5. Did AMD search for additional relevant and previously non-produced _{Redacted} emails that were located in any of the data sources AMD had *already* harvested from? (Note: This should include, without limitation, depo reharvest data and also data that had been previously processed and/or reviewed.) If so, please describe.

6. Do any emails included in the _{Redacted} remedial production come from sources other than backup tapes (*e.g.*, journal, hard drives, etc.) that were not previously harvested, processed, reviewed and/or produced? If so, please describe.

7. Was the remedial production limited to locating copies of _{Redacted} documents produced from the electronic files of other custodians that Intel's histogram analysis indicated were missing?

Please let me know if you need clarification on any of the above requests. Intel reserves the right to ask additional questions should your responses raise new issues.
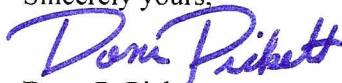
Redacted

By letter of May 14, 2008, you disclosed that   Redacted   email account was configured to automatically delete sent items from July through November 2005. You further advised, however, that   Redacted   copied himself on, and thus preserved, relevant sent items. As Mr. Ashley noted in his second Declaration (at ¶ 34), and as I described to the Court during the September 11 hearing (*see* 9/11/08 Tr. at 42-44), Intel questions whether   Redacted   in fact copied himself on all relevant emails. Further investigation seems to confirm our concern.

During the telephone conference held on December 22, you asked us to provide additional information on this topic. Here it is: Based on a review of   Redacted   data, and of the data from all other AMD production custodians, it appears   Redacted   sent at least 545 unique relevant email messages. Of those 545 sent emails identified by Intel,   Redacted   was a recipient (*i.e.*, a cc or bcc) on only 328. As such, of the relevant emails sent by Redacted Redacted and produced by AMD to date, it appears   Redacted   did not copy himself approximately 40% of the time. Of course, these figures understate the volume of missing sent items since they do not include (1) emails sent to individuals outside the designated production custodian population, and/or (2) emails sent to production custodians that were deleted by the production custodian(s).

Intel therefore requests that AMD review its productions to confirm whether it agrees or disagrees with the email counts provided above. Once we receive your response on this issue, Intel will determine whether a remedial production related to   Redacted   is necessary to supplement the missing sent items from July through November 2005.

Sincerely yours,

Donn P. Pickett

cc: Mr. Mark Samuels, Esq. (by email)

EXHIBIT E

BINGHAM

Donn P. Pickett
Direct Phone: 415.393.2082
Direct Fax: 415.262.9217
donn.pickett@bingham.com

November 18, 2008

Via Email and U.S. Mail

Eric M. Friedberg, Esq.
Stroz Friedberg, LLC
32 Avenue of the Americas
4th Floor
New York, New York 10013
efriedberg@strozllc.com

Re: *AMD v. Intel* - Lost Files

Dear Mr. Friedberg:

This letter follows the November 7 status conference during which you described the preliminary results of your team's testing of "lost files functionality" and requested Intel's position on that issue.

As you know, Intel explored the lost files issue during an informal interview on October 8 in San Francisco. In light of the information learned on October 8, and based upon your comments during the status conference and an independent assessment by Mr. Ashley, Intel now believes the parties should not spend additional time or resources on the lost files issue. Intel does not intend to seek supplemental data harvests or productions from AMD related to the lost files issue.

From Intel's perspective, the informal process, including your input, has now eliminated the need for formal discovery or court filings related to lost files. Thank you again for your assistance on these matters.

Sincerely yours,

Donn P. Pickett

cc: Ms. Jennifer Martin, Esq. (Stroz Friedberg, LLC)
       Mr. David Herron, Esq. (Counsel for AMD)
       Mr. Jeffrey Fowler, Esq. (Counsel for AMD)
       Mr. John Ashley (Consultant for Intel)

A/72753370.1

EXHIBIT F

O

O'MELVENY & MYERS LLP

November 17, 2008

BY E-MAIL & U.S. MAIL

Donn Pickett, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067

Re: *AMD v. Intel*

Dear Mr. Pickett:

We write in response to your November 13 letter regarding the topics for the informal interview of AMD's   Redacted   as well as to respond to pre-existing and Intel's new, wide host of additional questions and requests for information.

Redacted   **Informal Interview**

We address two matters related to   Redacted   informal interview. First is the date and conduct of that interview. As agreed and discussed at hearing on November 7, the interview will proceed for one day on Thursday, December 11. The interview will take place at AMD's facilities in Austin, Texas. The interview will begin at 9:30 a.m. We will send you additional logistical information as the interview date approaches. In addition, AMD requests that Intel limit the in-person attendance at   Redacted   informal interview to no more than a total of four of its counsel and consultants. We do not oppose additional Intel representatives attending by telephone and will provide a dial-in for this purpose. Our view, however, is that this is the only way to avoid a repeat of what AMD believes to have been -- whether intentional or not -- the intimidating, inquisition-like setting and conduct of the prior interviews of Mr. Cardine.

Second, with respect to the proposed topics set forth in your November 13 letter, Redacted Redacted will be able to respond to the vast majority of them. We address each of the topics as you have defined them below, and provide you with AMD's suggestions and comments. We believe that the interview of   Redacted   will be sufficient to bring closure to the informal information process contemplated by the Court and the parties.

1.   "Harvest protocols used by AMD IT and non-FCS personnel (hard drives; live exchange mail; vault; journal; PNS)."

        This topic appears to relate to Topic No. 4 in the Court's Chart. The information provided below about hard drive imaging by entities other than FCS responds to and satisfies Intel's request for information on that point. In any event, Redacted does not have personal knowledge on the issue of non-FCS hard drive imaging. As to AMD IT harvesting protocols from AMD's vault, journal, and custodians' personal network space, Redacted can provide responsive information. With regard to what you term "live exchange mail," we ask that Intel define and describe the questions you have and the information you seek so that AMD can provide responsive information. At present, we are unable to assess whether Redacted is able to provide responsive information.

2.   "Dumpster configurations and Redacted modifications to same."

        This topic relates to Topic Nos. 3 and 4 in the Court's Chart. Redacted will be prepared to answer questions about these topics.

3.   "Implementation of journal and vault systems and related foundational info."

        Redacted has already sat for an extensive interview about these systems. *See* Case Management Order No. 4, Paragraph 1(a). What additional information is needed? Please be specific.

4.   "Vault configurations for deleted items and related collection exports, migration and archiving."

        This relates to Topic No. 8 in the Court's Chart. Redacted will be prepared to discuss vault configurations for deleted items. The other subtopics are subsumed elsewhere: Collection of exports is covered by item number 1, above; migration is covered by item number 5, below; and archiving is covered by item number 3, above.

5.   "Historic PST migration to the vault."

        This refers to Topic No. 7 in the Court's Chart. While Redacted did not himself conduct this migration, he will be prepared to respond to questions on this topic.

6.   "Foundational info re outlook settings and employees' email usage (e.g., storage limits for employees' email accounts)."

        This topic is not set forth in the Court's Chart and was not raised by Intel at the September 11 hearing. As phrased, this topic also inappropriately seeks a generalized description of all AMD "employees email usage." Redacted cannot speak to that; that is an individual, custodian-by-custodian inquiry better suited to custodian deposition.

        As we have told you, it is also inappropriate for Intel to attempt unilaterally to expand the topics for inquiry beyond those defined by the Court's Chart or raised at the September 11

hearing. Your characterizing a topic as "foundational" doesn't change this. In addition, in our meet and confer on November 4, Intel was unable to identify any suspected problem or issue it perceives with respect to email storage limits. Indeed, at that time, you stated that Intel had "no idea until we ask the questions." This strikes us as a clear example of illegitimate "fishing."

Intel will need to better define what information it seeks and why. We will then consider whether a response will be provided and in what manner.

7. "Foundational info re Asia- and Europe-based servers (settings, journal, vault, harvesting)."

A portion of this topic appears to relate, remotely, to Topic No. 1 in the Court's Chart, but much of it does not. Within reasonable limits, AMD agrees that certain questions about journaling and vaulting for Asia and Europe-based custodians would not be inappropriate. Again, however, nothing in the Court's Chart deals with Asia and Europe servers, their settings, or harvesting in those locations.

Again, AMD will consider your proposed expansion of topics, on the condition that Intel identifies with particularity what questions it will have about "servers," "settings" on servers, and "harvesting." Short of that, we are unable to assess whether and to what extent   Redacted can provide information nor are we able to prepare him to do so.

8. "Protocols for AMD IT support of custodian preservation activities."

This, too, is not a topic defined in the Court's Chart or at hearing, nor is it defined well. What do you mean by this? To the extent questions on this topic reasonably relate to those in issue -- and   Redacted   has personal knowledge -- AMD will not object. Let's discuss this.

9. Backup Tapes.

Your November 13 letter promises a list of issues and questions Intel says it has with regard to back up tapes. We await that list.

"P" Numbers

Intel has asked why there may be gaps in certain "p" numbers with respect to file paths produced for various custodians. The principal reasons include that some exports were related to paper productions for which no pathing information is required to be produced. In addition, certain exports might not have contained any responsive documents, or all of the files in an export may have been duplicative of the relevant files contained on a piece of media processed earlier, thus yielding no responsive files for production. It is also possible that the files in an export contained privileged material which yielded no responsive documents for production, or the export contained privilege redactions for which there is no requirement to produce pathing information. Depending on the custodian, there may be other reasons for interrupted numerical progression of "p" numbers.

"30,000 Foot" Documents Regarding the Vault

Per your request, attached are documents that give a high-level overview of the AMD Enterprise Vault product.

We were surprised to see your November 13 letter's new three-part specification of the "30,000 foot" documents Intel now says it wants. AMD and Intel obviously differ in their interpretation of what should be produced, and we oppose Intel's proposed expansion of discovery on this topic. As you should be aware, **Redacted** was already provided for an extensive, no-holds-barred interview on this subject. In fact, Case Management Order No. 4 recites the fact that the parties have already have exchanged information on archiving systems, noting that "the operations of those [archiving] systems has been the subject of interviews and other formal and/or informal exchanges." If you have specific additional questions or document requests you should send them along and we will determine the best means of addressing them.

Non-FCS Hard Drive Imaging

Your November 13 letter asks AMD to identify vendors other than FCS that imaged hard drives. As stated by Mr. Cardine at his interviews, AMD utilized FCS for the vast majority of its hard drive imaging for designated custodians. At times beginning in October 2005 through 2008, AMD also utilized Global Data Finders to obtain hard drive images, and also utilized Digital Discovery Solutions on one occasion. In each case, the images taken by these entities were bit-by-bit images. It is possible that another, single image was taken by another vendor, and we are attempting to confirm that.

New Intel Questions Regarding Backup Tapes Used to Transmit Data to FCS

AMD believes that it has provided Intel with information sufficient to satisfy reasonable inquiry on this issue. If Intel wishes to spend interview time with **Redacted** on this subject, AMD is prepared to have him address the following: (1) why AMD IT used backup tapes instead of other external media, such as a hard drive; (2) who at AMD IT was responsible for creating the tapes; (3) in general, the time frames when the tapes were created; and (4) in general, what data was included on the tapes. We think the answers provided will obviate the need to ask the additional questions your November 13 letter outlines. In any event, AMD believes those questions are irrelevant and beyond the scope of reasonable inquiry.

New Intel Questions Regarding Data Collection in Japan and China

The questions posed in your November 13 letter again go beyond the scope of issues defined by the Court's Chart or at the September 11 hearing. Please set forth Intel's position in writing as to why this information is relevant and appropriately produced in informal discovery. Short of that, these questions strike us as irrelevant and unnecessary make-work.

Redacted **<u>Pre-Review Files Counts</u>**

AMD has reconsidered its position with regard to providing Intel a spreadsheet of pre-review file counts for Redacted During this informal discovery process, it has become quite clear that Redacted inadvertent loss is no longer an issue. As stated in Intel's October 3 email, Intel itself acknowledges that it does not need this information. We agree. Indeed, AMD has already produced a full explanation of what happened with Redacted and what AMD did to obtain replacement files. Those files have been produced. Analysis shows a robust production for Redacted Redacted If there is further information Intel requires about the loss, Intel can depose Redacted as we have invited on multiple occasions. AMD is unwilling to waive privilege or attorney work product protection.

<u>Production of Harvesting Information</u>

My October 28 letter to you clearly stated AMD's position on production of harvesting related information. That letter suggested several ways in which Intel potentially could move discussion on this topic forward. Your November 13 letter offers nothing new. Intel needs to narrow its request for this data. We await your proposal. To reemphasize, Redacted will not be able to answer questions on this topic. In addition, AMD has stated that, if necessary, it will produce an appropriate witness to answer questions on this topic. We stand by that representation. AMD, however, declines to produce such a witness during informal discovery and will not produce such a witness until the proper contours of inquiry have been agreed to between the parties or decided by the Special Master.

We are prepared to discuss these issues at a mutually-agreeable time.

Sincerely,

David L. Herron
of O'MELVENY & MYERS LLP

Attachments

LA3:1152993.1

EXHIBIT G

Rich and Tom: Per Rich's request and Tom's email below, attached is information about the functioning of near-deduping within Attenex Patterns. I am forwarding to you three pieces of information. The first is a general "layperson's" explanation of near-deduping, below. Second, the .pdf attached above is the Attenex description of near-deduping, which is confidential and which we have marked as such under the Protective Order. Finally, I have attached some links to the Attenex patent descriptions.

General Description:

At a high-level, near-deduplication suppresses the early emails of an email thread. So, if we were to send emails back and forth 10 times, it would suppress the previous 9 instances of that thread, and just keep the last, 10th message for review. This comparison is very conservative, if the e-mail's text is changed, or a new recipient is added, or a new attachment is added, that message will not be considered a near-duplicate of the original. Running near-deduplication is very effective for the "chatting" often seen in email correspondence.

There are three critical pieces to Attenex's near-duplicate process and they occur in the following order:

1. Conversation thread

a. All near-duplicate comparisons are constrained within each conversation thread. Since, in any group of email, there are potentially a large number of comparisons, Attenex uses the conversation thread to limit the scope of the near-duplicate comparisons. So basically what this means is all emails within each thread group are compared.

2. Message text

a. The next step is to compare the actual message text within the emails of a given conversation. The text comparison does assume some structure, namely new text is added before the previous message body. Attenex compares the bodies of two messages to their end, character-by-character, until they differ. If Attenex reaches the end of the shorter body, it's identified as a near-duplicate candidate. It then is near-duped if, and only if, it has no attachment. If there are attachments, a comparison of attachments, as described below in step 3, is executed.

Note

Since different email editors are used to format the email messages, Attenex does some clean-up before comparison (before messages are saved to the Attenex Patterns database). All consecutive white spaces, such as spaces, carriage returns, new lines, or tabs, are replaced with a single space. Also angle brackets < and > are replaced by single spaces as they are often used for indentation, or as markers for embedded URL links.

3. Attachments

a. If a near-duplicate candidate email has any attachments, those attachments are now compared. Attachments are compared by their hash-codes, i.e. binary equivalence. After identifying a pair of near-duplicate message bodies, any attachments are then evaluated. If an email message body is appended, in its entirety, within the other body, and its attachments are subset of the other, it is marked as a near-duplicate.

Links To Patent Descriptions:

7035876 System and method for evaluating a structured message store for message redundancy

http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=7035876.PN.&OS=PN/7035876&RS=PN/7035876

6820081 System and method for evaluating a structured message store for message redundancy

http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6820081.PN.&OS=PN/6820081&RS=PN/6820081

Lastly, please also note, as I believe we have described previously, that near-deduping is conducted on a per-custodian basis, not across the corpus of data of any two or more custodians.

If after you have reviewed this material you have additional questions, please let us know. Based on Chuck Diamond's and my discussion with Rich last week, I understood that Tom's question would be about "file pathing," which we will also be pleased to discuss if that is a different issue than the inquiry Tom raised in his email from this morning. David

---

From: Dillickrath, Thomas [mailto:DillickrathT@howrey.com]
Sent: Monday, October 15, 2007 9:14 AM
To: Simmons, Shaun M.
Subject: De-Dupes

Shaun,

I've been told that you are the resident expert on the de-duplication protocols AMD is employing (you can thank David Herron for that). We would like to get a better understanding of the protocols you guys are employing--can we speak tomorrow morning your time? Thanks.

Thomas J. Dillickrath
Senior Associate
Howrey LLP
1299 Pennsylvania Ave NW
Washington DC 20004
202.383.6745
dillickratht@howrey.com

EXHIBIT H

O

O'MELVENY & MYERS LLP

BEIJING

BRUSSELS

CENTURY CITY

HONG KONG

LONDON

NEWPORT BEACH

400 South Hope Street
Los Angeles, California 90071-2899

TELEPHONE (213) 430-6000
FACSIMILE (213) 430-6407
www.omm.com

NEW YORK

SAN FRANCISCO

SHANGHAI

SILICON VALLEY

TOKYO

WASHINGTON, D.C.

OUR FILE NUMBER
008,346-163

WRITER'S DIRECT DIAL
(213) 430-6230

WRITER'S E-MAIL ADDRESS
dherron@omm.com

March 19, 2008

VIA E-MAIL AND U.S. MAIL

Richard Levy, Esq.
Gibson Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California 90071

    Re: *AMD v. Intel*

Dear Rich:

   As promised in my letter of March 11, this will respond to your March 4 inquiry regarding "known losses of relevant data from an AMD custodian's hard drive due to file corruption, lost laptop or other, similar means of loss." Based on our investigation to date, and consistent with our agreement of December 7, 2007, we describe below the apparent loss of relevant data by one of AMD's custodians during the preservation period.

   Redacted   experienced an inadvertent loss of email dated during the period October 1, 2005 through March 2007. As described more fully below, AMD has attempted to recover this lost data by obtaining all of Redacted email from all sources identified by AMD as reasonably likely to contain it. AMD currently is in the process of reviewing that data for production.

   AMD hired Redacted as a Regional Sales Manager on October 1, 2005. Redacted has worked on the Redacted account since joining AMD. From October 1 through December 1, 2005, Redacted reported directly to   Redacted   who in turn reported to Redacted Redacted   On December 1, 2005 Redacted began reporting directly to Redacted (who reported to Redacted).   Redacted   began his tenure as Redacted   on November 22, 2006, at which time Redacted   -- Redacted then and current supervisor -- began reporting to Redacted   During the course of his employment, Redacted regular practice was to copy his supervisors on important emails related to Redacted business, and he believes that he did so with respect to a predominant majority of such emails. Redacted also copied   Redacted   on certain of his emails.

   Redacted preserved email principally on his laptop computer hard drive. He also periodically backed up files to his personal external hard drive. The loss of email occurred while

he was attempting such a back up procedure. Specifically, during the weekend of March 24-25, 2007, Redacted attempted to back-up .pst files containing his email covering the time period of October 2005 to March 2007 to an external hard drive in order to preserve them. Redacted estimated that the total size of these .pst files was approximately three gigabytes. In attempting this back up procedure, it appears that Redacted was working with two separate folders, one of which was empty and another of which contained the subject .pst files. It appears that Redacted mistakenly transferred the empty file to the external hard drive and then deleted the folder containing his email .psts. When Redacted realized what had occurred, he attempted to recover the deleted files but was unsuccessful.

Redacted reported this data loss to AMD Japan IT on the next business day, Monday, March 26, 2007. AMD Japan IT personnel attempted to recover Redacted data in several ways.

First, IT personnel tried to locate a copy of that data that had been created when exchanging Redacted old laptop computer for a new laptop computer in November 2006. Pursuant to AMD Japan IT's standard procedures, the process for creating such a copy is to transfer the data from the old computer to an alternate storage location, transfer the data from that location to the new computer's hard drive and, after confirming successful transfer, to delete the image from the temporary storage location. This process was followed in Redacted case, such that IT's copy of Redacted data no longer existed. Second, IT personnel located and checked Redacted pre-November 2006 computer, but found that the data had been removed from the hard drive after it had been transferred to the new computer. Third, AMD Japan IT personnel purchased what they believed to be the best commercially-available data recovery software for the specific purpose of recovering Redacted lost files and ran it on Redacted laptop hard drive. Although some data was recovered (approximately 335 megabytes), the subject .psts were not. Finally, AMD Japan IT checked the file server but found no .pst files from the end of December 2006 (which would have been the date that such files possibly could have been temporarily copied to a file server when switching out Redacted old computer). In sum, despite these many efforts, IT personnel were unable to recover the inadvertently-deleted email files.

Intel adversely designated Redacted on September 2007. AMD's counsel learned about Redacted inadvertent loss of data in November 2007. Given the fact and nature of the loss, AMD then immediately collected Redacted data from all of the sources on which he stored data as well as all back up or subsidiary sources that AMD identified as containing Redacted data.

First, consistent with its harvesting protocols, AMD obtained an image of Redacted laptop computer. AMD also obtained and extracted files from his personal external hard drive; obtained files from the personal network space assigned to Redacted and obtained files from Redacted Redacted home computer that were work-related.

Second, AMD obtained the 18 monthly back up tapes applicable to Redacted covering the time period from October 2005 through March 2007. These back up tapes were made pursuant to AMD's back up tape protocols for this litigation. The applicable back up tapes were restored by an outside vendor, and the Exchange mailbox items related to Redacted were extracted.

Third, AMD conducted a search across its journaling system and vault repository for emails sent or received by Redacted   This search captured emails sent or received by Redacted for the AMD employees, some of whom were on those systems as early as November 2005.

Finally, AMD created a data repository of hard drive images of the laptop computers and, as applicable, the personal network space of the five supervisors whom Redacted regularly copied on work-related email,   Redacted   This material was searched for Redacted emails, which were exported for review.

On February 15, 2008, AMD produced 21,345 of Redacted files to Intel. Both the data collected from Redacted own computer and storage devices as well as the additional data referenced above contain a significant amount of Japanese language text. That material is currently under review for anticipated production by March 31, the date by which each side is to supplement productions with foreign language documents. AMD will make its best efforts to produce all of Redacted responsive data by that date, but it is possible that review and production of some portion of the recovered data will not be concluded by that time. Should that be the case, we will keep you apprised of our progress.

Given the significant document production on February 15, AMD continues to assess and monitor document preservation and possible data losses, and we assume Intel is doing so as well. AMD will make additional disclosures promptly, if any become necessary.

If you have questions, please feel free to contact me.

Sincerely,

David L. Herron
of O'MELVENY & MYERS LLP

LA3:1145562.1

EXHIBIT I