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October 1, 2009

By Hand & Electronic Filing

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

PUBLIC VERSION
October 8, 2009

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
Motion to Compel Production of Certain Initial Harvest Dates

Dear Judge Poppiti:

Intel requests that AMD provide initial harvest dates for nine custodians for whom it has refused to provide those dates. *See* Ex. A. Those custodians include terminated employees who may not have been harvested at all. To date, Intel has provided AMD with harvest dates for both production and non-production custodians included on Intel's April 23, 2007 master Custodian List. Despite its claims of mutual exchange, AMD has provided only a partial list of initial harvest dates for production custodians and now for no good reason will not update its list. It is unclear why AMD refuses to complete the list of this basic harvest information. The Court should order AMD to provide the narrow relief requested.¹

Background

1. *Relevance of Initial Harvest Dates.* Data harvesting is a method of preserving data and a prerequisite to producing it. The timeliness of data harvests could potentially impact the efficacy of a preservation plan and the completeness of a document production. For these reasons, the identification of harvests dates – just as with litigation hold notice dates and journaling dates – constitutes foundational preservation discovery, information that the parties agreed to exchange. Moreover, harvest dates could be relevant to specific preservation issues such as the collection of data from employees who departed AMD during the course of this case.

2. *Intel's Harvest Date Production.* On November 14, 2006, Intel produced initial harvest dates for Intel's "party-designated" custodians (*i.e.*, custodians Intel had itself designated for production). Ex. B. On April 23, 2007, Intel produced initial harvest dates for many of its production and non-production custodians on the master Custodian List, as well as the dates of certain subsequent electronic harvests. *See* Docket # 321 (4/23/07 Remediation Report, Ex. F).

¹ The parties discussed this issue by telephone on September 11, 2009 and could not resolve it.

Intel supplemented its harvest date information on August 31, 2007 and March 28, 2008. Ex. C.²

3. AMD's Incomplete Initial Harvest Date Production. On November 14, 2006, AMD produced initial harvest dates for AMD's "party-designated" custodians (*i.e.*, custodians AMD had itself designated for production). Ex. D at 1-3. On March 11, 2008, AMD's counsel stated that AMD was also prepared to produce harvest date information for "adversely-designated" and "free throw" custodians. Ex. E (3/11/08 Herron Letter at 2). On May 14, 2008, AMD purported to produce such a supplemental list, but for some of the custodians on it, instead of an initial harvest date, AMD provided only the date of their termination of employment. Ex. D at 4-7.³ AMD thereafter repeatedly represented that it had produced to Intel complete lists of harvest dates. For example:

- On June 11, 2008, AMD represented to the Court that it had produced "lists of dates on which AMD collected *all* of its designated custodians' electronic data and documents, the most recent set of which was produced on May 14, 2008." Ex. F (Docket #964-2, 6/11/08 Herron Decl, ¶ 16) (emphasis added).
- On December 19, 2008, AMD represented to Intel that AMD had already produced "lists of harvesting dates for every production custodian." Ex. G (12/19/08 Samuels Letter at 3).

Those statements were inaccurate when made and remain so today. There are nine AMD production custodians on AMD's master Custodian List for whom AMD has not produced initial harvest dates. These nine custodians can be divided up into three categories. *First*, several custodians were designated by Intel as "free throw" production custodians following AMD's production of the supplemental list to Intel on May 14, 2008. The initial harvest dates for these free throw custodians have not been produced to Intel. These custodians include the following:

Free-Throw Custodians Without Initial Harvest Dates	
Name	Designation
1. [REDACTED]	Intel Free-Throw (5/30/08)
2. [REDACTED]	Intel Free-Throw (5/30/08)
3. [REDACTED]	Intel Free-Throw (5/30/08)
4. [REDACTED]	Intel Free-Throw (5/30/08)

Second, certain production custodians were included on the list, but rather than an initial harvest date, AMD only noted the date of their termination of employment at AMD, thereby suggesting AMD failed to harvest these custodians at all. These custodians include the

² Intel did not provide a harvest date for one of its own custodians, [REDACTED], who was originally included on Intel's master Custodian List. Intel will provide AMD with formal notification of this harvest date under separate cover.

³ The parties also exchanged certain "deposition reharvest" dates which are not the subject of this motion.

following:

Terminated Custodians Without Initial Harvest Dates	
Name	Designation
5. [REDACTED]	Intel Free-Throw (12/19/07)
6. [REDACTED]	Intel Free-Throw (12/19/07)
7. [REDACTED]	Intel Free-Throw (1/11/08)
8. [REDACTED]	Intel Free-Throw (12/19/07)

Third, for one custodian on the May 14, 2008 list, Stan Lublin, AMD stated he was “not yet harvested.” AMD has never updated that entry.

Custodians “Not Yet Harvested” (as of 5/14/08)	
Name	Designation
9. [REDACTED]	AMD

Intel has repeatedly requested that AMD honor its commitment and complete production of its initial harvest date list. AMD has refused.

4. Recent Deposition Testimony. As discussed above, AMD’s initial harvest date list includes ambiguous language for some custodians that was the subject of recent deposition testimony. For several custodians, instead of listing an actual harvest date, AMD states that the custodian is a former employee as of a certain date. To help clarify this ambiguity, Intel sought and received a Court order requiring AMD to answer questions about its harvest list. Here is the new testimony (in relevant part):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. H (██████ Vol II at 195:12 to 196:16) (emphasis added).

Following the deposition, Intel requested an updated initial harvest list to honor AMD's prior commitment and to clear up the ambiguity raised in the deposition. Ex. I (8/19/09 email). AMD refused to provide additional initial harvest dates in a letter dated August 25, 2009 and again during the parties' telephonic meet and confer on September 11, 2009. Ex. J (8/25/09 letter).

Argument

Intel is entitled to the requested relief for three reasons. *First*, the requested information is relevant. AMD requested the same information from Intel and Intel provided it over one year ago. Intel also provided subsequent harvest dates for production and non-production custodians on Intel's master Custodian List, making AMD's refusal to update its initial harvest date list even more unreasonable. Not only is the information relevant to foundational preservation issues (e.g., the timeliness of preservation activities), but it is particularly relevant to the handling of terminated employees' data.

Second, the request is narrow and reasonable in scope. AMD has not claimed that completing its production of this basic information (for only *nine* custodians) would require significant, much less undue, effort. AMD should have tracked initial harvest dates as a matter of course. If there is a deficiency in AMD's process that renders it unable to provide such basic information, it should say so. If not, then any burden argument must fail.

Third, the current state of the record is unfair. Intel is not even asking for parity on this issue – *i.e.*, Intel is *not* asking for the same information it has already provided to AMD, including harvest dates for production and non-production custodians. Intel is only asking AMD to complete its list of initial harvest dates so that Intel can have a full record to evaluate the timeliness, and thus the efficacy, of AMD's harvesting process.

If AMD maintains its position that its initial harvest date production to Intel is complete, then Intel must assume that AMD did not harvest the custodians at issue (in a timely fashion or otherwise) and, therefore, AMD should be precluded from disputing that fact. Moreover, if AMD claims that it is unable to obtain and produce that basic information, it should explain why its "exemplary" document retention plan leaves it in such a position.

Request For Relief.

Intel respectfully requests an order requiring AMD to supplement its promised initial harvest date list so that the factual record can be completed.

Respectfully,
/s/ W. Harding Drane, Jr.
W. Harding Drane, Jr. (#1023)

WHD:cet

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

Exhibit A

THIS EXHIBIT IS REDACTED IN ITS ENTIRETY

Exhibit B

THIS EXHIBIT IS REDACTED IN ITS ENTIRETY

Exhibit C

THIS EXHIBIT IS REDACTED IN ITS ENTIRETY

Exhibit D

THIS EXHIBIT IS REDACTED IN ITS ENTIRETY

Exhibit E



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March 11, 2008

VIA E-MAIL AND U.S. MAIL

Richard Levy, Esq.
Gibson Dunn & Crutcher
333 South Grand Avenue
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OUR FILE NUMBER
008,346-163

WRITER'S DIRECT DIAL
(213) 430-6230

WRITER'S E-MAIL ADDRESS
dherron@omm.com

Re: AMD v. Intel

Dear Rich:

This responds to your letter to me of March 4, 2008.

AMD has not yet completed compiling all of the information requested in your letter but, as to most of the listed items, it will be in a position to provide it shortly. In my November 27, 2007 letter to you, however, we proposed that certain information should be part of a mutual exchange. For example, we proposed a mutual exchange of harvest dates. And while we said that AMD would be willing to produce the March 11, 2005 litigation hold notice it issued to its IT personnel, Intel has not produced any litigation hold notice that it issued to its own IT staff. That exchange should also be concurrent. You have not yet responded to these proposals.

In addition, your March 4 letter substantially broadens prior inquiry by now requesting that AMD produce an elaborate report showing when each AMD custodian received a litigation hold notice or reminder, and indicating which version of notice was sent to each custodian on each such occasion. This was never part of our agreement, and your request is especially surprising since Intel has not provided remotely equivalent information to AMD or ever suggested that it is willing to do so. I discuss this more below but, if this sort of exchange is to occur at all, it will have to be mutual.

I now address your requests in the order you presented them.

1. Harvest Dates: As you correctly stated in your March 5 email to me, AMD has already provided harvest dates for its party-designated custodians. Your email appears to ask now for dates of reharvest for those same custodians. We are unclear why Intel would need or want that information. The short answer is that AMD reharvested data for those custodians as

required to supplement prior productions through the agreed June 1, 2006 cutoff, in compliance with Case Management Order No. 3. That response seems sufficient.

AMD is prepared to produce harvest date information with respect to adversely-designated and "free throw" custodians, as applicable. As noted in my November 27 letter (at page 3), however, this exchange should be mutual. Intel's last disclosure on harvest dates occurred on April 23, 2007. By our count, however, Intel did not at that time provide any harvest date information regarding 397 of its custodians. You have also informed us that Intel conducted further harvesting in May 2007, but the specific dates of that harvesting have not been disclosed. AMD has also adversely designated a number of Intel custodians since then. We therefore suggest that we agree upon a mutually-convenient date to exchange this information.

2. Journal Dates: Attached hereto at Tab 1 is a table showing the dates on which AMD custodians were journaled. The notation "term'd" signifies that the custodian terminated his/her employment with AMD prior to being placed on journal.

We request that Intel now respond in kind. On April 5, 2007, Kay Kochenderfer represented via email that "all the currently employed custodians on [Intel's] June 1, 2006 Custodian list are on the Exchange journaling system." We assume, as you suggested in discussions in February and March 2007, that Intel custodians were migrated to Intel's Exchange journaling system over time. Please provide the dates on which each Intel custodian was migrated to its Exchange journaling system.

3. Known losses of relevant data from an AMD custodian's hard drive due to file corruption, lost laptop or other, similar means of loss: We will, within the next week or so, make any necessary disclosures, consistent with the agreement we reached on December 7, 2007.

4. Back-up Tapes: Attached hereto at Tab 2 is a description of AMD's back-up tape regimen.

5. AMD's March 11, 2005 litigation hold notice to its IT personnel: As we have stated, AMD is prepared to produce this notice at the same time that Intel produces its IT-directed notices. There are, in fact, several litigation hold notices that Intel appears to be withholding. Specifically, as stated in my November 27, 2007 letter:

"[T]horough searches through the documents Intel has produced in remediation and culpability discovery have not uncovered any litigation hold notices delivered by Intel to its IT personnel (as referenced by Intel in its various filings with the Court concerning its evidence preservation issues). For instance, while we have found emails sent among Intel IT personnel, we have not located any litigation hold notice directed by Intel (or its in-house counsel) to IT personnel with respect to Intel's "complaint freeze" effort that Intel said it undertook in June and July 2005, or any litigation hold notice issued by Intel to its IT personnel at the time of the discovery of Intel's evidence preservation issues in October 2006." (See my November 27, 2007 letter at page 2.)

One of following three things must be true: (1) Intel has, in fact, already produced the litigation hold notices it directed to its IT personnel, but we have not located them; (2) Intel has not yet produced these IT-directed litigation hold notices; or (3) Intel did not issue litigation hold notices to its IT personnel at the times and for the purposes indicated in the foregoing paragraph. If (1), please direct us to the documents; if (2), let's please set a date for a mutual exchange; and if (3), please so state in writing so that we can have a written record of this fact.

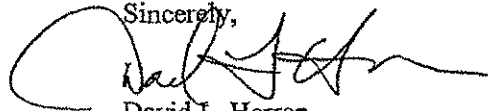
The last issue your March 4 letter raises has two parts, and I respond to them separately. First, your letter requests that AMD produce "every Litigation Hold Notice sent to every Custodian." My November 27 letter explained that we already have produced all the litigation hold notices within the scope of our agreed exchange, and I further represented that any differences with other forms sent from time to time are slight and immaterial. You appear to doubt my representation. If Intel believes a further exchange is necessary, we are prepared to do so, but only on the conditions that Intel concurrently produces to AMD all such notices and reminders directed to its own personnel, and that all privileges are preserved in connection with that exchange. (If Intel has in fact produced all of its hold notices and reminders, please provide all bates numbers so that we can be certain which documents comprise Intel's complete set of notices and reminders.)

Second, you request that AMD prepare and provide "a list of the date(s) on which each custodian received the first and any subsequent Litigation Hold Notice or reminder (and if the forms we have are the only ones sent, an indication which custodian received what notice)." This strikes us as both an unnecessary and non-trivial compilation undertaking, and most certainly not one which AMD can reasonably be asked to undertake unilaterally.

As with many of your requests, this one requires AMD to undertake an assignment that Intel itself has not undertaken or agreed to. Exhibit D to Intel's April 27, 2007 Report to Court about Intel's preservation lapses did, of course, identify the 316 Intel custodians who did not receive any litigation hold notice until 2007, and provided the approximate date on which those belated notices were issued. Intel's Paragraph 8 disclosures provide litigation hold notice dates for a limited handful of custodians -- apparently, fewer than 10. For approximately 700 Intel custodians, however, Intel has simply stated that by certain dates a certain number of custodians received litigation hold notices. Intel neither identified specific dates of those notices, dates of any follow-up reminders, nor which form of notice was sent on which occasion.

AMD is, therefore, disinclined to accede to this particular request. We nevertheless invite your response to the issues outlined above, and will consider it.

Sincerely,



David L. Herron
of O'MELVENY & MYERS LLP

Exhibit F

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,)	
)	Civil Action No. 05-441-JJF
v.)	
)	
INTEL CORPORATION, a Delaware)	
corporation, and INTEL KABUSHIKI KAISHA,)	
a Japanese corporation,)	
)	
Defendants.)	
_____)	
PHIL PAUL, on behalf of himself)	
and all others similarly situated,)	
)	
Plaintiffs,)	
)	Civil Action No. 05-485-JJF
v.)	
)	CONSOLIDATED ACTION
INTEL CORPORATION,)	
)	
Defendant.)	

DECLARATION OF DAVID L. HERRON

Of Counsel:

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Service, Ltd.

Dated: June 11, 2008

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, which are within my personal knowledge. I am a partner with the law firm of O'Melveny & Myers LLP, and am one of the attorneys principally responsible for representing plaintiff Advanced Micro Devices, Inc. ("AMD") in this matter. I make this declaration in support of AMD's Motion to Quash and for a Protective Order with respect to discovery propounded by defendant Intel Corporation ("Intel") under Fed. R. Civ. P. 30(b)(6).

2. Shortly after this case began, I and my colleagues proposed to, and secured the agreement of, Intel's counsel John Rosenthal of Howrey LLP for the parties to exchange their evidence preservation protocols, which in fact occurred in September and October 2005.

3. Those disclosures, Intel's subsequent disclosures to the Court, and discovery into Intel's evidence preservation problems reveal the contours of the evidence preservation system that Intel adopted. AMD undertook a materially different approach to document preservation than Intel. For instance, unlike Intel, AMD did not institute a system-wide auto-delete function with respect to email, and AMD's litigation hold notices (which AMD has produced to Intel) broadly require retention of all relevant material. In addition, in November 2005, AMD instituted and began migrating custodian email accounts to two email archiving systems: A vault that backs-up custodians' email on a 30-day cycle; and a journal that captures all sent and received email. As set forth by way of summary in the letter brief filed concurrently herewith, this is dramatically different than the preservation system Intel put in place.

15. As required by Case Management Order No. 3, the parties produced to one another data for a substantial number of designated custodians on February 15, 2008. This included productions for custodians adversely-designated by each party, as well as supplemental productions for party-designated custodians through the Court-ordered June 1, 2006 cut-off date. Shortly after that preoccupying production effort concluded, on March 4, 2008, Intel responded to AMD's November 7 letter regarding the parties' discovery agreement. (A true and correct copy of the letter dated March 4, 2008, from Intel's counsel, Mr. Levy, to me is attached hereto as Exhibit L.) Intel's letter confirmed virtually every aspect of this agreement, mimicking precisely the language that AMD had used to accept it. (Compare page 3 of AMD's November 27 letter (Exhibit K), with Intel's response letter at pages 1-2 (Exhibit L), which delineate in almost precisely the same language the AMD productions that would satisfy Intel's outstanding Rule 30(b)(6) discovery.) Thus, while the parties were continuing to discuss mutual and concurrent exchanges of information -- such as journaling and harvesting dates, and hold notices -- the parties had settled on the AMD information that, when produced, would satisfy Intel's outstanding Rule 30(b)(6) discovery. (See *id.*, Exhibits J, K and L.)

16. Consistent with this agreement and as negotiated and agreed to by the parties throughout this process, AMD has produced documents, charts, summaries, lists and a witness to detail the structure, components and operation of its document retention system, including all of the following: (a) as noted, an interview with an AMD's IT manager about AMD's email archiving systems; (b) a written summary of "AMD's Backup Tape Retention Protocols" (see my letter dated March 11, 2008, to Intel's counsel, Mr. Levy, a true and correct copy of which is attached as Exhibit M); (c) a list of dates on which AMD's journaling email archive was activated for all AMD custodians (*id.*); (d) a written "Summary of AMD's Document Collection

Protocols” (*see* my email dated November 16, 2007, to Intel’s counsel, Mr. Levy, a true and correct copy of which is attached as Exhibit N); (e) lists of dates on which AMD collected all of its designated custodians’ electronic data and documents, the most recent set of which was produced on May 14, 2008 (*see, infra*, Exhibit S); (f) all litigation hold notices delivered to AMD’s designated custodians (*see, e.g., id.*), and a hold notice delivered to AMD’s IT personnel (*see*, my June 9, 2008 letter enclosing the latter hold notice to Intel’s newest counsel, Donn P. Pickett, a true and correct copy of which is attached as Exhibit V); and (g) a chart identifying the dates litigation hold notices were delivered to every designated AMD custodian, and the version of the hold notice delivered. (*Id.*)

17. On March 19, 2008, AMD disclosed to Intel the inadvertent loss of email by a Japanese custodian adversely-designated by Intel who lost some email while trying to preserve it for this case. (A true and correct copy of my March 19, 2008 letter to Intel’s counsel, Mr. Levy, is attached hereto as Exhibit O.) AMD counsel, Mark Samuels, and I already had informed Intel’s counsel, Mr. Levy, of this potential loss on December 7, 2007, and advised Mr. Levy at that time that AMD was investigating it and would make any appropriate disclosure to Intel. The letter disclosing the Japanese custodian’s loss is very detailed and, to my knowledge, a far more detailed description of how the loss occurred, the volume of data involved, and the remedial steps taken by AMD than *anything* Intel has produced about any of its custodians. (*Id.*)

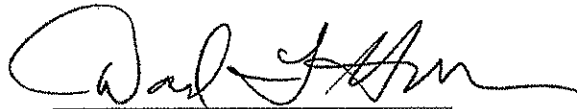
18. Intel pounced on this disclosure about AMD’s Japanese custodian in an apparent (and seemingly transparent) effort to renege on the parties’ agreement concerning Intel’s Rule 30(b)(6) discovery. Indeed, on March 28, 2008, Intel wrote a letter that made vague reference to undisclosed “irregularities in AMD’s retention efforts,” and now insisted that “Intel and AMD should be on equal footing.” (A true and correct copy of a letter dated March 28, 2008, from

accidentally lost email while trying to save it for this case, a loss (if it is one) that AMD has already remediated (Exhibit O).

25. Attached hereto as Exhibit W are relevant excerpts of the transcript of a hearing before the Special Master held on May 24, 2007.

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

Dated: June 11, 2008.

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

David L. Herron

Exhibit G



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OUR FILE NUMBER
8,346-163

December 19, 2008

BY E-MAIL & U.S. MAIL

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(213) 430-6340

WRITER'S E-MAIL ADDRESS
msamuels@omm.com

Re: AMD v. Intel

Dear Mr. Pickett:

This letter is intended to initiate meet and confer discussions regarding Intel's draft Rule 30(b)(6) Deposition Notice delivered to us on Tuesday, December 16.

Let me make several preliminary comments.

First, on its face, Intel's deposition notice, a copy of which is attached, goes well beyond anything conceivably reasonable. It contains 16 proposed topics and more than 50 subtopics, virtually all of which are aimed at, or at least touch upon, privileged and work product areas.

Second, this notice seeks to expand discovery well beyond the issues set forth in the Court's chart. This is inappropriate. Special Master Poppiti has repeatedly admonished that the Court's chart defines the parameters of discovery. Thus, among others, Intel's proposals to delve into "anticipation of litigation" (Proposed Topic No. 4), a broad range of harvesting information (Proposed Topic No. 6), back up tape issues (Proposed Topic No. 10), non-designated custodian data (Proposed Topic No. 12), and "audits and investigations" (Proposed Topic No. 16) are outside the scope of what the Special Master has authorized.

Third, informal discovery was meant to narrow, not expand, the need for deposition discovery. After Intel has spent approximately 15 hours interrogating AMD and FCS personnel through a battery of lawyers and consultants, we would have expected a draft deposition notice consistent with the representation you made to the Court that "the informal disclosure process has been productive and useful," your acknowledgement that its purpose was to enable the parties to "tailor the formal discovery," and your promise that, after informal discovery concluded, the parties would "then proceed to what I think of as confirmatory discovery." (See November 7, 2008 hearing transcript at p. 7, 30 and 32.) We see no indication that you have

concerns the standard operation of Microsoft Office, is beyond the Court's chart, and is inappropriate discovery.

Proposed Deposition Topic No. 4: This proposed deposition topic seeks information as to when AMD reasonably anticipated commencing this litigation. Not only is this topic not on the Court's chart, we have difficulty imagining any questions Intel could pose which would not intrude upon the attorney client privilege. For this reason, we do not intend to produce a witness to testify on this proposed topic.

Proposed Deposition Topic No. 5: This proposed deposition topic is set forth under the misleading umbrella term of "hold notices" but, through its 5 subtopics, obviously seeks much different and broader information. Specifically, subtopic (a) asks about the "timing of AMD's issuance of written litigation hold notices," which is information that AMD has already provided to Intel with respect to each production custodian. We are willing to affirm that information under oath. Subtopic (b) asks about the "meaning and intent of the language used." The litigation hold notices are privileged, and we negotiated a non-waiver agreement as a precondition to their production; we can't imagine any question that might be posed on this subtopic that would not intrude upon work product and/or privilege. For this reason, we do not intend to produce a witness on this subtopic. Subtopic (c) -- which says only "Custodians' compliance" -- is both unintelligible and, to the extent it is decipherable at all, does not appear to be a proper Rule 30(b)(6) deposition topic. With respect to subtopic (d) concerning "monitoring and auditing," AMD is prepared to provide a narrative summary, under oath, of the steps it took to monitor the preservation program that it put in place for this litigation, subject to a nonwaiver agreement. This type of narrative summary is precisely what the parties agreed upon as appropriate responses to many aspects of the Rule 30(b)(6) discovery AMD propounded on Intel regarding its preservation issues, and so we assume that you find this acceptable. Subtopic (e) concerns "IT Department technical support," a topic fully covered at Mr. Meeker's interview. AMD will affirm, under oath, the facts adduced at that interview that Intel is interested in having confirmed.

Proposed Deposition Topic No. 6: This proposed deposition topic broadly seeks data about "harvesting of electronic data for this litigation from all geographic locations and sources" including, but not limited to, various issues set forth in 6 separate subtopics. The Court's chart does not allow or contemplate this sort of boundless topic or formal discovery. Moreover, AMD has produced to you already a lengthy written summary of its collection protocols, and lists of harvesting dates for every production custodian. Intel also extensively questioned Messrs. Cardine and Meeker about harvesting. In addition, in the course of informal discovery, AMD has produced by letter responsive information about the entities and personnel who conducted harvesting. As such, subtopics 6(a) through 6(d) seek information already provided. Intel should identify the facts derived from these interviews and other informal discovery which it would like AMD to confirm, and we will do so under oath. Subtopic (e) seeks the "[i]dentity of custodians subject to harvesting." As noted, AMD has disclosed this information already with respect to all production custodians. Information regarding non-designated custodians is irrelevant to any issue. As to subtopic (f), we do not understand what is meant by

Exhibit H

THIS EXHIBIT IS REDACTED IN ITS ENTIRETY

Exhibit I

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Wednesday, August 19, 2009 5:10 PM
To: dherron@omm.com
Cc: Pickett, Donn; Rocca, Brian
Subject: Follow-up on Depositions

David:

I am writing to follow-up on our depositions last week. We wish to request certain documents (or updates to documents) referenced during the course of the depositions. Please provide us with copies of the following documents. It might make sense for you to bates-label them for clarity and ease of reference.

[REDACTED]

[REDACTED]

Two additional points:

-- We are still due an interrogatory response to question 93 (when AMD became aware that Intel won the [REDACTED]). Please let me know when you intend to produce this information.

-- Finally, [REDACTED] testified about certain anomalies that affected approximately 50 AMD production custodians. We were somewhat confused during the deposition about what anomalies [REDACTED] was referring to, in part because there was an initial reference to [REDACTED] (rather than [REDACTED]). If [REDACTED] was in fact referring to the production issue that Bernie first identified to me by email in November 2008, then we don't need any further information. If the anomalies refer to some other situation, please advise and we may request additional information.

Please let me know if you would like to discuss this. I am on vacation, but can make myself available as needed.

Thanks,

Tom

Thomas J. Dillickrath
Partner

9/18/2009

Exhibit J



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August 25, 2009

OUR FILE NUMBER
008,346-163

VIA E-MAIL AND U.S. MAIL

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Re: *AMD v. Intel*

Dear Mr. Pickett:

This letter provides the further information that you requested at the depositions of AMD's Rule 30(b)(6) preservation witnesses, as well as information separately requested in Mr. Dillickrath's email to me of August 19, 2009.

First, as discussed at deposition and requested by Mr. Dillickrath (his email's Items 3, 4 and 6), attached are the notes of [REDACTED]. We have bates labeled these notes from AMD-412-0000001 to AMD-412-0000063. [REDACTED] materials are bates labeled as AMD-412-0000001 through AMD-412-0000020; [REDACTED] materials are bates labeled as AMD-412-0000021 through AMD-412-0000028; and [REDACTED] materials are bates labeled as AMD-412-0000029 through AMD-412-0000063.

Second, in response to Mr. Dillickrath's Item 1, we are producing again within [REDACTED] notes referenced above (at AMD-412-0000002) the list of the 57 AMD custodians whose back-up data was at one time or another restored.

Third, Mr. Dillickrath's email (Item 3) refers to [REDACTED] testimony and appears to request preparation and production of an updated harvest date list. [REDACTED] testified that he was unaware of an updated list, and we have not prepared one. [REDACTED] at 12:9-11.) As you know, the parties exchanged lists of harvest dates at agreed upon times to provide the information then available, and AMD has complied.

Fourth, Mr. Dillickrath's Item 5 asks about AMD disclosures concerning apparent losses and the custodians at issue. As disclosed in writing to Intel and at deposition, this list is made up of the following custodians: [REDACTED] (See, e.g., [REDACTED])

Depo. at 103:6-14 and 106:20 - 107:3.) In addition, as you are aware, [REDACTED] had a rule setting on his Outlook account that has been the subject of prior AMD disclosures.

Fifth, Mr. Dillickrath asked about the Question 93 interrogatory response, which was served and filed on August 17, 2009.

Finally, Mr. Dillickrath's email inquired about the approximately 50 AMD custodians for whom supplemental productions were made after the September 2009 production cut-off date, and stated: "If [REDACTED] was in fact referring to the production issue that Bernie first identified to me by email in November 2008, then we don't need any further information." [REDACTED] was in fact referring to this issue which affected approximately 60% of the 50 custodians for whom supplemental productions were made. The remainder are individuals for whom AMD obtained additional data in the regular course of its monitoring and review of its collection and production, including review of file counts associated with its production. We trust that this issue is now closed, especially inasmuch as we regard it as falling clearly within our agreement to "stand down" on supplemental productions. As you know, we have already withdrawn both document requests and deposition topics contained in AMD's Rule 30(b)(6) notice on this issue as part of, and in reliance on, that agreement.

Sincerely,



David L. Herron
of O'MELVENY & MYERS LLP

Enclosures

cc: Eric Friedberg, Esq. (by email)
Jennifer Martin, Esq. (by email)
Jason Novak, Esq. (by email)

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