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E-filed: 12/4/2008

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

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

ORDER MEMORIALIZING WILLFULNESS  
PROCEDURES

[Re Docket Nos. 2674, 2677]

RAMBUS INC.,

Plaintiff,

v.

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

Defendants.

No. C-05-02298 RMW

[Re Docket Nos. 1431, 1432]

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RAMBUS INC.,

Plaintiff,

v.

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

Defendants.

No. C-06-00244 RMW

**[Re Docket Nos. 1660, 1661]**

The parties have been unable to reach agreement regarding procedures for making pretrial submissions related to the issue of willfulness. The court has considered the arguments presented in the parties' letter briefs and during a phone conference at 3:00 p.m. on December 4, 2008.<sup>1</sup> The following memorializes the court's rulings during the phone conference.

- The parties' pretrial submissions with respect to willfulness will not be due before the beginning of the trial on infringement and validity. Such submissions will be due at a future time that will enable the court to try the willfulness issue within ten (10) days of the end of the damages portions of the trial. The Manufacturers represented that their positions on willfulness are set forth in their pending motions for summary judgment.
- To minimize the burden on witnesses, the parties may elect to examine with respect to willfulness a witness not under the control of an adverse party who the party calls during the liability phase of trial. Such testimony will be taken in the afternoon, outside the presence of the jury.
- Parties may request to examine an opposing party's trial witness with respect to willfulness. The opposing party may postpone that witness' willfulness testimony on the condition that they produce the witness again during the willfulness phase of the case.
- Patent Local Rule 3-8 (Jan. 1, 2001) imposes a deadline for disclosing reliance on

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<sup>1</sup> Each party was represented by counsel. The phone conference was not reported.

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opinion of counsel. This deadline has passed. Postponing the willfulness phase of trial does not change the impact of Rule 3-8, and the Manufacturers may not disclose any new opinion of counsel defense to willfulness.

The court also discussed with the parties various ways to administer these cases more efficiently. The court will welcome any reports from any parties listing the outstanding motions in this case, the status of such motions, and any comment on how ruling on such motions will impact the upcoming trial. The court also expects the parties to meet and confer prior to December 10 with respect to representative parts. Any issues with respect to representative parts will be raised at the December 10 hearing.

DATED: 12/4/2008



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RONALD M. WHYTE  
United States District Judge

1 Notice of this document has been electronically sent to counsel in:  
2 C-05-00334, C-05-02298, C-06-00244.

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22 Counsel are responsible for distributing copies of this document to co-counsel that have not  
 23 registered for e-filing under the court's CM/ECF program in each action.

24 **Dated:** 12/4/2008 TSF  
**Chambers of Judge Whyte**