

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

ADVANCED MICRO DEVICES, INC. and )  
AMD INTERNATIONAL SALES & SERVICE, )  
LTD., )

Plaintiffs, )

v. )

INTEL CORPORATION and )  
INTEL KABUSHIKI KAISHA, )

Defendants. )

C. A. No. 05-441 (JJF)

**PUBLIC VERSION**

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IN RE:

INTEL CORP. MICROPROCESSOR )  
ANTITRUST LITIGATION )

MDL Docket No. 05-1717 (JJF)

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

Plaintiffs, )

v. )

INTEL CORPORATION, )

Defendant. )

C.A. No. 05-485-JJF

CONSOLIDATED ACTION

**THIRD DECLARATION OF JOHN F. ASHLEY**

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Dated: January 5, 2009  
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### **THIRD DECLARATION OF JOHN F. ASHLEY**

I, John F. Ashley, declare and state as follows:

1. I am currently employed as the National Practice Leader of First Advantage Litigation Consulting (“FADV”), 1201 Connecticut Avenue N.W., Suite 250, Washington, DC 20036.

2. FADV is an electronic discovery and computer forensics consulting firm that assists clients with fact finding in litigation, regulatory reviews, and business decisions.

3. Before working with FADV, I was the head of the Greater Manchester Police Department’s Computer Examination Unit, which at that time was the largest criminal computer forensics and electronic disclosure unit in Europe. In that position, I was responsible for all computer examinations and electronic disclosure matters in Manchester, England, North Wales, and the Isle of Man. On several occasions, I was called on to assist Scotland Yard with computer forensic investigations. I have been dedicated to the field of computer forensics, electronic disclosure and electronic discovery since 1989.

#### **Purpose of Declaration**

4. The purpose of this Declaration is to update the Court regarding the status of Intel’s ongoing investigation into the sufficiency of AMD’s data preservation and productions, and to support Intel’s Rule 30(b)(6) deposition notice and accompanying document requests. This Declaration is not intended to exhaustively identify every issue I am currently investigating, but to provide insight into some recent developments during the informal disclosure process.

### **Timeline and Background of the Informal Discovery Process**

5. Over the last six months, Intel and AMD have engaged in an informal disclosure process. During this process, Intel attempted to gain a better understanding of AMD's preservation, harvest, and production activities. I understood that the informal disclosure process was intended to precede deposition testimony and other formal discovery.

6. Intel first began raising specific questions about anomalies and missing documents observed in AMD's document productions in August 2007, and notified AMD of its concerns. At the time, AMD dismissed Intel's concerns and advised Intel to await completion of its custodial production before undertaking further investigation. *See* Ex. A. Accordingly, in Spring 2008, following AMD's assertion that the bulk of its document production was completed, Intel reopened its investigation into the completeness of AMD's custodial productions. In addition to seeing many of the same issues identified in August 2007, I discovered a number of additional anomalies in the data which appeared to be related to possible loss of relevant data.

7. In June 2008, AMD filed a Motion to Quash any formal discovery related to its data preservation and productions. *See* Docket #684. On July 2, 2008, in support of Intel's Cross-motion to Compel, I submitted a Declaration identifying certain anomalies in AMD's document production (the "First Ashley Declaration"). *See* Docket #763. I repeatedly noted that my observations and opinions were preliminary in nature, and that further discovery from AMD, including review of source documents and sworn testimony, would be needed to fully understand and explore AMD's preservation, harvest, processing and production protocols.

8. With one exception, the issues raised in the First Ashley Declaration were new.<sup>1</sup> The purpose of the First Ashley Declaration was to demonstrate to the Court that further investigation and discovery was warranted. It was not my intent to provide the Court with an exhaustive listing of all potential issues, and to do so would have been premature.

9. On July 24, 2008, AMD responded to the technical issues raised in the First Ashley Declaration with the declaration of its outside counsel, Jeffrey Fowler of O'Melveny and Myers (the "Fowler Declaration"). *See* Docket #800. While the Fowler Declaration attempted to address many of the issues I raised, it did little to resolve my concerns, or assuage my suspicions, about AMD's data preservation and production practices. To the contrary, Mr. Fowler's representations regarding certain aspects of AMD's discovery efforts raised a number of further questions, given the extent to which they both supplemented and at times contradicted previous AMD representations. The Fowler Declaration also revealed troubling new information about AMD's preservation program, including the apparently *ad hoc*, unsupervised and undocumented activities of an AMD IT employee, [REDACTED].

10. Accordingly, on August 8, 2008, I submitted another Declaration (the "Second Ashley Declaration"). *See* Docket #810. The Second Ashley Declaration was intended to respond to the representations in the Fowler Declaration, and to alert the Court to new questions that arose in light of the newly revealed and contradictory information provided by Mr. Fowler.

11. In advance of the September 11, 2008 hearing with the parties, the Special Master prepared a chart setting forth a number of issues arising from my First Declaration and AMD's

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<sup>1</sup> Almost a year earlier, Intel had questioned the preservation practices of AMD's [REDACTED] but AMD dismissed the criticism as a "treasure hunt." Ex. A. The First Ashley Declaration raised this issue again. ¶¶ 28-32.

responses thereto. The parties were directed to engage in an informal disclosure process to be followed by depositions.

12. During the September 11 hearing, AMD acknowledged that [REDACTED] preservation and production of relevant documents was incomplete – despite technical steps purportedly taken by [REDACTED] to prevent [REDACTED] from permanently deleting email. AMD agreed to restore backup tapes to remediate [REDACTED] email production. The resulting remedial production included several hundred new email messages from the period prior to activation of journaling on [REDACTED] email account, and thousands of new messages during the June/July 2006 timeframe. AMD has not yet provided any description of, or answered any questions about, the scope or nature of its remediation effort. I understand Intel sent a letter to AMD’s counsel on December 30 with a list of questions about [REDACTED] remedial email production, and that Intel awaits a response from AMD.

13. As part of the informal disclosure process, Intel conducted interviews with [REDACTED] [REDACTED] AMD’s electronic discovery liaison in this matter, and [REDACTED], a representative from AMD’s internal IT department. AMD also produced emails (based on agreed upon search terms and date ranges) from [REDACTED] and certain other members of AMD’s IT department.

14. The October interviews with [REDACTED] revealed new information that suggested potential causes of anomalies in AMD’s data productions – including the anomalies identified in the First Ashley Declaration, as well as additional issues identified in the period following the September 11 hearing. The [REDACTED] interviews were also useful in allowing the parties to resolve the issues on the Special Master’s chart relating to “Lost Files” and “Lost and Found” notations.

15. On October 15, at the conclusion of the second informal interview ██████████ ██████████ Intel informed AMD that it would be informally disclosing some preliminary analysis of a sampling of AMD custodian productions – more specifically, the histogram analysis. Intel described the analysis as being similar to the analysis provided for ██████████ sent items in the First Ashley Declaration.

16. After additional meet and confer sessions both with and without the participation of the Special Master’s technical consultants, an additional interview took place on December 11 with ██████████ I understand that ██████████ has served as the primary contact for all internal AMD technical aspects of discovery. Though I did not directly participate in ██████████ ██████████ interview, I have been briefed in detail on the discussion. ██████████ provided information that confirmed certain problems I had already identified and, in some areas, expanded our investigation into new topics. For example, ██████████ clarified previous representations by AMD concerning “30-day backup” tapes, explaining that they were essentially a once-monthly snapshot of the real-time data residing on AMD’s servers at a given point in time, containing no incremental data from the previous 29 days.

17. ██████████ also disclosed that AMD failed to harvest live server email for the overwhelming majority of AMD custodians, and that .ost email stores were not harvested during the period of time before custodians were placed on journaling. As a result, it appears that AMD failed to harvest two of the most basic sources of email data during a critical time period. AMD’s preservation plan thus had substantial gaps until individual custodians were put on journaling. This was confirmed in the December 12, 2008 teleconference by Mr. Samuels, “we failed to institute some automated preservation system until the fall of 2005. And that’s a fact. We didn’t.” [12/12/08 Hearing Tr. 18:24-19:2]. In reality, only an initial group of custodians

were placed on journaling in the fall of 2005. Indeed, based on the journaling dates provided by AMD, it appears that over two-thirds of the relevant time frame (the date between AMD's reasonable anticipation of litigation until the deposition reharvest cutoff) was pre-journaling.

18. Despite the ongoing informal discovery efforts, the vast majority of issues identified in my Declarations remain unresolved for a number of reasons, including:

- AMD's refusal to answer certain questions, in favor of delaying them until formal deposition (which I understand it now resists entirely);
- AMD's witnesses' inability to answer certain questions during interviews;
- AMD's claim that key aspects related to technical measures taken in connection with their discovery efforts are privileged; and/or
- AMD's claim that anything not expressly referenced as an "issue" in the Special Master's chart is, by default, excluded from discovery

19. Likewise, whereas the informal discovery process has provided some useful answers to Intel in trying to determine the completeness and effectiveness of AMD's practices, it has also uncovered numerous and significant new questions which have yet to be answered.

20. In our analysis of AMD's practices for this case, we have identified a number of issues that require investigation, including, for example:

- the ongoing enforcement of mailbox size restrictions;
- instructions by AMD IT that employees should delete or clear their mailbox folders to avert size limitations;
- untimely distribution of litigation hold notices, and the level of monitoring of custodian preservation activities;



- missteps in the configuration and delayed deployment of an automated preservation system;
- *ad hoc* and undocumented preservation activities by AMD IT employees;
- incomplete and flawed data harvesting activities;
- the differences in preservation and harvesting practices in different locations;
- the ability of AMD employees (based on the Dresden server) to delete emails from their email archives; and
- improper use of de-duplication and thread suppression technology.

The informal disclosures have shed light upon several critical errors by AMD related to the design, implementation and execution of its retention and production plans. In my opinion, to understand the full scope of these failures and their impact on AMD's ultimate production to Intel requires formal discovery.

21. It should further be noted that almost every admission by AMD of custodian data loss has been in response to Intel's inquiries into AMD's practices, rather than any independent auditing or monitoring as part of AMD's discovery plan. But for Intel's continuing – at its own expense – to press forward with an investigation, many of the data losses admitted by AMD to date, would never have come to light.

22. The following sections address some of the specific technical issues I have been investigating.

### **Enterprise Vault**

23. Enterprise Vault is a product used by many organizations for preservation purposes. Vault can capture data in a variety of ways depending on the settings established at an administrative level. As a result of information uncovered during the informal disclosure

process, it is my belief that AMD's implementation and configuration of its Enterprise Vault system raises questions and concerns about the soundness of their preservation scheme. Certainly, the methods employed by AMD's IT department in performing migrations of individual custodian .pst files to the Vault archive were not optimized for preservation of data. For example:

- By default, any messages residing in the "Deleted Items" folder were not migrated, despite representations from AMD that some custodians claim to have used their Deleted Items folders to preserve emails. *See* Docket #800 [Fowler Declaration] at ¶¶ 19, 38-39.
- Custodians were instructed to delete the original .pst files when the migration finished (though, by AMD's admission, not all items residing in the .pst file had been migrated), thus potentially spoliating relevant data. *See* Ex. B; and
- AMD's apparent failure to proactively confirm that all custodian .pst files had been properly identified and successfully migrated, or to audit the .pst migration logs created during the process.

*Correspondence produced by AMD seems to indicate that custodians themselves were primarily responsible for locating and identifying .pst files for migration See Ex. C., but AMD has also represented that IT employees performed this task [Fowler Declaration at ¶8]. In my opinion, it is vital that Intel be given the opportunity to explore this topic with AMD witnesses under oath, and also to review the logs automatically created during the .pst migration process. E.g., Ex. D.*

### **Journal**

24. With regard to AMD's journaling system, I take note that AMD delayed its implementation for a significant number of custodians, particularly for those based in Europe and

Asia. In addition, I am concerned about AMD's apparent failure to properly resolve the names of the various custodian email addresses and aliases before conducting data extractions from the collective multi-custodian Journal archives. ██████████ confirmed that AMD only retrieved custodian emails using the *first.last@amd.com* email address format, and thus may have excluded from their journal harvests other email formats and aliases that exist across the custodian population. In my opinion, AMD's pre-journaling failures, as well as AMD's potentially-flawed journal extraction procedures, may have impacted the sufficiency of AMD's data productions to Intel. Formal discovery is now the only way for Intel to evaluate and fully establish the significance of these failures.

#### **Configuration of Email Systems and Mailbox Size Quotas**

25. In addition to custodian-specific mailbox settings, to help manage and limit data retention by employees, AMD imposed and enforced strict mailbox size limitations on all employees. I understand that AMD did not suspend or alter its mailbox size limits procedures at any point after its duty to preserve relevant data arose.

26. I understand that AMD employees' ability to send and/or receive emails was restricted to varying degrees depending on whether their mailboxes were approaching, or had already exceeded, the designated mailbox size quota. I also understand it was a common occurrence for AMD employees to run afoul of mailbox size quotas, which in fact resulted in email usage being severely limited or entirely blocked. The purpose of such policies is to encourage employees to delete (or otherwise manage) emails in their mailbox folders before they reach a size quota, such that the employees avoid the adverse consequences of reaching or exceeding the quota.

27. The standard and most commonly used instruction to AMD employees reaching or surpassing their size limitation included an instruction to [REDACTED] [REDACTED] See Ex. E. In addition, throughout March 2005 (and perhaps on other occasions), AMD IT instructed all AMD employees that they should [REDACTED] [REDACTED] See Ex. F. The timing and broad distribution of these [REDACTED] notices is concerning, since AMD claims it reasonably anticipated litigation as early as March 11, 2005, but waited several weeks before informing any individual custodians about their obligation to preserve relevant email.

28. During his interview, [REDACTED] confirmed that since the onset of preservation obligations, an unknown number of AMD custodians had in fact experienced all possible levels of email account disabling due to surpassing limitations on mailbox size. Correspondence produced by AMD certainly shows that size quota restrictions were a point of frustration for some custodians themselves See Ex. G., as well as for others trying to email message to them See Ex. H., and that at least one meeting was held in 2006 to address this issue. See Ex. I. In addition, some of the key custodians tasked subordinates or assistants with the regular permanent deletion of email from their mailboxes. See, e.g., Ex. J.

29. The issues related to email system configuration and mailbox size limitations are foundational issues to any data preservation plan, and my investigation into them cannot be completed without the benefit of testimony under oath from AMD witnesses.

### Harvesting

30. To date, AMD has only provided initial harvest dates for designated production custodians, and AMD's counsel has informally represented to Intel's counsel that most, but not

all, of those dates reflect hard drive collections. Intel needs more specific information regarding the nature and timing of harvest activities to fully evaluate the sufficiency of AMD's harvesting procedures.

31. As noted above, AMD has disclosed that it generally failed to (a) migrate items from deleted items folders into Vault, (b) harvest live server email, (c) harvest .ost email stores (during the pre-journaling period), and (d) audit .pst migration logs. Because of these facts, the specific timing and sequence of harvesting activities could impact whether all sources of email were properly harvested. Consider the chronology of events for custodian [REDACTED], against the backdrop of what AMD has characterized as typical:

- From March 11, 2005 through August 10, 2006, AMD does not harvest any live server email, .ost email stores, or forensic hard drive image from [REDACTED].
- On November 2, 2005, [REDACTED] .pst files are migrated into Enterprise Vault. During the migration process, his deleted items and .ost email stores are not migrated. AMD IT does not proactively confirm that all of [REDACTED] custodian .pst files had been properly identified and does not audit the .pst migration logs created during the process to ensure that all items had migrated successfully.
- At some point during the next 10 months, following the migration process and per instructions from AMD IT, [REDACTED] deletes all .pst and .ost files from his hard drive and network storage.
- On August 10, 2006, AMD harvests a forensic image [REDACTED] hard drive for the first time.

32. In the example above, the forensic image of [REDACTED] hard drive, because it occurred almost a year *after* the Vault migration and deletion activity, would not capture any items previously stored in .ost storage file(s), any items that had failed to migrate successfully or any items from the deleted items folder(s). Similarly, since those items were neither preserved by the custodian nor migrated into Vault, they would not be subject to any harvest.

#### **Other Revelations Previously Undisclosed by AMD**

33. Since the informal disclosure process began, Intel has uncovered and/or AMD has belatedly disclosed, a host of new lapses and issues. For example:

- The failure of some custodians, such as [REDACTED], to preserve virtually any relevant documents [Docket #1040, AMD's 12/9/08 Status Report at 9];
- The failure to harvest and/or process all data for custodians [REDACTED] and [REDACTED];
- The failure of AMD to harvest data for the overwhelming majority of custodians from the live Exchange Server;
- The failure to migrate .ost files into Enterprise Vault; and
- The failure of AMD to preserve and/or perform a timely harvest of locally stored .pst files.

#### **Pre-Journaling Non-Preservation of Data**

34. Based upon AMD's confirmation of [REDACTED] data loss, and the need for remedial productions from backup tapes (addressed in paragraph 12 above), Intel began closely reviewing the sufficiency of other custodian productions. During this review, Intel uncovered non-preservation of emails during the pre-journaling period. Across AMD's designated

custodian population, the pre-journaling period accounts for at least two-thirds of the aggregate time between AMD's (purported) reasonable anticipation of litigation in March 2005 and the deposition re-harvest cutoff of June 2006. As such, widespread non-preservation during the pre-journaling period would substantially impact the overall sufficiency of AMD's data productions to Intel.

35. In October 2008, Intel began producing to AMD histograms (and accompanying document control numbers) which identify documents missing from subject custodians' productions. AMD has responded by producing "counter-histograms" for a subset of the custodians which still reflect widespread data anomalies and loss. The parties continue to discuss and debate (with the assistance of Mr. Friedberg and Ms. Martin) the proper way to account for AMD's unilaterally-imposed near-deduplication protocol. Intel is in the process of further refining its histogram methodology to include near-duplicate suppression based upon the input of the Special Master's consultants, and will soon provide new histograms reflecting this refinement. Preliminarily, the refined analysis appears to show the very same patterns as the prior versions – namely, widespread deletion of data during the pre-journaling period.

### **Conclusion**

36. Based upon my observations to date, without the benefit of any sworn testimony or the important documentary evidence not yet received by Intel, it is still my preliminary opinion that the design, implementation and execution of AMD's preservation, harvesting, processing and production protocols were flawed. I believe that AMD's errors led to incomplete data productions to Intel. It is critical for Intel to be provided with an adequate amount of time to explore and confirm these lapses with witnesses under oath. After such testimony is given, Intel

will be in a better position to determine the extent and nature of data loss, and to determine the degree to which AMD should be required to remediate its production.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 5, 2009

Public Version Dated: January 15, 2009  
898348/29282



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John F. Ashley



# **EXHIBIT A**



O'MELVENY & MYERS LLP

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NEW YORK  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY  
TOKYO  
WASHINGTON, D.C.

September 14, 2007

OUR FILE NUMBER  
8,346-163

WRITER'S DIRECT DIAL  
(213) 430-6340

VIA EMAIL

WRITER'S E-MAIL ADDRESS  
ttsamuels@omml.com

Kay Kochenderfer, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197

Re: AMD v. Intel Corporation

Dear Kay:

This letter is written with reference to your letters of September 4 and 10, which allege that nine AMD Custodians failed to preserve as Sent Items a total of 5,384 emails authored by them that have been produced out of the "In Boxes" of other AMD Custodians who received them. Those Custodians are [REDACTED]

Based on our investigation thus far, your claim is totally unfounded, and we are offended at having been put to the time and expense to debunk it.

Your September 4 letter was written following my August 10 letter to Bob Cooper in which I informed you that in the course of our review, we discovered that a number of our 108 party-designated Custodians had corrupted .pst files that were being repaired, or other .pst files that had not yet been harvested or processed. I told Bob that those .pst's were being processed and reviewed, and that the responsive data from them would be in your hands shortly. Since that time, and as I promised, we have made supplemental productions from a number of those custodians' files, and more will be on its way soon. Your September 4 letter and its 109 page list of "missing" items did not take into account any of these materials, as you acknowledged when we met in your office on September 7.

As you also acknowledged during our September 7 meeting, your list also included thousands of items (3,434 of them by our count) where the "missing" email was not the top item in the chain you identified. Rather, it was some unidentified email message buried within the

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chain. I wrote to you that day confirming this, pointing out that we had no ability to ascertain which item in the chain you were inquiring about, and asking you to identify it for us by date and time so we could search for it in the Custodian's data. Inexplicably, you refused, although the information was obviously available to you.

As a consequence of your September 4 letter (in which you knowingly failed to take into account all of the Custodian data that had been produced to you since August 10) and your September 10 letter (in which you declined to point us to the specific email in a chain about which you were inquiring), you have forced us to devote substantial and largely unnecessary efforts to investigating your questions, at considerable expense to AMD.

We have now concluded our work with respect to the first custodian on your September 4 letter, [REDACTED]. Of the 593 supposedly missing items you attributed to him, [REDACTED] preserved each and every one.

The attached spreadsheet accounts for each of the DCNs in one of five ways: Produced to Intel; Being Reviewed for Production; Deemed Non-Responsive; De-Duplicated; or [REDACTED] DCNs. I elaborate on each of these categories below.

**Produced to Intel:** This table lists the DCN from your letter and then the DCN for the same item produced from [REDACTED] data. In some instances, there are multiple DCNs listed, each of which is included in and/or inclusive of the DCN on your list.

**Being Reviewed for Production:** This table lists the DCN from your letter where we have confirmed that the same item exists in [REDACTED] data and is in the cue for review and production to Intel. I expect that these items, where responsive, will be produced to you within the next several weeks. If for some reason you require inspection of these items before then, we will oblige you.

**Deemed Non-Responsive:** This table lists the DCN from your letter where the reviewer of the same item from [REDACTED] data deemed it non-responsive. As you acknowledge in your September 10 letter, different reviewers looking at the same item in different custodians' data can sometimes come to different judgments as to responsiveness, and that was the case with these items.

**De-Duplicated:** This table lists the DCN from your letter where the item in question (a portion of a larger email string) exists in [REDACTED] data but was suppressed as being a "near duplicate." In each instance, the item in question was in fact produced from [REDACTED] data as part of a larger email chain, identified in the second column. A textual explanation of the way the software defines and suppresses near duplicates is set forth below.<sup>1</sup>

<sup>1</sup> To identify near duplicates, Attenex Patterns Workbench makes a copy of each email, and "normalizes" the e-mail content by removing reply identification characters such as ">" and condensing consecutive white spaces to a single space. It then groups e-mail based on the "subject thread," which is a normalized version of the subject field of the e-mail, and compares

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To satisfy you that the email chain fragment was in fact preserved in [REDACTED] data, but was simply suppressed, at your request we will on a one-time basis retrieve the items and make them available for your inspection. If for some reason Intel has an issue with our de-duplicating protocol (which provides Intel with every bit of the content while at the same time reducing both side's processing and review burden), we are happy to discuss it with you.

[REDACTED] DCNs: This table lists DCNs identified in your letter that did, in fact, come from [REDACTED] data. The assertion on page 1 of your letter that these items were produced out of some *other* custodian's data is simply incorrect.

As I noted earlier, Intel's refusal to identify the specific email chain fragment of interest, as I reasonably requested in my September 7 letter, inflicted upon AMD considerable programming effort and expense, as well as extensive manual review, to conduct the investigation. We do not intend to conduct a similar "treasure hunt" now for the other eight custodians. Rather, when our document exchange is complete on February 15, 2008, should you so desire, we can each flyspeck one another's productions looking for items received from a designated custodian whose documents do not include the "sent" counterpart. I am confident that in virtually all instances, any AMD disconnect will be the result of entirely proper de-duping or differing reviewer judgments about responsiveness. Rest assured, however, that if you request us to engage in such a wasteful exercise, we will make the same request of you. Frankly, we do not think this is how either of us should be spending our clients' money.

If you disagree, in the meantime you can resolve some similar questions about Intel's production. For example, we have received production of a large number of email messages sent by [REDACTED] that do not appear to have been retained by him. The list attached to this letter contains a sampling of such messages, and there are many similar Intel custodians. Perhaps you care to explain?

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the normalized content of each e-mail to other emails within its subject thread group. If the exact content of a normalized e-mail is contained within another e-mail, then the contained email is identified as a near duplicate. Source e-mail files in Attenex Patterns Workbench are not altered in this process. An e-mail with attachments will only be identified as a near duplicate of another if all of its text and all of its attachments are completely contained in another e-mail that has the exact same attachments, as determined by MD5 hash value.

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I will respond separately with respect to your Rule 30(b)(6) notice concerning AMD document preservation. The exercise you have put us through, coupled with your inexplicable effort to make it as onerous and expensive for AMD as possible, convinces us that your discovery is largely unjustified (and, at the very least, premature).

Very truly yours,



Mark A. Samuels  
of O'MELVENY & MYERS LLP

Enclosures

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O'MELVENY & MYERS LLP

[REDACTED]
67382-006308
67382-006277
66381-004388
67382-006228
67382-006345
67382-006344
66619-001886
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66036-003948
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67382-006304
67382-006318
67382-006284

LA2:841821.2



# **EXHIBIT B**

**THIS EXHIBIT HAS BEEN  
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# **EXHIBIT C**

**THIS EXHIBIT HAS BEEN  
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# **EXHIBIT D**

**THIS EXHIBIT HAS BEEN  
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# **EXHIBIT E**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**



# **EXHIBIT F1**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT F2**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT F3**

**THIS EXHIBIT HAS BEEN  
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# **EXHIBIT F4**

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# **EXHIBIT G**

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# **EXHIBIT H1**

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# **EXHIBIT H2**

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# **EXHIBIT I**

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# **EXHIBIT J1**

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# **EXHIBIT J2**

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

**CERTIFICATE OF SERVICE**

I, W. Harding Drane, Jr., hereby certify that on January 15, 2009, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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