

Frederick L. Cottrell, III  
Director  
302-651-7509  
Cottrell@rlf.com

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**VIA ELECTRONIC FILING  
AND HAND DELIVERY**

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

Redacted Public Version

**Re: *Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF***

Dear Judge Poppiti:

This letter seeks an Order requiring Intel to produce certain documents in its possession, or that of its attorneys, on which the Fair Trade Commission of Japan (“JFTC”) based its March 2005 determination that Intel maintained its microprocessor monopoly by engaging in illegal, anti-competitive, and exclusionary conduct.<sup>1</sup>

**I. THE JFTC DOCUMENTS ARE HIGHLY RELEVANT AND EASILY ENCOMPASSED BY THE BROAD DISCOVERY PERMITTED UNDER THE FEDERAL RULES.**

In concluding that Intel had illegally restrained competition – a conclusion that Intel chose not to contest - the JFTC considered a mountain of evidence, including: (1) information the JFTC obtained from its raid of Intel’s Japanese offices in April 2004; (2) documents collected during searches of major Japanese OEM manufacturers; and (3) materials -- including affidavits and witness statements -- developed by the JFTC itself during the course of its own investigation. AMD has requested that Intel produce in this case all documents in categories (1)-(3) in its possession or custody or under its control. (Ex. C, December 7, 2007 Letter from Michael M. Maddigan to Daniel S. Floyd).<sup>2</sup> Intel declined as to categories (2) and (3). (Ex. D, January 14 Letter from Daniel S. Floyd to Michael M. Maddigan.) Redacted

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<sup>1</sup> AMD hereby certifies that it has conferred in good faith with Intel in an effort to secure discovery of these documents without court action, and that this effort has proved unsuccessful.

<sup>2</sup> Citations to exhibits refer to the exhibits attached to the Declaration of Michael M. Maddigan filed contemporaneously herewith.

Redacted, this motion requests only that Intel be required to produce documents in its possession that fall within category (3) -- Intel affidavits and other Intel witness statements developed by the JFTC during the course of its investigation.

In Japanese litigation between AMD Japan and Intel, which AMD Japan initiated after the JFTC's finding that Intel had unlawfully restrained competition, the JFTC produced documents in all three categories to the Tokyo District Court in response to AMD Japan's request. The evidence the JFTC provided to the District Court was cataloged in a non-confidential List of Evidence ("the List"), on file with the District Court. (A translation of the List is attached as Exhibit A.) Of particular note, this evidence included affidavits of a number of Intel's Japanese executives. These executives included both the chief manager of Intel's Japanese sales department, who (according to the List) disclosed "[t]he content of an agreement between defendant and [a Japanese OEM] and a process for reaching the agreement" and also the sales manager of Intel's head sales office, who (again according to the List) described "the way of applying ECAP from defendant's perspective [and] [t]he concrete contents of the defendant's financing. . . ." See, e.g., Ex. A, Kou 27-1, Kou 29-1. According to the List, there appear to be at least three such affidavits, and perhaps more, included in the materials produced by the JFTC to the District Court.

Before producing this evidence to the District Court, the JFTC redacted some material it considered confidential. Redacted

Ex. B. Thus, the documents produced by the JFTC were to become public in the form produced by the JFTC unless either Intel or AMD Japan sought and obtained additional protection for those documents under Article 92. Intel did subsequently seek confidential treatment for certain information under Article 92, which the Tokyo District Court granted. After the District Court's ruling, AMD also subsequently requested confidential treatment for some material under Article 92. As a result of its request, Intel made a substantial number of additional redactions, above and beyond those initially made by the JFTC, to the documents produced by the JFTC. These Intel-redacted versions of the JFTC documents then became available to the public. But Intel's additional redactions effectively rendered the public versions of many of the JFTC documents unintelligible.

Through this motion, AMD seeks production from Intel of Intel witness statements and affidavits in the form those affidavits were produced to the Tokyo District Court by the JFTC. Although the JFTC already has provided these precise documents to both Intel and AMD Japan, Redacted

Thus, AMD does not have

access to the JFTC-produced documents in this case.

AMD expects that the Intel affidavits and witness statements generated by the JFTC in the course of its investigation will contain damning evidence of Intel's anti-competitive behavior. In finding that Intel violated Japan's Antimonopoly Act by engaging in illegal business practices and monopoly abuses, the JFTC determined Intel "made the five major Japanese OEMs refrain from adopting competitors' CPUs for all or most of the PCs manufactured and sold by them . . . by making commitments to provide the five OEMs with rebates and/or certain funds . . . [and this conduct] substantially restrained the competition in the market of CPUs sold by the Japanese OEMs." Ex. E. In this U.S. case, AMD and Class allege that Intel engaged in the same anti-competitive conduct, with the same business partners, in the same global market, and during the same general time period as alleged in the JFTC and civil proceedings in Japan. Thus, AMD anticipates that the Intel affidavits and witness statements gathered by the JFTC also will provide powerful evidence in support of AMD's claims.

Recognizing this, Intel only has agreed to produce to AMD in this case the witness statements and affidavits in their heavily redacted "public" versions. Intel apparently claims that the protection against public disclosure that the Tokyo District Court afforded the JFTC documents under Article 92 precludes it from producing in this case the complete versions of the JFTC documents in the form in which they originally were produced by the JFTC. *See* Ex. D. Not so. Article 92 applies to the Court and involves disclosure by the Court to the public, not to the parties. *See* Declaration of Yoji Maeda filed contemporaneously herewith. Having obtained the Article 92 protection it sought against disclosure of certain business information to the Japanese public, Intel should not be permitted to leverage that protection into a justification for refusing to produce highly relevant and damaging documents to AMD *in this case*. Permitting Intel to do so would be contrary to the broad discovery permitted by the Federal Rules of Civil Procedure -- discovery that is allowed particularly liberally in antitrust cases, due to their inherent complexity. *See, e.g., Pacitti v. Macy's*, 193 F.3d 766, 777-78 (3d Cir. 1999); *Kellam Energy, Inc. v. Duncan*, 616 F. Supp. 215, 217 (D. Del. 1985) ("there is a general policy of allowing liberal discovery in antitrust cases."); FED. R. CIV. P. 26(b)(1) (permitting discovery of relevant, non-privileged information that is reasonably calculated to lead to the discovery of admissible evidence.)

Intel's refusal to produce the Intel affidavits and witness statements in the form in which the JFTC itself produced them to the District Court fails to satisfy its obligation to produce relevant documents. In *OKI America, Inc. v. Advanced Micro Devices, Inc.*, 2006 WL 2547464 (N.D. Cal. Aug. 31, 2006), a patent case, plaintiff OKI America made a partial production of documents used in a related Japanese patent dispute between the parties, similar to what Intel has provided here. AMD moved to compel a full production and the Court rejected OKI's approach, requiring it to produce *all* relevant documents and not a "limited universe of its choosing." 2006 WL 2547464 at \*2. "The mere fact that AMD is a party to the Japanese proceedings does not exempt [the other party] from producing [in the US] what documents it possesses." 2006 WL 2547464 at \*2. The same rule should apply here with even more force because AMD Japan, the party in the Japanese litigation, is *not* a party in this U.S. litigation. AMD is entitled to receive the Intel affidavits in Intel's possession in the form they were produced to the Tokyo District Court by the JFTC itself, before they were further redacted pursuant to Intel's Article 92 request.

Moreover, to the extent Intel claims that the Article 92 protection it sought for the JFTC documents prevents it from producing documents in the form in which they originally were produced by the JFTC, Intel certainly could waive that protection to the extent necessary to provide AMD and class with the original JFTC documents subject to the protective order in this case. *See* Declaration of Yoji Maeda. It would be fundamentally unfair to permit Intel to move for greater confidentiality protection than the JFTC itself determined was necessary and then use that very same confidentiality to block AMD's discovery in this case. *See e.g., Koch v. Cox*, 489 F. 3d 384 (D.C. Cir. 2007) (discussing "prohibition against selective disclosure of confidential materials."). Just as the Article 92 procedure prevented public disclosure of certain Intel business information in the Japanese litigation, so too the comprehensive protective order in this case protects against the disclosure of that information here. Intel's legitimate interest in preserving confidentiality, therefore, is fully satisfied by the Protective Order entered by the Court in this litigation. Neither AMD nor its lawyers could disclose any Intel confidential information that may be contained in the JFTC documents (information that now is several years old and likely quite stale in any event).

**II. AMD HAS NO EFFICIENT OR EXPEDITIOUS ALTERNATIVE METHOD FOR OBTAINING THIS INFORMATION, IF IT CAN EVEN OBTAIN IT AT ALL.**

AMD needs to obtain these specific JFTC documents from Intel because it may well be the only, and certainly is the most efficient, way AMD can obtain them or the information they contain. In October 2005, AMD served Rule 45 subpoenas on the Japan OEMs (Toshiba, Sony, NEC, and Fujitsu). All four OEMs objected, asserting that the United States courts lack jurisdiction over Japanese companies to enforce requests for production. Redacted

Three years after AMD served its subpoenas, no Japan OEM has made a comprehensive production and none produced any witness statement or affidavit gathered by the JFTC. Deposition discovery of the Japan OEMs also will be cumbersome and time consuming.

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There is a better, simpler, faster way. Intel or its lawyers already possess highly relevant sworn affidavits and witness statements generated by the JFTC in the form in which they were produced by the JFTC to the District Court. Intel should be required to produce them.

Respectfully,

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)

FLC/III

Enclosures

cc: Clerk of the Court  
Richard L. Horwitz, Esquire (w/e) (By Hand and Electronic Mail)  
James L. Holzman, Esquire (w/e) (By Hand and Electronic Mail)