury in deciding the antitrust claims. Even if
13 the Manufacturers are not entitled to a jury, the court will be required to decide the merits of the
14 fraud claim in accordance with the jury's factual findings. *See Beacon Theatres*, 359 U.S. 500
15 (1959); *Shum v. Intel Corp.*, ___ F.3d ___, 2007 2404718 (Fed. Cir. 2007). Second, it could be
16 confusing to the jury if Hynix and Micron present fraud claims but Nanya does not. Third,
17 evaluation of a fraud claim involves judgments of credibility for which a jury is particularly suited.
18 Finally, the law is not entirely clear as to the extent of a showing of damages that must be made to
19 support a jury demand. With an advisory jury, Nanya will be able to point to the jury's verdict if it is
20 more favorable than the court's and perhaps be able to receive the benefit of it should the court's
21 decision that Nanya is not entitled to a jury turn out later to have been wrong. *See Alexander v.*
22 *Gerhardt Enterprises, Inc.*, 40 F.3d 187, 192 (7th Cir. 1994) (approving of the use of an advisory
23 jury to minimize the cost of litigation in cases of uncertainty as to jury entitlement).

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IV. ORDER

Rambus's Renewed Motion to Strike the Jury Demands with Respect to the Fraud Claims is denied as to the jury demands of Hynix and Micron and granted as to the demand of Nanya. However, the court elects to try the fraud issue as to Nanya with an advisory jury as authorized by Fed. R. Civ. P. 39(c).

DATED: 2/2/2008



RONALD M. WHYTE
United States District Judge

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Dated: 2/2/2008

TSF
Chambers of Judge Whyte