

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

ASUSTEK COMPUTER INC., ASUS COMPUTER INTERNATIONAL, INC., BFG TECHNOLOGIES, INC.,  
BIOSTAR MICROTECH (U.S.A.) CORP., BIOSTAR MICROTECH INTERNATIONAL CORP., DIABLOTEK, INC.,  
EVGA CORP., G.B.T., INC., GIGA-BYTE TECHNOLOGY CO., LTD., HEWLETT-PACKARD COMPANY, MSI  
COMPUTER CORP., MICRO-STAR INTERNATIONAL COMPANY, LTD., GRACOM TECHNOLOGIES LLC  
(FORMERLY KNOWN AS PALIT MULTIMEDIA, INC.), PALIT MICROSYSTEMS LTD., PINE TECHNOLOGY  
(MACAO COMMERCIAL OFFSHORE) LTD., AND SPARKLE COMPUTER COMPANY, LTD.

*Appellants,*

— v. —

INTERNATIONAL TRADE COMMISSION,

*Appellee,*

and

RAMBUS, INC.,

*Intervenor,*

and

NVIDIA CORPORATION,

*Intervenor.*

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**2010-1557**

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NVIDIA CORPORATION,

*Appellant,*

— v. —

INTERNATIONAL TRADE COMMISSION,

*Appellee,*

and

RAMBUS, INC.,

*Intervenor.*

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ON APPEAL FROM THE UNITED STATES INTERNATIONAL TRADE COMMISSION  
IN INVESTIGATION NO. 337-TA-661

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**NON-CONFIDENTIAL REPLY BRIEF OF APPELLANTS NVIDIA CORPORATION ET AL.**

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**COMPANION CASES TO:**

**2010-1483**

RAMBUS, INC.,

*Appellant,*

— v. —

INTERNATIONAL TRADE COMMISSION,

*Appellee,*

and

NVIDIA CORPORATION ET AL.,

*Intervenors.*

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## CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4 counsel of record for Appellant and Intervenor NVIDIA Corporation certifies the following:

1. The full name of the party represented by counsel of record is NVIDIA Corporation, a corporation formed under the laws of California.
2. The entity identified above is the real party in interest.
3. No parent corporation or any publicly held company owns 10 percent or more of the stock of NVIDIA.
4. The names of all law firms and the partners and associates that have appeared for NVIDIA Corporation in the proceeding before the United States International Trade Commission or who are expected to appear for the party in this Court are:

*Orrick, Herrington & Sutcliffe LLP*: I. Neel Chatterjee, Kenneth J. Halpern (no longer with Orrick), Mark S. Davies, E. Joshua Rosenkranz, Karen G. Johnson-McKewan, Fabio Marino, Deborah E. Fishman (no longer with Orrick), William H. Wright, Mark Wine, Richard S. Swope, Nitin Gambhir, Justin M. Lichterman, Lauren J. Parker, Rachel M. McKenzie, and Katherine M. Kopp.

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Dated: June 16, 2011

Respectfully submitted,

By



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## CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4 counsel of record for the customer Appellants certifies the following:

1. The full names of the parties we represent in this case are:

ASUSTeK Computer, Inc. and ASUS Computer International

BFG Technologies, Inc.

Biostar Microtech (U.S.A.) Corporation

Biostar Microtech International Corporation

Diablotek Inc.

EVGA Corporation

G.B.T. Inc.

Giga-Byte Technology Co., Limited

Hewlett-Packard Company

MSI Computer Corporation

Micro-Star International Company, Limited

Gracom Technologies LLC

Palit Microsystems Limited

Pine Technology (Macao Commercial Offshore) Limited

Sparkle Computer Company, Ltd.

2. All the real parties in interest represented by us are named in the caption.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties or amicus curiae represented by us are:

ASUS Computer International, Inc. is a wholly owned subsidiary of ASUSTeK Computer, Inc.

Biostar Microtech (U.S.A.) Corporation is a subsidiary of Biostar Microtech International Corporation.

G.B.T. Inc. is a subsidiary of Giga-Byte Technology Co., Limited.

MSI Computer Corporation is a subsidiary of Micro-Star International Company, Limited.

Gracom Technologies LLC is a subsidiary of Palit Microsystems Limited.

Pine Technology (Macao Commercial Offshore) Limited is a subsidiary of Pan Eagle Limited, which is a subsidiary of Pine Technology (BVI) Limited, which is a subsidiary of PINE Technology Holdings Limited.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by us in the agency or are expected to appear in this Court are:

Fish & Richardson P.C.: Ruffin B. Cordell, Andrew R. Kopsidas, Kori Anne Bagrowski (no longer with F&R), Peter J. Sawert, Anita E. Kadala, John P. Brinkmann, John Lahad (no longer with F&R), Barbara A. Benoit (no longer with F&R), Jeffrey R. Whieldon, Wasif Qureshi, Michael Chibib (no longer with F&R), John F. Horvath (no longer with F&R), David M. Hoffman, Josh Tucker (no longer with F&R), Timothy J. Devlin, Joshua M. Masur (no longer with F&R), Leeron G. Kaly, and Kimberley Kennedy (no longer with F&R).

Dated: June 16, 2011

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## INTRODUCTION

NVIDIA's opening brief argued (at 60-61) that the ITC incorrectly believed the "evidentiary burden is on Respondents [NVIDIA and its customers] to prove that their defenses were prejudiced by Rambus's misconduct" (Ad182). In *Micron Technology, Inc. v. Rambus Inc.*, \_\_ F.3d \_\_, No. 2009-1263, 2011 WL 1815975, at \*14 (Fed. Cir. May 13, 2011) ("*Micron II*"), the Court rejected the ITC's legal position and found that **Rambus** "bears the 'heavy burden' to show a lack of prejudice to the opposing party."

In light of *Micron II*, the Court should reverse the ITC and order this case dismissed. Moreover, the Court should address the other substantive issues raised here so as to avoid continuing disputes in related ongoing litigation between the parties. *Cf. Hynix Semiconductor Inc. v. Rambus Inc.*, \_\_ F.3d \_\_, Nos. 2009-1299, 2009-1347, 2011 WL 1815978, at \*9 (Fed. Cir. May 13, 2011).

## ARGUMENT<sup>1</sup>

### I. RAMBUS HAS NOT DEMONSTRATED SUBSTANTIAL INVESTMENT IN THE EXPLOITATION OF THE BARTH I PATENTS

NVIDIA's opening brief demonstrated (at 29-35) that an ITC complainant is statutorily required to clearly link the asserted patents to licensing activity and that Rambus failed to clearly link the Barth I patents to any licensing activity.

In response, Rambus ignores the express language of Section 1337 discussed extensively in NVIDIA's brief. 19 U.S.C. § 1337; NVIDIA Opening Brief ("NOB") 30-31. The statute's plain text requires Rambus to show a substantial investment in licensing "**with respect to the articles protected by the patent.**" 19 U.S.C. § 1337(a)(3) (emphasis added). Rambus concedes that it "has not apportioned its substantial investments specifically to the Barth I patents" (Rambus Answering Brief ("RAB") 29); indeed, it has not shown *any* investment with respect

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<sup>1</sup> All the issues raised here are questions of law and subject to *de novo* appellate review. See NOB29; *Microsoft Corp. v. i4i Ltd. P'ship*, \_\_ S. Ct. \_\_, No. 10-290, 2011 WL 2224428, at \*12-13 (June 9, 2011) (Breyer, J., concurring); *cf.* RAB26, 44 n.7.

to “the articles” protected by the Barth I patents. It accordingly has not met the statutory requirements for an ITC action.

The history of the statute confirms that Section 1337(a)(3) includes within the statute’s reach only “intellectual property owners who engage in extensive licensing of their rights **to manufacturers.**” *In the Matter of Certain Digital Processors and Digital Processing Systems, and Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-559, Order No. 24 at 93 (USITC June 21, 2007) (quoting S. Rep. No. 71 at 129 (1987)) (emphasis added).

This limitation goes to a core purpose of the Commission; namely, “to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad.” *Trade Reform Legislation: Hearings on Various Trade Reform Proposals Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 99th Cong. 664 (1986) (testimony). The International Trade Commission is a *trade* court and thus must only “be utilized on behalf of an industry in the United States.” *Id.* Indeed, Congress specifically declined to eliminate the domestic industry requirement because it did not want to “turn the ITC into an international patent court.” *See Intellectual Property Rights: Hearing*



*on S. 1860 and S. 1869 Before the Subcomm. on Int'l Trade of the S. Comm. on Finance, 99th Cong. 11-13, 205-206 (1986) (testimony).*

The Federal Trade Commission has explained that the domestic industry requirement is particularly important to police ITC actions brought by “firms whose business model,” like Rambus’s, “primarily focuses on purchasing and asserting patents.” Federal Trade Commission, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition* 8 n.5 (2011). The FTC believes that “[c]onsistent with the legislative history’s concern with innovation and the language of the statute,” the domestic industry requirement is “not satisfied by ex post licensing activity solely focused on extracting rents from manufacturers based on marketed products.” *Id.* at 30. “[E]x ante but not ex post licensing” satisfies the statutory requirement because “only the former seeks to ‘exploit’ the patent by putting it into productive use to create an industry.” *Id.* at 242.

Rambus asserts that “in the context of portfolio licenses,” the “Commission has repeatedly rejected” the argument that a “Complainant must link each activity to licensing efforts concerning the asserted patents.” RAB29. To the extent any ITC cases suggest a clear

link is not required, those cases are inconsistent with statutory text and cannot stand. “An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress.” *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374-75 (1986).

Rambus notes that it has spent at least \$11 million on its Licensing and Marketing Department, that “the Barth I patents are **part of** Rambus’s licensed Concurrent Interface Technology portfolio” that has “generated over \$36 million,” and that “patent license agreements **including** the Barth I patents have yielded substantial revenue, generating over \$800 million.” RAB13, 27-32 (emphasis added).<sup>2</sup> But careful phrasing cannot obscure the fact that Rambus never claims the Barth I patents contributed a single dollar to its \$836 million shakedown. Indeed, on the evidence Rambus has presented, it is entirely possible to conclude Rambus would have spent and made the

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<sup>2</sup> The ALJ found that the nine technology agreements are the same in all relevant respects. Ad56-57.

same amount of money on licensing had the Barth I patents never issued. Rambus has not met its burden to present evidence tying the Barth I patents to specific articles.

Rambus misleadingly asserts that it “frequently identifies the Barth I patents during negotiations.” RAB14. But of the 34 documents Rambus cites in support of this proposition, 31 are pages from largely standardized licensing presentations, half containing mere cover sheets to those presentations and the other half containing charts that list “Barth,” “‘405,” or “‘353” among a slew of other patent numbers or families.<sup>3</sup> See A42773;A47288;A47292;A47372;A47387;A47391; A47451;A47466;A47469;A47516;A47546;A47549;A47596;A47599; A47600;A47608;A47612;A47654;A47667;A47671;A47736;A47834; A47844;A47848;A47902;A47908;A47910;A47948;A47961;A47964. If one page of a presentation listing “Barth” among other Rambus patent family inventors (*e.g.*, A47288), or showing the ‘405 patent and 20

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<sup>3</sup> The remaining documents are Rambus’s prepared witness statements (*see* A17701-06;A41379-80), which cite the same licensing presentations discussed above, and an email (A48012-13) containing yet another chart that lists the ‘405 and ‘353 patents among many others.

others in a “non-exhaustive” patent claims summary (*e.g.*, A47671), were enough to establish a substantial licensing investment “with respect **to the articles** protected by the patent[s]” at issue, the domestic industry requirement would be meaningless.

Ultimately, Rambus distorts the record in a belated effort to link its millions to the Barth I patents. Rambus claims the ALJ found that the “Barth I patents are **required** for use of the Concurrent Interface Technology [“CIT].” RAB30-31 (emphasis added). But the ALJ found only that Rambus’s CIT license portfolio “**include[s]**” the Barth I patents. Ad58-60 (emphasis added) (citations omitted). Thus, the ALJ did not credit the testimony (*see, e.g.*, A18772), invoked here again by Rambus (at 28), that practicing the CIT license necessarily infringes the Barth I patents. And even had the ALJ found the CIT required use of the Barth I patents, Rambus has not demonstrated that a CIT license is an “article” protected by the patents in suit.

## II. THE BARTH I CLAIMS SHOULD BE CONSTRUED TO REQUIRE A TERMINATE SIGNAL

Under *Phillips v. AWH Corp.*, 415 F.3d 1303, 1324 (Fed. Cir. 2005) (en banc), the goal of claim construction is to “accurately” “capture the scope of the actual invention.” NVIDIA’s opening brief demonstrated through review of the Barth I application that the invention of the Barth I patents is a **flexible** data transfer method—a method in which there is a signal to start, and another signal to terminate, the data transfer. NOB12-15, 38-41. As a result, the terminate signal is “necessarily present,” *Alloc, Inc. v. ITC*, 342 F.3d 1361, 1368 (Fed. Cir. 2003), in all the asserted Barth I claims. Rambus’s own review of the Barth I specification only confirms that the invention is a flexible data transfer method.

First, contrary to Rambus’s suggestion (at 35), the Summary and Objects of the Invention demonstrates that the invention is a flexible data transfer method. Rambus argues that the “present invention” “passage” “describes” only “an embodiment that uses a strobe signal and a terminate signal.” RAB35. But, as in *Hynix*, “Rambus does not frame the issue fairly; the written description ... was simply attempting to explain how Rambus’s invention works, not merely to disclose a

preferred embodiment.” 2011 WL 1815978 at \*15. The “present invention” does not state or in any way suggest that it is discussing an “embodiment.” To the contrary, this Court has repeatedly held that a statement of the “present invention” supports construing the claims to reach only that invention. NOB38.<sup>4</sup>

Rambus errs in arguing that “at least half of the stated objects of the inventions are satisfied by the strobe [start] signal alone.” RAB33 (citing Ad318 at 3:23-64). Many of the objectives expressly refer to a terminate signal (Ad365 at 3:27,:34,:54), and one refers to “arbitrarily long data transfers” that necessarily include a terminate signal (to stop the “long” transfer at an “arbitrar[y] time”) (Ad365 at 3:30). Two other objectives refer to a transmission method (“interleaving” of data and control signals) that likewise necessarily requires a start and terminate signal (to establish the relevant sequences). Ad365 at 3:37,:42. Some objectives are either unrelated to data transfer methods (e.g., command

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<sup>4</sup> Rambus does not repeat the ITC’s invocation (ITC Answering Brief (“IAB”) at 42) of *Rambus Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1094 (Fed. Cir. 2003). *Infineon* involves a different set of Rambus patents with different present invention terminology.

encoding, Ad365 at 3:61) or abstract (“decouple control timing from data timing,” Ad365 at 3:22) and thus cannot show that the patent reaches beyond the flexible transfer method. Moreover, these objectives have nothing to do with the invention embodied in the claims at issue here.

Second, consistent with the Summary and Objects of the Invention, all the Barth I figures that illustrate data transfer include a start and a terminate signal. *See, e.g.*, Ad351, Ad365 (Figs. 8, 12, 13). Rambus states that the “Barth I specification also discloses embodiments without terminate signals.” RAB33. Aside from uncited assertions (at 33, 35), however, Rambus points only to an embodiment involving “interleaving” (at 34). The patent only describes interleaving embodiments that use start and “terminate” signals. Ad369 (Appendix B and Fig. 13 “illustrate the timing of interleaved data transfer operations”); Ad356 (Fig. 13 includes “TERMINATE” signal); Ad378 (Appendix B, control signal used to send “terminate” information).<sup>5</sup>

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<sup>5</sup> Although Rambus invokes the examiner’s comments (RAB10), the examiner found that both the application that issued as the ‘353 patent

Third, Rambus concedes that “the Barth I patents discuss shortcomings of certain prior-art systems.” RAB37. Rambus argues that “disclosing multiple embodiments that achieve different objects do not operate as disclaimers unless the specification makes clear that all embodiments are to be so limited.” *Id.* But that is not the law. Under *Phillips*, the goal of claim construction is to “accurately” “capture the scope of the actual invention.” 415 F.3d at 1324. Claims “should not be read too broadly as to encompass the distinguished prior art structure.” *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343 (Fed. Cir. 2001). Rambus does not even address the main case NVIDIA cites for the common sense proposition that prior art critiques are an indicator of the actual invention. *See* NOB41 (quoting *Inpro II Licensing, S.A.R.L. v. T-Mobile USA, Inc.*, 450 F.3d 1350, 1353-55 (Fed. Cir. 2006)). Here, the patent’s critiques of the fixed data transfer method support the conclusion that the invention is a flexible data transfer method.

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and the Barth ‘914 patent [REDACTED] (A51295).



Rambus devotes only a paragraph to defending the ALJ's claim construction rationale. RAB34-35. As NVIDIA explained, the ALJ relied on a passage that in fact describes the benefits of flexible data transfers. NOB42. Rambus counters that the "same benefit applies to systems without terminate signals." RAB34. But a meaningful data transfer is by either a fixed method or a flexible method; there is no other choice. In describing the benefits of the flexible method, the passage necessarily includes the terminate signal that is part of the flexible method.

Rambus resorts to one additional out-of-context quotation, arguing that the Barth I patents "indicate that a terminate signal need not always be used" because it states "[w]hen a terminate signal is used." RAB34-35 (citing Ad321 at 9:61-65) (emphasis by Rambus). But this play on the word "when" does not withstand review of the actual sentence. The patent is explaining that due to "intrinsic circuit delays," "when" a terminate signal is used to specify the end of a transfer operation, there will be some delay between when the signal is transmitted and when the last packet of data is transferred. Ad321 at 9:55-65. The purpose of the "when" is to distinguish the flexible method

from the prior art fixed method of data transfer, a method that does not need a terminate signal (because the length is preset) and thus does not have this delay.

This Court is well aware that Rambus has engaged in an improper effort to tailor pending claims to industry standard products. *See Hynix*, 2011 WL 1815978 at \*3 (Rambus JEDEC representative “direct[ed] Rambus’s prosecution efforts to cover those features”); *Micron II*, 2011 WL 1815975 at \*9 (Rambus “actively broadened its claims to cover JEDEC standard-compliant products.”). When Rambus emphasizes that the asserted Barth I claims do not “recite stopping or terminating data transfer” (RAB32-33), it once again is invoking tailored claims.<sup>6</sup> The original claims from which the asserted claims all descend included either a start signal or a terminate signal or both.<sup>7</sup>

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<sup>6</sup> Rambus asserts claims 11-13, 15, and 18 of the ‘405 patent (Ad8), claims 11-13 of the ‘353 patent (Ad9), and claims 1-2, 4-5, 12-13, 20-21 and 24 of the ‘109 patent (Ad10).

<sup>7</sup> For example, Rambus highlights original claims 13 and 14 (A30196). [REDACTED] and thus necessarily contemplate a flexible transfer method. The remaining original claims Rambus cites have nothing to do with the choice of data transfer method or the length of the actual data transfer. *See* claim 18 (A30198)

Rambus filed all of the asserted patent claims in continuation applications **after** JEDEC allowed standard technology to use fixed rather than flexible length data transfers.<sup>8</sup>

**III. THE BARTH I PATENTS ARE INVALID UNDER THE JUDICIAL OBVIOUSNESS-TYPE DOUBLE PATENTING DOCTRINE**

As NVIDIA’s opening brief pointed out, if Rambus’s claim construction prevails, then the Farmwald patent claims and the Barth I patent claims are “so close that the parties differed on only one issue: Whether the clock signal claim in the Farmwald ‘037 patent could be the ‘Strobe signal’ in the Barth I ‘353 patent.” NOB47. Among other things, NVIDIA quoted at length from *Rambus Inc. v. Hynix Semiconductor Inc.*, 569 F. Supp. 2d 946, 986-87 (N.D. Cal. 2008), where Rambus persuaded the district court that the external clock in the Farmwald invention “governs the timing of the response to a

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claim 22 (A30200) claim 26 (A30202)  
claim 27 (A30203)

<sup>8</sup> Rambus asserts that JEDEC has always used data transfer of “known lengths.” RAB36 n.5. But the record is clear that in 1999, JEDEC permitted flexible length data transfers. A31359.

transaction request.” NOB48-49. Under the construction offered by Rambus itself, the Farmwald patent necessarily renders obvious the Barth I patents.

Rambus does not discuss its own characterization of the Farmwald invention adopted by the *Hynix* district court, nor does it deny that its adoption here would render the Barth I patents invalid. Instead, Rambus argues that the Barth I patent distinguishes between the clock signal and the external clock signal. RAB41-42. That is not only incorrect (Ad15), but irrelevant to the question of whether the **Farmwald** specification uses a clock signal to start data transfer, as the *Hynix* court found.

Aside from the strobe signal, NVIDIA noted that “Rambus has not suggested any other differences between the Farmwald and Rambus patents.” NOB47. Rambus still has not done so. Although Rambus points to “features not recited in ‘353 claim 11” that are recited in other Barth I claims (RAB43), the parties do not dispute that the Farmwald patents claim “precharge” (A23147 at 25:16-26,26:39-48; A23148 at 27:25-30,27:64-28:20), “address information” (A23147 at 25:27-32,26:22-28; A23148 at 27:38-45,27:51-54,27:64-28:20,28:21-34), activating “sense

amplifiers” (A23147 at 25:16-26,26:39-48; A23148 at 27:64-28:20) or other features that are also asserted in the Barth I claims.

Contrary to Rambus’s suggestion (at 40), there is no material difference between the double patenting argument NVIDIA advances on appeal and the double patenting argument NVIDIA made below.

NVIDIA’s appeal brief focuses on comparing claim 8 of the Farmwald ‘037 patent to claim 11 of the Barth ‘353 patent. NOB47. NVIDIA was clear, however, that “Claim 11 of the Barth ‘353 patent is **representative.**” *Id.* (emphasis added). NVIDIA urged that if Rambus’s claim construction prevails, the “Barth I patents”—not just particular claims—“are invalid because Rambus already has a patent on a method of fixed length data transfer that uses a clock signal to start the transfer of data.” *Id.* at 45. *Accord id.* at 46 (“Barth I patents simply claim a broader version of the method claimed in the Farmwald patent.”).

NVIDIA made the same argument before the ITC. Although the experts discussed the arguments in a claim-specific format, the testimony is highly redundant. For example, Rambus’s expert did not meaningfully distinguish among the Barth I claims and did not

meaningfully distinguish among the Farmwald claims.<sup>9</sup> NVIDIA’s use of representative claims here did nothing but facilitate the presentation of the double patenting issue to this Court.<sup>10</sup>

NVIDIA also argued, both here and below, that a different Farmwald patent, the ‘755, renders the Barth I patents invalid as anticipated under 35 U.S.C. § 102(b). NOB54;A8848-903;A13372-81; A27515-22. Again, the substantive point is that the parties agreed that

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<sup>9</sup> As to the Barth I claims, Rambus’s expert discussed [REDACTED] A21910. The expert then summarily discussed the same arguments and responses with regard to all [REDACTED]

[REDACTED] A21910. As to the Farmwald claims, Rambus’s expert explained that [REDACTED]. A21910. *See also, e.g.,* A21914;A21918;A21923.

<sup>10</sup> The “general rule that issues must be raised in lower courts in order to be preserved as potential grounds of decision in higher courts” requires only that “the lower court be fairly put on notice as to the **substance** of the issue.” *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000) (emphasis added). Where, as here, the arguments do not “change[] the scope of any of the ... positions” advanced below, the arguments are permitted. *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1347 (Fed. Cir. 2001). *Cf. Eli Lilly & Co. v. Teva Pharm. USA, Inc.*, 619 F.3d 1329, 1341-42 (Fed. Cir. 2010) (declining to consider double patenting issue on appeal where it was not raised *at all* in district court).

the ‘755 patent teaches all but one of the elements of the Barth I patents, and NVIDIA demonstrated that the Farmwald patents include that remaining element, *i.e.*, an external clock that starts the data transmission. In response, Rambus presents this Court with a string cite to its expert’s testimony. RAB45. Such summary briefing does not require a reply. *Ajinomoto Co. v. ITC*, 597 F.3d 1267, 1278 (Fed. Cir. 2010). Regardless, the cited testimony is substantively duplicative of the expert’s unpersuasive testimony regarding the Farmwald ‘037 patent. *See, e.g.*, A21824 [REDACTED]

#### **IV. RAMBUS HAS UNCLEAN HANDS**

##### **A. Rambus Did Not Disclose The ‘292 Barth I Application And Is Thus Estopped From Enforcing Claims Descending From That Application**

This Court’s decision in *Hynix* confirms that Rambus’s failure to disclose the ‘292 Barth I application while it was a JEDEC member forecloses Rambus from enforcing the Barth I patents against JEDEC-compliant products. *See* NOB56-59. Quoting *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1028 (Fed. Cir. 1992) (en banc), *Hynix* explained that a finding of equitable estoppel is required if the patentee “through misleading conduct, led the alleged infringer to

reasonably infer that the patentee does not intend to enforce its patent against the alleged infringer.” 2011 WL 1815978 at \*9. Otherwise, as this Court explained at length in *Cancer Research Tech. Ltd. v. Barr Labs., Inc.*, 625 F.3d 724, 729 (Fed. Cir. 2010), “others working in the same field” as the patentee would be harmed. *Cf. Miller v. Brass Co.*, 104 U.S. 350 (1881); *Woodbridge v. United States*, 263 U.S. 50, 53, 56-63 (1923); *Webster Elec. Co. v. Splitdorf Elec. Co.*, 264 U.S. 463, 471 (1924).<sup>11</sup> The *Hynix* court concluded:

Were this court writing on a clean slate, it would be tempted to agree that **equity demands that Rambus’s participation in JEDEC equitably estopped or waived its claims against standard-compliant products,** notwithstanding its delay in amending its claims until after its exit from JEDEC.

2011 WL 1815978 at \*10 (emphasis added).

The *Hynix* court did not estop Rambus only because Rambus disclosed the relevant written description to JEDEC. *Id.* (“While

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<sup>11</sup> Rambus’s attempt (at 46-47) to dismiss these cases as addressing “different issues” is expressly rejected by *Webster*, which explains that the analysis from *Miller* and its progeny is applicable to “cases involving laches, equitable estoppel or intervening private or public rights,” 264 U.S. at 471.



Rambus was still a member of JEDEC, it disclosed to JEDEC its ‘703 patent, a member of the [Farmwald Horowitz] ‘patents in suit.’”).

Because Rambus “disclosed one patent” “to JEDEC” that had “a substantially similar specification to the patents in suit, differing only in the claims” (*id.* at \*3), and because none of the pending claims (yet) read on the industry standard, the court ultimately concluded that estoppel was unwarranted (*id.* at \*10).

Here, unlike in *Hynix*, the Court is writing on a “clean slate” for purposes of its equitable analysis. Rambus does not deny that it failed to disclose the ‘292 application, which was filed while Rambus was a member of JEDEC and from which all the Barth I patents descend (NOB12, 23).<sup>12</sup> And, unlike in *Hynix*, **Rambus never disclosed to JEDEC any Barth I specification.** Because Rambus never disclosed any Barth I patent to JEDEC, Rambus cannot resort to the argument

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<sup>12</sup> *Hynix* expressly holds that “participation in JEDEC imposed [on Rambus] a duty to disclose pending applications and issued patents ‘with claims that a competitor or other JEDEC member reasonably would construe to cover the standardized technology.’” 2011 WL 1815978 at \*9 (citation omitted).

that NVIDIA must show that the undisclosed pending claims read on the JEDEC standard.

Rambus does not deny that its failure to disclose its pending application, and its resulting ability to tailor its claims to the industry standards, misled all members of the semiconductor industry who manufactured or sold standardized products. NVIDIA and its customers plainly relied on the activities of JEDEC by designing and manufacturing memory controllers that interface with memory products compliant with JEDEC standards. Equity requires estopping Rambus from enforcing claims descending from the undisclosed '292 application.

Rambus misreads (at 48) both *Kingsdown Medical Consultants, Ltd. v. Hollister Inc.*, 863 F.2d 867, 874 (Fed. Cir. 1988), and *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010). *Kingsdown* “should not be understood to extend beyond” the “specific context” of “inequitable conduct.” *Hynix Semiconductor Inc. v. Rambus Inc.*, Nos. 00-20905 et al., 2007 WL 4209386, at \*3 n.2. (N.D. Cal. Nov. 26, 2007). *Fujitsu*, unlike this case, involves patents that were not obtained by tailoring claims to industry standards.

Rambus slices equity doctrines too finely when suggesting that NVIDIA has “abandon[ed] equitable estoppel” for a generalized “equity” defense. RAB46. *Hynix* is undeniably an equitable estoppel case, *see* 2011 WL 1815978 at \*9 (quoting *Aukerman*, 960 F.2d at 1028), and its analysis, which focused on the duty to disclose pending applications, exactly tracks the analysis of NVIDIA’s opening brief.

**B. Rambus Intentionally And In Bad Faith Destroyed Relevant Documents It Was Under A Duty To Preserve**

In the wake of *Micron II* and *Hynix*, the only open question related to Rambus’s document destruction is whether the Court should order the ITC to dismiss the case or allow the ITC to consider the sanction question in the first instance.<sup>13</sup> Because no sanction short of dismissal is feasible on this record, judicial economy warrants an order dismissing the case.

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<sup>13</sup> The ITC writes that “no appellate opinion” has reversed “a lower tribunal’s decision not to dismiss an action on the basis of spoliation.” IAB52. *Hynix* does just that. 2011 WL 1815978 at \*8.

**1. *Micron II* confirms the ALJ’s error in requiring NVIDIA to prove prejudice from Rambus’s intentional bad faith spoliation.**

After 15 pages of detailed record review, the ALJ found that Rambus had engaged in “intentional” and “bad faith” spoliation for the purpose of gaining litigation advantage. Ad180. Rambus does not meaningfully challenge the ALJ’s finding of bad faith. Rambus only argues summarily that the ALJ erred in holding that “adopting a document retention policy to dispose of ‘discoverable information’ constitutes bad faith” (RAB57). But the ALJ’s bad faith analysis tracks the analysis deemed proper in *Micron II*. Compare Ad178-80 with *Micron II*, 2011 WL 1815975 at \*13 (listing factors that “may lead to a determination of bad faith”).

As NVIDIA’s opening brief explained (at 60-61), the ALJ did err in reluctantly holding, despite his bad faith finding, that “the evidentiary burden is on [NVIDIA and its customers] to prove that their defenses were prejudiced by Rambus’s misconduct” and in rejecting their unclean hands defense because “they have not carried that burden” (Ad182).

Contrary to the ALJ’s reasoning, *Micron II* holds:

**If it is shown that the spoliator acted in bad faith, the spoliator bears the “heavy burden” to show a lack of prejudice to the opposing party** because “[a] party who is guilty of . . . intentionally shredding documents . . . should not easily be able to excuse the misconduct by claiming that the vanished documents were of minimal import.”

2011 WL 1815975 at \*14 (quoting *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 925 (1st Cir. 1988) (emphasis added)). Rambus’s lead argument in defense of the ALJ’s erroneous burden allocation is an effort to distinguish *Anderson*, the very case *Micron II* applied to Rambus’s destruction (and NVIDIA invoked in its opening brief, at 60-61).

Rambus attempts to sidestep its burden by asserting that the “question of relevance stands apart from the issue of prejudice.” RAB 51. But *Micron II* imposes no separate relevance inquiry on victims of spoliation. Rather, *Micron II* makes clear that the defendant must “only come forward with plausible, concrete *suggestions* as to what the destroyed evidence *might have been*,” 2011 WL 1815975 at \*14 (citations and quotations omitted, emphasis added by *Micron II*), exactly what NVIDIA has done (NOB64-65; *infra* at 27-29). Indeed, *Micron II* requires the *spoliator* to show that “all the documents

destroyed were either redundant or **irrelevant.**” 2011 WL 1815975 at \*14 (emphasis added).

After *Micron II*, there is no longer any question that the ALJ erred in placing the burden on NVIDIA to show it suffered prejudice from Rambus’s unlawful document destruction. Once the ALJ found that Rambus spoliated documents in bad faith, the burden should have been on Rambus to prove that the destruction did not matter. As a matter of equity and law, the decision below cannot, and should not, stand a moment longer.

**2. *Micron II* confirms that Rambus cannot meet its “heavy burden” of showing no prejudice to NVIDIA and its customers from the spoliation.**

Rambus cannot meet its “heavy burden” of proving a lack of prejudice to NVIDIA and its customers.

*Micron II* recognizes that a “bad faith” determination is “largely” determinative of the question of prejudice. 2011 WL 1815975 at \*14. The bad faith spoliator must show “that **all** the documents destroyed were either redundant or irrelevant” to this case. *Id.* (emphasis added). This Court can and should rule that Rambus cannot meet its “heavy burden” of showing no prejudice to NVIDIA and its customers because

the undisputed record permits no other conclusion. *Cf. Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2070-71 (2011)

(announcing a new substantive standard and applying that standard to the undisputed record).

Rambus cannot show that all the documents destroyed were either redundant or irrelevant because no one knows what was destroyed.

The ALJ found that Rambus destroyed 1,180 boxes of documents.

Ad169. And as the ALJ noted, “[t]here was no evidence that Rambus separated the background paperwork for each family of patents, **and there is no evidence that Rambus inventoried what was destroyed.**” Ad169 (emphasis added). “Thus,” the ALJ concluded, “the evidence that was destroyed by Rambus is as likely to have applied to any or all of its patents as it relates to a specific family or relates back to a particular application.” *Id.*

In placing the burden of proof on the wrong party, the ALJ wrote that “there was no evidence or testimony that the evidence that was destroyed would have supported any [of] Respondent’s claims or defenses.” Ad182. But the ALJ also acknowledged, for example, that Rambus’s outside counsel “did indeed purge some patent files,” stating

that “it is not clear what, if anything, he purged from the Barth I Patent files and whether it prejudiced Respondents.” Ad171. Under *Micron II*, any such doubts regarding prejudice must be resolved against Rambus.

Furthermore, Rambus cannot meet its burden because NVIDIA affirmatively proved that certain unique and relevant documents were destroyed. *See* NOB64-65. For example, NVIDIA explained (at 64) that access to the [REDACTED] that Barth maintained could have helped demonstrate that the Barth I patents “would have been obvious to a person of ordinary skill in the art,” *Neupak, Inc. v. Ideal Mfg. and Sales Corp.*, 41 F. App’x 435, 440 (Fed. Cir. 2002). Rambus and the ITC claim that the tree was “preserved and produced.” RAB19; IAB53. The record establishes otherwise.

Barth testified that he would be [REDACTED]  
[REDACTED] (A11421), that [REDACTED]  
[REDACTED]  
[REDACTED] (A11411), and that the [REDACTED]  
[REDACTED] (A11412). The document that Rambus and the ITC cite (A14675-76) does not mention any of the Barth patents, contains neither a description of claims nor a substantive discussion of the



contents of any claim or patent, and is typewritten on a word processor (in the form of an outline) with only a few scribbled notes.<sup>14</sup>

Rambus asserts that “other Barth documents were preserved and produced,” pointing to the Barth inventors’ lab notebooks. RAB19; *see also* IAB53. That does not establish that Barth’s files were not purged. Rambus specifically directed its employees to retain notebooks and other select documents on which it based its inventorship claims (A30800), but to destroy documents Rambus’s litigation targets could rely on to dispute its claims (A10739). *Accord Micron II*, 2011 WL 1815975 at \*8 (“employees were instructed to look for helpful documents to keep”).

As to the purging of outside counsel’s files (NOB65), Rambus relies primarily on testimony by Joe Moniz, Senior Manager for Intellectual Property, for the proposition that it received “complete” files from Lester Vincent in 1999. RAB18. *See also* IAB53 (relying on same

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<sup>14</sup> In light of Barth’s testimony, NVIDIA discussed the destruction of the conceptual tree and other Barth files in its post-hearing brief (A13418-19) as support for a contention already identified in its pre-hearing brief (A8999-9001). That was not “untimely” (RAB49), but rather entirely proper under the ALJ’s Ground Rule 11.1. *See* A60152.

evidence). But as the ALJ properly held, Moniz's testimony regarding the completeness of the files is not credible given that he had no knowledge of what the files originally looked like. Ad171; *see also* A11602. The destroyed outside counsel's files could have helped NVIDIA demonstrate that the Farmwald patents rendered the Barth I patents obvious.

**3. The Court should order dismissal because it is the only appropriate sanction for Rambus's prejudicial bad faith spoliation.**

The ALJ's legal error in this case at the very least warrants a remand to the ITC for proceedings consistent with *Micron II*. In *Hynix*, this Court vacated the district court's findings and conclusions regarding Rambus's document destruction and remanded for reconsideration under the "framework" set forth in *Micron II*. 2011 WL 1815978 at \*8. And in *Micron II*, the court affirmed the finding that Rambus engaged in spoliation, but remanded for the court to more "fully explain" its conclusion that Rambus destroyed evidence in bad faith. *Micron II*, 2011 WL 1815975 at \*12.

If the Court likewise remands here, it should vacate the limited exclusion order. *See Epistar Corp. v. ITC*, 566 F.3d 1321, 1338 (Fed.

Cir. 2009) (vacating limited exclusion order and remanding to ITC after intervening decision); *Jazz Photo Corp. v. ITC*, 264 F.3d 1094, 1098-99 (Fed. Cir. 2001) (reversing judgment and vacating related limited exclusion order); *Lucky Litter LLC v. ITC*, 403 F. App'x 490, 496 (Fed. Cir. 2010) (reversing ITC determination of a violation and vacating related exclusion and cease-and-desist orders).

Because the ALJ's opinion is more comprehensive than the *Micron II* district court opinion, however, a remand for reconsideration is not necessary. The *Micron II* court advised that “[i]f ... there was bad faith and prejudice, the record evidence may indeed justify a dispositive sanction [against Rambus].” 2011 WL 1815975 at \*16. Unlike the district court in *Micron II*, the ALJ here properly set forth the evidence supporting the bad faith finding. Ad178-180. Thus, there is no need for reconsideration of that question.

Given the scale of Rambus's document destruction, along with the fact that no one knows “the precise contours of the destroyed documents,” *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 135 (S.D. Fla. 1987), any sanction short of dismissal (for example, an adverse inference) would necessarily have to be so broad as to “compel a

verdict against the spoliator,” Jamie S. Gorelick et al., *Destruction of Evidence* § 3.16 at 122 (1989). Notably, both the *Micron II* district court and another district court, see *Samsung Elecs. Co. v. Rambus Inc.*, 439 F. Supp. 2d 524 (E.D. Va. 2006), saw fit to impose dispositive sanctions on Rambus.

An order dismissing this action is the only remedy that will “avoid substantial unfairness” to NVIDIA and its customers and “serve to deter such conduct by others,” including Rambus itself, “in the future.” *Micron II*, 2011 WL 1815975 at \*15 (citations and quotations omitted).

The Court should remand with instructions to dismiss the complaint.

#### **4. *Micron II* and *Hynix* foreclose Rambus’s remaining arguments.**

Recognizing that the ALJ’s decision not to dismiss the action due to Rambus’s spoliation depended solely on his (erroneous) burden allocation, Rambus makes a series of meritless criticisms of the balance of the ALJ’s decision.

Rambus argues that the duty to preserve documents arose when litigation “became ‘probable’” (RAB54-55), but that argument was expressly rejected in *Micron II* and *Hynix*. Compare Ad165-69 (finding

spoliation) *with Micron II*, 2011 WL 1815975 at \*2-4, 10 and *Hynix*, 2011 WL 1815978 at \*8 (same record that was before the ALJ “compel[s] a finding that litigation was reasonably foreseeable”); *Hynix*, 2011 1815978 at \*8 (rejecting “probable” standard).<sup>15</sup>

Rambus also recites a laundry list of purported factual distinctions between this litigation and *Micron II* and *Hynix*. RAB49, 54, 56, 57. But as the ALJ found, “JEDEC standards and the patents in both families deal with the broad topic of dynamic memory, and the chips (DRAM) used in data transfer.” Ad161. Thus, “[i]t did not matter whether [Rambus] had NVIDIA, Micron or Hynix in mind. The evidence [it] destroyed applied to Rambus’s patents and would be the same regardless of the name [it] wrote on the complaint.” Ad180. *See also* Ad181 (“[T]here is no statute or case that would require that Rambus have a specific party in mind to trigger the duty to preserve evidence.”); *Infineon*, 222 F.R.D. at 295 n.31 (same).

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<sup>15</sup> Other courts have likewise found spoliation by Rambus based on the same evidence presented in this case. *See Samsung*, 439 F. Supp. 2d at 538-39, 543-53; *Rambus Inc. v. Infineon Techs. AG*, 222 F.R.D. 280, 286, 290-94 (E.D. Va. 2004).

Rambus highlights a 1998 RDRAM license agreement with NVIDIA as support for its argument that it did not foresee litigation against NVIDIA when it destroyed documents (RAB3, 4, 20), but the ALJ made no mention of that agreement and presumably found it irrelevant. *See generally* Ad62-198. Moreover, *Micron II* explained that Rambus’s plot was to acquire licensing revenues from its RDRAM technology even while planning to sue those “same parties” for the production of standardized technology. *Micron II*, 2011 WL 1815975 at \*3. As early as 1994, Rambus had decided to take [REDACTED] [REDACTED] and thus launched [REDACTED] [REDACTED] based on [REDACTED] NOB11-12 (quoting A23533). And by the summer of 1999, Rambus intended to sue controller manufacturers such as NVIDIA. *See, e.g.*, A23291;A23406;A52162. Here, as with the semiconductor manufacturers in *Micron II* and *Hynix*, Rambus “did not have a longstanding and mutually beneficial relationship” with NVIDIA. *Micron II*, 2011 WL 1815975 at \*11.<sup>16</sup>

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<sup>16</sup> Rambus’s sporadic business overtures from 2000-2004 were simply an

**V. THE EXCLUSION ORDER MUST BE MODIFIED TO ELIMINATE PRODUCTS WITH SAMSUNG SDRAM**

The ITC's order barring NVIDIA and its customers from importing "memory controller products and products incorporating a memory controller that are covered" by the Barth I patents (Ad203) must, at a minimum, be modified to exclude memory controller products that include Samsung SDRAM. Rambus does not deny that Samsung paid \$900 million for a worldwide license. *See* NOB70.<sup>17</sup> The Samsung license was the initial sale of the patented Barth I method and thus Rambus "received [its] reward," *United States v. Masonite Corp.*, 316 U.S. 265, 278 (1942), thereby "exhaust[ing]" all its patent rights to the invention. *See Quanta Computer, Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 631 (2008).

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attempt to have its NVIDIA cake and sue it too. For example, Rambus's CEO advised the executive board on June 23, 2000, that Rambus should [REDACTED] A52222-23 (emphasis added). *See also* A11590-91;A11592;A13268-69;A23149;A23627-29.

<sup>17</sup> Rambus also concedes that the Samsung agreement was signed "after trial." RAB60. NVIDIA could not possibly have "abandoned" (*id.*) an argument premised on that agreement.

The Samsung DRAM embody the “essential features” of the Barth I patents. Rambus is wrong to suggest otherwise (at 60-61) by asserting that the Barth I patents pertain to memory controllers while the Samsung license pertains to memory devices. The asserted “claims refer to a memory device” (RAB6) and do not refer to a memory controller. *See, e.g.*, Ad383-384 (“353 claims 1, 11, 19). Indeed, Rambus continues to argue (at 6), and the ALJ found (Ad71;Ad93;Ad160-61), that the asserted claims are method patents focused on the interface between controllers and memory devices compliant with JEDEC industry standards. Thus, while, for example, the memory controllers provide the start and terminate signal, the DRAM must be configured in a particular fashion to receive the start and terminate signal. Rambus seeks to be paid twice for the same invention—an invention that involves the sending and receipt of start and terminate signals.

Similarly, Rambus’s argument that the license precluded the use of its method with third party controllers fails. In *Quanta*, the Supreme Court held that patent exhaustion applied notwithstanding that the license “specifically disclaimed any license to third parties to practice the patents by combining licensed products with other components”



because “exhaustion turns only on [licensee’s] own license to sell products practicing the [patentee’s] patents.” 553 U.S. at 637.

Moreover, Rambus’s license expressly states that [REDACTED]

[REDACTED] A25209.

Rambus also authorized the sale of the Barth I patents methods to Samsung. This Court recently held that patent exhaustion applies where “as in *Quanta*, [patentee’s] licensees were **authorized** to sell the accused products” via “an unconditional grant of a license ‘to sell ... and/or offer for sale’ the accused products.” *Tessera, Inc. v. ITC*, \_\_ F.3d \_\_, 2011 WL 1944067, at \*11 (Fed. Cir. May 23, 2011) (emphasis added); *see also id.* (the “fundamental purpose of patent exhaustion” is “to prohibit postsale restrictions on the use of a patented article”). Here, Rambus licensed Samsung to sell products that practiced the patented Barth I method. That license grant constituted “a relinquishment of the patent monopoly with respect to the article sold.” *Quanta*, 553 U.S. at 631.

*Fujifilm Corp. v. Benun*, 605 F.3d 1366 (Fed. Cir. 2010) does not change the analysis. *Fujifilm* did not involve an express transfer of

“worldwide” rights under U.S. patents. Here, unlike the patentee in *Fujifilm*, Rambus expressly relinquished its U.S. monopoly by authorizing Samsung to practice the Barth I patents in this country. Whether Samsung chooses to exercise that authorization is beside the point. In any event, any domestic sale requirement would be unwarranted. *See* NOB72.

### **CONCLUSION**

The ITC’s decision should be reversed, the exclusion order vacated, and the complaint ordered dismissed.



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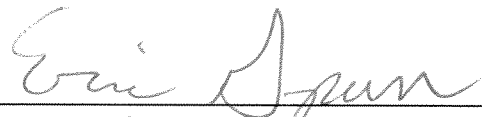
## DECLARATION OF AUTHORITY OF ERIC GRUNSPAN

1. I am an employee of the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for NVIDIA Corporation, in the above-entitled actions. I make this declaration pursuant to Federal Circuit Rule 47.3(d) and 28 U.S. Code Section 1746.

2. I am authorized to sign the foregoing Reply Brief of Appellants NVIDIA Corporation et al. on behalf of Ruffin Cordell, attorney of record for Asustek Computer Inc., et al. in these actions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 16, 2011  
Washington, D.C.



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Eric Grunspan

## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this 16th day of June, 2011, two copies of the Confidential Reply Brief of Appellants NVIDIA Corporation et. al. and two copies of the Non-Confidential Reply Brief of Appellants NVIDIA Corporation et. al. were served by Federal Express to the following:

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I also certify pursuant to Fed. R. App. P. 25(a)(2)(B)(ii) and Fed. Cir. R. 31(b) that on this 16th day of June, 2011, 12 copies of the Confidential Reply Brief of Appellants NVIDIA Corporation et. al.,

including the original, and 5 copies of the Non-Confidential Reply Brief of Appellants NVIDIA Corporation et. al., including the original, were filed by hand delivery to the Clerk of the Court for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark S. Davies', is written over a solid horizontal line.

Mark S. Davies

**CERTIFICATE OF COMPLIANCE  
(NO. 2010-1556, 2010-1557)**

Counsel for Appellant and Intervenor NVIDIA Corporation certifies that the brief contained herein has a proportionally spaced 14-point typeface, and contains 6,978 words, based on the "Word Count" feature of Microsoft Word, including footnotes and endnotes. Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Federal Circuit Rule 32(b), this word count does not include the words contained in the Certificate of Interest, Certificate of Filing and Service, Table of Contents, and Table of Authorities.

Dated: June 16, 2011

Respectfully submitted,



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Mark S. Davies