

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

IN RE INTEL CORPORATION)	MDL No. 05-1717-JJF
MICROPROCESSOR ANTITRUST)	
LITIGATION)	

ADVANCED MICRO DEVICES, INC. and)	C. A. No. 05-441-JJF
AMD INTERNATIONAL SALES &)	
SERVICE, LTD.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
INTEL CORPORATION and INTEL)	
KABUSHIKI KAISHA,)	
)	
Defendants.)	

PHIL PAUL, on behalf of himself and all others)	C. A. No. 05-485-JJF
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

**COUNTER-NOTICE OF TAKING DEPOSITION OF
TOSHIBA AMERICA INFORMATION SYSTEMS, INC.**

PLEASE TAKE NOTICE that, pursuant to Rule 45 and 30(b)(6) of the Federal Rules of Civil Procedure, and following the subpoena served on Toshiba America Information Systems, Inc. ("TAIS"), 9740 Irvine Blvd., Irvine, CA 92618, by plaintiff Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. ("AMD"), defendant Intel Corporation and Intel Kabushiki Kaisha ("Intel") will also take the deposition of TAIS at the offices of O'Melveny & Myers LLP, 610 Newport Center Drive, 17th floor, Newport Beach, California 92660 at 10 a.m.

on the dates of May 28-29, 2009¹, or at such other time as place as the parties may agree. The deposition will be recorded by stenographic and sound-and-visual (videographic) means, will be taken before a Notary public or other officer authorized to administer oaths, and will continue from day-to-day until completed, weekends and public holidays excepted.

Reference is made to the "Description of Matters on Which Examination is Requested" attached as Exhibit A to the Subpoena annexed hereto, and incorporated herein by this reference.

OF COUNSEL:

David M. Balabanian
James L. Hunt
Donn P. Pickett
Frank M. Hinman
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
(415) 393-2000

POTTER ANDERSON & CORROON LLP

By: /s/ W. Harding Drane, Jr.
Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhowitz@potteranderson.com
wdrane@potteranderson.com

Attorneys for Defendants
Intel Corporation and Intel Kabushiki Kaisha

Dated: May 1, 2009

914311/29282

¹ The subpoena issued on Toshiba America Information Systems, Inc. was originally noticed for March 20, 2009, but the parties have subsequently agreed to May 28-29, 2009 and may still further agree to a different time and place.

UNITED STATES DISTRICT COURT
for the
Southern District of California

Advanced Micro Devices, Inc. and AMD International)

Plaintiff)

v.)

Intel Corporation and Intel Kabushiki Kaisha)

Defendant)

Civil Action No. 05-441

(If the action is pending in another district, state where:

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

To: Toshiba America Information Systems, Inc.
9740 Irvine Blvd., Irvine, CA 92618

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 description of Matters on Which Examination is Requested attached hereto as Exhibit A. Deposition to be conducted on May 28-29, 2009.

Place: O'Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660

Date and Time:
05/28/2009 10:00

The deposition will be recorded by this method: Audiovisual and stenographic

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: May 1, 2009
CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

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

W. Harding Drane, Jr.
Potter Anderson & Corroon, LLP, Hercules Plaza, 1313 N. Market Street, P.O. Box 951, Wilmington, DE 19899-0951
(302) 984-6000; wdrane@potteranderson.com

Civil Action No. 05-441

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

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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 & Services, Ltd., including their respective past and present officers, directors, agents, attorneys, employees, consultants, or other persons acting on either of their behalf.
5. "Microprocessor" shall mean general purpose microprocessors using the x86 instruction set (*e.g.*, Pentium, Celeron, Xeon, Sempron, Athlon, and Opteron.).
6. The time period, unless otherwise specified, covered by each topic set forth below is from January 1, 2000 up to and including the present.

II. SUBJECT MATTER

1. Whether Toshiba has ever committed to purchase a certain percentage of Intel microprocessors in exchange for rebates or discounts from Intel.
2. The factors influencing Toshiba's decision to drop AMD microprocessors from its product line beginning in the third quarter of 2000.

3. The factors influencing Toshiba's decision to cancel its planned design of a Satellite notebook computer incorporating AMD microprocessors in or about March 2001.
4. Whether there were any time periods between 2001 and 2007 that AMD failed to provide TAIS or Toshiba with technical support, roadmaps, discount proposals, or any other information necessary for TAIS or Toshiba to evaluate the potential of using AMD microprocessors in its product line.
5. The number of occasions between 2001 and 2007 in which TAIS or Toshiba considered re-introducing AMD microprocessors into their product line, and the events surrounding those considerations.
6. The factors influencing Toshiba's decision to re-introduce AMD microprocessors into its product line in the third quarter of 2007.
7. The performance of TAIS's AMD-based product line in the U.S. retail market since the re-introduction of AMD microprocessors in third quarter of 2007, including but not limited to revenues, profits, and market share performance.
8. Any instances where AMD failed to provide or supply TAIS with microprocessors or products incorporating AMD microprocessors within the time period requested by TAIS, including but not limited to instances where AMD claimed that they could not provide TAIS with such products because of a supply shortage.
9. Whether TAIS has experienced any problems with AMD's component partners, including but not limited to chipsets, graphics or HD-DVD components.
10. Delays in the launching of computers, computer series or any other products sold or distributed by TAIS that contain AMD microprocessors.

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

12. TAIS's receipt, whether directly or indirectly, of discounts, rebates, marketing funds, or any other financial support from AMD.

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

CERTIFICATE OF SERVICE

I, W. Harding Drane, hereby certify that on May 1, 2009, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Jesse A. Finkelstein Frederick L. Cottrell, III Chad M. Shandler Steven J. Fineman Richards, Layton & Finger One Rodney Square 920 North King Street Wilmington, DE 19801	James L. Holzman J. Clayton Athey Prickett, Jones & Elliott, P.A. 1310 King Street P.O. Box 1328 Wilmington, DE 19899
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I hereby certify that on May 1, 2009, I have Electronically Mailed the documents to the following non-registered participants:

Charles P. Diamond Linda J. Smith O'Melveny & Myers LLP 1999 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 cdiamond@omm.com lsmith@omm.com	Mark A. Samuels O'Melveny & Myers LLP 400 South Hope Street Los Angeles, CA 90071 msamuels@omm.com
Salem M. Katsh Laurin B. Grollman Kasowitz, Benson, Torres & Friedman LLP 1633 Broadway, 22nd Floor . New York, New York 10019 skatsh@kasowitz.com lgrollman@kasowitz.com	Michael D. Hausfeld Daniel A. Small Brent W. Landau Allyson B. Baker Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. Suite 500, West Tower Washington, D.C. 20005 mhausfeld@cmht.com dsmall@cmht.com blandau@cmht.com abaker@cmht.com

<p>Thomas P. Dove Alex C. Turall The Furth Firm LLP 225 Bush Street, 15th Floor San Francisco, CA 94104 tdove@furth.com aturan@fmth.com</p>	<p>Steve W. Berman Anthony D. Shapiro Hagens Berman Sobol Shapiro, LLP 1301 Fifth Avenue, Suite 2900 Seattle, WA 98101 steve@hbsslw.com tony@hbsslw.com</p>
<p>Guido Saveri R. Alexander Saveri Saveri & Saveri, Inc., 111 Pine Street, Suite 1700 San Francisco, CA 94111 guido@saveri.com dck@saveri.com</p>	<p>Michael P. Lehman Cohen, Milstein, Hausfeld & Toll, P.L.L.C. One Embarcadero Center, Suite 526 San Francisco, CA 94111 mlehmall1@cmht.com</p>

By: /s/ W. Harding Drane, Jr.
Richard L. Horwitz (#2246)
W. Harding Dralle, Jr. (#1023)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdralle@potteranderson.com

Dated: May 1, 2009