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E-filed: 12/12/2008

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

REQUEST FOR PROPOSED AGENDAS

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

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RAMBUS INC.,

Plaintiff,

v.

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

Defendants.

No. C-06-00244 RMW

The parties have three hearing dates scheduled in the coming weeks. December 19 has been designated as the pretrial conference. January 6 and 7 of 2009 have been reserved as additional dates for hearing the parties' numerous pending motions for summary judgment and *Daubert* motions.

December 19 is scheduled as a pretrial conference. The court has not yet received a joint pretrial conference statement from the parties. The court understands that a variety of pretrial conference matters like trial time estimates and witness lists depend on the court's rulings on summary judgment and the number of representative products and prior art references. The court therefore extends the deadline for the parties to file their joint pretrial conference statement to January 5, 2009 and does not anticipate discussing trial time estimates on December 19. The court's current agenda for December 19 therefore consists of: (1) resolving any lingering disputes over representative products (if briefed in letters by December 17); (2) resolving any lingering disputes over expert opinions related to the court's construction of "memory device" (if briefed in letters by December 17); and (3) hearing argument on motions on which oral argument is needed.

As before, the court would benefit from the parties' insight regarding what matters they wish to be heard on December 19. *See* Docket No. 2665 (Nov. 26, 2008). Any proposal should be similar in format to those filed in response to the court's prior request, but filed jointly. If the parties cannot agree on a priority list, each party should list up to five matters they wish to have addressed or heard on December 19 (in addition to those mentioned above). The joint proposal should be filed by Monday, December 15 at 5:00 p.m.

1 Finally, the extraordinary¹ nature of this litigation should compel the parties to make an
2 additional good faith effort to settle. At the December 10 hearing, the court encouraged counsel to
3 settle this dispute, but counsel's clients were not there to hear the court. The court therefore expects
4 counsel to convey the court's following concerns to their clients.

5 A court's orders and a jury's verdict necessarily have binary outcomes. Motions are
6 generally granted or denied. The court cannot discount the relief requested because the matter was a
7 close call. Patents are valid or invalid. The jury cannot recognize the probabilistic nature of patent
8 rights. Injunctions are entered or not. The court cannot fashion remedies that force the parties to
9 engage in joint research and development, to shape product roadmaps, or to create innovative new
10 joint ventures.

11 No order that this court can enter can possibly benefit the parties as much as a settlement.
12 Until that happens, the litigation will continue to grind forward with motions, trials, and appeals, and
13 potentially more motions, retrials, and further appeals. This litigation produces only uncertainty,
14 and it does so at tremendous cost. It sacrifices the time of employees that could be spent developing
15 new technologies. It diverts and consumes money that could be spent on innovation. And it chills
16 the development of new products that remain hostage to the rights of others. The opportunity cost of
17 this litigation is staggering, and in light of economic conditions, ghastly. It is time for the parties to
18 move on.

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20 DATED: 12/12/2008



RONALD M. WHYTE
United States District Judge

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¹ By "extraordinary," the court does not necessarily mean "exceptional." 35 U.S.C. § 285.

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 registered for e-filing under the court's CM/ECF program in each action.

23 **Dated:** 12/12/2008

TSF
Chambers of Judge Whyte