

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In Re INTEL CORPORATION	§	
MICROPROCESSOR ANTITRUST	§	
LITIGATION	§	
	§	
ADVANCED MICRO DEVICES, INC.	§	
and AMD INTERNATIONAL SALES	§	
& SERVICES, LTD.,	§	Ancillary Case No.1:08CV853-SS
	§	
Plaintiffs,	§	
	§	
v.	§	Case No. 05-441-JJF, MDL 05-1717-JJF
	§	
INTEL CORPORATION, AND	§	(District of Delaware)
INTEL KABUSHIKI KAISHA,	§	
	§	
Defendants.	§	

**SUPPLEMENT TO MOTION TO QUASH DEPOSITION SUBPOENAS
OR, ALTERNATIVELY, FOR A PROTECTIVE ORDER**

As the Court is aware, AMD is seeking to take multi-day depositions of six of Dell's high ranking current and former employees for purposes of litigation that is pending in the District of Delaware. Before it has even taken the depositions of all the key party witnesses, AMD has insisted that it must take extensive depositions of these non-party witnesses. Specifically, AMD has announced that it will depose Mr. Dell for 12 hours, Mr. Allen and Mr. Clark for 21 hours apiece, Mr. Luecke and Mr. Neeld for 14 hours apiece, and Mr. Rollins for 14 hours. (This does not include the time Intel or the Class Plaintiffs intend to take with these non-party witnesses).¹

Although Dell is not a party to the Delaware litigation, it has long cooperated in discovery in that matter. In the course of that discovery, AMD and Dell agreed that any subpoenas would be issued from the Western District of Texas, thus requiring any disputes over those subpoenas to be resolved in that district. This agreement—which was memorialized in a

¹ Class Plaintiffs have announced that they will depose each of these witnesses for an additional 2 hours. Intel intends to depose each of these witnesses for half of the total deposition time allotted to each witness.

Stipulation that was signed by the Delaware Court—is very important to Dell and affected the extent of the document collection and production that Dell was willing to agree to provide.

Last month, AMD repudiated that contractual agreement and took the extraordinary position that although it explicitly agreed to issue subpoenas out of the Western District of Texas, it did not agree to adjudicate any disputes relating to those subpoenas out of the Western District of Texas. Such an interpretation renders the agreed term a nullity—something that every contract must be interpreted to avoid.

AMD is now making every effort to have a Special Master in Delaware determine the enforceability of subpoenas issued from this district. The Special Master has facilitated AMD's efforts by repeatedly shortening the jurisdictional briefing schedule in an admitted attempt to deprive this Court of the opportunity to address the merits of the motion pending before it.² Dan Allen, Jeff Clarke, Alan Luecke, Jerele Neeld, and Michael Dell (collectively “the Dell Employees”) file this supplement to inform the Court about what has occurred since the motion to quash was filed and to place the motion in proper context with respect to the proceedings before the Special Master in Delaware.

I. Events Before the Filing of the Motion to Quash

In early November 2008, AMD served deposition subpoenas on the Dell Employees. In accordance with the parties' agreement, the subpoenas were issued from the Western District of Texas. AMD issued the subpoenas despite a long-running dispute over the length of the depositions. Counsel for AMD and Dell engaged in negotiations in an attempt to resolve the dispute.

² In his proposed order modifying the time for Dell to object to his report and recommendation, the Special Master announced that it was “further modif[ying] the suggestion [to the Delaware District Court] to truncate the time to take exceptions” because “the hearing on the Motion to Quash in the Western District of Texas is currently scheduled for December 5, 2008.” Exhibit 1 at 2 n.1.

On November 17, 2008, the Special Master held a telephonic hearing at AMD's request. *See Exhibit 2.*³ AMD announced for the first time at the hearing that an impasse had been reached about the subpoenas. *See id.* at 8, 16. AMD sought to have the Special Master resolve the merits of the dispute. Dell objected, arguing that the Delaware court lacked jurisdiction over the discovery dispute given the parties' agreement that the subpoenas would issue out of (and thus, have disputes about it resolved in) the Western District of Texas. *See id.* at 8. Dell also urged that the issue should be decided on full briefing rather than simply the argument of counsel during a conference call. *See id.* at 9.

The Special Master agreed to accept briefing on the jurisdictional issue and set out an extremely expedited schedule. He ordered Dell to serve its brief 4 days later on November 21 and AMD to respond no later than November 25. The Special Master indicated that he intended to render his decision no later than December 2 and scheduled a conference call for 2 pm that day. The Special Master further indicated that if he determined that he had jurisdiction, then Dell and AMD must file their briefs on the merits of the discovery dispute by December 4 and a hearing would be held on December 8. *See id.* at 17-19, 22-25.⁴

During the November 17 hearing, Dell indicated that, given AMD's position that further negotiation would be futile, Dell would likely file a motion to quash the subpoenas in Texas. *See id.* at 27. The Special Master instructed Dell to inform this Court about the pending proceeding in Delaware. *Id.* at 27-28. Counsel for Dell quickly agreed. *Id.* at 28 ("Absolutely, Your Honor. I would never want one Court not to know, which is why I wanted to tell you what was most likely going to happen in Texas.").

³ In the interest of efficiency, the Dell Employees have not included transcripts from all of the hearings before the Special Master. If the Court wants a complete set, however, the Dell Employees will promptly provide them.

⁴ The discovery deadline in the Delaware litigation is not until the end of April 2009.

On November 19, 2008, the Special Master issued an order memorializing the briefing schedule discussed during the November 17 hearing. *See* Exhibit 3. The following day, the Dell Employees filed their motion to quash in this Court.

II. Events Since the Filing of the Motion to Quash

AMD responded to Dell's properly filed motion to quash, on November 21, by immediately asking the Special Master to take steps to expedite further his previously issued briefing schedule so that he could reach the merits of the jurisdictional dispute before AMD was even required to respond to the motion to quash pending in this Court. *See* Exhibit 4. Specifically, AMD offered to file its jurisdictional brief contemporaneously with Dell's brief and encouraged the Special Master to move the December 2 hearing to a date before Thanksgiving. AMD also suggested that the District Court in Delaware contact this Court to request that the motion to quash be held in abeyance pending a determination on the jurisdictional issue.

The Special Master granted AMD's request and moved the hearing to November 25. During that hearing, the Special Master set a second hearing for Monday, December 1.

At the conclusion of the December 1 hearing, the Special Master announced his conclusion that the contractual stipulation between Dell and AMD did not permit disputes over the proper scope of subpoenas issued from the Western District of Texas to be adjudicated in that district. In the alternative, the Special Master concluded that if the stipulation could be interpreted that way, then it should be modified by the Delaware Court to require resolution of the discovery dispute in Delaware. The Special Master indicated that he would issue a written report and recommendation to that effect the following day. Although Federal Rule of Civil Procedure 53(f)(2) generally provides twenty days for a party to file objections to a Special Master's report and recommendation, the Special Master indicated that he would recommend to

the Delaware Court that Dell's time to object be drastically shortened to a mere 3 days. *See* Exhibit 5.

Later that afternoon, this Court issued an order setting the pending motion to quash for a hearing at 2 pm on December 5. Counsel for Dell approached counsel for AMD in an attempt to resolve this discovery dispute without the need to further involve this Court or the Special Master. Dell believed it had reached a tentative agreement on December 2. *See* Exhibit 7.

After Dell believed the agreement had been reached, but before it had been memorialized in writing, AMD sent an email to the Special Master to inform him about the hearing scheduled by this Court. *See* Exhibit 6. As he indicated he would during the December 1 hearing, the Special Master issued the promised report and recommendation the afternoon of December 2. *See* Exhibit 8. Instead of providing Dell with the 3 days it had indicated the day before, the Special Master now recommended that Dell be given only 2 days to file objections to the report and recommendation. *See* Exhibit 1. The Special Master stated that this abbreviated schedule was intended to preempt this Court from acting on the motion to quash. *Id.* at 2 n.1.

Although counsel for Dell approached counsel for AMD to attempt to finalize the tentative agreement that had been reached between in-house counsel earlier, no final agreement was reached.

CONCLUSION

In direct contravention of its contractual agreement with Dell, AMD has sought to litigate the scope of deposition subpoenas issued from the Western District of Texas before a Special Master in Delaware. Although the Special Master has made efforts to expedite its consideration of the issues, there has not yet been briefing on the merits of this discovery dispute in Delaware. The Dell Employees respectfully request that the Court address the merits of the dispute and quash the deposition subpoenas or, in the alternative, order the depositions to go forth at a

reasonable time and for a reasonable length consistent with the Federal Rules of Civil Procedure and the practices of the Western District of Texas.

Respectfully submitted:

RATLIFF LAW FIRM, P.L.L.C.

/s/ Shannon H. Ratliff

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MICHAEL DELL

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on this the 3rd day of December 2008 with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Thomas R. Jackson
Evan P. Singer
JONES DAY
2727 North Harwood Street
Dallas, Texas 75201

I hereby certify that a true and complete copy of the above and foregoing has also been sent by facsimile transmission and first-class mail, on this the 3rd day of December 2008, to the following:

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/s/ Shannon H. Ratliff
Shannon H. Ratliff

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE
INTEL CORPORATION
MICROPROCESSOR ANTITRUST
LITIGATION

MDL No. 1717-JJF

ADVANCED MICRO DEVICES, INC., a
Delaware Corporation, and AMD
INTERNATIONAL SALES & SERVICES,
LTD., a Delaware corporation,

Plaintiffs,

v.

C.A. No. 05-441-JJF

INTEL CORPORATION, a Delaware
Corporation, and INTEL KABUSHIKI
KAISHA, a Japanese corporation,

Defendants.

PHIL PAUL, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

C.A. No. 05-485-JJF

INTEL CORPORATION,

Defendants.

CONSOLIDATED

DM 20

**ORDER MODIFYING TIME FOR A PARTY TO FILE
OBJECTION TO, OR A MOTION TO ADOPT OR MODIFY
SPECIAL MASTER'S ORDER, REPORT AND RECOMMENDATIONS**

WHEREAS, the Special Master concludes that it is critically important for the depositions of current and former employees of Dell Inc. as more fully described in the Special Master's Report and Recommendation Regarding Threshold Jurisdiction Raised By Current and Former Employees of Non-Party Dell Inc. DM 20 to commence as soon as is practicable;

WHEREAS, consistent with this approach the Special Master believes that the time within which a party may pursuant to Fed. R. Civ. P. 53(f)(2) file objections to – or a motion to adopt or modify – the Special Master’s Report and Recommendation should be shortened;

WHEREAS, consistent with this approach, the Special Master believes that any briefing to the Court on Fed. R. Civ. P. 53(f)(2) application should be expedited and page limited;

NOW THEREFORE, IT IS HEREBY RECOMMENDED THAT THE COURT:

1. Reduce the time permitted by Fed. R. Civ. P. 53(f)(2) from no later than 20 days from this date, to no later than 2 days from this date.¹
2. The initial letter brief in support of Fed. R. Civ. P. 53(f)(2) application should not exceed 5 pages, single spaced. Opposition letter briefs shall be served no later than 1 day following service of the application and shall not exceed 5 pages, single-spaced.
3. No reply briefs are permitted.

ENTERED this 2nd day of December, 2008.



Vincent J. Poppiti (#100614)
Special Master

SO ORDERED this _____ day of _____, 2008.

United States District Court Judge

¹ Having been advised by counsel for AMD that the hearing on the Motion to Quash in the Western District of Texas is currently scheduled for December 5, 2008, the Special Master further modifies the suggestion to truncate the time to take exceptions.

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)
)
 Plaintiffs,) Civil Action No.
) 05-441-JJF
 v.)
)
 INTEL CORPORATION,)
)
 Defendant.)

Teleconference in above matter taken pursuant to notice before Renee A. Meyers, Certified Realtime Reporter and Notary Public, in the offices of Blank Rome, LLP, 1201 North Market Street, Wilmington, Delaware, on Monday, November 17, 2008, beginning at approximately 2:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS
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LINDA SMITH, ESQ.
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for AMD

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Corbett & Wilcox is not affiliated
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Teleconference

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1 SPECIAL MASTER POPPITI: Let's start
2 with anyone from the Class on, please?

3 MR. ATHEY: Good afternoon, Your Honor.
4 Clay Athey, Prickett Jones, for the Class.

5 MR. FIMMEL: Steve Fimmel, Hagens Berman
6 Sobol & Shapiro in Seattle for the Class.

7 SPECIAL MASTER POPPITI: Thank you. And
8 from AMD, please.

9 MR. COTTRELL: Good afternoon, Your
10 Honor. Fred Cottrell and Steve Fineman in Wilmington,
11 and Mr. Diamond and Ms. Smith are on, I believe, in
12 California.

13 SPECIAL MASTER POPPITI: Thank you.
14 Good afternoon.

15 MR. DIAMOND: Good afternoon, Your
16 Honor, except I am in New York.

17 MS. SMITH: Good afternoon.

18 SPECIAL MASTER POPPITI: Thank you.
19 Colder weather.

20 MR. DIAMOND: Colder, yes.

21 SPECIAL MASTER POPPITI: And from Intel,
22 please.

23 MR. HORWITZ: Your Honor, it's Rich
24 Horwitz in Wilmington.

Teleconference

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1 MR. FLOYD: Good afternoon, Your Honor.
2 This is Dan Floyd, Bob Cooper, and Rod Stone in
3 Los Angeles.

4 SPECIAL MASTER POPPITI: Thank you all.

5 MS. SMITH: And then we could ask who is
6 on for Dell, please?

7 MS. MAGUIRE: Lauren Maguire from Ashby
8 & Geddes in Wilmington, and with me I have Tom Jackson
9 and Christopher Maynard from Jones Day, and also I
10 believe listening on the line is Michael Mann for
11 Mr. Rollins.

12 SPECIAL MASTER POPPITI: Thank you very
13 much.

14 I want to make sure that this is the
15 case. Other than a status report which did not cover any
16 issues that we may be talking about today, I am not aware
17 of any filing; is that correct?

18 MS. SMITH: That's correct, Your Honor.
19 May I tee it up for you?

20 SPECIAL MASTER POPPITI: Go ahead.

21 MS. SMITH: Dell agreed months ago to
22 make available for deposition five current employees of
23 Dell and one former employee who is separately
24 representing and that's why Michael Mann is on the phone.

Teleconference

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1 And the issue is so -- what I wanted to
2 tell you, Your Honor, is the reason this is sort of out
3 of the realm of what we have discussed is that the issue
4 is not whether they need to comply with case management
5 order No. 6 by bringing a motion for a protective order
6 so that their witnesses, their deponents do not have to
7 appear, the issue that we are here before you on today,
8 Your Honor, is the duration of the depositions of the six
9 individuals.

10 This specific issue was addressed in the
11 June 5 hearing, the one before Judge Farnan and yourself,
12 Your Honor. And then there was considerable negotiation
13 and ultimately case management order No. 6 was finalized
14 and so ordered by yourself and by Judge Farnan and then
15 on your order sent to all the third parties. And if you
16 recall, there was a long debated issue, which I won't
17 take you back to the beginning of time, I promise, about
18 whether the seven-hour rule should apply, the one-day
19 rule should apply, we should do it by days, we should do
20 it by hours until, ultimately, Your Honor, it was
21 determined that there would be this collective allocation
22 of deposition hours and we were, AMD and Class were given
23 an allocation as was Intel.

24 And we talked about specifically and at

Teleconference

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1 length both with Your Honor and among ourselves and then
2 back with Your Honor briefly and among ourselves, I think
3 there was several drafts of the same No. 6 which was
4 ultimately amended once already, but the idea was that we
5 would put in -- first of all, you can use your hours as
6 you will, and when you are out, you are out, and there
7 was considerable flexibility and that if there was a
8 need, we would come to Your Honor if there was a problem.

9 And what has -- and, ironically, I went
10 back to the transcript, and Michael Dell, who is the
11 chairman and CEO of Dell and one of the deponents in
12 issue today was a person used in several parts of the
13 hearing as the quintessential person who we couldn't do
14 in a day. And that got Chuck Diamond saying if we have a
15 deposition, we can get it done in seven hours, we will
16 get it done in seven hours; if it's going to take a day
17 and a half, we have to only be charged a day and a half
18 because some of these depositions, quite frankly, even
19 third-party depositions, Michael Dell has his
20 fingerprints on every transaction, every quarterly
21 transaction ends up talking to either Otellini, who is
22 the CEO of Intel, or Barrett or some other high ranking
23 person in the company. We are not going to get through
24 Michael Dell or Amelio or any of the other high ranking

Teleconference

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1 people, even of the third parties in one day.

2 And then you and I picked up on that in
3 further discussion later where we talked again about
4 Michael Dell, and what I said was, and I know I am
5 repeating this, and we need to indicate to the witnesses
6 that we can tell the Michael Dells of this world we think
7 we need two days to complete your full examination, or
8 perhaps, if it is Michael Dell, it may be three days as
9 opposed to someone else who we think is a day but we
10 would like to have the flexibility that Your Honor
11 indicated where, yes, we tell the witness we will expect
12 it to be X because I have a feeling that chairmen, CEOs
13 of major OEMs are not going to say, Sure, we will come as
14 long as you need us.

15 Anyway, what was implemented was this
16 idea where we would have flexibility, we provided our
17 estimates to Dell of the five current and the one former
18 from us and then Dell asked us, when their estimates were
19 provided, to also get the estimates from Intel and Class,
20 but they both gave estimates subject to what I think are
21 the requisite caveats that, depending on what happened at
22 the deposition, it might take more time or less time.

23 So Intel said half a day or
24 approximately three-and-a-half hours per each deponent

Teleconference

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1 and Class said two hours, and, so, we provided -- and
2 they can speak for themselves -- we were, we had 12 hours
3 for Michael Dell and 21 -- I can go through all the
4 estimates but we gave estimates and we provided our
5 estimates as well as Intel's and Class' to Dell. We have
6 talked about it at many meet and confers and other
7 discussions. We have reached impasse and I notified them
8 that we would be subpoenaing them and bringing this issue
9 to Your Honor.

10 And that is a lovely explanation of here
11 we are today.

12 MR. JACKSON: Your Honor, this is Tom
13 Jackson from Jones Day. May I make a comment?

14 SPECIAL MASTER POPPITI: Please,
15 Mr. Jackson.

16 MR. JACKSON: First, Your Honor, in all
17 fairness to you, I think I should advise you that from
18 our perspective, you do not have jurisdiction of this
19 issue either under the NDL rules themselves, or, more
20 particularly, as it relates to Dell and Dell employees
21 because of an agreement in the Dell document production
22 agreement in which AMD expressly agreed that issues with
23 respect to Dell employees would be issued out of and
24 resolved with the Western District of Texas.

Teleconference

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1 MS. SMITH: Your Honor, this is Linda
2 Smith. Not so. Come on, Tom.

3 SPECIAL MASTER POPPITI: Let him finish.
4 I obviously don't have that agreement in front of me.

5 MR. JACKSON: Secondly, Your Honor, to
6 the extent this issue is going to be addressed or
7 resolved, I mean, I know that Miss Smith talked at length
8 about, you know, various conferences and other things in
9 which Michael Dell and other people's names have been
10 bandied about here in the courthouse but Dell obviously
11 was not there, nor were people there representing Dell's
12 interests present. We think the issue has to be decided
13 on full briefing and can't be simply decided on a
14 conference call such as this.

15 What they basically have asked for is
16 19-and-a-half days with these people, right around
17 100 hours of deposition time, and what they can only be
18 expecting to do with that much time is repeat discovery
19 either among the defendants, the witnesses, themselves,
20 from Dell, or implicating that which they will have
21 already have learned from all the Intel depositions in
22 terms of how the various programs worked and that sort of
23 thing.

24 So what they ought to be trying to do

Teleconference

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1 with Dell, as I understand their case, is they ought to
2 be focusing on, you know, the issue of, you know, what
3 kind of threats or coercion was there from Intel because
4 this is, after all, a monopolization case, and, so, we
5 ought to be looking for acts of Intel's monopolization,
6 and if Dell's witnesses can talk about this, great. But
7 it doesn't take that much time from these folks, all of
8 whom, you know, are very senior employees of the
9 corporation, of course, Michael Dell being the largest.

10 But the first issue and I think the one
11 that is foremost is we simply don't think you have
12 jurisdiction over this dispute.

13 MS. SMITH: Your Honor, I am frantically
14 going through the agreement, which I am happy to, if it's
15 okay with Mr. Jackson, to send to you by e-mail and
16 everyone else who wants it, but, of course, they should
17 all have a copy, but the only agreement was that we would
18 issue subpoenas out of the, what district are you in, out
19 of whatever district of Texas, and that was the fullest
20 bounds of the agreement.

21 MR. JACKSON: And the purpose of doing
22 so was to say that any discovery disputes regarding Dell
23 witnesses would be resolved in the Western District of
24 Texas, Your Honor.

Teleconference

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1 MS. SMITH: No, sir. Absolutely not.
2 And the court has clearly indicated -- you are pro hacked
3 into this case. You have joined us and you filed papers
4 --

5 MR. JACKSON: I have been steadfast on
6 everything I have ever said in any writing --

7 SPECIAL MASTER POPPITI: Mr. Jackson,
8 would you go back? Our court reporter could not hear
9 you, sir.

10 MR. JACKSON: I am so sorry. As I said,
11 in anything that Dell has filed, and I think the only
12 thing that Dell has taken the position on in this case
13 had to do with a third-party discovery and the third
14 parties trying to get access to our discovery, and we
15 dutifully noted our reservations about the Court's
16 jurisdiction over us as third parties as it related to
17 discovery. But since we had produced documents and since
18 other people were trying to get access to those
19 documents, I dutifully felt it appropriate to express our
20 views and comments with respect to those documents.

21 SPECIAL MASTER POPPITI: Let me ask a
22 question with respect to the two issues, namely, the
23 jurisdictional issue which you raise, and, of course, the
24 merits issue which you both will get an opportunity to

Teleconference

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1 talk about either before me or before someone else.

2 It seems to me perhaps the most
3 efficient way to get this accomplished -- first of all,
4 have any of the depositions been noticed in terms of the
5 courtesy of providing dates?

6 MS. SMITH: Yes, Your Honor. What we
7 did is we had reached prior agreement, all of it
8 documented, that Dell would complete its production of
9 the second custodian set, which was a more limited set on
10 specific search charts more specific than the first set,
11 but I am going to reach this agreement on September 8th
12 that they would complete it within eight to ten weeks
13 which they will be able to do and that the depositions
14 would proceed at the end of November and December. And
15 we have noticed all of them for dates, although not all
16 of them are in -- we have extended out some.

17 One of the things we realized, for
18 example, is that Dell has a fiscal year that ends on
19 January 31st. So we wanted to -- we had expressly
20 indicated with Mr. Jackson that we would try to give them
21 lots and lots of advanced notice so that they could
22 schedule these in a, you know, understanding that no
23 third-party ever wants to be deposed, but also, and I am
24 happy to argue this now or later, that Dell is absolutely

Teleconference

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1 central to this case and these folks are absolutely
2 central and I have all the facts and figures right with
3 me now about how many key e-mails authored by them and in
4 which they are involved. But, in any event, that we
5 would give them plenty of time and that, for Michael
6 Dell, because of his situation, we would try to -- we
7 moved his to February so he could complete the end of
8 his, you know, quarterly filing.

9 SPECIAL MASTER POPPITI: I just wanted
10 to get some idea of when they would begin and how far
11 they stretched.

12 Here is what I would like to propose. I
13 think, in light of the issue regarding jurisdiction, that
14 I need some very quick attention put to that issue such
15 that I can, after the Thanksgiving holiday, reconvene a
16 teleconference for purposes of making some determination,
17 for purposes of making a determination on whether or not
18 this Court, through me, has jurisdiction to hear the
19 underlying issue regarding Dell.

20 And my expectation, based on what I have
21 just heard, is that there is a document that has been
22 referred to as an agreement. I don't know whether the
23 four corners of the document express everything that I
24 need to know about the agreement or whether there are

Teleconference

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1 exchanges in advance of entering the agreement that are
2 going to be important for purposes of my understanding
3 the full impact of the agreement.

4 In any event, I'd like you all to tell
5 me how quickly you can put something together and how
6 quickly we can reconvene for purposes of getting this,
7 the issue on the jurisdiction behind us.

8 MS. SMITH: Your Honor, there is two
9 issues -- there is sort of two elements on the
10 jurisdiction. One is the agreement which I can e-mail to
11 everyone on the phone and you can take a look at the
12 provision.

13 Frankly, I think this is a post hoc
14 attempt after -- the problem is I have 9,000 e-mails
15 agreeing to these depositions already, so it's, you know,
16 this is completely astonishing to me.

17 There is two issues on jurisdiction.
18 One is the agreement of the parties and the second is we
19 are happy to brief the law on this. I think Your Honor
20 is pretty familiar with that. I think we discussed it at
21 the outset of this case, the reach of the jurisdiction of
22 the NDL Federal District Court over State Courts or any
23 other court.

24 SPECIAL MASTER POPPITI: I don't know

Teleconference

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1 that Mr. Jackson, though, was referring to that. Are
2 you, sir?

3 MR. JACKSON: Your Honor, a couple
4 points. What we have agreed to talk about who ought to
5 be deposed at Dell. We never agreed to any length of the
6 deposition and that's what the issue is about.

7 SPECIAL MASTER POPPITI: I fully
8 understand that.

9 MR. JACKSON: And we issued these
10 subpoenas out of the Western District of Texas as they
11 had agreed to in the document. I think there is an
12 argument under the question of whether the NDL reach
13 extends jurisdiction to you over all third-party
14 discovery issues. I think that's an interesting issue
15 and I don't know that there is a competitive case on the
16 topic, frankly.

17 In addition to raising that issue, we
18 are specifically talking about the negotiation of the
19 agreement, which, you know, had these subpoenas be issued
20 out of the Western District so that the issue could be
21 resolved right there.

22 Our argument is going to be that AMD has
23 waived, you know, any rights it might have had under the
24 questionable NDL reach for jurisdictional purposes.

Teleconference

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1 SPECIAL MASTER POPPITI: I understand
2 your position. I would have expected you to have said it
3 just that way. But what I need is to have something put
4 before me so that it opens, it closes, and we have a
5 hearing on it and we move in one direction or another.

6 MR. JACKSON: Your Honor, we are
7 delighted to do that. I suppose I should inform the
8 Court that now that Ms. Smith tells me we are at impasse,
9 which, frankly, I did not know until she made the
10 statement to the Court, I believe that my clients are
11 also going to ask us to file motions for protective order
12 in the Western District of Texas. I have those on file.
13 We are more than willing to provide you with, you know,
14 our argument on the issue of the jurisdictional -- your
15 jurisdictional reach here and we would like, if the Court
16 is agreeable, to give us until Monday, the 24th, to file
17 such papers.

18 SPECIAL MASTER POPPITI: Miss Smith.

19 MS. SMITH: Well, Your Honor, this is
20 Linda Smith. I guess that's fine, although if Your Honor
21 was going to read them over the Thanksgiving holiday,
22 that means we would have to get them to you by the 26th.

23 SPECIAL MASTER POPPITI: Right.

24 MS. SMITH: I am willing to do that. I,

Teleconference

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1 frankly --

2 SPECIAL MASTER POPPITI: Can we do it
3 this way, can the first paper be filed not later than
4 close of business on the 21st and the response to that be
5 filed not later than close of business on the 25th so
6 that -- I will be here on the 26th, I am just wanting to
7 respect any travel plans that anyone else has.

8 MR. JACKSON: Your Honor, we are willing
9 to try and live with the end of the day on the 21st. If
10 we run into some kind of difficulty, we will let the
11 Court know, but we are more than willing to shoot for
12 trying to be done by the close of business on the 21st.

13 MS. SMITH: And we are fine with that,
14 Your Honor. Mr. Jackson, I am looking at this nine-page
15 agreement and desperately trying to find this paragraph.
16 I can't even find it. Do you remember where it is in the
17 agreement? I know it says that we will issue the
18 subpoenas out of the Western District of Texas, but I
19 can't find it.

20 MR. JACKSON: I am not going to discuss
21 that with you. I don't want to take up any more of the
22 Court's time.

23 SPECIAL MASTER POPPITI: Do that
24 offline, and, Miss Smith, if I can have your filing not

Teleconference

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1 later than the close of business on the 25th and in terms
2 of -- and we are only going to be looking, correct, at
3 the issue of the jurisdiction?

4 MR. JACKSON: That's my understanding of
5 what you were asking for, Your Honor.

6 SPECIAL MASTER POPPITI: I think that
7 makes sense, does it not?

8 MS. SMITH: Well, Your Honor --

9 MR. JACKSON: I would say yes, Your
10 Honor.

11 MS. SMITH: Of course you would,
12 Mr. Jackson. Special Master Poppiti, let me just suggest
13 to you that first we'll fight over jurisdiction, AMD will
14 prevail, and then we will fight over duration which is
15 actually the only issue, question at issue, and I have
16 specific agreements from Mr. Jackson that these people
17 will be made available for deposition in this case.

18 SPECIAL MASTER POPPITI: Commencing
19 when?

20 MS. SMITH: I am just saying this is
21 going to drag this out even longer while we go through --

22 SPECIAL MASTER POPPITI: I hope you know
23 me better. I don't want to do that.

24 MR. JACKSON: It's not my intent to drag

Teleconference

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1 anything out. As Miss Smith knows, the question of
2 whether or not I can schedule five of the highest level
3 employees at Dell for a day deposition or a week
4 deposition makes a heck of a lot of difference in terms
5 of trying to get a schedule.

6 MS. SMITH: Mr. Jackson, no one is
7 asking for a week. Please.

8 SPECIAL MASTER POPPITI: Here is what I
9 want, I can give you a date for either the first piece of
10 the hearing on jurisdiction and following on another date
11 for a hearing on the merits. I mean, it doesn't make a
12 whole lot of sense to me to say, Brief your merits
13 arguments as well if, in fact, that's what I am going to
14 need if I make determination that, in fact, I don't have
15 jurisdiction. And I want to be doing this as quickly as
16 possible.

17 It seems to me that if I have your
18 filings on the issue of jurisdiction by close of business
19 on the 25th, I can have a hearing on the issue of
20 jurisdiction as early as December 2. And once that
21 determination is made, and I will give you the
22 determination, my expectation would be, during the course
23 of the teleconference, putting together next steps
24 shouldn't take us too long. But, again, let me ask the

Teleconference

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1 question: Do you have a commence date for these
2 depositions?

3 MR. JACKSON: No, Your Honor, we do not.

4 SPECIAL MASTER POPPITI: Is there any
5 dispute with respect to the earlier scheduled
6 depositions?

7 MS. SMITH: Your Honor, it's Mr. Allen
8 on December 8th, Mr. Clark on the 15th, Mr. Luecke on
9 January 7th.

10 SPECIAL MASTER POPPITI: Say that again
11 for me. It's the 8th?

12 MS. SMITH: Dan Allen on the 8th, Jeff
13 Clark on the 16th, Allen Luecke on January 7th.

14 SPECIAL MASTER POPPITI: Pause right
15 there a moment, please.

16 MR. JACKSON: None of those dates have
17 been agreed to, Your Honor.

18 SPECIAL MASTER POPPITI: Is there any
19 reason why, in the context of leading up to even the
20 first hearing, I can't expect that discussion will occur
21 with respect to those two individuals and you can get,
22 you can forge some agreement with respect to at least
23 them.

24 MR. JACKSON: The problem, Your Honor,

Teleconference

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1 with respect to those two, for example, those are the
2 ones in which they have asked for approximately
3 four-and-a-half days' worth of time.

4 Now, trying to get a week, they have got
5 to have -- let's say I spend two hours telling them what
6 they need to know to get ready for it, and then they have
7 four-and-a-half days of testimony, finding a week in
8 these people's schedule is a much more difficult process
9 than trying to find a day, if the Court understands my
10 problem.

11 SPECIAL MASTER POPPITI: I do.

12 MR. JACKSON: Trying to have a
13 discussion about where they are going occur without
14 resolving the rest of this problem doesn't seem to work
15 very well.

16 MS. SMITH: This is a serious statement,
17 but I have agreement from you, Mr. Jackson, on the end of
18 November and December, but in any event, these, Dan Allen
19 and Jack Clark were the people that you indicated to AMD
20 would be the most knowledgeable and the ones we should
21 depose first.

22 We asked for 21 hours for each of them,
23 and then, with the appropriate caveats that I have
24 indicated, Intel and Class had given their estimates. We

Teleconference

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1 are willing to reduce our estimate some, but these are
2 very key witnesses, we can demonstrate that to the Court,
3 and I would say that it's not going to be collectively,
4 among the Class, Intel, and AMD, it's not going to be
5 less than three or four days for each of these
6 individuals and it can't be. And it is very interesting
7 because Mr. Jackson did say he --

8 MR. JACKSON: I never said anything like
9 that.

10 (Counsel talking at the same time.)

11 SPECIAL MASTER POPPITI: That's part of
12 the problem with conducting the conference in the fashion
13 that we have had to do this by virtue of the quick serve
14 up without papers.

15 What I want to do is I want to schedule
16 a hearing for the, on the issue of jurisdiction sometime
17 during the day on December the 2nd. You are going to
18 have a quicker turnaround if I decide that I do have
19 jurisdiction because I want there to be a hearing on the
20 depositions as they are currently scheduled, at least I
21 will assume, for the purpose of having this discussion
22 with you, that they are not yet scheduled, but I want
23 that hearing to be on December the 5th, assuming that we
24 have a hearing on December the 5th.

Teleconference

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1 MS. SMITH: Your Honor, would you like,
2 assuming that on December 2nd you determine that the
3 Court has jurisdiction, shall we submit simultaneous
4 briefs to you on the necessity for the duration or the
5 lack of necessity, in Mr. Jackson's case, for the
6 duration so that you have those, or is that going to jam
7 the Court too much?

8 SPECIAL MASTER POPPITI: I think it does
9 what it does. I understand the pace and the importance
10 of getting these depositions moving. I don't yet
11 understand, because I have nothing in front of me, I
12 don't understand what is going to be necessary in terms
13 of the total amount of time or what will be necessary for
14 each individual witness. And it's going to be important
15 for you to make some judgment as to how you choose to
16 carve that up for me with a simultaneous filing, my
17 expectation would be that close of business on the 3rd.
18 But I will have appropriate time to deal with it on the
19 4th and -- just a moment -- it's going to have to be a
20 filing close of business on the 4th because I am in all
21 day motions on another matter on motions to dismiss and
22 they will take not an insignificant amount of time. So
23 close of business on the 4th. And it's either going to
24 have to be sometime late in the afternoon on the 5th, or,

Teleconference

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1 unfortunately, it will chew into your first day of
2 proposed, the proposed deposition date December 8th.
3 And, again, that would have to be later in the day.

4 MS. SMITH: Your Honor, whatever you can
5 accommodate is fine with us. And please, you know, these
6 dates were the result of impasse noted and you ordered
7 that we had discuss this with Dell's counsel, but, you
8 know, they are not carved in stone. It's just we have to
9 get going. We are closing in on the end of discovery too
10 fast.

11 SPECIAL MASTER POPPITI: Well --

12 MS. SMITH: So what I am saying is the
13 date is not magical. On the other hand, it really, I
14 appreciate Your Honor, as always, Your Honor's, you know,
15 accommodation of us to totally change your schedule to
16 try to get this to work for us so we can do whatever you
17 want.

18 SPECIAL MASTER POPPITI: Well, the dates
19 I have just given to you I am comfortable with. The only
20 date that would be better for me would be a hearing on
21 the 8th or 9th as opposed to trying to squeeze it in on
22 that Friday so that would require flexibility on your end
23 in terms of any start date.

24 MS. SMITH: I am happy to do the hearing

Teleconference

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1 on the 8th. Hopefully it's a culmination of which we can
2 establish dates and get to the necessary issues and issue
3 the subpoenas.

4 SPECIAL MASTER POPPITI: Let's use the
5 date, then, that I have given you. If someone would
6 prepare a stipulated form of order with this accelerated
7 briefing schedule on the issues that we have identified,
8 and can I expect that we are, then, using the page
9 limitation established for the discovery dispute matters?

10 MS. SMITH: Yes, Your Honor. When you
11 say "use the dates," would you like us to change the
12 hearing to the 8th?

13 SPECIAL MASTER POPPITI: The 8th would
14 be better for me.

15 MS. SMITH: Any time or should I talk to
16 your clerk later?

17 SPECIAL MASTER POPPITI: Just one
18 moment. If we can do that on the 8th at 2:00, that would
19 be good on my end.

20 MS. SMITH: How about the December 2nd
21 hearing? It's fine if you want to have somebody call
22 Mr. Cottrell.

23 SPECIAL MASTER POPPITI: We can do a
24 2:00 start.

Teleconference

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1 MS. SMITH: And, Your Honor, that's
2 fine. And having gone back to the June 5 hearing where
3 we were discussing the many dates in this case, this is
4 the first time I have seen this so I have to wish you a
5 happy birthday.

6 SPECIAL MASTER POPPITI: Thank you. I
7 don't expect that from all of you on the line.

8 MR. COTTRELL: Your Honor, it's Fred
9 Cottrell. Can we take a moment just to confirm all dates
10 in terms of the submissions and the hearings?

11 SPECIAL MASTER POPPITI: Please do that,
12 Fred.

13 MR. COTTRELL: My understanding is
14 Dell's opening will be on the 21st by close of business?

15 SPECIAL MASTER POPPITI: Yes.

16 MR. COTTRELL: And AMD's response will
17 be close of business on the 25th?

18 SPECIAL MASTER POPPITI: Right.

19 MR. COTTRELL: And there is a hearing at
20 2:00 on December 2nd.

21 SPECIAL MASTER POPPITI: Yes.

22 MR. COTTRELL: By phone?

23 SPECIAL MASTER POPPITI: Yes.

24 MR. COTTRELL: And then on December 4th,

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1 there will be a filing on the merits of all this?

2 SPECIAL MASTER POPPITI: That's correct.

3 MR. COTTRELL: And then the second
4 hearing is December 8th at 2:00?

5 SPECIAL MASTER POPPITI: Yes.

6 MS. SMITH: I am sorry, I don't mean to
7 be awkward about this, but, Mr. Jackson, I assume that
8 you will -- I don't want to assume anything -- but as I
9 understand it, you may file with the Texas Court, but you
10 will not, for example, quash the subpoenas prior to
11 Judge Poppiti's hearings?

12 I am a little, you know, if we are
13 playing with -- if you are going to file in two courts at
14 the same time, I just want to make sure we understand the
15 parameters here.

16 MR. JACKSON: I don't know that I am in
17 a position to control the Texas Court schedule, Linda.

18 MS. SMITH: I am not sure, Your Honor --

19 SPECIAL MASTER POPPITI: Let me just --

20 MR. JACKSON: All I am going to do is
21 file the motions. Under the Local Rules, you will get
22 time to respond. I can't imagine it happening --

23 SPECIAL MASTER POPPITI: I would expect,
24 whatever you choose to do in Texas, that you are going to

Teleconference

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1 advise the Texas Court that --

2 MR. JACKSON: Absolutely, Your Honor.

3 SPECIAL MASTER POPPITI: -- things are
4 proceeding in Delaware at the same time?

5 MR. JACKSON: Absolutely, Your Honor. I
6 would never want one Court not to know, which is why I
7 wanted to tell you what was most likely going to happen
8 in Texas.

9 SPECIAL MASTER POPPITI: I understand
10 that.

11 MR. FLOYD: This is Dan Floyd for Intel.
12 I just want to confirm that we would have the right to
13 file submissions on the same time frames?

14 SPECIAL MASTER POPPITI: Yes, if you
15 choose. It would be better -- I don't know what your --
16 can you articulate what your position is, whether it's
17 adverse to -- where do you stand?

18 MR. FLOYD: I think we are -- we need to
19 look at the issues, ourselves, but we just need to make
20 sure we have the ability to weigh in as we deem
21 appropriate.

22 SPECIAL MASTER POPPITI: Sure. And if
23 there is an opportunity to join, then that would be most
24 appreciated on this end. If there isn't, I understand

Teleconference

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1 that.

2 MR. FLOYD: I appreciate that, Your
3 Honor. Thank you. We will figure that out, and to the
4 extent that we would be coordinating a response, we would
5 then.

6 SPECIAL MASTER POPPITI: I understand.
7 Anything else, then, please? Thank you all.

8 (The hearing was concluded at 2:35 p.m.)

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C E R T I F I C A T E

STATE OF DELAWARE:
:
NEW CASTLE COUNTY:

I, Renee A. Meyers, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the teleconference was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the foregoing teleconference is a true record; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand this 18th day of November A.D. 2008.

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2011)

EXHIBIT 3

WHEREAS, Dell having raised the issue of the jurisdiction of this Court to entertain disputes involving subpoenas for testimony issued to current and former Dell employees;

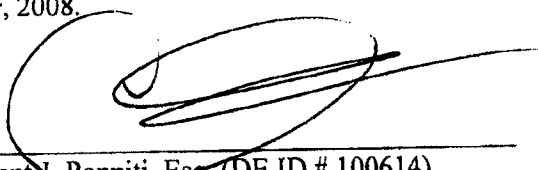
WHEREAS, the Court wishes to address in this Order the procedures for determining the jurisdiction of this Court to entertain disputes involving the subpoenas for testimony issued to current and former Dell employees as well as the dispute with respect to the duration of the depositions in question,

IT IS HEREBY ORDERED AS FOLLOWS:

1. On or before the close of business on November 21, 2008, Dell shall file its opening submission on the jurisdiction of this Court to entertain the disputes involving subpoenas for testimony issued to current and former Dell employees;
2. On or before the close of business on November 25, 2008, AMD shall file its response (and Intel and the Class shall file their responses, if desired); and
3. On or before the close of business on December 2, 2008, the Special Master expects to render a decision on the question of jurisdiction. To this end, the Special Master has scheduled a teleconference at 2:00 p.m. eastern time on that date among all interested parties;
4. If the Court rules that it does possess jurisdiction, all interested parties shall file simultaneous submissions on the dispute with respect to the duration of the depositions in question on or before the close of business on December 4, 2008; and
5. The Special Master shall hold a hearing on the dispute with respect to the duration of the depositions in question on December 8, 2008, at 2:00 p.m. eastern;

6. The briefing format and length for submissions under this Order shall be governed by the Procedures For The Handling Of Discovery Disputes (D.I. 178 in C.A. No. 05-441-JJF).

SO ORDERED this 19th day of November, 2008.



Vincent J. Poppiti, Esq. (DE ID # 100614)
Special Master

EXHIBIT 4



November 21, 2008

Sidney Balick

Adam Balick

Joanne Ceballos

James Dmiec

BY ELECTRONIC MAIL

The Honorable Vincent J. Poppiti
Special Master
Blank Rome LLP
Chase Manhattan Centre, Suite 800
1201 North Market Street
Wilmington, DE 19801-4226

**Re: *In re Intel Corporation Microprocessor Antitrust
Litigation - Discovery Matter
(MDL Jurisdiction over Dell Witnesses)***

Dear Judge Poppiti:

Yesterday, the Dell Witnesses filed a motion to quash in the United States District Court for the Western District of Texas.¹ The motion seeks to quash the subpoenas that AMD and Class Plaintiffs served on five current Dell Witnesses in this MDL. (The sixth Dell Witness was served out of the District Court of Massachusetts and is not a movant in the Texas court.) The motion is based on the Dell Witnesses' assertion that the estimated length of the depositions allegedly imposes an undue burden. Under Western District Court of Texas Local Rule CV-7(d), AMD's opposition to the motion to quash is due on December 1, 2008. That is one day before Your Honor is currently scheduled to decide whether this very discovery dispute should be adjudicated by Judge Farnan (based on Your Honor's recommendation). As such, the merits of the dispute have leaped ahead of the threshold "jurisdictional" issue.

A more appropriate and orderly approach would be for this Court to first decide the jurisdictional question. To this end, AMD recommends and requests that this Court as the MDL court proceed down one of two possible paths. First, this Court could proceed with the jurisdictional issue in the MDL on an expedited basis. The Dell Witnesses' brief is due to Your Honor by close of business today. AMD is prepared to file its brief simultaneously, rather than on November 25, as currently scheduled. If Your Honor is available, the jurisdictional issue could be heard and decided early next week. Alternatively, Judge Farnan could contact the Western District Court of Texas judge assigned to the Dell Witnesses' motion and ask that the motion be held in abeyance pending a determination on the jurisdictional issue. This course of action is common practice in MDL proceedings for these situations. The Western District Court of Texas

¹ The Dell Witnesses acknowledge in a footnote to their brief in support of the motion to quash that this Court has scheduled a hearing on December 2, 2008 to decide whether it has jurisdiction to resolve the parties' dispute regarding the depositions of Dell witnesses.

The Honorable Vincent J. Poppiti
November 21, 2008
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judge assigned to the Dell Witnesses' motion is the Honorable Sam Sparks (Chambers Phone No.: (512) 916-5230).

28 U.S.C. § 1407 ("Section 1407") expressly empowers MDL judges to resolve discovery disputes concerning non-parties who reside outside the district where the MDL action is pending:

The judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

Indeed, based on Section 1407, Your Honor has already issued a Report and Recommendation in this MDL, adopted by Judge Farnan, holding that this Court has this authority. (D.I. No. 300, Discovery Matter No. 5.)

As to the Dell Witnesses' assertion that AMD stipulated that the Western District Court of Texas should adjudicate all discovery disputes involving Dell, there is *no* such stipulation. AMD *never* agreed that the Western District Court of Texas would resolve any disputes with Dell in this case. The Dell Witnesses rely entirely on a provision in a September 2, 2005 Document Preservation Stipulation between AMD and Dell (entered into before the MDL Panel issued its order establishing this MDL). The 2005 Preservation Stipulation merely states that all subpoenas to Dell, Inc. must "issue" out of the Western District Court of Texas. (*See Exhibit A* at paragraph 11.) AMD agreed to no more, or less, than to follow standard procedure in MDL cases -- to have the Dell subpoenas issue out of the District Court where the deponent resides -- a procedure it has uniformly followed in this case with respect to all third-party witnesses. But AMD never agreed to have the Western District Court of Texas *adjudicate* disputes involving subpoenas issued from that district in this MDL or otherwise to relinquish its right to ask this Court to decide Dell deposition disputes so as to provide a uniform orderly discovery regime in this case. As noted above, Section 1407 expressly empowers an MDL judge to adjudicate discovery disputes involving subpoenas issued outside the MDL district. The Fifth Circuit is clearly in agreement with this. In *In re Clients & Former Clients of Baron & Budd, P.C.*, 478 F.3d 670 (5th Cir. 2007), the Fifth Circuit held:

"Certain federal statutes create an exception to the rule that only the issuing court may quash, modify, or enforce a subpoena. For example, the multidistrict litigation (MDL) statute . . . authorizes a judge assigned an MDL action to 'exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.' [citing § 1407(b)] This statute therefore authorizes the transferee

The Honorable Vincent J. Poppiti
November 21, 2008
Page 3-

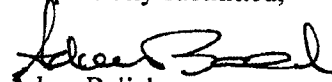
district court to exercise the authority of a district judge in any district: The transferee court may hear and decide motions to compel or motions to quash or modify subpoenas directed to nonparties in any district.”

In re Clients & Former Clients of Baron & Budd, P.C., 478 F.3d at 671 (quoting 9 James W. Moore et al., *Moore's Federal Practice* § 45.50[4], at 45-75 through 45-77 (Matthew Bender 3d ed. 2006)).

In any event, the September 2, 2005 Preservation Stipulation was expressly superseded by a later agreement between Dell and all the parties to this MDL. That agreement, entitled “Microprocessor Antitrust Litigation Document Production Agreement Between Dell and Requesting Parties” (the “Agreement”) expressly states that it “*supersedes* the subpoenas, the Preservation Stipulation, and the Supplemental Preservation Stipulation.” (Exhibit B, paragraph II.G at page 2; emphasis added.) By its express terms, the Agreement abrogated AMD’s obligation to do anything out of the ordinary for Dell, and contains nothing to suggest that discovery disputes are to be resolved in the Western District Court of Texas.

Accordingly this Court can and should exercise jurisdiction over plaintiffs’ disputes with Dell, and it should ask the Western District to stay its hand in deference to the MDL proceeding.

Respectfully submitted,



Adam Balick
Bar ID # 2718

cc: Clerk of the Court
Richard L. Horwitz, Esq.
James L. Holzman, Esq.
Thomas R. Jackson, Esq.
Michael D. Mann, Esq.
Lauren E. Maguire, Esq.
The Honorable Joseph J. Farnan, Jr.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ADVANCED MICRO DEVICES, INC., a)
Delaware corporation, and AMD)
INTERNATIONAL SALES & SERVICE,) Civil Action No. 05-441 JJF
LTD., a Delaware corporation,)
)
Plaintiffs,)
)
vs.)
)
INTEL CORPORATION, a Delaware)
corporation, and INTEL KABUSHIKI)
KAISHA, a Japanese corporation,)
)
Defendants.)

STIPULATION RE: PRESERVATION OF DOCUMENTS BY DELL INC.

WHEREAS, an action was commenced in the United States District Court for the District of Delaware on June 27, 2005, Civil Action No. 05-441-JJF, by plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. (hereafter jointly, "AMD") against defendants Intel Corporation and Intel Kabushiki Kaisha (hereafter jointly, "Intel");

WHEREAS, Dell Inc. (hereafter, "Dell"), a non-party to this action, has in its possession, custody, and control documents and information maintained in electronic form, which may fall into one or more of the categories listed in Exhibit A to this Stipulation ("Responsive Documents");

WHEREAS, Dell has engaged in good faith efforts to identify a list of Dell's employees who, as of the date of this Stipulation, are or were involved in the negotiation and decision

making concerning x86 microprocessor procurement and selection and therefore would be most likely to have prepared or received Responsive Documents (hereafter, "Custodians" for purposes of this Stipulation). This list of Dell Custodians is attached as Exhibit B.

WHEREAS, Dell has agreed to take the various steps set forth in this Stipulation in order to preserve evidence in the possession of Custodians.

NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN AMD AND DELL, SUBJECT TO THE APPROVAL OF THE COURT, AS FOLLOWS:

1. To the extent Dell has not already done so, upon execution of this Stipulation, Dell will deliver a "Litigation Hold" notice to all Custodians, which shall direct the Custodians to retain and preserve Responsive Documents.
2. Dell will use good faith efforts to preserve the June 27, 2005 back-up tapes for any exchange (e-mail) servers assigned to any of the Custodians that are likely to contain Responsive Documents.
3. Dell will use good faith efforts to preserve the most recent back-up tapes on or prior to June 27, 2005 for any shared servers assigned to any of the Custodians that are likely to contain Responsive Documents.
4. To the extent Dell has not already done so, Dell will use good faith efforts to image the hard drive from the desktop or notebook computers used in the normal course of business by any Custodian that are likely to contain Responsive Documents and will use good faith efforts to preserve either the original hard drive or the image of the hard drive. To the

extent that a Custodian possesses unique Responsive Documents on a home computer, Dell will instruct that Custodian to preserve those documents for later possible production.

5. To the extent Dell has not already done so, Dell will use good faith efforts to suspend any auto-deletions of emails for each Custodian that have not otherwise been preserved, collected, or copied for production.

6. To the extent Dell has not already done so, Dell will make a copy of its microprocessor procurement databases and will use good faith efforts to maintain and preserve that copy.

7. As to Responsive Documents of the Custodians created or received after June 27, 2005, to the extent that Dell has not already done so, Dell shall send an electronic notice (e.g. Microsoft Outlook poll or any other notice which seeks electronic confirmation upon receipt) to the Custodians reminding the Custodians of their obligations set forth in the Litigation Hold. The Custodians shall confirm receipt of the Litigation Hold. Further, every one hundred and eighty days thereafter, Dell shall send out a similar electronic notice to the Custodians.

8. Dan Anderson and Alan Luecke were previously identified by AMD as Custodians. Dell has informed AMD that these individuals no longer are employed by Dell and that the Responsive Documents of these Custodians have not been systematically preserved. To the extent that Dell identifies any Responsive Documents created or maintained by those Custodians that still exist, Dell shall use good faith efforts to preserve those Responsive Documents for later possible production.

9. Nothing herein shall limit Dell's right to contest or otherwise object to a future subpoena for the production of documents. Dell is not waiving any objections to the scope of

discovery or relevancy or admissibility of any documents requested by any party to this action. Dell expressly reserves all objections available to it under the Federal Rules of Civil Procedure and the Federal Rules of Evidence. Dell enters into this Stipulation with the express understanding that the Stipulation should not be construed as an order by the Court regarding the scope of discovery or the relevancy or admissibility of any documents requested by an party to this action.

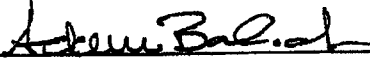
10. AMD agrees that it will use good faith efforts to avoid imposing excessive costs and burdens on Dell, and further that it will negotiate in good faith regarding any production requests as well as the allocation of expenses that may be incurred by Dell regarding preservation and production of documents pursuant to this Stipulation and any subpoena for the production of documents that AMD may serve upon Dell.

11. AMD agrees that any subpoena for testimony or for the production of documents and/or testimony AMD may serve upon Dell will issue out of the United States District Court for the Western District of Texas.

12. The parties recognize that Dell's obligations to preserve evidence does not extend beyond the Responsive Documents in the possession, custody or control of the Custodians as now identified or that may be identified in the future.

13. This Stipulation will remain in force pending further Stipulation or order of the Court or agreement of the parties to this Stipulation. AMD and Dell stipulate and agree that, upon request of the other, they shall, in good faith, confer about the contents and obligations under this Stipulation as appropriate.

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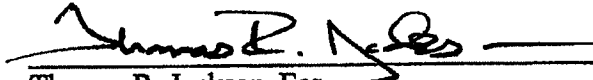
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Dated: September 2, 2005

JONES DAY



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Attorneys for Dell Inc.

Dated: September 6, 2005

ORDER

It is so ordered this ___ day of August, 2005

United States District Judge

EXHIBIT A

Definitions

For purposes of this Stipulation, "DOCUMENT" includes, without limitation, any hard copy writings and documents as well as electronically stored data files including e-mail, instant messaging, and databases created or dated on or after January 1, 2000 unless otherwise agreed upon by the parties to this Stipulation or ordered by the Court for good cause shown.

With respect to electronically stored data, "DOCUMENT" also includes, without limitation, any data on magnetic or optical storage media, including removable storage, stored as an "active" file or backup file, in its native format. Absent agreement of the parties or order of the Court for good cause shown, "DOCUMENT" does not include deleted, shadowed, fragmented or other data that cannot be recovered by the Custodian in the ordinary course of business. However, to the extent AMD seeks to recover deleted, shadowed, fragmented or other data that cannot be recovered by the Custodian in the ordinary course of business, AMD shall have the right to ask for such discovery at its own cost and, if Dell does not agree AMD may move the United States District Court for the Western District of Texas for such production for good cause shown.

For purposes of this Stipulation, "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (e.g., Sempron, Athlon, Turion, Opteron, Celeron, Pentium, and Xeon).

For purposes of this Stipulation, "FINANCIAL INDUCEMENT" means any payment, subsidy, rebate, discount (on MICROPROCESSORS or on any other INTEL product), Intel Inside funds, e-CAP funds, MDF, "meeting competition" or "meet comp" payments, "depo" payments, program monies, or any advertising or pricing support.

For purposes of this Stipulation, "your Company" refers to Dell Inc. and any of its present or former subsidiaries, joint-ventures, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "INTEL" refers to Intel Corporation and any of its present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof.

For purposes of this Stipulation, "MDF" refers to market development funds.

Purchase Terms

1. DOCUMENTS constituting or reflecting communications with INTEL concerning actual or proposed terms and conditions of the sale of MICROPROCESSORS, including without limitation pricing, quantities, discounts, rebates, Intel Inside funds, E-Cap funds and MDF.
2. DOCUMENTS constituting or reflecting internal discussions or other communications within your Company concerning actual or proposed terms and conditions of sales of INTEL or AMD MICROPROCESSORS.
3. DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon the exclusive purchase of INTEL

MICROPROCESSORS, or upon the purchase of a minimum volume of INTEL MICROPROCESSORS, or upon the purchase of a minimum percentage of your Company's MICROPROCESSOR requirements.

4. DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon your Company's agreement to use only INTEL MICROPROCESSORS in a particular computer platform, computer model or computer type.

5. DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon your Company's agreement to use only INTEL MICROPROCESSORS in computers sold in a particular geographic region.

6. DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings pertaining to INTEL's pricing of MICROPROCESSORS including without limitation any FINANCIAL INDUCEMENT.

7. DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon any restriction or limitation of your Company's purchases of AMD MICROPROCESSORS or conditioned upon any restriction or limitation of the sale or promotion of products containing AMD MICROPROCESSORS.

8. DOCUMENTS constituting, reflecting, or discussing any threat by INTEL to withdraw or withhold a FINANCIAL INDUCEMENT as a result of your Company's sale of products containing AMD MICROPROCESSORS, its purchases of AMD MICROPROCESSORS, or its plan to develop, release or promote a product containing an AMD MICROPROCESSOR.

9. DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to provide discounted or free chipsets, motherboards, or other components in connection with the purchase of, or as part of a package or bundle with, INTEL MICROPROCESSORS.

10. DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to discount or subsidize or provide marketing support in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

11. DOCUMENTS constituting, reflecting or discussing your Company's product line that was being designed, planned or developed that would contain an AMD MICROPROCESSOR.

Purchase History

12. DOCUMENTS sufficient to show:

- a) the prices paid by your Company to INTEL for all MICROPROCESSORS since January 1, 2000.

- b) the aggregate amount by quarter of any payment, subsidy, rebate, discount, Intel Inside funds, E-Cap funds, MDF, "meeting competition" payments, or any advertising or pricing support provided to your Company in connection with its purchase of MICROPROCESSORS (by quarter) since January 2000.
- c) Historical MICROPROCESSOR purchase volumes (by quarter) from INTEL and AMD since January 1, 2000.
- d) Analysis of expected and realized revenue, cost, and profitability of product lines (by quarter) since January 1, 2000.
- e) The use or disposition of any discount, subsidy, or marketing support provided by INTEL in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

Comparisons of INTEL and AMD MICROPROCESSORS

13. DOCUMENTS constituting or reflecting analyses, summaries, reports or studies prepared in connection with the consideration of the purchase or use of AMD and/or INTEL MICROPROCESSORS.

14. DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings prepared comparing INTEL and AMD MICROPROCESSORS whether from a price, quality or other standpoint.

Miscellaneous

15. DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning your Company's participation in or support of any AMD product launch or promotion.

16. DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning the allocation of microprocessors or other INTEL components.

17. DOCUMENTS constituting or reflecting discussions within your Company about unfair or discriminatory allocations of INTEL products or the fear of such unfair or discriminatory allocations.

EXHIBIT B

Document Custodians

**Allen, Dan
Anne, Seshu
Brown, Dave
Clarke, Jeff
Dell, Michael
Dixon, Eddie
Donnelly, Steve
Faulk, Brett
Garvin, Martin
Geerts, Scott
Gruzen, Alex
Hand, Neil
Kettler, Kevin
Malloy, Rich
McElroy, Terry
Medica, John
Melnick, Jon
Mette, Raven
Monk, James
Neeld, Jerele
Neland, Glenn
Nelson, Kevin
Poulter, John
Rollins, Kevin
Schuckle, Rick
Schweppe, Guy
Ward, Darrell
Woodruff, Nick**

CERTIFICATE OF SERVICE

I, Adam Balick hereby certify that on the 7th day of September, 2005 the attached Stipulation regarding Preservation of Documents by Dell Inc. was served electronically upon the following:

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Washington, DC 20004



ADAM BALICK

MICROPROCESSOR ANTITRUST LITIGATION

DOCUMENT PRODUCTION AGREEMENT BETWEEN DELL AND REQUESTING PARTIES

I. Background

- A. This Agreement, effective January 1, 2007, is between Dell, Inc. ("Dell"); Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. (collectively "AMD"); Intel Corporation and Intel Kabushiki Kaisha (collectively "Intel"); and the parties in the MDL Action (claimants therein referred to as the "MDL Plaintiffs") and the California Action (claimants therein referred to as the "California Plaintiffs").
- B. This Agreement governs all subpoenas served on Dell in the following matters:
1. *Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. v. Intel Corporation and Intel Kabushiki Kaisha*, No. 05-441-JJF, United States District Court, District of Delaware ("AMD Action").
 2. *In re Intel Corp. Microprocessor Antitrust Litigation*, MDL Docket No. 1717-JJF and *Phil Paul, et al. v. Intel Corp.*, Case No. 05-485-JJF, United States District Court, District of Delaware ("MDL Action").
 3. *In re Intel x86 Microprocessor Cases, Judicial Council Coordination Proceeding No. 4443*, Superior Court of California, County of Santa Clara ("California Action").
- C. The subpoenas served on Dell may be referred to herein as the "Subpoenas."
- D. AMD, Intel, the MDL Plaintiffs, and the California Plaintiffs may be referred to herein as the "Requesting Party" or "Requesting Parties."

II. Subpoenas to Dell

- A. Following the lawsuit filed by AMD against Intel, Dell and AMD entered into a September 2, 2005 stipulation for document preservation ("Preservation Stipulation") and an April 25, 2006 supplemental stipulation for document preservation ("Supplemental Preservation Stipulation") (Exhibits A and B).
- B. On October 4, 2005, AMD served Dell with a document production subpoena ("AMD Subpoena") (Exhibit C).
- C. On June 21, 2006, Intel served Dell with a document production subpoena ("Intel Subpoena") (Exhibit D).

Draft of January 18, 2007

- D. On June 22, 2006, plaintiffs in the MDL Action (“the MDL Plaintiffs”) served Dell with a document production subpoena (“MDL Subpoena”) (Exhibit E).
- E. On June 22, 2006, plaintiffs in the California Action (“the California Plaintiffs”) served Dell with a document production subpoena (“California Subpoena”) (Exhibit F).
- F. In place of specific document requests, definitions, instructions, and other terms of the Subpoenas, the parties have agreed to use a custodian-based, search-term approach to electronically search Dell’s data files, and the parties have agreed to use the data processing, review, and production protocols described in this Agreement to produce information relevant to the claims and defenses in the litigation.

In addition, Dell has agreed to produce certain transactional data relating to its purchase of microprocessors, its sale of computers, and the payments, rebates, subsidies, and marketing support provided by Intel. The parameters of this production will be reflected in a separate agreement.
- G. This Agreement supersedes the Subpoenas, the Preservation Stipulation, and the Supplemental Preservation Stipulation.

III. Procedures and Protocols

A. Media, data, metadata

- 1. Dell will collect, process, and review for possible production the following:
 - a. Active data files from the hard drives of the 28 “Custodians” defined by, and imaged pursuant to, the Preservation Stipulation.
 - b. Email on the current work hard drive of Gretchen Miller.

This data will be collected at Dell’s option either by using Encase Enterprise Edition (and collect only files that meet the date, file type, and First Search Term Set parameters set forth in this Agreement) or by re-imaging the hard drives.

- c. Exchange server email for Michael Dell and Kevin Rollins through January 1, 2007 (“the Dell/Rollins Second Harvest”).

After the Dell/Rollins Second Harvest, there shall be no ongoing preservation obligations as to Mr. Dell or Mr. Rollins under the Preservation Stipulation, the Supplemental Preservation Stipulation, or otherwise.

- d. Email on the current work hard drives of Dan Allen, Jeff Clarke, Glenn Neland, and Jerele Neeld through January 1, 2007 (“the Allen Second Harvest”).

This data will be collected at Dell’s option either by using Encase Enterprise Edition (and collect only files that meet the date, file type, and First Search Term Set parameters set forth in this Agreement) or by re-imaging the hard drives.

After the Allen Second Harvest, there shall be no ongoing preservation obligations as to Mr. Allen, Mr. Clarke, Mr. Neland, or Mr. Neeld under the Preservation Stipulation, the Supplemental Preservation Stipulation, or otherwise.

- e. The media and data described in Paragraphs III(A)(1)(a) – (d) above will be referred to as “Custodian Data.”
- f. Dell represents that, to the best of its knowledge, (1) the above-listed media are likely to contain most of the relevant, non-duplicative data stored on media preserved pursuant to the Preservation Stipulation for the Custodians, and (2) Dell does not believe that there are significant amounts of relevant, non-duplicative data stored on other such media. The Requesting Parties acknowledge that non-duplicative, relevant information may reside in other media that is not being processed, reviewed, or produced.

- 2. Subject to disclosure to and feedback or objection from the European Commission (“EC”), Dell will produce a copy of the documents provided to or seized by the EC in its investigation of Intel, except the following documents related to the investigation will not be produced:

- a. Correspondence to or from the EC;
- b. Materials prepared for or at the request of the EC;
- c. Attorney-client communications or materials covered by work product privilege, even if seized by or produced to the EC;
- d. Questions or requests for information from the EC or responses to the EC’s questions or requests for information;
- e. Information protected from disclosure by EU or other applicable privacy laws or regulations; and
- f. Materials provided to or seized by the EC after the effective date of this Agreement.