

Bob's Byte on Rambus Dispute

Written by Bob Snyder
13 February 2008



Supposing David made a slingshot. Instead of shooting at Goliath, he sat with the tribal council and the council all agreed Goliath and his brothers should build slingshots based on David's model. Goliath and his brothers loved it, and each armed himself, and they engaged in 8 years of war using the slingshot as the main weapon.

In the middle of the latest war, David tells Goliath and his brothers that the slingshot was patent-protected and Goliath and his brothers have to pay up. Not only for the current war but for all the wars in which they used slingshots.

Goliath argues, "You didn't tell me about the patents, about having to pay you." David responds, "What, you didn't know that this technology wasn't free? Of course, it's not free."

Goliath's brother Sam paid the royalties. But Goliath and two other brothers wouldn't pay. They came before the judge to argue their cases. Goliath said, "He should have told me he was going to charge me. He sat in on meetings with the tribe and we all made suggestions for an industry standard product."

David argued, "They just invited me in those meetings to see if I was dumb enough to make a public disclosure. Sure, I sat and watched while Goliath and his brothers used the council as a way to build their own standard using the best parts of my design. Now I want what is due me for my innovation."

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That's the fable of Rambus. And many industries have now changed the procedures of their standards bodies to avoid Rambus-like situations.

Founded by two university professors in 1990, Rambus is a Los Altos firm that figured out how turbo-charge computer memory chips

In the U.S. District Court in San Jose, a jury began hearing a case that will determine whether Rambus gets hundreds of millions (maybe billions!) of dollars from giant memory companies.

Hynix Semiconductor, Micron Technology and Nanya Technology argue Rambus deliberately and fraudulently misled the industry in the 1990s when the company participated in deliberations over standards for dramatically faster memory chips.

As standard discussions at the Joint Electron Device Engineering Council were going on, Rambus repeatedly did not disclose it was filing patent claims on six technologies to be adopted into SDRAM and DDR chip standards.

Geoff Tate, Rambus' CEO at the time, directed this strategy, ordering people in his company: "Do ***NOT*** tell customers/partners that we feel DDR may infringe - our leverage is better to wait."

When it was too late for the industry to change designs, Rambus revealed its patents and demands for payment. Rambus even named its strategy, "Lexington: The Shot Heard Around the World," referring to the first battle of the American Revolution.

Micron and memory makers call it "a patent trap." Rambus claims it didn't mislead anyone because the outlines of its patent claims were public in 1991. Because all of these inventions were known to everyone in the industry (many memory makers had signed NDAs), Rambus argues "These companies had a choice. They could have made their own inventions."

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Rambus admits it did not tell JEDEC about all of its patent activities, but the company wasn't legally obliged to do so. And Rambus wanted to be careful about how it delivered its claims against the powerful companies who could break or circumvent patents.

And on that point, sympathy swings to David. Remember these big memory companies are nasty. You don't get to stay alive in the cyclical memory business by being "nice." And these companies were caught red-handed in a price-fixing scandal. If Rambus had declared their patent issues, these large memory companies would have fought to avoid paying. Even to the detriment of the entire industry.

In fact, Rambus has another suit that says these guys torpedoed RDDRAM. Even to the point of buying a Toshiba factory and closing it to influence the market.

Rambus finally started seeking royalties in 2000, half the industry agreed to pay; the other half decided to fight. For the last eight years, Rambus has been embroiled in constant litigation about the validity of its patents and its actions at JEDEC.

Fortune ran an article that suggested Rambus even took notes in the standards meetings to help direct their patent filings. Other articles protest that the Goliaths would have swallowed David if the truth was transparent.

Listening to both sides, you'd have to say that the line between unethical and illegal is not a distinct line. And that's why it is so hard to judge these cases.

A columnist for the Mercury News had it right when he said, "Memory chips are made in clean rooms, but the business is grubby all around. "

For [Goliath's point of view](#)

For [David's point of view](#)