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<u>**Via Electronic Mail & Hand Delivery**</u>   **PUBLIC VERSION**
The Honorable Vincent J. Poppiti
Fox Rothschild LLP
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;Phil Paul v. Intel; C. A. No. 05-485-JJF
     <u>*Reply in Support of Motion to Compel Production of AMD's Back End Manufacturing Data*</u>

Dear Judge Poppiti:

AMD's opposition does not dispute that AMD's back-end manufacturing data is relevant
to this litigation generally and to the assertions in Dr. Ostrander's "expert report."[1] Nor does
AMD deny that it has relevant, back-end data in its possession that it could produce to Intel.

AMD's response is limited to two meritless arguments: (i) Intel did not properly request
AMD's back-end manufacturing data; and (ii) AMD has substantially complied with Intel's
request. AMD stakes its first claim on the notion that Intel did not "identify the specific, very
detailed types of back-end information that Intel now claims AMD was required to produce."
(*See* Opp. 2.) This assertion is untrue. Intel worked with AMD for many months to obtain
AMD's back-end data, and AMD never claimed that Intel's request was untimely, insufficient in
its detail, or otherwise improper. To the contrary, AMD repeatedly promised to produce the very
data at issue in this Motion. AMD first contrived the excuse that Intel did not properly request
this discovery only after Intel stated that it was prepared to seek relief from the Court. The
contemporaneous correspondence soundly refutes AMD's claim.

AMD concedes that in February 2008, *when the data requests were first exchanged in
writing by the parties,* Intel's request included the following broad categories of back-end
manufacturing data: "CPUs/Chipsets processed per assembly facility," identification of "product
names/numbers/descriptions produced by each facility," and "Capacity/Output/Yield"

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[1] AMD misses the point about Dr. Ostrander's "report." (*See* Opposition ("Opp.") 4.) That
report furnishes a new and *additional* basis for why AMD should be ordered to produce this
information.

information. (Opp. 2 (citing Srinivasan Decl., Ex. 1).) Although AMD characterizes these categories as being "limited to certain, specific, narrow categories of manufacturing data" (*see id.*), they describe precisely what Intel seeks now. Further, when Intel described its back-end manufacturing data request in letters dated June 4 and July 31, 2009 (*see* Srinivasan Decl., Exs. 4, 8), AMD did not claim that the scope of Intel's request had expanded or was poorly-defined. AMD said that it was "investigating the availability of the data you have requested," and not that the request was in any way improper. (*See id.*, Ex. 5.)

AMD's argument that it actually produced much of its back-end data also is not true. AMD's opposition obfuscates the simple fact that AMD has not produced to Intel what Intel actually requested: AMD's back-end manufacturing *data*. Although AMD made an initial back-end data production, this production was so deficient that it conveyed little useful information about AMD's back-end manufacturing capabilities. Not only did AMD omit entire categories of back-end data (such as the composition of AMD's inventories),[2] but the few categories of information that AMD produced were not broken out on a product-by-product basis (*see* Opp. 3) as Intel had requested at the outset of discovery, making it impossible for anyone to distinguish specific processors or families of processors. By so concealing the actual data, AMD can hide, for example, ███

Intel responded to AMD's deficient back-end data production, in part, by noting that AMD must have maintained this data because certain reports in AMD's custodial production referenced this data source. But instead of producing all of its back-end data in light of Intel's showing, AMD produced an incomplete collection of three types of reports that differ depending on the week (e.g., AMD produced report A for some weeks, report B for other weeks, and report C for still other weeks), which: (i) even collectively do not span the entire relevant period; (ii) vary greatly in terms of the information they contain; and (iii) instead of providing the data in electronic format, contain only *screenshots* of some of the data or high-level summaries of the underlying data. Further, as detailed in the Second Declaration of Jay Srinivasan, all of these reports omit key pieces of AMD's back-end manufacturing data. While AMD claims that it produced 400 reports that allegedly contain information *beyond* what Intel requested (*see* Opp. 4), it ignores the fact that these reports do not include what Intel actually did request: AMD's back-end manufacturing *data* – not a miscellaneous jumble of illegible and incomplete material.[3]

AMD should not be allowed to withhold its highly relevant back-end manufacturing data, the existence of which it does not deny and which is vital to Intel's defense.

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[2] AMD claims it produced "extensive inventory information" (*see* Opp. 4 n.2), but this material relates to monetary valuation – not units, which is what Intel requested.

[3] Contrary to AMD's claim, Intel's production of its back-end data is not relevant here. If AMD believed that Intel's back-end data production was deficient, it should have pursued a further production with Intel and, if necessary, with the Court. AMD has not done so.

Respectfully yours,

/s/ W. Harding Drane, Jr.

W. Harding Drane, Jr.

WHD:cet
cc: Clerk of Court (via Hand Delivery)
       Counsel of Record (via CM/ECF & Electronic Mail)
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