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**Patent Disclosure, Standard Settings and  
Antitrust Enforcement  
—A Preliminary Review on D.C. Circuit’s  
Ruling in Rambus v. FTC**

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Abstract

Standards allow products becoming interoperable as well as enhance the compatibility among products hence foster the innovation, efficiency and consumer choice. Standard setting through collaboratively activity such as standard setting organization (“SSO”) is commonly used in industry in the knowledge economy era; however, this process could raise unique antitrust concerns, such as “patent hold up.”

In April 22, 2008, U.S. D.C. Circuit Court in *Rambus v. Federal Trade Commission*, unanimously reversed the FTC’s August 2006 decision that Rambus had violated Section 5 of the Federal Trade Commission Act by failing to disclose intellectual property rights to a SSO. This case demonstrates the unique antitrust concerns and the complexity of patent hold up issues that might arise in collaboratively standard setting activities. This article discusses the background of this case, further review on D.C. Circuit’s holdings in this case, and argues that D.C. Circuit’s

rulings in this case should be reconsidered as it is inconsistent with the law and sound antitrust policy.

Keywords: antitrust, standard setting, patent hold up, patent disclosure