# **EXHIBIT A**

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

ADVANCED MICRO DEVICES, : Plaintiff, :

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: Civil Action No.

: 05-441-JJF

INTEL CORPORATION,
Defendant

Teleconference in the above matter taken pursuant to notice before Gloria M. D'Amore, Registered Professional Reporter, in the law offices of Blank Rome, LLP, 1201 N. Market Street, Suite 800, Wilmington, Delaware, on Thursday, November 16, 2006, beginning at approximately 11:05 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI

APPEARANCES:

O'MELVENY & MYERS
BY: CHARLES DIAMOND, ESQUIRE
and
LINDA J. SMITH, ESQUIRE
1999 Avenue of the Stars
Los Angeles, California 90067

Attorneys for AMD

CORBETT & WILCOX
Registered Professional Reporters
230 N. Market Street Wilmington, DE 19801

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1	APPEARANCES CONTINUED:
2	DICHARDE INVENT C PINCED
3	RICHARDS, LAYTON & FINGER BY: FREDERICK L. COTTRELL, III, ESQUIRE
4	and CHAD M. SHANDLER, ESQUIRE
5	One Rodney Square 920 N. King Street
6	Wilmington, Delaware 19801 Attorneys for AMD
7	POTTER, ANDERSON & CORROON
8	BY: RICHARD L. HORWITZ, ESQUIRE 1313 N. Market Street, 6th Floor
9	P.O. Box 951 Wilmington, Delaware 19899
10	Attorney for Intel
11	On behalf of GIBSON, DUNN & CRUTCHER, LLP BY: DANIEL FLOYD, ESQUIRE
12	Attorney for Intel
13	On behalf of HOWREY  DARREN BERNHARDT, ESQUIRE
14	Attorney for Intel
15	On behalf of BINGHAM, McCUTCHEN RICHARD RIPLEY, ESQUIRE
16	Attorney for Intel
17	PRICKETT, JONES & ELLIOTT  BY: JAMES L. HOLZMAN, ESQUIRE
18	1310 King Street Wilmington, Delaware 19801
19	Attorney for Plaintiff, Class On behalf of Cohen Milstein
20	DAN SMALL, ESQUIRE
21	Attorney for Plaintiff, Class
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1	JUDGE POPPITI: Please do a roll call.
2	MR. COTTRELL: In Wilmington for AMD is
3	Fred Cottrell and Chad Shandler, and, of course, on the
4	West Coast from O'Melveny and Myers is Chuck Diamond and
5	Linda Smith.
б	JUDGE POPPITI: Next, please.
7	MR. FLOYD: Dan Floyd from Gibson, Dunn
8	and Crutcher for Intel.
9	JUDGE POPPITI: Next.
10	MR. HORWITZ: Your Honor, it's Rich
11	Horwitz in Wilmington for Intel, as well, with Potter,
12	Anderson. And Darren Bernhardt from
13	JUDGE POPPITI: Mr. Horwitz, would you
14	go back over that. There was some interference on the
15	line. I didn't hear what you said.
16	MR. HORWITZ: Rich Horwitz from Potter
17	Anderson for Intel. And also on the line for Intel is
18	Daron Bernhardt from Howrey and Rick Ripley from Bingham,
19	McCutchen.
20	MR. HOLZMAN: Jim Holzman at Prickett,
21	Jones for the plaintiff, Class, along with Dan Small of
22	the Cohen Milstein firm in Washington.
23	JUDGE POPPITI: Thank you. Does that
24	round out everyone?

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1	Mr. Cottrell, are you taking the lead
2	today?
3	MR. COTTRELL: I think Chuck had a few
4	things, and then we can add, if necessary.
5	MR. DIAMOND: Judge, there were three
6	issues that it seemed appropriate to raise with you this
7	morning.
8	One is the status of the MDA responses
9	that both AMD and Intel have been receiving from parties
10	whose information we may be producing for one another.
11	The second is the letter that was sent
12	to you, at least, under Paul Weiss' letterhead
13	JUDGE POPPITI: Yes. I have that.
14	MR. DIAMOND: dated November 13th and
15	what to do with that during the pendency of the currently
16	brief Intel I'm sorry our motion to compel foreign
17	conduct discovery.
18	And then, the third issue is sort of an
19	update as to where we stand with third-party
20	negotiations. You wanted to be able to monitor that.
21	JUDGE POPPITI: Yes.
22	MR. DIAMOND: So, I thought we ought to
23	give you sort of a thumbnail sketch of where we stand.
24	JUDGE POPPITI: That's great

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Page 5
                      MR. DIAMOND: We can do those in any
1
     order you prefer.
2
                      JUDGE POPPITI: You call off the order,
 3
     follow the order that you suggested. I'm fine with that.
 4
                      MR. DIAMOND: Let me start with the
 5
     MDA's then. I think there were about a half dozen --
 6
     four to a half dozen letters that were sent to you in
 7
     total. We received about a dozen or so letters from
     recipients of our notification letter.
 9
                      JUDGE POPPITI: Yes.
10
                      MR. DIAMOND: We have resolved those
11
     issues with respect to everyone who has written to you.
12
                      JUDGE POPPITI: That's great.
13
                      MR. DIAMOND: At least we think so.
14
                      The last one we provided information to
15
     about 10 days ago, we haven't heard anything further, and
16
     they haven't returned calls or E-mails. So, I think that
17
     one is resolved, as well.
18
                      However, we recently got it, and I just
19
     confirmed that Intel received the same thing from -- you
20
     will remember Mr. Holstein, who represented the
2.1
     subpoenaed parties in connection with the protective
22
23
     order.
                      JUDGE POPPITI: Yes.
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Page б MR. DIAMOND: He has written on behalf 1 of his clients, HP and an HP subsidiary, objecting to the 2 way that AMD and Intel proposes to proceed and request 3 the right to inspect any document that is or contains any 4 materials subject to a nondisclosure agreement with HP. 5 For the reasons that we've discussed, 6 particularly with a company like HP, that will be so 7 dominant in both our corporate vials, that's, for 8 practical reasons, a nonstarter. 9 We have conveyed that to both 10 Mr. Holstein and the client level to the inside counsel's 11 office and are in discussions. I don't know where Intel 12 stands on that. 13 But we are desperate to get this 14 document exchange rolling. And I think we need to, or I 15 think you need to sort of set a fish or cut bait time 16 very soon, perhaps, as early as next week that -- you 17 know -- to the extent we haven't worked out any problems 18 with any of the recipients that we tee that up in front 19 of you and get it resolved. 20 · I'm becoming increasingly concerned 21 about the April document exchange cutoff, if we are 22 continued to be delayed by these third-party objections, 2.3

which ultimately you will have to resolve, and we don't

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1	view as well taken in view of the protective order.
2	It is probably useful to hear from Intel
3	as to where they stand.
4	JUDGE POPPITI: I agree.
5	MR. BERNHARDT: This is Daron Bernhardt,
6	Your Honor.
7	I think, generally, we would be
8	amendable to some sort of cutoff date. I rather not do
9	it next week just because of the holiday, but if we can
10	do it the end of the following week.
11	We have not started the negotiations
12	with HP because I think we sent our letter after AMD did,
13	and we just received Mr. Holstein's letter.
1.4	We would hope to be able to do this
15	through some sort of negotiated resolution. Most of the
16	third parties have not raised any objection to the
17	production of documents given that there is a protective
18	order in place. And we are going to try to engage with
19	HP to see if we can alleviate their concerns either by
20	agreeing to give them some sort of truncated list, some
21	word searches or something, or a date cutoff, or getting
22	them to have a better understanding of the protections
23	the protective order provides.
24	But in any event, if we could have a

	Page 8
1	little bit of time to do that, I'm optimistic that we
2	would be able to resolve it with them short of a motion.
3	If there has to be a motion, there has to be a motion.
4	I agree with what Mr. Diamond has said,
5	that for all practical purposes, having to identify every
6	single document from every third party just would not be
7	workable for either AMD or Intel.
8	JUDGE POPPITI: Any other comments about
9	that issue?
10	Well, it seems to me that if next week
11	doesn't work because of the holiday, certainly pick any
12	day in the following week that makes sense to the both of
13	you to permit the amount of discussion, dialogue,
14	negotiation that you need. And then, once that date
15	passes, permit there to be motion practice on the issue.
16	And I'm happy to let you pick that date.
17	MR. DIAMOND: This is Mr. Diamond.
18	In light of Mr. Bernhardt's comments, I
19	don't know that we need a hard-and-fast date. I think if
20	you tell us this needs to be resolved by the end of the
21	week of November 27th, if we reach impasse with HP
22	earlier than that, we're just going to tee this up and it
23	will get resolved when it gets resolved.
24	We'll file on Monday the 27th, but I

Page 9 don't know that you'll want, necessarily, to wait until Friday, December 1st. If we know we are not going to get 2 anywhere, we will go ahead and tee this up. 3 JUDGE POPPITI: Then here is what I 4 5 would --MR. BERNHARDT: Your Honor, could I just 6 mention one other point. This is Mr. Bernhardt again. 7 JUDGE POPPITI: Yes, please. 8 MR. BERNHARDT: I should have mentioned 9 this before. 10 As a result of getting AMD's MDA list 11 and some additional work that we have done, we may have a 12 few more letters that have to be sent out. I just want 13 to alert the court to that. There ought not to be too 14 many and, hopefully, they won't raise objections. 15 But given that we have been given two 16 weeks' time to get that notice to get a response back for 1.7 every third party, the last week of November may not work 18 for us. Certainly, for those where the letters have 19 already been sent, it would work. 20 JUDGE POPPITI: Mr. Diamond. 21 MR. DIAMOND: Unless --22 JUDGE POPPITI: We don't want to be 23 24 doing these piecemeal.

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MR. DIAMOND: Unless Mr. Bernhardt can
1
     filter out any documents from those companies, what this
2
    means is, the date last for the last objector to file the
 3
     last objection is really the first date that we can begin
 4
     the document exchange.
 5
                      I would think that under these
 6
     circumstances, maybe what we ought to do is propose that
 7
     we agree that seven days to object in the case of these
 8
     outliers be the notice period rather than the 15. So, if
 9
     they go out now, we can tee this up quickly. Obviously,
10
     if somebody needs more than seven days to sort out their
1.1
     difficulties, they can come back and ask Daron for some
12
     additional time, and we can discuss that.
13
                      But, again, if we start a 15-day clock
14
     running the end of this week, given the fact that
15
     unresolved objections are going to take two weeks to
16
     resolve, potentially an appeal to the District Court --
17
     we will be putting off this exchange until some time in
18
     mid-January. And that's just hopeless, from our
19
     standpoint.
20
                      Any objection that we just give seven
21
     days notice on the last couple of letters that go out.
22
                      MR. BERNHARDT: No objection from us,
23
     Your Honor.
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Page 11 JUDGE POPPITI: Well, if you think it's 1 going to work given the holiday, then I will let you 2 drive the train, so to speak. 3 And what I would like, because I think 4 it's important for whatever order that gets entered, I 5 would like you to draft the form of order that would be entered so that the third parties, I expect they're 7 monitoring the docket, can see whatever language you 8 9 choose. MR. DIAMOND: I will undertake to draft 10 something and shoot it by Mr. Bernhardt and Mr. Floyd. 11 JUDGE POPPITI: Should I look for that 12 by date certain or just leave it to your energy to get it 13 done and in due course? 14 MR, DIAMOND: We will probably have 1.5 something to you by Monday. 16 JUDGE POPPITI: That's fine. 17 MR. DIAMOND: I will certainly have 18 something to Daron by tomorrow. 19 JUDGE POPPITI: Okay. That's fine. 20 And I think what we may want to be sensitive to, knowing 21 everyone's concern about getting this rolling and getting 22 it accomplished by the date that the court has already 23 set, should we discuss now whether there -- with respect 24

Page 12 to motion practice, are we satisfied that the process for 1 motion practice should stay as it is in terms of the time 2 frames involved, or should there be a separate schedule, 3 if you will, and truncated? 4 MR. DIAMOND: With respect to the MDA 5 issue? 6 JUDGE POPPITI: Yes. I anticipate that 7 whatever motion practice there is, the way I would like 8 to approach it, and this is best circumstance, is it 9 opens and closes as quickly and efficiently as possible. 10 And we set a date when there can be a telephonic hearing 11 on those motions and a decision can be made during the 12 course of the hearing with a form of order as we've 13 contemplated in earlier discussion drafted by you, so 14 that I don't have to take the time necessary to create 15 the kind of record that the court would expect me to 16 create with any motion on a finding and recommendation. 17 I mean, I don't know whether you want to 18 discuss that now, or you want to give it some thought. 19 What I don't want to do is to set forth in a process that 20 is going to get in any sense bogged down. I don't want 21 it to be: 22 MR. BERNHARDT: Your Honor, this is 23 Daron Bernhardt. 24

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1	JUDGE POPPITI: Yes, please.
2	MR. BERNHARDT: What I would suggest is
3	that we consult with AMD's counsel on this and get back
4	to you. I think we actually are consulting with them on
5	some other issues tomorrow and maybe we could put that on
6	our agenda. But I would like the chance to think about
7	it and to talk to them about it the proposal.
8	JUDGE POPPITI: That's fine. And,
9	perhaps, if you all agree, then, I know you'll tell me
10	that. If you can do it by Monday, that would be great
11	because I think I would like to wrap whatever we do into
12	the order that I'm going to be entering.
13	And if necessary, during your meet and
14	confer, although I got a fairly busy schedule tomorrow,
15	if you all put out a call for me, I'll find a way to get
16	back to you.
17	MR. DIAMOND: We will put it on the
18	agenda for us to discuss between ourselves.
19	JUDGE POPPITI: Next matter, please.
20	MR. DIAMOND: The November 13th letter
21	from Paul Weiss' firm.
22	Let me say for the record, I am speaking
23	on behalf of AMD only with respect to Fujitsu and NEC.
24	JUDGE POPPITI: Yes.

- 1 MR. DIAMOND: AMD is separately
- 2 represented in connection with negotiations by two firms
- 3 with respect to Sony, and one of Mr. Cottrell's partner's
- 4 is handling the Toshiba negotiations.
- I don't know, quite frankly, Your Honor
- 6 what to make of this letter. Let me just give you the
- 7 background.
- 8 We, after serving subpoenas on the
- 9 Japanese OEM, the four named here and the one additional
- 10 one, we entered into an agreement that, in substitution
- 11 for compliance with the subpoena, each of the Japanese
- 12 OEM's could produce to AMD, in the first instance the
- documents that they gave or had collected from them by
- 14 the Japanense Fair Trade Commission, which conducted an
- 15 investigation into Intel's practices in 2005.
- JUDGE POPPITI: Yes. I'm aware of it,
- 17 and I'm familiar with it.
- 18 MR. DIAMOND: The understanding was, we
- 19 would use that collection of documents, which, obviously,
- 20 would be very easy to collect and produce to narrow the
- 21 universe of our request both in terms of custodians who
- 22 we were interested in the subject matter.
- 23 We bore all of the expense for the
- 24 copying of production of those materials. And we agreed

Page 15 to discuss in the future an allocation of expense with respect to any further production. 2 About three to four weeks ago, we sent 3 to each of the four signatories to this letter a revised 4 proposal significantly narrowing the scope of our 5 request, in light of what they had already produced to 6 7 us. We have not heard back from a single one 8 of them. No objections. No proposal to narrow. 9 discussions whatsoever as to scope. 10 And I had assumed that was because they 11 are all hanging fire waiting for the outcome of our 12 motion to compel. Intel's production of foreign conduct 1.3 documents. 14 This letter, as far as I'm concerned, is 15 wholly out of compliance with what we would have 16 expected. 17 JUDGE POPPITI: It looks like an 18 uninvited amicus. 19 MR. DIAMOND: Well, I won't put Dan and 20 Daron on the spot, but I suspect it was invited. 21 JUDGE POPPITI: Okay. 22 MR. DIAMOND: But in any event, your 23 Rule 3 of your June 28th procedures --24

Page 16 JUDGE POPPITI: Yes 1 MR. DIAMOND: -- is quite expressed that 2 there has to be a meet and confer. If we're going to go 3 to war with the Japanese OEM's over compliance, number 4 one, we're happy to talk to them both about narrowing 5 scope and assuming some portion of the costs of 6 collecting documents as both we and Intel have done with 7 respect to all of the subpoenaed parties. And Linda can 8 comment more on those. But we haven't foreclosed that. 9 But it seems to me that if we're going 10 to litigate this now, each of these can be litigated on a 11 case-by-case basis. There's history behind each of the 12 negotiations, and we're going to get into burden 13 questions and cost allocation questions that may be 14 rendered mute by -- well, that may well largely be 15 disposed of by your ruling on our motion to compel 16 Intel's production. 17 JUDGE POPPITI: Well, certainly that's 1.8 going to be a significantly umbrella and it may be. 19 MR. DIAMOND: I think we can all agree 20 that if we are not entitled to foreign conduct discovery, 21 bearing on Intel's activities with respect to purely 22

foreign companies, we are probably not entitled to it

from the purely foreign companies themselves. I put a

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Page 17 pin in that because companies like Sony are both domestic and foreign. They operate and purchase microprocessors 2 for use here in the United States, as well as Asia. 3 JUDGE POPPITI: I understand. 4 MR. DIAMOND: But by and large, it seems 5 to me that it is premature to go litigate these things. 6 There is nothing raised with respect to the foreign 7 conduct issues in this letter that's not already on the 8 table by virtue of Intel's opposition. 9 And what I would propose is that we 10 contact, through the appropriate counsel, each of these 11 four parties and tell them that we have been instructed 12 to meet and confer with respect to the burden issues 13 before we litigate that. But in any event, it's your 14 preference to decide the foreign conduct discovery issue 15 in the context of the Intel motion, and then we will 16 visit these as necessary. 17 JUDGE POPPITI: Any other comments? 18 MR. BERNHARDT: Daron Bernhardt for 19 Intel, Your Honor. 20 I have two overall comments. 21 procedural and one substantive. 22 The Japan OEM's have moved the court and 23 asked the court to address the jurisdictional decision 24

- 1 that Judge Farnan made and the impact that has on
- 2 discovery as it applies to them.
- 3 And in their letter brief they state
- 4 that Your Honor's decision on AMD's discovery motion to
- 5 compel will have a great impact on them. They asked the
- 6 court to consider that letter now, and they set out all
- 7 of the reasons why they think it ought to be considered
- won.
- 9 Now, outside of their presence, what AMD
- 10 is effectively doing is saying defer or strike their
- 11 motion and we'll put it off. And, I think, that, with
- 12 all due respect to Mr. Diamond, that procedurally that's
- 13 not the appropriate way to go. Intel ought not to be in
- 14 the position of speaking on behalf of the third parties
- 15 simply because they agree with our interpretation of The
- 16 Court FTAIA decision.
- And if AMD has a motion that it wants to
- 18 bring to strike or defer against that third party letter
- 19 brief, it ought to bring it, give the third parties the
- 20 opportunity to be heard on the issue, allow Intel to be
- 21 heard on it, and then the court can make a decision in
- 22 that fashion. I think that can be done very quickly.
- 23 AMD could get that on file in a day or two and the third
- 24 parties and Intel can respond certainly by the end of the

- 1 day Wednesday of next week.
- JUDGE POPPITI: And let me make an
- 3 observation about that. I mean, it does seem to me that,
- 4 if you will, an amicus submittal may serve some purpose.
- 5 And yet, at the same time, if I were to
- 6 view this document as an amicus submittal, the document
- 7 is filed against some background of those facts contained
- 8 in the November 13th correspondence.
- 9 So, it really isn't, if you will, a
- 10 traditional amicus focused squarely on the issue that you
- 11 are teeing up for me. It does have, if you will, some
- 12 legs of its own. And if that's the case, should there
- 13 not, at least be requirement, if you all don't agree that
- 14 this letter should stand, and they should be permitted to
- 15 participate, if you will, in the fashion of an amicus, do
- 16 you not agree that they should, at least, fulfill the
- 17 requirement of meet and confer.
- MR. BERNHARDT: Your Honor, I think,
- 19 certainly, they could have a very quick conversation with
- 20 AMD about whether AMD is willing to completely forego
- 21 foreign conduct discovery. I think we know what the
- 22 answer already to that is. And, therefore, it would be a
- 23 proforma meet and confer, but the result would be that
- 24 they want to participate and have their views heard, as

- Your Honor adjudicates AMD's motion to compel against
- 2 Intel.
- JUDGE POPPITI: And I'm not one for form
- 4 over substance. And yet, at the same time, I would be
- 5 very concerned at the front end of the process that I
- 6 will be involved with, I would, by virtue of in action
- 7 suggest that meet and confer isn't important because it
- 8 will be.
- 9 MR. BERNHARDT: One way to deal with
- 10 that, then, Your Honor, would be to ask AMD to try to
- 11 have that meet and confer in the next couple of days and
- 12 to report to the court some time next week about whether
- 13 any resolution is possible.
- 14 If the answer is, no, the court can then
- 15 take under submission this letter brief, have an amicus
- 16 filing and use it for whatever value The Court deemed
- 17 that it has. And the court could separate out those
- 18 parts that are relevant to a filing as an amicus and
- 19 those parts that the court thinks raised separate issues
- 20 that could be deferred.
- JUDGE POPPITI: Mr. Diamond.
- MR. DIAMOND: Your Honor --
- JUDGE POPPITI: And Mr. Diamond, before
- 24 you respond, let me just make another observation.

- 2 is always sensible, if it's helpful, I don't want to have
- 3 to perform the task of parsing out those sections that
- 4 are focused on the OEM's concerns themselves. If it's
- 5 supposed to be a pure amicus and it is expected to be
- 6 helpful, then I want it to be an amicus. I want it
- 7 focused on the issue that is before me. At least it
- 8 seems to me.
- 9 MR. DIAMOND: And I was going to sort of
- 10 raise the same objection to Mr. Bernhardt's last comment.
- 11 What parts of this are amicus and what parts of these are
- 12 motions.
- I am happy to begin the meet and confer
- 14 process. Obviously, we are singularly focused in getting
- 15 a reply done and to you on Tuesday, and given the holiday
- 16 next week, this is not likely to happen until the
- 17 following week.
- 18 I have no objection if you treat the
- 19 portion of these letters dealing with the purely legal
- 20 issue of foreign conduct discovery and take those into
- 21 account, if you think that there's anything worth taking
- 22 into account.
- But a good portion of this letter is
- 24 devoted to the burden arguments. And those ought to be

- 1 the subject of meet and confer because nobody knows how
- 2 burdensome this discovery is going to be because the
- 3 parties haven't defined what they need to do and what AMD
- 4 and Intel will pay for and what we won't pay for.
- 5 So, I think it's totally premature to
- 6 litigate those issues.
- 7 And I'm sensitive to Mr. Bernhardt's
- 8 comments about procedural niceties.
- g But on its face, this letter violates
- 10 your June 28th order. And I'm happy to write a letter to
- 11 you to that effect and ask you to strike it until such
- 12 time.
- 13 JUDGE POPPITI: Yes. And I was just
- 14 going to suggest that the procedural posture of the
- 15 letter, if you will, at least places before me the
- 16 argument being made on behalf of the OEM's.
- 17 And I think it's important for them to
- 18 have some voice in the matter, other than the letter. At
- 19 this juncture, we are on the phone without them. And it
- 20 seems to me that for purposes of making any judgment,
- 21 rounding out the record is important to do.
- So, I will leave it to you, Mr. Diamond,
- 23 to do whatever you think is appropriate with respect to
- 24 this letter. And depending upon what you do, I think it

- 1 may be important for me to convene, if necessary, a
- 2 conference, so that I can have the OEM's voice or argue
- 3 their position.
- 4 And I think it is also important that in
- 5 having whatever you filed with me, not necessarily in
- 6 conjunction with that, but I believe it is important for
- 7 the OEM's to have a copy of this transcript insofar as it
- 8 deals with the November 13th letter. And I would look to
- 9 counsel to make sure that that occurs.
- 10 MR. DIAMOND: Why don't I attach that to
- 11 the letter I will send you next week.
- JUDGE POPPITI: Please.
- 13 MR. DIAMOND: I am not quite sure what
- 14 time frames apply to this letter because the letter is
- 15 not in conformance with your rules either in procedure or
- 16 length.
- JUDGE POPPITI: I understand what you're
- 18 saying
- MR. DIAMOND: I don't know whether we're
- 20 operating under the Delaware local rules, your rules, but
- 21 we are not going to address the merits of this. We are
- 22 simply going to address the procedural deficiencies, and
- 23 I will attach the transcript.
- 24 And if Counsel for the OEM's want to

- 1 have a hearing on the propriety of the motion in its
- 2 current form, we can do that.
- 3
  I will need until next week, because, as
- 4 I said, I only represent AMD with respect to some of, but
- 5 these not all of these OEM's, and I need to get the other
- 6 Counsel on board. I will get that to you before you
- 7 leave for the holidays.
- JUDGE POPPITI: That's fine. What you
- 9 are saying is Wednesday of next week, that's fine.
- 10 That's fine with me.
- 11 MR. BERNHARDT: Your Honor, Darren
- 12 Bernhardt.
- 13 Can I make one other point?
- JUDGE POPPITI: Yes, please.
- MR. BERNHARDT: We have a hearing
- 16 scheduled, I believe, on November 29th. And it is quite
- 17 clear that the third parties want to have their voice in
- 18 adjudication of this motion and, therefore, we are under
- 19 some time pressure here.
- 20 If AMD is going to say, Look, you should
- 21 have had a meet and confer, and, therefore, your letter
- 22 is procedurally inappropriate, again, the meet and confer
- 23 is going to be proforma because AMD is not going to agree
- 24 with the third parties position that no foreign conduct

- 1 discovery should go forward.
- 2 So, if the court could impose some
- 3 deadline on that meet and confer, that would give the
- 4 parties an opportunity to refile before the hearing.
- 5 MR. DIAMOND: I totally object to that.
- 6 We are under orders from Judge Farnan to properly dispose
- 7 of the foreign conduct discovery issue. We have adopted
- 8 a schedule for that. This is going to be briefed by next
- 9 Tuesday. It will be argued on the 29th. There is no
- 10 right of these OEM's to inject themselves into that
- 11 process, either on their own, or if, it was the case, by
- 12 invitation of Intel.
- We have enough lawyers on this dispute
- 14 as it is and don't need another legion.
- 15 If the Japanense OEM's wanted to
- 16 crystallize this issue in a time frame that would have
- 17 paralleled the Intel motion, they certainly had every
- ability to do so and do so in an appropriate way.
- 19 I don't think that Mr. Bernhardt ought
- 20 to shoehorn them in so that it's five against one instead
- 21 of one against one.
- JUDGE POPPITI: I expect the OEM's,
- 23 through their able counsel, know how to serve up a
- 24 request to participate in briefing -- an amicus briefing,

- 1 if you will.
- 2 Although, this letter, as I said,
- 3 suggest that this is an uninvited amicus, there has been
- 4 no request appropriately filed for them to participate.
- So, it was important for me to read the
- 6 letter, for purposes of having this conversation. But I
- 7 can say, at this juncture, I don't intend to do anything
- 8 with that letter until I see what Mr. Diamond's submittal
- 9 is going to be, responding, if you will, to same.
- 10 Intel, if you choose, you can also file
- 11 a simultaneous view, if you will, of that letter, and I
- 12 will make some judgment as to whether the letter stands
- 13 and whether there is even sufficient time to permit
- 14 amicus filings.
- We're rolling toward a hearing date.
- 16 Your final brief is due next week. Again, I expect the
- 17 OEM's have been monitoring the docket. So, it should be
- 18 no surprise to them, and it appears not to be a surprise,
- 19 if they know we're in briefing.
- 20 I am not going to make any judgement
- 21 with respect to this letter at this juncture. But I
- 22 think you can hear my concerns about it.
- 23 MR. SMALL: Your Honor, this is Dan
- 24 Small. If I may interject something for the Class

Page 27 plaintiffs. ]. JUDGE POPPITI: Yes, please. 2 MR. SMALL: We have our next brief due 3 in this process for the motion to compel on Tuesday. And 4 we are working very hard to deal with the legal issues 5 that have been raised by the motions to compel. б The letter that was submitted by the 7 Japanense OEM's, in addition to raising that legal issue, 8 raised factual and different legal issues relating to 9 burden. And for us to be able to address that, we 10 certainly could not do it by Tuesday. 11 JUDGE POPPITI: And I understand that. 12 And that is why I say the letter certainly had some focus 13 on the briefing that is soon to be closed before me. But 14 it also had square and sharp focus on their own interest. 1.5 And that's not what this briefing and what these issues 16 are designed to do, or to address in this first round of 17 briefing. 18 It may be that whatever decision I make 19 impacts on the OEM's. But we are not going know that 20 until a decision is issued. And I don't want to wrap in 21 to this journey focus on the OEM's from their individual 22 perspectives. That's not the purpose of this briefing. 23

24

MR. SMALL: Your Honor, for the Class

- plaintiffs, we may be able to ride the coattails of AMD's
- 2 very able counsel.
- But if we find it necessary to submit
- 4 our own submission to you on Wednesday, can we do that?
- 5 JUDGE POPPITI: I did not mean to
- 6 exclude you.
- 7 MR. HORWITZ: Your Honor, this is Rich
- 8 Horwitz.
- 9 Having not been involved directly in any
- of the meet and confers in the past that the parties have
- 11 had, I just wonder if it would be appropriate, based on
- 12 what --
- JUDGE POPPITI: Mr. Horwitz, you are
- 14 cutting off again.
- MR. HORWITZ: Somebody must have a
- 16 Blackberry close to their phone.
- 17 It sounds like based on the conversation
- 18 today, if a meet and confer happens, and Mr. Diamond
- 19 hasn't suggested anything to the contrary, that it is
- 20 going to be perfunctory. And I have no idea when it
- 21 would happen, but I just hope it won't be delayed, if, in
- 22 fact, it is just going to be perfunctory, so if the OEM's
- 23 want to take a position, there won't be any efforts by
- 24 the parties from here on out that would make that delay

- even further out, if you understand what I'm saying.
- JUDGE POPPITI: I do. And what I would
- 3 expect is, even understanding your respective positions,
- 4 I certainly would not appreciate a discussion later on
- 5 suggesting to me that the reason why we are having a late
- 6 discussion is because a meet and confer that could have
- 7 been accomplished in short order didn't occur.
- 8 I'm not going to push you -- I think it
- 9 would be inappropriate for me to push to a meet and
- 10 confer as a result of this November 13th letter. But
- 11 there are issues raised in that November 13th letter that
- 12 should be addressed. There should be a meet and confer
- 13 and that may help round out the record that I need to
- 14 deal with the substance or the process of a November 13th
- 15 letter.
- So, I would urge that that occurs as
- 17 quickly as possible without directing it.
- MR. DIAMOND: Your Honor, the third
- 19 point concerns the status of the third-party
- 20 negotiations. And I think I ought to let Linda talk
- 21 about that because she and Dan have been principally
- 22 involved in it.
- JUDGE POPPITI: Please. Ms. Smith.
- 24 MS. SMITH: Yes, Your Honor. Basically,

- 1 I think we've made considerable progress.
- 2 And what I would like to do is not go
- 3 through on a third party by third party basis, but on
- 4 several of the large OEM's, I think we're about to
- 5 conclude agreements which will result in production
- 6 finally.
- But I would like at some point, perhaps,
- 8 once we get past the foreign conduct briefing and hearing
- 9 to actually take the list that we have provided to you
- 10 and give you a quick summary of both the way we're
- 11 addressing the negotiations in terms of we have a
- 12 bifurcated approach.
- One is, to designate custodians as a
- 14 third party and search terms and limit the search to
- 15 IMB's designated custodians, and within that have
- 16 custodian search terms.
- 17 And then, the other piece, which is,
- 18 perhaps, more germane to Intel and the Class Action
- 19 Plaintiffs is what we call transactional data, which has
- 20 to do with a very detailed series of questions about
- 21 sales and pricing, et cetera, which are what we call
- 22 corporate request.
- 23 And what we would like to do at some
- 24 point is to go through the protocols on the way we've

- 1 negotiated these, so you'll have a general understanding,
- 2 unless Your Honor is desirous having a three-hour seminar
- 3 on E-discovery and all of the issues involved, which I
- 4 would have to get other forensic people from my firm to
- 5 participate on my behalf.
- JUDGE POPPITI: No. I am happy to do
- 7 the general discussion. I've had pleasure of teaching
- 8 some E-discovery courses. I haven't done one this year,
- 9 but the general understanding will be good enough.
- 10 MS. SMITH: Otherwise, I am still
- 11 pushing for the meeting in Maui.
- JUDGE POPPITI: I will tell you what.
- 13 If it's in Maui, we can be as specific as we need to be.
- MS. SMITH: I think what the parties
- 15 would like to do, once we get this briefing behind us is
- 16 go through -- you know -- this is concluded. This is
- 17 outstanding. This is an impasse. Just so you have a
- 18 general sense of what's coming.
- 19 And I think that is something that Your
- 20 Honor expressed a desire to understand before we get to
- 21 this December 22nd motion practice commencement date so
- 22 you are not surprised. And we can, perhaps, organize it
- 23 into some groupings that makes sense in terms of the
- 24 briefing if there remains to be a briefing to be done.

- 1 So far, we are making very good
- 2 progress, and as I said, about to, it looks like,
- 3 conclude deals with very -- agreements with very big
- 4 players like IBM, HP and Dell.
- 5 JUDGE POPPITI: Great. That all makes
- 6 sense. And I think I would leave it, certainly, to you
- 7 to suggest when we do that. And I expect we will use one
- 8 of our Thursdays for that purpose, correct?
- 9 MS. SMITH: Yes, Your Honor.
- JUDGE POPPITI: Do you want to suggest a
- 11 date now, or do you want to wait until all of your work
- 12 is completed next week?
- MS. SMITH: Yes. We don't have that
- 14 much time. I think it should be either the first week of
- 15 December, or the first session we have in December, or
- 16 the second.
- 17 What I would like to give Your Honor
- 18 sufficient time to do is decide the pending motion.
- JUDGE POPPITI: I agree.
- 20 MS. SMITH: Then we will move on.
- 21 JUDGE POPPITI: That's good. Any other
- 22 matters, then, please. Then, I will be looking for a
- 23 form of order. And I am going to be expecting some
- 24 submittal with respect to the November 13, 2006 letter.

Page 33 MR. DIAMOND: Then you will have both next week. JUDGE POPPITI: That's great. Thank you, all. Have a pleasant, safe and plentiful Thanksgiving. (Teleconference was concluded at, approximately, 11:50 a.m.) 1.7 

	Page 34
1	CERTIFICATE
2	STATE OF DELAWARE:
3	NEW CASTLE COUNTY:
4	I, Gloria M. D'Amore, a Registered
5	Professional Reporter, within and for the County and
6	State aforesaid, do hereby certify that the foregoing
7	Teleconference was taken before me, pursuant to notice,
8	at the time and place indicated; that the statements of
9	said parties was correctly recorded in machine shorthand
10	by me and thereafter transcribed under my supervision
11	with computer-aided transcription; that the
12	Teleconference is a true record of the statements given
13	by the parties; and that I am neither of counsel nor kin
14	to any party in said action, nor interested in the
15	outcome thereof.
16	WITNESS my hand and official seal this
17	17th day of November A.D. 2006.
18	
19	Lana M. D'Amire
20	GLORIA M. D'AMORE REGISTERED PROFESSIONAL REPORTER
21	CERTIFICATION NO. 119-PS
22	
23	
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