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 & SERVICE, LTD., a Delaware corporation, Plaintiffs, v. INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation, Defendants.	C.A. No. 05-441-JJF
PHIL PAUL, on behalf of himself and all others similarly situated, Plaintiffs, v. INTEL CORPORATION, Defendant.	C.A. No. 05-485-JJF CONSOLIDATED ACTION

REPLY MEMORANDUM IN SUPPORT OF INTEL'S MOTION, PURSUANT TO RULES 16 AND 56, FOR A PRETRIAL CONFERENCE TO SEEK THE COURT'S DETERMINATION OF KEY ISSUES OF LAW THAT WILL GOVERN COMPLETION OF PREPARATION AND TRIAL

OF COUNSEL:

Robert E. Cooper
Daniel S. Floyd
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 900071
(213) 229-7000

Joseph Kattan
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8239

Darren B. Bernhard
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800

Donn P. Pickett
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2268

Dated: June 2, 2009

Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
Potter Anderson & Corroon, LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com

Attorneys for Defendants
Intel Corporation and Intel Kabushiki Kaisha

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES PAGE(S)

RULES

OTHER AUTHORITIES

INTRODUCTION AND SUMMARY

In its motion ("Intel Mot.") and supporting memorandum ("Intel Mem."), Intel urged the Court to simplify this case by resolving the parties' high-level disputes about antitrust law and by directing AMD to identify the transactions it intends to place at issue. Intel's Memorandum explained that prompt resolution of these issues is necessary to keep this case from sinking deeper into unmanageable complexity. If these issues were to remain unresolved over the months to come, two regrettable consequences would follow. First, expert discovery would be extravagantly wasteful, in part because the experts would not know what legal questions their economic analyses should address, and in part because Intel would have to underwrite elaborate cost studies to address thousands of irrelevant transactions in addition to the comparative handful that AMD will ultimately place at issue. *See* Intel Mem. 37. Second, at the summary judgment stage, the parties would have to file massive, potentially unfocused briefs that address these thousands of transactions under *each* of the different permutations of legal rulings the Court may ultimately adopt. Those briefs would therefore address many ultimately irrelevant issues interspersed with the few that will ultimately turn out to be relevant. *See id.*

In opposing this motion, AMD does not dispute these concerns, nor does it even engage on the merits of the legal issues Intel has raised. AMD instead offers pretexts for avoiding the merits and keeping the issues in this case as complex and murky as possible. None of these pretexts has merit. First, AMD suggests that neither Rule 16 nor Rule 56(d) enables courts to streamline complex cases through pretrial resolution of purely legal issues. But that position, among other things, would reduce Rule 16 to a nullity and contradict the holdings of the many cases Intel cited in its motion. AMD does not mention those cases, let alone distinguish them, and the cases AMD does cite have no relevance to this one.

Second, AMD contends that, deep down, this motion seeks resolution of disputed factual issues rather than legal ones. That is wrong. There is nothing "factual," for example, about the parties' core dispute concerning whether, under controlling precedent, the *Brooke Group* price-cost standard creates a safe harbor for all above-cost price concessions, including volume and market-share discounts. And Intel has taken pains to stress that it does *not* seek resolution of any factual issues related to these purely legal ones.

Third, AMD suggests that resolution even of legal issues would be premature because there is additional fact and expert discovery left to conduct and because (AMD argues) such discovery might somehow affect the court's legal rulings. This is illogical. Neither facts nor experts can change the governing law. The law determines what facts are relevant, and experts must accept the law as given.

Ultimately, AMD has no principled basis for opposing prompt resolution of the legal disputes addressed in this motion; it simply benefits from complexity and obscurity rather than simplicity and clarity. AMD's opposition also avoids engaging Intel on the merits of the underlying legal issues, even in the alternative, presumably because it recognizes that modern U.S. antitrust law forecloses its legal theories. Instead, lacking support for its positions in U.S. case law, AMD drops conspicuous references to an administrative decision of the European Commission ("EC"). *See* AMD Opp. 3, 7. But that decision is wholly irrelevant to this litigation because, among other considerations, the EC rendered its decision under a procedural regime and set of competition rules very different from those that govern antitrust proceedings in the United States.[1]

---

[1] First, the EC's decision adopted legal principles that depart from U.S. antitrust law in crucial respects. For example, the EC does not recognize the absolute safe harbor the U.S. Supreme Court has established to preserve incentives for aggressive above-cost price-cutting

In any event, the Court need not prejudge the *merits* of the parties' disputes on the underlying legal issues in order to determine that those disputes should be resolved promptly, one way or another, before the parties commit millions of dollars to expert discovery and certainly before they file their motions for summary judgment. At a minimum, this Court should schedule a Rule 16 conference in the near future to hear argument on this motion. That will be time well-spent no matter how the Court rules on the motion itself, given that the underlying legal issues will end up governing this case one way or another.

ARGUMENT

I. RULE 16 AND RULE 56 AUTHORIZE PRETRIAL RESOLUTION OF LEGAL DISPUTES IN ORDER TO STREAMLINE PROCEEDINGS IN COMPLEX CASES

AMD schizophrenically criticizes Intel both for filing this motion too *early*, *e.g.*, AMD Opp. 5, and for filing it too *late*, contending at one point that "Intel should have filed this motion several years ago, *before* the discovery process commenced." *Id.* at 2. In fact, Intel filed this motion towards the close of fact discovery (with minor exceptions, document discovery has been completed and depositions of party and third-party witnesses will conclude on June 12, 2009)

(see Intel Mem. 5-7), and the EC would prohibit, as so-called "exclusivity," many business arrangements that U.S. antitrust law permits. Second, the EC is not a court; it is an administrative agency that combines investigatory, prosecutorial, and decisionmaking functions all under one roof. *See generally* Donald Slater et al., *Competition Law Proceedings Before the European Commission and the Right to a Fair Trial: No Need for Reform?*, 5 European Competition J. 97, 129 (2009) ("the accumulation of investigative, prosecutorial and adjudicative powers by the Commission during the whole proceedings in antitrust cases leads naturally to what is called 'prosecutorial bias,'" in that "a case handler will naturally tend to have a bias in favour of finding a violation once proceedings have been commenced"). The adjudicative process, before a court with full powers to annul the decision (the Court of First Instance), has not yet begun. Third, EC procedure is very different from U.S. litigation procedure and affords respondents (defendants) much narrower opportunities to be heard and present evidence. For example, the Commission does not entitle the target to conduct its own discovery or to confront and examine witnesses. And although Intel was permitted to appear at a brief two-day, non-public oral hearing, it had no opportunity to present evidence in any comprehensive manner.

precisely to avoid any claim by AMD that the record was inadequate to permit identification of the dispositive legal questions.

The Court has full authority to grant the requested relief under either Rule 16 or Rule 56. Rule 16 affirms a district court's inherent authority to streamline litigation by "formulating and simplifying the issues," by "avoiding unnecessary proof," Fed. R. Civ. P. 16(c)(2)(A), (D), (P), and "by identifying the real issues prior to trial, thereby saving time and expense for everyone," Fed. R. Civ. P. 16(c) (advisory committee's note). As Intel has explained, courts have often invoked this explicit authority to resolve disputed legal issues well before trial so that the parties and the court may focus their resources on factual issues that will ultimately matter to the outcome of the case. *See* Intel Mot. 2-3 (citing cases).[2]

AMD neither cites these cases nor confronts this longstanding body of practice. Instead, AMD cites various authorities for the familiar proposition that "the pretrial conference is not intended to serve as a *substitute for a trial* and should not be used to determine *disputed issues of fact.*" AMD Opp. 5 (emphasis added; internal quotation marks omitted). That proposition is as irrelevant here as it is uncontroversial: Intel is seeking a ruling on disputed issues of *law*, not fact. Similarly inapposite are the several cases AMD cites for the near-tautology that courts "reject premature requests for partial adjudication." AMD Opp. 4. AMD's lead authority for that proposition is *Cox v. Sadd*, No. 1: 06-cv-35 (WLS), 2007 WL 2874234 (M.D. Ga. Sept. 26, 2007), which rejected, as factually unsupported, a prisoner's motion for summary judgment on his claim that he "received substandard medical care while in prison." *Id.* at *1. *Cox* and the

---

[2] Contrary to AMD's suggestion, Local Rule 16.3 does not somehow hamstring the Court's discretion about when to hold such a conference. That rule refers to procedures and requirements for the *final* conference before trial. But there is nothing in the Local Rules that prohibits the type of pretrial conference Intel seeks here. AMD is confusing the final pretrial conference (see Fed. R. Civ. P. 16(e) and Local Rule 16.3)) with the conference at issue in this motion (see Fed. R. Civ. P. 16 (a) and (c)).

other cases AMD cites bear no relevance to the present motion; at most, they stand for the truism that sometimes cases should be streamlined before trial, and sometimes they need not be.

If ever there were a case that *does* warrant streamlining under Rule 16, it is this case, which is unwieldy even by the standards of modern antitrust litigation. Ironically, AMD opposes this motion on the ground that the proceedings have grown so frantically complex that there is no time to simplify them. *See* AMD Opp. at 2 (arguing that motion is inappropriate to consider while "the parties triple - and quadruple-track depositions worldwide, and exchange massive amounts of written discovery"); *id.* at 9 ("there is simply far too much still to be done in the short time remaining"). AMD has it backwards. Now that the parties have produced millions of documents, sat through hundreds of deposition days, and incurred untold millions in attorneys' fees, the time has come to focus on what this case is really *about*—what legal principles will govern what claims, and which among thousands of transactions AMD intends to place at issue. That focus will be particularly important as the expert phase of this case approaches, when the costs could become crushing and the wasted time immense so long as the parties do *not* know what legal principles will govern and which transactions are at issue. *See* Intel Mem. 36-37.

As we have noted, some courts have employed Rule 56(d) in addition to or instead of Rule 16 to resolve legal disputes before trial, and Intel has alternatively invoked that provision here as well. *See* Intel Mot. 3 n.2. AMD argues that the pendency of further discovery makes even a pure law-oriented Rule 56 motion premature. But that makes no sense because, as discussed below, facts cannot change rules of law. And even if facts *could* change the law, AMD filed no affidavit that, as Rule 56(f) requires, "specifies reasons" why further discovery could be expected to yield currently unavailable facts that might somehow bear on resolution of these legal issues. Fed. R. Civ. P. 56(f).

AMD also suggests that addressing this motion under Rule 56 would violate a supposed agreement among the Court and the parties that there will be only one round of Rule 56 motions and that it will occur this fall. AMD Opp. 4. In fact, Intel has never agreed to such an approach, and the Court has never required it. To the contrary, the Court indicated in its June 5, 2008 conference that "if you want to undertake kind of a modified, rolling summary judgment procedure so you can say that X is out of the way and therefore that's going to save us X amount of time in discovery, we can maybe get that done for you[.]" 6/5/08 Tr. 23-24. The Court was responding to Intel's proposal that "legal principles ought to be focused on in a fashion that would be earlier than perhaps at the more traditional time of final motions for summary judgment." *Id.* at 23. AMD's counsel opposed that approach precisely because, in his view, legal principles are unimportant to antitrust law: "the Supreme Court teaches us that Section 2 is a big ball of wax and we have to look at the big ball of wax and make a determination of whether we have unreasonable exclusionary conduct." *Id.* at 25.

As Intel's motion explains, however, this "ball of wax" metaphor turns modern U.S. antitrust law on its head. The Supreme Court has confirmed that clear rules are indispensable in the Section 2 context, particularly where pricing conduct is concerned; and it has rejected AMD's alternative totality-of-the-circumstances approach precisely because the legal uncertainty it generates would deter firms from engaging in efficient, pro-consumer behavior. *See* Intel Mem. 5-7, 19-21. Astonishingly, AMD does not address, even in the alternative, the merits of this or several other key legal issues presented in Intel's motion. At bottom, AMD's opposition is a mere placeholder, designed to buy more time; it is not a serious response to Intel's proposed solution to an impending case-management crisis.

II. INTEL'S MOTION SEEKS RESOLUTION OF PURELY LEGAL ISSUES, NOT FACTUAL ISSUES

AMD next argues that Intel's motion seeks resolution of factual disputes as much as legal ones, and that resolution of those factual disputes should await the full-blown summary judgment briefing scheduled for the fall. This is a gross mischaracterization of Intel's motion, as AMD presumably knows from reading it.

Each of the issues that Intel has teed up for this Court's resolution concerns legal principles of general application, adopted by appellate courts and applied in hundreds of antitrust cases nationwide. For example, this Court need not resolve any disputed issues of fact to affirm that *Brooke Group* and its progeny establish a deliberately broad safe harbor for all above-cost single-product discounts; that this safe harbor necessarily includes volume and market-share discounts; and that AMD's proposed alternative analysis, based on a supposed distinction between "contested" and "uncontested" shares of a single product, would subvert this body of precedent. *See* Intel Mem. 4-21 (Legal Principle I).[3] Nor need the Court resolve disputed issues of fact to agree with the Third Circuit and other courts of appeals that the relevant measure of "cost" for *Brooke Group* purposes is incremental (or average variable) cost, not average total cost, and that it would subvert the Supreme Court's insistence on predictable bright-line rules to vary the governing cost methodology on an industry-by-industry basis. *See* Intel Mem. 21-25

---

[3] In one passage, AMD suggests that *Intel* has characterized this as a "single-product" case and that this is somehow a "contested factual . . . claim[]." This is nonsense. In fact, *AMD* was first to claim that this case involves a single relevant product market—"x86 microprocessors" (AMD Compl. ¶ 12)—and AMD has never departed from that position. *See* Intel Mem. 15 n.15. In particular, AMD has not alleged (and could not allege) that this case involves multi-product discounts of the type at issue in *LePage's Inc. v. 3M*, 324 F.3d 141 (3d Cir. 2003), cert. denied, 542 U.S. 953 (2004), where the defendant included within its bundled discount one or more products that the plaintiff did not sell. *See* Intel Mem. 13-14.

(Legal Principle II).[4] Of course, if and when the Court determines that incremental cost is the appropriate methodology, AMD could attempt to pose disputes of material fact about which costs are incremental to any given activity or product (and thus should be attributed to that activity or product) and which are fixed (and thus should not be so attributed). But Intel does not seek resolution of those or any other possible factual issues.

AMD plucks a number of passages from Intel's Memorandum out of context, citing them as supposed evidence that Intel does seek resolution of case-specific factual disputes. In each case, however, Intel merely identified the types of factual issues to which the associated legal dispute is relevant, and made clear that it is *not* asking the Court to determine at this point whether they constitute genuine issues of disputed fact.

For example, according to AMD, Intel "assert[s] that this case involves 'above-cost price concessions.'" AMD Opp. 6 (citing Intel Mem. 1). This flatly misrepresents Intel's motion. As the cited passage confirms (Intel Mem. 1), Intel seeks a legal determination about the scope of the *Brooke Group* safe harbor for above-cost price concessions. Contrary to AMD's obscure suggestion, Intel does not now seek a factual ruling that particular transactions fall into that safe harbor on the ground that the relevant price concessions were "above cost." *Cf.* AMD Opp. 7

---

[4] Against the array of Third Circuit and other court-of-appeals precedents cited in Intel's memorandum (at 23), AMD cites only a single, out-of-Circuit district court decision for the proposition that, for certain purposes, average variable cost is *not* a proper methodology, at least in cases involving the pharmaceutical industry. *See* AMD Opp. 8 (citing *Meijer, Inc. v. Abbott Labs.*, 544 F. Supp. 2d 995 (N.D. Cal. 2008)). That decision is an outlier, is highly suspect on the merits, and in any event is completely distinguishable from this case. Among other things, the conduct at issue in *Meijer* did not involve price cuts. Rather, the defendant was alleged to have anticompetitively *increased* the price of its monopoly product, thereby squeezing out rivals that wished to sell that product in combination with their complementary products in competition with the defendant's own complementary product. This case, by contrast, involves no such price-squeeze allegations; instead, the allegations here concern the nature and degree of Intel's price *cuts*. And as Intel has explained, above-cost price cuts are subject to absolute protection under U.S. antitrust law. *See* Intel Mem. 1-2, 5-7.

(incorrectly suggesting that Intel seeks a determination of whether "*Brooke Group* applies to Intel's conduct, and whether a given price is actually 'above cost'"). Instead, if the Court agrees with Intel that the *Brooke Group* price-cost analysis encompasses AMD's claims of pricing-related conduct, the parties would still need to address any issues of material fact about what the "price" and "cost" were for the relevant transactions. And of course any ruling on this legal issue, which applies to AMD's *pricing*-related claims, would have no direct bearing on AMD's claims of *non*-pricing-related conduct.

As another example, AMD also incorrectly contends that, in requesting confirmation from this Court about the scope of the "exclusive dealing" doctrine, Intel seeks factual rulings that "Intel's conduct does not involve long-term exclusivity contracts or withholding needed goods from customers" and that "'most or all of the contracts at issue here fall comfortably on the short-term side of any line that might be drawn.'" AMD Opp. 6. Again, Intel has made clear that its motion "does *not* ask the Court to resolve any factual disputes AMD may raise on these or other issues." Intel Mem. 28 (emphasis added); *see also id.* at 31. Instead, Intel explained, this motion merely "asks the Court to rule that, as a *matter of law*, AMD may attempt to establish 'exclusive dealing' liability only *if it proves* . . . that Intel (i) entered into long-term contracts with its customers to exclude AMD from the market or (ii) coerced customers to deal exclusively with it by threatening to withhold needed goods or services." Intel Mem. 31-32 (emphasis added). Nothing in that requested ruling would preclude AMD from raising issues of material fact about whether Intel *did* enter into long-term exclusionary contracts or *did* threaten to withhold needed goods or services. *See also* note 3, *supra* (addressing AMD's curious suggestion that Intel somehow introduced a "contested" issue into this case by *agreeing* with AMD that "this case is only a single-product context" (AMD Opp. 6)). Intel would ultimately

oppose such allegations on the merits, but it does not seek resolution of such factual disputes now.

In sum, the Court does not need to decide any factual issue in order to decide the legal questions raised by Intel's Motion. AMD's argument to the contrary is simply a diversion.

III. THE LEGAL DISPUTES PRESENTED HERE ARE RIPE FOR DECISION

AMD also argues that, for obscure reasons, this Court cannot accurately identify the main legal principles relevant to this case until all fact and expert discovery has concluded. AMD Opp. 7. This makes no sense. The rulings sought here are affirmations of fundamental principles of antitrust law, such as the *Brooke Group* standard for above-cost price cuts. In most cases, the Supreme Court and the courts of appeals have adopted these principles for use across a wide range of cases involving all types of factual contexts. The facts of a particular case, and expert economic testimony about those facts, do not somehow change fundamental antitrust principles from case to case. Indeed, if courts permitted basic antitrust principles to fluctuate from case to case depending on the facts of each, they would thwart the modern antitrust imperative for predictable standards and bright-line rules, like the *Brooke Group* standard, that companies can understand and follow in real time as they make business decisions. *See* Intel Mem. 5-7, 19 (citing cases).

AMD can hardly claim that the Court still knows too little about the factual context of this case to appreciate the practical significance of its legal rulings. *See* AMD Opp. 7 (warning against "speaking in abstractions and ignoring the concrete record"). Among other submissions, each side has filed an exhaustive 100-page pretrial case statement summarizing its main legal and factual contentions and an additional 40-page reply brief responding to the other side's pretrial statement. If AMD believed that the Court needed *additional* factual detail in order to

understand the context in which these legal issues arise, AMD could have provided such new detail in its opposition, along with its advocacy for whatever legal principles it favors. But AMD did nothing of the sort, presumably because it knows that more factual detail would add nothing to the Court's consideration of these legal disputes. AMD's silence confirms, if further confirmation were needed, that its primary interest lies not in helping the Court manage this case, but in postponing legal clarity indefinitely.

At a minimum, the Court should hold a Rule 16 hearing in the near future to discuss the legal issues raised in Intel's motion. Whether or not the Court ultimately agrees with Intel that each of those issues is now ripe for resolution, this would be time well spent. These are the issues that will determine the outcome of this case one way or the other, whether they are decided now, at summary judgment, at trial, or on appeal. The Court would gain much and lose nothing from a full and prompt airing of the parties' disagreement about those issues at this critical phase of the case.

IV. THE COURT SHOULD DIRECT AMD TO IDENTIFY WHICH OF THE THOUSANDS OF POTENTIAL TRANSACTIONS IT INTENDS TO PLACE AT ISSUE

Finally, quite apart from these legal issues, the Court should hold a Rule 16 hearing for an equally important reason: to ensure that AMD promptly winnows down the thousands of microprocessor transactions *potentially* at issue in this case to the manageable number that will *actually* be at issue. As Intel has explained (Mem. 36-37), unless AMD promptly identifies the specific transactions that it will argue are anticompetitive, Intel will have to waste enormous resources preparing needless expert analyses for thousands of transactions even though only a small subset will ultimately be featured at trial.

In its opposition, AMD does not dispute the gravity of that concern or identify any other reason why it should continue dragging its heels. Instead, AMD responds only that Intel has

already submitted interrogatories seeking identification of the transactions AMD wishes to place at issue, and AMD suggests (without actually stating) that it will respond to those interrogatories in due course. AMD Opp. 9. Tellingly, however, AMD gives no indication that it will respond *promptly and fully on the merits*, rather than responding with objections, qualifications, and yet further delay. In short, AMD offers no basis for opposing a conference at which the Court can direct it either (i) to identify the transactions it intends to place at issue or (ii) to explain why it believes, at this late date, that it is still premature to clarify what this case will be about.

CONCLUSION

Intel respectfully urges this Court to order a pretrial conference as soon as practicable to consider the legal issues raised in Intel's motion and to direct AMD to identify the transactions it plans to place in issue at trial.

OF COUNSEL:

Robert E. Cooper
Daniel S. Floyd
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 900071
(213) 229-7000

Joseph Kattan
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8239

Darren B. Bernhard
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800

Donn P. Pickett
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2268

Dated: June 2, 2009

POTTER ANDERSON & CORROON LLP

By: */s/ W. Harding Drane, Jr.*
Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com

Attorneys for Defendants
Intel Corporation and Intel Kabushiki Kaisha

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, W. Harding Drane, Jr. hereby certify that on June 2, 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:

Jesse A. Finkelstein
Frederick L. Cottrell, III
Chad M. Shandler
Steven J. Fineman
Richards, Layton & Finger
One Rodney Square
920 North King Street
Wilmington, DE 19801

James L. Holzman
J. Clayton Athey
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899

I hereby certify that on June 2, 2009, I have Electronically Mailed the documents to the following non-registered participants:

Charles P. Diamond
Linda J. Smith
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
cdiamond@omm.com
lsmith@omm.com

Mark A. Samuels
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071
msamuels@omm.com

Salem M. Katsh
Laurin B. Grollman
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway, 22nd Floor
New York, New York 10019
skatsh@kasowitz.com
lgrollman@kasowitz.com

Daniel A. Small
Cohen, Milstein, Hausfeld & Toll , P.L.L.C.
1100 New York Avenue, NW
Suite 500, West Tower
Washington, DC 20005
dsmall@cmht.com

Craig C. Corbitt
Judith A. Zahid
Zelle Hofmann Voelbel & Mason LLP
44 Montgomery Street
Suite 3400
San Francisco, CA 94104
ccorbitt@zelle.com
jzahid@zelle.com

Steve W. Berman
Anthony D. Shapiro
Hagens Berman Sobol Shapiro, LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
steve@hbsslaw.com
tony@hbsslaw.com

Guido Saveri
R. Alexander Saveri
Saveri & Saveri, Inc.
706 Sansome Street
San Francisco, CA 94111
guido@saveri.com
rick@saveri.com

Michael D. Hausfeld
Brent W. Landau
Hausfeld LLP
1146 19th Street, NW
Fifth Floor
Washington, DC 20036
mhausfeld@hausfeldllp.com
blandau@hausfeldllp.com

Michael P. Lehmann
Jon T. King
Hausfeld LLP
44 Montgomery Street
Suite 3400
San Francisco, CA 94104
mlehmann@hausfeldllp.com
jking@hausfeldllp.com

By: */s/ W. Harding Drane, Jr.*

Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com
Attorneys for Defendants
Intel Corporation and Intel Kabushiki Kasiha