

1 *Parties listed on signature page*

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E-FILED - 11/24/09

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR, INC., et al.,

Plaintiffs,

vs.

RAMBUS INC.,

Defendant.

CASE NO. CV 00-20905 RMW

**STIPULATION AND []
ORDER REGARDING ESCROW
ACCOUNTS FOR ONGOING ROYALTIES**

Judge: Honorable Ronald M. Whyte
Ctm: 6

1 WHEREAS, pursuant to Final Judgment dated March 10, 2009 in the above-
2 referenced matter, plaintiffs Hynix Semiconductor Inc., Hynix Semiconductor America Inc.,
3 Hynix Semiconductor U.K. Ltd., and Hynix Semiconductor Deutschland GmbH (collectively,
4 “Hynix”) have been ordered to pay to defendant Rambus Inc. (“Rambus”) certain ongoing
5 royalties (the “Ongoing Royalty”).

6 WHEREAS, Hynix has appealed, and Rambus has cross-appealed, the Final
7 Judgment to the United States Court of Appeals for the Federal Circuit.

8 WHEREAS, pursuant to this Court’s Order Granting Hynix’s Motion To Stay
9 Execution Of Judgment And Directing That Ongoing Royalties Be Paid Into An Escrow Account,
10 dated May 14, 2009 (the “May 14 Order”), Hynix has been ordered to pay the Ongoing Royalty
11 into an escrow account, held at a bank or other financial institution agreeable to the parties.

12 WHEREAS, pursuant to the May 14 Order, Hynix and Rambus have been ordered
13 to meet and confer and submit any proposed order that will be necessary to implement the escrow
14 arrangement.

15 NOW, THEREFORE, SUBJECT TO THE APPROVAL OF THE COURT, IT IS
16 HEREBY STIPULATED AND AGREED, by and among the undersigned counsel for Hynix and
17 Rambus, that:

18 (1) Hynix shall deposit 83.5% (or other percentage reflecting any applicable
19 future change in the Korean withholding tax laws or regulations) of each Ongoing Royalty
20 payment into an interest-bearing escrow account established at Bank of America, N.A. (the
21 “Escrow Agent”) in the United States (“Escrow Account”). The escrow agreement for the
22 Escrow Account (the “Escrow Agreement”) is attached hereto as Exhibit A. Hynix and Rambus
23 shall release their respective signatures for the Escrow Agreement as soon as reasonably
24 practicable upon the entry of this signed Order in this Court’s docket. Hynix shall make the
25 initial deposit into the Escrow Account in the amount and at the time required by Clause 4(1) of
26 the Escrow Agreement, but no sooner than five (5) days after entry of this Order, which initial
27 deposit is equal to 83.5% of the Ongoing Royalty payment due for the first, second, and third
28 calendar quarters of 2009. Hynix shall make subsequent deposits into the Escrow Account within

1 forty-five (45) days after the end of each calendar quarter in which an Ongoing Royalty payment
2 accrued, in an amount equal to 83.5% (or other percentage reflecting any applicable future change
3 in the Korean withholding tax laws or regulations) of the Ongoing Royalty payment associated
4 with such preceding calendar quarter.

5 (2) Contemporaneously with each deposit into the Escrow Account with respect to
6 an Ongoing Royalty payment referenced in paragraph (1) above, Hynix shall remit the balance of
7 such Ongoing Royalty payment not deposited into the Escrow Account directly to the Korean Tax
8 Authority in satisfaction of Hynix's potential withholding obligations with respect to such
9 Ongoing Royalty payment under Korean tax law. If the Korean Tax Authority (including any
10 office or division thereof) does not accept some or all of such payment (*e.g.*, if it is determined
11 that a withholding payment is premature or otherwise not due and owing at the time of such
12 payment), then Hynix shall: (a) within three (3) business days of such determination, notify
13 Rambus of such determination; and (b) within seven (7) business days of Hynix's receipt of any
14 amounts not so accepted, notify Rambus of such receipt, including the date of receipt and the
15 amounts received, and deposit such amounts into the Escrow Account, in US Dollars at the
16 exchange rate between Korean Won and US Dollars reported by the Federal Reserve at
17 <http://www.federalreserve.gov/RELEASES/H10/> for the date on which Hynix receives such
18 amounts (the "Non-Accepted Amounts").

19 (3) Hynix and Rambus shall sign and deliver to the Escrow Agent joint written
20 instructions directing release of the funds in the Escrow Account as necessary to effect the terms
21 of this Stipulation, including without limitation the terms set forth in paragraph (4) below.

22 (4) If (a) the Final Judgment is upheld on the appeal from the above-captioned
23 matter, including any review by the United States Supreme Court if such review is sought and
24 granted, or (b) the Final Judgment is no longer subject to further appellate review, then the funds
25 in the Escrow Account, including interest and/or profits therein, less an amount equal to the Non-
26 Accepted Amounts, shall be released to Rambus as soon as reasonably practicable, and the Non-
27 Accepted Amounts shall be remitted to Hynix, and, to the extent the Korean Tax Authority has
28 not accepted withholding taxes for one or more Ongoing Royalty payments, Hynix shall

1 contemporaneously make payment to the Korean Tax Authority such that a total amount equal to
2 16.5% (or other percentage reflecting any applicable future change in the Korean withholding tax
3 laws or regulations) of such Ongoing Royalty payments has been remitted to the Korean Tax
4 Authority in satisfaction of Hynix's potential withholding obligations with respect to such
5 Ongoing Royalty payments under Korean tax law. If the Final Judgment is reversed or vacated so
6 as to affect the basis for the Ongoing Royalty award, the funds in the Escrow Account, including
7 interest and/or profits therein, shall not be released to any party pending further proceedings
8 before this Court, but shall be released in accordance with any further order by the Court. No
9 funds in the Escrow Account shall be released sooner than (1) thirty days following the later of
10 remand to the district court following completion of all proceedings in the United States Supreme
11 Court, if a petition for writ or certiorari is granted; (2) denial of any petition for writ of certiorari
12 to the United States Supreme Court; (3) expiration of the time to file a petition for writ of
13 certiorari if no such petition is filed; or (4) until such time as is otherwise ordered by this court.

14 (5) Any remittance of withholding amount(s) to the Korean Tax Authority shall be
15 subject to (a) Rambus's right to seek refund or recovery of such withholding amount(s), in the
16 event the amount in the Escrow Account is released to Rambus, and (b) Hynix's right to seek
17 refund or recovery of such withholding amount(s), in the event the amount in the Escrow Account
18 is released to Hynix.

19 (6) Hynix further acknowledges and understands that Rambus may seek refund or
20 recovery of such withholding amount(s) before the release of any amounts in the Escrow
21 Account, including on the grounds that such amounts do not constitute Korean-source income,
22 and agrees that it will not oppose any such request. To the extent the Korean Tax Authority or
23 any court or tribunal of competent jurisdiction orders refund or recovery of some or all of such
24 withholding amount(s) before any funds are released from the Escrow Account, then (a) any party
25 that is advised of such a determination shall, within three (3) business days, give notice to the
26 other parties of such determination; (b) to the extent that such refund or recovery is ordered to be
27 paid directly to Rambus, Rambus and Hynix shall promptly file any necessary documents to
28 permit assignment of such refund or recovery to Hynix; and (c) within seven (7) business days

1 after Hynix's receipt of such refund or recovery (whether directly or by assignment from
2 Rambus), Hynix shall notify Rambus of such receipt, including the date of receipt and the
3 amounts received, and deposit such amounts into the Escrow Account, in US Dollars at the
4 exchange rate between Korean Won and US Dollars reported by the Federal Reserve at
5 <http://www.federalreserve.gov/RELEASES/H10/> for the date on which Hynix receives such
6 amounts. Any amounts so deposited shall be subject to the terms of the Escrow Agreement, it
7 being understood that any such amounts shall be deemed not to be "Non-Accepted Amounts."

8 (7) Each party shall bear its own costs and expenses, including attorneys fees, in
9 seeking reimbursement of any withholding tax paid and accepted. Each party shall cooperate
10 with the other party in good faith in response to any reasonable request by the other party to assist
11 in seeking refund or recovery of withholding amount(s) from the Korean Tax Authority,
12 including, without limitation, in connection with any administrative, tribunal or court (including
13 appellate court) action or proceeding relating to such seeking of refund or recovery. Without
14 limiting the generality of the foregoing, Hynix shall, upon Rambus's request, promptly send to
15 Rambus the necessary documents (including, without limitation, official certificate(s) of
16 payment(s) and payment slips) to enable Rambus (a) to make a refund or recovery request for
17 withholding amounts and/or (b) to support a claim for a foreign tax credit with respect to
18 withholding amounts against income taxes which may be levied by the United States government.
19 If Hynix has previously provided such documents to Rambus, and if the funds in the Escrow
20 Account are thereafter released to Hynix, Rambus shall, upon Hynix's request, promptly return
21 such documents to Hynix.

22 (8) Hynix and Rambus shall cooperate in good faith to effectuate the terms of this
23 Order, including without limitation signing and delivering to the proper escrow agent the joint
24 written instructions required by paragraph (3) above, releasing their respective signatures for the
25 agreements required by paragraph (1) above, and seeking any refund or recovery of any amounts
26 remitted as withholding to the Korean National Tax Service.

27 (9) All notices required or permitted under this Order shall be given in a manner
28 that complies with Clause 11 of the Escrow Agreement.

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(10) Hynix and Rambus may mutually agree in writing to modify the terms of this Order, subject to this Court's approval.

IT IS SO STIPULATED.

DATED: November 20, 2009

MUNGER, TOLLES & OLSON LLP

By: /s/ Gregory P. Stone
Gregory P. Stone

Counsel for Rambus Inc.

DATED: November 20, 2009

TOWNSEND & TOWNSEND & CREW LLP


By: /s/ Theodore G. Brown III
Theodore G. Brown III

Counsel for Hynix Semiconductor Inc.; Hynix Semiconductor America Inc.; Hynix Semiconductor U.K. Ltd.; and Hynix Semiconductor Deutschland GmbH

ORDER

IT IS SO ORDERED.

DATED: November 24, 2009



Honorable Ronald M. Whyte
United States District Court Judge