

UNITED STATES DISTRICT COURT

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION for the Central District of California

PHIL PAUL, on behalf of himself and all others similarly situated, Plaintiff v. INTEL CORPORATION, Defendant

MDL No. 05-1717-JJF Civil Action No. Consol. C.A. No. 05-485-JJF (If the action is pending in another district, state where: District of Delaware)

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

Mr. Jeff Barney c/o Donald S. Gray, Esquire To: Toshiba America Information Systems, Inc. 9740 Irvine Boulevard Irvine, CA 92618-1697

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See attached Exhibit A

Table with 2 columns: Place (O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660) and Date and Time (April 2, 2009 at 10:00 a.m.)

The deposition will be recorded by this method: stenographic and videographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/23/09

CLERK OF COURT

OR Laina M. Herbert Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Class Plaintiffs, who issues or requests this subpoena, are:

Laina M. Herbert (#4717), Prickett, Jones & Elliott, P.A. 1310 King Street, P.O. Box 1328, Wilmington, DE 19899-1328 (302) 888-6500

LMHerbert@prickett.com

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

Other *(specify)*: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

DESCRIPTION OF MATTERS ON WHICH EXAMINATION IS REQUESTED

I.

DEFINITIONS

1. "TAIS" shall mean and refer to Toshiba America Information Systems, Inc., including its past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on its behalf.
2. "Toshiba" shall mean and refer to Toshiba Corporation, including its respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on its behalf.
3. "Intel" shall mean and refer collectively to defendants Intel Corporation and Intel Kabushiki Kaisha, including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.
4. "AMD" shall mean and refer collectively to plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.
5. "Communication" shall mean any and all forms of communications, including, without limitation, letters, e-mails, memoranda, teleconferences and in-person meetings.

II.

SUBJECT MATTER

1. Any decision not to use or discontinue the use of AMD x86 microprocessors in any computer product or series formerly featuring AMD microprocessors sold or distributed by TAIS.
2. The exclusion of AMD x86 microprocessors from desktops, notebooks and/or any other computer products sold or distributed by TAIS.
3. The decision not to use AMD x86 microprocessors in any desktop, notebook and/or any other computer product sold or distributed by TAIS.
4. The purchase or acquisition of x86 microprocessors by TAIS, either directly or indirectly, for the period from January 1, 1998 to the present, including the existence and structure of any rebates, price adjustments, meet-competition payments/allowances, marketing payments/allowances, credits, and other monetary or economic benefits provided to TAIS, either directly or indirectly, by Intel or AMD in connection with the purchase or acquisition of x86 microprocessors.
5. Any monetary or non-monetary incentives or disincentives offered by Intel or AMD to TAIS, either directly or indirectly, in connection with TAIS's purchase, acquisition or use of x86 microprocessors for the period from January 1, 1998 to the present.
6. TAIS's roadmap for computer products incorporating x86 microprocessors, including but not limited to notebooks, desktops, tablet PCs, servers, blade servers, and workstations, from the period from January 1, 1998 to the present.
7. Any and all joint sales and marketing programs, ventures, or other activities between TAIS, Toshiba and Intel regarding computer products incorporating x86 microprocessors.
8. TAIS's process for selecting among differentiated x86 microprocessors manufactured by AMD and Intel to be used in computer products marketed and sold by TAIS.
9. The role of Toshiba with regard to the acquisition of x86 microprocessors and their incorporation into computer products marketed and sold by TAIS.

10. All communications between TAIS's current and former officers, directors, agents, managers, employees, or affiliates and Intel related to x86 microprocessors, the purchase or acquisition of x86 microprocessors, products incorporating x86 microprocessors, or the x86 microprocessor market, as well as the participants in and the contents of any such meetings.

11. The identity of any TAIS officer or director who concurrently served as an officer or director of Toshiba or any affiliate or subsidiary of Toshiba from January 1, 1998 to the present.

12. TAIS's volume of sales of desktop and notebook or laptop computers in the United States from January 1, 1998 to the present.

13. TAIS's market share or market segment share of desktop and notebook or laptop computers sold in the United States between January 1, 1998 and the present.

14. Transfer or FOB prices between Toshiba and TAIS from January 1, 2000 to the present.

15. The manner and process in which TAIS purchased or acquired x86 microprocessors for use in computer products sold or distributed by TAIS in the United States.

16. Hisatugu Nonaka's role in and involvement with the purchase or acquisition of x86 microprocessors or products incorporating x86 microprocessors during the time in which he served as an officer or director of TAIS.

17. Communications between Hisatugu Nonaka and Intel regarding the purchase, acquisition or use of Intel microprocessors during the time in which Mr. Nonaka served as an officer or director of TAIS.

18. TAIS's communications with retailers in the United States, including but not limited to Best Buy and Circuit City, regarding TAIS's use or nonuse of Intel or AMD microprocessors in products offered for sale or distribution by TAIS.

19. The subject matters discussed during meetings and/or teleconferences held between Intel and TAIS on the following dates:

- a. August 15, 2002
- b. September 6, 2002
- c. February 12, 2004
- d. April 6, 2004
- e. May 1, 2004
- f. November 4, 2004
- g. January 6, 2005
- h. August 22, 2005
- i. November 3, 2005
- j. December 5, 2005
- k. January 5, 2006
- l. May 30, 2006
- m. June 30, 2006
- n. November 6, 2006
- o. November 29, 2006.

20. The extent to which Toshiba controlled or influenced, either directly or indirectly, decisions made by TAIS.

21. Any instances where Intel failed to provide or supply TAIS with x86 microprocessors or products incorporating x86 microprocessors within the time period requested by TAIS, including but not limited instances where Intel claimed that they could not provide TAIS with such products because of a supply shortage.

22. Delays in the launching of computers, computer series or any other products sold or distributed by TAIS which contained x86 microprocessors manufactured by Intel.

23. Joint marketing efforts between TAIS and Intel concerning the sale or distribution of computer products or series manufactured or offered for distribution by TAIS or Toshiba.

24. TAIS's receipt, whether directly or indirectly, of marketing funds from Intel.

25. Current or former officers, directors, agents, managers or employees of TAIS or its affiliates who would also possess relevant knowledge about any of the preceding subjects.