

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ADVANCED MICRO DEVICES, INC., a  
Delaware corporation, and AMD  
INTERNATIONAL SALES & SERVICES,  
LTD., a Delaware corporation,

Plaintiffs,

v.

INTEL CORPORATION, a Delaware  
corporation, and INTEL KABUSHIKI KAISHA,  
a Japanese corporation,

Defendants.

C.A. No. 05-441-JJF

IN RE  
INTEL CORPORATION  
MICROPROCESSOR ANTITRUST  
LITIGATION

MDL No. 1717-JJF

PHIL PAUL, on behalf of himself  
And all others similarly situated,

Plaintiffs

v.

INTEL CORPORATION,

Defendants.

C.A. No. 05-485-JJF

CONSOLIDATED ACTION

PUBLIC VERSION  
October 22, 2009

**DECLARATION OF MICHAEL M. LEE IN SUPPORT OF  
DEFENDANTS' MOTION FOR AN EXTENSION OF TIME TO RESPOND  
TO AMD'S AMENDED EXPERT REPORTS**

Of Counsel:

Robert E. Cooper, Esq.  
Daniel S. Floyd, Esq.  
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333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000

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1050 Connecticut Avenue, N.W.  
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1299 Pennsylvania Avenue, N.W.  
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(202) 783-0800

Richard L. Horwitz, Esq. (#2246)  
W. Harding Drane, Jr., Esq. (#1023)  
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P.O. Box 951  
Wilmington, DE 19899-0951  
(302) 984-6000  
[rhorwitz@potteranderson.com](mailto:rhorwitz@potteranderson.com)

Attorneys for Defendants  
Intel Corporation and  
Intel Kabushiki Kaisha

Dated: October 8, 2009

PUBLIC VERSION  
October 22, 2009

I, Michael M. Lee, declare as follows:

1. I am an attorney at Gibson, Dunn & Crutcher LLP, counsel of record for Intel Corporation and Intel Kabushiki Kaisha (collectively, "Intel") in this matter. I am licensed to practice law in the State of California. I have personal knowledge of the matters stated in this declaration and, if called as a witness, could and would testify competently to them.
2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter dated October 6, 2009 from Shaun Simmons, counsel for AMD, to me.
3. Attached hereto as **Exhibit 2** is a true and correct copy of a letter dated August 10, 2009 from me to Mr. Simmons.
4. Attached hereto as **Exhibit 3** is a true and correct copy of a letter dated August 13, 2009 from Mr. Simmons to me.
5. Attached hereto as **Exhibit 4** is a true and correct copy of an e-mail dated August 15, 2009 from Mr. Simmons to Joseph Kattan, counsel for Intel, and me.
6. On August 18, 2009, the parties held a telephone conference call to discuss AMD's expert reports. During this call, AMD represented that there were no further materials supporting the spreadsheets already provided for Dr. Ostrander's report because the figures within those spreadsheets were entered in directly and reflected the expert's judgment and experience.
7. Attached hereto as **Exhibit 5** is a true and correct copy of a letter dated August 18, 2009 from Steven Sletten, counsel for Intel, to Mr. Simmons.
8. Attached hereto as **Exhibit 6** is a true and correct copy of a letter dated August 21, 2009 from Mr. Simmons to Mr. Sletten.

9. Attached hereto as **Exhibit 7** is a true and correct copy of a letter dated September 4, 2009 from me to Mr. Simmons.

10. Attached hereto as **Exhibit 8** is a true and correct copy of a letter dated September 15, 2009 from Mr. Simmons to me.

11. Attached hereto as **Exhibit 9** is a true and correct copy of a letter dated September 18, 2009 from Charles Diamond, counsel for AMD, to Robert Cooper, counsel for Intel.


12. On September 29, 2009, the parties held a telephone conference call to discuss, among other things, the September 15 changes to Dr. Ostrander's report. During this call, AMD was unable to answer Intel's questions related to these changes and promised to get back to Intel with a response.

13. Attached hereto as **Exhibit 10** is a true and correct copy of a letter dated September 30, 2009 from me to Mr. Simmons.

14. Attached hereto as **Exhibit 11** is a true and correct copy of an e-mail dated October 5, 2009 from me to Mr. Simmons.

15. On October 8, 2009, I and Jay Srinivasan, counsel for Intel, left a voice message with Mr. Simmons to attempt to resolve these issues without filing the instant motion. We informed Mr. Simmons of the relief we seek by this motion. We also informed Mr. Simmons that were we to file the instant motion, we would seek to have it heard on either October 12, 2009 or October 13, 2009, and that we are asking AMD to file any opposition to the instant motion by October 9, 2009. I have not yet heard back from Mr. Simmons but due to the urgency of this matter, Intel may not be able to wait for AMD's response before filing this motion.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on October 8, 2009 in Los Angeles, California.

  
\_\_\_\_\_  
Michael M. Lee

# **EXHIBIT 1**



O'MELVENY & MYERS LLP

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October 6, 2009

OUR FILE NUMBER  
8,346-163

**VIA E-MAIL & MESSENGER**

WRITER'S DIRECT DIAL  
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Michael M. Lee, Esq.  
Gibson, Dunn & Crutcher LLP  
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Los Angeles, CA 90071-3197

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

Re: AMD v. Intel

Dear Mike:

This responds to your September 30, 2009 letter and follow-up email. It appears that the assumption underlying your letter, and the corresponding request for further information, is misplaced. You have incorrectly identified "Dr. Ostrander's original Demand Statements A and B" as Dr. Watson's files titled "Historical Data Model - Discovery Period Lost Profits Only.xls" and "Historical Data Model - Lost Profits Through 2Q08.xls." Dr. Ostrander did not create those files, and he did not modify those files. He used them to prepare his initial Demand Statements A and B, which bear the titles "Econometric Cutoff Totals.xls" and "Econometric Ratio Totals.xls," respectively. We produced those to you on September 15, 2009. Dr. Ostrander repeated from Dr. Watson's spreadsheets the total incremental demand for each product in each quarter, but Dr. Ostrander's spreadsheets include no information regarding vertical segment. "Econometric Cutoff Totals.xls" and "Econometric Ratio Totals.xls" were later revised, and the revisions were also produced to you on September 15, 2009 as "Revised Demand Statement A Totals.xls" and "Revised Demand Statement B Totals.xls," respectively. The incremental demand units did not change from the initial Demand Statements A and B and the revised Demand Statements A and B, and Dr. Ostrander did not include vertical segment information in either version.

As promised, we have also followed up on the issues you identified during the September 29, 2009 conference among our legal and consulting teams. You are correct with respect to the discrepancy you identified in Dr. Ostrander's Forward-Looking Spreadsheet for Demand Statements A and B. The 2007 buffered incremental demand should come from Demand Statement B, rather than Demand Statement A. We also identified a rounding error in cells J8 and Q8 of the "2002" tab. We have included on the disc accompanying the hard copy of this letter a corrected version of Dr. Ostrander's Forward-Looking Spreadsheet for Demand Statements A and B.xls. This file replaces the file titled Revised Forward-looking Spreadsheet for Demand Statements A and B.xls that we produced on September 15, 2009.

In the process of investigating the discrepancy you identified, we identified two additional errors that should be corrected. First, in the estimated Capital Expenditure models, there was an error in [REDACTED] in 2001 and 2004-2008. We also have deleted extraneous numbers in Row 23 of the "Without Fab 25" tab of Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls, a revision that does not affect Dr. Ostrander's analysis. We have included on the disc accompanying the hard copy of this letter a corrected version of Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls, Demand Statement B - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls, Demand Statement C - AMD Forecast Model CapEx.xls, Statement D - Mix Improvements Model.xls, and Mfg Capital Delv 2001-2008.xls. These files replace the files produced to you on September 25, 2009 titled Revised Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls, Revised Demand Statement B - Historical Data Model - Lost Profits Through 2Q08 CapEx.xls, Revised Demand Statement C - AMD Forecast Model CapEx.xls, Revised Demand Statement D - Mix Improvements Model CapEx.xls, and Mfg Capital Delv 2001-2008\_Rev.xls, respectively.

Second, in re-reviewing his workpapers to answer the question you raised, Dr. Ostrander caught an error in the [REDACTED] in 2002 and the first quarter of 2003 and in certain quarter-by-quarter allocations and capacities necessary to support certain estimated production requirements. We have included on the disc accompanying the hard copy of this letter a corrected version of Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only.xls, Demand Statement B - Historical Data Model - Lost Profits Through 2Q08.xls, Demand Statement C - AMD Forecast Model.xls, and Demand Statement D - Mix Improvements Model.xls. These files replace the files bearing the same names that were produced with Dr. Ostrander's report on August 3, 2009.

These adjustments necessitate minor revisions to Dr. Ostrander's report. We have included on the disc accompanying the hard copy of this letter corrected versions of five pages of Dr. Ostrander's report, one of which also corrects transposed numbers identified in paragraph 104.

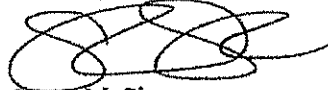
The adjustments to Dr. Ostrander's manufacturing capacity analysis nominally affect some of the numbers generated by Dr. Watson and Dr. Lys but in the interest of accuracy, we have updated them as well. With respect to Dr. Watson, the estimates of AMD's incremental unit sales and revenue have been revised slightly downward. This accounts for the capacity constraints Dr. Ostrander identified in his updated analysis. The estimates that have been revised appear in Figures 4-5 and 19-24 in the body of Dr. Watson's report, and in Figures 28-31, 34-39, and 42-45 in the Appendices. We have included on the disc accompanying the hard copy of this letter: (a) revised individual pages of Dr. Watson's report that include the updated Figures; (b) revised Appendices that include the updated Figures; and (c) updated versions of the Ostrander input files used by Dr. Watson.



Given that Dr. Lys's damages findings flow from the work by Dr. Ostrander and Dr. Watson, nominal revisions to Dr. Lys's conclusions were similarly required. Although Dr. Watson's incremental unit sales and revenue figures have nominally decreased, the updated damages figures are slightly higher as a result of the capital expenditure corrections by Dr. Ostrander. The disc that accompanies the hard copy of this letter includes revised pages from Dr. Lys's report with the updated information. (For ease of reference, the Exhibits that have been revised are nos. 44, 46, 48-49, 64-66.) You will also find on the disc updated versions of support files initially produced as part of Dr. Lys' report.

To the extent that the original versions of the materials discussed above for all three experts are listed on Materials Considered lists, you should consider the updated versions to be included as well.

Sincerely,



Shaun M. Simmons  
for O'MELVENY & MYERS LLP

Encls.

LA1:1186228.1

# **EXHIBIT 2**

# GIBSON, DUNN & CRUTCHER LLP

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August 10, 2009

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Client No.  
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## VIA E-MAIL

Shaun Simmons  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071

Re: *AMD v. Intel*

Dear Shaun:

I write regarding various issues that have come up as we are reviewing AMD's expert reports and supporting materials that we received on Monday, August 3, 2009. Please address these issues as soon as possible.

1. Deficient Spreadsheets Within Supporting Materials for Bernheim and Ostrander. We have noticed that the supporting materials for B. Douglas Bernheim's and Daryl Ostrander's expert reports contain spreadsheets that do not show all the calculations for some of the key analyses. For example, in Bernheim's supporting materials, some of the numbers in his Dell price-cost test exhibits are "hard-coded," in addition to the cost numbers he writes he took from Thomas Lys's report. (See, e.g., Bernheim's Supporting Materials: Analyses\~Exhibits\Formatted Price-Cost Tests.xls.) Similarly, all the supporting materials for Ostrander's reports contain cells that are "hard-coded." These spreadsheets do not contain the formulas underlying the calculations, and we cannot determine from where these figures came. Please produce spreadsheets within Bernheim and Ostrander's supporting materials that contain calculations that are not "hard-coded" as soon as possible.

In addition, Bernheim's exhibits for various OEM price-cost tests within his report appear in different formats than shown in the "Formatted Price-Cost Tests.xls" spreadsheet. For example, Exhibits 92-95 (for Dell) in the report appear in a different format than what is shown in the Dell tab for the "Formatted Price-Cost Tests.xls" file. For all the

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GIBSON, DUNN & CRUTCHER LLP

Shaun Simmons  
August 10, 2009  
Page 2

price-cost tests done, please provide the final versions as they appear in the report with exhibit numbers and titles, rather than the compilation of various tables in the "Formatted Price-Cost Tests.xls" file without titles and exhibit numbers and in a different format than the exhibits within the report. Moreover, to the extent the input numbers are calculated from related exhibits or spreadsheets, please show the calculations.

2. Supporting Materials for Watson. The file "AMD Forecast Share - Final.xlsx" contained within Mark Watson's supporting materials is listed in the "Materials Considered" section of his report as "from AMD management." It is unclear when this file was prepared—either in the past or more recently or for purposes of this litigation. In addition, no source document for this forecast is referred to in the file itself or in the report, so it is also unclear how this file was created—whether directly from a source document, by formula derived from a source document, or by a program. Please clarify these issues and produce the source(s) for this file, as well as any and all programs or formulas used to calculate the numbers within this file.

Moreover, in the file "Share Interpretation.xls," Watson classifies each forecasted share as "Diff" or "Absolute." It is unclear on what basis these classifications were made and who did these classifications, as the author of the file according to its properties is "Advanced Micro Devices," and it is listed in the "Materials Considered" section of Watson's report as being "from AMD management." Please clarify these questions as well.

3. Linking Programs with Exhibits. For the Watson and Bernheim reports, it is not readily apparent how certain exhibits were created from the data programs used. For these reports, please provide a table or spreadsheet that shows the relationship between (a) the Stata and Matlab programs used, (b) the input and output datasets for those programs, and (c) the exhibits in the reports.

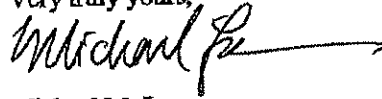
4. Michael D. Williams Report. On March 6, 2008, the Special Master granted Intel's Motion to Compel AMD and the ERS Group to produce a report generated by Dr. Michael A. Williams and the documents Williams used to prepare it (collectively, the "Williams Report"). The Special Master ordered that production of the Williams Report should "occur no earlier than the commencement of expert discovery." (3/6/08 Order at 24.) Given that expert discovery has commenced, please produce the Williams Report as soon as possible.

GIBSON, DUNN & CRUTCHER LLP

Shaun Simmons  
August 10, 2009  
Page 3

Thank you, and please let me know if you would like to discuss further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael M. Lee", with a long horizontal flourish extending to the right.

Michael M. Lee

MML/mml

cc: Joseph Kattan, Esq.  
Steven Sletten, Esq.  
Michael Denger, Esq.  
Darren Bernhard, Esq.  
Sogol Pirnazar, Esq.

100708516\_1.DOC

# **EXHIBIT 3**



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August 13, 2009

VIA E-MAIL

Michael Lee  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197

OUR FILE NUMBER  
8,346-263

WRITER'S DIRECT DIAL  
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WRITER'S E-MAIL ADDRESS  
ssimmons@omm.com

Re: AMD v. Intel

Dear Mike:

This responds to your letter of August 10, 2009. We have investigated the matters you raised and believe that no further production of materials is necessary. Intel already received most of what is requested in your letter. We are willing to arrange a call at your earliest convenience to identify where that information can be found. For the reasons discussed below, the remaining requests are either premature or otherwise addressed without requiring further disclosure.

As I mentioned in my email of August 11, 2009, AMD produced the ERS materials on July 31, 2009 -- more than a week before we received your letter and prior to the commencement of expert discovery.

As for Intel's request that AMD provide a spreadsheet or table to clarify the relationship between the exhibits to the Bernheim and Watson reports and the programs and input/output files used to generate those exhibits, we do not believe this is necessary. The exhibits, input/output files, and programs are already organized in a manner designed to allow Intel to identify the relationship between them. We are happy to walk through this with Intel on a call, which should not take much time. But we do not believe any additional tables or spreadsheets are necessary.

Your letter mentions that certain spreadsheets (and in particular the "Formatted Price-Cost Tests.xls" spreadsheet) provided in the Bernheim supporting materials contain cells with "hard-coded" values. Your letter also says that Intel is unable to determine from where these values came. The calculations on which these values were based have already been supplied to Intel and are readily identifiable. Accordingly, we see no reason to provide Intel with additional spreadsheets. That said, on the call proposed above, we will be happy to identify the location of

these calculations to Intel if that is actually necessary. It, too, ought not take more than a few moments.

Your letter points out some minor formatting differences between the OEM price cost tests set forth in the Bernheim report and the "Formatted Price-Cost Tests.xls" spreadsheet. These formatting differences do not require the revision you suggest, and there is nothing unclear about the relationship between the price costs tests set forth in the Bernheim report and the "Formatted Price-Cost Tests.xls" spreadsheet. In addition, all calculations have been provided to Intel and should be readily identifiable. Again, we are happy to discuss this matter further on the proposed call, but do not see anything here that would warrant the production of additional materials.

Turning to the materials supporting the Ostrander report, there are no further spreadsheets supporting the ones already provided to you. If Intel has questions about the information in those spreadsheets, it can certainly explore them at Dr. Ostrander's expert deposition.

Your questions about the "AMD Forecast Share - Final.xlsx" and the "Share Interpretation.xls" files are also premature. Dr. Watson made the appropriate disclosures in his report, and we do not believe it appropriate to engage in an informal, pre-deposition question-and-answer session.

Please let us know as soon as possible when you are available for a call to discuss the matters for which a call would be appropriate and useful.

Sincerely,



Shaun M. Simmons



# **EXHIBIT 4**

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**From:** Simmons, Shaun M. [ssimmons@omm.com]  
**Sent:** Saturday, August 15, 2009 9:20 PM  
**To:** Kattan, Joseph; Lee, Michael M.  
**Cc:** Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pimazar, Sogol K.  
**Subject:** RE: AMD v. Intel

Joe,

Our position is that Intel already has all the backup materials it needs and to which it is entitled. As a courtesy, we're willing to have a brief and informal call to walk your consultants through the organizational structure of the backup materials, even though we do not believe this is at all necessary. We are still available at 1:30 p.m EDT Tuesday. Let us know if you want to take advantage of the courtesy we are offering.

Shaun

---

**From:** Kattan, Joseph [mailto:JKattan@gibsondunn.com]  
**Sent:** Sat 8/15/2009 2:12 PM  
**To:** Simmons, Shaun M.; Lee, Michael M.  
**Cc:** Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pimazar, Sogol K.  
**Subject:** Re: AMD v. Intel

We need to have this call sooner so that we can go to the Special Master if AMD persists in denying us access to its experts' back-up materials. I suggest that you reassess your team's availability and be ready to have a call Monday morning.

---

**From:** Simmons, Shaun M.  
**To:** Simmons, Shaun M. ; Lee, Michael M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com ; Pimazar, Sogol K.  
**Sent:** Sat Aug 15 17:08:36 2009  
**Subject:** RE: AMD v. Intel

Mike:

I've confirmed that 1:30 p.m. EDT Tuesday works for us. Let me know if that works for your side.

Thanks,

Shaun

---

**From:** Simmons, Shaun M.  
**Sent:** Fri 8/14/2009 9:09 PM  
**To:** Lee, Michael M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pimazar, Sogol K.  
**Subject:** RE: AMD v. Intel

Mike,

It looks like at least one necessary party on our side will be traveling on Monday. I think we could do 1:30 p.m.

10/8/2009

EDT on Tuesday, but I am still trying to confirm that. I'll touch base again tomorrow.

Shaun

---

**From:** Lee, Michael M. [mailto:MLee@gibsondunn.com]  
**Sent:** Fri 8/14/2009 6:30 PM  
**To:** Simmons, Shaun M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pirnazar, Sogol K.  
**Subject:** RE: AMD v. Intel

Shaun,

I wanted to confirm that 9:00 AM PDT on Monday, August 17th works for you. We can use this dial-in number for the call:

877-492-4011  
Passcode: 2132297937

Please let me know if that works for you.

Thanks,  
Mike

---

**From:** Simmons, Shaun M. [mailto:ssimmons@omm.com]  
**Sent:** Friday, August 14, 2009 12:35 PM  
**To:** Lee, Michael M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pirnazar, Sogol K.  
**Subject:** RE: AMD v. Intel

Thanks, Mike. We'll do our best to be available at the time you propose. But let me check schedules just to make sure.

---

**From:** Lee, Michael M. [mailto:MLee@gibsondunn.com]  
**Sent:** Friday, August 14, 2009 12:04 PM  
**To:** Simmons, Shaun M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Denger, Michael L.; bernhardd@howrey.com; Pirnazar, Sogol K.  
**Subject:** AMD v. Intel

Shaun,

Thank you for your letter dated August 13, 2009. We would like to accept your offer to arrange a phone call to discuss the issues raised in our letters. We propose next Monday, August 17th at 9:00 AM PDT. Would that work for you?

Best,

Mike

**Michael M. Lee**  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071

10/8/2009

Phone: (213) 229-7937  
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# **EXHIBIT 5**

# GIBSON, DUNN & CRUTCHER LLP

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August 18, 2009

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## VIA E-MAIL

Shaun Simmons  
O'Melveny & Myers LLP  
300 South Hope Street  
Los Angeles, CA 90071

Re: *AMD v. Intel*

Dear Shaun:

This letter follows up on our conference call of earlier today to discuss issues related to the supporting and back-up materials for AMD's expert reports. During the call, AMD agreed to provide definitive answers to the questions raised in my colleague Michael Lee's letters dated August 10 and 16, 2009 regarding Dr. Mark W. Watson's supporting materials, as well as address the new issues that have arisen. The following is a summary of Intel's outstanding issues regarding the back-up materials for AMD's expert reports.

1. Mark W. Watson. As previously raised in Mr. Lee's August 10 and 16, 2009 letters, we have questions regarding the "AMD Forecast Share -- Final.xlsx," "Share Interpretation.xls," and "Supply Chain issues.xls" files provided with Dr. Watson's report. During the call, you agreed to provide definitive answers to our previous questions by the close of business tomorrow. These questions were on the table for a week before our conference call, and we were disappointed that AMD was unprepared to address them today. We need a complete response by tomorrow as discussed since it is now two weeks into our response period and we still have no basis for evaluating the information on these spread sheets. We prefer not to have to bring this to the Special Master but will have no choice if you cannot provide the necessary information by tomorrow.

LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO LONDON  
PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER

GIBSON, DUNN & CRUTCHER LLP

Shaun Simmons  
August 18, 2009  
Page 2

2. **B. Douglas Bernheim**. As mentioned during today's call, we have questions regarding Dr. Bernheim's conduct indices in his report. Appendix F of the report discusses his creation of these conduct indices for various OEMs and the general methodology he uses to construct these indicators. He gives one example -- IBM (Exhibit 180), and other conduct indices for other OEMs are represented in a collection of spreadsheets in the folder: "Bernheim\Analyses\Conduct indicators\Output for Watson." However, there are no details in the report or any documentation in the back-up materials on how each specific indicator flag is determined to be a "0" or "1" for each OEM-Quarter-Product Segment-User Segment combination. Please advise with details how these indicators were determined.

3. **Nathan A. Brookwood**. We have reviewed your e-mail from earlier today regarding the sources of the charts and timelines within Mr. Brookwood's report. We remain concerned, however, that the "source" materials for Appendix A have not been adequately identified. It would help somewhat to confirm that everything that was factored into the judgments reflected on this chart is contained in Section V.3., paragraphs 154 -- 249, of the Report. If there are other sources for the entries on Appendix A please produce or identify them.

4. **Thomas Z. Lys**. We have two additional issues with respect to Dr. Lys' report.

a) In the "x86-adjusted CPU data.xls" spreadsheet within the back-up materials for Dr. Lys' report, the "Segmented PL" tab states "Source: Segmented PL (2000 Q1 -- 2008 Q2.xls\_70166000085.xls, see Intel data folder; indirect marketing and G&A data for Q1 and Q2 2008 BCG CPU only-data have been switched to correct for the error in the file that was produced." The source of the "corrected" data, however, is not identified. What is the source of the corrected data? What was the "error," and on what basis was this "error" identified?

b) In paragraph 255 of Dr. Lys' report, Dr. Lys states that he relies "directly on AMD management" for "incremental R&D figures" for his sustainability analysis. These data are produced as the TIFFed document "AMD-X-F819-0030711 -- AMD-X-F819-0030711" supporting "Sustainability analysis.xls" (the "Incremental R&D" tab). However, it is not stated who produced these materials, for what purpose, and when they were produced. Please clarify these issues.

5. **Daryl Ostrander**. We have a few additional issues with respect to Dr. Ostrander's report.

a) **Native v. PDF Versions of Excel Spreadsheets**. As raised during today's call, 19 Excel spreadsheets mentioned in Dr. Ostrander's report were produced in the back-up materials in native and PDF files, but 35 other Excel spreadsheets mentioned in his report were produced only as PDF files. Attached to this letter is a list of the spreadsheets produced only as PDFs. Some of the PDF documents (e.g., AMDX-F819-0027006-0027073 and AMDX-F819-0027075-0027181) are blurry and illegible. It is unclear whether these files are different

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Shaun Simmons  
August 18, 2009  
Page 3

printings of the same spreadsheet or may correspond to a native file already received. What is the distinction between spreadsheets produced as native and PDF files and files produced as PDFs only? What is the origin of these PDF documents? Do the PDF files constitute AMD documents identified from AMD's production, or do they constitute Dr. Ostrander's work product? Please clarify these issues and produce the remaining 35 Excel spreadsheets in native file format.

b) Vague References to Documents. The footnotes to Dr. Ostrander's exhibits contain vague references to documents. In total, we ascertain that he references ten different documents in his exhibits. Dr. Ostrander provides only a description of each document without referencing a document title or file name. For example, he refers to the "September 2000 Executive Council presentation," for which there is more than one potential match. Please provide more complete citations that allow the documents to be identified, or provide the Bates number ranges for these documents.

c) Original and Modification of Documents. Please confirm whether the data and documents provided for Dr. Ostrander's report have been modified by Dr. Ostrander in any way from their original form. If any data or documents have been modified by Dr. Ostrander, please identify and produce the files as produced by AMD in the litigation and the version modified by Dr. Ostrander to support his calculations. In other words, to the extent that native format files constitute Dr. Ostrander's work product, but are based on produced data or documents, please identify and produce both versions.

d) Data from Global Foundries. In his report, Dr. Ostrander makes 39 references to data "provided by Global Foundries." Please inform us which documents contain those data, who prepared those data and for what purpose, and when those data were prepared. Please produce any data, programs, methodologies, or materials used in constructing or presenting those data.

e) "Extra" Documents. Dr. Ostrander's "documents considered" list contains 131 documents, but we have received 149 documents. Should these "extra" 18 documents be included in Dr. Ostrander's "documents considered" list?

As discussed, we are expecting full and complete answers concerning the issues previously raised regarding Dr. Watson's supporting materials by close of business tomorrow.



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Shaun Simmons  
August 18, 2009  
Page 4

We ask that AMD provide full responses to the remainder of our questions by the end of this week. Thank you.

Very truly yours,



Steven E. Sletten

SES/mml

cc: Joseph Kattan, Esq.  
Michael Denger, Esq.  
Darren Bernhard, Esq.  
Sogol Pinnazar, Esq.  
Michael Lee, Esq.

100714322\_1.DOC

**Excel Documents Not Received in Native Format: Ostrander's Documents Considered**

<b>Document Title</b>	<b>Date</b>	<b>Bates Number Range</b>
Untitled Spreadsheet	Undated	AMD-F049-00070436 -- 00070606
Untitled Spreadsheet	Undated	AMD-F063-00201940 -- 00201946
Untitled Spreadsheet	Undated	AMD-X-F819-0026092 -- 0026092
Untitled Spreadsheet	Undated	AMD-X-F819-0026093 -- 0026093
Untitled Spreadsheet	Undated	AMD-X-F819-0026094 -- 0026144
Untitled Spreadsheet	Undated	AMD-X-F819-0026145 -- 0026195
Untitled Spreadsheet	Undated	AMD-X-F819-0026196 -- 0026246
Untitled Spreadsheet	Undated	AMD-X-F819-0026247 -- 0026303
Untitled Spreadsheet	Undated	AMD-X-F819-0026304 -- 0026359
Untitled Spreadsheet	Undated	AMD-X-F819-0026360 -- 0026410
Untitled Spreadsheet	Undated	AMD-X-F819-0026411 -- 0026461
Untitled Spreadsheet	Undated	AMD-X-F819-0026462 -- 0026517
Untitled Spreadsheet	Undated	AMD-X-F819-0026585 -- 0026585
Untitled Spreadsheet	Undated	AMD-X-F819-0026586 -- 0026587
Untitled Spreadsheet	Undated	AMD-X-F819-0026588 -- 0026589
Untitled Spreadsheet	Undated	AMD-X-F819-0026590 -- 0026592
Untitled Spreadsheet	Undated	AMD-X-F819-0026638 -- 0026697
Untitled Spreadsheet	Undated	AMD-X-F819-0026698 -- 0026757
Untitled Spreadsheet	Undated	AMD-X-F819-0026758 -- 0026817
Untitled Spreadsheet	Undated	AMD-X-F819-0029863 -- 0029865
Untitled Spreadsheet	Undated	AMD-X-F819-0029866 -- 0029878
Untitled Spreadsheet	Undated	AMD-X-F819-0029879 -- 0029916
Untitled Spreadsheet	Undated	AMD-X-F819-0029917 -- 0029929
Untitled Spreadsheet	Undated	AMD-X-F819-0029930 -- 0029954
Untitled Spreadsheet	Undated	AMD-X-F819-0029955 -- 0029972
Untitled Spreadsheet	Undated	AMD-X-F819-0029973 -- 0029986
Untitled Spreadsheet	Undated	AMD-X-F819-0029987 -- 0030011
Untitled Spreadsheet	Undated	AMD-X-F819-0030012 -- 0030036
Untitled Spreadsheet	Undated	AMD-X-F819-0030037 -- 0030130
Untitled Spreadsheet	Undated	AMD-X-F819-0030131 -- 0030224
Untitled Spreadsheet	Undated	AMD-X-F819-0030225 -- 0030332
Untitled Spreadsheet	Undated	AMD-X-F819-0030333 -- 0030440
Untitled Spreadsheet	Undated	AMD-X-F819-0030441 -- 0030534
Untitled Spreadsheet	Undated	AMD-X-F819-0030535 -- 0030628

# EXHIBIT 6

O

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August 21, 2009

OUR FILE NUMBER

**VIA E-MAIL & HAND DELIVERY**

WRITER'S DIRECT DIAL  
(213) 430-7645

Steven E. Sletten, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197

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

Re: AMD v. Intel

Dear Steve:

Our letter to you on August 19, 2009 addressed points 1 and 4(b) of your August 18, 2009 letter. This letter addresses the remaining points.

2. B. Douglas Bernheim.

The conduct indicators reflect the conclusions reached by Dr. Bernheim based on his analysis of the evidence relating to each respective OEM over the course of the relevant time frame. Both the evidence relied upon and Dr. Bernheim's analysis of that evidence is identified and explained throughout the entirety of his report. The most specifically focused discussion of that evidence and analysis with respect to any given OEM is contained in the corresponding OEM specific section of his report. There is no additional material to disclose.

3. Nathan A. Brookwood.

As explained in my August 18 email, Appendix A is based on the narrative and evidence contained in Section V.3. of Mr. Brookwood's report (which includes paragraphs 154 to 249 and the footnotes thereto). If there is some dimension of your question we have not understood, please let us know.

4. Thomas Z. Lys.

a) You asked for an explanation about the reference in Dr. Lys's supporting materials to the correction of an error in indirect marketing and G&A data. This issue was addressed two months ago in an exchange of emails on which you were copied. I have attached to this letter a June 23 email from your colleague David Han confirming our suspicion that Intel

had mislabeled its production of G&A data (switching the columns containing that data for Q1 and Q2 2008). (See Attachment 1.) The reference in the Lys supporting materials is to the correction of this error in labeling by Intel.

5. **Daryl Ostrander**. Below are our responses to the matters you raised concerning Dr. Ostrander's backup materials.

a) **Native v. PDF versions of Excel Spreadsheets.**

At the outset, we note that AMD did not produce any backup materials for Dr. Ostrander, including spreadsheets, in PDF. Rather, all backup materials were produced in native and/or TIFF consistent with the parties' ordinary and longstanding document production protocols. We therefore assume that when you write PDF, you mean TIFF.

It also appears that you are laboring under the misimpression that the production format (i.e., native v. TIFF) of a given spreadsheet is somehow relevant to its "origin" or its status as work product of Dr. Ostrander. This is not the case. If a spreadsheet furnished to Dr. Ostrander was available in native format, then Intel was provided with a native and TIFF version of that spreadsheet. If, by contrast, a spreadsheet or document was available in hard copy or image format only, then Intel was provided with only a TIFF of that spreadsheet. This is all consistent with the parties' document production protocols in this case.

Your letter mentions two spreadsheets (AMDX-F819-002706 - 0027073 and AMDX-F-819-0027075 - 0027181) that were produced in PDF that are "blurry and illegible." Again, the static image versions of these spreadsheets were provided to Intel in TIFF, not PDF. In any case, we have reviewed the TIFFs of these spreadsheets and believe that the legibility issues you have described are the ordinary consequence of the TIFF conversion process. Further, whatever legibility issues Intel is having with the TIFFs of these spreadsheets can be obviated by using the native versions of them, which have already been provided to Intel. The document control numbers for the native versions of the spreadsheets are: AMDN-819-00000032 and AMDN-819-00000034. The TIFFs of these spreadsheets were accompanied by a load file containing an explicit reference to the native versions.

You also included an attachment to your letter purporting to identify 35 spreadsheets that Intel did not receive in native. Each of these spreadsheets, however, has already been produced to Intel in native either as a standalone native file or an embedded native file in a PowerPoint. Attachment 2 to this letter is a table providing the document control numbers of the native files containing all 35 spreadsheets. Again, the TIFFs of these spreadsheets were accompanied by a load file containing an explicit reference to the native versions.

b) **Vague References to Documents.**

You asked for further clarification about which documents were the ones cited in the footnotes of Dr. Ostrander's report. Looking at the citations and the documents themselves, it

does not appear to us that clarification is required. Nevertheless, we have created and included with this letter a table reflecting which documents correspond to which citation. (See Attachment 3.) Of course, all of these documents were disclosed with Dr. Ostrander's report.

c) Original and Modification of Documents.

You asked about modification of data and documents provided to Dr. Ostrander. The nature of your inquiry is a bit unclear to us because it is self-evident that Dr. Ostrander used the information from these materials in his analysis, and in that sense, modified it. However, the materials identified on Dr. Ostrander's list of materials considered are in the form in which they were received by Dr. Ostrander. If this does not answer your question, let us know.

In the course of investigating this inquiry, it has come to our attention that one spreadsheet page prepared by Dr. Ostrander was inadvertently omitted from his disclosure. Dr. Ostrander already disclosed all of the figures reflected in this spreadsheet page. Nevertheless, we believe this disclosure is necessary and appropriate. We have included along with the hard copy of this letter a disc containing that spreadsheet page as a supplement to Dr. Ostrander's original disclosure.

d) Data From Global Foundries.

We are still in the process of confirming all of the relevant information to respond to your inquiry about the data from Global Foundries, but in the meantime did not want to hold up our response to your other questions. We will get back to you as soon as we can on this point.

e) "Extra" Documents.

The extra documents you refer to in your letter were not furnished to or considered by Dr. Ostrander. They were provided to Intel only because the parties have customarily produced documents to each other in complete "family groups" or "message units."

Sincerely,



Shaun M. Simmons

# ATTACHMENT 1

**Laser, Jennifer**

**From:** Han, David S. [DHan@gibsondunn.com]  
**Sent:** Tuesday, June 23, 2009 5:34 PM  
**To:** Laser, Jennifer; Sletten, Steven E.  
**Cc:** Maddigan, Michael  
**Subject:** RE: Cost data follow-up

Jennifer,

There are SG&A expenses not included in the detailed segment-level files that are related to microprocessors. We are in the process of collecting that data.

In addition, here are responses to the other outstanding questions:

1. Regarding [REDACTED]
2. On 5/29/09, you stated that "it appears that the indirect G&A and marketing data for Q1 and Q2-2008 were erroneously switched (see calls AJ75-76, AJ 75-76). Could you please confirm that this is the case." You are correct—the number were erroneously switched.
3. We have examined [REDACTED] for the entire time-period and believe that it will be feasible to gather the information on 1-month outs. Please advise whether AMD is prepared to provide similar data (to date, we have received only quarterly manufacturing data from AMD).
4. We are still in the process of gathering the RevCost files and investigating the "4 - Legacy Test" issue that you raise below.

Regards,

Dave

---

**From:** Laser, Jennifer [mailto:J.Laser@OMM.com]  
**Sent:** Friday, June 19, 2009 11:03 AM  
**To:** Sletten, Steven E.; Han, David S.  
**Cc:** Maddigan, Michael  
**Subject:** FW: Cost data follow-up

Steve and Dave --

We would like to close out an item that has been open for a long time: whether any of the SG&A expenses not included in the detailed segment-level files produced in this case were in any way related to the production and/or sale of microprocessors. You promised to provide a response several weeks ago but we have not received it. Could you provide a response by Tuesday of next week?

8/19/2009



RE: Cost data follow-up

Page 2 of 4

We also posed a few straight-forward follow-up questions on the ICE data translation table and the Segmented PL file. Could you please provide responses at your earliest convenience.

Thank you,

Jennifer Laser  
O'Melveny & Myers LLP  
1999 Avenue of the Stars #700  
Los Angeles, California 90067  
(310) 246-8445 direct line  
(310) 246-6779 fax  
jlaser@omm.com

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From: Laser, Jennifer  
Sent: Thursday, June 11, 2009 5:51 PM  
To: 'Sletten, Steven E.'; 'Han, David S.'  
Cc: Maddigan, Michael  
Subject: RE: Cost data follow-up

Steve and Dave --

I would like to follow-up on one important data item that remains outstanding: whether any of the SG&A expenses not included in the detailed segment-level files produced in this case were in any way related to the production and/or sale of microprocessors. You said that you would have an answer last week. Could you please get back to us on this issue at your earliest convenience.

We also have a few follow-up questions on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you,

8/19/2009

RE: Cost data follow-up

Jennifer Laser  
O'Melveny & Myers LLP  
1999 Avenue of the Stars #700  
Los Angeles, California 90067  
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---

From: Laser, Jennifer  
Sent: Tuesday, June 02, 2009 10:07 AM  
To: 'Sletten, Steven E.'; 'Han, David S.'  
Cc: Maddigan, Michael  
Subject: Cost data follow-up

Steve and Dave --

Thank you for Steve's letter of May 29th. I am writing to follow-up on one item of importance that was not substantively addressed in Steve's letter. It's item no. 5 under Cost Data in my May 5th letter. We need to know as soon as possible whether any of the SG&A expenses not included in the detailed segment-level files produced in this case were in any way related to the production and/or sale of microprocessors. [REDACTED] Could you please provide the answer to that question at your earliest convenience.

Regards,

Jennifer Laser  
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Los Angeles, California 90067  
(310) 246-8445 direct line  
(310) 246-6779 fax  
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8/19/2009

RE: Cost data follow-up

Page 4 of 4

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8/19/2009

**ATTACHMENT 2**

BegDoc	End Doc	Native DCN
AMD-F049-00070436	AMD-F049-00070606	AMDN-049-00001542
AMD-F063-00201940	AMD-F063-00201946	AMDN-063-00018938
AMDX-F819-0026092	AMDX-F819-0026092	AMDZN-819-00000010
AMDX-F819-0026093	AMDX-F819-0026093	AMDZN-819-00000010
AMDX-F819-0026094	AMDX-F819-0026144	AMDZN-819-00000010
AMDX-F819-0026145	AMDX-F819-0026195	AMDZN-819-00000010
AMDX-F819-0026196	AMDX-F819-0026246	AMDZN-819-00000010
AMDX-F819-0026247	AMDX-F819-0026303	AMDZN-819-00000010
AMDX-F819-0026304	AMDX-F819-0026359	AMDZN-819-00000010
AMDX-F819-0026360	AMDX-F819-0026410	AMDZN-819-00000010
AMDX-F819-0026411	AMDX-F819-0026461	AMDZN-819-00000010
AMDX-F819-0026462	AMDX-F819-0026517	AMDZN-819-00000010
AMDX-F819-0026585	AMDX-F819-0026585	AMDZN-819-00000014
AMDX-F819-0026586	AMDX-F819-0026587	AMDZN-819-00000014
AMDX-F819-0026588	AMDX-F819-0026589	AMDZN-819-00000014
AMDX-F819-0026590	AMDX-F819-0026592	AMDZN-819-00000014
AMDX-F819-0026638	AMDX-F819-0026697	AMDZN-819-00000017
AMDX-F819-0026698	AMDX-F819-0026757	AMDZN-819-00000017
AMDX-F819-0026758	AMDX-F819-0026817	AMDZN-819-00000017
AMDX-F819-0029863	AMDX-F819-0029865	AMDZN-819-00000137
AMDX-F819-0029866	AMDX-F819-0029878	AMDZN-819-00000137
AMDX-F819-0029879	AMDX-F819-0029916	AMDZN-819-00000137
AMDX-F819-0029917	AMDX-F819-0029929	AMDZN-819-00000137
AMDX-F819-0029930	AMDX-F819-0029954	AMDZN-819-00000137
AMDX-F819-0029955	AMDX-F819-0029972	AMDZN-819-00000137
AMDX-F819-0029973	AMDX-F819-0029986	AMDZN-819-00000137
AMDX-F819-0029987	AMDX-F819-0030011	AMDZN-819-00000137
AMDX-F819-0030012	AMDX-F819-0030036	AMDZN-819-00000137
AMDX-F819-0030037	AMDX-F819-0030130	AMDZN-819-00000137
AMDX-F819-0030131	AMDX-F819-0030224	AMDZN-819-00000137
AMDX-F819-0030225	AMDX-F819-0030332	AMDZN-819-00000137
AMDX-F819-0030333	AMDX-F819-0030440	AMDZN-819-00000137
AMDX-F819-0030441	AMDX-F819-0030534	AMDZN-819-00000137
AMDX-F819-0030535	AMDX-F819-0030628	AMDZN-819-00000137

**ATTACHMENT 3**

**Documents Cited in Ostrander Exhibits**

<b>Document</b>	<b>Starting Page</b>	<b>Ending Page</b>
2002-2006 LRP Case 4b	AMD-X-F819-0026572	AMD-X-F819-0026584
9/24/01 LRP	AMD-X-F819-0026975	AMD-X-F819-0027005
9/24/01 LRP Excel file	AMD-X-F819-0027075	AMD-X-F819-0027181
1Q02 R6Q	AMD-X-F819-0026073	AMD-X-F819-0026091
1Q02 R6Q Indices	AMD-X-F819-0026518	AMD-X-F819-0026545
2002 qrtly Actuals Excel file	AMD-X-F819-0026555	AMD-X-F819-0026571
11/11/02 LRP	AMD-X-F819-0026617	AMD-X-F819-0026637
2002 LRP Indices	AMD-X-F819-0026945	AMD-X-F819-0026974
References to historical expenditures as provided by Global Foundries	AMD-X-F819-0027074	AMD-X-F819-0027074
2/16/2005 AMD Manufacturing Discussion presented to Executive Steering Committee	AMD-F063-5118818	AMD-F063-5118846

# **EXHIBIT 7**



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September 4, 2009

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Client No.  
T 42376-00764

VIA E-MAIL

Shaun Simmons, Esq.  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071

Re: *AMD v. Intel*

Dear Shaun:

I write to confirm our understanding regarding the existence of back-up materials related to the expert report of Dr. Daryl Ostrander. In my August 10, 2009 letter to you, Intel requested that AMD produce spreadsheets for Dr. Ostrander's supporting materials that contain non-"hard-coded" calculations and formulas. In your August 13, 2009 letter to me, you responded that for Dr. Ostrander's report, "there are no further spreadsheets supporting the ones already provided to you." On the conference call between Intel and AMD on August 18, 2009, AMD represented that the numbers contained within the spreadsheets and exhibits for Dr. Ostrander's report were entered in directly and reflected the expert's judgment and experience.

Please confirm in writing that no further data, documents, files, or spreadsheets containing formulas, methodologies, or calculations for Dr. Ostrander's expert report exist, aside from the spreadsheets already provided. If this is not the case, please produce detailed back-up for every hard-coded number that appears in his spreadsheets and formulae for all calculated cells in his spreadsheets. In other words, if a cell displays a number, please provide either a specific cite to a specific location in a document on Dr. Ostrander's considered documents list that is the source for that number, or a formula that shows how it is calculated from other cells that are specifically cited. If such back-up files do exist, please produce them no later than Tuesday, September 8, 2009.

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GIBSON, DUNN & CRUTCHER LLP

Shaun Simmons, Esq.  
September 4, 2009  
Page 2

I also reiterate our request from Steven Sletten's September 2, 2009 email to follow up on our questions regarding identifying specifically the "September 2000 Executive Council presentation" document that Dr. Ostrander refers to in footnotes to certain exhibits, as well as our request to provide further information and data regarding the data "provided by Global Foundries." As requested in Mr. Sletten's e-mail, we would appreciate answers to these questions later today.

Thank you again for investigating these issues.

Very truly yours,



Michael M. Lee

MML/mml

cc: Steven Sletten, Esq.  
Joseph Kattan, Esq.  
Michael Denger, Esq.  
Darren Bernhard, Esq.  
Jay Srinivasan, Esq.

100723775\_2.DOC

# **EXHIBIT 8**



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September 15, 2009

OUR FILE NUMBER  
0008346-00163

VIA EMAIL & MESSENGER

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WRITER'S E-MAIL ADDRESS  
ssimmons@omml.com

Re: *AMD v. Intel*

Dear Mike:

This responds to your letter to us dated September 4, 2009, and Intel's letter to Judge Poppiti dated September 9, 2009, relating to materials considered by Dr. Daryl Ostrander in connection with his expert report. As I told you by email shortly before you filed your motion, we have been working diligently to respond to your inquiries, and we simply needed some additional time to track down some answers.

As described below, we are also producing some additional electronic documents. These are being sent to you by messenger on a CD. We can now confirm, as you requested, that we have produced all data and documents considered by Dr. Ostrander in forming the opinions set forth in his report discoverable under the May 10, 2007 Amended Stipulation and Protective Order re Expert Discovery (the "Amended Stipulation"). We are available to meet with you after you have had time to consider this letter with its enclosures to discuss any remaining questions you may have.

**September 2000 Fab 25 HiP7 Cu Feasibility Study**

Intel's letter to Judge Poppiti asks us to more specifically identify the document referenced in Dr. Ostrander's report as the "September 2000 Executive Council presentation." As I explained in my September 6, 2009 email to Steve Sletten, the reference should have been to the "September 2000 Fab 25 HiP7 Cu Feasibility Study." We included that document in Dr. Ostrander's disclosures as AMD-F118-00000209 – AMD-F118-00000247.

**Historic Sales Data**

Exhibit E to Dr. Ostrander's report consists of two "forward-looking" spreadsheets. Those spreadsheets contain entries for [REDACTED] for various years.

As explained generally in his report, Dr. Ostrander calculated [REDACTED]

[REDACTED] We neglected to produce the spreadsheet showing the calculated actual sales, and have done so now. The file name of the spreadsheet is: "2009 06 24 Actual.xls."

In reviewing materials to respond to your inquiries, we learned that Dr. Ostrander was provided a preliminary version of the calculated actual sales spreadsheet. We have included on the CD being sent to you the final and correct version of this spreadsheet, which bears the filename "AMD die distribution.xls."

Because his report deals with different scenarios, Dr. Ostrander utilized four different spreadsheets that calculate the [REDACTED]. Each utilizes data extracted from the "actual sales" spreadsheet. Accordingly, there are two sets, the first utilizing the preliminary actual sales data (labeled "Econometric Cutoff Totals.xls," "Econometric Ratio Totals.xls," "USE THIS AMD Base NO Mix Adj Totals.xls," and "USE THIS AMD Base WITH Mix Adj Totals.xls.") and the second using the revised data (labeled "Revised Demand Statement A Totals.xls," "Revised Demand Statement B Totals.xls," "Revised Demand Statement C Totals.xls," and "Revised Demand Statement D Totals.xls"). We also are providing a second set of forward-looking spreadsheets for Demand Statements A and B and Demand Statements C and D, which similarly utilize the revised "actual" sales data. They are "Revised Forward-looking Spreadsheet for Demand Statements A and B.xls" and "Revised Forward-looking Spreadsheet for Demand Statements C and D.xls." These supersede Exhibit E to Dr. Ostrander's report.

#### **GlobalFoundries Information**

Exhibits G, I, K, and M to the Ostrander report contain information on historical capital expenditures from 2001 to 2008. That information comes from a document provided to Dr. Ostrander by GlobalFoundries personnel entitled "Manufacturing Capital Delivery Summary." A copy previously was included in Dr. Ostrander's disclosures as AMDX-F819-0027074.

The information appearing in the "Manufacturing Capital Delivery Summary" in turn comes from the business records of GlobalFoundries and AMD. Although not matters "considered" by Dr. Ostrander, and therefore not discoverable under the Amended Stipulation, in the interest of avoiding needless controversy we are pleased to provide you this background.

[REDACTED] Specifically, for each of the facilities (e.g., Fab 30) referenced in Dr. Ostrander's report,

[REDACTED] Data for 2001 was obtained from AMD's audited financial statements for the two ATMP facilities (Penang and Singapore), and from a legacy data storage system named GEAC for Fab 30.

Though not considered by Dr. Ostrander in preparing his report, the complete set of actual capital expenditure data for 2001-2008 is contained in the spreadsheet titled "Mfg\_Capital\_Delv\_2001-2008\_Rev.xls," and we are happy to share it with you.

In collecting the information to disclose here, we identified two errors in the original data. The Assembly data from the Penang facility, for the year 2001 only, originally was provided in local currency, the Malaysian Ringgit. That error has been corrected in "Mfg\_Capital\_Delv\_2001-2008\_Rev.xls." Also, 2004 capital expenditure data for Fab 36 was omitted from the original. We are also producing revised versions of Exhibits G, I, K, and M that reflect the revisions. They are "Revised Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls," "Revised Demand Statement B - Historical Data Model - Lost Profits Through 2Q08 CapEx.xls," "Revised Demand Statement C - AMD Forecast model CapEx.xls," and "Revised Demand Statement D - Mix Improvements Model CapEx.xls." They supersede Exhibits G, I, K, and M to Dr. Ostrander's report.

#### Path Forward

Our opposition to Intel's motion is due before midnight tomorrow. To give you adequate time to digest this information and to study the documents, and to resolve informally any questions or issues that you think remain, we would ask for an extension of our response date. We would propose Friday of this week, but we are open to any other suggestion you might have.

Very truly yours,



Shaun M. Simmons

for O'MELVENY & MYERS LLP

SMS:mrp

LA2:892894.3

# **EXHIBIT 9**



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September 18, 2009

VIA E-MAIL AND U.S. MAIL

Robert E. Cooper, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, California 90071-3197

Re: AMD v. Intel

Dear Bob:

Thanks for your letter of last evening. Although I can understand your displeasure with a supplemental production of any kind at this date, I think you've overreacted. Not a single line of Dr. Ostrander's expert report has changed. His conclusions remain his conclusions, and the basis for them remains entirely the same. Nor are the opinions of any other expert affected.

The corrections we made are entirely confined to the Ostrander backup materials, they are *de minimus*, and they are entirely immaterial to Dr. Ostrander's analysis. We apologize we didn't catch the mistake earlier, but here's what happened: While responding to Intel's request for additional backup for that report, we discovered that Dr. Ostrander utilized a draft compilation of AMD's actual sales Dr. Watson gave him, not Dr. Watson's final version. The differences between the two are wholly immaterial (about .1%)—hence, no changes to Dr. Ostrander's report—but in the interests of accuracy we felt it necessary to provide you the correct data. Since the actual sales data are replicated in the spreadsheets Dr. Ostrander prepared for each of the scenarios he considered, we also felt it necessary to provide corrected versions of these too. But the changes are all insignificant and do not affect anything.

We produced Dr. Watson's AMD actual sales data as part of the Ostrander disclosures on Tuesday, but in pulling together the additional Ostrander materials Intel requested, we realized we had failed to include the data in the Watson backup. We also decided that it would be useful for Intel to have the code Dr. Watson used to pull actual sales from the AMD database. Again, this changes nothing in the Watson report; it simply makes the backup production more complete.

The only other changes to Dr. Ostrander's back-up materials result from corrected historical capital expenditures data we received while following up on Intel's requests. Again,

OUR FILE NUMBER  
008,346-163

WRITER'S DIRECT DIAL  
(310) 246-6789

WRITER'S E-MAIL ADDRESS  
cdiamond@omny.com



these changes have no impact on Dr. Ostrander's analysis or conclusions. We just thought it made sense to include the information and advise you of the changes.

Though not related to any of the expert materials but so you are not taken by surprise, I need to advise you of one other change. At your team's request, we will be producing later today a disc of materials considered by Mr. Meyer in connection with the R&D File Mr. Meyer had prepared. When pulling those materials together, Mr. Meyer further scrubbed the data used in his analysis and made a couple of minor changes to his cost numbers. Again, the revisions have no effect on any of AMD's experts reports or their opinions.

As you know, we have produced reams of data over the past six weeks. As I'm sure Intel will discover, minor glitches are unavoidable despite all of our best efforts to make our disclosures to one another perfect. Our team will be available today and over the weekend to walk your team through the few rows that have changed in the Ostrander spreadsheets and the R&D File, and to respond to any other questions you may have.

Sincerely yours,



Charles P. Diamond  
of O'MELVENY & MYERS LLP

CPD:mos

# EXHIBIT 10

# GIBSON, DUNN & CRUTCHER LLP

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September 30, 2009

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Client No.  
T 42376-00764

VIA E-MAIL

Shaun Simmons, Esq.  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071

Re: *AMD v. Intel*

Dear Shaun:

Thank you for arranging the call yesterday to discuss the new expert back-up materials AMD recently produced. In addition to the questions raised during yesterday's call with respect to the new Ostrander, Watson, and R&D materials, for which we are still waiting answers, I write to raise an additional question with respect to the supplemental Ostrander materials.

In Dr. Ostrander's original Demand Statements A and B, he provided the incremental units demanded, which in turn were provided to him by Dr. Watson. These data were contained in these two files: Historical Data Model - Discovery Period Lost Profits Only.xls and Historical Data Model - Lost Profits Through 2Q08.xls. These units were provided by die name and by vertical segment (Desktop, Server, and Mobile). In Dr. Ostrander's Revised Demand Statements A and B, it appears he has provided incremental units demanded, and these data were contained in these two files: Revised Demand Statement A Totals.xls and Revised Demand Statement B Totals.xls. However, the units were provided by die name only, but not by vertical segment. Comparing both the original and revised demand statements, the total of incremental units did not change, but the product mix did in certain quarters. The revised model now lacks vertical segment information. The supplemental Watson materials do not address this revised product mix, as the new programs only provide new actuals for Dr. Ostrander and correct the designation of some K6 products.

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GIBSON, DUNN & CRUTCHER LLP

Shaun Simmons, Esq.  
September 30, 2009  
Page 2

Please provide revised versions of Revised Demand Statements A and B that include the incremental units demanded both by die name and by vertical segment. We ask that you please produce the revised spreadsheets no later than Friday, October 2, 2009. We further ask that you please provide responses to our outstanding questions raised during yesterday's call by that date as well.

Thank you again for your attention to these matters.

Very truly yours,



Michael M. Lee

MML/mml

cc: Joseph Kattan, Esq.  
Steven Sletten, Esq.  
Mark Weber, Esq.  
Darren Bernhard, Esq.  
Jay Srinivasan, Esq.

100738027\_1.DOC

# **EXHIBIT 11**

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**From:** Lee, Michael M.  
**Sent:** Monday, October 05, 2009 4:55 PM  
**To:** 'Simmons, Shaun M.'  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Weber, Mark E.; 'Bernhard, Darren'; Srinivasan, Jay P.  
**Subject:** RE: AMD v. Intel

**Attachments:** AMD v. Intel (9.30.09 Letter).pdf

Shaun:

I write to follow up whether you have responses to the questions outlined in the attached letter (and from last week's call) and whether you will produce revised spreadsheets as outlined in the letter. Please advise as soon as possible.

Thanks,  
Mike



AMD v. Intel  
(9.30.09 Letter)....

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**From:** Lee, Michael M.  
**Sent:** Wednesday, September 30, 2009 5:23 PM  
**To:** Simmons, Shaun M.  
**Cc:** Kattan, Joseph; Sletten, Steven E.; Weber, Mark E.; 'Bernhard, Darren'; Srinivasan, Jay P.  
**Subject:** AMD v. Intel

Shaun:

Please see the attached letter.

Thanks,  
Mike

<< File: AMD v. Intel (9.30.09 Letter).pdf >>

**Michael M. Lee**  
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