

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 Friday February 1, 2008, beginning at approximately 1:30 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 SPECIAL MASTER POPPITI: Why don't we
2 queue up and see who is on the line. And let's start
3 with the Class, please.

4 MR. HOLZMAN: Jim Holzman, Prickett,
5 Jones.

6 SPECIAL MASTER POPPITI: Thank you.
7 Anyone else for Class?

8 MR. HOLZMAN: Not that I know of.

9 SPECIAL MASTER POPPITI: AMD. Here we
10 go. AMD, please.

11 MR. SAMUELS: Mark Samuels on the line.
12 I am not sure who else from O'Melveny or from Richards,
13 Layton is on at this moment.

14 MS. CHANG: Jennifer Chang from
15 O'Melveny is on.

16 SPECIAL MASTER POPPITI: Thank you.

17 MR. SAMUELS: I believe Beth Osman from
18 AMD in-house is on or should be joining shortly.

19 MS. OSMAN: Beth Osman is on. Thank
20 you.

21 SPECIAL MASTER POPPITI: Thank you.

22 MR. HORWITZ: Good afternoon, Judge.
23 It's Rich Horwitz here in Wilmington. I am not sure who
24 is on from co-counsel. We didn't have open communication

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1 until the call got started, so I think I will just let
2 people introduce themselves.

3 SPECIAL MASTER POPPITI: Okay.

4 MS. KOCHENDERFER: Kay Kochenderfer, Bob
5 Cooper, and Rich Levy are here from Gibson, Dunn in the
6 Los Angeles office.

7 SPECIAL MASTER POPPITI: Thank you very
8 much. Jim Holzman, do you want us to proceed without --

9 MR. HOLZMAN: Absolutely. We are ready.

10 SPECIAL MASTER POPPITI: Does anyone
11 object to proceeding before someone from Richards joins
12 us?

13 MR. SAMUELS: No, Your Honor?

14 SPECIAL MASTER POPPITI: Anyone else
15 object? Okay. Hearing none, I'd prefer to get started
16 so I don't wind up coughing all over the telephone.

17 I have read both of your submittals of
18 January 22nd from Mr. Cottrell and the January 29 from
19 Mr. Horwitz, and I gather, from reading those, that there
20 may not be too much for me to be dealing with today. So
21 why don't we try to focus on what the issues were, advise
22 as to whether they have been resolved, and let's see if
23 we can't narrow down what's left for me to deal with, if
24 anything.

1 MR. SAMUELS: Your Honor, it's Mark
2 Samuels, if I could start. I think there are four
3 issues. By far, the most important issue, from our
4 perspective, and an issue that, to our way of thinking,
5 remains very much alive is the question of whether Intel
6 submitted all of the materials that they ought to have
7 submitted in connection with the in camera inspection of
8 the Weil Gotshal materials. And, in particular, we are
9 talking about what at least we have been referring to as
10 summaries.

11 As we understood it, and still
12 understand it, the process that was engaged in by Weil
13 Gotshal involved an interviewer taking contemporaneous
14 notes and then preparing, from those notes, a summary or
15 a memorandum of some kind.

16 Your Honor confirmed that with
17 Ms. Kochenderfer during the December 27th hearing and the
18 relevant portions of that are cited at footnote one of
19 our letter brief of the 22nd.

20 And as we were working with Intel
21 counsel to get the materials queued up for submission to
22 Your Honor on January the 22nd, it became very clear that
23 what we thought these summaries or memoranda were going
24 to be submitted, Intel decided not to submit. And I

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1 asked the question very directly of Miss Kochenderfer in
2 an e-mail exchange that's attached as Exhibit A to our
3 letter, I asked her very clearly whether there were
4 summaries being withheld. She didn't answer. And that's
5 what prompted our letter to you of January the 22nd.

6 Now, from the letter that Mr. Horwitz
7 submitted on the 29th, I think it is now quite clear that
8 Intel did withhold from Your Honor these memoranda or
9 summaries that were prepared based on the raw notes, and
10 the explanation that is offered by Mr. Horwitz is that
11 those are viewed by Intel as, quote, derivative
12 materials, unquote, and fell within the scope of my
13 agreement during the hearing on January the 3rd that Your
14 Honor could forego inspection of those derivative
15 materials based on a representation that Intel would be
16 making that those derivative materials don't contain any
17 information, factual information that's not contained in
18 the summaries or memoranda.

19 Now, it was always quite clear to us
20 that these derivative materials were something different
21 than summaries or memoranda prepared by the interviewers
22 following the contemporaneous notes. And that's clear
23 from the transcript of January the 3rd.

24 Mr. Floyd says, just as I related to

1 you, Mr. Floyd says, at page 7 and 8, and I will quote
2 him, "Your Honor, I wanted to -- I spoke to Mr. Samuels
3 yesterday a little bit about this issue that
4 Ms. Kochenderfer was addressing, which is that we have
5 been attempting to collect -- sorry, which is what we
6 have been attempting to collect are the interview notes
7 that, for example, a particular individual may have taken
8 in interview and then taken notes, prepared a memo,
9 perhaps done some follow-up, and, in each instance, may
10 have obtained factual information which would then have
11 been embodied in some sort of writing, and that's the
12 information that we have been pulling."

13 Then Mr. Floyd goes on to describe this
14 third category. He says, "What we have discovered, not
15 surprising, is that there is a large amount of material
16 then that is created or used by Weil for other purposes
17 related to their retention and that is what we would view
18 as more derivative work product." And that's what we
19 understood, too.

20 And at page 10, I recite to Your Honor,
21 and I am quoting, "Yes, Mr. Floyd and I did discuss this
22 yesterday and we didn't reach a resolution yesterday. It
23 was really the first indication we had that there were
24 these so called derivative materials, and I'd like to

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1 make a suggestion about those. If, as Mr. Floyd
2 believes, these derivative materials contain no factual
3 information that isn't otherwise contained in the
4 interview notes, the interview notes, themselves, and if
5 we can get a representation to that effect and a
6 representation that all, that the balance of these
7 derivative materials are core attorney work product, I
8 think we would be satisfied."

9 And then I go on, "Mr. Floyd and I did
10 confer, and I am not sure we got as far as Your Honor may
11 have intended for us to get, due, I think, principally to
12 the holiday, but we do have agreement, I believe, that
13 the materials, the so-called set-up materials, the
14 questionnaires, the preinterview instructions, the
15 scripts, and so forth, all of the materials we discuss
16 will be provided to Your Honor in camera as well as the
17 Weil Gotshal notes, themselves. It's a little bit vague
18 to it but it seems as though the Weil Gotshal notes
19 consist of handwritten, you know, contemporaneous or
20 typewritten notes taken by the interviewing lawyers at
21 the time of the interview and then more elaborate
22 memoranda that were prepared afterward, presumably, based
23 on those notes and follow-up, so those Weil Gotshal
24 materials will also be submitted to Your Honor in

1 camera." And that's what we understood and no one
2 disabused us of that notion.

3 Now, come to find out that what Intel
4 has submitted to Your Honor are, apparently, and, of
5 course, we haven't seen any of this, but what Intel has
6 submitted to Your Honor, apparently, consists only of the
7 contemporaneous notes prepared by the interviewers, but
8 these memoranda that were prepared based on those notes
9 have not been submitted, and we -- they are clearly
10 responsive and they ought to have been.

11 The only thing we agreed need not be
12 produced at this time were the derivative materials which
13 Mr. Floyd described as materials prepared not to document
14 what a custodian said but for other purposes, you know,
15 things that mention what a custodian said, such as what
16 we assumed to be legal research memoranda or such. And,
17 so, we are, you know, we are quite disturbed that these
18 summaries or memoranda have not been submitted to Your
19 Honor in camera.

20 You will recall that, way back when,
21 Intel was claiming that they wanted to organize all of
22 these materials together for Your Honor to see, and it
23 appears that only the raw interview notes have been
24 submitted and not these summaries or memoranda prepared

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1 from them, and we think they ought to have been. We
2 think that was the agreement and that's why we wrote the
3 letter.

4 SPECIAL MASTER POPPITI: Okay. Who is
5 going to be speaking from Intel, please?

6 MS. KOCHENDERFER: Your Honor, this is
7 Kay Kochenderfer.

8 SPECIAL MASTER POPPITI: Thank you,
9 Miss Kochenderfer.

10 MS. KOCHENDERFER: What Intel provided,
11 we understood we were to provide and what we did provide
12 was interview notes that were taken by the Weil attorneys
13 who conducted the interviews, and, in some instances,
14 those interview notes were handwritten, made at the time
15 that the interviewer was actually conducting the
16 interview.

17 SPECIAL MASTER POPPITI: Correct.

18 MS. KOCHENDERFER: In some instances,
19 those handwritten notes were then typed up by the
20 interviewer and not what I would characterize as a formal
21 memo but a bit more in the nature of a typewritten
22 transcription of their handwritten notes, roughly a
23 typewritten transcription of their handwritten notes.
24 Those we have provided. So if that situation occurs, we

1 have provided both the contemporaneous handwritten notes
2 and then whatever was typed up that also will contain
3 factual information that was learned by the Weil attorney
4 during the interview process.

5 In addition, we provided --

6 SPECIAL MASTER POPPITI: May I, just for
7 the purpose of following along with you?

8 MS. KOCHENDERFER: Sure.

9 SPECIAL MASTER POPPITI: It's my
10 expectation, based on some of the review I conducted,
11 that what you are saying is only some of the attorneys
12 took the handwritten notes, typed up those notes for
13 purposes of, maybe they can't read their own handwriting
14 or whatever, and in that circumstance, the handwritten
15 notes and the typewritten notes with respect to any
16 interview of any particular custodian, you have provided?

17 MS. KOCHENDERFER: That's correct.

18 SPECIAL MASTER POPPITI: And I am
19 expecting that they would be provided in conjunction with
20 the materials submitted with respect to each custodian?

21 MS. KOCHENDERFER: That's correct.

22 SPECIAL MASTER POPPITI: Or organized in
23 that fashion?

24 MS. KOCHENDERFER: That's correct.

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1 So, from the way we did actually
2 organize it alphabetically, so, for each custodian, in
3 the back of the tab for that custodian, there could be
4 one set of materials, there could be two, there could be
5 three, depending on the circumstances of how many
6 materials we found that were reflective of the
7 interviewer writing down information they learned from
8 the custodian.

9 SPECIAL MASTER POPPITI: I understand.

10 MS. KOCHENDERFER: Those have been
11 provided.

12 I think there has been a little bit of
13 confusion about the term "summaries." Mr. Samuels did
14 send me an e-mail and ask about the, quote, summaries. I
15 interpreted his question as to whether or not those
16 summaries -- I interpreted his question as referring to
17 the summaries that were submitted to the Court since
18 that's terminology that has been used before, custodian
19 summaries submitted pursuant to paragraph eight.

20 SPECIAL MASTER POPPITI: Yes.

21 MS. KOCHENDERFER: So I responded and
22 said, Sure, we will provide those summaries to the
23 Special Master and put them in alphabetical order in a
24 Word document for ease of review.

1 SPECIAL MASTER POPPITI: And you did
2 that.

3 MS. KOCHENDERFER: Yes.

4 SPECIAL MASTER POPPITI: You may be
5 mindful of the phone call that you got from Mary LeVan
6 sometime last week where we asked that that be done my
7 not having known, because I kept my hands off those
8 materials for a period of time for reasons that I have
9 shared with you in correspondence, so I didn't know at
10 the time that that binder had been prepared for purposes
11 of walking through the materials. But, indeed, you did
12 provide the summaries to me yet again organized
13 alphabetically.

14 MR. SAMUELS: Your Honor, again, since
15 we haven't seen the materials and sort of, you know, I am
16 sort of describing something I can't see here, but I want
17 to make sure that we are not getting into some word
18 issues here.

19 If Your Honor will look at Exhibit A to
20 our letter, the very last part of that e-mail string puts
21 the question to Miss Kochenderfer as clearly as I could
22 possibly have done. It says, "Kay, there are summaries
23 prepared by Weil beyond what you are proposing to submit
24 in camera; true"? And I never got a response to that.

1 And the summaries that we are talking
2 about are different than the paragraph eight disclosures,
3 which, in many instances, are just a sentence or two.
4 What we have been referring to or what Your Honor asked
5 Miss Kochenderfer about at the hearing on December 27,
6 Your Honor asked Miss Kochenderfer, "Were there also the
7 creation of a document that either summarized those
8 interview notes that is a document different from the
9 summaries that were provided pursuant to paragraph
10 eight"?

11 "MISS KOCHENDERFER: "I believe that
12 there were."

13 That's what we are talking about. And I
14 still don't have a clear understanding as to what
15 happened to those, why those haven't been supplied to
16 Your Honor, or if they have, why there is no
17 representation about that.

18 MS. KOCHENDERFER: I was trying to walk
19 through exactly the terminology to make sure that we
20 understand exactly what the steps were and what we have
21 provided and what we believe are not appropriate to
22 provide.

23 SPECIAL MASTER POPPITI: Okay.

24 MS. KOCHENDERFER: So the first step is

1 what I described, which is where a Weil attorney prepared
2 handwritten notes while they were doing the interview
3 with the custodian, we have provided those. In some but
4 not all instances some of the Weil attorneys then typed
5 those up in some format. In those instances, we have
6 provided those.

7 I think what is -- what Mr. Samuels is
8 going to next is, Was there then, after the one or two
9 documents that I have just described, which would contain
10 the factual information learned by the Weil attorneys
11 while interviewing the custodian, and if there is
12 follow-up, we have provided that, too, but if there was a
13 next step of then the attorney condensing or --

14 MR. SAMUELS: Or elaborating upon.

15 SPECIAL MASTER POPPITI: Just a moment,
16 counsel, please.

17 MS. KOCHENDERFER: Let me just finish
18 explaining it and then we can go from there, but I just
19 want to make sure that I have explained it.

20 If there was a subsequent document where
21 the attorneys synthesized the factual information in the
22 longer extensive notes of the actual facts that were
23 learned during the interview, if that attorney
24 synthesized that information, it is our position that

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1 that would be core work product because that reflects the
2 attorney's thought process in summarizing what that
3 attorney believed was the, you know, working on what the
4 ultimate summary of the notes were.

5 So, that is what we contend would
6 constitute core work product and would be derivative of
7 the underlying factual information that was learned by
8 the Weil attorneys while they were conducting the
9 interviews.

10 MR. SAMUELS: Your Honor --

11 SPECIAL MASTER POPPITI: I --

12 MS. KOCHENDERFER: Sometimes these were
13 done by people other than the interviewer.

14 SPECIAL MASTER POPPITI: I am sorry?
15 Once again, I missed that.

16 MS. KOCHENDERFER: Sometimes these would
17 have been done by people other than the interviewer.

18 SPECIAL MASTER POPPITI: In terms of
19 memoranda, if you will, re-looking at the interview
20 handwritten notes, and in the circumstances you
21 described, the typewritten version of those handwritten
22 notes, and doing some work with those; correct?

23 MS. KOCHENDERFER: Right.

24 MR. SAMUELS: Your Honor, so I think we

1 now have it on the table. There were, following the
2 contemporaneous notes, there were memoranda or summaries,
3 whatever you want to call them, that were prepared. Our
4 assumption, and, to some degree, it's speculation, but I
5 don't think so, I would expect that those summaries would
6 be -- would elaborate upon the chicken scratching or
7 whatever was contemporaneously done by an interviewer at
8 the time of the interview.

9 Now, Miss Kochenderfer maintains that
10 those represent core work product because they were, you
11 know, prepared by a lawyer and represent some sort of
12 synthesis. Well, that may be.

13 It may also not be. And we don't accept
14 that Intel can draw its own conclusion and not even
15 submit the material for Your Honor's inspection. That's
16 what they ought to be doing. And Your Honor can decide
17 whether that is core work product or simply an
18 elaboration of what the witness said during the course of
19 the interview and is pure factual information. That's
20 the point here. And we don't think Intel should be able
21 to decide for itself what is core work product and what
22 isn't. That's the whole purpose of this in camera
23 inspection.

24 So, that's what we expected Your Honor

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1 to be receiving from them and the materials are
2 responsive and they ought to be submitted.

3 MS. KOCHENDERFER: Your Honor, Intel has
4 provided the interview notes, whether they are in
5 handwriting or typed up, and any follow-up materials --
6 and we will get to the point of concluding that process
7 in a second -- but that's what we are doing, any
8 interview notes, follow-up materials, documents that set
9 forth factual information learned by the Weil attorneys
10 during the interview process, and our representation is
11 that anything else that was prepared that summarizes or
12 synthesizes does not contain any new factual material,
13 that if there is anything that actually contains new
14 factual material that was learned from the custodian,
15 that we would provide as something that is a follow-up
16 material.

17 SPECIAL MASTER POPPITI: Okay.

18 MS. KOCHENDERFER: That's consistent
19 with the discussion at the last hearing in which
20 Mr. Samuels said, "If, as Mr. Floyd believes, these
21 derivative materials contain no factual information that
22 isn't otherwise contained in the interview notes,
23 interview notes, themselves, and if we can get a
24 representation to that effect and a representation that

1 the balances of these derivative materials are core
2 attorney work product, I think we would be satisfied,"
3 and that's the premise that we were operating under.

4 MR. SAMUELS: Your Honor, I don't think
5 they really could have been operating under the
6 assumption that these memoranda were off limits. I was
7 as clear as I could be. It's a little bit vague to us
8 but it seems as though the Weil Gotshal notes consist of
9 handwritten, you know, contemporaneous or typewritten
10 notes taken by the interviewing lawyers at the time of
11 the interview and then more elaborate memoranda that were
12 prepared afterward, presumably based on those notes and
13 follow-up, so those Weil Gotshal materials will also be
14 submitted to Your Honor in camera.

15 If there was a misunderstanding, I don't
16 know how it arose, but we feel like, you know, important
17 materials that were to have been presented to Your Honor
18 have not been based on Intel's unilateral determination
19 that they represent core work product. And we can't
20 accept that.

21 SPECIAL MASTER POPPITI: I think I
22 understood the discussion in that hearing -- and I am
23 looking down at the transcript along with you -- I
24 expected that the representation that any work done that

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1 was derivative from those materials, and I understood
2 "derivative" to mean after you took your contemporaneous
3 notes and after those notes were either typed or after
4 they were summarized and after the summary was prepared
5 for submittal consistent with paragraph eight.

6 If other documents were created by Weil
7 attorneys discussing the information, I did not expect
8 that I would be seeing those because they would be
9 considered core work product.

10 I mean, it seems to me that once you put
11 in front of me, taking it backwards, the paragraph eight
12 documents and if it is important for me to measure the
13 facts articulated in those paragraph eight summaries
14 against the interview notes, handwritten, typed, or
15 summarized, that's what I was expecting to see for
16 purposes of doing the in camera review.

17 I did not anticipate seeing discussion
18 points, if you will, surrounding any particular interview
19 unless, of course, within those documents that constitute
20 a discussion of the interview there are additional facts
21 that may have resulted from follow-ups that are not
22 otherwise contained, or from the initial interview, that
23 are not otherwise contained either in the handwritten
24 notes, the typewritten version of those notes, or

1 summaries prepared in anticipation of preparing the
2 paragraph eight summary.

3 MS. KOCHENDERFER: That's Intel's
4 understanding as well, Your Honor.

5 MR. SAMUELS: Well, if that's the
6 understanding, then, I don't -- then I don't understand
7 why these summaries haven't been provided.

8 SPECIAL MASTER POPPITI: I think if I
9 understand counsel's statement to me that they are --
10 they would not be provided if they are in -- if they are,
11 in fact, just summaries of what I just discussed, namely,
12 summaries of the interview notes, summaries of the
13 typewritten notes, I got that already.

14 MR. SAMUELS: Your Honor --

15 SPECIAL MASTER POPPITI: Or an analysis
16 of them.

17 MR. SAMUELS: Right. You know, we are,
18 again, laboring under the disability of not having seen
19 any of this, but here is our concern. Let's suppose
20 these handwritten notes contained a bunch of shorthand
21 that is meaningful only to the interviewer and will --
22 and following the interview, the interviewer prepares a
23 memorandum which puts into English what these handwritten
24 contemporaneous notes were intended to document, Your

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1 Honor will never see them.

2 SPECIAL MASTER POPPITI: I understand
3 exactly what you have said.

4 MR. SAMUELS: That's our --

5 SPECIAL MASTER POPPITI: Let me use that
6 as an example.

7 MR. SAMUELS: Right.

8 SPECIAL MASTER POPPITI: No. 1, I
9 haven't come across anything like that at this juncture,
10 and, No. 2, it seems to me that if I do, and
11 understanding that with respect any particular
12 interviewer there may be a document that translates that
13 other than the summaries or typewritten version of the
14 handwritten notes or other than the rule, the paragraph
15 eight filing, then I will ask the question.

16 MR. SAMUELS: Okay. Because, Your
17 Honor, our concern is that there was discussion, there
18 was disclosure made a while back, a "while," w-h-i-l-e,
19 back that Mr. Lender, for purposes of preparing the
20 paragraph eight summaries, edited some draft memoranda
21 that had been prepared by his colleagues. Those have not
22 been submitted, as I understand it.

23 And we also have the situation, and Your
24 Honor's comments relieved some of my anxiety about this,

1 but we also have the problem of these interview notes,
2 the contemporaneous notes being indecipherable to us.
3 Those are our concerns.

4 SPECIAL MASTER POPPITI: Well, I am just
5 trying to think in terms of the frame of reference of
6 having worked now with some of these binders. I can't
7 tell you that I have looked down at any particular page
8 and said, I can't understand what's on this page. I
9 can't tell you that I can decipher every little stroke on
10 the page, but I can tell you that I am making all best
11 efforts to determine whether the information that I might
12 -- that I may consider requiring the production of that
13 information, I am doing that rather carefully.

14 MR. SAMUELS: Okay. Very good, Your
15 Honor. That relieves our anxiety considerably and we
16 appreciate that.

17 SPECIAL MASTER POPPITI: And with the
18 documents that I have been provided, I am able, I
19 believe, to look at what happened contemporaneously. If
20 I have, then, a separate document that summarizes that, I
21 can measure that summary against the contemporaneous
22 notes, and, in turn, can take all of that information and
23 measure it against the paragraph eight submittals. And
24 that's what I expect you expect me to be doing and that's

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1 what, in fact, I am doing.

2 MR. SAMUELS: Exactly.

3 SPECIAL MASTER POPPITI: Now, if there
4 is a memorandum created, a memorandum that is different
5 from what I just described to you, namely, the
6 contemporaneous notes, any handwritten -- any typewritten
7 version of those, if there is another document that's
8 sitting out there where attorney No. 1 decides I am going
9 to put these -- I am going to think about these a little
10 further, I am going to create another document, and some
11 light bulb goes on where he or she remembers something
12 that is not in the contemporaneous notes, and, therefore,
13 not reflected in the typewritten version of those, I
14 would expect that it makes some sense for me to say to
15 Intel, You have got to be making the affirmative
16 representation that there are no new facts contained in
17 those other documents. And I believe that that is the
18 representation that I am getting.

19 MR. SAMUELS: Actually, Your Honor, I
20 believe that Your Honor has been told that that
21 representation can't be made yet but will be made --

22 SPECIAL MASTER POPPITI: Can't be made
23 yet but will be made.

24 MR. SAMUELS: But will be made, if it

1 can be, which sort of brings me to the next issue, which
2 is when this submission is going to be complete? We had
3 a date of January 18, we are now two weeks past, and we
4 have really got no indication from Intel when the
5 submission is going to be completed.

6 MS. KOCHENDERFER: Your Honor, we have
7 another notebook of materials that we prepared and that
8 we are ready to send out today, and we think that that
9 will conclude the process.

10 SPECIAL MASTER POPPITI: Okay. Well,
11 then, just give me one moment, please.

12 Counsel, this is what I am anticipating,
13 and I want you to expect that, on my end, I am not
14 staffing this up in the sense that I am not surrounding
15 myself with people looking at these books. An in camera
16 review is an in camera review, and I think it's important
17 for me to say to you that the way I am staffing it is
18 with myself and one other individual.

19 So, with that information, I can tell
20 you that I expect, barring having coughing fits over the
21 next three or four days, that we should be able to finish
22 this, I am hoping, by Friday next week. Now, that may be
23 on a wee bit of a short side, but we are looking, at the
24 outside, no longer than, if you will, ten traditional

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1 work days. I didn't mean to say it that way. Not later
2 than Monday of -- I don't have a calendar in this room --
3 not next Friday but the Monday after that.

4 MR. SAMUELS: And, so, I don't know how
5 much material Intel has yet to put in Your Honor's hands.

6 SPECIAL MASTER POPPITI: If I understood
7 Miss Kochenderfer, one additional binder.

8 MR. SAMUELS: Okay. All right. Very
9 good. So that timing is fine with us, and needless to
10 say, we appreciate Your Honor's taking the time to do
11 this, especially with the illness.

12 SPECIAL MASTER POPPITI: I think it's my
13 responsibility. I don't think approaching it any other
14 way would be appropriate.

15 Now, having said that, and I don't know
16 whether we want to just move to other issues that are on
17 these papers, but if you do, let me ask you to bring me
18 back to an issue with respect to the other end of the
19 review. I mean, I understand that I have yet to make a
20 decision for you on whether or not you get any of this
21 information. I understand that. And I am really
22 thinking about doing it in a fashion that does not
23 necessarily put me with a document to present to you but
24 reconvening on a telecon for purposes of giving you my

1 ruling and asking a prevailing side to come up with a
2 document. I think it's just going to be more efficient
3 in terms of making a judgment and moving things along, if
4 you will.

5 One of the things that I will want you
6 to either discuss with me today or to consider is
7 anticipating that I would release some of these documents
8 and require that they be produced, you can anticipate
9 that I have -- it's not a matter of coding -- it's a
10 matter of color coding portions of the documents that I
11 think should be released and portions of the documents
12 which will not be released, and with respect to the
13 colors on the non-release, there is a description that,
14 essentially, by virtue of the color, says, This is core
15 work product, or it has nothing to do with this, so there
16 are two colors.

17 And I want to make sure that if I make
18 the determination to release, that Intel gets to
19 understand some of these magic marker scribblings, if you
20 will. So I want you to think about whether it makes any
21 sense for me to, when I get to that point, to sit down
22 with, I think the most efficient way, if this makes sense
23 at all, with local counsel, with AMD being present in the
24 room, with Class plaintiffs being present in the room,

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1 but with my, if you will, discussion of what I have done
2 and trying to explain what I have done by virtue of
3 showing it to Intel, Intel and I will be sitting in a
4 place that is same room but it's in a fashion that AMD
5 and Class plaintiffs won't have an opportunity to see the
6 document.

7 I am just concerned that if I send this
8 stuff back raw that there may be some confusion. I hope
9 not, but there may be.

10 MR. SAMUELS: Your Honor, that procedure
11 is sensible to us if that's where Your Honor is headed,
12 and I presumed you would end up putting into
13 Mr. Horwitz's hands the result of all of your solitary
14 labor that -- is that how that would go?

15 SPECIAL MASTER POPPITI: Yes.

16 MR. SAMUELS: And you would just
17 maintain a copy, I guess it would have to be a color
18 copy, but maintain a copy as sort of an audit trail in
19 case there is a later dispute?

20 SPECIAL MASTER POPPITI: That's correct.
21 I am also mindful, certainly, that the work with respect
22 to this issue would not be finished because it would then
23 be important for me, in conjunction with that, to, No. 1,
24 articulate why I believe that certain of this information

1 should be produced, that Intel has the opportunity to
2 challenge that judgment, if they choose to do that, once
3 they have seen the documents back, and it will be
4 important, I think, to discuss some time frames even
5 within the parameters of the discovery dispute procedure
6 that's already in place so that this can be moved along
7 as quickly as possible.

8 MR. LEVY: Your Honor, this is Richard
9 Levy. Good day. As far as we are concerned, the
10 procedure you outlined sounds like it makes a lot of
11 sense. I am not quite sure that it makes total sense
12 just to have Mr. Horwitz there because I am not sure to
13 what extent he is going to be absolutely familiar with
14 these issues, so we might need to just coordinate an
15 opportunity to have somebody from Gibson, Dunn be there
16 at the same time.

17 SPECIAL MASTER POPPITI: That's fine.
18 And I certainly didn't mean to exclude, I was looking for
19 efficiency and I will certainly expect that you will make
20 appropriate judgments with respect to who needs to be in
21 the room as well.

22 MR. LEVY: That's fine. Let us know
23 when the time comes and -- or give us some forewarning of
24 when you think the time is and then we will try to figure

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1 out days and coordinate that with --

2 SPECIAL MASTER POPPITI: I expect that I
3 should be in the position to give you some better sense
4 of timeline maybe Wednesday of next week.

5 MR. SAMUELS: Very good, Your Honor.

6 One last matter, I hope it's a
7 housekeeping matter, Your Honor has received from Intel
8 both, I guess, now a Word version as well as an Excel
9 version of a, I guess, a compilation of the paragraph
10 eight disclosures for each custodian. We haven't been
11 provided with that and I am not sure why. I still don't
12 understand why, but we would like that provided to us.

13 SPECIAL MASTER POPPITI: The request for
14 a different version was ultimately not necessary in light
15 of the fact that that binder was in the materials that
16 were submitted, namely, the binder that reorganized the
17 paragraph eight summaries in an alphabetical fashion,
18 and, again, I wasn't aware of that because I didn't want
19 to be anywhere near these binders until my colleagues
20 over here performed the redaction that I described to all
21 of you.

22 So, if the request, and I think Intel
23 does say that they are happy to do that, if the request
24 is to have the summaries, Rule 8 summaries in the

1 alphabetical order that they sent over, I expect Intel --
2 well, Intel, are you going to be sending that?

3 MS. KOCHENDERFER: We don't have any
4 problem with that as we said in our January 29th
5 submission as long as AMD and Class counsel do not try to
6 take the position that providing it constitutes any type
7 of waiver of privilege or work product protection, which
8 I wouldn't expect them to do but I just want to make sure
9 that that's clear.

10 SPECIAL MASTER POPPITI: Is it clear?

11 MR. SAMUELS: Yeah. I mean, the notion
12 that that's work product, having been submitted to Your
13 Honor, it's a little strange, but, of course, we won't
14 argue anything from their providing it to us.

15 SPECIAL MASTER POPPITI: Okay. Good.

16 MR. SAMUELS: I think that's it from
17 AMD, Your Honor.

18 SPECIAL MASTER POPPITI: Okay. Intel,
19 anything else?

20 MS. KOCHENDERFER: No, Your Honor.

21 SPECIAL MASTER POPPITI: Thank you all
22 very much and I will be in touch with you toward the
23 middle of next week.

24 MR. SAMUELS: And feel better, Your

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1 Honor.

2 SPECIAL MASTER POPPITI: Thanks very

3 much.

4 (The teleconference was concluded at

5 2:16 p.m.)

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C E R T I F I C A T E

STATE OF DELAWARE:
:
NEW CASTLE COUNTY:

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

WITNESS my hand this 1st day of February A.D. 2008.

Renee A. Meyers

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)

