

UNITED STATES DISTRICT COURT

for the
District of Minnesota

In re Intel Corporation Microprocessor Antitrust Litig.
Plaintiff
v.
Defendant
Civil Action No. MDL 05-1717 (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

To: Best Buy Co., Inc.

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 schedule A, attached.

Table with 2 columns: Place (Robins, Kaplan, Miller & Ciresi L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402) and Date and Time (04/07/2009 9:00 am)

The deposition will be recorded by this method: Court Reporter

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: April 3, 2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Karen Marcus
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Class Plaintiffs

Karen Marcus, Finkelstein Thompson LLP, 1050 30th Street, NW, Washington, D.C. 20007

Civil Action No. MDL 05-1717 (JJF)

**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)**.

## Schedule A

### DEFINITIONS AND INSTRUCTIONS




1. The term "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (*e.g.*, Sempron, Athlon, Turion, Opteron, Celeron, Pentium, Core, Core Duo, and Xeon).
2. The term "BEST BUY" refers to BEST BUY COMPANY, INC. and any of its controlled present or former subsidiaries, parents, and predecessor or successor companies.
3. The term "COMPUTER SYSTEM" means any product that utilizes a MICROPROCESSOR including, without limitation, desktop computers, notebook computers and workstations.
4. The term "PURCHASE DATA" refers to the data files produced by BEST BUY in this litigation that reflect BEST BUY's purchases of x86 microprocessors and x86 computer systems.
5. The term "SALES DATA" refers to the data files produced by BEST BUY in this litigation that reflect BEST BUY's sales of x86 microprocessors and x86 computer systems.
6. The term "REBATE DATA" refers to the data files produced by BEST BUY in this litigation that reflect (i) any payment, subsidy, rebate, discount received by BEST BUY from a vendor, manufacturer, Intel or AMD in connection with BEST BUY's purchase of x86 microprocessors and/or x86 computer systems; (ii) as well as any rebates or discounts BEST BUY gave to their customers in association with the purchase of x86 microprocessors and/or x86 computer systems.
7. The term "LOOKUP TABLE" refers to the data files produced by BEST BUY in this litigation and entitled:

REDACTED

REDACTED

8. The relevant time period for these topics is January 1,2000 to the present.

**DEPOSITION TOPICS**

1. The recordation, compilation, storage, and production of the data produced by BEST BUY in connection with this litigation, including the system in which that data was stored.
2. The manner in which the data produced by BEST BUY is maintained and prepared in the ordinary course of business
3. The data that Best Buy produced in this litigation, including the definitions for all data fields, abbreviations or codes reflected as values in any data fields, the provision of formulas for all calculated fields, product identification, and the interaction among the datasets produced, including but not limited to:
  - a. Your knowledge of the Sales data, how it relates to the Purchase, Rebate and Lookup Tables data, and how it may link to the Purchase, Rebate and Lookup Tables data.
4. Identifying the universe of files that represent BEST BUY's Sales data/Purchase data of x86 based computer systems and x86 microprocessors.
5. Explanation of the net acquisition cost of a product to BEST BUY.
6. Explanation of how rebates are captured in the Sales/Purchase data and identification of those adjustments in the data.
7. Identification in the Sales data of internal sales or transfers, product returns, credits and debits.
8. 
9. 
10. 
11. Description of the consumer/vendor rebates offered by BEST Buy and interpretation of the rebates in the Rebate Data; including identification of rebates related to microprocessors or computer systems.

12. Interpretation of and definitions for the values of different variables in the Lookup Tables as well as how variables in the Lookup Tables relate to other variables (both in the Lookup Tables and in other data sets).