

EXHIBIT A

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

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION))))	MDL No. 05-1717-JJF
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ADVANCED MICRO DEVICES, INC. and AMD INTERNATIONAL SALES & SERVICE, LTD.,)))))))))	C. A. No. 05-441-JJF
Plaintiffs,		
vs.		
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.		
INTEL CORPORATION,)))))	
Defendant.		

**NOTICE OF TAKING DEPOSITION OF
INTEL CORPORATION AND INTEL KABUSHIKI KAISHA CONCERNING
EVIDENCE PRESERVATION AND COMPLETENESS OF DOCUMENT
PRODUCTION, AND REQUEST FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. (collectively, “AMD”) will take the deposition of defendants Intel Corporation and Intel Kabushiki Kaisha (collectively, “Intel”) on June 4, 2009, beginning at 9:30 a.m., at the offices of O’Melveny & Myers LLP, 400 South Hope Street, 18th Floor, Los Angeles, California, or at such other time and place as the parties may agree. The deposition will be recorded by stenographic and sound-and-visual (videographic) means, will be taken before a Notary Public or

other officer authorized to administer oaths, and will continue from day to day until completed, weekends and public holidays excepted.

Reference is made to the “Description of Matters on Which Examination is Requested” attached hereto as Exhibit A and incorporated herein by this reference. In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Intel is hereby notified of its obligation to designate one or more officers, directors, or managing agents (or other persons who consent to do so) to testify on its behalf as to all matters embraced in the “Description of Matters on Which Examination is Requested” and known or reasonably available to Intel.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rules 35(b) and 34 of the Federal Rules of Civil Procedure, AMD requests that Intel produce for inspection, copying and use at the deposition all of the documents and other tangible things in their possession, custody, or control and responsive to the “Categories of Documents and Tangible Things Requested for Production” attached hereto as Exhibit B and incorporated herein by reference. Production shall take place before the deposition (specifically, on May 28, 2009) or at such other time as the parties may agree.

/s/ Frederick L. Cottrell, III

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

Cottrell@rlf.com

Shandler@rlf.com

Fineman@rlf.com

Attorneys for Plaintiffs Advanced Micro

Devices, Inc. and AMD International Sales &
Service, Ltd.

OF COUNSEL:

Charles P. Diamond

cdiamond@omm.com

Linda J. Smith

lsmith@omm.com

O'Melveny & Myers LLP

1999 Avenue of the Stars, 7th Floor

Los Angeles, CA 90067

(310) 246-6800

Mark A. Samuels

msamuels@omm.com

O'Melveny & Myers LLP

400 South Hope Street

Los Angeles, CA 90071

213-430-6000

Dated: April 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Electronic Mail to the following:

Richard L. Horwitz, Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
P. O. Box 951
Wilmington, DE 19899

James L. Holzman, Esquire
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899-1328

I hereby certify that on April 28, 2009, I have sent by Electronic Mail the foregoing document to the following non-registered participants:

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

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

Daniel A. Small, Esquire
Cohen Milstein, Sellers & Toll, L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, DC 20005

/s/ Frederick L. Cottrell, III
Frederick L. Cottrell (#2555)
cottrell@rlf.com

EXHIBIT A

DESCRIPTION OF MATTERS ON WHICH EXAMINATION IS REQUESTED

I. DEFINITIONS

1. “Intel” shall mean and refer collectively to defendants Intel Corporation and Intel Kabushiki Kaisha, including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.

2. For all Deposition Topics other than Deposition Topic No. 1, the term “this Litigation” means and refers to the litigation in which this Notice of Taking Deposition has been served.

3. For Deposition Topic No. 1, the term “this Litigation” means and refers to the instant litigation between Advanced Micro Devices and Intel Corporation and Intel Kabushiki Kaisha (MDL No. 05-1717-JJF), the related civil antitrust cases filed by Class Plaintiffs against Intel Corporation and Intel Kabushiki Kaisha (C. A. No. 05-441-JJF and C. A. No. 05-485-JJF), the Japan-based litigation filed by Advanced Micro Devices (Japan) against Intel Kabushiki Kaisha, and includes any potential civil antitrust litigation that Intel reasonably anticipated might be filed against it in the United States or a foreign country based on activities of or relating to domestic or foreign governmental antitrust regulatory bodies.

4. “Intel Custodians” means and refers to the approximately 1,027 individuals identified by Intel on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.

5. Intel’s “Global Database” means and refers to the database that Intel populated, searched, and extracted data from in connection with Intel’s remediation efforts;

6. “Intel’s EMC Archive” means the EMC email archiving solution and all related systems that Intel represented to the Court it implemented in December 2006 and in 2007.

II. SUBJECT MATTER

1. The date on which Intel first reasonably anticipated this Litigation and any Intel evidence preservation activities undertaken by Intel before June 27, 2005.
2. Intel's knowledge of the nature and scope of issues being investigated by regulatory authorities in the United States and abroad prior to the commencement of this Litigation, and Intel's participation and involvement in those investigations.
3. Configuration of Intel's email systems including, but not limited to:
 - a. Intel's efforts to change, monitor or prevent the use of Outlook settings that could adversely impact Intel Custodian preservation including, but not limited to, automatic emptying of deleted item folders;
 - b. Dumpster settings for individual Intel Custodians, dumpster settings on Exchange servers utilized by Intel Custodians, and any changes made by Intel to dumpster settings in connection with this Litigation;
 - c. Intel's efforts to change and monitor mailbox size limits or quotas for Intel Custodians' Outlook email accounts, and the effect of such limits or quotas on Intel Custodians' preservation of email; and
 - d. Loss or deletion of Intel Custodian email resulting from the configuration of Intel's email systems including, but not limited to, Intel Custodians' Outlook settings, dumpster settings, or mailbox size limits or quotas.
4. Intel's implementation, use, and harvesting of data from Intel's EMC Archive including, but not limited to:
 - a. The original configuration of Intel's EMC Archive, changes thereto, and Intel's instructions to Intel Custodians regarding Intel's EMC archive;

- b. Migration of deleted items, historic .psts, the contents of Intel Custodian mailboxes, and other data into Intel's EMC Archive;
 - c. Processes used to extract data from Intel's EMC Archive;
 - d. Errors, malfunctions or data loss associated with Intel's EMC Archive including, but not limited to, data loss upon migration of Intel Custodians' email accounts to Intel's EMC Archive or upon harvesting from Intel's EMC archive; and
 - e. Quality control, auditing, and documentation related thereto.
5. Intel's harvests of electronic and hard copy (paper) data for this Litigation, including but not limited to:
- a. Protocols and processes used for Intel's non-remedial, "organic" harvests conducted after May 2007;
 - b. Gaps and deficiencies in Intel's non-remedial, "organic" harvests conducted after May 2007;
 - c. Live Exchange server mailbox harvesting of Intel Custodian data;
 - d. Intel's harvest of email deleted items including, but not limited to, Intel's harvests of Exchange dumpsters;
 - e. The completeness of Intel's harvests of Intel Custodian data; and
 - f. Quality control, auditing, and documentation related thereto.
6. Actions taken by Intel to preserve Intel Custodian data upon the discovery of preservation lapses in 2006 and 2007.
7. Intel's processing and production of Intel Custodians' electronic data, including but not limited to:

- a. Intel's discovery, collection, processing, and production of .psts for approximately 155 Intel Custodians, as referenced in Intel's filing with the Special Master dated May 30, 2008;
 - b. Intel's discovery, collection, processing and production of Intel Custodian data after production deadlines established by Court orders;
 - c. Methods of deduplication, and of processing and repair of .pst files used by Intel's vendors in this Litigation, and the results thereof; and
 - d. The completeness of Intel's production of organic and remedial electronic data, including Intel Custodian, backup tape, database and shared server data.
8. Backup tape policies and protocols, including:
- a. Intel's pre-litigation disaster recovery backup tapes including, but not limited to, content of backup tapes, backup tape recycling and retention, data collected from such backups, and data loss; and
 - b. Preservation of backup tapes for this Litigation including, but not limited to, content of backup tapes, backup tape recycling and retention, data collected from such backups, and data loss.
9. Intel's "Global Database" including, but not limited to:
- a. Methods, tools and protocols used to populate, search and extract data from Intel's Global Database, and the content thereof;
 - b. Reporting capabilities of, and errors, malfunctions or data loss associated with, Intel's Global Database; and
 - c. Quality control, auditing, and documentation related thereto including, but not limited to, chain of custody, tracking and validation of data inputs into and data extracts from Intel's Global Database.

10. The timing, scope and nature of problems and/or issues for the following Intel Custodians' data preservation, harvesting, processing and/or productions:
 - a. Craig Barrett;
 - b. CJ Bruno;
 - c. Andy Bryant;
 - d. Dianne Bryant;
 - e. Louis Burns;
 - f. Debbie Conrad;
 - g. Kevin Corbett;
 - h. Tammy Cyphert;
 - i. David Hamilton;
 - j. Shuichi Kako;
 - k. Shervin Kheradpir;
 - l. Tom Kilroy;
 - m. Eric Kim;
 - n. Charlotte Lamprecht;
 - o. Sean Maloney;
 - p. Jeff McCrea;
 - q. Paul Otellini;
 - r. Josh Richmond;
 - s. Satish Sangameswaran;
 - t. Jake Smith;
 - u. Tim Thraves; and
 - v. Kazumasa Yoshida.

EXHIBIT B

CATEGORIES OF DOCUMENTS AND TANGIBLE THINGS REQUESTED FOR PRODUCTION

I. DEFINITIONS

1. “Intel” shall mean and refer collectively to defendants Intel Corporation and Intel Kabushiki Kaisha, including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.

2. For all Document Requests other than Document Request No. 1, the term “this Litigation” means and refers to the litigation in which this Notice of Taking Deposition and request for Production of Documents and Tangible Things has been served.

3. For Document Request No. 1, the term “this Litigation” means and refers to the instant litigation between Advanced Micro Devices and Intel Corporation and Intel Kabushiki Kaisha (MDL No. 05-1717-JJF), the related civil antitrust cases filed by Class Plaintiffs against Intel Corporation and Intel Kabushiki Kaisha (C. A. No. 05-441-JJF and C. A. No. 05-485-JJF), the Japan-based litigation filed by Advanced Micro Devices (Japan) against Intel Kabushiki Kaisha, and includes any potential civil antitrust litigation that Intel reasonably anticipated might be filed against it in the United States or a foreign country based on activities of or relating to domestic or foreign governmental antitrust regulatory bodies.

4. “Intel Custodians” means and refers to the approximately 1,027 individuals identified by Intel on its Custodian List served on June 1, 2006, pursuant to the Stipulation and Order Regarding Document Production entered by the Court in this Litigation.

5. “Documents” shall mean and include all “writings,” “recordings” or “photographs” as those terms are defined in Rule 1001 of the Federal Rules of Evidence. Without limiting the foregoing, the term “documents” includes both hard copy documents as well as electronically stored data-files including email, instant messaging, shared network files, and databases. With respect to electronically stored data, “documents” also includes, without

limitation, any data on magnetic or optical storage media (e.g., servers, storage area networks, hard drives, backup tapes, CDs, DVDs, thumb/flash drives, floppy disks, or any other type of portable storage device, etc.) stored as an “active” or backup file, in its native format.

II. INSTRUCTIONS

1. These requests call for the production of all responsive documents that are within the possession, custody or control of Intel, including its officers, directors, agents, attorneys, employees, and other persons acting on Intel’s behalf.

2. If any document covered by these requests is withheld by reason of a claim of attorney-client privilege, attorney work product protection, or any other privilege or protection, please furnish a log providing the following information with respect to each such withheld document: date; author; recipients; general subject matter; and legal basis upon which the document has been withheld.

3. These requests shall be deemed continuing so as to require further and supplemental production in accordance with F.R.C.P. 26(e).

III. REQUESTS

1. Documents sufficient to show and detail the evidence preservation activities undertaken by Intel in connection with this Litigation prior to June 27, 2005.
2. Documents sufficient to show and detail the changes Intel made to dumpster settings for individual Intel Custodians and on Exchange servers utilized by Intel Custodians in connection with this Litigation.

3. Documents sufficient to show and detail Intel's monitoring of, and changes Intel made or enforced in regard to, Intel Custodians' Outlook email account settings or configurations in connection with this Litigation.
4. Documents sufficient to show and detail the migration of Intel Custodians' deleted items, historic .psts, the contents of Intel Custodian mailboxes, and other data to Intel's EMC Archive.
5. Documents sufficient to show and detail the processes used by Intel to extract data from Intel's EMC Archive.
6. Documents sufficient to show and detail Intel IT policies, procedures, instructions, guidelines or user guides related to Intel's EMC Archive including, but not limited to, any such materials provided to Intel Custodians.
7. Documents sufficient to show and detail the methods, protocols, and results of Intel's population, searching and extraction of data from Intel's Global Database.
8. Documents sufficient to show and detail Intel's harvesting of Intel Custodians' dumpster deleted items.
9. Documents sufficient to show and detail the scope of Intel's harvests of non-remedial Intel Custodian data.
10. Documents sufficient to show and detail Intel's discovery, collection, processing, and production of .psts for approximately 155 Intel Custodians, as referenced in Intel's filing

with the Special Master dated May 30, 2008.

EXHIBIT B

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

IN RE)	
INTEL CORPORATION)	
MICROPROCESSOR ANTITRUST)	MDL No. 05-1717-JJF
LITIGATION)	
<hr/>		
ADVANCED MICRO DEVICES, INC., a)	
Delaware corporation, and AMD)	
INTERNATIONAL SALES & SERVICES, LTD.,)	
a Delaware corporation,)	
)	
Plaintiffs,)	
)	C.A. No. 05-441-JJF
v.)	
INTEL CORPORATION, a Delaware corporation,)	
and INTEL KABUSHIKI KAISHA, a Japanese)	
corporation,)	
)	
Defendants.)	
<hr/>		
PHIL PAUL, on behalf of himself)	
and all others similarly situated,)	C.A. No. 05-485-JJF
)	
Plaintiffs,)	CONSOLIDATED ACTION
)	
v.)	DM 35
INTEL CORPORATION,)	
)	
Defendants.)	
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ORDER

WHEREAS, the matter is presently before the Special Master on Advanced Micro Devices, Inc. and AMD International Sales & Service, LTD's ("AMD") Motion to Compel Defendants Intel Corporation and Intel Kabushiki Kaisha ("Intel") regarding

Rule 30(b)(6) and Document Requests (“Motion to Compel”) (Docket No. 1554) related to Intel’s evidence preservation and completeness of document production. A copy of AMD’s Notice of Taking Deposition of Intel Corporation And Intel Kabusidki Kaisha Concerning Evidence Preservation And Completeness of Document Production, and Request For Production of Documents is attached hereto as Exhibit A;

WHEREAS, Intel opposes the Motion on the grounds that [D.I. 1605] (i) the discovery is time-barred pursuant to the June 20, 2007 Stipulation and Order Bifurcating Discovery into Intel’s Preservation Issues (“Bifurcation Order”) [D.I. 396]; (ii) the discovery sought is duplicative of prior discovery which AMD has or has had ample opportunity to obtain; and (iii) the Motion to Compel is not ripe for consideration;

WHEREAS, the Special Master held a telephonic hearing in this matter on July 20, 2009 (the “hearing”) during which the Special Master made certain conclusions;

WHEREAS, for the sake of convenience and clarity any conclusions reached by the Special Master both during and subsequent to the hearing will herein read “concludes”;

WHEREAS, the Special Master consulted with Eric Friedberg and his colleagues at Stroz Friedberg LLC who also participated in the hearing;

WHEREAS, the Special Master noted that the Bifurcation Order permitted discovery to be conducted by AMD concerning Intel’s remediation plan itself and which could also include “inquiring into the nature and extent of Intel’s loss of data, and the potential consequences of those losses with respect to Intel’s ability to remediate the same, to be concluded by August 31, 2007;

WHEREAS, the Special Master also noted the Bifurcation Order also permitted discovery concerning causation/culpability related issues to be conducted expeditiously commencing no later than October 1, 2007 without setting an end date;

WHEREAS, the Special Master concludes that causation/culpability discovery is not time-barred since the Bifurcation Order does not contain an end date and the term “expeditiously” relates to the commencement of discovery;

WHEREAS, Eric Friedberg and his colleagues at Stroz Friedberg LLC advised and the Special Master concludes, that discovery conducted on remediation and causation/culpability, necessarily involved the same opportunity to conduct what would be considered Fed. R. Civ. P. 30(b)(6) discovery consistent with the United States District Court for the District of Delaware Default Standards for Discovery of Electronic Documents (“E-Discovery”);

WHEREAS, the Special Master concludes that an exhaustive examination of all prior deposition transcripts and document production with an eye toward determining whether AMD had a complete and fullsome opportunity to ask questions now covered by the deposition topics at issue would neither be plausible or practical and burdensome;

WHEREAS, at the same time the Special Master further concludes that some opportunity to conduct Fed. R. Civ. P. 30(b)(6) discovery on some of the notice topics is appropriate and ripe, although repetitive and duplicative discovery and discovery of matters that are closed pursuant to the Bifurcation Order is not appropriate;

WHEREAS, the Special Master pursuant to the agreement of the parties, concludes that Topics 7 and 9 are appropriate and the 30(b)(6) depositions on these two topics will be conducted in seven (7) hours;

WHEREAS, the Special Master concludes that Topics 5, 6, and 8 have been addressed in prior deposition notices and no additional deposition time should be permitted;

WHEREAS, the Special Master concludes that Topics 1 and 2 have not been covered by prior deposition notices;

WHEREAS, the Special Master concludes that Topics 4 and 10 address topics for which new information has been discovered. Topic 4 relates to information newly disclosed by Intel regarding problems it had with extracting data from the EMC Archive and Topic 10 relates to information newly supplied by Intel through its revised custodian interview summaries.

WHEREAS, with respect to AMD's Request for Production the Special Master is mindful of Intel's assertion that if it possessed the documents it would have produced them pursuant to prior requests;

WHEREAS, the Special Master concludes that if Intel has produced responsive documents, a certification of that production is appropriate;

WHEREAS, the Special Master concludes that if Intel cannot certify that all responsive documents have been produced, Intel should provide responses to the requests for production;

NOW, THEREFORE, AND FOR REASONS ALSO STATED ON THE RECORD IT IS HEREBY ORDERED, AS FOLLOWS:

1. AMD's request for Fed. R. Civ. P. 30(b)(6) depositions is HEREBY GRANTED as set forth below and DENIED in all other respects:

a. Topics No. 1 and 2 - 1 hour;

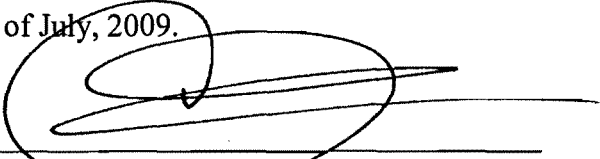
- b. Topics 3 – 2 hours;
- c. Topic 4 – 1 hour;
- d. Topics 7 and 9 – 7 hours;
- e. Topic 10 – 2 hours.

2. Within seven (7) days of the date of this Order, Intel shall either (i) certify that it has produced all of the documents responsive to AMD's Request for Production or (ii) produce the responsive documents on a date to be mutually agreed upon by the parties. The parties shall advise the Special Master of the agreed upon date not later than August 7, 2009.

4. Not later than close of business on August 7, 2009, the parties shall recommend to the Special Master an end date for causation / culpability discovery.

THE SPECIAL MASTER'S OPINION AND ORDER WILL BECOME A FINAL ORDER OF THE COURT UNLESS OBJECTION IS TAKEN IN ACCORDANCE WITH THE ANTICIPATED ORDER OF THE COURT WHICH SHORTENS THE TIME WITHIN WHICH AN APPLICATION MAY BE FILED PURSUANT TO FED. R. CIV. P. 53(f)(2).

SO ORDERED, this 31st day of July, 2009.



Vincent J. Poppiti (DSBA No. 100614)
Special Master

EXHIBIT C



O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
NEWPORT BEACH
NEW YORK

400 South Hope Street
Los Angeles, California 90071-2899
TELEPHONE (213) 430-6000
FACSIMILE (213) 430-6407
www.omm.com

SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

October 14, 2009

OUR FILE NUMBER
0008346-0163

VIA E-MAIL AND U.S. MAIL

Thomas J. Dillickrath, Esq.
Howrey LLP
1299 Pennsylvania Ave NW
Washington, DC 20004-2402

WRITER'S DIRECT DIAL
(213) 430-6404

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

Re: AMD v. Intel

Dear Tom:

We write to meet and confer about 67 questions that Intel's 30(b)(6) witnesses failed to answer during their recent depositions. Attached is a table of questions and citations.

These 67 questions are well within the scope of AMD's deposition topics for which the Court ordered Intel to produce witnesses. Indeed, many of them are nearly identical to the questions that were the subject of Intel's recent motion to compel directed to AMD. Despite ample notice, Intel's witnesses were unprepared and failed to answer 52 of these questions. Intel's lawyers stonewalled AMD on the 15 remaining questions by asserting baseless privilege objections that contradict the positions Intel took on similar questions it asked of AMD's witnesses.

Intel's responses to these questions are highly relevant to the motions that the parties are filing today. AMD expected, and certainly deserved, to have those responses in hand by now. Please inform us immediately whether Intel will voluntarily produce witnesses to respond to these questions and reasonable follow-up. If we do not hear from you by close of business on Friday, we will have no choice but to assume that Intel declines to produce witnesses and to proceed with filing a motion to compel. In any such motion, AMD will request that Intel's witnesses be produced on an expedited basis in Los Angeles.

Sincerely,

Jeffrey Fowler
for O'MELVENY & MYERS LLP

Attachment
LA2:894839.3

EXHIBIT D

From: Fowler, Jeffrey
Sent: Friday, October 16, 2009 1:10 PM
To: 'Dillickrath, Thomas'
Cc: donn.pickett@bingham.com; Rocca, Brian; Herron, David; Wieder, Eric
Subject: RE: AMD v. Intel

Tom -

I am afraid that waiting six days to respond to my letter does not reflect the urgency of the situation. Answers to AMD's questions are important for its response to Intel's motion, which is due in less than 40 days. We are pleased to meet and confer on Monday, but first please provide AMD with some advanced understanding of Intel's position. Does Intel intend to produce witnesses to answer the 67 questions I identified? If there is a particular subset of questions that Intel is prepared to resolve by offering a witness, please identify them. We can meet and confer over the remainder.

AMD would like Intel's written response to my questions in advance so that Monday's meeting is our last on this topic.

Have a good weekend.

Jeff

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Friday, October 16, 2009 9:05 AM
To: Fowler, Jeffrey
Cc: donn.pickett@bingham.com; Rocca, Brian; Herron, David; Wieder, Eric
Subject: RE: AMD v. Intel

Jeff,

With regard to your letter, we believe a meet-and-confer will be useful. However, we cannot do so until Monday. Can your team be available for a call Monday afternoon?

--Tom

Thomas J. Dillickrath
Partner

-----Original Message-----

From: Fowler, Jeffrey [mailto:JFowler@OMM.com]

Sent: Wed 10/14/2009 3:19 PM

To: Dillickrath, Thomas

Cc: donn.pickett@bingham.com; 'Rocca, Brian'; Herron, David

Subject: AMD v. Intel

Tom -

Please see my attached letter.

Jeff

Jeffrey J. Fowler

O'Melveny & Myers LLP

400 S. Hope Street, Los Angeles, CA 90071

213-430-6404

jfowler@omm.com

This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

EXHIBIT E

From: Fowler, Jeffrey
Sent: Monday, October 19, 2009 4:02 PM
To: 'Dillickrath, Thomas'
Cc: donn.pickett@bingham.com; brian.rocca@bingham.com
Subject: RE: Regarding your email of October 16

Tom:

Tempus fugit. We'll expect your response tomorrow. Can you meet at 10:30am Pacific? This cannot drag beyond tomorrow morning.

- Jeff

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Monday, October 19, 2009 3:44 PM
To: Fowler, Jeffrey
Cc: donn.pickett@bingham.com; brian.rocca@bingham.com
Subject: Regarding your email of October 16

Jeff,

We are preparing a written response per your request. We will send you this response by tomorrow morning, and will be ready to meet-and-confer promptly thereafter.

Thanks,

Tom

Thomas J. Dillickrath
Partner

EXHIBIT F

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Tuesday, October 20, 2009 8:28 AM
To: Fowler, Jeffrey; Herron, David; Pearl, James
Cc: Pickett, Donn; Rocca, Brian; Wieder, Eric
Subject: Re: Fowler email of Oct. 16

Jeff,

I write in response to your email of October 16, requesting that Intel put its positions in writing with regard to your chart of questions, sent October 14. Intel is confident that its objections were well-founded and its witnesses prepared for the 30(b)(6) depositions. However, for a number of questions, we are willing to supplement the deposition transcript, in written form, by providing such further information as is available or by confirming the lack of additional information. The list of such questions is as follows:

REDACTED : Questions 4-5

REDACTED Questions 6-10, 15, 18, 21-22

REDACTED : Questions 34-41, 54-62

REDACTED : Questions 64, 67

As to the remainder of the questions, Intel stands by its objections and its witness' responses.

We look forward to discussing at our meet-and-confer, scheduled for 10:30 am pdt today.

Thomas J. Dillickrath
Partner

HOWREY LLP
1299 Pennsylvania Ave NW
Washington, DC 20004-2402
Direct: +1 202.383.6745
Fax: +1 202.318.8564
DillickrathT@howrey.com
www.howrey.com

Amsterdam Brussels Chicago East Palo Alto Houston Irvine London Los Angeles Madrid
Munich New York Northern Virginia Paris Salt Lake City San Francisco Taipei Washington DC

EXHIBIT G

REDACTED IN ENTIRETY

EXHIBIT H

REDACTED IN ENTIRETY

EXHIBIT I

REDACTED IN ENTIRETY

EXHIBIT J

REDACTED IN ENTIRETY

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE)	
INTEL CORPORATION)	
MICROPROCESSOR ANTITRUST)	MDL No. 05-1717-JJF
LITIGATION)	
<hr/>		
ADVANCED MICRO DEVICES, INC., a)	
Delaware corporation, and AMD)	
INTERNATIONAL SALES & SERVICES, LTD.,)	
a Delaware corporation,)	
)	
Plaintiffs,)	
)	C.A. No. 05-441-JJF
v.)	
)	
INTEL CORPORATION, a Delaware corporation,)	
and INTEL KABUSHIKI KAISHA, a Japanese)	DM-4 di.3
corporation,)	
)	
Defendants.)	
<hr/>		

ORDER

WHEREAS, on April 24, 2009, defendants Intel Corporation and Intel Kabushiki Kaisha (hereafter jointly, "Intel"), filed an opening letter brief moving to compel further testimony in response to 130 questions it posed to plaintiffs' Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. (hereafter jointly, "AMD") Fed. R. Civl. P. 30(b)(6) witness regarding evidence preservation issues ("Motion to Compel");

WHEREAS, the parties completed briefing on Intel's Motion to Compel on May 26, 2009;

WHEREAS, a telephonic hearing (the "Hearing") on Intel's Motion to Compel was held before Special Master Vincent J. Poppiti (the "Special Master") on June 15, 2009;

WHEREAS, two discrete issues were raised by counsel at the Hearing with respect to the attorney-client privilege and the restoration of tapes of certain AMD custodians;

NOW, THEREFORE, IT IS HEREBY ORDERED, AS FOLLOWS:

A. Attorney-Client Privilege

Intel moved the Court to compel AMD's Rule 30(b)(6) deponent to answer questions 93, 96, 97, and 99.¹ AMD objected to each of these questions based upon the attorney-client privilege and attorney work product. After reviewing the questions and conducting the Hearing, the Special Master concludes that questions 96, 97, and 99 implicate the attorney-client privilege, and Intel's Motion to Compel is therefore denied with respect to these questions. However, the Special Master also concludes that question 93 does not implicate the attorney-client privilege. AMD is therefore ordered to respond to question 93 via interrogatory. None of these questions implicates the attorney work-product doctrine. The attorney-client privilege protects communications between an attorney and his client related to a fact of which the attorney was informed by his client without the presence of a third party for the purpose of securing primarily either a legal opinion or legal services, where the privilege has not been waived. See Pfizer Inc. v. Ranbaxy Laboratories, Ltd., 2004 U.S. Dist. LEXIS 20948, at **2-3 (Oct. 7, 2004). "Only communications made for the purpose of obtaining or giving legal advice are protected." Id. at *4.

Questions 96, 97, and 99 implicate the attorney-client privilege because each of these questions ask AMD to disclose its reasons for commencing litigation, which in the Special Master's view necessarily implicates AMD's communications with its attorneys for the purpose of securing legal advice. For example, question 96 states:

¹ Numbers herein correspond to the parties' chart titled "Intel's and AMD's Positions On The Remaining Questions."

Was one of the circumstances leading to AMD's decisions to commence this litigation Intel's steamroller business practices?

See Ozmun Tr. at 188:11-20.

Questions 97 and 99 similarly deal with AMD's communications with counsel regarding its decision to commence this litigation.² See 3V, Inc. v. CIBA Specialty Chems. Corp., 587 F. Supp. 2d 641, 647 (D.Del. Nov. 20, 2008) ("In general, the attorney-client privilege protects attorney-client communications made for the purpose of obtaining or giving legal advice").

On the other hand, Question 93 is not protected by the attorney-client privilege, because in the Special Master's view it is simply a factual question. Question 93 states:

Q: When did AMD learn that Intel paid Sony in 2003 multimillion dollar sums disguised as discounts and promotional support in exchange for absolute microprocessor exclusivity as alleged in paragraph 30 – as paragraph 40 [of AMD's civil complaint in this action]?

See Ozmun Tr. 177:20-178:4.

Question 93 seeks factual information regarding when AMD learned that a certain event occurred, and does not reveal confidential attorney-client communications. See Cobell v. Norton, 2003 U.S. Dist. LEXIS 1487, at *16 (D.D.C. 2003) (holding that answer to simple factual question that does not reveal any confidential communications with attorney for the purpose of securing legal advice or services is not protected by the attorney-client privilege).

² Question 97 states:

Was one of the circumstances leading to AMD's decision to commence this litigation Intel's alleged use of its ability to offset margins across multiple business units?

See Ozmun Tr. at 188:21-189:2.

Question 99 states:

What conduct led to AMD's decision to commence this litigation?

See Ozmun Tr. at 190:5-8.

Alternately, even if AMD objects because the Fed. R. Civ. P. 30(b)(6) deponent, Beth Ozmun, is an attorney, AMD's objection is without merit in this instance. See Honeywell Int'l v. Nikon Corp., C.A. No. 04-1337-JJF, DM-13, D.I. 1481 (D.Del. Nov. 25, 2008) (holding that party may not avoid its obligation under Fed. R. Civ. P. 30(b)(6) by putting forward an attorney as its witness).

B. Restoration of Tapes

Intel poses a number of questions regarding tape restoration performed by AMD.³ The Notice of Deposition of AMD's witness pursuant to Fed. R. Civ. P. 30(b)(6) (the "Notice of Deposition") states, in pertinent part:

14. AMD's attempts (successful or unsuccessful) to recover, restore or produce documents related to any Custodian (including but not limited to the Custodians identified in Topic 14 above), from backup tapes, other employees' electronic files, and/or from data previously harvested but suppressed by AMD's near-deduplication protocols.

See Notice of Deposition of AMD at ¶ 14.

Intel moves the Court to Compel Intel to answer questions 26, 27, 28, 29, 30, 31, 32, 144, 145, 148, 149, 151, 152, and 153-158. After consideration of the parties' arguments on this issue, the Special Master concludes that questions 26, 32, 144, 145, 148, 149, 152, and 153 are not protected by the attorney-client privilege and fall within the scope of topic 14 of the Notice of Deposition. See 3V, Inc. v. CIBA Specialty Chems. Corp., 587 F. Supp. 2d at 647 ("In general, the attorney-client privilege protects attorney-client communications made for the purpose of obtaining or giving legal advice"). Significantly, AMD did not object to the scope of deposition topic 14 during the hearing before the Special Master on January 9, 2009. See Tr. of Hr'g Before Special Master dated Jan. 9, 2009 at 67:5-7. Intel is entitled to know whether

³ See Questions 26, 27, 28, 29, 30, 31, 32, 144, 145, 148, 149, 151, 152, and 153-158.

restoration efforts occurred beyond Messrs. Ruiz and Oji based on the broad scope of deposition topic 14.

For example, question 26 asks what else was restored, other than “Mr. Ruiz and Ms. Ng-Lim’s mailbox?”. See Halle Tr. at 121:9-21. AMD interposed an attorney-client privilege and attorney-work product objection. If mailboxes for other custodians were restored, AMD is required to disclose such information because it falls within the broad scope of topic 14, which refers to restoration efforts for any Custodian, to which AMD agreed, and does not reveal confidential attorney-client communications.

Questions 144, 152 and 153⁴ similarly ask what restoration efforts were performed with respect to Messrs. Ruiz and Oji, and if restoration efforts beyond those two custodians occurred. The Special Master concludes that these restoration efforts are not protected by the attorney-client privilege or attorney work product. Thus, whether AMD is able to search Mr. Seyer’s data (question 144) and whether NDCI restored all of the tapes it received from AMD to find Mr. Ruiz’s tapes (question 153) fall within deposition topic 14, and are proper.

⁴ Question 144 states:

Q: Does AMD have the ability, itself, then to search Mr. Seyer’s data on those for that set that you just discussed? . . .

Q: Was that done in connection with any restoration activities for this particular lawsuit?

A: Objection, work product, attorney client privilege.

See Smith Tr. at 175:9-176:13.

Question 152 states: “Were there other restoration activities for this litigation performed besides Mr. Oji and Mr. Ruiz?” and question 153 states “Did NDCI have to restore all the tapes it received from AMD to find the tapes for Mr. Ruiz?”. See Smith Tr. at 194:6-11 and 194:12-19.

In questions 32, 145, 148 and 149, Intel asked about the specific technology that was used to restore Messr. Ruiz and Oji's tapes.⁵ Although Walter Smith ("Smith") was designated by AMD to testify upon topic 10, which concerns "backup tape policies and procedures", including "restoration activities for this litigation," he was unable to answer these questions. See Notice of Deposition at ¶ 10. Questions 32, 145, 148, and 149 fall within the scope of deposition

⁵ Question 32 states:

You mentioned before the break that you were aware of technology that was available to pull individual custodians' data from the backup tapes. Do you whether that technology was used for the Ruiz remediation?

See Halle Tr. at 127:1-17.

Question 145 states:

Q: Regarding Mr. Ruiz and Mr. Oji, same question?

A: You know I am aware – I know that we did restore data for Mr. Oji and Mr. Ruiz, restored data for those two individuals as part of this litigation. I am not aware of the specific mechanisms for those two individuals. I don't know.

See Smith Tr. at 176:12-18.

Question 148 states:

Q: Do you know anything about the restoration activities related to Mr. Ojii and Mr. Ruiz?

A: Yeah. As we previously discussed, right, I know that tapes were – were pulled back from storage vaults, as we would call them, right for the restoration. I know that the data was restored from those tapes and produced for this litigation. The specific data center operations, individual technique used for restoring the data, I am not – I am not familiar with the specific details of how the restoration of that restoration was done.

See Smith Tr. at 177:25-178:13.

Question 149 states:

Q: Do you know any of the details about how the restoration was done? . . .

A: As for the specifics of the individual, the set of tapes for the two instances we are talking about, no, I actually have no knowledge of the specific IT technique used and whether that was done by IT or an outside party.

See Smith Tr. at 178:14-179:1.

topic 10, and AMD should adequately prepare Smith or another witness regarding these three questions.

Questions 27, 28, 29, 30, 31, 151, 154, 155, and 156 relate directly to the cost and/or burden to AMD of restoring data on backup tapes. During the Hearing, counsel for Intel represented that these questions deal specifically with Intel's future motion for further remediation. See Tr. of Hr'g at 44:1-19. The Special Master concludes that Intel's possible motion for future remediation is not ripe for decision at this time. These questions were not contemplated within the allowed sixteen (16) hours of deposition time allotted to Intel. However, the Court will consider further argument on the issue if Intel files a motion for further remediation in the future.

Lastly, the Special Master denies follow-up with respect to questions 157 and 158 at this time. Question 157 states:

Did AMD receive back from NDCI all of the mailboxes on the tapes that it sent?

See Smith Tr. at 195:16-20.

AMD amended the transcript to answer "No" to this question. Intel's request to follow-up regarding the location of the tapes and burden to access the tapes for additional remediation relates solely to a future motion for further remediation. This issue is not ripe for decision. As a result, the Special Master finds that question 157 has been answered and additional follow-up will not be allowed at this time.

Question 158 asks:

Did NDCI restore the exchange dumpster when it restored the tapes?

See Smith Tr. at 195:21-23.

AMD amended the transcript to add “Yes” in response to this question. Intel’s request to follow-up regarding the status of the dumpster is moot. The dumpster has been restored. With respect to Intel’s request to follow-up regarding the burden to access the dumpster for additional remediation, this issue relates to a future motion for further remediation, and is not ripe for decision at this time. Thus, the Special Master concludes that question 158 has been answered and additional follow-up will not be allowed at this time.

However, AMD may renew its application with respect to questions 27, 28, 29, 30, 31, 151, 154, 155, 156, 157 and 158 when filing its motion for further remediation.


C. **Meet and Confer**

With respect to all other rulings made by the Special Master at the Hearing, the parties shall meet and confer as to whether either party intends to take a Fed. R. Civ. P. 53(f)(2) objection. If either party intends to object, Intel shall prepare a form of Order, which shall be stipulated to by AMD for form only, and submitted to the Special Master no later than close of business on Monday, June 29, 2009. If neither party intends to object, the transcript of the Hearing shall be the the record of the rulings made.

Additionally, the parties shall advise of their meet and confer discussion regarding additional Fed. R. Civ. P. 30(b)(6) time that will be necessary as a result of the Special Master’s Rulings.

THE SPECIAL MASTER'S OPINION AND ORDER WILL BECOME A FINAL ORDER OF THE COURT UNLESS OBJECTION IS TAKEN IN ACCORDANCE WITH THE ANTICIPATED ORDER OF THE COURT WHICH SHORTENS THE TIME WITHIN WHICH AN APPLICATION MAY BE FILED PURSUANT TO FED. R. CIV. P. 53(f)(2).

Entered this
22nd day of June, 2009



Vincent J. Poppiti (DSBA No. 100614)
Special Master

EXHIBIT L

Frederick L. Cottrell, III
Director
302-651-7509
Cottrell@rlf.com

June 12, 2009

VIA ELECTRONIC FILING AND HAND DELIVERY

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

Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF, DM

Dear Judge Poppiti:

On April 28, 2009, AMD timely served a Rule 30(b)(6) deposition notice and request for production of documents addressing the precise preservation topics on which Intel has conducted both informal and formal discovery of AMD over the last year.¹ Intel previously argued to Your Honor that discovery on these very topics is “routinely expected from litigants,” and that Intel had a “perfect right” to conduct it. (*See* Intel’s January 5, 2009 Letter Brief at p. 3, Fowler Decl. ¶ 10, Exh. I.) And yet, when Intel is asked to produce what it has -- as a matter of purported “entitlement” -- so vigorously sought and obtained from AMD, Intel responds by refusing to produce a 30(b)(6) witness on all but two of AMD’s 30(b)(6) topics and refusing to produce any documents.²

Not even Intel disputes that Intel’s preservation discovery “got into the details, into the weeds” about aspects of AMD preservation on which AMD has never obtained information from Intel. And Intel has stated its intent to rely on the preservation discovery it conducted -- but which AMD has not -- to seek “remediation” from AMD. AMD fully expects that Intel will support its motions by arguing that AMD should have employed preservation measures that *Intel itself never employed at all*. As a matter of right and certainly fairness, therefore, AMD is entitled to and must obtain discovery from Intel on the same subject matters and issues that Intel has both raised in discovery and will doubtlessly rely on in its forthcoming motions.

¹ Indeed, AMD’s latest 30(b)(6) notice is virtually a mirror image of the relevant parts of the deposition notice Intel served on AMD in December 2008. *See* AMD’s Rule 30(b)(6) Deposition Notice and Request for Production of Documents attached to the Declaration of Jeffrey J. Fowler (“Fowler Decl.”) ¶ 3, Exh. A filed simultaneously herewith.

² Intel only agrees to produce a 30(b)(6) witness on Topic 9, Intel’s “Global Database,” and Topics 7(c) and 7(d) “to the extent that inquiry into [these latter two subtopics] is related to Topic 9.” Pursuant to the agreement of the parties, AMD has withdrawn Topics 7(a) and 7(b) and Document Request 10.

■ ■ ■

Notably, Intel does not defend its refusal to submit to discovery by arguing that AMD has already conducted it. Nor does it disavow its intent to use the discovery it has obtained, but not given, offensively in future motions. Instead, Intel duplicitously stonewalls this discovery by wrongly asserting that it is “untimely,” “duplicative” since AMD purportedly had an *opportunity* to conduct this discovery before, “burdensome,” and invades the attorney-client privilege and attorney work product doctrine.

Having met and conferred without success, AMD thus brings this motion to compel. As we show below, none of Intel’s arguments or objections preclude or can preclude the timely discovery AMD served. AMD therefore seeks an order compelling Intel to produce a competent witness (or witnesses) for deposition, and to fully respond to AMD’s document requests. The Court should so order.

1. AMD’s 30(b)(6) Notice is Not Time-Barred, As Intel Asserts.

Intel’s Objections and Responses to AMD’s 30(b)(6) notice begin with a “general objection” that AMD’s discovery is “untimely.” (*See* Intel’s Objections and Responses at p. 5, hereafter “Objections,” Fowler Decl. ¶ 4, Exh. B.) It is principally on this basis that Intel resists any and all discovery. And Intel’s sole basis for this objection and its position is language in the June 20, 2007 Stipulation and Order Bifurcating Discovery into Intel’s Preservation Issues (“Bifurcation Order”). (*See* Fowler Decl. ¶ 9, Exh. H.) Intel’s reliance on that order to preclude timely AMD preservation discovery is specious.

Your Honor will recall that the Bifurcation Order split discovery into Intel’s preservation lapses into two halves: Remediation Discovery and Causation/Culpability Discovery. (*Id.* ¶ 1, pp. 3-4.) The Causation/Culpability phase was to commence “expeditiously” after the completion of Remediation Discovery. (*Id.* ¶ 5, p. 5.) Intel now relies on this phrase to argue that AMD’s current Rule 30(b)(6) notice was not served “expeditiously” and is thus time-barred. Intel’s objection is meritless for three reasons.

First, Causation/Culpability Discovery is not closed, and AMD has never said that its discovery into Intel’s preservation of evidence has been completed. Unlike the Remediation phase, the Bifurcation Order did not specify an end date for Causation/Culpability Discovery. In fact, the origin of the requirement that it proceed “expeditiously” was stipulation language that *AMD proposed* in order to prompt a reluctant Intel to produce deposition witnesses and documents it had been withholding. (*See* Fowler Decl. ¶ 9.) Through Intel’s discovery -- and, certainly, by way of depositions of AMD witnesses Intel conducted in March 2009 -- Intel has interjected as new “preservation issues” the topics covered by AMD’s 30(b)(6) notice. AMD responded by serving its Rule 30(b)(6) notice in April 2009. Thus, if anything, AMD has acted expeditiously to pursue these issues newly-interjected by Intel.

Second, the Bifurcation Order was not intended to foreclose any and all future discovery regarding the parties’ preservation and production of documents -- and there is nothing in it to suggest any such limitation. Instead, discovery is left open until such time as AMD responds to Intel’s massive spoliation of evidence -- which AMD has not yet done. (*See* Bifurcation Order ¶ 5, p. 5, Fowler Decl. ¶ 9, Exh. H.) Intel thus advances a reading of the Bifurcation Order that is at odds with its very terms.

Finally, Intel's proposed discovery limitation is also entirely at odds with the Court's Case Management Order No. 1 -- and Intel's own interpretation of that Order. Case Management Order No. 1 permits Intel, AMD, and/or class plaintiffs to take a deposition, at any time "[p]rior to or shortly after the deadline for completing document production," into "the completeness of document production (including electronic discovery)." (See Fowler Decl ¶ 11, Exh. J.) Intel has repeatedly argued to this Court -- including in its July 2, 2008 and January 5, 2009 letter briefs, that its discovery into AMD's document retention policies and practices was fully justified by the language of Case Management Order No. 1. (See Intel's January 5, 2009 Letter Brief at 1 n.2, Fowler Decl. ¶ 10, Exh. I; Intel's July 2, 2008 Motion at 2, 5 n.3, 7, Fowler Decl. ¶ 12, Exh. K.) That is not a deposition AMD has yet taken. Accordingly, if the Order is a sufficient basis to justify Intel's preservation discovery, it certainly justifies AMD's as well.³

The bottom line is this: AMD timely served its Rule 30(b)(6) deposition notice. No Court order limits or prohibits that new discovery. AMD is therefore entitled to conduct and obtain this discovery in the ordinary course, just as Intel was. The Court should so conclude.

2. AMD's 30(b)(6) Notice Does Not Duplicate Prior Discovery.

Intel also pretends that AMD's Rule 30(b)(6) deposition notice and document requests duplicate prior discovery AMD conducted. (See Intel's Objections at 3-4, Fowler Decl. ¶ 4, Exh. B.) These assertions are also specious. During the parties' meet and confers, AMD requested that Intel identify specific instances in depositions previously taken where AMD had already obtained the information sought by the new discovery propounded. Intel has not tried to and cannot do so. Indeed, although Intel initially agreed to provide these citations, it ultimately revised its offer to only provide instances where AMD had the "opportunity" to seek this discovery. (See June 9, 2009 Letter from D. Pickett at p. 2, Fowler Decl. ¶ 7, Exh. F.) Intel knows full well that AMD has not obtained the deposition testimony it now seeks, and that AMD has no intent of trodding already-trodden deposition ground. And the assertion that this discovery *could* have been previously conducted says nothing about whether it *actually was conducted* such that the new discovery is duplicative. That is the burden Intel must carry but cannot. (See *Anderson v. Dillard's, Inc.*, 251 F.R.D. 307, 310 (W.D. Tenn. 2008) (party opposing the requested discovery has the burden of establishing undue burden under Fed. R. Civ. P. 26(b)(2)(C)).)

As for documents, AMD offered to withdraw every document request if Intel would represent that its prior productions included all responsive documents, and asked that, if that were Intel's contention, Intel identify such documents. (See Meet and Confer letter of June 5, 2009, Fowler Decl. ¶ 7, Exh. E.) Intel declined to do so. Instead, it evasively represented that documents responsive to AMD's requests "*would have been included*" in prior productions without identifying a single document to support this assertion. (See June 9, 2009 Letter from D. Pickett at 2, Fowler Decl. ¶ 7, Exh. F.) That is not a representation that Intel produced *any* such documents, or that prior productions constitute a complete response to AMD's document requests.

Intel is simply trying to evade proper discovery and deny AMD the deserved opportunity to defend against Intel's forthcoming motions. There is no legal basis for that. Intel's reliance on AMD's prior "opportunities," and its general representations about Intel's prior document productions, simply do not vitiate AMD's proper discovery. AMD is not foreclosed from pursuing

³ In any event, the Bifurcation Order cannot and should not generally be read to prohibit a preservation deposition that the Court's Case Management Order No. 1 explicitly provides for.

this discovery merely because the general topics may be read to overlap with prior discovery. (*See Martinez v. Menchacha*, C.A. No. 08-197, 2008 WL 5060322 (S.D. Tex. Nov. 24, 2008).) This is especially true given that the discovery addresses new issues. (*See Garrett v. San Francisco*, 818 F.2d 1515, 1518-1519 (9th Cir. 1987).) The discovery AMD seeks is new, pure and simple. Intel can't show otherwise. The Court should order Intel's compliance.

3. Intel's Smattering of Boilerplate Objections Are Also Meritless.

Finally, Intel interposes objections in an attempt to entirely preclude AMD's discovery that Intel itself contended from the start are "contrary to law and logic." (*See Intel's January 5, 2009 Letter Brief at p. 3, Fowler Decl. ¶ 10, Exh. I.*) These range from attorney-client privilege and/or work product objections to each and every deposition topic and document request, to assertions that the very discovery Intel itself conducted is a "fishing expedition" that is "unduly burdensome" or "overbroad." (*See Intel's Objections at 5, 19-24, 26, Fowler Decl. ¶ 4, Exh. B.*) AMD acknowledges that privilege and work product issues exist, but they can be handled as with prior discovery. But no objection Intel interposes precludes discovery or can limit it to something less than Intel obtained from AMD.

4. AMD Needs This Discovery To Defend Itself.

In imposing its own preservation discovery upon AMD, Intel argued that AMD had placed *its own* preservation at issue by attacking Intel's alleged preservation lapses. (*See Intel's July 2, 2008 Mot. at 7, Fowler Decl. ¶ 12, Exh. K* (arguing that "the genie is out of the bottle" and that AMD "must allow Intel to discover whether its contentions withstand scrutiny").) As noted above, having withstood roughly two years of Intel's informal and formal discovery that Intel commenced in April 2007, AMD now strongly suspects that Intel intends to characterize as "defects" in AMD's preservation program preservation measures *that Intel itself never employed*.⁴ Intel has made clear that it plans to use these "defects" to seek an AMD "remediation." (*See March 2, 2009 Letter from Donn Pickett, Fowler Decl. ¶ 13, Exh. L.*) Discovery into Intel's own record with respect to these measures is thus necessary for AMD to defend itself.

5. Conclusion

AMD is prepared to conduct this remaining Rule 30(b)(6) discovery efficiently and expeditiously. For all the foregoing reasons, we respectfully submit that Your Honor should compel the Rule 30(b)(6) deposition requested and Intel's responses to AMD's document requests forthwith.

REDACTED

Respectfully,

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)
Cottrell@rlf.com

FLC,III/afg

cc: Richard L. Horwitz, Esq. (Via Electronic Mail)
James L. Holzman, Esq. (Via Electronic Mail)

EXHIBIT M



1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
302 984 6000

www.potteranderson.com

Richard L. Horwitz
Partner
Attorney at Law
rhorwitz@potteranderson.com
302 984-6026 Direct Phone
302 658-1192 Fax

May 26, 2009
Public Version Dated: June 5, 2009

By Electronic Filing & Hand

The Honorable Vincent J. Poppiti
Fox Rothschild LLP
Citizens Bank Center, Suite 1300
919 North Market Street
Wilmington, Delaware 19899

PUBLIC VERSION

Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF
Reply In Support of Motion to Compel Further Deposition Responses

Dear Judge Poppiti:

In advance of the hearing scheduled for May 29, 2009 at 10:00 a.m. EDT, and in response to AMD's voluminous opposition papers, Intel submits this letter in support of its motion to compel additional Rule 30(b)(6) deposition testimony.¹

This motion continues, and we hope will help conclude, Intel's year-long effort to obtain basic deposition testimony about AMD's document preservation practices. In the wake of AMD's second motion to block any deposition on preservation, Your Honor granted Intel 16 hours of deposition time to explore the topics in Intel's deposition notice, modified only in three relatively minor respects. AMD claims Intel "squandered" that time, but the fact is that AMD wasted large parts of it making baseless speaking objections, and proffering witnesses unprepared to, or instructed not to, answer over 300 questions. AMD has since tacitly conceded the impropriety of much of its deposition obstruction. Of the approximately 160 unanswered questions Intel initially raised with AMD during the meet and confer process, AMD agreed to provide answers – scripted by counsel – to 36. See Intel Motion to Compel, Ex. K (Herron 4/16/09 Ltr. and Fowler 4/23/09 Ltr.). After Intel moved to compel answers to 130 questions, AMD abandoned its inapt *Noerr-Pennington* objection to 11 of them.² As to 12 other questions, AMD simultaneously maintains its privilege claim while pointing to other instances in which the question was supposedly answered, a further concession that the privilege objection is either

¹ Intel understands that Your Honor has inquired about rescheduling the hearing date. We are checking schedules, and will respond promptly.

² AMD's post hoc attempt to replace that invalid objection with others fails. Fed. R. Civ. P. 32(d)(3)(B); *Kansas Wastewater, Inc. v. Alliant Techsystems, Inc.*, 217 F.R.D. 525, 528 (D. Kan. 2003).

invalid or waived. The time has come for AMD to comply with the Court's prior order so that Intel may complete its discovery of AMD's practices and file its motion to compel further remediation.³

AMD's two main points in opposition to this motion are unavailing. First, it claims that the questions fall outside the 15 topics this Court approved. That is not true as to any of the questions at issue, let alone all of them. Second, AMD argues that many of its instructions based on privilege and work product are valid. The questions do not seek protected information. Rather, they go only to the facts underlying AMD's document preservation issues – facts that are not privileged and are not work product.

The key subjects at issue include:

- AMD's reasonable anticipation of this litigation. Intel intends to move to compel remediation related to AMD's failure to implement a timely preservation plan when it first reasonably anticipated litigation against Intel. Based on AMD's own documents and admissions to date, it reasonably anticipated this litigation at least by January or February 2005 (perhaps earlier) and should have been retaining documents months before its claimed anticipation date of April 20, 2005. Yet AMD has provided almost no deposition testimony on this topic and its use of its opposition brief to tell its side of the story only emphasizes Intel's need to test AMD's assertions in deposition.
- AMD's stealth restoration activities and remediation. Intel continues to believe that AMD has conducted undisclosed interim preservation tape restoration and/or other remedial activities.⁴ AMD's deposition responses and objections, and its supplemental deposition corrections, essentially dodge this issue. Intel is entitled to know the whole story.
- AMD's data losses and preservation issues. AMD maintains it has disclosed all "*known*" instances of data loss, without defining what that term means, while refusing to provide information about *suspected* or *potential* data losses. See Topic 12 ("Any known or *suspected* non-preservation of AMD Custodian data.") (emphasis added) It is apparent that AMD is using semantics to conceal some of its preservation issues. Even if AMD contends these (undisclosed) issues have been remediated or otherwise resolved, Intel is entitled to make an independent assessment of them, including whether AMD's remediation, if any, was adequate and whether there are other issues that require similar remediation steps.

³ Intel has repeatedly asked AMD for its assent to a briefing schedule and procedure to hear Intel's motion – required due to the delays in securing AMD's deposition testimony. Intel will seek the Court's intervention to set a procedure at the May 29 hearing (subject to rescheduling on June 2 or another date).

⁴ Intel made these concerns known well over a year ago in Mr. Ashley's first declaration. See, e.g., Declaration of John Ashley (7/1/08 (D.I. 763)), at ¶ 17.

This letter is organized into three sections, as follows: Section I sets forth the current status of the questions that are the subject of Intel's motion. Section II addresses the parties' main disputes on matters related to the attorney-client privilege and work production protection. Section III addresses the inadequate preparation of AMD's 30(b)(6) witnesses. Intel is also submitting a revised chart, which is identical to AMD's but adds a column in which Intel responds to AMD's contentions on the questions that remain the subject of Intel's motion.⁵ Because AMD opted to separately argue each and every question in the chart, Intel is forced to respond accordingly, although it will attempt to do so concisely.

I. OVERVIEW OF QUESTIONS THAT REMAIN THE SUBJECT OF THIS MOTION

Before filing this motion, Intel – both unilaterally and pursuant to a lengthy teleconference and multiple letters – narrowed the number of unanswered questions at issue from well over 300 to 130. Since the motion was filed, AMD has conceded its erroneous position on, and supplied answers to, an additional 48 questions. Some of those answers are adequate, while other answers require follow up questions. As reflected in the revised chart that accompanies this letter, Intel's motion now concerns 86 questions (and related subject matter).⁶

Intel seeks an allotment of time to (1) re-ask questions that AMD has not answered and conduct reasonable follow-up on the subject matter of those questions, and (2) proceed with reasonable follow-up questions to certain of the supplemental responses provided by AMD after the deposition.

A. Questions AMD Has Refused To Answer

The majority of questions at issue have never been answered. Although the disputes vary from question to question there are some common themes:

- Each of the unanswered questions falls squarely within topics in Intel's deposition notice approved by Your Honor and call for underlying factual information that is not subject to any privilege or work product protection.
- AMD continues to block fundamental questions about its document preservation. It uses two primary methods. First, it claims that AMD's knowledge of preservation problems are privileged. But those underlying facts have nothing to do with attorney client communications. Second, it claims that only preservation problems that ultimately

⁵ Intel's chart also corrects AMD's entry number 38.

⁶ Intel disagrees with the tenor and substance of Mr. Herron's declaration purporting to relate the underlying facts. Although it is unnecessary to respond to each of his arguments, Intel openly acknowledges it sought to expedite the parties' meet and confer, because Intel was (and remains) concerned about AMD's year-long strategy of delay and obstruction. Given the substantial narrowing of issues, it is apparent that the meet and confer process was productive. Mr. Herron's disparagement of it is not.

resulted in known data losses are permissible topics. As noted above, Intel is entitled to know what happened and independently assess AMD's remediation efforts.

- AMD attempts to raise objections in its Opposition not raised during the depositions themselves. These tardy objections are waived, as outlined in Intel's Motion (at 6). AMD provides no explanation or legal authority supporting the *ex post facto* assertion of objections.
- AMD's positions on many of Intel's questions are contradictory. For example, while "standing on" its assertion of privilege in many cases, AMD simultaneously points to alleged "answers" on the record, which of course undermines its position that the information is privileged. *See, e.g.*, Chart (Questions No. 22, 44, 138). AMD cannot have it both ways.
- AMD's attempts to justify its positions by pointing to Intel's objections to different questions asked more than a year ago are mere distractions. AMD's arguments are off point, too late, and in any case not before the Court.

Intel requests that AMD be ordered to provide knowledgeable witnesses and permit them to answer Intel's questions.

B. Non-Responsive and Insufficient New "Answers"

The remaining questions require further testimony because AMD's supplemental written answers are inadequate, beg additional questions, or both.⁷ AMD should not be permitted to block the give and take of live deposition testimony by asserting improper instructions or failing to prepare its witnesses. Intel is entitled to unfiltered, sworn testimony, including reasonable follow-up. *See Cavanaugh v. Wainstein*, 2007 U.S. Dist. LEXIS 40242, at *33 (D.D.C. 2007).

For example, during Mr. Halle's deposition, Intel asked the following question about chart of harvest dates provided by AMD to Intel:

[REDACTED]

See Chart, No. 34; Intel Motion, Ex. J. [REDACTED] and AMD provided a supplemental response along with its opposition brief, as follows:

⁷ This includes Question Nos. 17, 18, 19, 26, 34, 37, 68, 102, 110, 111, 151, 157, 158.

[REDACTED]

AMD's "answer" is non-responsive, or partly responsive at best. [REDACTED]

[REDACTED]

II. INTEL DOES NOT SEEK INFORMATION PROTECTED FROM DISCLOSURE BY ANY PRIVILEGES OR OTHER DOCTRINES

A. AMD Cites Case Law That Supports Intel's Position

AMD does nothing to refute Intel's assertion that underlying facts are not protected by privilege or work product protection. *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981); *Koch Materials Co. v. Shore Slurry Seal, Inc.*, 208 F.R.D. 109, 121-22 (D.N.J. 2002). In fact, two of AMD's own cases confirm that such *factual* discovery is not barred. *See T&H Landscaping, LLC v. Colorado Structures Inc.*, 2007 U.S. Dist. LEXIS 63495, at *3-4 (D. Colo. 2007) (defendant's response to "factual statements within the [plaintiff's expert] report" is an appropriate area of questioning for a 30(b)(6) deponent); *In re Cendant Corp. Securities Litigation*, 343 F.3d 658, 662 (3d Cir. 2003) (Federal Rule of Civil Procedure 26(b)(3) "does not bar discovery of *facts* a party may have learned from documents that are *not themselves discoverable.*") (citing *Federal Practice and Procedure* § 2024, at 337) (emphasis added). AMD's attempt to characterize Intel's fact-based inquires as seeking "conclusions of AMD's counsel" is unavailing. *See, e.g.*, AMD Opp. at 19; citing No. 14 [REDACTED]

[REDACTED]

Similarly, the case AMD cites (and mischaracterizes) in its attempt to seek blanket protection for anything having to do with its "investigations, validation and auditing activities concerning data preservation, collection and production" actually *supports* Intel's position. AMD Opp. at 7 & 16, citing *In re Linerboard Antitrust Litigation*, 237 F.R.D. 373 (E.D. Pa. 2006). *Linerboard* concluded that the 30(b)(6) witness was not required to talk to in-house counsel to prepare for his deposition for several reasons. First, the Court concluded that the witness had been adequately prepared to answer the questions asked based on more than two weeks of preparation which included reviewing deposition testimony and talking to more than ten individuals. Second, the deponent had produced extensive non-privileged sources of information responsive to the topic of inquiry. Finally, the court found that the in-house counsel's mental *recollections* of facts learned from an investigation that had been conducted twelve years earlier would necessarily be "so intertwined with mental impressions" as to

constitute opinion work product. *Id.* at 379. Intel is not asking for AMD counsel's recollections of facts, or opinion work product, but seeks to discover only the facts themselves, which in *Linerboard* had already been disclosed to plaintiffs through production of "almost 30,000 pages of documents" and 30(b)(6) depositions. *Id.* at 378 (emphasis added). Indeed, *Linerboard's* holding was expressly "limited to the circumstances of this case in which there has been extensive discovery of the underlying facts." *Id.* at 379. Here, by contrast, AMD has steadfastly refused to disclose the facts.

Moreover, contrary to *Linerboard* in which the discovering party "had available to them extensive non-privileged sources of the same information," *id.* at 383, AMD engaged in a shell game by designating an in-house counsel, Ms. Ozmun, as a witness, failing to prepare her as a 30(b)(6) witness and then claiming her knowledge was privileged. Repeatedly, AMD feigned compliance by instructing her [REDACTED]

[REDACTED] *See, e.g.,* (Question No. 45). Of course, Ms. Ozmun then had no testimony to offer. AMD should have either designated a non-attorney to testify or permitted Ms. Ozmun to testify *as AMD*, rather than in her capacity as an attorney. Instead, [REDACTED]

[REDACTED] If Ms. Ozmun were testifying *as AMD*, as she should have in response to a 30(b)(6) notice, she would have been able to distinguish her "recollections" of facts as an attorney and to testify about the underlying, unprivileged facts themselves.⁸ *See Linerboard*, 237 F.R.D. at 386.

B. AMD Has Abandoned Its Erroneous *Noerr-Pennington* Assertion

AMD's legally unsupported assertion of the *Noerr-Pennington* doctrine as a bar to discovery was simple obstruction. AMD does not address, and therefore concedes, this point.

C. AMD Improperly References and Misconstrues Prior Objections By Intel That Are Not Before the Court

1. Intel's Prior Objections Are Not In Issue

As a starting point, Intel's prior objections are not before the Court. *See, e.g., In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 1994 U.S. Dist. LEXIS 1344, at *4 n.2 (E.D. Pa. 1994) (rejecting the "what's good for the goose, is good for the gander" defense to a discovery motion; "defendants' point fails to address the fundamental difference between the two privilege logs, that being that only the defendants' log is at issue"). AMD offers no legal authority for why Your Honor should base its decision on isolated, often out of context, prior objections that are not the subject of the pending motion.

⁸ AMD attempts to shift the burden to Intel in seeking this discovery. However, Intel does not have to show a "substantial need" to obtain the non-privileged facts over which AMD has improperly asserted work-product protection. *See Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 138 (3d Cir. 2000) (requiring objecting party to demonstrate that work product privilege applies before shifting burden to party seeking production).

2. Even If Intel's Prior Objections Were In Issue, AMD Has Not Raised Them Within A Reasonable Amount Of Time

AMD notes that it "has not yet put the privilege and work product lines Intel drew to the test by way of a motion." AMD Opp. at 7, fn. 8. However, the time for such a motion has passed. AMD's Rule 30(b)(6) depositions on Intel's document retention practices took place over 15 months ago. A motion to compel must be "sought within a reasonable time to prevent delay." *Carnathan v. Ohio Nat'l Life Ins. Co.*, 2008 U.S. Dist. LEXIS 65546, at *5 n.2 (M.D. Pa. 2008); *see also Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 18 (E.D. Pa. 1986) (only considering claims brought pertaining to "recent depositions," and declining to consider complaints about assertions of privilege made 16 months earlier). AMD should not be permitted to hijack Intel's motion with untimely complaints about depositions that occurred well over one year ago.

3. Intel's Prior Objections Are Distinguishable In Any Event

Apart from their other problems, AMD's cherry-picked examples are distinguishable from the questions that *are* before the Court. As discussed below, AMD's assertion that it "simply drew the same privilege and work product lines as Intel," AMD Opp. at 7, is not accurate. Moreover, AMD obtained an unprecedented amount of discovery on Intel's document retention and preservation practices, yet it distorts the massive record by only citing a tiny portion of Intel's testimony and objections. Critically, AMD cites to isolated Intel objections while ignoring the fact that AMD obtained, in many instances, the very discovery Intel seeks now and to which AMD inappropriately objects.⁹

Factual IT Questions vs. Attorney Mental Processes. AMD objected to the question,

[REDACTED] Ozmun Tr. 56:1-6. AMD curiously claims that this question "delves into counsel's decision-making process," AMD Opp. Ex. A. No. 42, and therefore instructed its witness not to answer. The question, however, seeks an underlying fact – [REDACTED] To buttress its improper objection, AMD points to Intel's objection to an AMD question about [REDACTED] AMD Opp. at 8. The difference is obvious.

[REDACTED] The latter is protected, the former is not.

Discovery and Knowledge of Preservation Issues. [REDACTED]

[REDACTED] For example, AMD objected to the

⁹ For example, AMD objects to Intel's question No. 22 [REDACTED] yet obtained answers from Intel on an identical issue: [REDACTED]

[REDACTED] Almirantearena Tr. 194:7-10; *see also id.* 191:12-15 [REDACTED]

question, [REDACTED]

[REDACTED] Halle Tr. 108:2-10. Intel is entitled to know what AMD's preservation issues were. In answering, AMD would not have had to disclose any privileged information, nor explain how its counsel came to any realizations. AMD claims that "Intel refused to answer questions about whether and when it became aware of custodian preservation problems."¹⁰ AMD Opp. at 8. But Intel has provided AMD with detailed documents and deposition testimony about when it became aware of its custodian preservation issues.

Efforts To Learn About Custodian Preservation Issues. AMD refused to answer questions as to [REDACTED] AMD objected to the question, [REDACTED] No. 37. By contrast, Intel allowed this testimony and only objected to questions [REDACTED] where such testimony would reveal the specific actions of its attorneys, the substance of an attorney-client communication or its attorneys' work product. For example, Intel objected to inquiries concerning [REDACTED] in the interviews conducted by Intel's counsel, AMD Opp. at 8, and [REDACTED] AMD. Opp. Ex. A. No. 37 (emphasis added). In short, Intel objected to questions that sought [REDACTED]

Facts Of Preservation Issues Learned From Or By Outside Counsel. AMD refused to answer the question [REDACTED] Ozmun Tr. 95:7-17. AMD cites Intel objections to [REDACTED] inquires about [REDACTED] For example, AMD points to Intel's objection to the question, [REDACTED] No. 53. In [REDACTED] This is quite distinct from AMD's objection to a question that sought [REDACTED]

D. Selective Assertion of Privilege Should Not be Permitted

AMD cannot decide to answer some topics and selectively assert a privilege as to other questions on that topic. *Westinghouse Elec. Corp. v. Republic of Phil.*, 951 F.2d 1414, 1426 n.13 (3d Cir. 1991). For example, AMD permitted its witness to testify when witnesses *were* aware

¹⁰ AMD also claims that Intel refused to answer "in some cases" whether Intel discovered any problems at all, or the extent of those problems. This is untrue, and AMD provides no such citations. The questions AMD cites in its brief each ask whether Intel came to a certain realization at a specific time.

of their preservation obligations: [REDACTED]

[REDACTED] But not when its witnesses may have had *mistaken beliefs* about their preservation obligations: [REDACTED]

Halle Tr. 108:2-10.

III. INTEL ASKED APPROPRIATE QUESTIONS THAT FALL WITHIN THE DESIGNATED TOPICS AND YET AMD WAS UNPREPARED OR UNWILLING TO ANSWER

A. Intel Complied with the Court's Order

AMD skirts responsibility for its failure to prepare witnesses by misconstruing the Court's January 22, 2009 Order (the "Order"). First, contrary to AMD's unfounded suggestion, Intel was expressly "not limited" to "confirmatory questions," Order ¶1, and instead was granted the right to test by examination, at formal deposition, AMD's document retention and preservation practices. Second, the Order only modified Intel's deposition notice in three specific ways, and Intel in no way violated these modifications. The Court ordered that:

- Intel's questions should focus on designated custodians only. AMD does not claim that Intel sought testimony on non-designated (*i.e.*, non-production) custodians.
- On deposition Topic 6 (Harvesting), the Court noted it would be "impractical for AMD to prepare and present a witness who could testify regarding the proposed data-harvesting details with respect to every AMD custodian." Intel did not ask questions that called for harvesting details with respect to any, let alone "every," AMD custodian.
- Intel's back-up tape questions (Topic 10) were confined to the "subtopics explicitly delineated in the Notice for this topic."¹¹ Those subtopics included: type of backups, software and media used, content and frequency of the backups, tape rotation/recycling schedule, and restoration activities for this Litigation. D.I. 1291 (1/22/09). Each of Intel's questions about AMD's preservation tape protocols and restoration activities fall squarely within these subtopics.

AMD fails to cite an actual instance where Intel's questions fall outside the express ambit of Your Honor's Order.

¹¹ The parties were also ordered to make a "good-faith" attempt to address deposition Topic 13 in the form of an interrogatory response. After considering the issue carefully, including AMD's conduct during the informal discovery process, Intel decided to pursue live testimony instead of attorney-crafted narratives.

B. Intel's Topics Were Described With Sufficient Particularity And Its Questions Were Plainly Within the Scope

Despite a prior unsuccessful motion opposing each of the 30(b)(6) topics in which it did not raise the issue, AMD now attempts to ratchet up the level of specificity required of Intel's 30(b)(6) deposition notice. The notice need not be, as AMD argues, so detailed as to "permit the responding party to . . . reasonably anticipate the questions that will be asked." AMD Opp. at 5. AMD is not entitled to a virtual preview of deposition questions, only notification as to the specific areas of exploration. Indeed, AMD complained before the deposition about the number of subtopics delineated in the notice, but now complains there were not enough. AMD cannot have it both ways. A notice need only be reasonable; perfection is not the standard.

Thus, AMD's witness should have been prepared to answer Intel's questions, which were squarely within its noticed topics. For example, AMD's designee on the "events and circumstances leading to AMD's decision to commence this Litigation" (Topic 4), should have been able to testify, for example, when AMD learned of the Intel contracts it disputes as anticompetitive – a *key* allegation in AMD's Complaint. No. 41. Yet, AMD asserts this is "beyond the scope."¹²

AMD's assertion that such questions call for "legal contentions" is unavailing. AMD Opp. at 6. In contrast to the 30(b)(6) topics rejected in *In re Independent Service Organizations Antitrust Litigation*, which required a corporate witness to "testify about facts supporting numerous paragraphs" of the defendant's Answer and Counterclaims, Intel seeks such basic, factual, discovery as when AMD learned of the basic allegations in AMD's Complaint. 168 F.R.D. 651, 654 (D. Kan. 1996); *see, e.g.*, No. 93.

It is also unclear how the information Intel seeks could not be "reasonably available to AMD." AMD Opp. at 18-19. [REDACTED]

[REDACTED] No. 13. These activities were fundamental to AMD's document preservation strategy – it's unclear how the order in which they occurred could be "unduly burdensome to collect and validate."

C. Intel's Questions Relating To AMD's Reasonable Anticipation Date Call For Relevant Information

Deposition topic number 4 concerns the "[d]ate on which AMD first reasonably anticipated this Litigation, *and the events and circumstances leading to AMD's decision to commence this Litigation.*" (emphasis added). This topic was not limited by Your Honor in any way, and Intel's counsel gave specific examples in open court of the types of questions Intel

¹² AMD devotes a section of its opposition to a witness-by-witness summary of testimony. AMD Opp. at 9-20. Intel rejects AMD's characterization of the testimony, but does not believe a point by point response, or counter-summaries, are warranted. Intel will instead address the issues on a question by question basis in the attached chart.

would be pursuing. Jan. 9, 2009 Hearing Tr. 39:10-40:24. Ignoring these points, AMD, during the deposition and in its opposition, has taken an artificially restrictive view of this topic's scope and the relevant law.

The information Intel seeks regarding *the events and circumstances leading to AMD's decision to commence this litigation* is relevant and discoverable, and will be a basis for Intel's forthcoming motion to compel documents from AMD's preservation tapes. Intel should be entitled to explore the timing of AMD's knowledge of potential causes of action against Intel, supporting legal theories, and the facts that underlie the allegations in its complaint. *See, e.g., Micron Technology, Inc. v. Rambus Inc.*, 255 F.R.D. 135, 150 (D. Del. 2009) (concluding that litigation was reasonably foreseeable by the time plaintiff had "identified potential litigation targets, causes of action, and fora," and was drafting claim charts). This evidence may be found in internal documents, public statements and communications with third parties (including government agencies). It may also be gleaned from AMD's conduct in the months leading up to its commencement of this litigation, such as the date it retained an economist to evaluate Intel's conduct, or the date it commenced an evaluation of potential legal claims.

All of these facts, once disclosed, may shed additional light on when AMD should have known that its internal documents could be relevant to litigation against Intel, and thus should have been preserved in a timely fashion. Intel simply cannot accept AMD's "take our word for it" approach.

* * *

Intel respectfully requests an order: (1) overruling AMD's objections; (2) providing Intel with time to obtain answers to unanswered questions and reasonable follow-up questions; (3) instructing AMD to provide witnesses properly prepared to answer all outstanding questions; and (4) instructing AMD to produce its witnesses for deposition in San Francisco. We look forward to discussing these issues with Your Honor at the hearing (to be rescheduled).

Respectfully,

/s/ Richard L. Horwitz
Richard L. Horwitz

RLH:cet
917980 / 29282
Enclosure

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

EXHIBIT N

REDACTED IN ENTIRETY

EXHIBIT O

REDACTED IN ENTIRETY

EXHIBIT P

REDACTED IN ENTIRETY

EXHIBIT Q

REDACTED IN ENTIRETY