

## Case Summary

### Rambus, Inc. v. Infineon Techs. AG

222 F.R.D. 280 (D. Va., 2004)

#### **Document Retention Policy Must be Suspended When a Party Reasonably Anticipates Litigation**

In a patent infringement action, the defendant filed a motion to compel production of various documents including those related to the plaintiff's document retention policy. The defendant alleged that the plaintiff implemented a "document retention policy" which also provided a policy for the destruction of documents that would have been harmful in litigation. The plaintiff provided evidence of the defendant's "shred day", an event where employees shredded about two million documents as part of the defendant's document retention policy. The plaintiff argued that its motive was not to destroy potentially discoverable information and that the plaintiff was legitimately trying to reduce search and review costs.

#### **Decision**

The court held that when a party is aware of pending litigation, or should reasonably be able to anticipate pending litigation, it has a duty to suspend the destruction of documents that may be relevant to anticipated litigation. The firm also must suspend any routine document purging system that might be in effect; failure to do so would constitute spoliation. Furthermore, the court stated "even if a party's intentional destruction of documents was not in bad faith, it would be guilty of spoliation if it reasonably anticipated litigation when it did so." As a result, the court granted the defendant's motion and ordered the plaintiff to produce documents relating to its document retention policy.

Production of Electronic Documents  
Deletion of Electronic Documents