IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION	MDL No. 05-1717-JJF))
ADVANCED MICRO DEVICES, INC. and AMD INTERNATIONAL SALES & SERVICE, LTD.,) C.A. No. 05-441-JJF
Plaintiffs,))
v.))
INTEL CORPORATION and INTEL KABUSHIKI KAISHA,,	
Defendants.)))
PHIL PAUL, on behalf of himself and all others similarly situated,) C.A. No. 05-485-JJF
Plaintiffs,)))
vs.	PUBLIC VERSION-
INTEL CORPORATION,	REDACTED
Defendant.)

EXHIBITS
TO THE DECLARATION OF BRIAN C. ROCCA
VOLUME 2 OF 4
(Nos. 13-29)

cc:

James L. Holzman, Esquire

(By electronic mail)

Frederick L. Cottrell, II, Esquire

(By electronic mail)

J. Clayton Athey, Esquire (By electronic mail)

Dated: October 14, 2009

Richard L. Horwitz (#2246) W. Harding Drane, Jr. (#1023)

POTTER ANDERSON & CORROON LLP Hercules Plaza, 6th Floor

1313 N. Market Street

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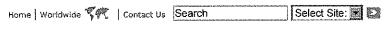
Attorneys for Defendant

Intel Corporation and Intel Kabushiki Kaisha

EXHIBITS 13-16 HAVE BEEN REDACTED IN THEIR ENTIRETY

Exhibit 17





Processors ATI Products Embedded Solutions Support & Drivers About AMD Where To Buy

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New Economic Study Finds Intel Extracted Monopoly Profits of \$60 Billion Since 1996

Also Finds Consumers and Computer Manufacturers Could Gain Over \$80 Billion from Full Competition in Microprocessor Market

Sunnyvale, Calif. -- August 2, 2007 -- A new economic study issued today by Dr. Michael A. Williams, Director, ERS Group, found that Intel has extracted monopoly profits from microprocessor sales of more than \$60 billion in the period 1996-2006. Dr. Williams' analysis explains why pro-competitive justifications for Intel's monopoly profits are implausible.

Williams also found that consumers and computer manufacturers could gain over \$80 billion over the next decade if the microprocessor market were open to competition. The analysis noted that consumers would save at least \$61 billion over the period, with computer manufacturers projected to save another \$20 billion, enabling them to increase their investment in R&D; create improved products and greater product variety; and provide additional innovation benefits to computer buyers around the world.

The ERS Group is an economic and financial consulting firm retained by AMD's outside counsel, O'Melveny & Myers IIP.

Dr. Williams said, "Intel has extracted \$60 billion in monopoly profits over the past decade; over the next decade consumers and computer manufacturers would save over \$80 billion from a fully competitive market."

Williams continued, "In light of the recent European Commission decision and prior Japan Fair Trade Commission actions, this analysis asks not whether Intel has engaged in anticompetitive conduct, but how much Intel has gained from the alleged conduct."

Thomas M. McCoy, AMD executive vice president, legal affairs and chief administrative officer stated, "Intel's monopoly profits of \$60 billion directly contradict Intel's claim that its business practices have resulted in lower prices – in fact this study shows that billions of dollars have moved straight from consumers' pockets to Intel's monopoly coffers."

McCoy continued, "That \$80 billion translates into an Intel monopoly tax on every consumer who purchases a computer. That's a jaw-dropping figure that helps explain why the European Commission brought antitrust charges against Intel – the real harm that its abuse of monopoly power causes competition and consumers."

A summary of the study is attached.

About Dr. Michael Williams and ERS Group

ERS Group is an economic and financial consulting firm that specializes in analyses for complex business litigation. Over 3,000 clients, including Fortune 500 companies, law firms, universities, industry trade associations and government agencies, have retained ERS Group professionals in a wide variety of cases involving numerous industries.

Michael Williams, Ph.D. is a Director of ERS Group. He specializes in antitrust, industrial organization, and regulation. As an economist in the Antitrust Division of the U.S. Department of Justice and as a consultant, he has examined and provided expert testimony on a variety of antitrust and regulatory issues, including monopolization, price fixing and tying arrangements. He has served as a consultant to the U.S. Department of Justice and the Federal Trade Commission in such matters as the proposed mergers of Exxon and Mobil, BP Amoco and ARCO, and in litigated matters such as FTC v. Rambus and U.S. et al. v. Oracle. His Ph.D. in economics is from the University of Chicago. He presented testimony this year as part of the joint DOJ-FTC examination on the future of the antitrust rules governing single-firm conduct.

For more information on AMD's commitment to fair and open competition, visit http://www.amd.com/breakfree

About AMD

Advanced Micro Devices (NYSE: AMD) is a leading global provider of innovative processing solutions in the computing, graphics and consumer electronics markets. AMD is dedicated to driving open innovation, choice and industry growth by delivering superior customer-centric solutions that empower consumers and businesses worldwide. For more information, visit www.amd.com.

A Quantification of Intel's Historical Monopoly Profits from the Sale of Microprocessors and a Projection of Future Consumer and Computer Manufacturing Gains in a Fully Competitive Marketplace News Room Home Page 2 of 3

A report by Dr. Michael A. Williams, Director, ERS Group

KEY STUDY FINDINGS:

- Intel extracted monopoly profits from the sale of microprocessors of approximately \$60 billion in the period 1996 - 2006.
- Pro-competitive explanations for Intel's \$60 billion in monopoly profits are implausible for the following reasons:
 - Recent European Commission charges and prior findings from the Japan Fair Trade Commission;
 - O The rarity of firms that achieved a 16-percent or more economic return;
 - An examination of strong companies that have much lower economic returns, including Pfizer, Wyeth, ExxonMobil Corp., and Target;
 - Intel's reported losses on its non-microprocessor businesses, showing that Intel lacks sustained, competitive advantages from brand-name loyalty and other factors;
 - O Negative average economic returns earned by other semiconductor companies.
- Consumers and computer manufacturers would conservatively gain approximately \$81 billion in the next decade from full competition in the microprocessor market.
 - o Consumers, including both home and business users, would save at least \$61 billion.
 - Computer manufacturers are projected to save at least another \$20 billion over the next 10 years.
- That represents a consumer savings of approximately 1.5% off the retail price of a \$1,000 highperformance desktop computer in a fully competitive market.
- Computer manufacturer savings would result in: (1) increased research and development, (2) greater product variability, and (3) further innovation, providing additional benefits to computer buyers.

Monopoly Profits

Intel's economic return on its microprocessor business was calculated using publicly available
information and standard economic methodology. The method begins with standard financial
statements and derives from them the information necessary to calculate a firm's economic profits. It
is based on Nobel Prize-winning research conducted by Merton Miller and Franco Modigliani and used
by more than half the Fortune 1,000 firms to analyze their economic performance; Wall Street
investment banks to assess potential investments; and leading management consulting firms, such as
McKinsey & Co. and Stern Stewart & Co.

Intel's Total Profits (total return 25.95%)	\$141.8 billion
Competitive Profits (cost of capital 9.94%)	- 54.2 billion
Result: Economic Profits (economic return 16.01%)	\$87.7 billion
Portion of Economic Profits Attributed to Assumed Advantages (5.0%)	- \$27.3 billion
Result: Monopoly Profits (11.01%)	= \$60.4 billion

- Intel's economic profit (\$88 billion) was calculated by first determining total profits (\$142 billion) and subtracting from that value its cost of capital (\$54 billion—which includes a normal profit), resulting in economic profits of \$88 billion.
- Intel's economic profit margin of 16-percent (the \$88 billion) stands in stark contrast to the economic
 returns of 498 other public companies examined. Like Intel, they had capital of \$1 billion or more in
 1996. Of these companies, the average economic return was less than one percent. Intel earned an
 economic return higher than 99-percent of these large companies, including companies with strong
 brands, research and development, or intellectual property rights, such as Pfizer, Wyeth, ExxonMobil
 Corp., and Target.
- Only four companies earned economic returns of 16 percent or more Microsoft (38.25%), UST Inc. (28.54%), Coca-Cola Co. (16.58%), and Intel (16.01%) and each of these companies has been associated with antitrust determinations. Of course, high economic returns by themselves do not demonstrate anticompetitive conduct.
- To be conservative, the study next provided Intel with a generous assumption that 5 percentage points (\$28 billion) of its economic return were attributable to legitimate advantages. That left the \$60 billion monopoly profit figure.

Consumer and Computer Manufacturer Savings

 The calculation of future consumer and computer manufacturer gains employed four conservative assumptions: News Room Home Page 3 of 3

- Intel's price premiums would fall by 50% over five years; price premiums were calculated by comparing Intel products with their AMD counterparts.
- o AMD's market share of units sold would rise from 27% to 35% over five years.
- O Total industry sales would grow at only half the historical growth rates.
- o OEMs would pass-through 75% of cost savings to computer buyers.
- Data from 2Q2006 through 1Q2007 were used as the basis for projecting consumer benefits from increased competition over 10 years.
 - o Consumer benefits for 2012-2016 set equal to benefits in 2011.
- As an example of consumer savings on a specific computer purchase, the study notes that consumers
 would save more than 1.5 percent off the cost of a \$1,000 performance desktop computer.

Intel microprocessor ASP – 2006 \$121.12

Intel microprocessor ASP – 2011 (projected) - \$101.30

Total price reduction for computer manufacturer: \$19.82 (16 percent less)

Savings passed on to consumer: 75%

Total consumer savings per computer:

\$14.87, or 1.5% of a \$1000 performance desktop computer

About Dr. Michael A. Williams and ERS Group

- ERS Group is an economic and financial consulting firm that specializes in analyses for complex business litigation. Over 3,000 clients, including Fortune 500 companies, law firms, universities, industry trade associations and government agencies, have retained ERS Group professionals in a wide variety of cases involving numerous industries.
- The ERS Group, an economic and financial consulting firm retained by AMD's outside counsel, O'Melveny & Myers LLP, specializes in analyses for complex business litigation.
- Michael Williams, Ph.D. is a Director of ERS Group. He specializes in antitrust, industrial organization, and regulation. As an economist in the Antitrust Division of the U.S. Department of Justice and as a consultant, he has examined and provided expert testimony on a variety of antitrust and regulatory issues, including monopolization, price fixing, and tying arrangements.
- Williams has served as a consultant to the U.S. Department of Justice and the Federal Trade
 Commission in such matters as the proposed mergers of Exxon and Mobil, BP Amoco and ARCO, and
 in litigated matters such as FTC v. Rambus and U.S. et al. v. Oracle. His Ph.D. in economics is from
 the University of Chicago. He presented testimony this year as part of the joint DOJ-FTC hearings on
 the future of the antitrust principles governing single-firm conduct.

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Exhibit 18

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., a Delaware corporation, and AMD INTERNATIONAL SALES & SERVICE, LTD., a Delaware corporation,)) Civil Action No. 05-441 JJF)
Plaintiffs,)
vs.)
INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation,)))
Defendants.)
IN RE:) Civil Action No. 05-MD-1717-JJF
INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION)

DECLARATION OF CHARLES P. DIAMOND IN SUPPORT OF OPPOSITION BY ERS GROUP AND ADVANCED MICRO DEVICES, INC. AND AMD INTERNATIONAL SALES AND SERVICES, LTD. TO INTEL'S MOTION TO COMPEL PRODUCTION DISCOVERY MATTER #8

- I, Charles P. Diamond, declare as follows:
- 1. I am a partner in the law firm of O'Melveny & Myers LLP, counsel for plaintiffs Advanced Micro Devices, Inc. and AMD International Sales and Services, Ltd. in this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto.
- 2. O'Melveny & Myers LLP hired Dr. Michael A. Williams and his firm ERS Group to assist counsel in understanding certain economic matters at issue in this litigation. As part of that retention, earlier this year, O'Melveny asked Dr. Williams to analyze and quantify the profits Intel had extracted from its x86 microprocessor monopoly that could not be attributed to pro-competitive justifications. This research was commissioned in part to respond to questions posed by several competition authorities, both here and abroad, that are investigating Intel's conduct. While AMD may seek to introduce this or similar analyses into evidence in this case, no decision has been made to do so or to designate Dr. Williams or ERS Group as testifying

experts. Indeed, the Court has not yet scheduled a date for the identification of testifying experts or the exchange of expert reports.

- 3. Because of the importance of the x86 market to the U.S. and world economies and continuing productivity gains, this lawsuit and the related competition authority investigations have captured substantial public interest. As developments warrant, AMD has publicized them, generally through press releases and interviews with the business and legal press. Intel has done the same. For example, attached as Exhibit A is a September 1, 2005 release Intel issued at the time of its answer, which characterized the AMD Complaint as "a case study in legal dissonance." Intel has also issued releases seeking to minimize the significance of its agreement to comply with recommendations of the Japanese Fair Trade Commission after that agency issued a Statement of Objections ("SO") against Intel (March 31, 2005), and to dismiss as "only preliminary" the SO issued by the European Commission's Directorate General for Competition concerning Intel's business practices (July 27, 2007).
- 4. Intel executives have also been aggressive in seeking out journalists willing to publish Intel's "spin." By our count, during July and August, 2007 alone, Intel's corporate communications director, Chuck Mulloy, and its general counsel, Bruce Sewell, have appeared in the business press seventeen times claiming that competition in the x86 microprocessor market is fiercely competitive. At least twice, Intel executives attacked Dr. Williams' report as "wildly speculative and based on flawed assumptions about Intel and the market" and, as a reporter summarized their views, constituting a "slanderous smear campaign." A synopsis of these press accounts is attached as Exhibit B.

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

Executed November 9, 2007, at Los Angeles, California.

CHARLES P. DIAMOND

Exhibit A

Intel Files Response to AMD Complaint

SANTA CLARA, Calif., Sept. 1, 2005 - Intel Corporation today filed its response to a lawsuit recently initiated by Advanced Micro Devices (AMD) regarding Intel's business practices. In the response, Intel refutes AMD's claims and states that its business practices are both fair and lawful.

The Intel response explains that AMD's claims are factually incorrect and contradictory. In addition, AMD's complaint -- by attempting to impede Intel's ability to lower its prices - would hurt consumers, not help them.

"Innovation, investment, customer focus and great products have led to Intel's success over the years," said <u>Bruce Sewell</u>, Intel general counsel. "These are the things that have been fundamental to our decision making as we've sought to move the industry and the pace of technology forward.

"Likewise, AMD has made its own business decisions and choices that have determined its position in the marketplace. Yet, with its lawsuit, AMD seeks to instead blame Intel for the many business failures AMD has experienced that are actually a direct result of AMD's own actions or inactions."

In its response filed today with the U.S. District Court in Delaware, Intel described the semiconductor industry business model that has led to phenomenal growth and steadily increasing value to customers over the years. That business model is based on three fundamental principles: production, product and price. The Intel response indicates that "AMD's choices and behaviors with respect to each of these core principles over the period covered by the complaint provide a compelling answer to the allegations it has made in this case."

Intel's response further states, "AMD's complaint presents a case study in legal dissonance. Although AMD has purportedly brought its complaint to promote competition, its true aim is the opposite. Under the cover of competition law, AMD seeks to shield itself from competition. AMD seeks to impede Intel's ability to lower prices and thereby to allow AMD to charge higher prices. AMD's colorful language and fanciful claims cannot obscure AMD's goal of shielding AMD from price competition."

About Intel

Intel, the world leader in silicon innovation, develops technologies, products and initiatives to continually advance how people work and live. Additional information about Intel is available at www.intel.com/pressroom and blogs.intel.com.

Intel is a mark or registered trademark of Intel Corporation or its subsidiaries in the United States and other countries.

* Other names and brands may be claimed as the property of others.

Exhibit B

Synopsis of Intel Press Accounts

Intel Spokesman: "Microprocessor Market Is Fiercely Competitive." Chuck Mulloy, Intel Spokesman said, "The microprocessor market is fiercely competitive and is functioning properly and consumers are benefiting." [Online Comment on 7/29 at 1:26 pm to Roger Parloff's article in Fortune on 7/29/07]

Intel SVP And General Counsel: Evidence That Industry Is Competitive Is "Compelling." Bruce Sewell, Intel senior vice president and general counsel said, "The evidence that this industry is fiercely competitive and working very well is compelling." [Agence Europe, 7/28/07]

Intel Spokesman: "Prices Of Microprocessors Continue To Go Down." Chuck Mulloy, Intel Spokesman said, "Prices of microprocessors continue to go down. That's a sign of the market operating properly." [Los Angeles Times, 7/28/07]

Intel SVP and General Counsel: "Competition Is Working." Bruce Sewell, Intel senior vice president and general counsel said, "The basis of the complaint is that we are providing discounts, enabling our customers to produce their products more cheaply, and pass savings on to consumers. Competition is working; the only issue is whether AMD can make the margins it would like." [BusinessWeek Online, 7/30/07]

Intel Spokesman: Williams Report Purely Speculative, Unfounded. "Intel dismissed the [Williams] report as filled with "wild" speculation and based on incorrect assumptions." The only thing one can conclude from the study is that if you pay someone enough money you can get them to say almost anything," said Chuck Mulloy, spokesman for the Santa Clara company. [...] In his response, Mulloy called the study "wildly speculative and based on flawed assumptions about Intel and the market." The European Commission filed its charges in a 164-page confidential "statement of objections" that AMD has not seen, he said." [San Jose Mercury News, 8/2/07]

Intel SVP and General Counsel: "Case Is Based On Complaints from a Direct Competitor." Bruce Sewell, Intel senior vice president and general counsel said, "The case is based on complaints from a direct competitor rather than customers or consumers." [Statement from Intel Press Release, 7/27/07]

Intel Spokesman: Customers Aren't Complaining. Chuck Mulloy, Intel Spokesman said, "First, the Statement of Objection in no way changes the fact that AMD has been and continues to be the source of complaints about Intel's business practices. There are no customers complaining, there are no consumers complaining." [Online Comment on 7/29 at 1:26 pm to Roger Parloff's article in Fortune on 7/29/07]

Intel Spokesman: AMD Engaging In Slanderous Smear Campaign. "AMD is trying to damage Intel's reputation. It's determined that even if it loses the antitrust suit, in the end Intel will look like the bad guy to the consumer," [Chuck Mulloy] said. What finally

got Intel's goat was an "economic study" that AMD was trying to "peddle to the press," Mulloy said, that makes it look like AMD is laying its claims for damages way this side of a trial that isn't supposed to begin until April of 2009." [Virtualization SYS-CON Media, 8/5/07]

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Research Director: Customer Impact Disputed. Chris Ingle, a consulting and research director at technology consultancy Interactive Data (IDC) said, "Prices are going down, both companies continue to innovate, and consumers are getting more for their money. It is difficult to see where consumers are losing out." [BusinessWeek Online, 7/30/07]

Intel Spokesman: AMD Engaging In Slanderous Smear Campaign. ""AMD is trying to damage Intel's reputation. It's determined that even if it loses the antitrust suit, in the end Intel will look like the bad guy to the consumer," [Chuck Mulloy] said. What finally got Intel's goat was an "economic study" that AMD was trying to "peddle to the press," Mulloy said, that makes it look like AMD is laying its claims for damages way this side of a trial that isn't supposed to begin until April of 2009." [Virtualization SYS-CON Media, 8/5/07]

Intel Spokesman: EC Made Errors of Fact. Bruce Sewell, Intel senior vice president and general counsel said, "I can tell you that having read the SO there are factual assumptions which have been made which we think the Commission has simply gotten wrong – not intentionally...the Commission has simply misunderstood" [Reuters News, 7/27/07]

Intel Spokesman: Discounts are Pro-Competition. Bruce Sewell, Intel senior vice president and general counsel said, "We are confident that we can show the commission how the discounts we have offered our customers are actually procompetition, rather than hindering it." [Dow Jones International News, 7/27/07]

Intel Spokesman: We Have Other Facts. Bruce Sewell, Intel senior vice president and general counsel said, "The commission has chosen certain facts which it uses to conclude that there is an exclusivity arrangement. We have other facts to dispute that." [Wall Street Journal Europe, 7/28/07]

Intel Spokesman: We Can Correct Commission. Bruce Sewell, Intel senior vice president and general counsel said, "The commission has made some assumptions and drawn some conclusions which we think we can correct." [Wall Street Journal Europe, 7/28/07]

Intel Spokesman: Intel Hasn't Broken Laws. Bruce Sewell, Intel senior vice president and general counsel said, "I don't believe there is any kind of smoking gun. And the way the commission calculated costs is based on "factual errors and errors of assumption." [BusinessWeek Online, 7/30/07]

Intel SVP And General Counsel: "The Way Competition Is Played Out In This Market Is Through Price Discounts." Bruce Sewell, Intel senior vice president and general counsel said, "The way...in which competition is played out in this market is through price discounts by Intel and by AMD and there is nothing unlawful about those discounts. We believe that these rebates are lawful anywhere around the world. . . . We understand the rules, we've looked at the rules and we think we are well within them." [Associated Press, 7/27/07]

IN THE UNITED STATES DISTRICT COURT DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Hand Delivery to the following:

Richard L. Horwitz, Esquire W. Harding Drane, Jr., Esquire Potter Anderson & Corroon LLP 1313 North Market Street P. O. Box 951 Wilmington, DE 19899 James L. Holzman, Esquire Prickett, Jones & Eliott, P.A. 1310 King Street P.O. Box 1328 Wilmington, DE 19899-1328

and have sent via electronic mail to the following non-registered participants:

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

Daniel A. Small, Esquire Cohen Milstein Hausfeld & Toll, L.L.C. 1100 New York Avenue, N.W. Suite 500 - West Tower Washington, DC 20005 Robert E. Cooper, Esquire Daniel S. Floyd, Esquire Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, California 90071-3197

/s/ Steven J. Fineman

Steven J. Fineman (#4025) Richards, Layton & Finger, P.A. One Rodney Square P.O. Box 551 Wilmington, Delaware 19899 (302) 651-7700 Fineman@rlf.com

Exhibit 19 has been redacted in its entirety

Exhibit 20

BEHING BRUSSELS HONG KONG LONDON LOS ANGELES NEWPORT BEACH

1999 Avenue of the Stars Los Angeles, California 90067-6035

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NEW YORK SAN FRANCISCO SHANGHAI SILICON VALLEY TOKYO WASHINGTON, D.C.

OUR FILE NUMBER

008.346.163

WRITER'S DIRECT DIAL (310) 246-6801

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

September 27, 2007

VIA E-MAIL & U.S. MAIL

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

> Re: AMD v. Intel

Dear Dan:

As with all else in this highly complex case, it is not easy to even write a letter that says "this letter is in response to your letter of X date." So here goes: This letter responds to your letter of September 14th responding to my letter of July 30th and the recently agreed to Case Management Order #3 entered on September 18, 2007 by Special Master Poppiti and So Ordered on September 19th by United States District Court Judge Farnan, plus the additional discussions that have taken place between you and Mike and between you and me.

I will address the issues in the order set forth in your letter:

Privilege Review and Logs

Pursuant to Case Management Order #3, paragraph 6, the parties have agreed to negotiate in good faith to arrive at significant modifications in approach, timing and number of privilege logs that will be required in the future. You and I have agreed to meet and confer on privilege log protocols on Monday, October 8, 2007.

Intel's Meet and Confer Regarding AMD's Document Responses

We confirm that to the extent AMD made objections to Intel's First, Second, and Third Requests for Production but nevertheless agreed to produce documents, AMD made a complete production notwithstanding those objections (other than for privilege).

Your September 14 letter raised several questions about AMD's responses to certain of Intel's document requests -- specifically, those requests to which AMD asserted objections and did not agree to produce documents. First, you asked whether AMD designated custodians to address those requests. The answer is that AMD did not separately designate custodians whom it

Daniel S. Floyd, Esq., September 27, 2007 - Page 2

would not otherwise have designated solely for the purpose of responding to those requests. Second, you inquired whether documents responsive to those requests were produced from the files of custodians designated for those requests. Because no custodians were designated specifically for the purpose of responding to those requests, the answer is no. Whether AMD produced documents responsive to these requests from the files of custodians designated for other purposes, however, depends upon the particular request. For example, we produced documents from designated custodians' files that we believe would be responsive to a reasonable interpretation of Requests 161, 162, and 168. We would be pleased to discuss these requests, our interpretation of them, and what we have produced in response to them, further with you. We also would like you to provide the same information you have requested with respect to Intel's responses to AMD's document requests and look forward to discussing Intel's objections to AMD's requests at the same time.

Your September 14 letter also discusses "corporate requests" and asks us to confirm that AMD has been producing documents responsive to corporate requests from custodian files. We can confirm that AMD has been doing so, consistent with the terms of the parties' agreed-upon document production protocol. Please confirm that Intel has as well. We also agree with your suggestion that we need to reach closure as soon as possible on production from databases and shared drives, as well as on any remaining issues regarding the corporate requests. I understand that you and Mike Maddigan are planning on meeting tomorrow on these issues.

Glover Park Subpoena

In your September 14 letter, you also asked for information that you contend would help you evaluate AMD's privilege objections to the subpoena Intel issued to Glover Park. In response to your questions: (1) Glover Park was retained by O'Melveny & Myers LLP as of January 1, 2005; (2) AMD is asserting privilege with respect to documents from November 1, 2004, when Glover Park began working on AMD's behalf, through the present; and (3) the general purpose and scope of Glover Park's retention is to provide such services as O'Melveny & Myers LLP may require, including assisting in the testing and development of litigation and jury themes, preparing both AMD's legal and company spokespeople and written materials concerning the litigation; and providing expertise to help make this dispute understandable to legal and non-legal audiences. While we are not entirely sure what you mean when you refer to "responsive communications with third parties that would not be subject to any claim of privilege," we would indeed, as your letter anticipates, be willing to meet and confer with you regarding inquiry about those communications. We suggest that you and Mike address this issue as well.

ERS Subpoena

As pertains to Requests 257 and 258, Dr. Williams and the ERS Group are economic consultants retained by O'Melveny and Myers to assist counsel in understanding certain economic matters, including Intel's economic profitability. Intel's requests invade the attorney-client and work product privileges in seeking the premature and non-reciprocal disclosure of

Daniel S. Floyd, Esq., September 27, 2007 - Page 3

expert information in a manner and time that is inconsistent with the Amended Stipulation and Protective Order as entered by the Court on May 11, 2007, and with FRCP 26(a)(2)(B). Nor has AMD's public reference to certain of Dr. William's findings resulted in any override of these controlling provisions. Waiver is not the issue. The federal rules do not permit a party to conduct discovery for the purpose of publicly rebutting expert opinions its adversary may have injected into the public debate. Neither Dr. Williams nor ERS Group has as yet been designated as an expert witness by any party, and their opinion, whether or not publicly referenced, is presently immaterial to this action. Any ultimate materiality--together with Intel's concomitant right to inquire--will only ripen if and when Intel finds itself having to refute their opinion in this litigation. That will happen, if at all, only after the parties exchange their respective expert reports.

Rule 26

In your letter you write: "I wanted to clarify what our concerns are concerning the Rule 26 disclosure. We think the parties should agree to a timetable to update the disclosures. Our concern is two-fold: that AMD listed only a handful of third party witnesses, notwithstanding the many companies it has identified in its complaint and discovery responses, and our concern that the listing of the AMD related witnesses at this point are too broad and with boilerplate descriptions. A simple way to address the issue without having to fight about the adequacy of either party's initial efforts would be to select a date to supplement the disclosures under Rule 26(e), so the parties could rely upon the disclosures for purposes of deposition selection."

This is very puzzling to us given both the language of Rule 26(e) and the lengthy history of this case. The language of Rule 26(e) which addresses "Supplementation of Disclosures and Responses" provides that:

"A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing."

In this case, we negotiated the Custodian Stipulation and Order, which provided for each party's identification of the Master Custodians pursuant to an articulated (and highly negotiated) standard requiring the representation by both parties that "After reasonable investigation, AMD/Intel hereby represents that the individuals below are believed to comprise all of its and its subsidiaries' personnel in possession of an appreciable quantity of non-privileged, material, non-duplicative documents and things." It goes on to address former employees and to set out a four-pronged test for the 20% Party-Designated Production Custodians consisting of:

"The Party-Designated Production Custodian List shall constitute a representation by the party that the individual custodians are believed in good faith to include: (i) the most important custodians with knowledge of the issues framed by the pleadings; (ii) the custodians believed

Daniel S. Floyd, Esq., September 27, 2007 - Page 4

likely to have the most non-privileged, non-duplicative documents responsive to the other party's Initial Document Requests; (iii) the custodians whose files, taken together, constitute a comprehensive response to the other party's Initial Document Requests; and (iv) all persons whom the party then reasonably believes likely to be called by the party as a witness at trial."

The Custodian Stipulation and Order further sets out an informal discovery process pursuant to which Intel and AMD exchanged both organization charts and 100s of pages of responses to two separate rounds of requests plus follow ups including detailed descriptions of each custodian's job responsibilities. See, for example, Intel's request which asks:

AMD ACCOUNT TEAMS//SALES & MARKETING GROUP

1. For each of the following accounts – Acer, Alienware Corporation, Appro International, Asus Computer International, Averatec, Dell, Egenera, Fujitsu, Fujitsu-Siemens, Gateway, Hewlett-Packard, Hitachi, IBM, Lenovo, LG, MPC Computers, MSI Computer Corp., NEC, NEC-CI, Network Appliance, Rackable Systems, Samsung, Solectron, Sharp, Sony, Sun Microsystems, Supermicro Computers, Toshiba, Trigem, ASI, Avnet, Bell Microproducts, D&H Distributing, Epox International, Foxconn, Hon Hai Precision, Ingram Micro, Intcomex, Mitex, Supercom, Synnex, Tech Data, Tyan, Aldi, Best Buy, Circuit City, CompUSA, Costco, Dixon's (DSG), Fry's, MediaMarkt, Office Depot, Office Max, Toys R Us, Vobis, Wal-Mart, Staples, Time Computers, Carrefour Conforama (PPRP), Yakamo – please answer the following questions:

1

¹ To date, AMD has provided the following information regarding its account teams: Barton Arnold ("works on the IBM account"); Donna Becker (Manager, Microsoft Alliance Marketing); James Beggans (HP Sales Development Manager); Christopher Calandro (Global Account Manager, Gateway); Jerome Carpentier ("he focuses on working with HP, IBM, and Sun"); Brian Casto (IBM Sales Development Manager); Walter Cataldo (Account Executive); Ted Donnelly (IBM Global Account Manager); James Elder (Account Exec., WW Avnet); Anne Flaig (Director, Sales for HP; Director, Sun); Jeff Fonseka (Senior Sales Rep. - Sony); Bradley Fryer (Channel Sales Manager - Fry's, Costco, Future Shop, Best Buy Canada, Amazon.com, Walmart); Jeff Hartz (Channel Sales Manager - Walmart, Sam's Club, Radio Shack, CompUSA, Office Depot, and Tiger Direct); Yoshimi Ikeda ("responsible for the Hitachi account in 2003 and also had a previous relationship with Toshiba"); Masato Ishii (Regional Sales Manager -Sony, Toshiba, Hitachi, PCS, NEC); Takayuki Kuroshima (Regional Sales Manager - Japan tier one OEM accounts); JD Lau ("manages the Lenovo account in China"); Makato Matsunaga ("worked on the Fujitsu account, among others"); Takamichi Miyamoto (FSE NEC); Tetsuji Murai ("worked on the Toshiba account"); Ken Oberman ("at various times had responsibility for the Averatec, Acer, Fujitsu, Sony, Sun Micro, and Toshiba accounts"); Naoko Ohgimi (Customer Support Engineer - Fujitsu); Gerard Poulizac (Regional Sales Manager - HP EMEA, NEC-CI); Derek Reaves (Distribution Business Manager - Avnet); Tom Rogers (Channel Sales Manager - Best Buy, Office Max, Micro Center); Claudia Santos (Business Development, Regional Manager - Toshiba, Sun, HP, IBM, Positive, Procomp, Novadata, Itautec, Semp); Takeshi Shimizu (FSE - IBM, Sun and Cray (Japan)); Masahide Shuyama (Sales Manager - NEC); Kelly Talbot (Channel Sales Manager - Circuit City, Staples, Business Depot, Hartco); Adam Tarnowski (Senior Account Manager - Appro, Rackable): Dwight Tausz (Global Account

Daniel S. Floyd, Esq., September 27, 2007 - Page 5

- a. Who is the current Account Manager or person at AMD with primary responsibility for managing the account? How long have they been in this role? What are their primary duties and responsibilities in this role? To whom do they report?
- b. Since January 1, 2000, what other individuals have served as Account Manager or had primary responsibility for managing the account? For each, please identify the time period during which they held this position, their responsibilities (if different from above), the person they reported to, and their current position.
- c. Since January 1, 2000, what other individuals have been assigned to the account or account team with responsibilities that included directly dealing with customers? For each, please identify the position held, their primary responsibilities, the time period during which they held the position, the person they reported to, and their current position.
- d. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for negotiating directly with the account regarding the sale of AMD microprocessors or products incorporating AMD microprocessors? Please identify the time period during which each individual was in this role.
- e. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for dealing or negotiating with the account with respect to any type of marketing or promotional program?

In addition to the footnote, AMD responded to this request with a 71 page spreadsheet response, which was then followed-up by further Intel requests and AMD submissions.

The Custodian Stipulation and Order established corporate requests, and a protocol for Adverse-Party Production Custodians and Free Throw Custodians. Intel altered its Master Custodian and 20% Party-Designated Custodian list to delete Intel custodians after the decision on Intel's Motion to Dismiss based on the Foreign Trade Antitrust Improvements Act and put them back on the lists after the decision on AMD's Motion to Compel. The Custodian Stipulation and Order has been the basis on which both parties have conducted document production since the middle of May 2006. The parties have laboriously worked to revise certain of these protocols (but not the manner and designation of the custodians) in Case Management Order #3. It is hard to imagine a case where the disclosure of the party witnesses and their roles and responsibilities is more complete than this one.

Manager – IBM, Lenovo); Chris Towne (Corporate Distribution Business Manager – ASI, Bell Microproducts); Keisuke Toyooka (Sales Manager – Sony); Renato Urani (Account Manager – Acer); Jeff Venditte (Sr. Sales Account Manager – HP); Lanzhi Wang (OEM Account Manager – China OEMs); Alan Windler (responsible for Gateway account).

Daniel S. Floyd, Esq., September 27, 2007 - Page 6

With respect to third parties, we have jointly -- with AMD taking the lead -- proceeded on a custodian by individual custodian basis to identify (and narrow) the list of key custodians for each of the subpoenaed third parties. Again, it is hard to imagine a case where the disclosure of third party witnesses is more robust than this one.

Accordingly, we do not believe that Rule 26(e) supplementation is required. That said, both parties have an interest once we commence the deposition phase of discovery and have made our way through the majority of the deposition process in making sure that the witnesses each party intends to call at trial have been identified and an opportunity provided for the other side to depose those witnesses.

I look forward to discussing these matters with you.

Very truly yours,

Linda J. Smith

of O'Melveny & Myers LLP

LJS:deb

Exhibits 21-26 have been redacted in their entirety

Exhibit 27

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
IRVINE SPECTRUM
LONDON
NEWPORT BEACH

400 South Hope Street Los Angeles, California 90071-2899

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SHANGHAI
SILICON VALLEY
TOKYO
WASHINGTON, D.C.

October 24, 2005

our file number 008,346-163

VIA E-MAIL AND U.S. MAIL

John J. Rosenthal, Esq. Howrey LLP 1299 Pennsylvania Avenue, N.W. Washington, D.C. 20004 writer's direct dial (213) 430-6230

writer's e-mail address dherron@omm.com

Re: AMD v. Intel: eDiscovery Issue Regarding Preservation

Dear Mr. Rosenthal:

As agreed, this letter provides AMD's responses to the questions posed to Intel in Jeff Fowler's September 23, 2005 letter regarding preservation efforts.

Overview of AMD's Preservation Efforts

Enterprise Level Preservation

- On March 11, 2005, AMD sent preservation notices to the appropriate IT personnel in its various offices. The oldest full backup of the Exchange servers and Windowsenvironment, network shared file servers were located and preserved.
- Beginning March 19, 2005, full backups were made and retained. Over the next several
 weeks the backup schedules were coordinated; going forward, full backups are taken and
 retained every month.
- The monthly full backups are retained in secure locations. Most of the sites send their tapes to Austin, although a few offices retain their backups locally. Compliance is tracked and monitored on a weekly basis.
- AMD's document retention and destruction policies were suspended to prevent the inadvertent destruction of documents that may be relevant to this lawsuit.

Custodian Level Preservation

- On April 1, 2005, AMD issued its first wave of document preservation notices to
 approximately 150 custodians likely to have relevant information. The custodians were
 instructed to preserve all documents and data relevant to the lawsuit. This includes, of course,
 e-mail. Like Intel, AMD also is in the process of moving its custodians subject to the hold
 notice to a new Exchange server on which e-mail can be more easily stored.
- As additional custodians are identified, preservation notices are sent to them and they are put
 on the litigation hold. To date, the list of custodians includes approximately 440 people.
 Appropriate follow-up is conducted as needed to ensure custodian understanding and continued
 compliance with the hold.

Responses to Follow-up Questions

One-Time Backup

How many total tapes were gathered during the snapshot?

AMD is extracting monthly full backups of its Exchange and Windows-environment, shared network servers. Roughly 200 tapes are collected in these backups.

How are they organized/indexed?

These backup tapes are organized by backup type (i.e., Exchange or file server), by site, and by date.

How were instructions for the one-time backup communicated?

The instructions for AMD's monthly backup protocol were communicated in writing. Follow-up phone calls were made to the appropriate IT personnel to confirm understanding and compliance.

Were all snapshots taken on June 20?

The oldest, full backup in existence as of March 11, 2005, was preserved and full backups were to be taken on and in the few weeks immediately after March 19, 2005. The exact date varied by a week or two depending on the sites' backup schedules. Since about May 2005, backup schedules were (and are now) coordinated worldwide.

Have any backup tapes covering periods prior to June 20 been recycled? Prior to the initiation of the enterprise level hold on March 11, 2005, backup tapes were recycled and rewritten in the ordinary course of business.

Have any backup tapes covering periods after June 20 been recycled? Monthly backup tapes for the Exchange and Window-environment, shared network servers have not been recycled since March 2005.

Is there a legal hold on any existing backup tapes other than those constituting the one-time backup?

Legal holds on monthly backup tapes are described above.

Has there been any subsequent effort to target certain systems or segments of the IT structure and conduct more regular backup snapshots of those targets?

As noted, AMD is conducting monthly backups on its Exchange and Windows-based, shared file environment. This has resulted in a large collection of tapes storing the data collected over the time period specified.

Shared Sources

Has [AMD] engaged in any preservation efforts for shared sources other than hold notices to custodians?

As part of the Enterprise Level Preservation, AMD is retaining monthly full backups of its Exchange and Windows-environment, shared network servers — which includes data and documents from employees company-wide.

Custodian Legal Holds

Exactly how many hold notices have been issued?

The current count of custodians to whom a litigation hold has been issued is roughly 440. AMD continues to assess the propriety of maintaining that hold with respect to all of these employees, some of whom AMD does not believe have any relevant information or involvement with any issue relevant to this lawsuit. Accordingly, AMD currently is in the process of reviewing its hold list and is considering paring that list, as appropriate.

How was the hold notice communicated?

The preservation notice was communicated in writing. Follow-up phone calls were made and emails sent on an as-needed basis.

Please describe in specific terms the instructions given to custodians for how to preserve their electronic documents.

At the present time, AMD will adopt Intel's approach to responding to this question.

Is there a procedure to monitor compliance with the legal hold? What is it?

Yes. Compliance is monitored in part by requesting acknowledgement of the custodians' receipt and understanding of the hold notice. Periodic email communications are sent to custodians reminding them of their preservation obligations and providing an opportunity to raise any questions or concerns. Follow-up communications occur on an as-needed basis.

Is there a procedure for preserving the documents of terminated employees? Yes. When a custodian is terminated during the pendency of the litigation hold, AMD harvests that custodian's potentially relevant data and documents. AMD either retains or makes a forensic copy of that custodian's hard drive; segregates and preserves data and documents on Exchange and Windows-environment, shared network servers; and paper documents and other physical storage media are collected as appropriate.

Are there different hold instructions for the custodian once his or her computer has been imaged for collection?

Not at this time.

Miscellaneous Sources

Does [AMD] archive Instant Messages?

No. AMD's current instant messaging ("IM") system cannot be configured to save or log IMs. Accordingly, AMD does not have an instant message archiving system.

What efforts are being made to prevent relevant data from being deleted in Instant Messaging systems?

Custodians have been specifically instructed not to use IMs for business-related, substantive communication. Such business information is to be conveyed via email, memorandum, or other means that can be saved and retrieved. The litigation hold applies to require preservation of any communications by this or other means that is relevant to the lawsuit.

incerely

Please feel free to contact me if you have any questions.

David L. Herron

of O'MELVENY & MYERS LLP

cc: Rod Stone, Esq.

CC1:720688.8

Exhibit 28 has been redacted in its entirety

Exhibit 29

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

IN RE)
INTEL CORP. MICROPROCESSO	OR :	
ANTITRUST LITIGATION	:) MDL Docket No. 05-1717-JJF
ADVANCED MICRO DEVICES, I Delaware corporation, and AMD INTERNATIONAL SALES & SER a Delaware corporation,,))))
Plaint	tiffs,	<i>)</i>)
		Civil Action No. 05-441-JJF
v.)
INTEL CORPORATION, a Delawa corporation, and INTEL KABUSHI a Japanese corporation,)))
Defer	ndants.)))
PHIL PAUL, on behalf of himself and all others similarly situated,)))
Plain	tiffs,))
) Civil Action No. 05-485-JJF
v.)) CONSOLIDATED ACTION
INTEL CORPORATION,) CONSOLIDATED ACTION
Defer	ndant.))

REDACTED -- PUBLIC VERSION **DECLARATION OF JEFFREY J. FOWLER** 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 24, 2008

Jesse A. Finkelstein (#1090) Frederick L. Cottrell, III (#2555) Chad M. Shandler (#3796) Steven J. Fineman (#4025) Richards, Layton & Finger, P.A. One Rodney Square P.O. Box 551 Wilmington, Delaware 19899 (302) 651-7700 Finkelstein@rlf.com Cottrell@rlf.com Shandler@rlf.com Fineman@rlf.com Attorneys for Plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd.

DECLARATION OF JEFFREY J. FOWLER

- I, Jeffrey J. Fowler, declare and state as follows:
- If called as a witness in this matter, I could and would testify competently to the 1. following facts, which are within my personal knowledge. I am Counsel with the law firm of O'Melveny & Myers LLP, and am one of the attorneys 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. My principal responsibilities in this case relate to electronic discovery, including AMD's preservation, collection and production-related protocols. This declaration outlines these protocols. It also addresses the factual inaccuracies and issues raised in the Declaration of John Ashley that Intel filed in opposition to AMD's Motion to Quash.

OVERVIEW OF AMD'S PRESERVATION SYSTEM

Although it did not commence litigation for another three and a half months, AMD's preservation efforts began immediately after the Japan Fair Trade Commission announced its March 2005 decision that Intel had violated Japan's anti-monopoly laws. (Attached hereto as Exhibit A is a true and correct copy of AMD's March 11, 2005 litigation hold notice that sets forth AMD's initial preservation instructions to its IT personnel, a copy of which was previously produced to Intel.) AMD thereafter designed and implemented a preservation plan that included, among others, the following steps: (1) immediate cessation of routine backup tape recycling procedures and the indefinite retention of 30-day backup tapes for all relevant email and file servers; (2) issuance of litigation hold notices to employees identified

LA2:865986.2 1 as relevant in the first instance, and the continued issuance of such hold notices as additional employees were identified; (3) the design and implementation of a plan to migrate the email accounts of hundreds of relevant custodians to an Enterprise Vault and Journal archiving system: and (4) a thorough, forensically-sound harvesting process designed broadly to capture through bit-by-bit imaging all potentially-relevant electronic materials in the possession of AMD custodians.

4. The following paragraphs detail each of these steps, which AMD has previously described to Intel. AMD first described its protocols in a series of telephone conferences and in correspondence with Intel's counsel John Rosenthal in September and October 2005. (See Declaration of David L. Herron ¶ 2; see also a true and correct copy of AMD's counsel's letter to Intel's counsel dated October 24, 2005, describing AMD's preservation protocols, which is attached hereto as Exhibit B.) AMD later provided this information to Intel through document productions, informal technical exchange and written summaries, which I reference below.

Backup Tape Retention

- On March 11, 2005, AMD instructed its IT personnel to retain the oldest full backup of Exchange email and file servers utilized by employees involved in AMD's general purpose x86 microprocessor business. (See Exh. A.) AMD also instructed that a one-time full backup of these servers be made on or around March 19, 2005. In addition, AMD indefinitely suspended its backup tape recycling procedures and, since March 19, 2005, has retained 30-day backups of relevant email and file servers.
- 6. AMD first described its backup tape protocol to Intel in its October 19, 2005 correspondence referenced above. (See Exh. B.) During preservation discovery, AMD then

produced to Intel a written summary titled "AMD's Backup Tape Retention Protocols" which details and describes AMD's backup tape regimen. (A true and correct copy of AMD's Backup Tape Retention Protocols summary is attached hereto as Exhibit C.)

Litigation Hold Notices

On April 1, 2005, AMD issued its first round of litigation hold notices to approximately 150 employees, and has put many hundreds of additional individuals under hold since then. In the course of preservation discovery, AMD produced to Intel every litigation hold notice that AMD delivered to any designated custodian. (As an example, attached hereto as Exhibit D is a true and correct copy of AMD's April 1, 2005 litigation hold notice, which did not materially change over time.) (Id. at 1.) AMD also distributed an explanatory

set of Frequently Asked Questions that further define a hold recipient's obligations. (Id. at 3-5.)

8. As the case progressed, as Intel served its initial rounds of document requests, and as new factual issues became injected into the litigation, AMD continued to identify new document custodians to whom it issued litigation hold notices. AMD has disclosed to Intel both the date on which it delivered a litigation hold notice to each designated AMD custodian and identified the version of the litigation hold notice delivered. (Attached hereto as Exhibit E is a true and correct copy of the list setting forth this litigation hold-related information.) In fact, both parties continued to issue litigation hold notices to custodians as they were identified, including through and after June 1, 2006, when the parties exchanged lists of custodians pursuant to the Stipulation and Proposed Order Regarding Document Production entered in this case. (Attached hereto as Exhibit F is a list of the dates upon which Intel delivered litigation hold

notices to its custodians.) Analysis of the information Intel has produced shows that, as of June 1, 2006, Intel had not delivered litigation hold instructions to % of its custodians. (Id.) From Intel disclosures regarding its preservation system, I understand that Intel did not subject these late-noticed custodians' email accounts to any backup retention mechanism (such as backup tapes or an email archive) until late February 2007.

Implementation of the Enterprise Vault/Journal

- 9. On November 2, 2005, AMD commenced the process of configuring custodians' email accounts to an email archiving tool known as the Enterprise Vault. The Vault archive is designed to preserve large volumes of email from multiple employees in a central, searchable location. The Vault is a commercially-available product offered by Symantec Corporation. Information regarding its basic configurations is public and, therefore, generally available.
- 10. One of the principle purposes of the Enterprise Vault is to improve performance of email servers by serving as a secondary location for large volumes of email. AMD's Enterprise Vault is configured to make a daily "sweep" of email that is 30 days old, storing it safely in a separate server. (This server is commonly referred to as the "Vault.") I understand that, through early May 2006, the Vault swept all email, including email located in Deleted Items folders. In this respect, AMD's Vault is the exact antithesis of an auto-delete function: It is configured to archive (rather than delete) emails that would otherwise affect server performance.
- 11. Email users have complete access to their emails stored in the Vault, although I understand that, with some exceptions, the Vault is configured so that custodians are not able to delete email once it resides there. In fact, from the Microsoft Outlook interface, it is hardly noticeable that emails reside in the Vault. Emails remain in the same folders that exist in

Outlook. For example, Sent Items remain in the Sent Items folder even after they move to the Vault. The Vault also permits the user to archive emails in folders and subfolders similar to Outlook PST files. All active email that is not manually moved to the Vault is swept into the Vault after 30 days. I understand that Intel obtained information about AMD's email archiving solutions during an informal technical exchange with one of AMD's IT representatives in September 2007.

- 12. A major advantage to the Vault is that it discourages users from saving email in various locations on hard drives and networks. Instead, the email is stored in a single, controlled location. The Vault is also capable of storing PST files that users created prior to the implementation of the Vault through a process known as "migration." Among other reasons, AMD migrated custodians' old PST archives into the Vault in order to encourage email users to both utilize the Vault and to cease the use of the decentralized, less stable PST archives. AMD's data collection protocol envisioned harvesting these "historic" Outlook PST files for this litigation not only by means of Vault exports, but also by obtaining bit-by-bit images of custodians' hard drives and harvesting personal network space where copies of the data might also reside.
- 13. In addition to enabling the Vault, AMD also enabled "journaling" on custodians' Exchange email boxes. The "Journal" is a setting in the Microsoft Exchange email system that, once enabled, makes a copy of every email -- sent or received -- for the enabled email user. Copies of these emails are stored in a separate, searchable archive. I understand that, with some exceptions, AMD typically enabled the Journal function for a custodian either concurrent with or within a few days of the migration of the custodian's email account to the Vault.

14. By the end of November 2005, AMD had migrated the email accounts of 65% of all AMD custodians designated so far during document discovery in this case to its Journal; by March 2006, that number was 76%, increasing to 85% by August 2006. (Attached hereto as Exhibit G is a true and correct copy of a list AMD produced to Intel that identifies the dates upon which each designated AMD custodian's email account was configured to the Journal.) I understand from the representations made by Intel that, with the exception of a limited number of Intel custodians, Intel did not adopt and fully implement an email archiving system until March 2007 -- approximately 21 months after the lawsuit began and over 16 months after AMD implemented these tools. (Attached hereto as Exhibit H is a true and correct copy of the list of dates on which Intel migrated its custodians' email accounts to Intel's email archiving tool.)

Forensic Harvesting

Case 1:05-md-01717-JJF

- 15. In October 2005, AMD commenced a comprehensive, forensically-sound data collection effort. (Attached hereto as Exhibit I is a true and correct copy of the "Summary of AMD's Document Collection Protocols" that AMD produced to Intel.) AMD utilized qualified consultants and IT professionals to obtain forensically-sound, bit-by-bit images of custodian hard drives. AMD's electronic discovery vendor, Forensics Consulting Solutions (hereafter "FCS"), maintains the images of the computer hard drives and external storage media that were collected (or "harvested") from AMD custodians.
- 16. AMD harvested custodian data on more than one occasion, including both before and after Vault and Journal implementation. AMD also collected email and other electronic documents from redundant sources, including each custodian's Journal, Vault, personal network space, and external storage media. (Attached hereto as Exhibit J are true and correct copies of the lists of "harvest" dates for AMD's designated custodians that AMD produced to Intel.)

17. During this case, the parties, their eDiscovery Liaisons, and the parties' vendors have established an effective practice of information exchange on electronic discovery issues that has often facilitated disclosure of eDiscovery-related information without need for formal discovery. For instance, the parties' eDiscovery Liaisons communicate frequently, certainly weekly if not more often, about technical production issues, among many other things. In addition, each side has participated in a number of "informal technical exchanges" in which party IT personnel and eDiscovery vendor personnel have provided technical data, thus obviating the need for deposition or document discovery. In connection with discovery related to Intel's evidence preservation issues and productions, the parties and their counsel also have both produced written summaries in lieu of document production and depositions, and have exchanged information in face-to-face informal meetings or telephone conferences that likewise served as substitutes for formal discovery.

ISSUES RAISED IN THE DECLARATION OF JOHN ASHLEY

The information set forth below addresses the issues Mr. Ashley raises in his declaration.

Deleted Items (Ashley Declaration ¶¶ 11-21)

19. Mr. Ashley's accusations of email deletion appear to confuse emails stored in Deleted Items folders with emails that were actually irretrievably deleted, intentionally or otherwise. There is a distinct difference, particularly at AMD where there is no system-wide automatic deletion function for emails contained in the Deleted Items or any other folders. This contrasts with Intel, which had a standard "auto-delete" setting that

See, e.g., Ashley Decl. ¶ 18: "I discovered that an overwhelming majority of all emails produced for ... were initially deleted before they were produced."

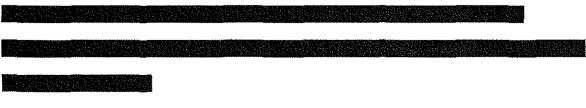
(Attached hereto as Exhibit K are true and correct copies of relevant excerpts of the deposition testimony of Intel's Eva Almirantearena and Exhibit 11 thereto, which describe Intel's standard auto-delete rule.) At AMD, emails maintained in Deleted Items folders are preserved and not subject to automatic expunging. Thus, contrary to Mr. Ashley's apparent assumption, an AMD custodian's preservation of email in a Deleted Items folder is not evidence of a failure to comply with preservation protocols. Email files preserved in, and produced from, Deleted Items folders are no different than items preserved in, and produced, from an Inbox, Sent Items, or any other folders. In fact, both AMD custodians whom Mr. Ashley highlights for having large volumes of deleted items, routinely used their Deleted Items folders as a location to preserve emails they wanted to retain.

- 20. AMD's preservation and harvesting protocols were designed to capture all emails maintained by each custodian, regardless of storage location (e.g., on hard drives, in the Vault or Journal, on personal network space, or on external storage media) and regardless of the folder name in which those emails were stored. (See Exhs. D and I, supra.) This includes emails in Deleted Items folders. I understand from FCS (AMD's eDiscovery vendor) that AMD's production contains emails from Deleted Items folders for 112 AMD custodians during the time period that Mr. Ashley examined, March 1, 2005 through November 2, 2005.
- 21. Mr. Ashley contends that the total percentage of emails from Deleted Items folders produced by AMD custodians during the timeframe he examined is "nearly seven percent." (Ashley Decl. ¶ 13.) FCS has calculated the percentage of AMD's production of deleted items as 6.8%, whereas the percentage of emails from Deleted Items folders found in Intel's "organic" production (i.e., its native file production for Intel custodians, not including any Intel deposition reharvest or "remedial" file productions) is approximately 5.6% of the total files it produced.

The point here is not that this proves failure on Intel's part to properly preserve; rather, it shows that there is nothing suspect about producing emails from Deleted Items folders.

Harvests of Recovered Items (Ashley Declaration ¶¶ 14-21)

- 22. Mr. Ashley notes that AMD harvested email from Deleted Items folders for several custodians, including (See Ashley Decl. ¶¶ 14-21.) This is explained both by individual retention habits and the fact that each of these individuals was subject to preservation and data collection involving a function in Microsoft Outlook identified in the Tools menu as "Recover Deleted Items."
- 23. The "Recover Deleted Items" command permits a user to review and recover items that were "double-deleted" and now reside in a repository known as the "dumpster." By opening the Deleted Items folder and clicking the "Recover Deleted Items" command, a user may review a list of all emails that reside in the dumpster. A user may then select these items and return them to their Deleted Items folder. AMD's IT department controls the functionality of the dumpster, including the setting for how long recoverable items are maintained in it. AMD's typical dumpster setting retains items for 7 days.
- 24. After the AMD Law Department issued its first set of preservation instructions to its IT personnel in March 2005, Jerry Meeker -- a senior IT manager who has assisted the AMD Law Department with preservation issues -- decided to change certain custodians' dumpster settings so that the Exchange server would preserve any emails in the dumpster for approximately one year. The objective was to provide the AMD Law Department with the option to restore these items as necessary during the litigation.



26. Mr. Meeker also collected email files from the dumpsters of other AMD custodians immediately prior to the migration of their mailboxes to the Vault and Journal. The objective was to perform the collection from dumpsters at a time that would leave no significant gap between the dumpster collection and the Vault and Journal migration. AMD's initial Vault and Journal migrations were set to occur on November 2, 2005. In what proved to be a time-consuming process over the weekend of October 29-30, 2005, Mr. Meeker collected email files maintained in the Exchange dumpsters for Mr. Meeker also restored and collected email files for on November 1, 2005, the day before the Vault and Journal were enabled for him. Mr. Meeker migrated the files obtained from these restore exercises to the Vault on December 10, 2005. Given the

five hours of Mr. Meeker's time for just migration of the custodian mailboxes to the Vault and Journal, Mr. Meeker did not restore the Exchange dumpster for any other AMD custodians.

(Ashley Declaration ¶¶ 29-32) 27.

AMD Custodians Nick Kepler and Michael Soares (Ashley Declaration ¶¶ 26-27)

- 28. As described in Exhibit S to the previously-submitted Declaration of David L. Herron, AMD custodian Nick Kepler enabled a feature in Microsoft Outlook that prevented his email box from automatically saving his Sent Items. Instead, Mr. Kepler saved emails by copying himself, i.e., placing his name in the "cc" field of the email so that his sent emails would appear in his Inbox. Mr. Kepler is the only known individual of the 164 designated AMD custodians whose mailbox was configured this way.
- 29. Exhibit S to Mr. Herron's declaration also describes a preservation issue involving AMD custodian Michael Soares. AMD sent Mr. Soares a preservation notice on February 21, 2006 and enabled his email account for the Vault and Journal on March 30, 2006. Mr. Soares believes that, subsequent to the Vault and Journal enabling, his laptop was stolen and, as AMD

has disclosed, another of Mr. Soares' computer hard drives failed. As a result of the Vault and Journal -- which maintain a copy of every email Mr. Soares sent or received since March 30, 2006 -- the loss, if any, should be limited to any unique "loose" files that Mr. Soares maintained on these hard drives.

Purported "Undisclosed Remediation" (Ashley Declaration ¶¶ 22-24)

- 30. Contrary to Mr. Ashley's suspicions, AMD has not utilized any forensic tools to recover deleted items or engaged in other remediation. The only exception is AMD's remediation efforts on behalf of its custodian, Kazuyuki Oji, which AMD disclosed to Intel.
- 31. I next address Mr. Ashley's questions and apparent confusion regarding the "Lost Files" notations in file paths for Contrary to Mr. Ashley's suspicions, these notations are not evidence of selective remediation.
- 32. AMD imaged certain custodians' hard drives using a well-known forensics tool called EnCase Enterprise ("EnCase"). In some instances, including the hard drives of the EnCase images that AMD provided to FCS (AMD's eDiscovery vendor) were not accessible to FCS because FCS's version of EnCase could not view images of hard drives that were "encrypted." (Encryption is a common data security measure that AMD often employed to protect its hard drives.) FCS returned the inaccessible hard drive images of to AMD, and requested that AMD decrypt the hard drives and provide new images. To accomplish this, AMD restored the original EnCase images to new hard drives, decrypted the hard drives, and then imaged the new drives. AMD then delivered the image of the new, decrypted drive to FCS. I am informed that, when FCS opened the new image of the decrypted hard drives for FCS's version

of EnCase automatically generated a "Lost Files" folder and placed all contents of the hard drive into the folder. Apparently, the presence of this "Lost Files" folder has led Mr. Ashley to suspect that AMD was engaged in a secret forensic effort to recover deleted files. (See Ashley Decl. ¶ 20.) It was not. Instead, I understand that EnCase automatically generates "Lost Files" folders under a variety of circumstances and that the data contained in those folders is not always deleted. As concerns were the second of the deleted. As concerns were second of the deleted the "Lost Files" notation as it did. But the presence of the Lost Files folder at the root of these hard drive images most certainly was not the result of an effort by AMD or FCS to recover deleted files.

The hard drives for were not encrypted, but the FCS personnel conducting the data export assumed that they were. I am informed that the FCS employee conducting the export did not follow FCS's standard export protocol. As a result, FCS inadvertently exported data found in "Lost Files" folders. As described above, Lost Files folders are not part of the actual hard drive that is imaged, but are instead automatically generated by EnCase. "Lost Files" folders typically store varieties of inactive data found on the hard drive, such as files generated by program installations, inactive copies of files left over from computer error, as well as deleted files. It is not part of FCS' regular protocol to collect files from the "Lost Files" folder. AMD did not instruct FCS to export items in "Lost Files" folders; it was, instead, the result of inadvertent error on the part of the FCS employee conducting the export of the data from those hard drives. I understand that none of the data produced from the Lost Files folders for Steel and Edwards was identified by EnCase as "deleted." Mr. Ashley incorrectly assumes that it was. (Ashley Decl. ¶ 22.)

AMD's Litigation Hold Notice (Paragraphs 33-36)

34. Early versions of AMD's litigation hold notices provided directions for how custodians could create a special "Preservation Notice" folder to store potentially relevant material. (See, supra, Exh. D.) Creating this folder was not mandatory and, as a result of the Vault and Journal, eventually became unnecessary. Whether or not custodians created or named folders as suggested, as discussed above, AMD's data collection processes were designed to capture all potentially-relevant data regardless of whether a custodian decided to utilize a special folder for preservation purposes. That comprehensive collection effort, and AMD's production to date of approximately 1.1 terabytes of information, apparently was not considered by Mr. Ashley in his critique.

Enterprise Vault Migrations (Ashley Declaration ¶¶ 37-45)

- 35. I will hereafter describe my general understanding of AMD IT's migration of PST files into the Enterprise Vault.
- 36. It is common knowledge that email users can and typically do create PST files to store emails outside of their active email box, and often save them on laptop hard drives, external hard drives, and other locations that are not immediately accessible to corporate IT personnel. To my knowledge, this practice is becoming increasingly less desirable for large corporations because of the expense and risk associated with locating and collecting these decentralized archives of company email. As mentioned above, one of the objectives of an Enterprise Vault system is to free a corporation from decentralized PST archives and create a single, searchable repository of all corporate email. Accomplishing this objective thus requires the collection and "migration" into the Vault all of the PST files that an employee has created. Therefore, in

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addition to enabling the Vault to "sweep" future emails from custodians' active email boxes, AMD also attempted to move custodians' pre-existing PST files into the Vault using the Vault's automated "migration" process.

- 37. It is my understanding from Intel's disclosures that Intel itself had not migrated historic PSTs of its custodians into Intel's own email archiving system.
- 38. Although some AMD employees were involved with their Vault migrations, AMD IT representatives were principally responsible for migrations of custodians' PST files into the Vault. In a typical case, an AMD IT representative would contact a custodian and obtain permission to access the custodian's email account and network space. The IT representative then worked with the custodians to identify PST files. This included running searches for PST files on a custodian's hard drive and network space, as well as confirming with the custodian that all PST files had been gathered. The IT representative then made a copy of the PST files and loaded those copies into a "staging area" on the network. From this staging area, the IT representative would perform the migration of PSTs to the Vault.
- 39. Emails from Deleted Items folders were not automatically migrated to the Vault. Typically, however, if the AMD IT representative noticed a large Deleted Items folder, I understand that the IT representative would contact the custodian to determine whether items in that folder should be migrated into the Vault. Mr. Ashley has provided a copy of an email between AMD IT and AMD custodian that is an example of the sort of exchange that AMD IT had with custodians who maintained such email stores. (See Ashley Decl., Exh. 11 at page 1.) In that instance, AMD's IT representative, and inquired whether email in 's Deleted Items folder should be migrated. responded affirmatively,

and explained that "I keep everything" (Id.) I understand that the Deleted Items folder from PST file was then migrated into the Vault by

- 40. The Vault migration software is designed to capture all emails eligible for migration, including those which fail initially to migrate. If the Vault is unable to migrate certain items, the Vault automatically creates a "migration failure" subfolder in a custodian's mailbox, and moves a copy of these items from the PST to this new subfolder. The purpose of this automatic protocol is to attempt to later sweep the emails contained in these "migration failure" folders into the Vault once they are over 30 days old. I understand that these "migration failure" subfolders were contained in AMD's production because the messages that failed migration were later successfully swept into the Vault through the normal course of the 30-day sweep. These "migration failure" notations were in the productions of 14 of the 15 custodians that Mr. Ashley identified in Paragraph 40 of his declaration as purportedly having migration problems. The presence of these folders in AMD's production, however, suggests that the PST migrations were in fact successful and operating pursuant to the Vault's configurations, not that there was some "systemic" or other failure to either migrate or collect relevant email files.
- 41. FCS (AMD's eDiscovery vendor) was not able to locate a "migration failure" folder Ashley's declaration what evidence he is relying on to suggest a migration failure for AMD believes that, like the other 14 custodians identified in Mr. Ashley's declaration, migration was successful. In any event, as noted above and as described in documents produced to Intel, AMD was not relying solely on the Vault to collect historic PST files. AMD also redundantly harvested this email -- both before and after it enabled the Vault

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and Journal -- from hard drives, personal network space, and external storage media. (See, supra, Exh. I.)

42. It is accurate that AMD instructed custodians to delete PST files after confirming that migrations of those PSTs to the Vault were successful. The reason was to prevent custodians from continuing to store email offline in these files, and to encourage custodians instead to rely on the same archives located in the highly-effective and corporate-controlled Vault for future storage.

Evidence of ScanPST in AMD's Production (Ashley Declaration ¶¶ 46-48)

- 43. ScanPST is an application that Microsoft provides as part of its Microsoft Outlook email software package. It is designed to cure defects that occur in email PST archives. I am aware that individual email users, corporate IT departments, and eDiscovery vendors alike routinely utilize ScanPST. I understand that it is thus not unusual to find traces of ScanPST or similar software in large populations of email produced in litigation.
- 44. When ScanPST is used on a PST file, I understand that Scan PST will generate a "Lost & Found" subfolder in the PST if repairs are made. Traces of these repairs -- whether conducted by the user, an IT department, or an eDiscovery vendor -- exist in both parties' productions. In fact, I understand that 91 Intel custodians have traces of ScanPST (or similar products) in their production.
- 45. Mr. Ashley points to traces of ScanPST in AMD's production to suggest that AMD failed to disclose losses of data from PST files. (Ashley Decl. ¶ 47.) That is incorrect. It is not surprising that Mr. Ashley found traces of ScanPST in AMD's production, but this is not because there were known losses that that AMD failed to disclose. As part of its regular eDiscovery

"best practices," FCS uses ScanPST on every PST it receives prior to processing the PST into its Attenex review tool, regardless of whether there is evidence that the PST is corrupt. FCS uses ScanPST as a preventative measure to improve the likelihood that PSTs will be processed efficiently. FCS is not alone: The support team for FCS' processing software provider, Attenex, recommends that vendors like FCS run ScanPST on all PST files prior to loading them into the Attenex/Workbench system that FCS uses. Contrary to Mr. Ashley's surmise, using ScanPST does not entail a "high likelihood of data loss during the repair process." (Ashley Decl. ¶ 47.) Indeed, Microsoft's support website for ScanPST states that data losses from ScanPST are "probably very rare." The traces of ScanPST that exist in AMD's production are thus merely indicative of production-wide efforts that were made by AMD's processing vendor to proactively cure potential defects in PSTs prior to processing them. I am informed that ScanPST's repair efforts were successful and did not reveal that any particular PST suffered data loss.

46. Mr. Ashley is also incorrect that "best practices would require AMD to re-harvest the corrupt PST file." (See Ashley Decl. ¶ 48.) AMD obtained bit-by-bit images of the media where PSTs were located. I understand that bit-by-bit images are exact copies and are not materially different than the original. As such, there is nothing to "reharvest."

The Parties' Naming Conventions and AMD's Deduplication Protocols (Ashley **Declaration** ¶¶ 35, 43-44, 51)

47. AMD's harvest protocols were designed to capture exact copies of PST files and retain folder structure and file paths. Copies of emails from the Journal archive do not contain any folder-level meta data because they obviously were never maintained in an Inbox, Sent Items, or Deleted Items folder. Similarly, emails exported from the Vault may not contain elaborate folder structure. As a result, many of the emails in AMD's production do not have the

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productions. (See Ashley Decl. ¶ 43.)

- 48. When FCS exports emails from Attenex for production to Intel, Attenex automatically inserts a unique file id into the newly created PST file and adds "Out" to the file name. For example, messages produced from a PST file named "Intel.pst" would result in a PST file entitled, "Intel982333 Out.pst." In this example, the software automatically adds the number 982333 and 'Out' to the PST file.
- 49. This is not a material alteration of the file path and, indeed, the original file path is retained as part of the production path. For example, the document produced as DCN AMDN-013-00000173 Filename 'Engage MS Project Q404 NA Timelines (Revised).ppt' was produced on volume AMDN0002 at a path of '\P002701\18\1\Documents and Settings\rfuller\Desktop\Engage\Engage Planning Documents\'. The bolded portions of the path are attributable to processing.
- 50. While Mr. Ashley speculates that AMD has somehow failed to comply with the Second Amended Stipulation Regarding Electronic Discovery and Format of Document Production (the "Native Stipulation") entered by this Court, we are presently unable to understand on what evidence he bases this broad assertion and do not believe it is accurate. In addition, Intel seems to have its own file path issues. Here are four examples from Intel's production:
 - a. DCN 67072-009217 \NATIVE\606301-109 Riedle, Gerhard EMAIL\000001\67072-009217.msg
 - b. DCN 66678-001294 \0041 Pat Gelsinger Email\Outlook\archive3.pst\Top of Personal Folders\Lost & Found\Recovered Folder 90A2\PCOMP Weekly Status

Report - WW18 2002.msg 66678-001294.msg

- c. DCN 66377-007310 \0008 Matthew Kurko_Efiles\My Documents\HP\HP CSA\Misc 4\Oct Chipset Demand.xls_66377-007310.xls
- d. DCN 67554-018666 \NATIVE\606301-057_Barrett, Carol EFILE\000001\67554-018666.ppt

In the last example above, Intel did not preserve the original file path or the original file name as appears to be required by the Native Stipulation but, instead, provided that information in a field in their load file.

51. Indeed, I understand that Intel has produced files that do not appear to follow normal file pathing conventions, and this is particularly true with respect to Intel's productions of "remedial" files taken from its so-called "global database." While AMD has not fully assessed the extent or gravity of Intel's departure from normal file pathing protocols, it is my present understanding that this issue may in fact affect a substantial portion of Intel's productions to date. In any event, AMD has been producing files and file path information to Intel since early December 2006. To my knowledge, Mr. Ashley's assertions represent the first time that Intel has taken issue with file paths or file pathing information produced by AMD, other than as may possibly have been raised in the ordinary course of communications between AMD's and Intel's eDiscovery Liaisons.

52. In an informal exchange, AMD provided Intel with information about its deduplication protocols over nine months ago. (See Ashley Exh. 15.) To my knowledge, Intel has not asked AMD another question about deduplication since that time.

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

Dated: July 24, 2008

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Hand Delivery to the following:

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I hereby certify that on July 24, 2008, I have sent by Electronic Mail the foregoing document to the following non-registered participants

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