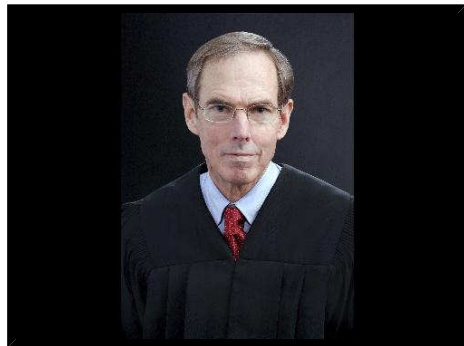




## Hynix Might Pay \$51 Million to Rambus for U.S. Access (Update3)

By Joel Rosenblatt



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July 15 (Bloomberg) -- **Hynix Semiconductor Inc.**, the world's second-largest maker of memory chips, might be forced to pay more than \$51 million a year, or 11 cents a share, to **Rambus Inc.** rather than be barred from its \$1.2 billion computer-chip market in the U.S. by a federal judge in California.

If Hynix gives in, larger competitor **Samsung Electronics Co.** and **Micron Technology Inc.** -- both in similar patent-infringement suits with Rambus -- probably won't be far behind, according to **James Hopenfeld**, a patent lawyer at Ropes and Gray in Washington. Rambus, based in Los Altos, California, is a **designer** and licensor of chips used in such products as Sony Corp.'s **PlayStation** video game.

"This is going to be a bellwether" decision, Hopenfeld said. "There's a strong likelihood the other cases will follow, but it's not guaranteed because there could be differences in the facts."

Prospects of a settlement were elevated after Rambus asked U.S. District Judge **Ronald Whyte** last month to block Ichon, South Korea-based Hynix from selling dynamic random access memory, or DRAM, chips in the U.S. The judge is likely to grant an injunction, the most severe punishment in such a suit, given that a jury ruled in a previous trial that Hynix illegally used Rambus's patent designs, said patent attorney **Robert Sterne**.

Rambus has "a better than 50 percent chance" of getting a court order, said Sterne, a partner in Sterne, Kessler, Goldstein & Fox in Washington. "I don't see any reason why a judge wouldn't grant an injunction."

### BlackBerry Suit

In a comparable case, **Research in Motion Ltd.** agreed in 2006 to pay NTP Inc., an Arlington, Virginia-based patent company, \$612.5 million because a judge was likely to shut down its BlackBerry e-mail service in the U.S., said Sterne, who isn't involved in the Rambus suits.

"Injunctions force resolution, every time," he said.

Hynix's **U.S.** DRAM sales last year were \$1.2 billion, according to the El Segundo, California-based research firm **iSuppli Corp.** In a settlement, Rambus might charge royalties of 4.25 percent to 7 percent of sales, according to court papers. That would mean annual payments by Hynix of \$51 million to \$84 million.

The lower rate is what Whyte used to set damages in a previous phase of the case and is based on Rambus's royalties from Hitachi Ltd. for an earlier version of DRAM. Seven percent is the top rate Rambus proposed to the court as appropriate for Hynix's use of its technology.

Besides banning Hynix sales, the judge can also order the company to buy a license from **Rambus** at a rate he sets or force the parties to arrive at one, said Ropes and Gray's Hopenfeld.

### Hynix Statement

It's unlikely Whyte will issue an injunction, Hynix said in an e-mailed statement. He should deny Rambus's request because the California company makes no product, Hynix said, vowing to appeal any court order against it.

Last week, the South Korean chipmaker asked Whyte to consider a decision by the U.S. Patent and Trademark Office to review four Rambus patents at issue in the Hynix case. Hynix is using the review -- originally requested by Samsung Electronics, another defendant facing a Rambus suit in Whyte's court -- to argue that an injunction is "inappropriate" because the agency or an appeals court might later invalidate the Rambus patents.

Hynix's request "probably won't make too much of a difference," Hopenfeld said. Whyte has a jury verdict that Rambus's patents are valid and infringed, while the "outcome of the re-examination is still a ways away."

### Judge's Remarks

At a June 24 hearing, Whyte said Rambus made a "fairly persuasive argument that it has been and will be irreparably

harmful in future competition" without an injunction barring sales of DDR3. Rambus claimed -- and a jury agreed -- that DDR3 used the designer's most recent technologies for speeding information flow in computers, called XDR and XDR2 chips.

The judge didn't immediately address DDR2, which has a 79 percent share of the current market, according to iSuppli.

Whyte is ``looking at this on a product-by-product basis, and he's looking very carefully at this issue of irreparable harm," Hopenfeld said. ``If the judge thinks a given product is going to pose competitive risks to Rambus's products, even if they're just designing products, that's going to weigh powerfully in favor of an injunction."

Hynix is the first of four chipmakers to end a Rambus patent suit in Whyte's court over memory. Those remaining are Samsung, based in Suwon, South Korea; Micron, of Boise, Idaho; and **Nanya Technology Corp.**, based in Taiwan.

#### Balance of Supply

After working its way through a two-year glut of memory chips, the industry is approaching a balance of supply and demand that might be disrupted by an injunction, said **Bob Merritt**, a vice president at **Semico Research Corp.**, a Phoenix-based semiconductor consulting company. Computer makers such as Dell Inc. might face shortages, he said. Dell spokesman **Jess Blackburn** declined to comment.

``Whatever applies to Hynix is going to have some sort of impact on all the manufacturers, so this is not just a Hynix issue," Merritt said. ``Hynix just happens to be the first one up."

It would be difficult to win an appeal of any decision Whyte makes, Hopenfeld said.

``He is one of the most highly regarded district court judges in the country when it comes to experience with patent cases," the lawyer said.

**Rambus** rose 27 cents, or 1.6 percent, to \$16.73 in Nasdaq Stock Market composite trading. Hynix fell 1,050 won, or 4.5 percent, to 22,150 won in Seoul trading today.

The case is Hynix Semiconductor Inc. v. Rambus Inc., 00-cv- 20905, U.S. District Court, Northern District of California (San Jose).

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