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RAMBUS UPDATE

STATES, SDOS CONSORTIA ALL UNITE TO SUPPORT INFINEON

Andrew Updegrove

Beginning with our February issue, we have been following the progress of *Rambus v. Infineon*, the most-watched legal case in the standard setting world of recent memory (for the factual background and the case of the litigation to date, see: <http://www.consortiuminfo.org/bulletins/feb03.php#editorial>). Following the refusal by the Federal Circuit to reconsider its decision not to punish Rambus for its prior conduct in the Joint Electron Devices Engineering Council (JEDEC), Infineon made one last effort to prevail, by petitioning the Supreme Court to intervene. If the Supreme Court does not grant Infineon's petition, motion, the decision of the lower court will stand.

Many were astonished when the Federal Circuit Court refused to punish Rambus, especially since a jury in the original trial had found that Rambus had committed fraud. So great was this astonishment that a wide variety of constituencies have independently decided to file a compelling range of amici curiae (literally, "friends of the court") briefs in support of Infineon's plea to the Supreme Court to intervene. Those briefs represent the combined weight of ANSI accredited SDOs, consortia, semiconductor companies, JEDEC, the Attorneys General of 16 states and commonwealths, and a patent professional -- truly, an impressive range of interests, all of which have taken the time, trouble and expense to file lengthy and closely-reasoned opinions from diverse perspectives in support of overturning the lower courts decision.

Without question, the veritable barrage of briefs should suffice to get the serious attention of the high Court. But will they be sufficient to persuade the Justices to allocate their scarce time to the dispute? Only time, as they say, will tell. The announcement could come as early as October.

The briefs were filed by:

- **The Attorneys General of sixteen states and Commonwealths**, in defense of the public's interest and reliance on standard setting. The primary author of the brief was the Attorney General of Virginia (the site of the original jury trial in *Rambus v. Infineon*), with the support of *Alabama, Connecticut, California, Idaho, Illinois, Iowa, Maryland, Massachusetts, Missouri, New Hampshire, Oregon, Oklahoma, Puerto Rico, Utah, and West Virginia*.
- **Lucash, Gesmer & Updegrove LLP** (the host of this site), on a pro bono basis on behalf of ten organizations with a combined membership of **over 8,600** corporations, universities, government agencies and other institutional members spanning a broad range of technology areas. The organizations include five ANSI accredited SDOs and five consortia. The five SDOs are:
 - *Consumer Electronics Association (CEA)*
 - *Electronic Components, Assemblies and Materials Association (ECA)*
 - *Electronic Industries Alliance (EIA)*
 - *Government Electronics and Information Technology Association (GEIA);*and
 - *Association Connecting Electronics Industries (IPC)*

The five major consortia were:

- *Global Platform, Inc.*
- *IMS Global Learning Consortium, Inc. (IMS)*
- *OpenGIS Consortium, Inc. (OGC)*
- *PCI Industrial Computer Manufacturers Group, Inc. (PICMG)*
- *The Open Group (TOG)*
- *Video Electronics Standards Association*

In addition, two major corporations heavily involved in standard setting, together with a joint venture formed by these two companies for the purpose of developing standards, joined in support of the brief. They are:

- *MasterCard International Incorporated*
- *VISA International*
- *EVMCo, LLC*

- **Five major semiconductor companies:** Advanced Micro Devices; Hynix Semiconductor America, Inc.; Micron Technology, Inc.; Mindspeed Technology, Inc.; and Nvidia Corporation
- **JEDEC** itself, protesting the Federal Circuit's reinterpretation of the JEDEC policy in a way which JEDEC contends makes it "ineffective and unworkable," to the detriment of the past vendors and purchasers of billions of dollars of compliant products.
- And finally, **Robert Harmon**, a patent attorney concerned about the impact of the decision on the consistent application of the law regarding patent claim construction.

The ***Consortium Standards Bulletin*** will continue to monitor and report on the course of ***Rambus v. Infineon***, as well as on the results of the current trial before an administrative judge in the action brought by the Federal Trade Commission against Rambus, based upon the same course of conduct.

Comments? updegrove@consortiuminfo.org

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