

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

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

**JOINT STATUS REPORT OF THE PARTIES
REGARDING INTEL DISCOVERY INTO AMD EVIDENCE PRESERVATION**

In advance of the status conference scheduled for November 7, 2008 at 11:00 a.m. EST, and pursuant to the Stipulation and Order Regarding Intel Discovery Into AMD Evidence Preservation (“the September 23 Order”), the parties provide this joint report regarding the status

of the Informal Information Disclosure Period.

I. The Parties' Informal Disclosure Activities

The parties have been working in good faith to engage in the informal disclosure of information required by the September 23 Order. However, they have encountered delays that will not allow the informal disclosure to be completed as contemplated by the September 23 Order.

On October 8 and 15, Intel informally interviewed Anthony Cardine, a representative of AMD's external electronic discovery vendor, Forensics Consulting Solutions ("FCS"). The October 8 interview lasted approximately 4 hours. This interview concerned Issue No. 6 ("Lost Files") and Issue No. 9 ("Lost" and "found" notations) as set forth in the "AMD Motion to Quash Chart for the Parties" delivered by the Court to the parties on September 10, 2008 (hereafter, the "Court's Chart"). The October 15 interview lasted approximately 3.5 hours, and concerned Issue No. 11 (file paths) and Mr. Cardine's knowledge of FCS' involvement in AMD data collection. Despite AMD's invitation for Intel to question Mr. Cardine regarding Issue No. 4 (harvesting of deleted items) in the Court's Chart, Intel declined to do so. It is Intel's position that Mr. Cardine was not familiar with other harvest activities conducted by non-FCS personnel. During this time period, AMD also has produced information to Intel regarding AMD's collection and imminent production of supplemental files for Mr. Ruiz; follow-up information about file paths; and information about FCS' upgrade of its processing software, Attenex. Intel has requested, and AMD has agreed to produce, additional follow-up information on these and related topics. Mr. Friedberg and/or Ms. Martin participated in the October 8 and 15 interviews, and the parties welcome their participation in any additional interviews as well.

AMD and Intel also agreed to production of documents, based on specified search terms and date ranges, from five representatives of AMD's IT department (specifically, AMD IT personnel Judy Padgett, Charu Verma, Sudhir Bathula, Sandip Chowdhury and Jerry Meeker). AMD originally intended to produce these documents by November 7 and 12. Despite AMD's best efforts, due to the extensive review that is required in order to cull from this production privileged and core work product material, AMD informed Intel on November 4 that review will require an additional two weeks to complete. Specifically, AMD informed Intel that it anticipates producing documents on a rolling basis, and completing the production of documents of the five designated AMD IT personnel by no later than November 26, 2008. In addition, on October 31, 2008, AMD delivered to Intel a proposed Stipulation and Order to govern the production of non-core attorney work product. The parties are negotiating the terms of that stipulation. In the absence of Intel's agreement to the proposed Stipulation and Order, AMD will be unable to produce documents. In addition, as indicated above, AMD agreed to supplement the production of Hector Ruiz with unique data obtained from backup tapes for the time period from March through November 2005, which AMD anticipates producing by no later than November 14, 2008.

II. New Issues Raised By Intel

Intel's Position: On October 10, 2008, Intel produced to AMD and Mr. Friedberg a series of histograms which reflect Intel's preliminary analyses of thirty-five (35) AMD custodians. With the exception of the histogram prepared for Mr. Ruiz, the analysis supporting these histograms was performed after the September 11, 2008 hearing and was disclosed to AMD early in the informal disclosure period to allow AMD to make its own investigation of the apparent production anomalies. Intel believes these histograms may indicate some non-trivial

portion of AMD custodians' data was not preserved or produced from the period prior to the implementation of journaling. These 35 analyses cover only a portion of AMD's production, and were provided as a sampling of the suspected problems. Intel believes that similar issues exist across a much larger number of AMD custodians. Intel has not gone to the expense of performing the same analyses for all AMD custodians (and does not believe it should be required to do so). On October 23, 2008, AMD's counsel interviewed Intel's consultants regarding the methodology used to create the histograms. AMD requested that Intel produce document control numbers (DCNs) for the emails reflected in the histograms and Intel is willing to provide those DCNs with the understanding that (1) AMD will use all of those DCNs in performing its own analysis and (2) will disclose the results of all of those analyses – not limiting their disclosure to analyses that are helpful to AMD. AMD has thus far declined to agree that it will analyze the DCNs it has asked Intel to provide or to fully report its findings with regard to the DCNs it has requested. In light of AMD's response, Intel is concerned that AMD is engaging in an ad hoc, unsupervised remediation effort. Intel believes that any remediation effort must be transparent, carefully defined, and pursuant to an Order issued by this Court. Intel therefore requests the immediate involvement of the Court and Mr. Friedberg in defining and overseeing the analyses to be performed by AMD, the disclosure of all findings, and the scope and nature of AMD's remediation/restoration of data.

AMD's Position: AMD has advised Intel that it currently is and will continue to conduct its own analysis of the "histograms" Intel has created without aid of the DCNs on which Intel relied. Intel's analysis, which is based on some information that Intel has had at its disposal since February 15, 2008, necessarily requires AMD to assess whether, and to what extent, it will resort to backup tapes to obtain supplemental files for all or some subgroup of the 35 custodians

depicted on Intel's "histograms." AMD does not believe that Intel's "histograms" necessarily or invariably demonstrate any deficiency, and also does not believe they reflect any "systemic" preservation issue. In addition, Intel's suggestion that AMD is embarking on a "remediation" is incorrect. AMD maintains that it has satisfied its duty to preserve evidence. The only issue currently under consideration is whether, as to the specific custodians at issue, it is reasonable under the Federal Rules of Civil Procedure for AMD to supplement its prior production by obtaining "inaccessible data" from backup tapes given the production of documents already made from accessible data sources.

AMD is working diligently on its analysis of these recently-provided "histograms," and will disclose its analysis as necessary and appropriate to the Court, Intel and Mr. Friedberg. Intel's suggestion that the Special Master ought to oversee AMD's independent analysis is entirely inappropriate and should be rejected. To the extent that AMD determines that it should obtain at its own expense and produce any supplemental files for the identified custodians, AMD will so advise the Court, Intel and Mr. Friedberg and attempt to produce all such supplemental data at the earliest practicable time.

AMD also requests that Intel be required to identify any additional issues or "histograms" it contends require AMD's consideration. Although Intel has had data used to create its "histograms" for almost nine months, Intel did not raise these issues at briefing on AMD's Motion to Quash or at the September 11, 2008 hearing. Intel instead waited until a month after the hearing to raise them for the first time, although Intel obviously had been preparing its analysis for some time before that. Intel now claims that it will, when it chooses, disclose additional issues. This sort of gamesmanship is only likely to create further delay, and potentially impact the overall case schedule. Intel should be required to raise any and all

purported preservation issues it has now so that they can be addressed in a timely, efficient manner.

III. Primary Matters in Dispute

Although the parties continue to meet and confer on various issues, the parties anticipate that certain disputes will require resolution by Your Honor. During the status conference, the parties would like to discuss the nature and timing of the process by which Your Honor would like to hear and resolve these disputes. The primary matters in dispute are set forth below.¹

1. The Effectiveness of the Informal Interview Process and Scheduling of the Interview of AMD employee, Jerry Meeker.

AMD's Position: In briefing on its Motion to Quash, AMD proposed that formal discovery be preceded by both informal interviews and provision of written narratives in order to efficiently provide Intel with information, reduce the overall burden and cost of discovery, and narrow the scope and duration of any deposition that might be required. This was based on past experience during AMD's discovery into Intel's evidence preservation problems in which truly informal, short interviews effectively served these purposes. To this point, Intel's conduct of the so-called "informal" interviews has constituted, in AMD's view, an abuse of the process, and is neither appropriate, nor efficient, nor likely to limit the scope or need for formal depositions in any material way.

Intel, for example, has had as many as six lawyers and two consultants attend the interviews, each of whom questioned the witness. The "interviews" so far have been in the form

of cross-examination style interrogation by multiple examining attorneys and consultants, and have been indistinguishable from deposition except for the absence of a court reporter. Hours of examination were spent on technical issues of at most trivial significance. In addition, Intel continues to pursue inquiry well outside the scope of the Court's Chart. Intel's conduct to date has expanded the process into a fishing expedition not focused on discovery at issue and not conducted with brevity, informality or narrowing of issues this "informal discovery" process was meant to achieve.

The parties also are at impasse with regard to the scheduling of the interview of AMD's IT employee, Jerry Meeker. On November 4, 2008, Intel's counsel, Mr. Pickett, agreed to an interview date of December 10 or 11, but reserved Intel's position that the interview proceed for two full days. Intel changed its position overnight, and now insists on proceeding for one full day *prior* to any document production, and for another day thereafter. The issues for Mr. Meeker's interview cannot reasonably consume two full days. AMD has so informed Intel and has suggested that, if a first day does not in fact exhaust reasonable inquiry, AMD would consider a limited, follow-on interview. It remains AMD's position, however, that a good faith, truly informal interview of Mr. Meeker that is reasonably designed to achieve the objectives of this Court-ordered process, and is within the scope of the Court's Chart, should easily be completed in one day.

In summary, AMD is prepared to produce Mr. Meeker for interview for a single day of interview after document production is completed, and to consider additional time if truly necessary. In the alternative, AMD requests that the Informal Interview process be deemed by

¹ The below list of matters in dispute is not exhaustive and the parties reserve the right to raise additional disputes in future filings.

the Court to have been completed, and that the parties proceed to the formal discovery phase after the production of documents has been completed on or about November 26, 2008. In that event and so that order and proper limitations can be placed on that formal discovery, AMD suggests the parties be required to immediately meet and confer about the topics for deposition, length of deposition, a deposition schedule, and to submit their joint or respective positions on these issues to the Court.

Intel's Position:

Intel believes that the informal interviews have been productive in developing the appropriate scope of formal discovery and in developing important information. Intel disagrees with AMD's characterization of the interviews, which were conducted professionally and cordially. Mr. Friedberg and/or Ms. Martin participated in both interviews and may be able to comment further if the Court is concerned by AMD's characterization of the process.

The parties previously discussed scheduling two meetings with Mr. Meeker during consecutive weeks in October to discuss various relevant topics. By letter of October 27, AMD proposed November 20 as an alternative date for a meeting with Mr. Meeker, but, due to anticipated delays in its production of documents from Mr. Meeker, recently proposed either December 10 or 11, 2008. Intel would like to conduct an initial interview of Mr. Meeker on November 20, regardless of whether AMD had produced documents from him by that date. Intel believes the parties may be able to reach agreement on the scheduling of this interview as well as its length, but are also open to having the Court decide the question if it feels the issue is ripe.

2. Intel Histogram Analyses: As discussed above, Intel's submission of

“histograms” and AMD’s proposed response and potential supplemental production raise timing issues that AMD believes necessarily impact the current discovery effort. The parties would appreciate the opportunity to more fully discuss these issues with the Court and seek the Court’s guidance on their resolution.

3. AMD’s Non-Production Custodians: Intel has requested certain information about AMD custodians who were placed on retention, but whose documents have not been designated for production. AMD has declined to provide that information.

4. Harvest-Related Data: Intel has requested documents regarding harvest failures or deviations from AMD’s stated harvest protocol. AMD has agreed to provide such harvest-related documents from the files of AMD’s IT personnel on the condition that Intel accept the production as complete and not request additional related documents from the files of AMD’s internal legal counsel and staff and its outside counsel. On October 28, AMD delivered to Intel a meet and confer letter on this topic which suggested other possible compromises and solicited additional suggestions from Intel. The parties have not yet concluded negotiations on this topic but may reach impasse shortly, thus requiring briefing to and a ruling by the Court.

IV. Rule 30(b)(6) Depositions

The September 23 Order requires the parties to meet and confer regarding the topics of the Rule 30(b)(6) depositions that will follow the Informal Information Disclosure Period. The parties are prepared to meet and confer on this issue, and to submit their joint or respective positions on these issues at any time the Court may direct. We look forward to discussing these issues on November 7.

Dated: November 5, 2008.

RICHARDS, LAYTON & FINGER, P.A.

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