**Re: Deleware........**
ScruffyNYC:

It was good to see you in Delaware.

I figured that I would pick up after the lunch break since you covered what happened before lunch.

After lunch Rambus had their expert witness on document retention on the stand -- Mr. Montana (? spelling).

Mr. Montana comes across as very self assured and he appears quite intelligent. Montana wasn't questioned by Stone -- he was questioned by another Rambus attorney who I haven't seen speak before -- since I walked in a minute or two late after lunch, I didn't get the attorney's name. But anyway, these guys have their particular specialties and Stone doesn't handle everything.

When being interviewed by Rambus, Mr. Montana did extremely well. When Micron's Price got a hold of him, Price tried to rattle him -- which is Price's "pit bull" tactic. Price is just doing his job trying to make a great Rambus witness look vulnerable. At one point Price got feisty and asked "do you know the difference between being an expert witness and being an advocate?" Of course Mr. Montana said "Yes."

Anyway, when Montana was in Rambus's hands, he was asked very basic questions about document retention policies. For example, was there anything unusual about Rambus's document retention policy and Montanta said that it was "very typical, unexceptional in every respect."

Mr. Montanta testified that Rambus kept back up tapes for three months and this was conservative -- companies usually keep them for shorter periods. He explained the purpose of back up tapes are for purposes such as disaster recovery. It was explained that Rambus kept their archive tapes permanently and that policy did not change.

Montana went on to explain that pursuant to a document retention policy that it's OK to discard unimportant email. He said the key to email is to make a sound judgment as to what it says. Just like regular mail, Montana explained that you can treat junk email like junk mail -- discard it. But he also said that you should separate out valuable email or save a hard copy of the important email. He went on to say that "looking for things to keep" and "reasons to keep it" may not have been the best advice for "pack rats" like Rambus engineers but only because it will cause them to keep more junk. But he also went on to say that at the end of the day it's sound (but not completely necessary) advice. Also, he said that final execution copies of all contracts should be kept indefinitely.

Getting to the shred day of 1998 (September 3, 1998). Montana said it's not uncommon for companies to have shred days -- or a full office clean out day -- some may do it on a Saturday. He also said that it's common to have a shred day when you're first implementing a document retention policy. He said the 200 bags and 400 legal size boxes of Rambus's shredded documents was not exceptional. Montanta went on to say reams of the engineer's computer print outs that were laying around for years (some 4 to 6

feet high) were discarded along with old phone books and old trade magazines were typical types of documents to shred -- which is what Rambus says was shredded.

With regard to shred day of 1999 (August of 1999) Montana went on to say that an annual shred day is quite typical. He also said that he did not know of any evidence that Rambus did not follow their document retention policy when carrying out their shred days. With regard to keeping a log of discarded documents, he said it's impractical to log every piece of paper, so it's not exception to have not kept a log.

With regard to a litigation hold, Montana said it's his experience that there needs to be an actual opponent or an actual dispute. The negotiations leading up to the dispute must have clearly broken down. This is what Rambus is claiming with Hitachi, when Joel Karp was on the stand he said that there were letters back and forth and an actual meeting took place in Japan on or around November 15, 1999. Karp said it was a well attended meeting by Hitachi engineers and executives and Karp thought it went well. Karp thought went things went well because it was a well attended meeting and Rambus put forth a solid presentation as to the importance / scope of their technology with solid patent coverage. But once Rambus got back to the USA, things got very quiet on Hitachi's part despite Rambus's request to meet monthly before they left Japan. Once communications fell completely silent, Rambus sued Hitachi in January of 2000. The litigation hold was put in place (in December of 1999 or maybe late Nov -- see Judge Whyte finding of fact #102 in his Jan 2006 decision) before the suit was filed. This was when it became clear to Rambus that litigation was more likely than not. This was all backed up by Rambus's expert Montana as being proper procedure.

Montana went on to say that for many companies litigation is always possible -- particularly companies like Rambus. However, being in a state of perpetual litigation hold would put Rambus in an "impossible situation." It would put an enormous drain on the organization to live in that state and it would result in a "guessing game in which there is no end." So, to put all records on indefinite hold with litigation being only a possibility, it would be extremely burdensome -- and as I said in my post yesterday, it would be ridiculous. I am glad we heard this from Montana. Moreover, I am glad that he was allowed to testify because to the best of my knowledge Judge Whyte did not allow for this type of expert in the Hynix unclean hands / spoliation trial. This gives us a glimpse into Judge Robinson's fairness -- to both sides. In my view, she doesn't appear to favor either party.

Before Price cross examined Montana, Montana made a point of saying that in this case Micron sued Rambus and there was no notice of the lawsuit. But since Hynix sued Rambus just a few days before, Rambus correctly had a litigation hold in place after that suit was filed against them. In sum he said what Rambus did was consistent with industry practices and he did not see any evidence that Rambus violated the hold(s) once put in place.

Now, as you can imagine, Micron's Price probably didn't feel too good at this point. So he puts on his "pit bull" cap.
But just before he did he said something to the effect that the purpose of an expert witness is to be objective. He alluded to the fact that their (Micron's) expert witnesses are all top grade & ethical. But he also said something to the effect that they don't need any in this trial anyway. I can tell that Judge

Robinson got a kick out of that. She smiled and rolled her eyes somewhat and she had it written all over her face the look incredulity that Micron would only hire an expert witness that is completely 100% objective. In my view, Price said something silly because Judge Robinson knew that there probably is no such thing as a completely 100% objective expert witness. This really wasn't that big of a deal but I just wanted to point it out. It's one of the few times that I've seen Judge Robinson show much emotion -- she can be tough to read and she probably likes it that way.

Anyway, Price gets into some line of questioning where he asks Montana if he understands the difference between being an advocate and being an expert? Of course Montana said yes. Also, I got a bit nervous when Price though he caught Montana in an inconsistency / lie. Montana said he had advised companies on litigation holds before. But in his summer of 2006 deposition, he said he did not. Price played this part of the videotape to show what Montana said in 2006. However, Montana fixed that by saying that in the subsequent sixteen or so months, he has advised companies on litigation holds. Also, Rambus drove this point home in their final cross -- so they patched that up.

At one point I was a bit surprised that Montata mixed it up a bit with Price. Price tries to rattle is witnesses and he's pretty good at it. But I took Montana as the type of guy that doesn't like to rattle and he accepted Price's challenges. What I mean by this is that I thought these guys were supposed to offer brief answers. But Price threw out some hypothetical bait that Montana took. For example, Price was throwing some things out that were already listed on page 33 of the actual doc of Judge Whyte's Jan of 2006 decision (so they are not new or smoking guns) like high royalty rates pushing Rambus into litigation quickly, manufactures might tell Rambus to "pound sand" if the royalty rate is 5%, or Rambus acknowledging in internal memos that litigation was possible to put the DRAM manufacurs on notice -- also check Judge Whyte page 13 of the actual doc where it says Rambus might have to sign an agreement with an industry powerhouse or "win in court" to get respect for their IP:

**http://investor.rambus.com/downloads/Uncleanhandspdf.pdf**

Price got in Montana's face (not literally, the attorneys stay at the podium with a microphone) and basically said how can this not be anticipation litigation and how could litigation not be more likely than not under these circumstances? Montana got into a somewhat long winded answer that basically said well the rate would have to be so prohibitively high with the express intent to "bait" the opponent into a lawsuit while they were concealing their true intent to never negotiate then, in his view, litigation would be more likely than not or probable -- which obviously trancends possible. I thought he took some "poetic license" here and I was trying to see Stone & company's reaction but I didn't see much. But I think he did a good job nevertheless. I thought that he used his articulate intellect (which he has) to give some good answers to Price.

I don't want to run on too much more because it's been a long day. But quickly, the next item up was Cooley Godward. This is when we went to the videotape. I must admit, I got quite bored with these videotaped depositions being shown and at some points deposition transcripts were read aloud to Judge Robinson. For example, Diane Savage (a Cooley attorney) was shown on video as well as having her transcript read. I guss that Micron must get this stuff on the record just like it's on Judge Whyte's record.

In fact, the HTX case numbers even match (ie HTX 395). So, I won't do Judge Whyte's work twice like Micron must. Of course, Micron is doing the work twice with the **explicit** hope of obtaining a **different result**. So, just go to the above link and start on page 7 of the actual doc if you want to know about Cooley Godward and Diane Savage and John Girvin and Dan Johnson and Mr. Leal and their meetings with Rambus -- it's all there.

The last item today were Rambus's CEO's Geoff Tate's videotaped depositions. I think there were something like 10 separate ones. Most are from the first two Infineon suits in 2001 and 2004, one is from Micron in 2001, one is from the FTC in 2003, one is from Hynix in 2005 and the last one is from a Micron deposition in July of 2006.

They started to play Tate videotapes and they will continue on Tuesday at 9 AM (a half hour earlier than usual). I'll just say that I felt like I was back in Payne's courtoom with the points they were trying to make. This horse has been beaten so many times, I'm tired of it. I can't wait until we get to Rambu's real affirmative defenses in Calforina (which is something new & powerful) instead of Micron re-trying the same stuff with the hope of a different result.

I'll end the evening by saying that, in my view, Judge Robinson would have to be like Payne or incredibly naive to fall for it. I think she is neither.

PS:

Excuse any long winded sentences or ramblings. It's been a long day and rest is more appealing to me than proofreading right now and I'd like to post this tonight, not tomorrow.