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May 1, 2009

REDACTED PUBLIC VERSION
FILED MAY 13, 2009

VIA E-MAIL AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Blank Rome LLP
Chase Manhattan Centre, Suite 800
Wilmington, Delaware 19801-4226

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. 05-1717-JJF, and Phil Paul, et al. v. Intel Corporation, C.A. 05-485-JJF*

Dear Judge Poppiti:

This letter responds to Intel's letter of April 21, 2009, in which Intel raises a "potential production issue" and attaches a privileged and highly sensitive document that AMD inadvertently produced.

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Intel's disclosure of this document -- even to Your Honor -- is, at the very least, troubling and a blatant violation of the Second Amended Stipulation Regarding Electronic Discovery and Format of Document Production (the "Native Stipulation") (D.I. 288 in C.A. No. 05-441-JJF; D.I. 396 in C.A. No. 05-1717-JJF)

We are confident that we can persuade Intel during a meet and confer that its rush to judgment that AMD waived the privilege is unfounded.

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Co., 16 F.3d 929, 937-40 (8th Cir. 1994).
Kovel, 296 F.2d 918, 921 (2d Cir. 1961).

In re Bieter
United States v.

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U.S. Information Sys., Inc. v. International Bhd. of Elec. Workers Local Union No. 3, 2002 U.S. Dist. LEXIS 19363, at *20 (S.D.N.Y. Oct. 10, 2002). It is well established that work-product protection is waived **only if** the disclosure is made to an adversary. *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, 1996 U.S. Dist. LEXIS 18849, at *10 (S.D.N.Y. Dec. 19, 1996). Where the disclosure is made to a non-adversary, as is the case here, it does not result in waiver of the protection.

That Intel produced the **REDACTED** to Your Honor even before receiving a claw back letter (AMD was unaware that it produced the presentation until it received its copy of the Intel letter) shows that Intel reasonably believed it to be arguably privileged. Rather than exposing the Court to a privileged communication, Intel should have raised the issue with AMD. The Court established a procedure for documents produced in discovery that may be subject to a claim of privilege. As set forth in paragraph 35 of the Native Stipulation:

If a Receiving Party reasonably believes that the Producing Party has allowed access to any documents, data or information that is potentially privileged, ***the Receiving Party shall notify the Producing Party and specifically identify the information. The Receiving Party shall cease any review of the potentially privileged material.***

(emphasis added). The parties have repeatedly followed this protocol and alerted one another to potentially privileged documents that may have been produced by the other during the discovery period. AMD has regularly sent Intel correspondence identifying, to date, a total of nearly 1300 Intel documents that may have been inadvertently produced.¹ Intel has similarly (and liberally) taken advantage of the claw back provision of the Native Stipulation, clawing back over 3700 inadvertently produced Intel documents over the course of over a dozen letters to AMD.

AMD plans to claw back the document and provide Intel with a redacted version. To the extent Intel still disputes the privilege assertion after the parties meet and confer, it can raise the issue with Your Honor in the proper manner. Jumping the gun was both inappropriate and premature. AMD respectfully requests that Your Honor disregard Intel's letter and its attachments, return the documents to Intel and expunge the record of copies of the attorney-client communication and work product protected document until the issue is properly before Your Honor.

¹ In stark contrast, Intel has sent AMD just one letter (nearly two years ago) identifying 21 potentially privileged AMD documents. Despite objection by AMD's counsel, Intel's practice has been to review and use at deposition potentially privileged AMD documents without providing notice to AMD.

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Respectfully,

/s/ Frederick L. Cottrell, III

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FLC,III/afg

cc: Clerk of the Court
Richard L. Horwitz, Esquire
James L. Holzman, Esquire