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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

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:

AMD opposes Intel's requests to postpone the pretrial conference and trial and to enlarge its time to move for summary judgment from the four weeks it agreed to in CMO #10 (as measured from the date of its expert reports) to the nine plus weeks it now seeks. As indicated to Intel during the negotiations of CMO #11, AMD does not object to enlarging the expert discovery window if, after the commencement of discovery, additional time appears necessary.

Intel's Request to Delay the Trial So As to Enlarge its Summary Judgment Window

Since June 2008, when the Court established the revised pretrial and trial schedule in CMO #5, the parties have understood that the expert discovery and summary judgment phases of this case would be highly compressed so as to permit trial to get underway during the first quarter of 2010. The Special Master has repeatedly conveyed to the parties Judge Farnan's admonition that AMD and Intel alike would have to work within the parameters of the trial date to complete all pretrial activities, including expert discovery and summary judgment briefing.[1]

AMD has complied. Intel does not want to. It now contends that it lacks adequate time to complete expert discovery, including taking the experts' depositions, and to prepare and argue its summary judgment motions in time for a March 29, 2010 trial. But why is that? The

[1] *See, e.g.*, June 5, 2008 Hearing Tr. at 20:17-24 ("THE SPECIAL MASTER: ....quite frankly, we all know this, what's going to drive this is Judge Farnan's decision on when the trial date should be. Because I would anticipate that what we don't want to be doing, and I hope I'm correct, Your Honor, in suggesting this, we don't want to be picking a trial date and then repicking it eight or nine or ten months from now…."); July 20, 2009 Hearing Tr. at 10:8-11 (05-441, D.I. 1651) ("SPECIAL MASTER POPPITI: …I have, as I expect you know, fairly frequent contact with the Court and I do not anticipate that Judge Farnan would look too kindly on making an adjustment to the trial schedule….").

following table, which shows how the pretrial timetable has been compressed, also shows that it was done largely at Intel's behest:

(05-441; 05-1717)	AMD Rpts	Intel Rpts	***Time (Wks)***	Rebuttal Rpts	Time (Wks/ Days)	Expert Disc Period	SJ Mot Due	***Wks/Days from Intel Rpts***	Brief-ing Ends	Pretrial/Trial
CMO # 5 (707; 987)	6/8	7/27	***7***	8/20	3+3	8/21-10/16	9/21	***8***	11/2	11/5 & 2/15
CMO #7 (1357; 1697)	7/20	9/7	***7***	10/1	3+3	10/2-11/27	11/2	***8***	12/14	12/17 & 3/29
CMO #10 (1656; 2022)	8/3	10/5	***9***	11/2	4	11/3-12/7	11/2	***4***	12/14	12/17 & 3/29
CMO #11 (1707; 2094)	same	10/19	***11***	11/23	5+2	11/30-1/3	11/16*	***4****	12/28*	12/17 & 3/29
Intel Prop (1704; 2091)	same	same	***11***	same	5+2	11/20-1/15	12/23	***9+2***	2/5	TBD/TBD

*AMD proposed; not incorporated into the final order.

The key columns are those that set forth the time for Intel to file expert reports in response to AMD's and the amount of time it would have to move for summary judgment following the delivery of its expert reports (both emphasized). CMO #5 gave Intel eight weeks from the filing of its expert reports to move for summary judgment. When the parties asked for and received an additional six weeks to complete fact discovery, CMO #7 retained the preexisting spacing, and Intel's summary judgment filing window, measured from its report date, remained at eight weeks. The picture changed only with the entry of CMO #10. There, in exchange for pushing each side's expert report dates out two weeks and enlarging Intel's expert report window by two weeks more (expanding it from seven to nine), Intel agreed to collapse its summary judgment filing window from eight weeks to four. By the same token, Intel agreed to a summary judgment briefing schedule that required it to file its motions *before it had a chance even to read AMD's rebuttal reports and before it got to depose a single AMD expert*. (When Intel asked for yet two more weeks for its expert reports during the CMO #11 negotiations -- giving it eleven in total -- AMD agreed to push all the dates back proportionately.[2])

So why should things now change? Intel maintains that because CMO #10 was a favor to AMD, the boundaries should be redrawn in a manner fairer to Intel. But that's not what happened at all. CMO #10 was entered to resolve DM 37, a controversy ignited because Intel needed to depose two HP witnesses it hadn't gotten around to prior to the June 12, 2009 discovery cut-off, and AMD objected to the unfair advantage the Intel deposing attorneys would have if they had AMD's expert reports in hand.[3] As an alternative to sequestering the Intel

[2] The one return concession AMD requested (and Intel granted) was to enlarge AMD's rebuttal report period by nine days to take into account Intel getting twenty-eight more days on its reports.

[3] As AMD's expert report deadline approached, AMD requested and Intel graciously granted a few additional days for AMD to resolve some issues with its damages reports. (AMD

attorneys involved in the depositions from the reports, the Special Master gave Intel the option of pushing back the expert report dates and compressing the pretrial schedule commensurately. The record couldn't be clearer that Intel elected this option so it would not have to forego the HP depositions:

> "SPECIAL MASTER POPPITI: . . . But I'd like to start at the bottom of the list and work my way up a bit, so that would be looking at the bottom, the application from AMD seeking to sequester attorneys who would be involved in HP depositions from expert reports.
>
> "I have, for purposes of my numbering, numbered that as DM No. 37. And my question, quite simply, is: Why doesn't it make more sense to simply forestall the filing of the expert reports and jockey the deadline date to coincide with one day after the depositions have been concluded rather than doing anything that, from my perspective, may be a little bit draconian." (July 20, 2009 Hearing Tr. at 7:2-7:14.)

The Special Master made clear that his offer to slip the expert report schedule did not include changing the rest of the schedule:

> "I have, as I expect you know, fairly frequent contact with the Court and I do not anticipate that Judge Farnan would look too kindly on making an adjustment to the trial schedule, so that is propelled, if you will, by the conduct of these two depositions.
>
> "So it's either one of two ways. It's either the deposition that you are contemplating occur, that you expect will occur in early August occurs before that, that's the first, that that deposition doesn't occur at all, that's the second, or the expert reports get filed when you propose that they get filed if it's going to be by stipulation and there would be some opportunity, if necessary, to supplement those reports subsequent to the conduct of the deposition that is conducted later in time.
>
> "Now it's really three things to either discuss or choose from, and if you are unable to discuss and choose for yourselves, then I am certainly in a position to point you in the direction I think this needs to go." (*Id.* 10:8-11:3.)

Significantly, when Intel's counsel accepted the invitation to slide the expert report dates forward to permit the HP depositions to be taken (and presciently forecast Intel's need for two more weeks for its expert reports), he assured the Special Master that the scheduling changes would not affect the trial date:

> "[W]e are not here in terms of the whatever extra time Mr. Diamond has asked for, ***we haven't been asking for any kind of movement of any trial dates.*** I don't think

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was prepared to file its other reports on schedule.) But, as AMD's counsel indicated during the hearing on DM 37, that short delay paled by comparison with the time it Intel expected it would take to complete the HP depositions. (July 20, 2009 Hearing Tr. at 8:3-9:14.)

> that's necessary. I think this sort of time frame we are talking about could be managed. And if, in fact, it gets extended out and the reports come due, we are not going to have an objection. If there is a need to supplement the report, that's not a problem at all. . . .
>
> "And the other thing, we very well ourselves may face the situation during our seven-week process where we may need a week, and I don't think that time frame we are talking about really should affect the overall schedule and ***we won't propose that the overall schedule be changed***." (*Id.* 12:4-13:3) (emphasis added).

But now Intel is proposing exactly what it promised not to -- ***that the overall schedule be changed***. Aside from the obvious bait-and-switch aspects of Intel's request, it rests on the false premise that summary judgment motions can't be filed until the parties substantially complete expert discovery. But none of the schedules the parties have operated under for the past two years has afforded Intel that right. Under both CMO # 5 and #7, summary judgments were due before the conclusion of expert depositions. And as Judge Farnan observed when he denied Intel's Rule 16 request, summary judgments don't have to await the conclusion of expert depositions. "The Court had set a schedule for the filing of summary judgment motions, which allows for the completion of fact discovery and, at least, the exchange of expert reports." (Memorandum at 4) (05-441, D.I. 1591; 05-1717, D.I. 1785). Indeed, if the conclusion of expert discovery were a prerequisite to the filing of summary judgment motions, as Intel now urges, why did Intel agree in CMO #10 to file its motions the day before it could take its first expert deposition and on the very day it was slated to receive AMD's rebuttal reports?

Intel offers insufficient justification for changing the schedule, let alone reneging on its promise not to "propose that the overall schedule be changed." The principal authority Intel cites for delaying summary judgments until the conclusion of expert discovery is AMD's opposition to Intel's Rule 16 motion, where we argued that the legal issues Intel sought to raise were "inextricably intertwined with the extensive and complicated discovery record still being developed, including the expert discovery that has not yet commenced." AMD Opposition at 2 (5/22/09) (05-441, D.I. 1485, 05-1717, D.I. 1830.) We stand by the view that Intel's legal issues would benefit from an examination in light of the economic principles articulated by the experts. And we agree that a moving party should ordinarily be apprised of what its adversary's experts have to say before being required to move for summary judgment. But Intel knows what AMD's experts have to say, in such painful detail that Intel complains about the equivalent of 3,000 pages of analysis it was forced to read. Intel has had those reports in hand for a month already, and by the time of its summary judgment deadline, it will have had three months to digest them, take them apart and prepare its counter-positions. If Intel and its experts will know enough to refute AMD's experts by the middle of October, they certainly will know enough to move for summary judgment by mid-November.

And to be sure, as Intel previewed in its May 2009 Rule 16 motion, Intel's summary judgment motions will present essentially legal issues. (As it acknowledges in footnote 1 of its letter brief, at a minimum, the evidence of what happened is so hotly in dispute that its experts will be forced to "catalog at least some of the critical evidence that dispositively contradicts the selected facts cited by AMD's experts." Brief at 2 (5/8/09) (05-441, D.I. 1443; 05-1717, D.I.

1786.)) Intel previewed those legal issues back in May in its Rule 16 motion. To the extent their outcome will be informed by economic arguments, AMD put its arguments on the table in its expert reports. Intel can't convincingly argue that expert depositions will add anything meaningful since, if its motions were sufficiently ripe back in May for Intel to file them, they must be ready by now. Intel is entitled to file summary judgment motions, but postponing the pretrial and trial on the off-chance that Intel might discover something useful (which it could put in a reply brief anyway) seems an imprudent course in this jury case.

Intel's Request to Enlarge the Expert Deposition Window

CMO #10 allocated approximately one month for expert depositions, which is exactly what AMD agreed to in the latest stipulation, CMO #11. As AMD advised Intel during the negotiation of CMO #11, if good cause exists to extend expert depositions, such as congestion Intel expects on account of the holidays, AMD will not oppose it. However, it is premature to be making adjustments to the schedule based on exigencies that have yet to arise, particularly adjustment that will push expert discovery into early 2010 when the parties will be all-out in trial preparation mode.

Respectfully,

/s/ Frederick L. Cottrell, III

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