

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

IN RE
INTEL CORPORATION
MICROPROCESSOR ANTITRUST
LITIGATION

MDL No. 05-1717-JJF

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

PUBLIC VERSION

C.A. No. 05-441-JJF

Plaintiffs,

v.

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,

C.A. No. 05-485-JJF

v.

INTEL CORPORATION,

Defendant.

CONSOLIDATED ACTION

**EXHIBITS TO
LETTER TO SPECIAL MASTER VINCENT J. POPPITI DATED JANUARY 5, 2009
FROM W. HARDING DRANE, JR.**

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Dated: January 15, 2009
Public Version

898820/29282

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EXHIBIT A

(videographic) means, will be taken before a Notary Public or other officer authorized to administer oaths, and will continue from day to day until completed, weekends and public holidays excepted.

Reference is made to the "Description of Matters on Which Examination is Requested" attached hereto as Exhibit A and incorporated herein by this reference. In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, AMD is hereby notified of its obligation to designate one or more officers, directors, or managing agents (or other persons who consent to do so) to testify on its behalf as to all matters embraced in the "Description of Matters on Which Examination is Requested" and known or reasonably available to AMD.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rules 30(b) and 34 of the Federal Rules of Civil Procedure, Intel requests that AMD produce for inspection, copying and use at the deposition all of the documents and other tangible things in their possession, custody, or control and responsive to the "Categories of Documents and Tangible Things Requested for Production" attached as Exhibit B and incorporated herein by reference. Production shall take place at the time and place of the deposition or at such other time and place as the parties agree.

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Dated: December 30, 2008

EXHIBIT A

EXHIBIT A:

**DESCRIPTION OF MATTERS ON WHICH
EXAMINATION IS REQUESTED**

L

DEFINITIONS

1. "AMD" shall mean and refer collectively to plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.

2. "AMD Custodians" or "Custodians" means and refers to the approximately 440 individuals identified by AMD on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.

3. "Litigation" means and refers to the litigation in which this Notice of Taking Deposition has been served.

II.

SUBJECT MATTER

1. AMD's implementation and use of Enterprise Vault (in all relevant geographic regions) including but not limited to:

- (a) Timing of implementation and deployment;
- (b) Initial configuration and any subsequent changes thereto;
- (c) Migration of data into Enterprise Vault storage, including the type(s) of data migrated and not migrated;
- (d) Quality control safeguards and auditing;
- (e) Reporting, search and production capabilities;
- (f) Processes used to extract data from the system; and
- (g) Errors, malfunctions, data corruption or loss.

2. AMD's implementation and use of an email journaling system (in all relevant geographic regions) including but not limited to:

- (a) Timing of implementation and deployment;
- (b) Initial configuration and any subsequent changes thereto;
- (c) Type(s) of data the email journaling system was configured to preserve and types of data it was not configured to preserve;
- (d) Quality control safeguards and auditing;
- (e) Reporting, search and production capabilities;
- (f) Processes used to extract data from the system; and
- (g) Errors, malfunctions, data corruption or loss.

3. Configuration of AMD's email systems, including but not limited to:

- (a) Employees' ability to customize email settings that could impact preservation of emails;
- (b) Dumpster settings, use of shift-delete, and AMD Custodians' ability to permanently delete email messages.
- (c) Mailbox size limits or quotas for AMD employees' email including but not limited to:
 - 1) Nature and purpose of any limits or quotas, including any changes after AMD reasonably anticipated this Litigation;
 - 2) Consequence(s) of an email account nearing or reaching the limit or quota;
 - 3) Recommendations or instructions to employees and Custodians; and
 - 4) Whether and when AMD Custodians reached storage limits after March 11, 2005, and the identities of such Custodians.

4. Date on which AMD first reasonably anticipated this Litigation, and the events and circumstances leading to AMD's decision to commence this Litigation.

5. AMD's litigation hold notices for the Litigation, including but not limited to:

- (a) The timing of AMD's issuance of written litigation hold notices;
- (b) Meaning and intent of the language used;

- (c) AMD's knowledge of whether Custodians followed the instructions or recommendations included in the litigation hold notices;
- (d) Monitoring and auditing; and
- (e) IT Department technical support.

6. AMD's harvesting of electronic data for this Litigation from all geographic locations and sources (hard drives, live exchange server mailboxes, Enterprise Vault, email journaling), including but not limited to:

- (a) Identity of entities and personnel conducting harvests;
- (b) Protocols and processes used;
- (c) Types of data included and excluded from harvests;
- (d) Timing of harvesting activities;
- (e) Identity of custodians subject to harvesting; and
- (f) Documentation, auditing and validation.

7. Nature of, and protocols for, AMD IT's support of custodian preservation activities.

8. Data processing protocols and procedures utilized by AMD's electronic discovery vendor(s), including but not limited to:

- (a) Identity of vendor performing processing functions;
- (b) Processes used;
- (c) Type(s) of data included or excluded from processing;
- (d) Hardware and software used; and
- (e) Documentation, auditing and validation.

9. De-duplication and near de-duplication methods used by AMD during this Litigation, including but not limited to:

- (a) Protocols, databases and tools used by FCS and Stratify;
- (b) Attenex methodology for de-duplication and near de-duplication; and
- (c) AMD's knowledge of whether Custodians manually de-duplicated or near de-duplicated, the identity of any such Custodians, and any actions taken by AMD related to Custodians' manual deduplication or near-deduplication.

10. Backup tape policies and protocols, including but not limited to:
 - (a) Pre-Litigation disaster recovery backup tapes, including type of backups, software and media used, content and frequency of the backups, tape rotation/recycling schedule, and restoration activities for this Litigation; and
 - (b) Preservation of backup tapes for this Litigation, including type of backups, software and media used, content and frequency of the backups, tape rotation/recycling schedule, restoration activities for this Litigation.
11. Facts underlying the statement in Mr. Herron's letter of October 24, 2005 to Mr. Rosenthal (at 1) that "AMD's document retention and destruction policies were suspended to prevent the inadvertent destruction of documents that may be relevant to this lawsuit."
12. Any known or suspected non-preservation of AMD Custodian data.
13. The timing, scope and nature of the problems and/or issues for the following Custodians' data preservation, harvesting, processing and/or productions:
 - (a) Mr. Ruiz;
 - (b) Mr. Oji;
 - (c) Mr. Soares;
 - (d) Mr. Kwok;
 - (e) Mr. Kepler;
 - (f) Mr. Urani; and
 - (g) Mr. Brunswick.
14. AMD's attempts (successful or unsuccessful) to recover, restore or produce documents related to any Custodian (including but not limited to the Custodians identified in Topic 14 above), from backup tapes, other employees' electronic files, and/or from data previously harvested but suppressed by AMD's near-deduplication protocols.
15. AMD's audits and investigations of the sufficiency of its data preservation, harvesting and productions related to the Litigation.

EXHIBIT B

EXHIBIT B:
**CATEGORIES OF DOCUMENTS AND TANGIBLE THINGS
REQUESTED FOR PRODUCTION**

I.

DEFINITIONS

1. "AMD" shall mean and refer collectively to plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.
2. "AMD Custodians" or "Custodians" means and refers to the approximately 440 individuals identified by AMD on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.
3. "Litigation" means and refers to the litigation in which this Notice of Taking Deposition has been served.

II.

REQUESTS

1. Documents sufficient to show the dates and sources of each harvest of electronic data for each Custodian, including each harvest from hard drive, Enterprise Vault system, email journaling system, PNS and exchange servers.
2. For each Custodian, documents sufficient to show the nature and scope of each harvest of electronic data from AMD's Enterprise Vault and email journaling systems, including the search tools, parameters and/or criteria used to extract the data.
3. By Custodian and for each suppressed email, the logs or tracking information automatically generated by, and/or stored within, the Attenex database(s) as a result of the near-deduplication process, as referenced during Mr. Cardine's interview on October 15, 2008.
4. The logs generated during the migration of PSTs into AMD's Enterprise Vault system, as referenced during Mr. Meeker's interview on December 11, 2008.
5. Documents sufficient to show which Custodians, if any, requested an increase in his or her mailbox size quotas (after March 1, 2005), the date of any such request(s), and the action taken by AMD's IT department in response to such request(s).

6. Documents sufficient to show (a) any instructions, recommendation and/or user guides provided to AMD employees, or (b) internal AMD IT policies and/or procedures, related to AMD's Enterprise Vault and email journaling systems.

7. For each Custodian, documents sufficient to show each email address and/or display name that, when used, would result in an email being delivered to the subject Custodian's AMD email account.

8. For each individual AMD Custodian for whom data has not been produced to Intel (*i.e.*, non-designated Custodians), documents sufficient to show:

- (a) Timing of and specific steps taken for preservation of data;
- (b) Any known or suspected non-preservation of data;
- (c) Date(s) on which the Custodian's documents were harvested for the Litigation;
- (d) Date(s) on which the Enterprise Vault was first used to capture and preserve email for the Custodian; and
- (e) Date(s) on which the Custodian received a Litigation hold notice.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, W. Harding Drane, Jr., hereby certify that on December 30, 2008, 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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I hereby certify that on December 30, 2008, I have Electronically Mailed the documents to the following non-registered participants:

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Dated: December 30, 2008

EXHIBIT B

SUMMARY CHART OF INTEL'S RULE 30(B)(6) DEPOSITION TOPICS

DEPOSITION TOPIC	RELEVANCE	SOURCE OF ISSUE
1. Enterprise Vault ("EV")	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶23 • AMD acknowledges this topic is proper subject of inquiry • AMD used EV for preservation • AMD harvested data from EV • AMD chose not to migrate certain classes of data 	<ul style="list-style-type: none"> • Foundational discovery • Crt Summary Chart Topics 1, 7, 8 • Fowler Decl. ¶¶ 9-14, 35-42 • Internal AMD IT Emails • ██████ Interview topic
2. Journaling System	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶24 • AMD acknowledges this topic is proper subject of inquiry • AMD used journal for preservation • AMD harvested data from journal • Scope of messages captured by journal 	<ul style="list-style-type: none"> • Foundational discovery • Crt Summary Chart Topic 1 • Fowler Decl. ¶¶ 9-14 • Internal AMD IT Emails • ██████ Interview topic
3. Configuration of Email Systems	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶¶25-29 • AMD acknowledges this topic is proper subject of inquiry • Configuration of AMD email accounts (mailbox size quotas, dumpster settings, etc.) can impact preservation • AMD claims that "Deleted Folder" was used for custodian preservation 	<ul style="list-style-type: none"> • Foundational discovery • Internal AMD IT emails • Crt Summary Chart Topics 2, 3, 5 • Fowler Decl. ¶¶19, 22-28 • ██████ Interview topic
4. Reasonable Anticipation of Litigation	<ul style="list-style-type: none"> • AMD's duty to preserve data was triggered when it reasonably anticipated taking action to initiate litigation against Intel 	<ul style="list-style-type: none"> • Foundational discovery • Fowler Decl. ¶3 ("AMD's preservation efforts began immediately after the [JFTC] announced its March 2005 decision....")
5. Litigation Hold Notices	<ul style="list-style-type: none"> • AMD acknowledges this topic is proper subject of inquiry • AMD states the timing, distribution and content of notices are key components to preservation 	<ul style="list-style-type: none"> • Foundational discovery • Crt Summary Chart Topics 10, 12, • Fowler Decl. ¶¶ 3, 7-8, 34 • "Early versions of AMD's

DEPOSITION TOPIC	RELEVANCE	SOURCE OF ISSUE
		<p>litigation hold notices provided directions for how custodians could create a special "Preservation Notice" folder to store potentially relevant material. (citation omitted). Creating this folder was not mandatory and, as a result of the Vault and Journal, eventually became unnecessary." Fowler Decl. ¶ 34.</p> <ul style="list-style-type: none"> 10/24/05 Herron Letter at 1, 3-4 [Ex. B to Fowler Decl.]
6. Harvesting	<ul style="list-style-type: none"> See Third Ashley Decl. ¶¶30-32 AMD acknowledges certain information related to this topic is proper subject of inquiry Timing, scope and nature of harvests may impact the sufficiency of AMD's data productions 	<ul style="list-style-type: none"> Foundational discovery Crt Summary Chart Topic 4 Fowler Decl. ¶¶ 15-17 Summary of AMD's Document Collection Protocols [Ex. I to Fowler Decl.] AMD's 7/24/08 Brief offered "informal exchanges about AMD's collection protocols" [REDACTED] Interview topics
7. IT Support of Preservation	<ul style="list-style-type: none"> See Third Ashley Decl. ¶¶ 23-29 AMD acknowledges this topic is proper subject of inquiry Preservation problems and other relevant tech issues often communicated to AMD IT IT performed and supervised certain preservation activities 	<ul style="list-style-type: none"> Foundational discovery Internal AMD IT emails [REDACTED] Interview topics
8. Data Processing	<ul style="list-style-type: none"> AMD acknowledges this topic is proper subject of inquiry Processing activities may filter, exclude or corrupt relevant data Information about this topics is necessary to understand sufficiency of AMD's data productions 	<ul style="list-style-type: none"> Foundational discovery Fowler Decl. ¶¶ 43-46 [REDACTED] Interview topic AMD's 12/9/08 Status Report re histograms

DEPOSITION TOPIC	RELEVANCE	SOURCE OF ISSUE
9. De-Duplication	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶35 • AMD acknowledges this topic is proper subject of inquiry • Topic is necessary to understand sufficiency of AMD's productions • Relevant to histogram analysis • AMD has produced significant duplicates within custodians. 	<ul style="list-style-type: none"> • Foundational discovery • Crt Summary Chart Topic 11 • ██████ Interview topic • AMD's 12/9/08 Status Report re histograms
10. Backup Tapes	<ul style="list-style-type: none"> • Touted by AMD as failsafe • One of first steps in preservation • Could be highly relevant to remediation issues • Oji remediation • ██████ remediation • ██████ contradiction of AMD 30-day backup representations 	<ul style="list-style-type: none"> • Foundational discovery • Fowler Decl. ¶¶ 3, 5-6 • AMD's Backup Tape Retention Protocols [Ex. C to Fowler Decl.] • 10/24/05 Herron Letter at 1-2 • ██████ Interview topic
11. Suspension of document retention and destruction policies	<ul style="list-style-type: none"> • AMD acknowledges this topic is proper subject of inquiry • Relevant to Intel's inquiry into the sufficiency of AMD's actions to preserve data • Relevant to evaluate whether AMD accurately described its practices 	<ul style="list-style-type: none"> • Foundational discovery • 10/24/05 Herron Letter at 1 [Ex. B to 7/24/08 Fowler Decl.]
12. Non-preservation of Data	<ul style="list-style-type: none"> • AMD acknowledges this topic is proper subject of inquiry • Relevant to sufficiency of productions 	<ul style="list-style-type: none"> • Crt Summary Chart Topic 2 • AMD IT emails
13. Custodian-specific problems	<ul style="list-style-type: none"> • AMD acknowledges this topic is proper subject of inquiry • Relevant to sufficiency of productions 	<ul style="list-style-type: none"> • Crt Summary Chart Topics 2 ██████, 3 ██████, 13 ██████, 14 ██████, 15 ██████ • Fowler Decl. ¶¶ 22-29 • AMD's 12/9/08 Status Report re histograms
14. Remedial/Supplemental Data Productions	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶12 • AMD acknowledges this topic is proper subject of inquiry 	<ul style="list-style-type: none"> • ██████ Remedial Production • ██████ Remedial Production

DEPOSITION TOPIC	RELEVANCE	SOURCE OF ISSUE
	<ul style="list-style-type: none"> • Intel needs to understand the nature and scope of all AMD remedial productions 	
15. Audits/Investigations	<ul style="list-style-type: none"> • AMD claims to have conducted numerous "reviews" of its program, and has consistently reported its program is "exemplary" without any "lapses" • AMD's failure to disclose obvious preservation issues raises questions 	<ul style="list-style-type: none"> • 5/24/07 Hearing Tr. at 9-13 (Mr. Samuels stating: "We...told Mr. Cooper in no uncertain terms that we are unaware of any systemic failure or lapse of AMD's preservation plans or efforts. We have double-checked. That remains the case today. There is absolutely no basis for concern on Intel's part about AMD's document preservation activities....there is no reasonable cause to think that AMD has been derelict in the slightest.") • 8/10/07 Samuels Letter to Cooper ("We have now completed a review of AMD's preservation program with respect to each of the 108 AMD party-designated production custodians. We are pleased to report that our preservation program appears to be operating as designed and intended; no lapses in that program have been identified.")

SUMMARY CHART OF INTEL'S DOCUMENT REQUESTS

REQUEST	RELEVANCE	SOURCE OF ISSUE	BURDEN
1. Harvest Dates	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶¶30-32 • AMD's delay in harvesting data, and the length of time between harvests from hard drives, journal and vault, are highly relevant • Necessary to allow Intel to identify any gaps in the retention and production of data between the dates of hard drive and Vault harvests 	<ul style="list-style-type: none"> • Intel requested this information in writing on multiple occasions 	<ul style="list-style-type: none"> • AMD has provided initial harvest dates; needs to identify the sources of those harvests and supplement with Exchange Server, journal, vault, PNS • Harvest dates were tracked and thus information should be readily available to be produced in a chart format
2. Vault/Journaling Extraction Info	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶¶23-24 • Information necessary to evaluate the sufficiency of AMD's extraction of data from the Vault/journal systems 	<ul style="list-style-type: none"> • ██████ interview topic 	<ul style="list-style-type: none"> • AMD likely tracked this information and it should be readily available
3. Deduplication Logs	<ul style="list-style-type: none"> • Logs necessary to understand sufficiency of data production • AMD unilaterally implemented a near-deduplication protocol • AMD's main defense to histogram analysis is near-deduplication 	<ul style="list-style-type: none"> • ██████ interview topic • Court Summary Chart Topic 11 	<ul style="list-style-type: none"> • Logs are automatically generated and stored, and readily available
4. PST Migration Logs	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶23 • Only way to verify if migrations were successful • AMD IT instructed custodians to delete PSTs after migrations • AMD IT did not audit 	<ul style="list-style-type: none"> • ██████ interview topic • Court Summary Chart Topic 7 • AMD IT emails 	<ul style="list-style-type: none"> • Logs are automatically generated and stored, and readily available

REQUEST	RELEVANCE	SOURCE OF ISSUE	BURDEN
	these logs		
5. Mailbox Size Quota Docs	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶¶25-29 • Mailbox size quotas intended and designed to discourage and/or prevent email retention • Custodians had mailbox size problems • AMD IT recommended deleting and clearing email folders to avert size limitations 	<ul style="list-style-type: none"> • ██████ interview topic • Internal AMD IT emails • “Tips and Tricks” IT notices 	<ul style="list-style-type: none"> • Targeted search of emails or AMD IT logs / “help tickets” • Search limited in scope (custodians and search terms related to mailbox size quotas)
6. Vault/Journaling Overview Docs	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶¶23-24 • Vault and journaling used for preservation • AMD harvested from both sources for this litigation 	<ul style="list-style-type: none"> • Intel requested, and AMD agreed to produce (on several occasions), overview documents related to AMD’s vault/journal system • AMD only produced a few publicly-available documents it downloaded from a website • Court Summary Chart Topics 1, 7, 8 • ██████ interview topics 	<ul style="list-style-type: none"> • Intel is only asking for a small number of overview documents: the internal “how to” guides for employees; and the internal AMD IT policies/procedures for Vault/Journal • AMD IT most likely have these documents stored in a single location
7. Emails Addresses and Resolve Names	<ul style="list-style-type: none"> • See Third Ashley Decl. ¶24 • AMD extracted data from journal system using a single email address: first.last@amd.com • Extraction process excluded other email addresses and resolve names for custodians 	<ul style="list-style-type: none"> • ██████ interview topic 	<ul style="list-style-type: none"> • List of custodian email addresses, aliases, and resolve names should be centrally stored and easy to provide
8. Non-designated Custodian	<ul style="list-style-type: none"> • Relevant to AMD remediation 	<ul style="list-style-type: none"> • Intel has requested this information on 	<ul style="list-style-type: none"> • AMD has already provided journal

REQUEST	RELEVANCE	SOURCE OF ISSUE	BURDEN
Information		<p>several occasions</p> <ul style="list-style-type: none"> • During 9/11/08 hearing, Mr. Herron stated that non-designated custodians are only relevant to the extent they relate to remediation. <i>See</i> Ex. C, Hearing Tr. at 67:14-68:18 	<p>dates for all custodians (production and non-designated)</p> <ul style="list-style-type: none"> • AMD tracked this information and it should be readily available for production in chart format

EXHIBIT C

Teleconference

Page 1

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 Thursday, September 11, 2008, beginning at approximately 1:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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 3 Elizabeth Sloan, Esq.
 4 Eric Friedberg
 5 Jennifer Martin

6 SPECIAL MASTER POPPITI: Hello, Vincent
 7 Poppiti just joined.
 8 MR. SMALL: Good morning, Your Honor.
 9 This is Don Pickett.
 10 SPECIAL MASTER POPPITI: Good morning,
 11 sir.
 12 What we will do is we will go through,
 13 for the court reporter's purpose and certainly for my
 14 purpose, once I have everyone, once I can expect everyone
 15 has clicked on. I'd like you to know that Eric Friedberg
 16 and his colleague, Jennifer Martin, are here, and Liz
 17 Sloan is also here with me. And you will see the reason
 18 why it was important to have the consultants that you
 19 permitted me to retain for this purpose here with me
 20 today as we move throughout the structure of the work we
 21 are going to do for the rest of the afternoon, or
 22 hopefully for not the rest of the afternoon but the work
 23 that we have to do today.
 24 Let's start with AMD, please.

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1 MR. COTTRELL: Good afternoon, Your
 2 Honor. Fred Cottrell in Wilmington. And on the phone
 3 with me from O'Melveny is David Herron and Roberta
 4 Vespremi, V-e-s-p-r-e-m-i, and, Your Honor, Beth Osmond
 5 I believe, is on, and she is with AMD. That should be it
 6 for AMD.
 7 SPECIAL MASTER POPPITI: Thank you.
 8 Ms. Osmond, are you on?
 9 MS. OSMOND: Yes, I am, Your Honor.
 10 SPECIAL MASTER POPPITI: Thank you very
 11 much.
 12 Anyone from the Class participating?
 13 MR. ATHEY: Yes, Your Honor. Clayton
 14 Athey of Prickett, Jones for the Class. And I should be
 15 it today for the Class.
 16 SPECIAL MASTER POPPITI: Thank you, sir.
 17 And from Intel, please.
 18 MR. DRANE: Good afternoon, Your Honor.
 19 This is Harding Drane at Potter, Anderson & Corroon in
 20 Wilmington, and I will ask my co-counsel to introduce
 21 themselves.
 22 SPECIAL MASTER POPPITI: Thank you,
 23 Mr. Drane.
 24 MR. PICKETT: This is Don Pickett and

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1 with me, McKay Worthington, M-c-K-a-y
 2 W-o-r-t-h-i-n-g-t-o-n.
 3 MR. ROCCA: Good afternoon. This is
 4 Brian Rocca, R-o-c-c-a, from Bingham, McCutchen.
 5 SPECIAL MASTER POPPITI: Thank you,
 6 Mr. Rocca.
 7 MR. COOPER: And, Your Honor, out in
 8 L.A., Bob Cooper, Kay Kochenderfer, Rich Levy, and I
 9 think maybe Dan Floyd is on.
 10 SPECIAL MASTER POPPITI: Thank you.
 11 MR. DILLICKRACH: Also Tom Dillickrach
 12 from Howry, D-i-l-l-i-c-k-r-a-c-h.
 13 MR. PICKETT: Your Honor, one other --
 14 this is Mr. Pickett. Your Honor, one other thing. We
 15 have with us on the line Mr. Ashley who is our consultant
 16 in case there are any technical issues that arise.
 17 SPECIAL MASTER POPPITI: Thank you.
 18 That may prove to be helpful.
 19 MR. ASHLEY: Good afternoon, Your Honor.
 20 John Ashley, A-s-h-l-e-y.
 21 SPECIAL MASTER POPPITI: Thank you,
 22 Mr. Ashley.
 23 Counsel, let me do this as I make some
 24 effort to set the stage here. I expect you have all had

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<p>1 the benefit of receiving the charts that hopefully form, 2 will form the agenda if we need to be going through each 3 of the items during the course of the afternoon. But let 4 me initially make a couple of observations if I might. 5 No. 1, both parties have asked me to 6 address the issue as to whether, as a result of the work 7 you attempted to do informally to request and gather 8 information surrounding the subject matter that we are 9 going to be talking about the during the course of the 10 afternoon, whether or not there was a waiver on the part 11 of Intel to forego its opportunity to ask for formal 12 discovery in the subject area. 13 And although I am satisfied that the 14 record does not support a waiver that would foreclose 15 Intel the opportunity to conduct formal discovery, I 16 think it's important for me to say, at the same time, I 17 am confident that there were requests that were made by 18 Intel that AMD either responded to in a fulsome fashion, 19 was in the process of responding to those requests, or 20 had indicated that it was willing to honor those 21 requests. 22 That all says to me that there are, from 23 my perspective, discrete, perhaps, subject areas or 24 discrete issues where there was, in fact, a request for</p>	<p>1 So, what I would propose is that we 2 approach the examination of the chart that you all have 3 with a goal in mind of seeing whether you can still make 4 the effort to do as much of the work with respect to the 5 information that Intel is looking for, that AMD has 6 indicated it is willing to provide, how much of that you 7 can do informally, understanding that, at some point, 8 Intel wants to sit a 30(b)(6) witness or witnesses in the 9 chair to verify information that it has either already 10 received, it was in the process of receiving, or AMD will 11 continue to provide. 12 What I'd like to do is ask both sides 13 whether that approach makes some sense. 14 MR. HERRON: David Herron for AMD. We 15 do agree with your analysis and the way you have set it 16 out and that is a fine approach for AMD. 17 MR. PICKETT: Your Honor, this is Don 18 Pickett. It may be appropriate, if I fully understand 19 it, for a little background. We have been engaged in 20 discussions, Intel and AMD have been engaged in 21 discussions about these topics for a little over a year. 22 SPECIAL MASTER POPPITI: Since April the 23 11th, 2007. 24 MR. PICKETT: Right. And there has been</p>
<p>1 information and Intel did one of those several things. 2 It either responded to it in a fulsome fashion, it was in 3 the process of responding to it, or it had promised to do 4 that. And it seems to me that the work we conduct this 5 afternoon should be set against that backdrop. 6 The reason why I say that is because I 7 believe it becomes my ultimate responsibility to measure 8 any requests for formal discovery against what has 9 already either occurred, what was in the process of 10 occurring, or even what AMD had indicated it was willing 11 to do informally. 12 What I would like to suggest is that 13 rather than expecting that you are going to be asking me 14 this afternoon to literally go through each request that 15 Intel made formally and ask me to then measure, and I am 16 not sure I have the record to do this, what AMD has done, 17 that is, what it did, what it was in the process of 18 doing, or what it had indicated it intended to do, for 19 the purpose of my measuring line by line, word by word, 20 the application to put a 30(b)(6) witness in the chair, 21 No. 1, and the application to make sure that before that 22 occurs, that the documents that you have requested line 23 by line, word by word, and request by request is honored 24 formally.</p>	<p>1 progress made during that time, but a lot of this was an 2 inquiry that revealed some items in the beginning, more 3 items were revealed as it went through, and then 4 particularly, as a result of this, these motions, a great 5 deal of new information was, of course, developed, and 6 the manner and some of the answers led us to believe that 7 formal discovery really was going to be necessary and we 8 would need to get confirmation under oath of a lot of 9 these things, you know, a declaration of Mr. Fowler 10 raises new questions, that kind of thing. 11 However, if you are saying only that 12 this type of motion is somewhat premature now, that the 13 parties could make additional progress informally and 14 then we would proceed with discovery, I think that would 15 be something the parties should do in a prompt manner and 16 we should then return to you to pursue whatever matters 17 we have, although I can say that we do need to get some 18 discovery. 19 We have had no discovery at all. We 20 have had no one under oath. We have had answers which 21 are not complete, not definitive, and, so, at some point, 22 we are going to want that. We have made that request in 23 May, and I think, for the parties to make some progress 24 in the interim, it's fine, but I don't think that should</p>

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<p>1 be a long process.</p> <p>2 SPECIAL MASTER POPPITI: And I think</p> <p>3 what I hear you saying is that, on Intel's part, there is</p> <p>4 a willingness to continue to develop as much information</p> <p>5 as you can informally, understanding that, at some point,</p> <p>6 you have the perfect right to secure representations</p> <p>7 under oath in a fashion that gives you the fulsome kind</p> <p>8 of 30(b)(6) information that I expect Judge Farnan</p> <p>9 contemplated, that I expect the default rules of</p> <p>10 e-discovery and the District contemplate, and that I</p> <p>11 expect that AMD cannot oppose.</p> <p>12 Did I state that fairly from AMD's</p> <p>13 perspective?</p> <p>14 MR. HERRON: Judge, I think you meant</p> <p>15 Intel's perspective.</p> <p>16 SPECIAL MASTER POPPITI: No. I mean,</p> <p>17 from AMD's perspective, that AMD cannot oppose putting</p> <p>18 someone in the chair to provide the kind of information</p> <p>19 that Intel is looking for from a 30(b)(6) witness?</p> <p>20 MR. HERRON: AMD does not oppose having</p> <p>21 a 30(b)(6) witness testify about those subjects on which</p> <p>22 deposition is needed. And as we said in our brief, we</p> <p>23 have suggested that we should have 30(b)(6) deposition on</p> <p>24 certain topics. There is no doubt about that. That's</p>	<p>1 what reservation breakdowns do they contend they need to</p> <p>2 look into.</p> <p>3 Those have been defined now by</p> <p>4 Mr. Ashley and that's where focus ought to be. If this</p> <p>5 discovery occurs informally, as it should, as regards to</p> <p>6 technical matters, then it should go forward that way and</p> <p>7 that should be the end of it.</p> <p>8 If parts of the discovery, and I think</p> <p>9 are some, have to be completed by way of 30(b)(6)</p> <p>10 deposition and documents production, that's fine. But</p> <p>11 our interest is bringing this to closure on the issues</p> <p>12 truly in issue now.</p> <p>13 SPECIAL MASTER POPPITI: Well, and part</p> <p>14 of my dilemma -- and I will even defer to Eric and Jen</p> <p>15 here in terms of making this a little, somewhat of a</p> <p>16 conversation, if you will -- part of my dilemma in</p> <p>17 approaching the application as it exists, and certainly</p> <p>18 giving study to it from both sides, is I am not, on this</p> <p>19 record, able to make any judgment with respect to what</p> <p>20 information has been provided for the purpose of putting</p> <p>21 me in a position of making a judgment as to what formal</p> <p>22 discovery is needed to fill in the holes.</p> <p>23 And I don't think you all want either me</p> <p>24 to be in the position, maybe you do, or that you want me,</p>
<p>Page 11</p> <p>1 what Judge Farnan ordered.</p> <p>2 But I need to, if I could, Your Honor,</p> <p>3 respond briefly to what Mr. Pickett outlined with his --</p> <p>4 he is suggesting, I think, a return to meet and confer</p> <p>5 processes culminating in a return to you with yet another</p> <p>6 motion and then, ultimately, discovery ordered on</p> <p>7 whatever is left out there.</p> <p>8 We have been down the path of having an</p> <p>9 agreement, we thought, that is now disavowed, and the</p> <p>10 provision of a lot of responses that is, you know,</p> <p>11 informal in nature but formally responding to formal</p> <p>12 discovery.</p> <p>13 So, when Mr. Pickett says that no</p> <p>14 discovery has happened at all, it's just not the case.</p> <p>15 We, both parties have provided summaries in lieu of other</p> <p>16 forms of response to discovery.</p> <p>17 We have been down this road for a long</p> <p>18 time. Intel has now posed to us discovery which, even</p> <p>19 after the submissions which I submit are comprehensive</p> <p>20 about AMD's preservation system, you know, Intel still</p> <p>21 has expanded its new discovery by 50 percent, not</p> <p>22 acknowledged that previous discovery has been supplied,</p> <p>23 and is insisting on wide-ranging discovery that doesn't</p> <p>24 go to the core issue of what loss do they contend exists,</p>	<p>Page 13</p> <p>1 along with my consultants, to be in the position, and,</p> <p>2 again, maybe you do, of literally looking through</p> <p>3 everything that AMD has provided for purposes of making a</p> <p>4 fair and appropriate judgment as to how deep formal</p> <p>5 discovery should go. Because it seems to me my</p> <p>6 overarching responsibility in managing discovery is to do</p> <p>7 just that, and I don't think either of you want to be in</p> <p>8 a position of literally having to redo what you have</p> <p>9 already done.</p> <p>10 And I don't believe that I have got a</p> <p>11 record that permits either me to do that independent of</p> <p>12 the Court's consultants or along with the Court's</p> <p>13 consultants to say, Look, Intel asked for this, AMD has</p> <p>14 indicated that it's either provided it or intends to</p> <p>15 provide it, and once it does provide it, if it hasn't</p> <p>16 yet, whether the quality of that information is, in fact,</p> <p>17 what Intel was looking for.</p> <p>18 I can't do that on this record unless</p> <p>19 you tell me I am missing something here.</p> <p>20 MR. HERRON: Judge, it's David Herron.</p> <p>21 I understand that and agree with you that it is difficult</p> <p>22 where the Court says to make the assessment you just</p> <p>23 described. But I also submit that it's not necessary for</p> <p>24 the Court to make that assessment.</p>

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<p>1 What we know now is that in coming to 2 the Court to compel discovery, Intel has definitively 3 identified, through Mr. Ashley and through its briefing, 4 those areas in which it has issues or concerns. 5 Importantly, what the Court sent to us 6 yesterday I think very accurately chronicles precisely 7 what Intel is raising now and precisely defines what 8 Intel says truly is in issue. 9 That outline that the Court provided is 10 what ought to be, you know, what focus ought to be put on 11 and where we ought to try and decide two things: Is 12 discovery necessary on that, on each item chronicled by 13 the Court set out in the outline? And, second, if it is 14 necessary, by what means can it most reasonably, and in 15 AMD's interests, but also in Intel's interests, what 16 means by which should it be delivered? Should it be 17 informally as is probably the best way to resolve 18 technical issues, or should it be by way of document 19 production and 30(b)(6) testimony? 20 And I think that by following the path 21 that the Court has charted out by the outline, that, and 22 I think comprehensive outline of the issues that Intel 23 now raises, we get to the resolution of the inquiry into 24 AMD preservation, Intel gets the answers in the form that</p>	<p>1 have identified a number of lapses. May I expect that 2 your term "lapses" may be the term I have adopted, 3 "purported problem"? 4 MR. PICKETT: That would be fair. 5 SPECIAL MASTER POPPITI: Then I think I 6 understand what you are saying. 7 MR. PICKETT: And there may be a couple 8 of additional problems that aren't on your summary chart, 9 but I, essentially, you have captured it. 10 SPECIAL MASTER POPPITI: Okay. 11 MR. PICKETT: The second point I wanted 12 to make is, at some point soon, Intel is going to need 13 actual real discovery. The Federal Rules, last time I 14 checked, don't have something called informal discovery. 15 However, that informal discovery could be a more 16 efficient way, particularly with the experts to 17 communicate so that when we tee up the actual discovery, 18 we can get through some items quite quickly in the 19 30(b)(6). Others, we may not make as progress only to do 20 it in a more deliberate way. 21 But I think that's a helpful suggestion, 22 keeping in mind that, at some point, you do need answers 23 under oath, you do need them from qualified witnesses 24 with source documents. That's certainly something that</p>
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<p>1 it needs, and we can resolve all these outstanding 2 issues. 3 MR. PICKETT: Your Honor, this is 4 Mr. Pickett, if I could? 5 SPECIAL MASTER POPPITI: Yes, you can, 6 please. 7 MR. PICKETT: Thank you. Let me first 8 start by saying, responding to the point that Mr. Ashley 9 and Intel have definitively identified all of the lapses. 10 That is, given the context of where we have been in the 11 recent months, I know that's not right. Intel is 12 somewhere in the middle of this investigation. Whether 13 it's uncovered 20 percent or 80 percent of the lapses, we 14 just don't know. We can't know that until we continue 15 the investigation. 16 We have been peeling an onion, and, as I 17 say, and these production lapses have, some were revealed 18 last year, far more were revealed, frankly, in the course 19 of this motion. So, we can't say that that's it unless, 20 you know, we have a chance to do a little more 21 investigation. 22 Second, we are going to need -- 23 SPECIAL MASTER POPPITI: I do want to 24 interpose a question here. You say you have been -- you</p>	<p>1 AMD has asked of Intel and it's certainly something that 2 any party, I think, has the right to under the Federal 3 Rules, the Local Rules, and Judge Faman's order. 4 SPECIAL MASTER POPPITI: I certainly 5 understand that, but I think it becomes my responsibility 6 within the language of the Federal Rules, within the 7 spirit of the Federal Rules, within the expectation I 8 know that Judge Faman has, to respect the work that you 9 have already done, that is, you have attempted to do some 10 things informally. I can't define that all, given the 11 state of this record, but I know that I do not intend to 12 simply say, You have done 100 percent of what you needed 13 to do informally and you still have the right to do it 14 formally all over again. I don't think it's 100 percent, 15 so it's probably the extreme example makes the extreme 16 example. 17 But what I will not do is I will not 18 permit you, as I said earlier in my opening, if you will, 19 opening remark, that if you have achieved the goal in 20 getting the information that you were looking for 21 informally, I am not going to simply put you back at 22 square one because you have identified, from your 23 perspective, an individual lapse or a systemic lapse, and 24 I don't see a systemic at this point on this record.</p>

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<p>1 What may make some sense, even before 2 you make some effort to see where you are informally and 3 ultimately then better define where you think you need to 4 be with formal discovery, what may make some sense is to 5 briefly go through the table, Mr. Friedberg is here, 6 Ms. Martin is here, your expert is there, and literally 7 make some comment, if you will, on the purported 8 problems, respecting Intel's argument, respecting AMD's 9 argument and response, so that perhaps comment from the 10 Court's consultants with appropriate conversation with 11 Mr. Ashley, if that becomes necessary, it can better 12 frame the work that you need to do so you will get some 13 sense as to why I thought it was important to start this 14 conference in this fashion.</p> <p>15 Does that make sense to you all? 16 MR. PICKETT: Sure. I think there is a 17 danger getting bogged down in some details, so hopefully 18 we can keep it in some kind of elevation.</p> <p>19 SPECIAL MASTER POPPITI: It will be 20 elevated, and, as you can see, my interests by virtue of 21 providing you with the table that you have, it's 22 important for me to keep it structured.</p> <p>23 MR. HERRON: Judge, it's fine with AMD. 24 MR. PICKETT: Would you like Intel to</p>	<p>1 position correctly, it is essentially seeking 2 representations under oath as to the fact that it took 3 seven months to implement the automated retention system 4 and why.</p> <p>5 And if I understand AMD correctly, it 6 seems to me that AMD is, although it doesn't say it that 7 directly, this is an appropriate subject for a 30(b)(6) 8 witness, is it not? 9 MR. HERRON: Judge, it is fine to have a 10 witness testify about this, although it seems redundant 11 to admissions already made, which is AMD instituted its 12 journal and filed archives in November of 2005, so what 13 purpose the 30(b)(6) testimony could serve on that point, 14 I am not sure.</p> <p>15 SPECIAL MASTER POPPITI: I understand 16 exactly what you are saying, at the end of the day, 17 expecting that there will be a 30(b)(6) witness if Intel 18 chooses to want to take up whatever time I permit for 19 them to go back and have you resay what you already said, 20 I don't want to be in a position of controlling that 21 question and that answer in a 30(b)(6) deposition. 22 I will give you the appropriate amount 23 of time when it's important for me to do that and then 24 you will, Intel will allocate its time appropriately.</p>
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<p>1 proceed first? 2 SPECIAL MASTER POPPITI: Well, let's, 3 yeah, let's do it that way. The identified problem, No. 4 1, is the automated journaling and archiving not 5 implemented until November the 2nd of 2005. 6 (Discussion off the record.) 7 SPECIAL MASTER POPPITI: Let's start 8 with one then, please. 9 MR. PICKETT: So I can introduce it, and 10 Mr. Ashley, if you want to add any comments, that's fine. 11 The first issue having to do with the timing of the 12 journaling involved archiving. We have been provided 13 journal dates. We have not been provided the vault 14 archiving dates. 15 There is a statement from AMD that the 16 migrations occurred around the same time, but there are 17 exceptions that haven't been identified or explained. 18 And it's not clear to me whether AMD has agreed to 19 provide that information but that it that might be 20 something we could explore on the informal meet and 21 confer process as Your Honor is suggesting. 22 SPECIAL MASTER POPPITI: And 23 Mr. Friedberg has either a comment or question. 24 My question is, if I understand Intel's</p>	<p>1 But I think that's what you all are looking for with 2 respect to No. 1. If that is the case, let's move on to 3 two. 4 MR. PICKETT: That's certainly right 5 with respect to the issue No. 1 in this summary. We have 6 a request that's broader with respect to the journaling 7 involved, but I think that's for another day. 8 SPECIAL MASTER POPPITI: As I understand 9 the request, as you say, it is broader, you are looking 10 for the same kind of information with respect to 11 journaling and also with respect to, both with respect 12 to the vaulting system and with respect to the 13 journaling system, you are, in a sense, looking for the 14 same kind of information that I would have expected you 15 would have even under the default standards that this 16 District follows. 17 MR. PICKETT: That's correct 18 MR. HERRON: Judge, I am, frankly, a 19 little bewildered here in that we have already provided 20 someone to, at Intel's request, for an Intel informal 21 interview. 22 SPECIAL MASTER POPPITI: I understand 23 that Mr. Mecker, I am fully aware of what you have 24 done, I understand that Mr. Mecker was available for an</p>

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<p>1 hour, and I gather that that meant he was available for 2 an appropriate amount of time to answer questions. 3 My -- I am not in a position, as we are 4 sitting here, to make the judgment that what Mr. Meeker 5 did was in a fulsome nature with respect to both the 6 vaulting and the journaling system. 7 So, I am not in a position to say to 8 you, Does it make sense for us to do it again? It 9 doesn't make sense for me to say to you, Do it again, but 10 I can't make that judgment on this record. 11 MR. HERRON: Your Honor, I understand 12 and certainly agree. 13 SPECIAL MASTER POPPITI: Eric, do you 14 have a -- 15 MR. FRIEDBERG: Judge, just I think what 16 we are trying to accomplish in going issue by issue 17 technically is to figure out, at this point, and give you 18 some feedback of what our sense is of the technical 19 merits of various of these sub issues, and that may 20 affect the total amount of time that ends up being 21 allotted for what is a 30(b)(6) deposition as a matter of 22 right. 23 In other words, it's almost impossible 24 to -- because the party, rather, Intel, is permitted to</p>	<p>1 MR. HERRON: I fully agree with that. I 2 mean, I think that's a great approach. What I was 3 actually going to go on to respond to was Mr. Pickett's 4 indication that there were other issues beyond this one 5 related to this very topic that he says are for another 6 day. It seems to me that the other day is today, and 7 that in following the outline that you have just given 8 to, you know, reach a conclusion about what should be 9 inquired to and how, it would be useful to hear the over 10 issues now so they are all on the table. 11 My fear here is that we will go through 12 this and have raised some issues but Intel will 13 intentionally defer others in an effort to prolong the 14 process rather than truncate it. And -- 15 SPECIAL MASTER POPPITI: I can assure 16 you that it is not my intention to permit the process to 17 be truncated. In fact, I think when we conclude, as we 18 conclude our business today, it's going to be important 19 for me to say to the both of you, Here is the time limit 20 that I'd like to see you work within. So it's not going 21 to be an open-ended process. 22 MR. PICKETT: We have no problem with 23 that. We would like to proceed as promptly as we can. 24 But I can be a little -- I can provide some clarification.</p>
Page 23	Page 25
<p>1 take a 30(b)(6) deposition on the issues of preservation 2 and location and archiving and any potential lapses, it's 3 very hard to parse it up issue by issue and have an 4 instruction that they shall not be permitted to ask about 5 a particular technical set of circumstances at the 6 deposition. 7 It would be helpful, I think, to hear 8 from AMD about why the following approach wouldn't make 9 sense, which is, if we give some feedback, as a technical 10 matter, about what we think about some of the merits of 11 these things, why wouldn't it make sense, then, for that 12 to guide Intel about how much it wants to embrace the 13 informal exchange and then how much it, therefore, wants 14 to pursue in the 30(b)(6) deposition. And as the Judge 15 said, if Intel, given the time that the Judge is going to 16 allot for the totality of these technical decisions, if 17 Intel wants to waste 80 percent of its time on something 18 that seems to be something you all have gone over, you 19 know, to, fairly well, then why shouldn't they be allowed 20 -- in other words, why isn't that the most efficient way 21 to deal with it is to allow Intel's self-interest in not 22 wasting its time at the 30(b)(6) deposition that it's 23 going to get be the same that injects sanity into the 24 process?</p>	<p>1 on some of what we are going to need, and some of that is 2 the basic foundational understanding of some of these 3 systems. 4 You know, we have -- we get answers and 5 we have questions in response and hopefully the experts 6 can look through those. You have listed a lot of these 7 things but we just need to know some of the basic of what 8 happened, when it happened, why it happened, and that's, 9 I think, just part of our underlying, as I call it, 10 foundational discovery with respect to the retention of 11 production. 12 SPECIAL MASTER POPPITI: And by "when it 13 happened, why it happened," are you suggesting with 14 respect to a particular custodian or are you suggesting 15 that, for example, with respect to the, to the vaulting 16 system? 17 MR. PICKETT: Really, I meant with the 18 vaulting system. You know, they have told us it happened 19 around the time of the journaling but there are 20 exceptions. But there is kind of an obvious follow-up 21 question. If I got that answer in a formal deposition, I 22 would say, Well, what were the exceptions? 23 SPECIAL MASTER POPPITI: Yes. So, then, 24 it seems to me that you can get -- you can ask the</p>

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<p>1 question now, you can ask it informally during your 2 extended meet and confer, and to the extent that it's 3 going to be important for you to be using your 30(b)(6) 4 time to get that under oath, then you will have an 5 opportunity to do that as well. 6 But you are right, having that 7 information before informally is certainly better than 8 not having it at all as you walk into the 30(b)(6) 9 deposition room. 10 MR. PICKETT: Exactly. So as I envision 11 it, we, with the experts, do this extensive but efficient 12 and timely meet and confer, and then we, each side 13 regroup, probably with you, and we go forward. 14 SPECIAL MASTER POPPITI: Let's go 15 through with our feedback point to point because I think 16 that will inform your work even as you calendar it out. 17 So let's move on to 2, please. 18 MR. PICKETT: Right. No. 2, actually, 19 No. 2 and No. 3 are very closely related. This goes to 20 the fact that, as you state here in the analysis, 21 49 percent of the 53,000 deleted items produced in the 22 self-select period were from four of the most senior 23 executives at AMD, and that raised some questions in our 24 mind, and the explanations from Mr. Mecker raised further</p>	<p>1 And, so, it certainly seems that, you 2 know, to the extent that users are -- AMD is saying, for 3 example, that in some of these people, they are using the 4 deleted items' folder, I think foldering technique; in 5 other words, it is moving items to deleted items folder 6 and that's why a number of the e-mails are appearing in 7 the deleted items folder. And that they are also 8 representing that -- and there is a dispute over the 9 numbers, I believe, about how many folks did that -- but 10 they are also representing that, generally speaking, that 11 wasn't the technique that most people used to do the 12 foldering and that's why most of the e-mails that are 13 being produced in a deleted items folder having been part 14 of the pack, that's why most of them occur in a 15 concentrated number of books. 16 So, you know, that certainly seems 17 factually possible that a number of the top executives 18 were, indeed, using the deleted items folder as a place 19 to, essentially, clean their in boxes out and it's not -- 20 and the fact that, probably because they could manage 21 them better and the fact that not everybody was doing 22 that doesn't necessarily indicate that there was some 23 anomalous type of harvest tingling. 24 So it strikes us that AMD's proffer in</p>
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<p>1 questions. 2 He states that he, apparently, on his 3 own, went in and changed dumpster settings for two of 4 them, he retrieved items from dumpsters from four other 5 people. And even his explanations raise questions 6 because we submitted in Exhibit 5 to Mr. Ashley's first 7 declaration, Your Honor, which shows that the sent 8 e-mails from Mr. Ruiz practically disappeared, produced 9 from him, you know, particularly in June through October, 10 and if the dumpsters had been reset for him, that 11 wouldn't have been the case. 12 Similarly, we find that Mr. Ruiz 13 produces received e-mails in those time periods, but, 14 again, the sent e-mails are missing. 15 There are similar issues but that sort 16 of introduces the issues. 17 MR. FRIEDBERG: So, clearly, and, again, 18 I think the idea is to give you a little feedback about 19 our take on some of this. Obviously, this is not, by any 20 means, meant to be a determination because there is no, 21 this is not a hearing, there is not a factual, you know, 22 record under oath and we are not doing decision-making at 23 this point. We are just trying to give you some feedback 24 technically.</p>	<p>1 this regard is feasible. It's clearly something that I 2 think that we think that you could test pursuant to AMD's 3 offer of additional informal disclosure. And, again, you 4 know, if you -- I am just talking about the foldering at 5 this point, not the sent items issue -- you know, you all 6 are going to have to make a decision, therefore, about if 7 AMD proffers more comprehensively regarding the way in 8 which or the reasons by which the deleted items are 9 clustered amongst a smaller number executive, whether 10 that's critical and the degree to which you want to -- 11 you want to spend your time in a 30(b)(6) witness testing 12 what you have gotten informally. 13 Also, you have the option, obviously, of 14 taking AMD up on its proposal to also test that 15 representation in effectual depositions, you know, of 16 Meyers, Seyer, Menard, and even Ruiz. 17 MR. ASHLEY: Could I respond to 18 Mr. Friedberg, Your Honor? 19 MR. HERRON: Your Honor, it's David 20 Herron. May I interject before Mr. Ashley speaks? 21 SPECIAL MASTER POPPITI: Sure. 22 MR. HERRON: I, with respect, have to 23 object. I guess I can't object to his presence provided 24 that he's reviewed and signed the protective order</p>

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1 acknowledgment, but I do object to him speaking to
 2 technical matters here.
 3 This is not a hearing where we are
 4 offering evidence, as Mr. Friedberg just pointed out, and
 5 it seems to me that Mr. Friedberg is the technical expert
 6 who ought to be speaking but not Mr. Ashley.
 7 SPECIAL MASTER POPPITI: Well, let me do
 8 this. It seems to me that we are not in the mode of
 9 having a formal evidentiary hearing, and I said that to
 10 you at the front end. This is not the kind of record
 11 that I am working with.
 12 The second observation is, indeed,
 13 Mr. Friedberg and his colleague are here as court
 14 consultants. At the same time, if it's important for me
 15 to be, or for me, ultimately, to be informed and to
 16 literally launch you back to a meet and confer with
 17 observations that we are making, to the extent that
 18 Mr. Ashley's comments are going to be helpful to the
 19 dialogue that Mr. Friedberg is having with you, then I
 20 view it to be important. I don't view it to be sworn
 21 testimony, but I think it's important to have.
 22 So I understand your position. I don't
 23 know why this impacts on the protective order. I intend
 24 to make no decision here today. So help me with the

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1 protective order aspect.
 2 MR. HERRON: Judge, we, you know, if
 3 both parties, have, in the context of preservation
 4 discovery, marked a number of documents, our own briefs,
 5 etcetera, as confidential. You know, a question whether
 6 we should be doing that, frankly, I don't think AMD
 7 believes that we should, but we have, and, therefore,
 8 material we are discussing is covered by the protective
 9 order.
 10 I assume that Mr. Ashley has, in fact,
 11 executed it and I understand the Court's position and
 12 that's perfectly fine.
 13 Thank you for considering my point.
 14 SPECIAL MASTER POPPITI: Thank you.
 15 Mr. Ashley, did you want to be asking
 16 Mr. Friedberg a question?
 17 MR. ASHLEY: Yes, please, Your Honor. I
 18 did sign the protective order over a year ago, I believe.
 19 If you point me down the deleted items,
 20 Mr. Friedberg, we, when we started this investigation, we
 21 were surprised to find 53,000 items attributable to
 22 49 percent of the items attributable to four executives.
 23 When we got the response from Mr. Fowler
 24 and got to learn more about Mr. Meeker's dumpster

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1 restorations to three of the four, that explained it
 2 better to me why there was so many for these individuals.
 3 The deleted items folders are being used
 4 as a stall when they were dropping onto the actual, into
 5 the dumpster, Mr. Meeker having gone back to the dumpster
 6 and repopulated the deleted items folders, which were
 7 then reviewed and produced, gives me a much better
 8 understanding of where this 49 percent of e-mail came
 9 from and why they were there.
 10 MR. FRIEDBERG: Okay.
 11 MR. ASHLEY: Now, we have concerns about
 12 the deleted items folder in relation to the vaulted, for
 13 instance, where the deleted items folders were migrated
 14 into the vault from the archives, and in May, '06, they
 15 ceased being captured and brought in from the e-mail
 16 collections. ^ my views as we use in the deleted items
 17 folders as the place of best preservation, and that
 18 causes a problem.
 19 MR. FRIEDBERG: I thought May '06 is
 20 after the journaling was implemented?
 21 MR. ASHLEY: No, not the case. There
 22 were at least 84 custodians who weren't journaled until
 23 after May '06.
 24 MR. HERRON: It is the case that when

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1 custodians were put on call, they were within a day or
 2 concurrently or within a few days, with the exceptions
 3 that we will provide to Intel, also put on the journal.
 4 So it was concurrent.
 5 MR. FRIEDBERG: I agree with Mr. Ashley,
 6 obviously, if there was a big -- I mean, I thought that
 7 the timing was different, but if there is a big gap and
 8 deleted items aren't being migrated to the vault, you
 9 know, and that's where they are storing stuff, I agree
 10 that would be an issue. But you all can sort of work
 11 that out in your informal exchanges, right?
 12 MR. ASHLEY: Yes.
 13 MR. FRIEDBERG: Okay. So let me move on
 14 to the other point that we were talking about, which is
 15 the sent items, which is, you know, to give you some
 16 feedback about the point that Intel was just making, that
 17 there is a jump, you know, a very big statistical jump in
 18 the sent items when you move from the self-select period
 19 to the journaling period. Do I have that right? That's
 20 the theory, right?
 21 MR. PICKETT: Yes.
 22 MR. FRIEDBERG: So, I think AMD is also,
 23 I can't remember whether they proffered that additional
 24 informal exchanges in that regard, but that does -- oh,

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<p>1 they are offering the backup tapes, so that seems to be a 2 focus as a, you know, a significant issue that should be 3 explored especially since, if we understand it, if the 4 dumpster was set for Ruiz to 360 days in March of '05, 5 you would think, generally speaking, that the sent items 6 would be captured in the dumpster when the dumpster items 7 were repopulated; correct?</p>	<p>1 we get from that and whether that doesn't put largely the 2 issue to rest.</p>
<p>8 MR. ASHLEY: Correct, Your Honor.</p>	<p>3 SPECIAL MASTER POPPITI: Eric, do you 4 have a question?</p>
<p>9 MR. FRIEDBERG: So -- this is 10 Mr. Friedberg speaking. And, so, you know, we do, you 11 know, we do see that as an issue that definitely is worth 12 some exploration and seems to have, on the face of it, 13 you know, prior to any kind of formal discovery and 14 hearings and whatnot, some, I want to say "merit," 15 because that was a, you know, a more troubling static.</p>	<p>5 MR. FRIEDBERG: I was just wondering 6 whether AMD could clarify just how it expects the issue 7 of the restoration of the October to November backup 8 tapes to address the issue with the disparity between the 9 Ruiz statistics in the self-select period, you know, 10 vis-a-vis the Ruiz statistics post archiving. I didn't 11 quite get that.</p>
<p>16 So I think that, again, that's an area 17 where I think the, to the extent that there are informal 18 exchanges that take place that put that matter to rest, 19 fine. But, obviously, if not, that is ultimately going 20 to transition to where that would be the proper subject 21 of 30(b)(6) deposition and also testimony potentially 22 given by Ruiz.</p>	<p>12 MR. HERRON: Unfortunately, 13 Mr. Friedberg, I am not sure that confining of that first 14 into that time period is going to only address that 15 issue. You correctly pointed out that the -- that 16 setting the dumpster setting to a 360-day time period, 17 one would expect would have resulted along with harvest 18 to have a, you know, a collection that was more 19 equivalent to the post journaling time frame.</p>
<p>23 So, on that -- so, again, our framework 24 in doing this is to give you feedback about what types of</p>	<p>20 So it may be, and I think that AMD is 21 prepared to restore additional backup tapes through that 22 time period preceding migration to the vault and journal 23 and to see whether we have, in fact, captured, as I 24 expect is the case, any e-mail not previously produced,</p>
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<p>1 things are looking like they have more merit or are more 2 troubling than others so that you all can sort of decide, 3 at the end of the day, how much you want to dig into 4 these in the formal processes.</p>	<p>1 and, if so, we would produce it.</p>
<p>5 It's also your chance to tell us, Look, 6 you have got all the technical stuff wrong, and to the 7 extent that we, you know, that a judge is going to be 8 making a decision about how much formal discovery to give 9 and to the extent that that decision is going to be 10 predicated on, in part, our understanding of the 11 technical issues, we are looking for you, once we give 12 you this informal feedback about how issues are hitting 13 us, to tell us whether we are, you know, on base or off 14 base. Is that fair, Judge?</p>	<p>2 That collection should, in fact, answer, 3 in whole or in part, whether or not there has been an 4 adequate collection, an adequate backstop to collect 5 e-mails not previously produced.</p>
<p>15 SPECIAL MASTER POPPITI: Yes. That's 16 fair.</p>	<p>6 So what I am saying is that AMD is 7 prepared to restore the backup tapes from -- during that 8 time period and to produce those unique e-mails.</p>
<p>17 MR. PICKETT: From Intel's standpoint, 18 you are on base with that one.</p>	<p>9 SPECIAL MASTER POPPITI: Okay. Then 10 let's move --</p>
<p>19 SPECIAL MASTER POPPITI: Are there any 20 comments from AMD with respect to No. 3, 2 and 3?</p>	<p>11 MR. FRIEDBERG: Does AMD have -- and, 12 again, this may be not appropriate in a question and let 13 me know if you think it's not -- does AMD have a current, 14 you know, working theory about what is accounting for the 15 difference between the self-select period and the 16 journaling?</p>
<p>21 MR. HERRON: No, Your Honor. I think 22 that your summary sets out things correctly, especially 23 in terms of AMD proposed discovery or respiration, we are 24 going to restore backup tapes and that, we will see what</p>	<p>17 MR. HERRON: Well, I mean, it's 18 difficult. I guess we don't have a final answer is the 19 best way to say it now. We do know that Mr. Ruiz's 20 assistant, as we set forth in the papers, had 21 administrative access to his e-mail account. You know, 22 perhaps there was leakage through that.</p>
	<p>23 MR. FRIEDBERG: We saw that, but the 24 issue with that would be that, you know, the dumpster</p>

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<p>1 setting is set on his mailbox, so regardless of whether 2 he is accessing it, you would think that the items would 3 still go to the dumpster and then be available because 4 the harvest was done before 360 days was up. 5 MR. HERRON: I suspect, however, if 6 administrative access is gained and releases were made 7 through that administrative access, the question whether 8 that goes into the deleted folders of the, you know, of 9 the e-mail account owner or the deleted folders of the 10 person gaining administrative access, I am just unclear. 11 The fact is that resolution lies in our 12 going to resorting to backup tapes which we have 13 obligated ourselves to do and are in the process of 14 doing. We do suggest that once we receive those results, 15 that's the time for analysis, whether it was effective or 16 not effective. 17 SPECIAL MASTER POPPITI: Let me pose a 18 question to Mr. Friedberg. Is there another mechanism of 19 how an individual would delete? 20 MR. FRIEDBERG: I mean, one -- I mean, 21 one issue, you know, that, obviously, would be of 22 concern, is that the, if the -- if the disparity was -- I 23 don't know whether or not, and I have to check this 24 myself, whether or not, if you were shift deleting these</p>	<p>1 think that AMD here has offered proposed additional 2 formal, informal exchanges, rather, regarding its 3 representations for, or how these deleted -- the 4 distribution of these deleted items, and I think that, 5 again, where we come out is the general right to take 6 30(b)(6) witness deposition testimony about this kind of 7 issue, I mean, in general, it would encompass this kind 8 of technical issue. And I think at the end of the day, 9 again, the Judge is going to weigh what you ultimately 10 come up with after the informal exchanges about how 11 satisfied you are, Intel, about what AMD said about how 12 much formal discovery you are going to get in this 13 regard. 14 MR. PICKETT: I understand and I didn't 15 mean to slight the issues that you had identified on the 16 summary because it is not clear to us how Mr. Meeker's 17 explanation of what he did with respect to harvesting 18 from dumpsters fits the actual production. 19 MR. ASHLEY: Your Honor, if I could just 20 make a comment, please, Your Honor, please. 21 SPECIAL MASTER POPPITI: Thank you, sir. 22 MR. ASHLEY: This ties in again pretty 23 much with what we just discussed regarding the dumpster. 24 Our concerns with the global failure was that 96 percent</p>
<p>1 items, whether they wouldn't go to the dumpster, and, 2 therefore, that's why you see a difference between what's 3 in the Ruiz dumpster and what's in the, you know -- but, 4 I don't -- one, I would have to confirm that, in fact, 5 shift delete doesn't go to the dumpster, and, 6 essentially, under their settings, whether it would not 7 go to the dumpster, and, two, you'd have to sort of -- I 8 am not exactly sure how you would go about exploring 9 whether or not that was the deletion mechanism, possibly 10 through the deposition of Ruiz. 11 SPECIAL MASTER POPPITI: Okay. Well, 12 it's something to explore. 13 We are onto four, then, please. 14 MR. PICKETT: Yes, Your Honor. This 15 goes to harvest issues, and you have accurately listed 16 those issues. 17 In addition, though, there is a 18 gentleman by the name of Kwok, K-w-o-k, who has had some 19 harvest failures that AMD has pointed us to. There is 20 also some questions regarding an August '07 letter from 21 AMD which describes some harvest failures relating to, I 22 believe, Mr. Ruiz and some other individuals that we have 23 some further questions about. 24 MR. FRIEDBERG: I mean, here, I just, I</p>	<p>1 of the deleted items came from only 20 custodians. That 2 may be, again, indicative of some of the dumpster 3 restoration that were done by Mr. Meeker for a limited 4 number of custodians. That maybe what's skewed that 5 number. 6 SPECIAL MASTER POPPITI: And I gather 7 that, again, that would be left for informal 8 representations or perhaps further informal discussion 9 with Mr. Meeker. Agreed? 10 MR. ASHLEY: I believe the dumpster 11 items that AMD have already proposed restoring will 12 answer that. 13 MR. PICKETT: But I do think we do need 14 some fuller explanation of Mr. Meeker's activities and 15 the effect of them. For example, when he goes into 16 restored, a dumpster on October 29th and the setting has 17 not been changed, that only captures seven days, and you 18 we just need -- and then why only four other individuals, 19 those kinds of questions, just to understand what the 20 exceptions to the protocol were. 21 MR. FRIEDBERG: And I think that the 22 Judge, you know, believes that those are fair questions. 23 I mean, I think this is an area that we think these are 24 fair questions and we are hoping you can get as far as</p>

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1 you can down the road with informal discovery. And if
 2 you can't resolve it to your satisfaction, then you could
 3 do it under oath. And if you can resolve it to your
 4 satisfaction, you can also, you know, get your -- get the
 5 agreed upon explanations under oath in the 30(b)(6)
 6 deposition, but that would probably take, you know, less
 7 time.

8 So what we want to know at the end of
 9 the process is, you know, from Intel's point of view, it
 10 would be helpful to know, at the end of the renewed
 11 offered informal exchange, what areas are, you know, do
 12 they really need additional probing on in the 30(b)(6)
 13 deposition as opposed to wanting to get confirmations of
 14 what they have learned under oath, both of which are
 15 appropriate, but then that will help the Judge set some
 16 length of the 30(b)(6) deposition.

17 SPECIAL MASTER POPPITI: Let's move on
 18 to five --

19 MR. PICKETT: Yes. This has to do with
 20 the auto delete function. I think there is at least a
 21 broader statement that is not reflected in the summary.
 22 Mr. Ashley's affidavit at paragraphs 25 to 32, this is in
 23 the second column, the statement is "relies only on Ruiz
 24 statistics," it also relies on Mr. Kepler's data. And,

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1 as a further report, we have got a further production of
 2 Mr. Kepler's documents and have had a chance to review
 3 that. It does not include items that have been retained
 4 for privilege review, but given what we have, only --
 5 only 60 percent of Mr. Kepler's production he cc'd
 6 himself on, which was the explanation for why his ability
 7 to turn off the auto delete was not a problem, so it just
 8 raises questions.

9 I guess, similarly, we have questions
 10 about: Was Mr. Kepler the only one to turn off auto
 11 delete, and, you know, was there investigation to make
 12 sure that that was so?

13 MR. HERRON: May I respond to that?
 14 SPECIAL MASTER POPPITI: Sure, yes.
 15 MR. HERRON: First, the representation
 16 has been made now several times that Kepler, Mr. Kepler
 17 is the only designated custodian who had this issue. We
 18 think that should put the end of it -- put that to end.
 19 If they want that -- if Intel wants that under oath, we
 20 will provide it.

21 But, you know, I don't know where
 22 Mr. Pickett is getting his statistics about only
 23 60 percent of the sent e-mails during the pre-journaling
 24 period having been sent e-mails on which Mr. Kepler cc'd

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1 himself. That's just not the case. In fact, in the
 2 month of July, it was 57 out of 62 e-mails. The next
 3 month, 75 out of 78. The next month, all 67 sent e-mails
 4 that were produced, he cc'd himself. The next month, all
 5 86. So I am not quite aware of the statistics but I felt
 6 the need to respond to that assertion.

7 SPECIAL MASTER POPPITI: Well, then, if
 8 there is a need for Intel to further explain where their
 9 statistics come from, I am sure they will do that.

10 MR. PICKETT: Yes, Your Honor.
 11 SPECIAL MASTER POPPITI: Onto six, then,
 12 please.

13 MR. PICKETT: This is the production
 14 from lost files folders in which only four custodians
 15 produced lost files. And that goes to the, really goes
 16 to how the system has worked, as explained by Mr. Fisher,
 17 and perhaps Mr. Ashley could chime in here, because our
 18 experts don't, do not believe that the encryption
 19 explanation makes sense. Also does not understand the
 20 explanation for FCSs, exporting of lost files that they
 21 shouldn't have.

22 Apparently, AMD's position is that
 23 relevant files were produced, but under their protocol,
 24 they wouldn't have been produced. It just raises some

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1 question.

2 MR. ASHLEY: I don't know whether you
 3 want me to comment ahead of Mr. Friedberg or vice versa,
 4 but I am sure this is an area Mr. Friedberg will be very
 5 well-versed in.

6 SPECIAL MASTER POPPITI: Indeed. And we
 7 have had some discussion.

8 MR. ASHLEY: Do you want Mr. Friedberg
 9 to go first?

10 MR. FRIEDBERG: I will go, Mr. Ashley.
 11 I mean, I think that, again, here, this is a, this will
 12 move us up to the 50,000-foot level for a second here, so
 13 just correct us if we are wrong, but we are sort of
 14 taking this argument as, essentially, there is
 15 essentially metadata in the deduction that indicates, in
 16 Intel's mind, a sense of undisclosed remediation; in
 17 other words, that the lost and found nomenclature in what
 18 I will call the metadata of the produced files is
 19 indicating a remediation of a problem that AMD didn't
 20 disclose.

21 So, A -- and Mr. Ashley, do I get that
 22 generally right as the reason you are raising this?

23 MR. ASHLEY: The lost and found is
 24 another issue, Mr. Friedberg. That related to the

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<p>1 corruption --</p> <p>2 MR. FRIEDBERG: <i>I am sorry. I misspoke.</i></p> <p>3 The lost files. I apologize.</p> <p>4 MR. ASHLEY: <i>It goes to the production</i></p> <p>5 <i>of lost files for four of the custodians by AMD. They</i></p> <p>6 <i>are files within the lost files folder which, as we both</i></p> <p>7 <i>know, I would imagine, that having the folder created</i></p> <p>8 <i>automatically by the end case imaging process.</i></p> <p>9 MR. FRIEDBERG: <i>Ycs.</i></p> <p>10 MR. ASHLEY: <i>Obviously, the other files</i></p> <p>11 <i>were found on four individuals, within four individuals'</i></p> <p>12 <i>images and produced by AMD, which we have located.</i></p> <p>13 MR. FRIEDBERG: <i>But the reason you are</i></p> <p>14 <i>raising that is your theory is that this represents a</i></p> <p>15 <i>forensic recovery of information that was inappropriately</i></p> <p>16 <i>lost.</i></p> <p>17 MR. ASHLEY: <i>That's one possibility.</i></p> <p>18 <i>The other belief is that these files that were located in</i></p> <p>19 <i>the lost files folder all the time became the losses</i></p> <p>20 <i>within the -- they lost the patterns folder structure,</i></p> <p>21 <i>which does occur occasionally on those files. Then, with</i></p> <p>22 <i>the forensic software, were placed into the lost files</i></p> <p>23 <i>folder. They were still actual files, and, as such, were</i></p> <p>24 <i>reviewable, and certainly, on four occasions, were</i></p>	<p>1 A, quantify to what degree this even is the case for</p> <p>2 other custodians; correct?</p> <p>3 MR. ASHLEY: <i>Correct. And the position</i></p> <p>4 <i>with the lost files and the images is it's relatively</i></p> <p>5 <i>easy and not a time consuming task to identify if they</i></p> <p>6 <i>exist. I think the images have been captured for</i></p> <p>7 <i>preservation purposes and we can see that relevant data</i></p> <p>8 <i>was found in four occasions in four images. And this is</i></p> <p>9 <i>an area that, basically, AMD responded, Mr. Fowler</i></p> <p>10 <i>responded, wasn't part of FCS' protocol to deal with lost</i></p> <p>11 <i>files.</i></p> <p>12 I am aware, obviously, as you are,</p> <p>13 Mr. Friedberg, I have been through many of these matters,</p> <p>14 the vendors' protocol doesn't dictate what he's done in</p> <p>15 discovery.</p> <p>16 MR. FRIEDBERG: <i>Could you hold on one</i></p> <p>17 <i>second.</i></p> <p>18 SPECIAL MASTER POPPITI: <i>Give as you</i></p> <p>19 <i>moment, please, just one moment. I am going to put you</i></p> <p>20 <i>on hold.</i></p> <p>21 (Off the record.)</p> <p>22 MR. FRIEDBERG: <i>So, Mr. Ashley, so if we</i></p> <p>23 <i>understand AMD's response to the quote/unquote, selective</i></p> <p>24 <i>production issue, their response is, Look, with respect</i></p>
<p>1 located and produced.</p> <p>2 MR. FRIEDBERG: <i>And, so, not to be too</i></p> <p>3 <i>colloquial, but so what? And, therefore, what?</i></p> <p>4 MR. ASHLEY: <i>Well, basically, the</i></p> <p>5 <i>position that AMD have said on those documents that I</i></p> <p>6 <i>have read is that their protocol was to forensically</i></p> <p>7 <i>image if not all, the majority of custodian's drives.</i></p> <p>8 The probability is that lost files</p> <p>9 folders exist across the majority of those images which</p> <p>10 are, say, inactive data. As you can see from this case,</p> <p>11 these for instances, potentially relevant data, and we</p> <p>12 believe that that is not being looked at and harvested.</p> <p>13 MR. FRIEDBERG: <i>So what your theory is</i></p> <p>14 <i>is not that this necessarily represents an inappropriate</i></p> <p>15 <i>or an undisclosed sort of intentional remediation but</i></p> <p>16 <i>that it's their harvesting these lost files, they should</i></p> <p>17 <i>be harvesting them everybody.</i></p> <p>18 MR. PICKETT: <i>I think we don't know,</i></p> <p>19 <i>but, at a minimum, it shows that the harvesting is</i></p> <p>20 <i>inconsistent because some, in only four cases, some cases</i></p> <p>21 <i>lost files are being harvested but for the remainder, not</i></p> <p>22 <i>at all.</i></p> <p>23 MR. FRIEDBERG: <i>So, it does seem in</i></p> <p>24 <i>informal discovery you could get fairly down the road to,</i></p>	<p>1 to the, two of the four people, the reason that the lost</p> <p>2 files is in the metadata of the production, or in that</p> <p>3 folder, is because of a decryption process, all of the</p> <p>4 data from those two drives is, were placed in those</p> <p>5 folders.</p> <p>6 So we understand that you may or may not</p> <p>7 think that that's accurate, but I would implore you to,</p> <p>8 you know, explore that through your own independent</p> <p>9 testing to determine whether or not that's a reasonable</p> <p>10 and accurate response.</p> <p>11 MR. ASHLEY: <i>If we come to that, we will</i></p> <p>12 <i>do that. However, I understand that AMD also responded</i></p> <p>13 <i>that having had the decryption process issues, that they</i></p> <p>14 <i>re-decrypted and dealt with the data correctly, shall we</i></p> <p>15 <i>say, and produced the data from that re-decrypted drive.</i></p> <p>16 MR. FRIEDBERG: <i>Right. But what I am</i></p> <p>17 <i>saying is, let's say it was just those two folders, just</i></p> <p>18 <i>those two custodians, and for some, and I am not a, you</i></p> <p>19 <i>know, I am not personally as familiar with the lost</i></p> <p>20 <i>files' protocol, but let's say, for example, that,</i></p> <p>21 <i>literally, when you take a drive and let's say it's a</i></p> <p>22 <i>whole list encryption or some other encryption issues, if</i></p> <p>23 <i>it does cause all the files to be dumped into that</i></p> <p>24 <i>folder, it would not, I don't think, subject to, you</i></p>

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<p>1 know, obviously, more argument about this, be fair to 2 say, Look, you had the obligation, because you did it 3 with respect to these two, where all the data was 4 commingled, to produce lost files for all the other 5 images. I don't necessarily think that would be a fair 6 argument.</p> <p>7 AMD is, specifically, to that point, 8 AMD's response in that regard, on the other two drives, 9 is that that wasn't part of their general protocol to 10 produce data from lost files and it was just an error, 11 and, so, they shouldn't be held to producing data from 12 those lost folders.</p> <p>13 So, I would say you should get as far as 14 you can in the informal processes because then if it 15 comes down to, if you are satisfied on the first two that 16 were fully decrypted and that that really occurred and 17 that's why those were produced, then it's obviously going 18 to tee up an issue for the Judge about, Well, should AMD 19 -- I am sorry, should AMD have produced data from all 20 lost file folders across all custodians? And the answer 21 to that may be yes and the answer to that might be no.</p> <p>22 For example, you would, you know, I am 23 sure acknowledge, Mr. Ashley, that one can very quickly 24 use, you know, recover deleted folders function in end</p>	<p>1 MR. ASHLEY: I think that will be part 2 of the informal discovery process. I think as we race to 3 the recovered folders functionality of end case, not 4 anywhere in either of my declarations was that raised as 5 an issue.</p> <p>6 MR. FRIEDBERG: I am giving that as an 7 example because you were saying that it's very easy to 8 produce lost file information from all the images. And 9 what I am suggesting to you is that the ease of 10 production is not the only factor. There are, I mean, 11 arguably -- you could argue that it is under, you know, 12 the new definition of "reasonably acceptable."</p> <p>13 It also may be that the Court might say, 14 Look, that's sort of a forensic recovery and I am not 15 going to start ordering forensic recoveries across, you 16 know, 300 custodians or whatever it is.</p> <p>17 I am not prejudging it and I am not 18 saying that's where anybody's going to come out. I am 19 just lagging that as an issue that if you all come back 20 and say, Look, this inconsistency by AMD warrants ten 21 custodian production of lost file information, that 22 becomes, to some degree, a legal issue, I would think.</p> <p>23 MR. ASHLEY: Yes. We are not talking 24 about deleted information. We are talking about active</p>
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<p>1 case to recover deleted files. It takes very little 2 time.</p> <p>3 That's not necessarily a standard or 4 approved way of doing, you know, e-discovery harvesting 5 even though it's doable and you get real data and 6 sometimes you get relevant data.</p> <p>7 So, it would tee up an issue for the 8 Judge about, you know, is that data accessible, you know, 9 reasonably accessible and is it appropriate for the Court 10 to order, you know, custodian-wide discovery of those 11 lost files if that ends up being your argument.</p> <p>12 Is that a fair way to tee up the two 13 issues?</p> <p>14 MR. ASHLEY: Yes. And I will deal with 15 issue one first regarding the decryption.</p> <p>16 MR. FRIEDBERG: I don't need you to 17 address it substantively now. I am saying, Go back and 18 figure it out and see at the end of that informal process 19 whether you still want to push that point.</p> <p>20 MR. ASHLEY: I think in order to be able 21 to do that, I think we need further information from AMD. 22 We don't that encryption software was in use.</p> <p>23 MR. FRIEDBERG: They are offering 24 assistance in that regard.</p>	<p>1 files that are located in the lost files folder.</p> <p>2 MR. FRIEDBERG: I understand that. I 3 understand that.</p> <p>4 SPECIAL MASTER POPPITI: Well, then, I 5 think we have covered that area enough.</p> <p>6 Let's move on, then, to seven, please.</p> <p>7 MR. PICKETT: This one has to do with 8 the migration of TSP files to the vault and an indication 9 that there were errors with respect to 15 custodians in 10 that migration process, and I think that's been 11 accurately stated in the summary.</p> <p>12 SPECIAL MASTER POPPITI: And AMD 13 proposes further, providing further information in that 14 regard?</p> <p>15 MR. PICKETT: Yes.</p> <p>16 SPECIAL MASTER POPPITI: Okay. I really 17 think that's probably enough said about seven.</p> <p>18 MR. PICKETT: No. 8 has to do with, on a 19 going-forward basis, archiving in the vault and what 20 happens with respect to deleted items. The first issue 21 is identified in the summary which is the, from 22 Mr. Ashley's paragraph 42 with respect to the discrepancy 23 between the seven-day and the 30-day treatment of the 24 deletions. I think that actually affects more No. 7, the</p>

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<p>1 migration.</p> <p>2 An issue here, though -- there are</p> <p>3 really sort of two issues. One is with respect to how</p> <p>4 AMD, when they happen to notice large stores of deleted</p> <p>5 items, would migrate them. That's from Mr. Fowler's</p> <p>6 paragraph 39.</p> <p>7 The other has to do with the statement</p> <p>8 from Mr. Fowler's paragraph 11 in which he states that</p> <p>9 custodians have access to the vault even after it's been</p> <p>10 migrated and exceptions exist so that custodians can</p> <p>11 delete from the vault even after migration.</p> <p>12 MR. FRIEDBERG: So, I mean, I think that</p> <p>13 -- I think we understand what the parties' positions are.</p> <p>14 I want to clarify one thing. So we see that AMD is</p> <p>15 saying that it's previously produced the witness on</p> <p>16 archiving and Intel declined AMD's offer to produce him</p> <p>17 again.</p> <p>18 MR. PICKETT: I think that's a little</p> <p>19 strong. I think the first session had some merit but it</p> <p>20 was limited. And AMD did offer the witness -- well,</p> <p>21 witness, I guess he is under oath, but offered the person</p> <p>22 up for further explanation and that was never accepted or</p> <p>23 declined but it was just -- I take it it still exists.</p> <p>24 MR. FRIEDBERG: So, is AMD -- I am</p>	<p>1 Counsel, I have a question. There seems</p> <p>2 to be a discrepancy between the statement in AMD's brief</p> <p>3 at page 5 and Mr. Fowler's affidavit at paragraph 39 as</p> <p>4 to whether deleted items from before 2005 were archived</p> <p>5 in the vault. If you will take a look at the July 24th</p> <p>6 correspondence, page 5, paragraph 5, the second full</p> <p>7 sentence, it reads, "He apparently is not familiar with</p> <p>8 how the semantic system migrates copies of historic PSTs</p> <p>9 to the vault. In early May, 2006, the vault, in fact,</p> <p>10 was unable to sweep and retain e-mail from deleted item</p> <p>11 folders, a setting AMD altered in light of the journal</p> <p>12 redundancy."</p> <p>13 If you measure that sentence against</p> <p>14 Mr. Fowler's affidavit at 39, and I am looking at the</p> <p>15 first full sentence, there appears to be an</p> <p>16 inconsistency. I don't know whether you want to address</p> <p>17 that now or whether you want to be addressing that in</p> <p>18 your informal meet and confers.</p> <p>19 MR. HERRON: Why don't I address it now</p> <p>20 and we can follow-up if necessary.</p> <p>21 Deleted items that were in PST folders</p> <p>22 were, in fact, migrated. There was a historic migration</p> <p>23 because, a migration of historic PSTs to the vault. The</p> <p>24 other migration that happened as a matter of course was</p>
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<p>1 sorry. Is AMD willing to give access to that person to</p> <p>2 clarify these open issues?</p> <p>3 MR. HERRON: Yes. AMD is willing to</p> <p>4 provide a person to provide clarification about these</p> <p>5 issues, but Mr. Pickett is incorrect in his recitation of</p> <p>6 what happened. The offer was made in writing. It was</p> <p>7 not accepted. There was a further conversation between</p> <p>8 me and Mr. Levy of Gibson, Dunn in which he stated to me</p> <p>9 that there was no further need to have any discussion</p> <p>10 with Mr. Meeker, who had been provided.</p> <p>11 But, you know, they are raising issues</p> <p>12 they want answers on. We just want an end to this</p> <p>13 exercise. We will produce Mr. Meeker again.</p> <p>14 SPECIAL MASTER POPPITI: And it seems to</p> <p>15 me in an informal process, and in light of what we are</p> <p>16 doing today, that makes sense.</p> <p>17 MR. PICKETT: That's fine, Your Honor.</p> <p>18 I stand corrected, then. I wasn't part of that</p> <p>19 conversation.</p> <p>20 SPECIAL MASTER POPPITI: Thank you.</p> <p>21 MR. PICKETT: No, 9, this has to do with</p> <p>22 the use of the terms lost and found in the file paths.</p> <p>23 SPECIAL MASTER POPPITI: Give us one</p> <p>24 moment, please.</p>	<p>1 the migration of deleted in box items. Those were swept</p> <p>2 into the vault beginning in November of 2005 through</p> <p>3 approximately May of 2006, and then, as noted,</p> <p>4 discontinued in light of the redundancy of the journal</p> <p>5 which obtained and retained all sent and received items.</p> <p>6 So that's the distinction and I hope clarifies it.</p> <p>7 SPECIAL MASTER POPPITI: It does. Thank</p> <p>8 you.</p> <p>9 MR. HERRON: Certainly.</p> <p>10 SPECIAL MASTER POPPITI: Move on, then</p> <p>11 to nine.</p> <p>12 MR. PICKETT: We just had some questions</p> <p>13 about that, but let's move on to nine. This is the lost</p> <p>14 and found file path.</p> <p>15 SPECIAL MASTER POPPITI: You want to</p> <p>16 raise some questions about what?</p> <p>17 MR. PICKETT: I think it's better left</p> <p>18 to the meet and confer process.</p> <p>19 SPECIAL MASTER POPPITI: That's fine.</p> <p>20 Thank you.</p> <p>21 MR. PICKETT: On nine, the lost and</p> <p>22 found file path items, there is a -- it's been captured</p> <p>23 here and there is a concern that due to migration, there</p> <p>24 was some corruption of the PST files. We need to</p>

Teleconference

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<p>1 understand further about those notations and the 2 protocols, and I understand that AMD has proposed that. 3 SPECIAL MASTER POPPITI: They have, 4 indeed. 5 I don't think there needs to be any 6 further comments on nine. 7 Eric, do you have a question? 8 MR. FRIEDBERG: I just want to ask 9 something offline. 10 SPECIAL MASTER POPPITI: Counsel, just 11 one moment, please. 12 (Off the record.) 13 MR. FRIEDBERG: For Mr. Ashley, 14 Mr. Ashley, just on the, going back to the lost files 15 point for a minute, are you there? 16 MR. ASHLEY: Yes. 17 MR. FRIEDBERG: So, did you -- did 18 Intel, when it was doing its harvesting production 19 uniformly across the, all of its custodians, recover and 20 produce information from those folders. 21 MR. ASHLEY: I have no involvement in 22 Intel's side of this case regarding correction 23 preservation, etcetera. I was brought into the case 24 maybe 12 months ago due to some anomalies that we were</p>	<p>1 into consideration as you are exploring this instead of 2 teasing up these issues for Judge Poppiti at the end of 3 the informal, at the end of the informal process. 4 SPECIAL MASTER POPPITI: Thank you. 5 Next item, please? 6 MR. PICKETT: Item ten, confusing hold 7 notice instructions. This has to go with, really to the 8 content of the litigation hold notice, and, in 9 particular, the explanation that the instructions were 10 not mandatory, which, to us, was -- led to other 11 questions as to why did you -- why would you issue a 12 notice that's not mandatory, what were the exceptions, 13 and so on. And I understand at least some information 14 has been offered by AMD in that regard. 15 SPECIAL MASTER POPPITI: And it seems to 16 me you should continue to explore that informally and 17 that it would be an appropriate subject for 30(b)(6). 18 Paragraph 11, please. 19 MR. PICKETT: 11 also concerns the 20 uncertainties regarding the file path information and 21 also raises the de-duplication process. As to 22 de-duplication, AMD has offered to provide further 23 information. 24 I think there is some file path</p>
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<p>1 trying to find to dig a little deeper into AMD's 2 production. That's the extent of my involvement. 3 MR. FRIEDBERG: Does counsel on Intel's 4 side know that? 5 MR. PICKETT: I can assure you that I 6 don't. 7 MR. DILLICKRACH: I will be glad to look 8 into it if I can readily find an answer, but I don't 9 think any of us have an answer here today. 10 SPECIAL MASTER POPPITI: Thank you. 11 MR. HERRON: I think the answer is no, 12 that they were not imaging, they were not retaining, or 13 they were not trying to harvest those sort of files. 14 They didn't do imaging. Instead, they copied select 15 files and I don't think that those sort of lost files 16 were attempted to be recovered even after the deletion of 17 five custodians were known about. I think we are going 18 to find the answer is no. 19 MR. FRIEDBERG: Mr. Herron, I think 20 that's consistent with what I remember from the 21 depositions, is that they were sort of harvesting active 22 files, and, as you say, no forensic imaging of custodian 23 lap tops. 24 So, again, you might want to take that</p>	<p>1 information forthcoming from AMD but that's really for 2 Mr. Herron's saying. 3 MR. FRIEDBERG: I think it would be 4 helpful here, Mr. Ashley, if you could make your best 5 case on this file path issue because it does strike us 6 that AMD -- I am sorry, AMD's arguments that the file 7 path information had been produced since the beginning, 8 there hasn't been an objection to it, and it would be 9 quite difficult, if not impossible, to go back and redo 10 the file path information for the whole production. 11 So, again, we might not be understanding 12 that right. So if you want to shed any other light on 13 that, we would appreciate that. 14 MR. ASHLEY: Yeah. The proposal was 15 never that they should go back and recreate all the file 16 paths. What happened, when we started to notice some 17 gaps, should we say, in the production, for want of a 18 better expression, I was trying to establish the sources 19 of the data had come from that are being produced as 20 relevant, and the only way to do that, really, was by 21 understanding the file path information. But it became 22 apparent very quickly that that was extremely difficult. 23 It didn't seem to be any standard naming 24 convention. I suspect that multiple personnel or</p>

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1 entities were involved in gathering data from different
 2 locations. They were using different naming conventions.
 3 They are neither attempting to interpret that to see
 4 whether all relevant sources that were identified in the
 5 AMD protocol had been gone to to recover data from, which
 6 was implied in our protocol, and because I couldn't
 7 understand the pathing names, I couldn't discern them.
 8 A better, and that may be informal
 9 again, a better understanding if their naming convention
 10 is in the folder path, it may well resolve that totally.
 11 So it's not a matter of recreating the path but
 12 explaining to us what we need.
 13 MR. DILLICKRACH: This is
 14 Mr. Dillickrach. If I can just add one thing? As we are
 15 using the data on both sides of this case for different
 16 reasons, it's not uncommon to get the post facto
 17 requests. We just got a request from one of Mr. Herron's
 18 colleagues yesterday asking about some data that have
 19 some information that was produced approximately 13 or
 20 14 months ago.
 21 So I think it is, in my experience, as
 22 you are using the data for different reasons, the
 23 questions that don't come up on the initial review may
 24 come up down the road.

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1 SPECIAL MASTER POPPITI: Okay. I have
 2 no questions or comments with respect to 11.
 3 Have we missed any issues that, of the
 4 numbered issues on the chart?
 5 MR. PICKETT: I am sorry. We have gone
 6 through all 11.
 7 SPECIAL MASTER POPPITI: My question is:
 8 Do the 11 capture your universe of identified problems?
 9 MR. PICKETT: I would say they capture
 10 our list of known and strongly suspected items. There
 11 are some other items that we are really going to need a
 12 better understanding of what I call the foundational
 13 discovery to know that, but I think, for now, it's fine.
 14 SPECIAL MASTER POPPITI: Okay.
 15 MR. PICKETT: And I have added a few
 16 points along the way as they seemed appropriate.
 17 SPECIAL MASTER POPPITI: Do you want to
 18 turn the page, then, and look at the other lapses
 19 previously disclosed by AMD, please.
 20 MR. PICKETT: Sure. The first one, late
 21 delivery of written hold notices, we know when the hold
 22 notices were sent. What we don't know is why many key
 23 custodians were delayed.
 24 SPECIAL MASTER POPPITI: Okay.

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1 MR. HERRON: I am not sure exactly what
 2 Intel is driving at here. Each side identified
 3 custodians, put them under hold as this case unfolded.
 4 AMD started, as we have defined in our brief.
 5 After that time, as discovery was
 6 propounded as, you know, there was back and forth between
 7 the parties, and as we came to the conclusion that we
 8 would have a custodian-based document production, each
 9 side continues to identify custodians through June 1,
 10 2006, and, in fact, after that time.
 11 Intel has been very resistant, and
 12 Mr. Floyd might want to speak to this, to talk about how
 13 custodians were identified, why they were identified, and
 14 probably for legitimate reason since that does, in fact,
 15 raise the turning point of privilege or work product
 16 issues. So I am not sure what Mr. Pickett is driving at
 17 here.
 18 What they have in hand right now are the
 19 dates on which each and every individual received a
 20 notice, the precise notice each and every individual
 21 received, they know about the migrations involved in the
 22 journals, so, beyond that, what a 30(b)(6) witness could
 23 testify to without disclosing a privilege, I am just not
 24 clear on. I just raise that as a concern.

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1 SPECIAL MASTER POPPITI: I understand
 2 that. You know, of course, that I have not been
 3 following, other than knowing depositions are occurring,
 4 following the detail of the depositions, but you also
 5 know that Mr. Friedberg has been. And in my discussions
 6 with him, I certainly understand that this topic was
 7 certainly attempted to be probed during the Intel
 8 depositions and I understand that with respect to
 9 questions that were asked concerning this topic, that the
 10 attorney/client privilege was interposed and I have not
 11 been asked to make any ruling with respect to questions
 12 posed, the privilege raised, and I guess my observation
 13 is: If Intel wants to take the time that I ultimately
 14 allot during the 30(b)(6) deposition to spend and hear
 15 you say, "Objection, privileged," then they can do that.
 16 MR. PICKETT: Another potential approach
 17 is during the informal meet and confer process, we would
 18 ask, for example, Is there an explanation that is not
 19 privileged?
 20 SPECIAL MASTER POPPITI: And I
 21 understand that and I fully anticipate that that's
 22 precisely what you would do and that's why it was
 23 important for us to approach the work today the way we
 24 have.

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<p>1 MR. PICKETT: Let me correct a 2 misstatement of mine, Your Honor, with respect to this. 3 I said that we knew when the hold 4 notices went out. As I understand it, we know that for 5 the custodians who have produced documents but not for 6 the non-production custodians whose documents have been 7 retained. 8 In correspondence prior to the motions, 9 AMD indicated that they felt that was not relevant, 10 however, Intel has produced that, and if it's not 11 relevant to both sides, that's fine. But if it -- if 12 there is some kind of relevance to it, it ought to be the 13 same for each side. 14 MR. HERRON: Your Honor, may I speak to 15 that? 16 SPECIAL MASTER POPPITI: Yes, please. 17 MR. HERRON: Judge, the request by Intel 18 for this kind of information about non-designated 19 custodians is the perfect example of the overbreadth of 20 their discovery, and, quite frankly, a misuse of 21 discovery. 22 Intel has conceded in its brief that 23 even though they lost by a non-designated custodian, 24 there would be no prejudice because the documents from</p>	<p>1 by Intel of that information is essential to assessment 2 of its remediation plan which it's undertaken. If that 3 were not the case, in other words, if the non-designated 4 custodians were not timely notified and actually 5 preserving and subject to backup, then Intel's 6 remediation plan is founded on a false assumption and it 7 cannot possibly work to replace the files that have been 8 lost. 9 And, so, for that reason, and that's a 10 reason that does not apply to AMD, that Intel has 11 willingly obliged itself, observed by the Court, to 12 supply data about its non-designated custodians. 13 AMD is not remotely in that same 14 position in the true sense that we provide information of 15 100 non-designated custodians who, in one Intel pick, 16 will be entirely irrelevant to this case and his 17 documents will be irrelevant to this case, I submit, is 18 overbreadth, unduly burdensome, and inappropriate. 19 SPECIAL MASTER POPPITI: And I don't 20 need to hear Intel make any comment with respect to that. 21 It seems to me that you have, you state your position 22 with respect to information that you say you will not 23 provide during the course of this informal process. If, 24 at the end of the work that you do informally, Intel</p>
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<p>1 the non-designated custodian never come into play. Intel 2 has exactly one custodian pick left. After that pick is 3 made, whatever documents an un-designated custodian saved 4 or didn't save, whether they are notified or not notified 5 matters not at all. It's not relevant to any issue in 6 this case. It's certainly not relevant to preservation. 7 Intel has adequate information to 8 designate custodians that tells it precisely what AMD has 9 done and they can assess the preservation program by 10 that, on that basis. And their, you know, we are hearing 11 from Mr. Pickett again that there needs to be an absolute 12 level playing field between AMD and Intel on the issue of 13 disclosures including upon non-designated custodians. 14 But there is a material difference that 15 distinguishes the parties' obligations. Intel had a 16 break down that it acknowledges, in fact, that as many as 17 1,000 of its custodians, and its remediation plan is 18 founded on its assumption, the files destroyed by one 19 custodian would have been preserved in other custodians' 20 files including the files of non-designated files. That, 21 of course, is only possible if, in fact, the 22 non-designated custodian received a timely litigation 23 hold with actually preserving documents, with subject to 24 adequate backup and the like, and, therefore, disclosure</p>	<p>1 intends still to join that issue, then I will make a 2 determination with respect to that issue. 3 But I think in light of the way that we 4 have attempted to structure work going forward, I would 5 prefer not to deal with it at this point. You have said 6 you are not going to provide it. Intel has heard you are 7 not going to provide it. It will be their call as to 8 whether or not they ultimately want to join that issue. 9 MR. HERRON: Very well. Thank you. 10 SPECIAL MASTER POPPITI: I think that's 11 the most efficient way to handle it. 12 MR. PICKETT: I agree. 13 As to the remaining items to Mr. Kepler, 14 we have, I think, covered adequately in our discussion of 15 item five above. 16 SPECIAL MASTER POPPITI: I think we 17 have. 18 MR. PICKETT: Mr. Oji and Mr. Soares are 19 described adequately and we understand there is 20 information forthcoming. 21 MR. HERRON: I understand that as well. 22 SPECIAL MASTER POPPITI: So, if that's, 23 by flipping to the end of that document, brings us to the 24 end of the work, then what I'd like you to do, and either</p>

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<p>1 do it for me now or tell me you will do it for me in the 2 early part of the new week, give me some sense as to what 3 you all see to be an appropriate <i>time frame</i> to get the 4 informal process moving again, and I am not meaning to 5 suggest you haven't also been working while the motion 6 has been pending, and then tell me when the process 7 should close.</p> <p>8 MR. HERRON: Your Honor, might I suggest 9 that the parties do what we have often done in the past, 10 which is get together, you know, as early as this 11 afternoon or tomorrow morning, and try and come up with 12 at least an outline and report to the Court at some time 13 next week about what we suggest as a <i>proposed timetable</i> 14 for moving forward.</p> <p>15 MR. PICKETT: That's fine with me, Your 16 Honor. I would propose we have a relatively short period 17 of time for this intensive informal meet and confer and 18 then schedule a week or so after that, when convenient 19 for Your Honor, essentially a status conference for where 20 we are and where we should head.</p> <p>21 SPECIAL MASTER POPPITI: I am happy to 22 do that. And I also want you to be discussing, in 23 addition to the <i>time frame</i>, your view of the time 24 parameters for a 30(b)(6).</p>	<p>1 status conference?</p> <p>2 SPECIAL MASTER POPPITI: Yes. I'd like 3 your thought so that we don't, I don't wind up having to 4 reconvene you for the purpose of simply asking you to do 5 that.</p> <p>6 MR. PICKETT: I understand.</p> <p>7 SPECIAL MASTER POPPITI: And in talking 8 about the 30(b)(6) deposition, I would expect you are 9 also going to be dealing with scope as well.</p> <p>10 MR. PICKETT: Yes.</p> <p>11 SPECIAL MASTER POPPITI: Okay. Well, I 12 sincerely appreciate your willingness to work the way we 13 had proposed. I hope you agree with me that we have, I 14 think we have accomplished a lot in getting you back on a 15 path of getting a <i>significant amount</i> of information 16 informally, and I look forward to the work product on 17 Monday with respect to the rollout.</p> <p>18 Any other comments or questions, please?</p> <p>19 MR. PICKETT: Not from us. Thank you, 20 Your Honor.</p> <p>21 SPECIAL MASTER POPPITI: Thank you.</p> <p>22 MR. COTTRELL: Your Honor, my 23 understanding is we are going to take a short break and 24 then have a call, an initial call about the reporter's</p>
Page 71	Page 73
<p>1 MR. PICKETT: Very good.</p> <p>2 SPECIAL MASTER POPPITI: I understand 3 when I say a "30(b)(6)," I expect you are going to have 4 more than one individual in the 30(b)(6) chair. So what 5 I'd like to do is, if you can -- do you expect you are 6 going to be able to get back to me by Monday, close of 7 business?</p> <p>8 MR. PICKETT: Yes, Your Honor.</p> <p>9 SPECIAL MASTER POPPITI: Then let's -- 10 and do you expect that I need a teleconference with you 11 or is it just a function of receiving your proposal?</p> <p>12 MR. PICKETT: I believe the latter.</p> <p>13 SPECIAL MASTER POPPITI: Then let's do 14 close of business on the 15th, and once I see the <i>time</i> 15 <i>frame</i> you are proposing, I will set an appropriate date 16 for whatever remains in terms of -- perhaps you should do 17 that for me as well. Set the <i>time frame</i>, set some 18 proposal with respect to items that remain in dispute for 19 any further filing, and then I will be in a <i>position to</i> 20 understand an appropriate time for a further and final 21 hearing.</p> <p>22 MR. PICKETT: A clarification with 23 respect to the last assignment. Is that essentially a 24 proposal for mechanism by which to proceed <i>following the</i></p>	<p>1 motion issue?</p> <p>2 SPECIAL MASTER POPPITI: Yes.</p> <p>3 MR. COTTRELL: Your Honor, do you want 4 to give me a time?</p> <p>5 SPECIAL MASTER POPPITI: It's quarter of 6 three now, Fred. Let's look at 3:05, five after three.</p> <p>7 MR. COTTRELL: That's fine, Your Honor. 8 I will call Mr. Finger and Ms. McGuire and I think 9 Mr. Diamond will be on and then we will have everybody 10 use this call in number in 15 minutes.</p> <p>11 SPECIAL MASTER POPPITI: That would be 12 great.</p> <p>13 (The teleconference was concluded at 14 2:48 p.m.)</p>


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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 Certified Realtime 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 12th day of September A.D. 2008.


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

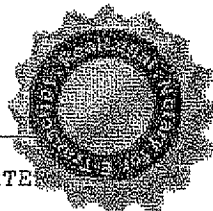


EXHIBIT D

Center, San Francisco, CA 94111, or at such other time and place as the parties may agree. The deposition will be recorded by stenographic and sound-and-visual (videographic) means, will be taken before a Notary Public or other officer authorized to administer oaths, and will continue from day to day until completed, weekends and public holidays excepted.

Reference is made to the "Description of Matters on Which Examination is Requested" attached hereto as Exhibit A and incorporated herein by this reference. In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, AMD is hereby notified of its obligation to designate one or more officers, directors, or managing agents (or other persons who consent to do so) to testify on its behalf as to all matters embraced in the "Description of Matters on Which Examination is Requested" and known or reasonably available to AMD.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rules 30(b) and 34 of the Federal Rules of Civil Procedure, Intel requests that AMD produce for inspection, copying and use at the deposition all of the documents and other tangible things in their possession, custody, or control and responsive to the "Categories of Documents and Tangible Things Requested for Production" attached hereto as Exhibit B and incorporated herein by reference. Production shall take place at the time and place of the deposition or at such other time and place as the parties may mutually agree.

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EXHIBIT A

EXHIBIT A:

**DESCRIPTION OF MATTERS ON WHICH
EXAMINATION IS REQUESTED**

I.

DEFINITIONS

1. "AMD" shall mean and refer collectively to plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.

2. "AMD Custodians" or "Custodians" means and refers to the approximately 440 individuals identified by AMD on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.

3. "Litigation" means and refers to the litigation in which this Notice of Taking Deposition has been served.

II.

SUBJECT MATTER

1. AMD's implementation and use of Enterprise Vault (in all relevant geographic regions) including but not limited to:

- (a) Timing of implementation and deployment;
- (b) Initial configuration and any subsequent changes thereto;
- (c) Migration of data into Enterprise Vault storage, including the type(s) of data migrated and not migrated;
- (d) Quality control safeguards and auditing;
- (e) Reporting, search and production capabilities;
- (f) Processes used to extract data from the system; and
- (g) Errors, malfunctions, data corruption or loss.

2. AMD's implementation and use of an email journaling system (in all relevant geographic regions) including but not limited to:

- (a) Timing of implementation and deployment;
- (b) Initial configuration and any subsequent changes thereto;
- (c) Type(s) of data the email journaling system was configured to preserve and types of data it was not configured to preserve;
- (d) Quality control safeguards and auditing;
- (e) Reporting, search and production capabilities;
- (f) Processes used to extract data from the system; and
- (g) Errors, malfunctions, data corruption or loss.

3. Configuration of AMD's email systems, including but not limited to:

- (a) Employees' ability to customize email settings that could impact preservation of emails;
- (b) Dumpster settings, use of shift-delete, and AMD Custodians' ability to permanently delete email messages.
- (c) Mailbox size limits or quotas for AMD employees' email including but not limited to:
 - 1) Nature and purpose of any limits or quotas, including any changes after AMD reasonably anticipated this Litigation;
 - 2) Consequence(s) of an email account nearing or reaching the limit or quota;
 - 3) Recommendations or instructions to employees and Custodians; and
 - 4) Whether and when AMD Custodians reached storage limits after March 11, 2005, and the identities of such Custodians.

4. Date on which AMD first reasonably anticipated this Litigation, and the events and circumstances leading to AMD's decision to commence this Litigation.

5. AMD's litigation hold notices for the Litigation, including but not limited to:

- (a) The timing of AMD's issuance of written litigation hold notices;
- (b) Meaning and intent of the language used;

- (c) Custodians' compliance;
- (d) Monitoring and auditing; and
- (e) IT Department technical support.

6. AMD's harvesting of electronic data for this Litigation from all geographic locations and sources (hard drives, live exchange server mailboxes, Enterprise Vault, email journaling), including but not limited to:

- (a) Identity of entities and personnel conducting harvests;
- (b) Protocols and processes used;
- (c) Types of data included and excluded from harvests;
- (d) Timing of harvesting activities;
- (e) Identity of custodians subject to harvesting; and
- (f) Documentation, auditing, validation and issue tracking.

7. Nature of, and protocols for, AMD IT's support of custodian preservation activities.

8. Data processing protocols and procedures utilized by AMD's electronic discovery vendor(s), including but not limited to:

- (a) Identity of vendor performing processing functions;
- (b) Processes used;
- (c) Type(s) of data included or excluded from processing;
- (d) Hardware and software used; and
- (e) Documentation, auditing, validation and issue tracking.

9. De-duplication and near de-duplication methods used by AMD during this Litigation, including but not limited to:

- (a) Protocols, databases and tools used by RCS and Stratify;
- (b) Attenex methodology for de-duplication and near de-duplication; and
- (c) Custodians' manual de-duplication or near de-duplication decisions.

10. Backup tape policies and protocols, including but not limited to:
 - (a) Pre-Litigation disaster recovery backup tapes, including type of backups, software and media used, content and frequency of the backups, tape rotation/recycling schedule, and restoration activities for this Litigation;
 - (b) Preservation of backup tapes for this Litigation, including type of backups, software and media used, content and frequency of the backups, tape rotation/recycling schedule, restoration activities for this Litigation; and
11. Facts underlying the statement in Mr. Herron's letter of October 24, 2005 to Mr. Rosenthal (at 1) that "AMD's document retention and destruction policies were suspended to prevent the inadvertent destruction of documents that may be relevant to this lawsuit."
12. For each individual AMD Custodian for whom data has not been produced to Intel (*i.e.*, non-designated Custodians):
 - (a) Timing of and specific steps taken for preservation of data;
 - (b) Any known or suspected non-preservation of data;
 - (c) Date(s) on which the Custodian's documents were harvested for the Litigation;
 - (d) Date(s) on which the Enterprise Vault was first used to capture and preserve email for the Custodian;
 - (e) Date(s) on which the Custodian received a Litigation Hold Notice; and
13. Any known or suspected non-preservation of AMD Custodian data.
14. The timing, scope and nature of the problems and/or issues for the following Custodians' data preservation, harvesting, processing and/or productions:
 - (a) Mr. Ruiz;
 - (b) Mr. Oji;
 - (c) Mr. Soares;
 - (d) Mr. Kwok;
 - (e) Mr. Kepler;
 - (f) Mr. Urani; and
 - (g) Mr. Brunswick.

15. AMD's attempts (successful or unsuccessful) to recover, restore or produce documents related to any Custodian (including but not limited to the Custodians identified in Topic 14 above), from backup tapes, other employees' electronic files, and/or from data previously harvested but suppressed by AMD's near-deduplication protocols.

16. AMD's audits and investigations of the sufficiency of its data preservation, harvesting and productions related to the Litigation.

EXHIBIT B

EXHIBIT B:

**CATEGORIES OF DOCUMENTS AND TANGIBLE THINGS
REQUESTED FOR PRODUCTION**

I.

DEFINITIONS

1. "AMD" shall mean and refer collectively to plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.

2. "AMD Custodians" or "Custodians" means and refers to the approximately 440 individuals identified by AMD on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.

3. "Litigation" means and refers to the litigation in which this Notice of Taking Deposition has been served.

II.

REQUESTS

1. Documents sufficient to show the dates and sources of each harvest of electronic data for each Custodian, including each harvest from hard drive, Enterprise Vault system, email journaling system, PNS and exchange servers.

2. For each Custodian, documents sufficient to show the nature and scope of each harvest of electronic data from AMD's Enterprise Vault and email journaling systems, including the search tools, parameters and/or criteria used to extract the data.

3. By Custodian and for each suppressed email, the logs or tracking information automatically generated by, and/or stored within, the Attenex database(s) as a result of the near-deduplication process, as referenced during Mr. Cardine's interview on October 15, 2008.

4. The logs generated during the migration of PSTs into AMD's Enterprise Vault system, as referenced during Mr. Meeker's interview on December 11, 2008.

5. Documents sufficient to show which Custodians, if any, requested an increase in his or her mailbox size quotas (after March 1, 2005), the date of any such request(s), and the action taken by AMD's IT department in response to such request(s).

6. Documents sufficient to show (a) any instructions, recommendation and/or user guides provided to AMD employees, or (b) internal AMD IT policies and/or procedures, related to AMD's Enterprise Vault and email journaling systems.

7. For each Custodian, documents sufficient to show each email address and/or display name that, when used, would result in an email being delivered to the subject Custodian's AMD email account.

EXHIBIT E



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OUR FILE NUMBER
8,346-163

December 19, 2008

BY E-MAIL & U.S. MAIL

Donn Pickett, Esq.
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WRITER'S DIRECT DIAL
(213) 430-6340

WRITER'S E-MAIL ADDRESS
msamuels@omm.com

Re: AMD v. Intel

Dear Mr. Pickett:

This letter is intended to initiate meet and confer discussions regarding Intel's draft Rule 30(b)(6) Deposition Notice delivered to us on Tuesday, December 16.

Let me make several preliminary comments.

First, on its face, Intel's deposition notice, a copy of which is attached, goes well beyond anything conceivably reasonable. It contains 16 proposed topics and more than 50 subtopics, virtually all of which are aimed at, or at least touch upon, privileged and work product areas.

Second, this notice seeks to expand discovery well beyond the issues set forth in the Court's chart. This is inappropriate. Special Master Poppiti has repeatedly admonished that the Court's chart defines the parameters of discovery. Thus, among others, Intel's proposals to delve into "anticipation of litigation" (Proposed Topic No. 4), a broad range of harvesting information (Proposed Topic No. 6), back up tape issues (Proposed Topic No. 10), non-designated custodian data (Proposed Topic No. 12), and "audits and investigations" (Proposed Topic No. 16) are outside the scope of what the Special Master has authorized.

Third, informal discovery was meant to narrow, not expand, the need for deposition discovery. After Intel has spent approximately 15 hours interrogating AMD and FCS personnel through a battery of lawyers and consultants, we would have expected a draft deposition notice consistent with the representation you made to the Court that "the informal disclosure process has been productive and useful," your acknowledgement that its purpose was to enable the parties to "tailor the formal discovery," and your promise that, after informal discovery concluded, the parties would "then proceed to what I think of as confirmatory discovery." (See November 7, 2008 hearing transcript at p. 7, 30 and 32.) We see no indication that you have

tailored Intel's proposed deposition topics to account for the extensive information AMD produced during informal discovery. It strikes us that after AMD has produced the witnesses Intel requested for extensive interviews, responded to Intel's histograms, and provided other, significant informal discovery, the issues in the Court's chart have largely been mined to the fullest extent appropriate. What little remains can be provided to you, and the facts adduced at the interviews can be confirmed under oath, as you indicated was the appropriate course.

We now turn to the specifics of Intel's proposed deposition topics.

Intel's Proposed Deposition Topics

Proposed Deposition Topic Nos. 1 and 2: Proposed Deposition Topic No. 1 seeks information about the Enterprise Vault and contains 7 subtopics, while Topic No. 2 concerns AMD's journaling system and also has 7 subtopics. At the hearing on December 12, you stated that Intel had "received some detailed information regarding the journaling and archiving," "a good amount of data with respect to it," and that the parties had made "good progress." (See December 12, 2008 hearing transcript at p. 24.) You also confirmed that the issue of .pst migration has been resolved. (*Id.* at 30-31.) AMD agrees; all of the issues listed in Intel's draft deposition notice on these topics have been comprehensively covered in the informal interview process. As such, it seems to us that what you are proposing with respect to these deposition topics is paradigmatic "confirmatory discovery."

We suggest that Intel prepare a list of the specific facts derived from the witness interviews which it would like AMD now to confirm. Assuming that Intel does so accurately, AMD is prepared to affirm them, under oath. This will give Intel the formal record it wants and obviate the need for deposition testimony on these topics.

Proposed Deposition Topic No. 3: This proposed deposition topic seeks information about AMD's email systems, and has 7 subtopics. Certain of the subtopics strike us as amounting to primers on the standard operation of Microsoft Outlook, which Intel and its experts do not need testimony from AMD about. Others, such as subtopic (c) concerning "mailbox size limits or quotas," are outside the scope of the Court's chart. Although we could have objected to Intel pursuing this topic at [REDACTED] informal interview, we nevertheless allowed you to ask any questions that you wanted in the belief that Intel would learn, as it did, that there is no substance to Intel's apparent theory that mailbox quotas somehow led to data loss. Instead, as [REDACTED] informed you, AMD's litigation hold notices directed custodians to him for any such issues, and [REDACTED] resolved any issue that arose by immediately increasing mailbox size. We have also produced documents to you from the files of the designated IT custodians documenting custodian requests for mailbox size limit increases and actions upon those requests. If Intel believes it has evidence of loss resulting from mailbox size quotas, we will reconsider your position but, failing that, we don't think this is appropriate discovery.

As to subtopic 3(b), AMD is prepared to affirm, under oath, the dumpster settings that [REDACTED] apprised you of on December 11. The remainder of this subtopic, however,

concerns the standard operation of Microsoft Office, is beyond the Court's chart, and is inappropriate discovery.

Proposed Deposition Topic No. 4: This proposed deposition topic seeks information as to when AMD reasonably anticipated commencing this litigation. Not only is this topic not on the Court's chart, we have difficulty imagining any questions Intel could pose which would not intrude upon the attorney client privilege. For this reason, we do not intend to produce a witness to testify on this proposed topic.

Proposed Deposition Topic No. 5: This proposed deposition topic is set forth under the misleading umbrella term of "hold notices" but, through its 5 subtopics, obviously seeks much different and broader information. Specifically, subtopic (a) asks about the "timing of AMD's issuance of written litigation hold notices," which is information that AMD has already provided to Intel with respect to each production custodian. We are willing to affirm that information under oath. Subtopic (b) asks about the "meaning and intent of the language used." The litigation hold notices are privileged, and we negotiated a non-waiver agreement as a precondition to their production; we can't imagine any question that might be posed on this subtopic that would not intrude upon work product and/or privilege. For this reason, we do not intend to produce a witness on this subtopic. Subtopic (c) -- which says only "Custodians' compliance" -- is both unintelligible and, to the extent it is decipherable at all, does not appear to be a proper Rule 30(b)(6) deposition topic. With respect to subtopic (d) concerning "monitoring and auditing," AMD is prepared to provide a narrative summary, under oath, of the steps it took to monitor the preservation program that it put in place for this litigation, subject to a nonwaiver agreement. This type of narrative summary is precisely what the parties agreed upon as appropriate responses to many aspects of the Rule 30(b)(6) discovery AMD propounded on Intel regarding its preservation issues, and so we assume that you find this acceptable. Subtopic (e) concerns "IT Department technical support," a topic fully covered at Mr. [REDACTED] interview. AMD will affirm, under oath, the facts adduced at that interview that Intel is interested in having confirmed.

Proposed Deposition Topic No. 6: This proposed deposition topic broadly seeks data about "harvesting of electronic data for this litigation from all geographic locations and sources" including, but not limited to, various issues set forth in 6 separate subtopics. The Court's chart does not allow or contemplate this sort of boundless topic or formal discovery. Moreover, AMD has produced to you already a lengthy written summary of its collection protocols, and lists of harvesting dates for every production custodian. Intel also extensively questioned [REDACTED] about harvesting. In addition, in the course of informal discovery, AMD has produced by letter responsive information about the entities and personnel who conducted harvesting. As such, subtopics 6(a) through 6(d) seek information already provided. Intel should identify the facts derived from these interviews and other informal discovery which it would like AMD to confirm, and we will do so under oath. Subtopic (e) seeks the "[i]dentity of custodians subject to harvesting." As noted, AMD has disclosed this information already with respect to all production custodians. Information regarding non-designated custodians is irrelevant to any issue. As to subtopic (f), we do not understand what is meant by

"[d]ocumentation, auditing, validation and issue tracking." What is this asking for? Obviously, to the extent this seeks work product or privileged information, AMD will decline to waive those protections.

Proposed Deposition Topic No. 7: This proposed deposition topic seeks confirmatory information regarding "AMD IT's support of custodian preservation activities," a topic Intel fully pursued at [REDACTED] interview. Intel should identify in writing the facts from that interview on which it seeks confirmation, and AMD will confirm under oath.

Proposed Deposition Topics 8 and 9: Proposed Deposition Topic No. 8 seeks information about "[d]ata processing protocols and procedures utilized by AMD's electronic discovery vendors" and has 5 subtopics, while Topic No. 9 yet again seeks information about "[d]e-duplication and near de-duplication methods used by AMD" and has 3 subtopics.

These topics are, on their face, directed to AMD's vendor's activities; no AMD employee could speak to them. We have provided you with access to [REDACTED] of FCS, and you questioned him for almost 8 hours on these issues. As to the issue of "deduplication," AMD also produced detailed written information to you on October 15, 2007. The bottom line here is that AMD has provided all the information Intel has requested on multiple occasions. If there are specific facts we or [REDACTED] have already provided to you that you would like affirmed, please let us know what they are and we will affirm them or, if Intel prefers, provide a responsive narrative summary. As to subtopic 9(c), we are unable to determine the nature of the information Intel is seeking.

Proposed Deposition Topic No. 10: In this proposed deposition topic, Intel returns again to the topic of backup tapes, both pre-litigation and post. This is not an issue identified in the Court's chart. Moreover, AMD has already provided a written summary about backup tapes, and we are in the process of preparing a response to your letter requesting further information on this topic. In addition, although AMD registered its objection, we permitted Intel to ask questions about backup tapes at [REDACTED] interview, in the apparently vain hope that the information would satisfy your apparent curiosity. Instead, you are now asking for such things as the "type of backups, software and media used" and other information irrelevant to any issue, and certainly well outside the bounds the Special Master has set.

As stated at hearing, AMD is prepared to provide information about backup tape coverage for the only two custodians for whom it has resorted to backups to supplement prior productions, [REDACTED]. Beyond that, and for the reasons noted above, AMD declines to produce a witness on this topic.

Proposed Deposition Topic No. 11: This proposed deposition topic seeks facts underlying a statement made by AMD's outside counsel in a disclosure made more than three years ago. This type of information is more efficiently obtained through an interrogatory, and so AMD agrees to provide a narrative summary of the pertinent facts under oath.

Proposed Deposition Topic No. 12: This proposed deposition topic and its 5 subtopics seek information about non-designated custodians. None of this concerns a topic on the Court's chart, and it is irrelevant to any issue in this case. We declines to produce a witness on this topic.

Proposed Deposition Topic No. 13: This proposed deposition topic seeks information about any known or suspected non-preservation of AMD Custodian data. This is not a topic on the Court's chart. We have provided information to you in writing regarding certain custodians, consistent with our professional obligations. There is no reason for deposition to confirm what AMD has told Intel already. AMD will provide a narrative summary, under oath, if Intel should so desire. We do not intend to waive privilege or work product protection.

Proposed Deposition Topic No. 14: This proposed deposition topic seeks information about the "timing, scope and nature of problems and/ or issues" in "data preservation, harvesting, processing and/or productions" for a list of 7 AMD designated custodians. AMD is prepared, subject to a nonwaiver agreement, to provide narrative summaries as to [REDACTED]. AMD believes that the disclosures already made as to [REDACTED] satisfy any duty AMD has in that regard.

Proposed Deposition Topic No. 15: This proposed deposition topic is redundant to those covered by Topic No. 14, and is the subject of disclosures already made by AMD to Intel.

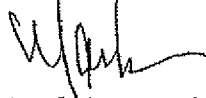
Proposed Deposition Topic No. 16: This proposed deposition topic seeks information on "audits and investigations" about AMD's data preservation, harvesting and productions. As we have described several times, AMD's in-house and outside counsel were responsible for these functions, and we cannot imagine questions Intel could ask that would not seek to invade the attorney-client privilege or work product, which we decline to waive. We are prepared to discuss, subject to a nonwaiver agreement, an appropriate reciprocal exchange on this topic.

Intel's Proposed Document Requests

We were surprised to receive document requests accompanying this draft deposition notice, as we have never discussed a second round of document discovery. We will defer response to the proposed document requests until we have resolved the deposition topics. We reserve all objections.

We look forward to your response to the foregoing.

Very truly yours,



Mark A. Samuels
of O'MELVENY & MYERS LLP

EXHIBIT F

Rocca, Brian

Sent: Thursday, September 18, 2008 8:05 AM
To: Rocca, Brian

----- Original Message -----

From: Herron, David <DHerron@OMM.com>
To: Pickett, Donn
Cc: Smith, Linda <LSmith@OMM.com>; Fowler, Jeffrey <JFowler@OMM.com>; Vespremi, Roberta <rvespremi@omm.com>; Marks, Anthony (Perkins Coie Brown & Bain) <AMarks@perkinscoie.com>; MWorthington@perkinscoie.com <MWorthington@perkinscoie.com>; Dillickrath, Thomas <DillickrathT@howrey.com>; Herron, David <DHerron@OMM.com>
Sent: Wed Sep 17 20:05:39 2008
Subject: INFORMAL DISCLOSURES

Donn: As promised, here is our first take on an outline for informal disclosures on the topics identified in the Court's Chart and at hearing.

This is preliminary and putting firmer dates to this obviously depends on everyone's schedules, although we have put this in the order in which we suggest the disclosures should take place. After you have reviewed this, let's have a meeting to walk through each item, including the types of documents that Intel is interested in and the process for getting those produced. We can do this in person or by phone and suggest we hold that meeting on Monday, September 22.

Here is the list:

1. "Lost Files" issue (Court Item No. 6): Week of September 29
2. "Lost" and "found" issue (Court Item No. 9): Week of September 29
3. [REDACTED] issue (AMD Prior Disclosure in Court's Chart): Week of October 6

We need to know whether Intel is requesting production of the file count chart outlined in AMD's brief and, if so, will need to confirm agreement about no waiver of privilege or work product prior to producing it.

4. Harvesting/forensic collection protocols (Court Item No. 4): Week of October 6
5. Deduplication process and, potentially, file path information (Court Item No. 11): Week of October 13
6. Implementation of the journal and vault systems and related foundational information (Court Item No. 1): Week of October 20
7. Vault configurations for deleted items, collection exports and archiving on a going-forward basis (Court Item Nos. 4 and 8): Week of October 27
8. Historic .pst migration to the vault (Court Item No. 7): Week of October 27

As noted, we will need to discuss the parameters of a number of these and other items in the Court's chart, including [REDACTED] issues (Court Item No. 5 and prior AMD Disclosure); generally, what you are interested in regarding deduplication protocols and, specifically, what the exchange should be on "file path" information (Court Item No. 11); and [REDACTED] information (AMD Prior Disclosure). We also want to discuss whether Court Item Nos. 2, 3, 10, and AMD Prior Disclosure regarding purported "late delivery" of hold notices should be deferred to deposition. David

David L. Herron

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EXHIBIT G



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OUR FILE NUMBER
8,346-163

November 17, 2008

BY E-MAIL & U.S. MAIL

Donn Pickett, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067

WRITER'S DIRECT DIAL
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WRITER'S E-MAIL ADDRESS
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Re: AMD v. Intel

Dear Mr. Pickett:

We write in response to your November 13 letter regarding the topics for the informal interview of AMD's [REDACTED] as well as to respond to pre-existing and Intel's new, wide host of additional questions and requests for information.

[REDACTED] Informal Interview

We address two matters related to [REDACTED] informal interview. First is the date and conduct of that interview. As agreed and discussed at hearing on November 7, the interview will proceed for one day on Thursday, December 11. The interview will take place at AMD's facilities in Austin, Texas. The interview will begin at 9:30 a.m. We will send you additional logistical information as the interview date approaches. In addition, AMD requests that Intel limit the in-person attendance at [REDACTED] informal interview to no more than a total of four of its counsel and consultants. We do not oppose additional Intel representatives attending by telephone and will provide a dial-in for this purpose. Our view, however, is that this is the only way to avoid a repeat of what AMD believes to have been -- whether intentional or not -- the intimidating, inquisition-like setting and conduct of the prior interviews of [REDACTED].

Second, with respect to the proposed topics set forth in your November 13 letter, [REDACTED] will be able to respond to the vast majority of them. We address each of the topics as you have defined them below, and provide you with AMD's suggestions and comments. We believe that the interview of [REDACTED] will be sufficient to bring closure to the informal information process contemplated by the Court and the parties.

1. "Harvest protocols used by AMD IT and non-FCS personnel (hard drives; live exchange mail; vault; journal; PNS)."

This topic appears to relate to Topic No. 4 in the Court's Chart. The information provided below about hard drive imaging by entities other than FCS responds to and satisfies Intel's request for information on that point. In any event, ██████████ does not have personal knowledge on the issue of non-FCS hard drive imaging. As to AMD IT harvesting protocols from AMD's vault, journal, and custodians' personal network space, ██████████ can provide responsive information. With regard to what you term "live exchange mail," we ask that Intel define and describe the questions you have and the information you seek so that AMD can provide responsive information. At present, we are unable to assess whether ██████████ is able to provide responsive information.

2. "Dumpster configurations and ██████████ modifications to same."

This topic relates to Topic Nos. 3 and 4 in the Court's Chart. ██████████ will be prepared to answer questions about these topics.

3. "Implementation of journal and vault systems and related foundational info."

██████████ has already sat for an extensive interview about these systems. See Case Management Order No. 4, Paragraph I(a). What additional information is needed? Please be specific.

4. "Vault configurations for deleted items and related collection exports, migration and archiving."

This relates to Topic No. 8 in the Court's Chart. ██████████ will be prepared to discuss vault configurations for deleted items. The other subtopics are subsumed elsewhere: Collection of exports is covered by item number 1, above; migration is covered by item number 5, below; and archiving is covered by item number 3, above.

5. "Historic PST migration to the vault."

This refers to Topic No. 7 in the Court's Chart. While ██████████ did not himself conduct this migration, he will be prepared to respond to questions on this topic.

6. "Foundational info re outlook settings and employees' email usage (e.g., storage limits for employees' email accounts)."

This topic is not set forth in the Court's Chart and was not raised by Intel at the September 11 hearing. As phrased, this topic also inappropriately seeks a generalized description of all AMD "employees email usage." ██████████ cannot speak to that; that is an individual, custodian-by-custodian inquiry better suited to custodian deposition.

As we have told you, it is also inappropriate for Intel to attempt unilaterally to expand the topics for inquiry beyond those defined by the Court's Chart or raised at the September 11

hearing. Your characterizing a topic as "foundational" doesn't change this. In addition, in our meet and confer on November 4, Intel was unable to identify any suspected problem or issue it perceives with respect to email storage limits. Indeed, at that time, you stated that Intel had "no idea until we ask the questions." This strikes us as a clear example of illegitimate "fishing."

Intel will need to better define what information it seeks and why. We will then consider whether a response will be provided and in what manner.

7. "Foundational info re Asia- and Europe-based servers (settings, journal, vault, harvesting)."

A portion of this topic appears to relate, remotely, to Topic No. 1 in the Court's Chart, but much of it does not. Within reasonable limits, AMD agrees that certain questions about journaling and vaulting for Asia and Europe-based custodians would not be inappropriate. Again, however, nothing in the Court's Chart deals with Asia and Europe servers, their settings, or harvesting in those locations.

Again, AMD will consider your proposed expansion of topics, on the condition that Intel identifies with particularity what questions it will have about "servers," "settings" on servers, and "harvesting." Short of that, we are unable to assess whether and to what extent [REDACTED] can provide information nor are we able to prepare him to do so.

8. "Protocols for AMD IT support of custodian preservation activities."

This, too, is not a topic defined in the Court's Chart or at hearing, nor is it defined well. What do you mean by this? To the extent questions on this topic reasonably relate to those in issue -- and [REDACTED] has personal knowledge -- AMD will not object. Let's discuss this.

9. Backup Tapes.

Your November 13 letter promises a list of issues and questions Intel says it has with regard to back up tapes. We await that list.

"P" Numbers

Intel has asked why there may be gaps in certain "p" numbers with respect to file paths produced for various custodians. The principal reasons include that some exports were related to paper productions for which no pathing information is required to be produced. In addition, certain exports might not have contained any responsive documents, or all of the files in an export may have been duplicative of the relevant files contained on a piece of media processed earlier, thus yielding no responsive files for production. It is also possible that the files in an export contained privileged material which yielded no responsive documents for production, or the export contained privilege redactions for which there is no requirement to produce pathing information. Depending on the custodian, there may be other reasons for interrupted numerical progression of "p" numbers.

"30,000 Foot" Documents Regarding the Vault

Per your request, attached are documents that give a high-level overview of the AMD Enterprise Vault product.

We were surprised to see your November 13 letter's new three-part specification of the "30,000 foot" documents Intel now says it wants. AMD and Intel obviously differ in their interpretation of what should be produced, and we oppose Intel's proposed expansion of discovery on this topic. As you should be aware, ██████████ was already provided for an extensive, no-holds-barred interview on this subject. In fact, Case Management Order No. 4 recites the fact that the parties have already have exchanged information on archiving systems, noting that "the operations of those [archiving] systems has been the subject of interviews and other formal and/or informal exchanges." If you have specific additional questions or document requests you should send them along and we will determine the best means of addressing them.

Non-FCS Hard Drive Imaging

Your November 13 letter asks AMD to identify vendors other than FCS that imaged hard drives. As stated by ██████████ at his interviews, AMD utilized FCS for the vast majority of its hard drive imaging for designated custodians. At times beginning in October 2005 through 2008, AMD also utilized Global Data Finders to obtain hard drive images, and also utilized Digital Discovery Solutions on one occasion. In each case, the images taken by these entities were bit-by-bit images. It is possible that another, single image was taken by another vendor, and we are attempting to confirm that.

New Intel Questions Regarding Backup Tapes Used to Transmit Data to FCS

AMD believes that it has provided Intel with information sufficient to satisfy reasonable inquiry on this issue. If Intel wishes to spend interview time with ██████████ on this subject, AMD is prepared to have him address the following: (1) why AMD IT used backup tapes instead of other external media, such as a hard drive; (2) who at AMD IT was responsible for creating the tapes; (3) in general, the time frames when the tapes were created; and (4) in general, what data was included on the tapes. We think the answers provided will obviate the need to ask the additional questions your November 13 letter outlines. In any event, AMD believes those questions are irrelevant and beyond the scope of reasonable inquiry.

New Intel Questions Regarding Data Collection in Japan and China

The questions posed in your November 13 letter again go beyond the scope of issues defined by the Court's Chart or at the September 11 hearing. Please set forth Intel's position in writing as to why this information is relevant and appropriately produced in informal discovery. Short of that, these questions strike us as irrelevant and unnecessary make-work.

██████████ Pre-Review Files Counts

AMD has reconsidered its position with regard to providing Intel a spreadsheet of pre-review file counts for ██████████. During this informal discovery process, it has become quite clear that ██████████ inadvertent loss is no longer an issue. As stated in Intel's October 3 email, Intel itself acknowledges that it does not need this information. We agree. Indeed, AMD has already produced a full explanation of what happened with ██████████ and what AMD did to obtain replacement files. Those files have been produced. Analysis shows a robust production for ██████████. If there is further information Intel requires about the loss, Intel can depose ██████████ as we have invited on multiple occasions. AMD is unwilling to waive privilege or attorney work product protection.

Production of Harvesting Information

My October 28 letter to you clearly stated AMD's position on production of harvesting related information. That letter suggested several ways in which Intel potentially could move discussion on this topic forward. Your November 13 letter offers nothing new. Intel needs to narrow its request for this data. We await your proposal. To reemphasize, ██████████ will not be able to answer questions on this topic. In addition, AMD has stated that, if necessary, it will produce an appropriate witness to answer questions on this topic. We stand by that representation. AMD, however, declines to produce such a witness during informal discovery and will not produce such a witness until the proper contours of inquiry have been agreed to between the parties or decided by the Special Master.

We are prepared to discuss these issues at a mutually-agreeable time.

Sincerely,



David L. Herron
of O'MELVENY & MYERS LLP

Attachments

LA3:1152993.1

**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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