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VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Special Master
Fox Rothschild LLP
Citizens Bank Center
919 North Market Street, Suite 1300
Wilmington, DE 19899-2323

REDACTED PUBLIC VERSION

Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; C.A. No. 05-MD-1717-JJF; Response to Intel's Letter re Motion to Compel Discovery from Glover Park (DM 36)

Dear Judge Poppiti:

As is obvious from Intel's August 11th letter, the back and forth between the parties on the Glover Park subpoena has not resolved the issue. Without getting into the details of offers and counter-offers, which are inappropriate to bring to a court's attention, the negotiation has crystallized the issues and again demonstrated Intel's overreaching.

Scope of the Discovery Exclusion in the 2007 Stipulation

Intel does not contest the obvious fact that its subpoena flatly violates the 2007 Stipulation, which prohibits the service or enforcement of any subpoena "calling for the production of documents or testimony relating to activities designed to influence government or agency action." As Intel concedes in its August 11th letter, the principal issue the Court now needs to resolve is whether Intel is entitled to "documents related to Glover Park's efforts to influence *non-governmental actors* . . . such as the general public, customers, opinion-thought-leaders, technology leaders, columnists and other market participants." We note at the outset this discovery has nothing whatsoever to do with the purported basis for the Glover Park subpoena: to establish when AMD reasonably anticipated commencing suit against Intel. General fact discovery ended two months ago, and Intel concedes it does not intend to take any Glover Park depositions based on the documents. So why does it need them at all?

In any event, these documents fall squarely within the 2007 Stipulation. If as Intel contends the 2007 Stipulation was intended to cover only direct lobbying activities – despite the

absence of that word anywhere in the document – the parties could have simply drafted an order prohibiting discovery of "communications with government officials." But they used much broader language and barred discovery of any documents "*related to* activities designed to influence government or agency action." By using the broad "*related to activities*" language, the parties clearly intended to extend the reach of the exclusion to both direct and indirect activities meant to influence government or agency action. And lobbying editorial writers, columnists and OEM customers to pressure government officials to investigate Intel certainly are *activities related* to "influenc[ing] government or agency action." If that wasn't the intent the 2007 Stipulation, then why make reference to "activities related" to influencing government and agency officials?

The record makes clear that Intel is now trying to rewrite history. Mr. Diamond's declaration, and his statements at the hearing on this matter, made clear his understanding that his deal with Intel's Mr. Floyd bought each party protection of their respective public affairs campaigns within the competition authority arena, including indirect efforts intended to pressure government and agency participants. If Mr. Diamond got it wrong, Intel most assuredly would have offered up Mr. Floyd's declaration. That it hasn't in any of the three filings it has made on this DM is compelling evidence that Mr. Diamond got it right.

Attorney-Client Privilege

Even in the absence of the 2007 Stipulation, however, established case law would shield from discovery public affairs activities performed by Glover Park for or at the request of counsel – whether in-house or outside counsel – on the basis of the attorney-client privilege or work product protection. *See, e.g.*, *In re Grand Jury Subpoenas Dated March 24, 2003*, 265 F. Supp. 2d 321, 324-26, 330 (S.D.N.Y. 2003); *In re Calvin Klein Trademark Trust*, 198 F.R.D. 53, 54 (S.D.N.Y. 2000). REDACTED

Intel now agrees: "Intel concedes that most, if not all, of this work may be privileged. (August 11th Letter at 2.) Yet it insists on getting a log so detailed as to reveal the timing and the nature of Glover Park's activities. It is entitled to no log under the Stipulation and Order. But even if AMD were to make one available, Intel is certainly not entitled to one so detailed as to defeat the attorney-client privilege that is being protected.

Relevant Date Range for Production

Intel has made clear that it is looking to beef up its anticipation of litigation arguments for its "upcoming remediation motion." In bringing this motion, Intel asserts that the relevant timeframe for "anticipation of litigation" documents begins after January 1, 2005. (*See* August 11, 2009 Letter at n.1.) Despite this, Intel improperly seeks documents from November and

December 2004. If any discovery is ordered, or if AMD is ordered to log privileged documents, Intel should be limited to the timeframe it has established as the relevant one: documents after January 1, 2005 through March 31, 2005, when AMD began its document preservation efforts.

Respectfully,

/s/ Chad M. Shandler

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CS/lmg

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