

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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INTEL CORPORATION,)

Respondent.)
_____)

Docket No. 9341

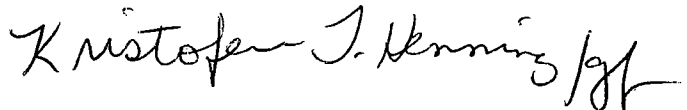
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**NON-PARTIES HEWLETT-PACKARD COMPANY, JEFF GROUDAN, LOUIS KIM
AND JOSEPH LEE'S MOTION TO QUASH SUBPOENAS *AD TESTIFICANDUM*
ISSUED BY INTEL CORPORATION**

Pursuant to Federal Trade Commission Rule of Practice 3.34(c), 16 C.F.R. § 3.34(c), non-parties Hewlett-Packard Company ("HP"), Jeff Groudan, Louis Kim and Joseph Lee move to quash the subpoenas *ad testificandum* Intel Corporation issued to Mr. Groudan, Mr. Kim and Mr. Lee. The grounds for this motion are set forth in the accompanying Memorandum of Law.

Dated: May 13, 2010

Respectfully submitted,



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**MEMORANDUM OF LAW IN SUPPORT OF NON-PARTIES
HEWLETT-PACKARD COMPANY, JEFF GROUDAN, LOUIS KIM AND JOSEPH
LEE’S MOTION TO QUASH SUBPOENAS *AD TESTIFICANDUM*
ISSUED BY INTEL CORPORATION**

I. INTRODUCTION

The Federal Trade Commission (“FTC”) brought this administrative adjudicative proceeding against Intel Corporation (“Intel”) for alleged violations of § 5 of the Federal Trade Commission Act. The FTC alleges that Intel holds improper monopoly power in the markets for central processing units (“CPUs”), microprocessors specifically, and graphics processing units (“GPUs”). Intel has issued several deposition subpoenas to third-parties in connection with this proceeding, including a total of *nineteen (19)* to Hewlett-Packard Co. (“HP”) and its current or former employees (and even to one of HP’s outside anti-trust counsel), largely on subject matters for which HP already produced over 230,000 pages of documents and nine (9) deposition witnesses in a private anti-trust litigation against Intel. The three (3) witnesses who are the subject of this motion, Jeff Groudan (“Mr. Groudan”), Louis Kim (“Mr. Kim”) and Joseph Lee (“Mr. Lee”), are current HP employees who Intel (among others) already deposed in its private anti-trust litigation. As explained below, there is simply no justification for Intel’s proposed duplicative and harassing depositions and the associated unnecessary and undue burden on HP,

Mr. Groudan, Mr. Kim and Mr. Lee. Therefore, Intel's deposition subpoenas to those individuals should be quashed.

II. BACKGROUND

A. HP's Discovery In Intel's Private Anti-Trust Litigation

Advanced Micro Devices, Inc. ("AMD") brought an anti-trust action against Intel (now settled) that alleged Intel willfully maintained an improper monopoly in the microprocessor market in violation of § 2 of the Sherman Act. Class action plaintiffs also brought a similar action against Intel. AMD, Intel and the class plaintiffs all served third-party discovery requests on non-party HP that generally sought documents and information relating to microprocessor competition and pricing. In response, HP produced nine (9) deposition witnesses (including Mr. Groudan, Mr. Kim and Mr. Lee) who were subject to questioning by Intel, among others, in addition to producing over 230,000 pages of documents. HP understands that Complaint Counsel and Intel have agreed that depositions taken in Intel's private anti-trust litigation can be treated as if they were taken in this proceeding. *See* January 14, 2010 Scheduling Order, ¶ 21.¹ In that regard, therefore, Mr. Groudan, Mr. Kim and Mr. Lee can be considered as having already been deposed in this proceeding.

The FTC's claims against Intel regarding CPUs and microprocessors in this proceeding are substantively the same as AMD's claims in the Intel private litigation. For instance, both the FTC and AMD complaints alleged that: (1) Intel possesses monopoly power in the CPU market

¹ Although the January 14, 2010 Scheduling Order does not preclude a party in this proceeding from seeking discovery that overlaps with prior discovery from Intel's private anti-trust litigation, it does not limit non-party HP's ability to quash unreasonable, overly burdensome and harassing discovery of the kind attempted by Intel here, particularly inasmuch as there is no reasonable justification for Intel's attempt to cover the same subject matter in a second deposition from witnesses who are unlikely to have additional relevant information.

(FTC Compl. ¶ 41, AMD Compl. ¶ 25);² (2) Intel coerced Tier One Original Equipment Manufacturers (“OEMs”), such as HP, into arrangements to limit or foreclose their use of competitor’s products (FTC Compl. ¶ 6, AMD Compl. ¶¶ 35, 47, 72); (3) Intel offered market share or volume discounts selectively to OEMs, which bundled microprocessors with free or heavily discounted chipsets and motherboards (FTC Compl. ¶¶ 7, 53, AMD Compl. ¶¶ 60, 85); (4) if an OEM purchased a competitor’s products, Intel punished or threatened OEMs with retaliation by, *inter alia*, reducing or withdrawing discounts, rebates or subsidies (FTC Compl. ¶ 54, AMD Compl. ¶¶ 35, 64); and (5) the OEMs were susceptible to retaliation because Intel is the only supplier with the CPU product breadth to meet all OEM requirements and demands (FTC Compl. ¶ 50, AMD Compl. ¶¶ 36, 63).

B. Deposition Requests To HP In This Proceeding

On April 30, 2010, Intel sent eight (8) subpoenas *ad testificandum* to HP and HP accepted service of Intel’s subpoenas to Mr. Groudan, Mr. Lee and Mr. Kim as of May 3, 2010. *See* Ex. C; Ex. D. Those are not the only deposition subpoenas Intel has sent to HP, however. On May 10, 2010, Intel sent another eleven (11) deposition subpoenas to HP – two (2) for HP corporate representative depositions, eight (8) for current or former HP employee depositions and even one (plus a document subpoena) to one of HP’s outside anti-trust counsel – and requested counsel for HP to identify those for which it can accept service. *See* Ex. E.³ Thus, in addition to the nine (9) depositions of HP personnel taken in its private anti-trust litigation alleging anti-competitive conduct by Intel, Intel now purports to seek nineteen (19) additional HP depositions in this proceeding alleging the same anti-competitive conduct.

² The FTC and AMD complaints are attached as Exhibits A and B respectively.

³ Certain exhibits to Intel’s second set of subpoenas are confidential under a protective order from Intel’s private litigation and have been removed. Mr. Robert Skitol of Drinker, Biddle & Reath LLP is one of HP’s outside anti-trust counsel.

III. ARGUMENT

The FTC Practice Rules specifically authorize the Administrative Law Judge to limit discovery upon a determination that, *inter alia*, it is “unreasonably cumulative or duplicative,” is obtainable from a more convenient source or the “burden and expense of the proposed discovery outweigh its likely benefit.” *Id.* (emphasis added); *see also* 16 C.F.R. § 3.31(d)(1) (2008)(authorizing Administrative Law Judge to issue order protecting non-party from unduly burdensome discovery). In particular, “repeat depositions are disfavored.” *See, e.g., Jones v. Cunningham*, No. 99-20023, 2009 WL 3398801 at *2 (N.D. Cal. 2009) (quoting *Graebner v. James River Corp.*, 130 F.R.D. 440, 441 (N.D. Cal. 1990)). That is precisely the case here. Intel (through the same counsel representing it in this proceeding) already had the opportunity to – and actually did – question Mr. Groudan, Mr. Kim and Mr. Lee about allegations that it engaged in improper anti-competitive conduct in the CPU market, which is, in relevant part, the subject of this proceeding. Indeed, in addition to Intel, counsel for the FTC actually attended Mr. Groudan, Mr. Lee and Mr. Kim’s prior depositions.⁴ HP has addressed each subpoena at issue below, but for all three (3) any additional depositions of witnesses already deposed in Intel’s private anti-trust litigation would be unnecessary, duplicative, cumulative and harassing. Further, the burden placed on HP, Mr. Groudan, Mr. Lee and Mr. Kim for any such deposition outweighs any purported benefit of covering the same subject matter a second time – particularly given their status as non-parties to this proceeding and Intel’s prior depositions. *See, e.g., Katz v. Batavia*

⁴ In the course of the parties’ meet and confer discussions, Intel has indicated only that it wishes to depose Mr. Groudan, Mr. Lee and Mr. Kim for a second time because this proceeding was initiated by a different claimant and Complaint Counsel has proceeded under § 5 of the FTC Act, as opposed to the Sherman Act that was the basis of AMD’s claims against Intel. The underlying alleged conduct as it pertains to HP at issue in each instance, however, is the same.

Marine & Sporting Supplies, Inc., 984 F.2d 422, 424 (Fed. Cir. 1993) (“[T]he fact of nonparty status may be considered by the court in weighing the burdens imposed in the circumstances.”).

A. Intel’s Subpoenas To Mr. Groudan, Mr. Kim And Mr. Lee Should Be Quashed Because They Are Unreasonably Duplicative, Unduly Burdensome And Harassing.

There is no reasonable justification for Intel’s attempt to re-depose Mr. Groudan. Mr. Groudan was deposed in Intel’s private anti-trust litigation less than a year ago (in June 2009) for a total of two (2) days.⁵ Both the FTC and Intel (through the same law firm representing it in this proceeding) were present at Mr. Groudan’s prior deposition. Over the course of Mr. Groudan’s two-day deposition, Intel spent approximately four (4) hours questioning him about matters relating to microprocessor pricing and competition. For all of the reasons set forth above that apply equally to Mr. Groudan, Mr. Lee and Mr. Kim, there is no reason for a second, duplicative and harassing deposition of Mr. Groudan. In addition, Mr. Groudan currently holds the same position he held in 2009 at the time of his deposition, Vice President of Thin Clients and Virtualization, which does not involve material interaction with Intel. Since his deposition, Mr. Groudan has not been involved in any negotiations or pricing discussions with Intel and has no new knowledge about the microprocessor pricing and competition allegations in the FTC’s complaint beyond what he testified to in May 2009. He also has not worked for HP’s commercial desktop group since the end of 2007 (before his prior deposition), and therefore is not likely have any new information related to the issues in this proceeding. Simply put, Intel already deposed Mr. Groudan and there is no basis for a duplicative deposition.

⁵ The transcripts for HP’s prior depositions are confidential under a protective order from Intel’s private litigation. Therefore, HP, Mr. Groudan, Mr. Lee and Mr. Kim have not attached them here. If the Administrative Law Judge prefers, HP is willing to provide full copies of those transcripts for non-public *in camera* review.

The same reasoning applies to Intel's subpoena to Mr. Kim. Like Mr. Groudan, Mr. Kim was deposed in Intel's private anti-trust litigation for two days, on February 26 and 27, 2009. Both Intel (again through the same law firm representing it in this proceeding) and counsel for the FTC were present at Mr. Kim's deposition. Intel spent approximately four (4) and a half hours and hundreds of pages of the deposition transcript questioning Mr. Kim about microprocessor pricing and competition issues, focusing specifically on HP's business dealings with Intel and AMD relating to microprocessors in the commercial desktop space. HP also produced a substantial number of documents from Mr. Kim's files in the private anti-trust litigation, which Intel has and had for use at Mr. Kim's first deposition. In addition to HP's common objections to Intel's subpoenas identified above, its attempt to re-depose Mr. Kim is improperly duplicative and harassing for the additional reason that Mr. Kim left HP's commercial desktop group at the end of 2007 (before his deposition). Mr. Kim's work in that group was the subject of his first deposition. As of the end of 2007, Mr. Kim took a position in HP's printer division where he no longer interacts in any material way with Intel that is relevant to the claims in this proceeding. Thus, any additional deposition of Mr. Kim would simply rehash subject matter already addressed at his first deposition.

Mr. Lee was deposed in Intel's private anti-trust litigation on May 8, 2009. Intel (again represented by the same law firm representing it in this proceeding) attended the deposition and spent over three (3) hours questioning Mr. Lee on microprocessor competition and pricing issues. Just as it did for Mr. Groudan and Mr. Kim's depositions, counsel for the FTC also attended Mr. Lee's deposition and has agreed that those depositions will be treated as if taken in this proceeding. In addition to those common objections that HP interposes to Intel's subpoena directed to Mr. Lee, it appears that the time period relevant to this proceeding does not include

post-May 2009 information. As a result, any second deposition of Mr. Lee is not likely to reveal additional relevant information beyond that which Intel already has – making the burden on Mr. Lee of any such deposition far outweigh Intel’s need for the information.

Simply put, nine (9) depositions for Intel of HP personnel on microprocessor competition and pricing are more than sufficient. Any additional depositions – especially of those HP personnel who have already been deposed - are unnecessary and harassing to HP and the potential witnesses. Therefore, the Administrative Law Judge should quash Intel’s deposition subpoenas to Mr. Groudan, Mr. Lee and Mr. Kim.

B. Alternatively, Intel Should Be Required To Reimburse HP, Mr. Groudan, Mr. Kim And Mr. Lee For All Of Their Costs (Including Attorney’s Fees) Incurred In Preparing For And Providing Any Second Depositions.

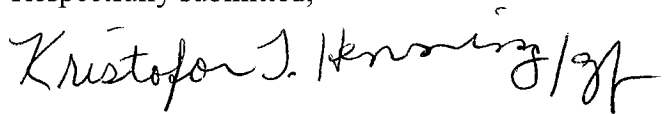
The FTC Operating Manual expressly authorizes an order under appropriate circumstances requiring a party seeking discovery to reimburse the subject of its discovery requests for its associated costs and expenses. *F.T.C. Manual* § 10.13.6.4.7.8. For the reasons explained above, the Administrative Law Judge should quash Intel’s deposition subpoenas to Mr. Groudan, Mr. Kim and Mr. Lee in their entirety. If, however, any deposition is permitted to move forward in some form, in light of Intel’s prior depositions, Intel should be required to reimburse HP, Mr. Groudan, Mr. Kim and Mr. Lee for all of their costs (including attorneys’ fees) incurred in preparing for and providing any such depositions. Moreover, Intel should not be permitted to question Mr. Groudan, Mr. Kim or Mr. Lee about any subjects already addressed at their prior depositions.

IV. CONCLUSION

HP, Mr. Groudan, Mr. Kim and Mr. Lee respectfully request that the Administrative Law Judge quash Intel's deposition subpoenas to Mr. Groudan, Mr. Kim and Mr. Lee.

Dated: May 13, 2010

Respectfully submitted,



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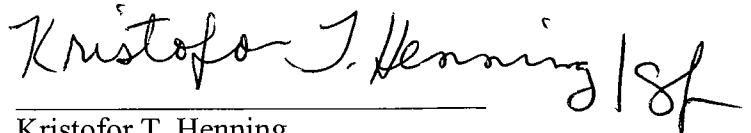
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**STATEMENT OF KRISTOFOR T. HENNING PURSUANT TO FEDERAL TRADE
COMMISSION RULE OF PRACTICE 3.22(G)**

I am an attorney with Morgan, Lewis & Bockius LLP and submit this statement pursuant to Federal Trade Commission Rule of Practice 3.22(g), 16 CFR § 3.22(g), in connection with Non-Parties Hewlett-Packard Company, Jeff Groudan, Louis Kim and Joseph Lee's Motion to Quash Subpoenas *Ad Testificandum* Issued by Intel Corporation. I spoke with David Emanuelson, counsel for Intel Corporation, in good faith in an attempt to resolve by agreement the issues raised by HP's Motion to Quash, on at least May 5, 2010, May 6, 2010, May 7, 2010 and May 10, 2010. During those conversations, the parties were unable to reach an agreement that obviated the need for HP's motion.

Dated: May 13, 2010

Respectfully submitted,



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**[PROPOSED] ORDER GRANTING MOTION OF NON-PARTIES HEWLETT-
PACKARD COMPANY, JEFF GROUDAN, LOUIS KIM AND JOSEPH LEE**

**TO QUASH SUBPOENAS AD TESTIFICANDUM ISSUED BY INTEL
CORPORATION**

Before the Administrative Law Judge is Non-Parties Hewlett-Packard Company, Jeff Groudan, Louis Kim and Joseph Lee's Motion to Quash Subpoenas *Ad Testificandum* Issued By Intel Corporation ("Motion to Quash"). Having considered the Motion to Quash and the supporting arguments and the responses by Intel Corporation, this Court finds that the motion should be, and hereby is, GRANTED.

IT IS THEREFORE ORDERED that the Subpoenas *Ad Testificandum* issued to Jeff Groudan, Louis Kim and Joseph Lee on April 30, 2010 by Intel Corporation, are hereby quashed.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: May ___, 2010