

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)	
)	
Plaintiffs,)	Civil Action No.
)	05-441-JJF
v.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

Teleconference in above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the offices of Blank Rome, LLP, 1201 North Market Street, Wilmington, Delaware, on Tuesday, July 31, 2007, beginning at approximately 3:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 APPEARANCES (Continued:)

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1 OPERATOR: A roll call has been requested.

2 Please respond when your name is called.

3 Richard Ridley?

4 MR. RIDLEY: Yes.

5 OPERATOR: Mr. Robert Stone?

6 MR. STONE: Yes.

7 OPERATOR: Miss Mary Mullaney?

8 MS. MULLANEY: Yes.

9 OPERATOR: Mr. Rich Horwitz?

10 MR. HORWITZ: Yes.

11 OPERATOR: Miss Linda Smith?

12 MS. SMITH: Yes.

13 OPERATOR: Mr. Clayton Athey?

14 MR. ATHEY: Yes.

15 OPERATOR: Mr. Richard Volen?

16 MR. VOLEN: Yes.

17 OPERATOR: Mr. Dan Floyd?

18 MR. FLOYD: Yes.

19 OPERATOR: Miss Mary Graham?

20 SPECIAL MASTER POPPITI: We are still

21 waiting, I gather.

22 OPERATOR: Mr. Fred Cottrell?

23 MR. COTTRELL: Yes.

24 OPERATOR: Mr. Mark Samuels?

1 MR. SAMUELS: Yes.

2 OPERATOR: Miss Renee Meyers?

3 MS. MEYERS: Yes.

4 OPERATOR: Mr. Daniel Small?

5 MR. SMALL: Yes.

6 OPERATOR: Miss Mary LeVan?

7 SPECIAL MASTER POPPITI: Mary, are you on?

8 We can get started.

9 MR. STONE: Mike Powell is also on the line.

10 SPECIAL MASTER POPPITI: Mary LeVan, I have
11 asked my secretary to join me just in case we will be
12 referring to calendar.

13 So, with the roll call, if I could hear
14 status or discussions from the last time we spoke.

15 MR. SMALL: This is Dan Small for the Class
16 plaintiffs.

17 SPECIAL MASTER POPPITI: Thank you.

18 MR. SMALL: What I'd like to do is give you
19 a real quick history of where we have been since our
20 last call, put on the record a proposal.

21 SPECIAL MASTER POPPITI: Let's start again.

22 MR. SMALL: What I was laying out, Your
23 Honor, was first that I would give you a quick history
24 of our discussion since our last call with Your Honor

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1 and then talk about a proposal, I think, Frys and the
2 Class plaintiffs are agreeable to for how to proceed,
3 and then, third, talk about some of the specifics of how
4 we would propose to go forward on the motion to compel.

5 SPECIAL MASTER POPPITI: Okay.

6 MR. SMALL: So, first, Your Honor, as you
7 may recall, when we last spoke on the 25th, Wednesday of
8 last week, we had noted that we had not heard back from
9 Frys on Class plaintiff's latest proposal, and, as we
10 viewed it, final proposal to try to resolve this
11 dispute. And Your Honor set a deadline of today for
12 Frys and the Class plaintiffs, as you put it, to either
13 "fish or cut the bait," and also instructed Frys to
14 contact Class counsel by as soon as possible the next
15 day to advise us of where Frys was at with respect to
16 our latest proposal.

17 SPECIAL MASTER POPPITI: Yes.

18 MR. SMALL: And then, finally, Your Honor,
19 on the last call, you told the parties in Frys that if
20 we had not reached agreement by today's call, that we
21 would spend time on the call today discussing procedures
22 for going forward with the motion to compel.

23 SPECIAL MASTER POPPITI: Correct.

24 MR. SMALL: So, I received a call the next

1 day, Your Honor, from Frys counsel in which they advised
2 me that they were rejecting our latest and final
3 proposal.

4 SPECIAL MASTER POPPITI: Okay.

5 MR. SMALL: So we have had some discussions
6 on how to proceed in light of that, and I just,
7 literally, minutes ago, received a call from Frys
8 counsel in which they made a proposal, and, as I
9 understand it, the proposal would be acceptable to the
10 Class plaintiffs, and I would like to put it on the
11 record.

12 The first part of the proposal is that Frys
13 would agree with Class plaintiffs to set out a schedule
14 for the continued litigation of the motion to compel.

15 SPECIAL MASTER POPPITI: Okay.

16 MR. SMALL: Second, Frys would agree that if
17 we continue to attempt to reach a negotiated resolution
18 of the motion, that they would not use the existence of
19 those negotiations as a reason to defer or derail or in
20 any way affect the schedule for litigating the motion to
21 compel.

22 SPECIAL MASTER POPPITI: Okay.

23 MR. SMALL: Third, in light of that
24 representation, Frys would like us to continue the

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1 negotiations, and, under those circumstances, we are
2 prepared to do that.

3 And then, last, Frys and Class plaintiffs
4 discussed attempting to propose, by close of business to
5 Your Honor, a scheduling order that would set in motion
6 the further litigation for the motion to compel.

7 SPECIAL MASTER POPPITI: Okay.

8 MR. SMALL: If we are able to agree upon a
9 proposed order, we would submit it jointly by close of
10 business.

11 OPERATOR: Excuse me. Joining Eric
12 Friedburg.

13 MR. SMALL: If we are able to agree upon
14 that by close of business tomorrow, we intend to submit
15 it jointly; if not, we would submit competing orders.
16 So that's the proposal. It's acceptable to Class
17 plaintiffs.

18 I would suggest, however, Your Honor, that
19 we use some time on today's call to go through some of
20 the specifics of what at least Class plaintiffs would
21 contemplate putting in a proposed order to see if we
22 have any disagreements with Frys, and to the extent we
23 do, to at least get Your Honor's input on those issues.

24 SPECIAL MASTER POPPITI: Okay. I see no

1 reason not to use the time today to accommodate that.

2 Can I hear from Frys, please?

3 MR. STONE: Yes, Your Honor. Robert Stone
4 on behalf of Frys. I would agree with Mr. Small's
5 characterization of what's taken place since we were
6 last on the phone with Your Honor with one slight
7 caveat, which is, following Frys rejection of the
8 outstanding offer from Class plaintiffs, there was
9 discussion with Class plaintiffs and a request that
10 Class plaintiffs put an additional proposal on the
11 table. Class plaintiffs said that it would do so
12 promptly. We are still waiting. And I hope that, as a
13 result of the agreement with respect to putting the
14 motion to compel on the calendar, that the parties can
15 continue their what have been fruitful discussions to
16 get this resolved.

17 SPECIAL MASTER POPPITI: It sounds like you
18 both agree that this should be on parallel track?

19 MR. STONE: That's fine with Frys, Your
20 Honor.

21 SPECIAL MASTER POPPITI: Good.

22 MR. SMALL: We do both agree, Your Honor,
23 but I wish we had not gone down this path, but I feel
24 compelled now to correct what Mr. Stone has just said

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1 because we did not agree to give an additional proposal
2 to Frys. In fact, we specifically told Frys that there
3 would be no additional proposals from Class plaintiffs
4 unless Frys would agree that they would not use our
5 willingness to continue to negotiate with them as a
6 reason to forestall or delay or stop the litigation of
7 the motion to compel.

8 SPECIAL MASTER POPPITI: And if I understood
9 the response to that was that there would be no -- there
10 would be no disadvantage and the use of the negotiations
11 would not be used that we should forestall proceeding on
12 any schedule that was set.

13 MR. SMALL: That's exactly correct, Your
14 Honor.

15 MR. STONE: And that's agreed to by Frys,
16 Your Honor.

17 SPECIAL MASTER POPPITI: Good. Go ahead,
18 please.

19 MR. STONE: So I am prepared to discuss and
20 to listen to Class plaintiff's proposals with respect to
21 what the order would look like.

22 SPECIAL MASTER POPPITI: Okay.

23 MR. SMALL: Your Honor, Dan Small again.
24 Our first proposal and our preferred proposal would be

1 for Frys and the Class plaintiffs simply to put on the
2 record for Your Honor our latest proposal for resolving
3 the motion to compel.

4 We believe that makes a lot of sense for a
5 couple reasons. One, it will avoid having wasted
6 literally months of negotiation which got us to this
7 point where we have two proposals that have, of course,
8 certain differences but those differences are narrowed
9 greatly from where we started, and we believe that the
10 quickest way to the end is for Your Honor simply to rule
11 which of those two proposals is the better resolution of
12 this motion.

13 It also, Your Honor, I think, would avoid
14 the necessity for any discovery because we would have
15 sufficient information, I believe, to be able to explain
16 the competing proposal to Your Honor and let Your Honor
17 decide which is the better route without engaging in,
18 you know, getting additional samples produced by Frys or
19 a 30(b)(6) deposition or whatever else we might
20 otherwise have to do for discovery.

21 So, that would be our primary proposal. I
22 would suggest maybe that we discuss that first because
23 if we can agree upon that, we won't have to get into the
24 alternative proposal.

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1 MR. STONE: Robert Stone, Your Honor. I
2 guess I am a little confused because I thought what we
3 were going to agree to do is set a schedule for further
4 briefing on the motion to compel in which both sides
5 would set forth their respective positions and then
6 request the Court to rule.

7 SPECIAL MASTER POPPITI: I think I heard the
8 same thing. Let me see if I understood it, then,
9 Mr. Stone. If I cut you off, I apologize.

10 MR. STONE: That's okay.

11 SPECIAL MASTER POPPITI: What I think I
12 heard was each of you have your view of what your
13 ultimate position is and each of you have your view with
14 respect to those positions, as to whether your position
15 should prevail, and if I understood what the Class was
16 saying, in order for me to understand that, I need to
17 see it. And the easiest way to see it is to give me
18 what your proposal -- your ultimate proposals are and
19 explain, I would expect, once that's done, why you come
20 at your proposal with a different view.

21 Is that what I understood the Class to be
22 proposing?

23 MR. SMALL: Your Honor, I think to the
24 extent there is to briefing and there certainly could be

1 if the Court would like it, it would be briefed by what
2 the differences are between the two proposals and why,
3 you know, in each party's view, one is better than the
4 other.

5 MS. SMITH: Your Honor, this is Linda Smith.
6 I think nothing like having four people try to explain
7 the same proposals five different ways. I think the
8 plot is slightly different, and certainly Frys and the
9 Class can jump in, what I thought that the essence of
10 the proposal was is that we would proceed down two
11 tracks at the same time.

12 SPECIAL MASTER POPPITI: Right.

13 MS. SMITH: The first track would be that
14 the Class and Frys would agree to a hearing schedule for
15 briefing and hearing on the motion to compel, and that
16 would not really be a contest between differing views of
17 resolution, it would be litigating over whether, you
18 know, whether and to what extent the subpoena should be
19 enforced and, you know, taken the position as to why it
20 should not or why a certain portion should not.

21 So that would be separate and distinct from
22 the other track, which Frys, as I understand it, has
23 agreed will not hinder track one but will be ongoing at
24 the same time which is still trying to reach a deal.

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1 SPECIAL MASTER POPPITI: And I understand
2 that. But then I misunderstood what was being said if
3 what I view is accurate.

4 MS. SMITH: Exactly. As I said, why don't I
5 let -- you know, it never stopped me before, but why
6 don't I let Frys and Class talk about this, but I think
7 what Dan Small is trying to say is we have, over months
8 and months and months, been discussing various
9 proposals.

10 There has been substantial concessions on
11 the Class side, at least I would say, and we are at a
12 point now where we -- we thought we were close, but
13 apparently not. And the thought -- I think the thought
14 was to discuss Frys' current position, Class' current
15 position right now, right here, before we -- and, you
16 know, not ask the Court to rule but sort of to
17 understand and then those negotiations would proceed
18 down the separate track. But the briefing would not be
19 on whose proposed current version of the proposal is
20 better. It would be on the whole motion to compel
21 issue.

22 SPECIAL MASTER POPPITI: Then I did
23 misunderstand because I expect that what I was hearing
24 was that we would not be ratcheting all the way back to

1 day before one, that day before one being when you
2 started to meet and confer, when the Class and Frys
3 started to meet and confer, that it would be day, if you
4 will, day one forward to whenever each side developed
5 its ultimate position. And I thought I heard that you
6 would be -- that the Class plaintiffs and Frys would be
7 teeing up that ultimate position for purposes of my
8 examining those and determining which of those
9 positions, or something in between, is the way it should
10 go.

11 MR. SMALL: Your Honor, you did hear that
12 correctly. That is what I had proposed. Obviously,
13 there is more than one way to come at this.

14 SPECIAL MASTER POPPITI: Sure.

15 MR. SMALL: What I had envisioned, just to
16 be as clear as I can be, there would continue to be,
17 outside of the process for negotiation between the Class
18 and Frys in an attempt to reach a negotiated resolution
19 in which we would be prepared to make an additional
20 proposal to Frys and see if we can reach agreement, but
21 that would be completely separate from proceedings
22 before Your Honor.

23 The part before Your Honor is just what you
24 said, that Frys, you know, before today, had given a

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1 proposal, which we do not accept, and we gave a final
2 proposal which was supposed to have been accepted or
3 rejected by our last call, which was ultimately
4 rejected.

5 SPECIAL MASTER POPPITI: Right.

6 MR. SMALL: So it's those two latest
7 proposals, by Class and Frys, that I would propose
8 putting before Your Honor, having Frys and the Class
9 explain the proposals and why they think there is merit
10 to their own proposal compared to the competing
11 proposal, and let Your Honor, you know, ask questions
12 and make a determination, as you said, which proposal is
13 a better resolution of the motion or something in
14 between.

15 SPECIAL MASTER POPPITI: Mr. Stone.

16 MR. STONE: So, I am a little unclear, just
17 because this is slightly different than the
18 conversations I had with counsel for Class prior to the
19 call, but, Dan -- and if you don't mind, Your Honor, I'd
20 like to ask plaintiff's counsel a question.

21 SPECIAL MASTER POPPITI: Please do.

22 MR. STONE: Dan, so, are you -- what you
23 think we need to do now is to go through the history to
24 how we got to where we are and then have that discussion

1 with Judge Poppiti and then describe what our two
2 current positions are?

3 MR. SMALL: I would not suggest that it's
4 necessary to go through the history of the negotiations.
5 I am not sure that's going to be illuminating and it
6 tends to provoke a lot of disagreement and, you know, he
7 said/she said kind of conversation.

8 So my suggestion would be just get to the
9 bottom line what each of our latest proposals were,
10 explain them to the Special Master, and let him decide
11 which he prefers or something in between.

12 MR. STONE: And I guess the problem I have
13 is that, to understand where we are, you need to see
14 what proposals have been on the table, and, finally, you
15 know, it was my understanding last week that we were
16 going to receive your bottom line subsequent to last
17 Thursday. And, so, not having yet received that, I
18 think that this discussion is a little bit premature and
19 may not be as fruitful as it otherwise could be.

20 MR. SMALL: Well, it's not an apt
21 description, in my opinion, of the situation going
22 forward. It's not that we are going to offer a new
23 bottom line going forward, we are going to propose a
24 different way to come at this, but I think for

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1 litigation purposes, which can be kept separate from the
2 negotiations, we each were prepared to accept a proposal
3 we put on the table, our latest proposal, and that we
4 can explain to the Special Master why we think that is a
5 proper resolution of the motion.

6 SPECIAL MASTER POPPITI: Let me ask this
7 question: If you both have a document which I gather
8 represents a proposal for purposes of the telephone
9 call, we will call last, whatever that proposal is, and
10 I think what I am hearing is you both want me to see and
11 understand that last proposal.

12 From the Class' point of view, they don't
13 think that I need the history to understand their
14 proposal. From Frys' point of view, I think, Mr. Stone,
15 you are saying you would like me to see the history?

16 MR. STONE: That's correct.

17 SPECIAL MASTER POPPITI: And I don't know
18 that I should preclude viewing the history if Frys is of
19 the opinion that I would be better informed of their
20 proposal, their last proposal, by understanding the
21 history. And, you know, my expectation is that if the
22 Class doesn't want to approach it that way, I don't
23 think there is a disadvantage to say, Do whatever you
24 think is best for the ultimate purpose of helping me

1 understand where -- what the proposals are, that is, the
2 last proposals.

3 Does that not make sense, Mr. Small, rather
4 than hamstringing either of you to explain the proposal
5 against whatever backdrop you choose? And, yet, at the
6 same time, I don't think what either of you want me to
7 be saying is the routine, "This represents our meet and
8 confer history up to the point where it fell apart,"
9 because I tend to agree that unless the meet and confer
10 history informs the ultimate proposal, that that may not
11 be necessary.

12 You know, I frequently see that in discovery
13 disputes because it's important to advise the Court --
14 it's not only important, it's required by the rule -- to
15 advise me of the meet and confer. By virtue of doing
16 that, it helps me become informed as to what your
17 ultimate position is.

18 So I think my guidance is if Mr. Stone wants
19 to do it one way, Mr. Small wants to do it another, I
20 don't think that creates a problem for either of you,
21 does it?

22 MR. SMALL: No, Your Honor. And I certainly
23 didn't mean to say before that we were opposed under all
24 circumstances to including any of the history of our

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1 negotiation. I was speaking in terms of what I see as
2 the downside of doing that, that sometimes more focus
3 than is warranted is put on that and there is a lot of
4 disagreement that's a distraction from the goal, which
5 is to have the Court understand the different proposals
6 to determine which is the better.

7 But I think, as Your Honor put it, as long
8 as any discussion of the history of the negotiation is
9 for the specific purpose of illuminating the final
10 proposal, then that would be fine.

11 SPECIAL MASTER POPPITI: Mr. Stone.

12 MR. STONE: Well, with Your Honor's
13 guidance, I think that all makes sense as well.

14 SPECIAL MASTER POPPITI: And, remember, the
15 other thing that -- I don't know whether I am going to
16 be asked to be doing this, but if this ultimately goes
17 to a decision or an order of findings and
18 recommendations that gets served up to Judge Farnan, if
19 part of it is in the context of a rule to show cause, if
20 you will, for purposes of a sanction, then you are
21 going -- obviously, you are going to have to make -- the
22 Class will have to make the determination as to what
23 information they want me to be aware of to show what was
24 being done for the purpose of making some request at the

1 end, whatever that request may be, in terms of a
2 sanction.

3 What I hope would occur would be that once
4 the papers are closed, if you will, that there would be
5 a need for me to revisit a lot of information that may
6 be important for me to see in the first instance rather
7 than seeing it for the first time -- I said "revisit," I
8 mean in the context of the rule to show cause.

9 Is that helpful?

10 MR. SMALL: It is, Your Honor.

11 MR. STONE: It is, Your Honor.

12 The only other thing I would suggest, at
13 this point in our discussions, is the parties have spent
14 a lot of time exchanging proposals back and forth, and
15 with Frys most recent acquiescence in Class plaintiff's
16 request that a motion to compel schedule be set and that
17 we will not use our ongoing negotiations to thwart that
18 schedule, I really believe that the parties' best
19 efforts would be focused on, rather than talking about
20 the past and where we have, you know, been at an
21 impasse, getting off the phone and speaking to each
22 other about the next proposal for resolution.

23 SPECIAL MASTER POPPITI: Right. And it may
24 be that the schedule will provide some degree of impetus

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1 for everyone around our table and for your respective
2 clients as well.

3 MR. STONE: And, so, in that regard, rather
4 than spending our time now rehashing what the latest
5 proposals were, which we know were acceptable to both
6 parties, I think if we talk about either the framework
7 for a schedule on the motion to compel or simply get off
8 the phone so that we could negotiate that and provide it
9 to Your Honor by close of business tomorrow, that would
10 be in all of our best interests.

11 MR. SMALL: Your Honor, I am sorry, were you
12 going to say something?

13 SPECIAL MASTER POPPITI: No. I wanted to
14 hear what you had to say.

15 MR. SMALL: I think, at this point, we are
16 simply down to proposing a briefing schedule in which we
17 would address the competing proposals. I had originally
18 proposed to Frys that we have a schedule where Class
19 file an opening brief within ten days, then Frys would
20 have ten days to respond, and then Class would have
21 seven days for a reply. That's still agreeable to
22 Class.

23 I am wondering, given the way this will be
24 briefed now, whether we should just do simultaneous

1 exchange of briefs and responses to those briefs?

2 SPECIAL MASTER POPPITI: Mr. Stone.

3 MR. STONE: I think that the initial
4 proposal of opening opposition and reply makes sense and
5 Frys is amenable to that.

6 SPECIAL MASTER POPPITI: Then there is no
7 reason not to go with the way that -- with that
8 proposal.

9 MR. SMALL: And ten days and seven days to
10 do the briefing, Your Honor?

11 SPECIAL MASTER POPPITI: Yes.

12 MR. SMALL: And we will submit something to
13 Your Honor tomorrow to implement that.

14 SPECIAL MASTER POPPITI: The only other
15 question that I have is: At the end of briefing, I
16 should set for you a hearing schedule. I would
17 anticipate that we could do that by telephone. Frys
18 requested, the last time we were all together, that we
19 were in a courtroom.

20 Is there a need to do that, Mr. Stone, or do
21 you expect this could be done by telecon.

22 MR. STONE: Your Honor, I haven't addressed
23 the issue yet with my client, so I am not sure what
24 their position will be.

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1 SPECIAL MASTER POPPITI: Just pose that
2 question to them.

3 MR. STONE: I will, indeed.

4 SPECIAL MASTER POPPITI: Mary LeVan, are you
5 on the line?

6 MS. LeVAN: Yes.

7 SPECIAL MASTER POPPITI: Thank you. Let's
8 do this: Let's look at a schedule for a hearing date
9 now so that the order will reflect that as well. So for
10 ten, ten, and seven, putting us outside in 27 days, I
11 guess, is, I would like to have five working days before
12 a hearing date.

13 Mary, can you check the calendar?

14 MS. LeVAN: What week am I looking for?

15 SPECIAL MASTER POPPITI: You are looking for
16 ten, ten, and seven, 27 days out, plus seven more, and
17 we are looking for a hearing, a telecon, or in the
18 courtroom, my guess is we'd need, what do you think,
19 counsel, an hour? Hour and a half?

20 MR. SMALL: I would think an hour and a half
21 should be sufficient, Your Honor.

22 SPECIAL MASTER POPPITI: Mr. Stone.

23 MR. STONE: What was the date again, Your
24 Honor?

1 SPECIAL MASTER POPPITI: We don't have a
2 date. I was just asking about the length.

3 MR. STONE: Oh.

4 SPECIAL MASTER POPPITI: Two hours?

5 MR. STONE: Two hours should be sufficient,
6 I would think.

7 SPECIAL MASTER POPPITI: We are looking for
8 two hours.

9 MS. LeVAN: So you have an arbitration that
10 day. You have time in the morning.

11 SPECIAL MASTER POPPITI: Okay.

12 MS. LeVAN: And I would say either morning
13 to mid afternoon, anywhere from nine to 12:30 or so, you
14 are open. I would hate to try to do it after the
15 arbitration in case it runs long.

16 SPECIAL MASTER POPPITI: I'd prefer not to
17 do it on the same day.

18 MS. LeVAN: Okay. That would be the 27th,
19 that's ten, ten, and seven. Do you want to try the
20 28th?

21 SPECIAL MASTER POPPITI: What I need is ten,
22 ten, and seven, plus another week.

23 MS. LeVAN: So that brings you into the
24 first week in September.

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1 SPECIAL MASTER POPPITI: If you are clear of
2 anything else that you know of.

3 MS. LeVAN: Right. You are open September
4 4th. That day is open for you.

5 SPECIAL MASTER POPPITI: What day of the
6 week?

7 MS. LeVAN: That is a Tuesday. It so
8 happens that the 3rd is a holiday. That is a Monday.

9 SPECIAL MASTER POPPITI: Counsel, do you
10 want to steer clear of that in case of travel?

11 MR. STONE: Yes, Your Honor. Also, I have a
12 hearing on the 5th here in California.

13 MR. SMALL: I have a conflict on the 4th, if
14 it's possible to avoid that.

15 SPECIAL MASTER POPPITI: Look to the end of
16 the week, then.

17 MR. STONE: Is the 7th available?

18 MS. LeVAN: Yes.

19 MR. SMALL: The 6th is also open for me,
20 Your Honor.

21 SPECIAL MASTER POPPITI: What day of the
22 week is that?

23 MS. LeVAN: That's a Friday.

24 SPECIAL MASTER POPPITI: Okay. That's good,

1 Friday, and why don't we schedule it for 9:30. Let's do
2 it this way: We will tentatively schedule it for 9:30
3 if it's going to be live, and if you can ask, Mr. Stone,
4 if you can ask your client, sooner than later, that
5 would be great because, otherwise, if you are going to
6 be doing it from California, you are not going to want
7 to be doing it necessarily 9:30 in the morning, and I am
8 happy to do it as late in the day as your schedule
9 permits.

10 MR. STONE: I appreciate that.

11 SPECIAL MASTER POPPITI: We can do 3:30,
12 even if we were two hours, or we can start at 4:00, with
13 two hours, that's not a problem.

14 MR. STONE: I will --

15 SPECIAL MASTER POPPITI: We will hold both
16 times.

17 MS. LeVAN: Okay.

18 SPECIAL MASTER POPPITI: And just let me
19 know.

20 MR. STONE: Thank you, Your Honor.

21 SPECIAL MASTER POPPITI: Okay. Is there
22 anything else, then, please?

23 MR. SMALL: Not for the Class, Your Honor.

24 MR. STONE: Not for Frys, Your Honor.

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1 SPECIAL MASTER POPPITI: You can certainly
2 submit a form of order as quickly as you can. I won't
3 be able to put a pen to the order until Monday.

4 MR. SMALL: Yes, Your Honor.

5 SPECIAL MASTER POPPITI: So as soon as you
6 get it in this week, that would be great, so I can
7 actually get it on Monday.

8 MR. COTTRELL: Your Honor, I don't know
9 whether Mr. Samuels wishes to raise an issue before we
10 go?

11 MR. SAMUELS: Yes, Your Honor, Mark Samuels,
12 if I might.

13 MS. SMITH: Can we have Frys get off?

14 SPECIAL MASTER POPPITI: Mr. Stone, thank
15 you.

16 MR. SAMUELS: Mark Samuels, Your Honor. I
17 am, of course, mindful this call is interrupting Your
18 Honor's vacation.

19 SPECIAL MASTER POPPITI: Not at all. That's
20 why I said if it relates to the e-mail of the other day,
21 I am happy to do it. It's just that I knew I was not
22 going to have easy access to opening all attachments
23 because I needed something.

24 MR. SAMUELS: We will try to minimize the

1 imposition on Your Honor's time.

2 SPECIAL MASTER POPPITI: Not a problem.

3 MR. SAMUELS: Your Honor will recall in
4 bifurcating discovery into Intel's evidence preservation
5 issues, Your Honor originally proposed a July 31
6 deadline, later extended by stipulation of the parties
7 to August 31, and that's the deadline for completing
8 remediation discovery. The particulars of what the
9 initial discovery would entail were agreed upon by the
10 parties on July the 3rd.

11 Your Honor, it's now, I guess, August 1
12 tomorrow and we are now 31 days out from this August 31
13 deadline, and Intel's production of documents in
14 response to our initial remediation discovery has been,
15 in AMD's view, very slow. Against the volume we have
16 been told to expect, only a small fraction of it has yet
17 hit our doors.

18 When we complained about that to Intel
19 middle of last week, we were told on Friday evening by
20 Intel's counsel that it would be, and I am quoting here,
21 At least two to three weeks before that initial document
22 production could be completed. That, of course, was
23 very concerning to us in the face of an August 31
24 completion date and would obviously impose on our right

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1 to conduct follow-up discovery and to conduct
2 depositions.

3 Prompted, I assume, by our request to speak
4 with Your Honor this afternoon, I received a letter last
5 night from Intel counsel, which I am, if I am reading
6 correctly, contains a commitment by Intel to complete
7 its production of documents in response to the initial
8 remediation discovery by August 10.

9 SPECIAL MASTER POPPITI: Okay.

10 MR. SAMUELS: And I would like, if I am
11 reading that correctly, for Mr. Floyd, or someone else
12 from the Intel side, to confirm it because it's very
13 important to us that this initial discovery be completed
14 without any further delay.

15 SPECIAL MASTER POPPITI: For Intel.

16 MR. FLOYD: I will take a couple minutes and
17 then I will obviously respond directly to Mr. Samuels'
18 question.

19 The order was actually entered on July 10,
20 and we have -- one of the issues we have, we have six
21 custodians, one of which is a third party. You know, I
22 understand Mr. Samuels' frustration. I am not really
23 quarrelling with it. I understand. If I was in his
24 position, I'd want the documents as soon as possible. I

1 want to assure that we have a team that's working on it.
2 There are issues in terms of getting those third-party
3 documents. There are a lot of privilege issues that we
4 have to deal with.

5 So, in light of, you know, Mr. Samuels'
6 letter, which I would have responded to regardless of
7 whether or not he had requested a conference, but,
8 obviously, you are here to assist us, and, you know, we
9 recognize that, I have gone back and I have tried very
10 hard to talk to the people that are working on it, push,
11 and do the things that you, you know, should do to try
12 to move things along.

13 So, I have, in fact, indicated to
14 Mr. Samuels in writing that we will have -- we have, at
15 this point, three additional custodians, and then there
16 are two faces to the production, there is a group of
17 documents that we can turn over relatively easily and
18 others that require redaction or some additional looking
19 at to confirm issues regarding privilege. So we are
20 going to have another production on Friday, which will
21 take care of --

22 SPECIAL MASTER POPPITI: This Friday?

23 MR. FLOYD: This Friday, which will take
24 care of, we believe, the additional Intel custodians,

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1 the two, sometime early next week, the third-party
2 production, and then we have said they intend to get it
3 all done by the 10th, and then there is some additional
4 summaries and things that we have promised to get them,
5 which we will get also when we set forth a schedule on
6 that.

7 So, I don't, at this point, I don't see any
8 problem with that. I am certainly going to push as hard
9 as I possibly can. I can't always predict what happens
10 in the world, but I feel comfortable in making the
11 representation and we will certainly follow-up on it to
12 make sure it gets done. If something unusual happens,
13 we will address it immediately and deal with it.

14 MR. SAMUELS: Your Honor, that's acceptable.
15 We really want to keep the remediation discovery in the
16 window that is in Your Honor's order, and we appreciate
17 Mr. Floyd's commitment and apologize for having to
18 burden Your Honor with this.

19 SPECIAL MASTER POPPITI: Not at all.

20 MR. FLOYD: We have got a 30(b)6), we have
21 had a couple informal technical exchanges. We
22 understand the situation. We are not -- we understand
23 where we are and the need to get it done. We will work
24 diligently to do so.

1 SPECIAL MASTER POPPITI: I appreciate the
2 work that you have done to get to the point of offering
3 the things that you did and certainly stand ready to
4 accept a call if there are any problems. Okay? Thank
5 you all very much.

6 MR. DIAMOND: Your Honor, it's Charles
7 Diamond.

8 SPECIAL MASTER POPPITI: Yes.

9 MR. DIAMOND: I rarely participate in these
10 calls lately.

11 SPECIAL MASTER POPPITI: I haven't heard
12 your voice for a while, Mr. Diamond.

13 MR. DIAMOND: Not for lack of interest.
14 Mr. Samuels had been carrying the water for us on the
15 remediation issues, and ably so, in our opinion, so I
16 have not interfered. But I just -- this is sort of in
17 the nature of a head's up that you can expect a parallel
18 negotiation as sort of part of our discussions of
19 spoliation and remediation.

20 As much as Mr. Samuels is concerned about
21 the pace of the remediation discovery, I grow
22 increasingly concerned about the pace of discovery
23 generally. As I wrote to Mr. Cooper last week, we are a
24 good six months beyond what is the deadline for an

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1 exchange of documents and we are just halfway through,
2 if that, not including the remediation discovery. I
3 think everyone is in -- everyone who is a realist is in
4 pretty much agreement that Intel is not going to be able
5 to get this database assembled and begin tapping into it
6 in any substantial way until the end of the year, if
7 that early. And the difficulty we are confronting is
8 that once the tap is turned on on those documents, the
9 production is not immediate. If all of our outbound
10 material gets the review and scrutiny that the material
11 we have exchanged thus far has received, we can
12 anticipate that those documents are going to be subject
13 to ongoing review which is going to prevent their
14 production until well into 2008, and I am anticipating,
15 in all likelihood, through the end of 2008.

16 From our way of thinking, that's not
17 consistent with an April 27, 2009, trial date. And, so,
18 we need to begin thinking as part of this remediation
19 program about newer, better, more efficient, and cheaper
20 ways to get the document exchange done.

21 We promised Intel early on, and by that, I
22 mean a good year-and-a-half, two years ago, when we
23 first negotiating outbound productions, that we would
24 not use electronic means to filter out any documents,

1 that we would eyeball all of the documents we assembled
2 on harvest before we would produce them, and we have
3 remained faithful to that commitment. My understanding
4 is that they are proceeding with their outbound
5 production in very much the same way.

6 It is a grossly, grossly inefficient
7 process, particularly against the backdrop of negotiated
8 deals in which most of the documents that we are
9 spending money reviewing will never see the light of day
10 because neither side is designating them for tip
11 production, which is a prerequisite to being used in
12 litigation.

13 We had put on the table as part of -- or an
14 adjunct for remediation discussions a proposal to try to
15 expedite the review of the remaining outbound material,
16 including remediation material. I have copied
17 Mr. Friedburg on that because it clearly involves
18 aspects of remediation, in our view, you know, a
19 remediation plan that gets us too little too late is not
20 really a remediation plan, so we have to look at not
21 only how these documents are going to be assembled but
22 over what time period they are going to be assembled,
23 reviewed, and produced.

24 And we had made a fairly detailed proposal

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1 to Intel in which the Class has joined. Mr. Cooper has
2 promised to give that due consideration and to get back
3 to us with whatever thoughts Intel has on the matter,
4 but we see this as increasingly an urgent priority item.

5 We need to get together or seek your help in
6 getting together to arrive at a much more expeditious
7 process for getting these documents delivered to one
8 another so that it doesn't become an albatross on the
9 litigation.

10 SPECIAL MASTER POPPITI: And when would you
11 expect that everyone would be, or should be in a
12 position to discuss that with me or come to resolution?

13 MR. DIAMOND: I think the ball is presently
14 in Mr. Cooper's court. I had suggested we meet this
15 week. They need some more time to think about it. I
16 understand that. But I certainly hope that we are able
17 to huddle in the next ten days.

18 SPECIAL MASTER POPPITI: Okay.

19 MR. DIAMOND: And then report to you where
20 we are.

21 SPECIAL MASTER POPPITI: Then what may be
22 important to do is, not having my calendar in front of
23 me, if you will look and see when we have got the next
24 regularly scheduled status, if it's compatible with what

1 you all think makes sense, then let's make sure that we
2 use that next date or whenever the best date is after
3 the next date to discuss this.

4 I think it would be important for either me
5 or for the parties, at some point in the fall, and not
6 late fall, to be having communication with the Court
7 regarding the scheduling order. And with respect to
8 that, that can take place in a number of different ways.
9 You can suggest to me, with some input, that I have some
10 discussion with Judge Farnan directly about where you
11 all are and what impact the current circumstance, what
12 impact that current circumstance has on dates that are
13 already set so I can get some sense from the Court of,
14 before you all make application, as to what should
15 happen with the scheduling order.

16 Obviously, you can request the Court engage
17 in the first instance, I am not sure that that is
18 necessary if you think the root of having absent
19 conversation with Judge Farnan --

20 MR. DIAMOND: Our proposal, really, is in
21 the nature of, How do we live within the deadlines that
22 are currently established?

23 SPECIAL MASTER POPPITI: I understand that.

24 MR. DIAMOND: And Mr. Cooper expressed to me

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1 his desire to get this case tried on time, that's
2 certainly our desire, and we want to try to make that
3 happen first.

4 SPECIAL MASTER POPPITI: I understand that.
5 So I am just suggesting that as we get much beyond late
6 fall, we are really looking at a time when we should be
7 having some conversation or application to the Court
8 because, in late fall, we are looking at a year and,
9 what, two, three months away from the trial.

10 MR. FLOYD: Obviously, Mr. Cooper is not on,
11 so I can address some of it. We intend to have a
12 response to Mr. Diamond's letter within a day. It is
13 fairly complex. And one thing I just want to point out,
14 not to belabor it, but, obviously, one of the
15 presumptions here, or assumptions that are being made
16 here, which I think is true, is it's not as if AMD is
17 finished reviewing all of its documents and produced its
18 documents, and part of the proposal here is to try to
19 deal with both sides, so I think there is some -- that
20 seems, to me, to be one of the fundamental assumptions
21 here.

22 We are, you know, we will respond, and I
23 think it's going to make sense to have -- we will
24 certainly need to meet. I think our view is, what we

1 express in the letter, is that the parties ought to meet
2 in the sense of a meet and confer environment so we can
3 have some very open and frank discussions before we
4 bring it to Your Honor.

5 SPECIAL MASTER POPPITI: That makes senses.

6 MR. FLOYD: But we understand -- we
7 appreciate Mr. Diamond's letter. Obviously, he and
8 Mr. Cooper have had some discussions and we will engage
9 in that process and see what comes out of it and get
10 back to you.

11 SPECIAL MASTER POPPITI: Okay. I look
12 forward to the status with respect to these issues. I
13 won't press you yet for any date when that should
14 happen.

15 Anything else, then, please?

16 Well, then, thank you. Mary, are you still
17 on?

18 MS. LeVAN: Yes. Do you need me?

19 SPECIAL MASTER POPPITI: Yes. Everyone
20 else, I appreciate your time.

21 (The teleconference was concluded at 3:47
22 p.m.)

23

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1 C E R T I F I C A T E

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional
5 Reporter, within and for the County and State aforesaid,
6 do hereby certify that the foregoing teleconference was
7 taken before me, pursuant to notice, at the time and
8 place indicated; that the teleconference was correctly
9 recorded in machine shorthand by me and thereafter
10 transcribed under my supervision with computer-aided
11 transcription; that the foregoing teleconference is a
12 true record; and that I am neither of counsel nor kin to
13 any party in said action, nor interested in the outcome
14 thereof.

15 WITNESS my hand this 31st day of July A.D. 2007.

16
17 

18 RENE E A. MEYERS
19 REGISTERED PROFESSIONAL REPORTER
20 CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)



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