

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE)
INTEL CORP. MICROPROCESSOR)
ANTITRUST LITIGATION) MDL Docket No. 05-1717-JJF
_____)
ADVANCED MICRO DEVICES, INC., a)
Delaware corporation, and AMD)
INTERNATIONAL SALES & SERVICE LTD,)
a Delaware corporation,)
Plaintiffs,)
v.) Civil Action No. 05-441-JJF
INTEL CORPORATION, a Delaware)
corporation, and INTEL KABUSHIKI KAISHA,) REDACTED PUBLIC VERSION
a Japanese corporation,)
Defendants.)

DECLARATION OF DAVID L. HERRON

Of Counsel:
Charles P. Diamond
Linda J. Smith
O'Melveny & Myers, LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-6035
(310) 553-6700

Mark A. Samuels
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, 90071
(213) 430-6340

Dated: July 10, 2009

Frederick L. Cottrell, III (#2555)
Chad M. Shandler (#3796)
Steven J. Fineman (#4025)
Laura D. Hatcher (#5098)
Richards, Layton & Finger, P.A.
One Rodney Square, P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
Cottrell@rlf.com
Shandler@rlf.com
Fineman@rlf.com
Hatcher@rlf.com
Attorneys for Plaintiffs Advanced Micro
Devices, Inc. and AMD International Sales &
Service, Ltd.

DECLARATION OF DAVID L. HERRON

I, David L. Herron, declare and state as follows:

1. If called as a witness in this matter, I could and would testify competently to the following facts, all of which are within my own personal knowledge.

2. I am a partner at O'Melveny & Myers LLP, and am one of the attorneys representing Advanced Micro Devices, Inc. ("AMD") in this matter. I make this declaration in support of AMD's Reply on its Motion to Compel Fed. R. Civ. P. Rule 30(b)(6) Deposition Testimony and Document Production.

3. Attached as Exhibit A is a true and correct copy of an excerpt of the relevant portion of the transcript from the May 3, 2007 telephonic hearing regarding the bifurcation of discovery into Intel's preservation issues that is cited in AMD's Reply Brief.

4. Intel has experienced a self-described "journal extraction issue" with regard to at least two Intel production custodians. Attached as Exhibit B is a true and correct copy of an e-mail from Intel's counsel, Tom Dillickrath, to AMD's counsel, Shaun Simmons, dated April 6, 2009, which refers to Intel's journal extraction issues.

5. Attached as Exhibit C is a chart prepared by AMD that responds to Intel's extensive argument set forth in Exhibit 6 to the Declaration of Donn Pickett. Exhibit C provides AMD's responses to Intel's arguments regarding prior AMD discovery.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 10, 2009.

A handwritten signature in black ink, appearing to read "David L. Herron", written over a horizontal line.

David L. Herron

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF DELAWARE
 3
 4 ADVANCED MICRO DEVICES,)
 Plaintiffs,) Civil Action No.
 5) 05-441-JJF
 v.)
 6)
 NTEL CORPORATION,)
 7)
 Defendant.)

8
 9 Teleconference in above matter taken pursuant
 to notice before Renee A. Meyers, Registered Professional
 Reporter and Notary Public, in the offices of Blank Rome,
 10 LLP, 1201 North Market Street, Wilmington, Delaware, on
 Thursday, May 3, 2007, beginning at approximately 11:00
 11 a.m., there being present:
 12

13 BEFORE:
 14 V NCENT J. POPPITI, ESQ., SPECIAL MASTER

15 APPEARANCES:
 16 O'MELVENY & MYERS
 MARK SAMUELS, ESQ.
 JAMES PEARL, ESQ.
 17 1999 Avenue of the Stars
 Los Angeles, California 90067
 18 for AMD
 19
 20 CORBETT & W LCOX
 Registered Professional Reporters
 22 230 North Market Street Wilmington, DE 19899
 (302) 571-0510
 23 www.corbettreporting.com
 Corbett & Associates is not affiliated
 24 With Wilcox & Fetzer, Court Reporters

1 SPECIAL MASTER POPPITI: Good morning
 2 all. And I do sincerely thank you for pulling together
 3 to make sure that we were going forward. It's my
 4 understanding that we are not on an agenda, but I do
 5 understand we are going to be discussing issues that may
 6 relate to 30(b)(6) deposition and path forward for those
 7 if there are any objections that need to be addressed
 8 that cannot be resolved.

9 MR. SAMUELS: Mark Samuels here. May I
 10 address that?

11 SPECIAL MASTER POPPITI: Yes, please.

12 MR. SAMUELS: Your Honor is correct.
 13 When last we spoke a week ago today, we were -- we were
 14 told that Intel would give us objections, whatever they
 15 had, to our deposition notice and document request, we
 16 would meet and confer, and then reconvene today to set a
 17 briefing schedule if there were any issues that remained.
 18 Intel did serve its objections to our
 19 Rule 30(b)6 notice and document request on Thursday
 20 evening. We take issue with Intel objections to four
 21 deposition categories and objections to eight document
 22 requests.
 23 We met and conferred at some length
 24 yesterday with Intel counsel. We also discussed the

1 APPEARANCES (Continued):
 2 RICHARDS, LAYTON & FINGER
 FREDERICK L. COTTRELL, III, ESQ.
 3 One Rodney Square
 Wilmington, DE 19899
 4 for AMD
 5 POTTER, ANDERSON & CORROON
 RICHARD L. HOROWITZ, ESQ.
 6 1313 North Market Street, 6th Floor
 Wilmington, DE 19899
 7 for Intel
 8 GIBSON, DUNN & CRUTCHER, LLP
 ROBERT COOPER, ESQ.
 9 DANIEL FLOYD, ESQ.
 333 South Grand Avenue
 10 Los Angeles, California 90071-3197
 for Intel
 11
 12 DARON BERNHARDT, ESQ., HOWRY
 for Intel
 13 PRICKETT, JONES & ELLIOTT
 JAMES L. HOLZMAN, ESQ.
 14 1310 King Street
 Wilmington, DE 19801
 15 for Class
 16 COHEN, M LSTEIN, HAUSFELD & TOLL, P.L.L.C.
 DANIEL SMALL, ESQ.
 17 1100 New York Avenue, N.W
 Suite 500, West Tower
 18 Washington, D.C. 20005
 for Class
 19

20 ALSO PRESENT:
 21 Eric Friedberg
 Jennifer Martin
 22
 23
 24

1 question of how documents will be produced and about a
 2 privileged waiver agreement.
 3 With respect to the four deposition
 4 categories, I think we made progress, and if I am not
 5 mistaken, I think we now have an understanding and can go
 6 forward.

7 SPECIAL MASTER POPPITI: Okay.

8 MR. SAMUELS: Of the four categories at
 9 issue, three of them, and those were categories one, two,
 10 and ten, those categories involve Intel's standard
 11 practices with respect to the auto deletion of electronic
 12 data practices with respect to evidence preservation and
 13 practices with respect to litigation holds, h-o-l-d-s,
 14 and whether there have been departures or deviations from
 15 those practices in connection with this and other
 16 litigation.

17 I think we have reached an understanding
 18 on these topics, and the understanding is that we will be
 19 able to go forward with them, and in that connection, I
 20 have represented to counsel that we do not intend to
 21 spend a great deal of time going into the details about
 22 other Intel litigations, especially those litigations
 23 where Intel's practices have been the same as they have
 24 been in this case.

1 for these 17 custodians, if this is the universe of
2 custodians whose documents are going to be produced in
3 response to these document requests, we are going to
4 require that those documents be reviewed by counsel and
5 harvested and produced in the normal fashion so that
6 counsel can make the certification they are required to
7 make about the diligence of the search for documents.

8 The eight boxes that are sitting at
9 Gibson, Dunn, we are more than happy to take, but at the
10 end of the day, we are -- we are going to require that
11 those custodians' files be searched. And if we are going
12 to have a fight about that, I'd just as soon have it
13 sooner rather than later because I don't think there is
14 really any, you know, there is really any grounds for
15 Intel to object to that. And if it means delaying the
16 deposition, our concern is that we don't want to, you
17 know, take this deposition off calendar while Intel
18 takes, you know, takes its sweet time complying with a
19 document request that's been out there for a month.

20 I mean, this should be --

21 SPECIAL MASTER POPPITI: Well, let me
22 ask this question, with respect to, literally, getting
23 this ball rolling: When can I anticipate that the
24 materials that you -- that have been segregated, boxed,

1 The end result was a rough agreement
2 that we would try to go forward with three days of
3 depositions which would generally cover the subjects but
4 would be truncated. That's now falling apart, and I am
5 not sure how we should proceed, then, under those
6 circumstances.

7 Our objective right now is to get the
8 remediation plan approved and completed, and that's where
9 all efforts have been devoted, and I mean lots of people
10 have been involved in this effort and we are going
11 forward as quickly as we can on the assumption that the
12 remediation is what's going to prove to be desirable.

13 If we are going to go through a long
14 document search, produce documents, then start going
15 through a lot of witnesses, as far as I am concerned,
16 that ought to be second.

17 SPECIAL MASTER POPPITI: Well, let me
18 ask this question: I mean, clearly, the remediation plan
19 is, from my perspective, critically important to
20 accomplish. The issues with respect to what happened or
21 what should have been going on, what should have
22 happened, my question is: Why does that have to be on a
23 parallel track for purposes of the depositions going
24 forward on the issue of remediation?

1 if you will, when can that be accomplished?

2 MR. COOPER: Your Honor, that can be
3 accomplished very quickly. There is an issue whether we
4 have to go back through it with respect to privilege.

5 SPECIAL MASTER POPPITI: And when will
6 that decision be made?

7 MR. COOPER: Well, we need to talk about
8 that next, here, I think. I don't know where we -- we
9 have not yet reached an agreement on that, and that needs
10 to be addressed.

11 But let me just embroider a thought on
12 all of this. This all started off with our suggestion
13 that if plaintiffs want to proceed right away with some
14 discovery, it ought to be directed to the remediation
15 plan, which is the first order of business, that we have
16 been working full force in an effort to try to put
17 together a remediation plan and get that underway because
18 that's what's most important.

19 Plaintiffs, as I understand it, came
20 back and said, No, we want all this discovery on all
21 things so we can look at whether you did things that were
22 inadequate and we can make challenges in court down the
23 road. We said, If that's what you want to do, then that
24 ought to be split off and ought to come second.

1 MR. SAMUELS: Two answers to that.
2 First, our report -- Intel's report, to which ours is
3 supposed to be responsive, you know, has 20 pages of
4 Intel's version of what happened.

5 SPECIAL MASTER POPPITI: Yes, it does.

6 MR. SAMUELS: And we are under the
7 impression that we get an opportunity to respond to that.

8 SPECIAL MASTER POPPITI: You certainly
9 do.

10 MR. SAMUELS: That's No. 1. No. 2 is
11 what happened and what the scope of remediation ought to
12 be are -- they are linked. The amount of remediation
13 that is required is a -- is related to the amount of
14 culpability or fault that caused the loss of data in the
15 first place.

16 Now, Intel's story, as laid out in their
17 report to Your Honor, is that they designed a perfectly
18 reasonable, responsible document preservation program at
19 the outset of the case and that that program was
20 undermined by a series of unintended, unforeseeable human
21 errors, but that those errors and lapses can all be
22 remediated and everyone can be happy and life can go on
23 and that there was no intention on Intel's part to cause
24 any loss of evidence.

EXHIBIT B

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Monday, April 06, 2009 11:55 AM
To: Simmons, Shaun M.
Cc: Wieder, Eric
Subject: Tatel

Shaun,

As per our conversation, we plan to produce the documents for custodian documents today. There will be around 7,000

As discussed, we also anticipate producing documents for custodian hopefully by the end of the week. I will advise on volume as soon as I can. also due to a journal extraction issue,

Best,

Tom

Thomas J. Dillickrath
Partner

EXHIBIT C

REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by electronic mail to the following:

Richard L. Horwitz, Esquire
Potter Anderson & Corroon, LLP
1313 North Market Street
P. O. Box 951
Wilmington, DE 19899

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

I hereby certify that on July 10, 2009, I have sent by electronic mail the foregoing document to the following non-registered participants:

Darren B. Bernhard, Esquire
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2402

Robert E. Cooper, Esquire
Daniel S. Floyd, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

Daniel A. Small, Esquire
Cohen Milstein, Hausfeld
& Toll, L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, DC 20005

/s/ Frederick L. Cottrell, III
Frederick L. Cottrell, III (#2555)
cottrell@rlf.com