

# EXHIBIT A

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ADVANCED MICRO DEVICES, ) Docket No. A 08-CA-853 SS  
INC., ET AL )  
)  
vs. ) Austin, Texas  
)  
INTEL CORPORATION, ET AL ) December 5, 2008

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE SAM SPARKS

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer.

14:05:03 1 THE COURT: 08-853, Intel Corporation Microprocessor  
14:05:09 2 Antitrust Litigation, et cetera, et cetera.

14:05:12 3 When I was called yesterday or my clerk was called  
14:05:17 4 yesterday and advised by somebody in Delaware that time was  
14:05:20 5 running out and that they had jurisdiction over this case, by the  
14:05:31 6 time I got off the bench, time had run out. What they meant was  
14:05:35 7 it gets 5:00 there earlier than it does here. But this morning,  
14:05:39 8 I did call this gentleman. Seemed like a pleasant guy, Poppiti  
14:05:45 9 or something like that, and he indicated that the judge had  
14:05:53 10 entered an order which Mr. Ratliff has filed during the noon  
14:05:59 11 hour. So that's as far as I am up on this case.

14:06:03 12 Apparently, the MDL is taking the position that  
14:06:07 13 notwithstanding anything, they are to determine the discovery  
14:06:11 14 problems. So that's where we are.

14:06:17 15 MR. RATLIFF: Yes, sir.

14:06:19 16 THE COURT: Who wants to start?

14:06:22 17 MR. RATLIFF: Your Honor, I might start a minute, if  
14:06:23 18 you don't mind.

14:06:24 19 THE COURT: He also indicated that he had set up for a  
14:06:28 20 video presentation on Monday. Are y'all aware of that?

14:06:33 21 MR. RATLIFF: No. There's a hearing or something on  
14:06:34 22 Monday, as I recall.

14:06:38 23 Your Honor, this is Mr. Jackson, who's with Jones Day  
14:06:41 24 and also represents Dell and Dell employees.

14:06:44 25 MR. JACKSON: Your Honor, there is a hearing, as I

14:06:45 1 understand it now, at 4:00 eastern time, Monday afternoon, before  
14:06:50 2 Special Master Poppiti to outline the question of his view of the  
14:06:54 3 length -- of the appropriate length of the depositions. I don't  
14:06:58 4 know anything about a video.

14:06:59 5 THE COURT: He mentioned a video but I don't know.

14:07:06 6 MR. KLEIN: Your Honor, I'm Michael Klein and this is  
14:07:07 7 Linda Smith with O'Melveny & Myers in Los Angeles, and she's in  
14:07:12 8 the MDL litigation representing AMD, and she knows something  
14:07:16 9 about the hearing scheduled on Monday.

14:07:18 10 MS. SMITH: What the Judge -- what Special Master  
14:07:21 11 Poppiti did is he divided the issues into whether -- which court  
14:07:26 12 had jurisdiction to adjudicate disputes arising out of the  
14:07:30 13 issuance of the subpoenas; and once that was decided, the next  
14:07:34 14 issue is the, quote, merits issue, which is how long the  
14:07:36 15 deposition should be. Judge Poppiti made a ruling -- a report  
14:07:42 16 and recommendation to District Judge Farnan that the MDL court  
14:07:48 17 had jurisdiction, Farnan approved that.

14:07:52 18 So we're going back on Monday to deal with the merits  
14:07:55 19 part of it, which is, okay, now that the MDL court has  
14:07:58 20 jurisdiction, how long should these depositions take.

14:08:03 21 MR. KLEIN: We're doing that provided this court grants  
14:08:06 22 AMD's motion to stay this afternoon.

14:08:06 23 MS. SMITH: That's true.

14:08:10 24 MR. KLEIN: And we're prepared to argue if it's --  
14:08:13 25 AMD's motion, we're prepared to present the Court with our

14:08:17 1 argument on that motion.

14:08:18 2 THE COURT: That's why y'all are here. I wouldn't want  
14:08:20 3 to disappoint you.

14:08:31 4 I will say this. I believe in keeping things orderly,  
14:08:36 5 but those orders are not binding on me. And I made that clear to  
14:08:42 6 the special master that I was going to keep an eye on everything.  
14:08:49 7 I didn't want to mess up the water. And I certainly don't want  
14:08:51 8 to get in anybody else's fight. I've got enough of my own.  
14:08:55 9 However, I don't think it's appropriate to shut Dell down, and it  
14:09:06 10 won't happen. So let's go from there.

14:09:10 11 MR. KLEIN: All right. Well, your Honor, our basic  
14:09:12 12 point, AMD's basic point is that this is a very appropriate case  
14:09:18 13 for this court to grant the motion to stay and to defer to the  
14:09:22 14 MDL judge in this situation because this is not your ordinary  
14:09:28 15 type of even MDL case, for that matter.

14:09:32 16 Yesterday, when I thought I was printing out a two-page  
14:09:35 17 order from the MDL case, my printer ran for five minutes, and  
14:09:39 18 when it stopped, I realized that attached to the order was the  
14:09:42 19 almost 14 pages of the distribution list. So this case, of all  
14:09:50 20 MDL cases, would benefit from the MDL judge ruling on all these  
14:09:56 21 types of issues. And stated differently, if this court were to  
14:10:01 22 set the precedent in this matter of denying the motion to stay  
14:10:06 23 and taking up this matter, then we can anticipate that every  
14:10:11 24 third-party witness deponent who has a lawyer on this list, who  
14:10:17 25 will be added to this list even when the time comes, they will be

14:10:20 1 filing a similar motion to what Dell filed in some various part  
14:10:24 2 of the country.

14:10:24 3 THE COURT: No. I understand the problem, counsel.

14:10:27 4 MR. KLEIN: And so, that's our basic position.

14:10:29 5 THE COURT: But I'm the only one here who's ever been  
14:10:31 6 deposed in an MDL case, and it was supposed to take an hour. It  
14:10:35 7 took four and a half days. And my knowledge about the subject  
14:10:39 8 matter was simply to testify that a certain person was in federal  
14:10:46 9 court in El Paso, Texas on a certain date wherein the minutes of  
14:10:52 10 the Court so -- was there. But there was so many nice folks  
14:10:59 11 there that wanted to ask me questions, and I was so entertaining  
14:11:02 12 that they kept me four and a half days. So I understand things  
14:11:05 13 are long there.

14:11:06 14 MR. KLEIN: And the MDL, of course, and the special  
14:11:09 15 master, rather, is available for phone call disputes if things  
14:11:13 16 like that arise during these depositions, which, you know, is  
14:11:17 17 another reason to defer to them, let the special master deal with  
14:11:21 18 that rather than having that tie up this court's time and  
14:11:25 19 resources. So the rules allow for MDL to have that jurisdiction.  
14:11:31 20 And because of the nature of this particular case, especially,  
14:11:36 21 AMD would urge that the Court grant the motion to stay and allow  
14:11:38 22 the MDL to adjudicate all disputes of this nature up in the MDL  
14:11:45 23 litigation.

14:11:46 24 THE COURT: Thanks, counsel.

14:11:49 25 MR. RATLIFF: Your Honor, Shannon Ratliff and Lisa

14:11:54 1 Paulson for the Dell employees. And also with us today is Mr.  
14:11:59 2 Tom Jackson -- he spoke a minute ago -- from Jones Day. And Mary  
14:12:04 3 Pape, who's a litigation director at Dell.

14:12:06 4 Here's the situation that I think we face here, your  
14:12:10 5 Honor. After three years, if Dell hasn't spent almost \$8 million  
14:12:14 6 producing documents pursuant to requests, demands or negotiated  
14:12:22 7 document production to AMD, today, at around noon, received an  
14:12:31 8 order which AMD urges the Court to say deprives Dell of the  
14:12:37 9 benefit of the thing they put in the agreement for their  
14:12:40 10 protection and that is --

14:12:42 11 THE COURT: It's a unique kind of interpretation.

14:12:46 12 MR. RATLIFF: It was.

14:12:47 13 THE COURT: You can issue the subpoena but nothing else  
14:12:49 14 matters?

14:12:50 15 MR. RATLIFF: That's right, your Honor.

14:12:51 16 THE COURT: Some kind of strange interpretation. I  
14:12:54 17 think it should go into the joke book of this year.

14:12:57 18 MR. RATLIFF: We think it's strange and we think it's  
14:12:59 19 -- we are now faced with a situation after that of facing demands  
14:13:05 20 on five, six -- five Dell employees and --

14:13:10 21 THE COURT: Don't I have under advisement right now  
14:13:13 22 additional discovery in this case?

14:13:18 23 MR. RATLIFF: If you do, I'm not aware of it, your  
14:13:20 24 Honor.

14:13:20 25 THE COURT: Is that a different Dell case?

14:13:22 1 MR. RATLIFF: That's probably a different Dell case.

14:13:24 2 But we're now faced with a situation where five current  
14:13:26 3 Dell employees, one former, the AMD request for time for  
14:13:32 4 deposition alone is 96 hours. And Intel, who has said they think  
14:13:41 5 they can do what they need -- AMD, if it's a seven-hour day,  
14:13:45 6 Intel says we think we could do ours in half that time, but they  
14:13:48 7 say with these kind of increased demands.

14:13:51 8 So you've got everybody from Michael Dell, the CEO, the  
14:13:54 9 chief executive officer and chairman, down through some of their  
14:14:01 10 top level people, and Mr. Kevin Rollins, a former employee, and  
14:14:07 11 they're going to try to immobilize them for days. This reminds  
14:14:11 12 me of the situation that the Court is well aware of when the  
14:14:14 13 rules did not provide for a presumptive limit, and you would sit  
14:14:21 14 in depositions, in particularly in antitrust cases, that would be  
14:14:25 15 mindless that go on for weeks.

14:14:28 16 And it seems to me that this is a situation -- I don't  
14:14:31 17 think this court in any way has been deprived of jurisdiction  
14:14:35 18 with all deference to the Judge in Delaware. When he acts, as I  
14:14:40 19 understand it, on a discovery dispute on the Corrugated Box  
14:14:44 20 decision -- the Corrugated Box decision's out of the Fifth  
14:14:48 21 Circuit -- he is not acting as the MDL judge or a Delaware  
14:14:52 22 district judge, he is acting as the judge of the Western  
14:14:54 23 District, just like you do.

14:14:56 24 THE COURT: That's what his opinion said.

14:15:00 25 MR. RATLIFF: And so, what we think should happen, as



14:15:04 1 opposed to a stay -- he's now set to go on Monday. This has been  
14:15:09 2 teed up in front of this court, and AMD has responded in his  
14:15:12 3 court. And I think this court ought to go ahead and say, this is  
14:15:18 4 the way these depositions will proceed. We think we're entitled  
14:15:22 5 to protection. We think that we have made proposals that said,  
14:15:28 6 look, why don't you take four of these people that are really the  
14:15:31 7 people that might be the players. We will -- we have set aside  
14:15:37 8 time for them. We'll go ahead and reserve time on Michael Dell's  
14:15:43 9 calendar and on Kevin Rollins' calendar, because they're hard to  
14:15:49 10 get on, for one day after you see what you get in that first  
14:15:55 11 group of depositions, which are still high-ranking people in  
14:16:00 12 Dell, then you'll have a better idea of what you need when you  
14:16:04 13 get to these other people. And we had agreed to some time limits  
14:16:11 14 in terms of how many days or how many hours they will get. It  
14:16:18 15 seems to me and had we been able to reach that agreement, nobody  
14:16:22 16 would have had to do anything in court here or in Delaware.

14:16:27 17           The other thing that struck me -- strikes me as strange  
14:16:31 18 in these cases is that the claim is we need to do this for  
14:16:35 19 uniformity. I think I have two responses to that. One, most  
14:16:40 20 discovery disputes dealing with length and whether it's abusive  
14:16:45 21 and necessary are won-off type decisions. It depends on who the  
14:16:49 22 person is, what their position is in the company, what their  
14:16:52 23 exposure is to the facts of the case. They're not  
14:16:56 24 precedent-setting decisions that are going to then control all  
14:16:58 25 the third-party depositions.

14:16:59 1 The second thing is and where the uniformity argument  
14:17:03 2 seems to fall, to me, fall apart is that if the MDL judge, acting  
14:17:11 3 as a judge in the Western District, enters an order compelling  
14:17:15 4 that discovery or holding someone in contempt for not --

14:17:19 5 THE COURT: That was my next question because I'm not  
14:17:22 6 familiar with any authority that he would be able to do that.

14:17:27 7 MR. RATLIFF: Well, there is authority. Let me tell  
14:17:28 8 you what I know. Judge Singleton had the Corrugated Box cases,  
14:17:33 9 MDL in Houston. He had two officials in other states, third  
14:17:39 10 parties, who refused to be deposed. He issued contempt orders.  
14:17:44 11 But what the Fifth Circuit said is, when he did that he was  
14:17:48 12 acting as a judge in the two jurisdictions where the people were  
14:17:56 13 located.

14:17:56 14 And in the instance we're talking about here, if the  
14:18:01 15 MDL judge were to enter an order compelling discovery or holding  
14:18:05 16 someone in contempt for failure to do it, the appeal would go to  
14:18:08 17 the Fifth Circuit. And as the Sixth Circuit has pointed out,  
14:18:13 18 that is done so that the discovery and -- the discovery law in a  
14:18:20 19 particular circuit is maintained and not interfered with by the  
14:18:24 20 MDL court.

14:18:26 21 So I believe it would be perfectly appropriate and I  
14:18:30 22 would urge the Court to give us some protection against these  
14:18:35 23 extremely burdensome depositions. The rules clearly think -- and  
14:18:40 24 I understand one size doesn't always fit. But the rules clearly,  
14:18:44 25 it seems to me, establish a presumption that you can get done

14:18:47 1 what you need to get done in seven hours of deposition time. And  
14:18:51 2 I think your experience and my experience has been if you turn to  
14:18:56 3 it, it's got to be a pretty complex issue before you can't get it  
14:19:00 4 done in seven hours.

14:19:01 5 And so, we would ask that the Court not grant AMD's  
14:19:07 6 motion for stay and that the Court enter an order granting  
14:19:10 7 protection to these witnesses. If the Court's got any questions,  
14:19:16 8 I'll be happy -- I've got some copies of the authority I  
14:19:19 9 mentioned, your Honor, and I can hand that up to the Court, if  
14:19:21 10 you'd like.

14:19:22 11 THE COURT: We can find whatever authority we need.  
14:19:26 12 Okay.

14:19:27 13 MR. RATLIFF: Thank you, your Honor.

14:19:28 14 MR. KLEIN: Brief response, your Honor, as to the  
14:19:29 15 motion.

14:19:29 16 THE COURT: It's not a brief -- what I don't understand  
14:19:33 17 is why competent lawyers can't make a reasonable schedule for  
14:19:37 18 deposition. That's what I don't understand. And this schedule  
14:19:41 19 doesn't look reasonable to me for a company that's got the  
14:19:44 20 business that they have of the problems that they have right now.

14:19:51 21 MR. KLEIN: As to that issue, your Honor, Ms. Smith is  
14:19:54 22 the one who's been involved in all those negotiations.

14:19:56 23 THE COURT: Counsel, you're sitting up here as  
14:20:00 24 representing them, you're bound to have some input. And I can't  
14:20:05 25 believe that you wouldn't be arguing the same on behalf of your

14:20:09 1 client if those same depositions schedules were staring them in  
14:20:14 2 the face. I mean it's presumptively unreasonable.

14:20:17 3 MR. KLEIN: I think any lawyer would do that, Judge,  
14:20:19 4 but the facts of this case are just significantly different than  
14:20:24 5 the ordinary case.

14:20:25 6 THE COURT: It doesn't make any difference about the  
14:20:26 7 facts of the case. This is discovery and time of people trying  
14:20:30 8 to run a corporation.

14:20:31 9 Now, I'm not going to be presumptive and think that the  
14:20:38 10 magistrate, the special master is going to be unreasonable. I'm  
14:20:44 11 not going to indulge in that. My judgment should be that that  
14:20:48 12 person is going to be reasonable. And when the lawyers, for  
14:20:52 13 whatever reason, can't work out a reasonable schedule, then a  
14:20:56 14 person who is in charge will.

14:20:58 15 MR. KLEIN: And he may cut the times in half for all we  
14:21:01 16 know. We just don't --

14:21:01 17 THE COURT: That's true.

14:21:01 18 MR. KLEIN: We don't know what he's going to do.

14:21:02 19 THE COURT: I don't know about the times and I don't  
14:21:08 20 know about the spacing, but I rather suspect that the gentleman  
14:21:10 21 has enough experience to be able to map out a procedure when the  
14:21:17 22 lawyers can't. That's the first thing that dawned on me with all  
14:21:22 23 of these papers on this one thing. Because lawyers can't sit  
14:21:27 24 down and communicate -- that's one thing the special master said.  
14:21:33 25 I guess he Googled me. When I talked to him this morning, he

14:21:37 1 liked my order where I quoted the kindergarten. That's what this  
14:21:47 2 looks like to me. This looks like people who can't or won't -- I  
14:21:52 3 don't know, but if I had a hearing, I could probably figure it  
14:21:54 4 out -- be reasonable.

14:22:00 5 But I'm not going to jump into the MDL. It makes sense  
14:22:03 6 for one person to be in charge. I will not stay this case. I  
14:22:07 7 will allow the special master to resolve this problem. You can  
14:22:15 8 represent to him that I think that the schedule is unreasonable,  
14:22:20 9 and I do not understand why lawyers could not work it out before  
14:22:25 10 they came here or there. But I'm going to reserve from doing  
14:22:33 11 anything to allow him to resolve the problem and not get into a  
14:22:45 12 three-way.

14:22:48 13 The one thing that I preach and the American College  
14:22:53 14 preaches is lawyers, not the clients, but lawyers are in charge  
14:23:01 15 of the scheduling, and a lawyer that does not reasonably handle  
14:23:11 16 deposition time and scheduling is not exhibiting ethical conduct  
14:23:23 17 and I believe that. Some of the worst times in the world were --  
14:23:32 18 in our part of the world where in the beginning, the mesothelioma  
14:23:38 19 cases where a deposition took three days. Three days. Who was  
14:23:44 20 your high school teacher? Did your parents pay the doctor that  
14:23:52 21 delivered you? I'm proud to say I never took a deposition lasted  
14:23:59 22 over a day, ever, and I tried so many cases, even more than  
14:24:04 23 justice of the peace cases.

14:24:07 24 So you could make those representations. I will carry  
14:24:11 25 the motion to stay. I will have competence that if y'all can't

14:24:15 1 work out a reasonable schedule, that the trustee will. I'm  
14:24:24 2 available on Monday. Thanks.

3 (End of proceeding.)

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UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 8th day of December, 2008.

/s/Lily I. Reznik  
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