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### **AMERICAN ANTITRUST INSTITUTE FILES BRIEF OPPOSING RAMBUS DECISION**

(Washington, DC) The American Antitrust Institute (AAI) filed a motion today in the United States Court of Appeals for the District of Columbia Circuit to support the Federal Trade Commission (FTC) in seeking rehearing urge rehearing and reconsideration of the April 2008 decision in the long-running Rambus case.

“Rambus’ conduct was patent ambush, securing a monopoly through deception,” said Albert Foer, President of the AAI. “Rambus’ conduct will result in consumers paying more for the memory products that are essential to operation of every computer.”

The AAI has been fighting the decision of a three judge panel that reversed the FTC decision holding that Rambus had violated Section 2 of the Sherman Act by seeking royalties after failing to abide with the rules of a standard setting body. In a May 13 letter to the FTC, the AAI said that the D.C. Circuit panel was wrong in its recent Rambus decision overturning the FTC, and urged that the FTC seek an en banc rehearing

In the motion and accompanying brief that were authored by volunteer attorney David Balto on behalf of the AAI, the Consumer Federation of America, and the Public Patent Foundation, the parties argue that the panel’s decision is inconsistent with the D.C. Circuit’s seminal decision in *U.S. v. Microsoft*. The AAI believes the panel’s decision fails to recognize the core Section 2 principle that the acquisition of monopoly power by illegitimate means unrelated to superior skill, industry, or foresight is – and ought to continue to be—a violation of the federal antitrust laws. In this case the court created a new rule that would make it nearly impossible to challenge deceptive conduct by a monopolist.

The AAI brief argues substantial consumer harm will occur if the panel's decision is not reviewed. The FTC’s enforcement against deceptive manipulation of standard setting has brought substantial benefits to consumers in the past. The FTC’s case against Unocal for abuse of standard setting for a key gasoline additive saves California consumers 5 cents a gallon or more than \$500 million a year. Under the panel's decision, however, challenging this conduct by Unocal might have been impossible.

“There can be no doubt that the deception engaged in by Rambus should not receive any special solicitude under the antitrust laws,” said Foer. “If this decision stands, it will encourage deception

and other conduct detrimental to the standard-setting process which will ultimately harm consumers and high tech companies that depend on a fair standard-setting process,” said Foer.

**About the American Antitrust Institute**

The American Antitrust Institute is an independent non-profit education, research and advocacy organization. Since its formation in 1998, the AAI’s mission has been to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy. To learn more about the AAI, please visit [www.antitrustinstitute.org](http://www.antitrustinstitute.org)

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