



## **DECLARATION OF JEFFREY J. FOWLER**

I, Jeffrey J. Fowler, declare and state as follows:

1. If called as a witness in this matter, I could and would testify competently to the following facts, all of which are within my own personal knowledge.

2. I am Counsel at O'Melveny & Myers LLP, and am one of the attorneys representing Advanced Micro Devices, Inc. ("AMD") in this matter. I make this declaration in support of AMD's Motion to Compel defendant Intel Corporation ("Intel")'s Deposition Testimony under Fed. R. Civ. P. 30(b)(6).

### **Meet and Confer Efforts Leading Up to this Motion**

3. On April 29, 2009, AMD served a Rule 30(b)(6) Deposition Notice and Request for Production of Documents upon Intel. (A true and correct copy of the notice is attached hereto as Exhibit A.)

4. Intel served its Objections and Responses to AMD's 30(b)(6) Notice on May 23, 2009. (A true and correct copy of Intel's Objections is attached hereto as Exhibit B.) In its Objections, Intel offered only to provide a 30(b)(6) witness on Topic 9, relating to Intel's "Global Database," and Topics 7(c) and 7(d) to the extent they relate to Topic 9. (*See id.* at 13, 15-16). Intel refused to provide any documents responsive to AMD's requests.

5. On May 25, 2009, my colleague David Herron sent an email to Intel counsel Thomas Dillickrath requesting that Intel meet and confer, and suggesting a meeting on Tuesday, May 26, 2009. Intel responded by requesting that AMD set forth its positions in writing prior to any meet and confer. (A true and correct copy of the email exchange between David Herron and Thomas Dillickrath is attached hereto as Exhibit C.) In response to Intel's request, I set forth AMD's positions in a letter to Thomas Dillickrath dated May 30, 2009. (A true and correct copy of AMD's May 30, 2009 meet and confer letter is attached as Exhibit D.)

6. Subsequently, the parties held a telephonic meet-and-confer on June 2, 2009 to discuss AMD's Rule 30(b)(6) notice, among other topics. During the meet-and-confer, AMD agreed to drop Topics 7(a), 7(b), and Document Request 10, in exchange for Intel's agreement to withdraw yet another recently-served Rule 30(b)(6) notice. As to the remainder of the 30(b)(6) topics and document requests, the parties ultimately agreed they had largely reached impasse.

7. During the meet-and-confer, however, AMD offered to withdraw every document request if Intel would represent that its previous document productions fully responded to AMD's requests and if Intel identified those documents. (A true and correct copy of the June 5, 2009 letter from David Herron to Donn Pickett confirming this offer is attached as Exhibit E.) Intel declined to do so. Instead, in a written response dated June 9, 2009, Intel represented only that, if documents responsive to 2, 3, 4, 6, 8, 9 exist, they "would have been included" in Intel's prior remediation productions. (A true and correct copy of the June 9, 2009 letter from Donn Pickett to David Herron is attached as Exhibit F.)

8. AMD also requested at the parties' telephonic meet and confer that, in support of Intel's argument that AMD's Rule 30(b)(6) notice topics duplicate prior discovery, Intel identify citations to previous depositions of Intel preservation witnesses demonstrating that AMD had, in fact, covered the topics listed in its Rule 30(b)(6) notice (and, thus, that AMD's current discovery is "duplicative"). Intel agreed to consider the request. Shortly thereafter, Intel offered to provide a materially different list of deposition citations than AMD requested. Rather than identify *actual* instances of AMD having asked questions covering the deposition topics at issue in AMD's Rule 30(b)(6) deposition notice, Intel offered instead to provide citations to instances where AMD had a "*prior opportunity*" to ask questions on various subjects. (*Id.*) This information, even it exists, would not begin to establish that AMD is now proposing to conduct

duplicative discovery, and is neither what AMD requested nor what Intel said exists to show that AMD's current discovery is somehow improper. (A true and correct copy of my June 12, 2009 email to Intel counsel Brian Rocca is attached hereto as Exhibit G.)

**Other Documents Relevant To AMD's Motion**

9. Attached as Exhibit H is a true and correct copy of the Court's June 20, 2007 Stipulation and Order Bifurcating Discovery into Intel's Preservation Issues (the "Bifurcation Order"). In its Objections and Responses, Intel cites language in the Bifurcation Order in support of its argument that AMD's discovery is entirely foreclosed. The language Intel cites directs that the Causation/Culpability phase of discovery proceed "expeditiously" after the close of Remediation Discovery. (*See id.* ¶ 5, p. 5.) This language was originally proposed by AMD at a point in the case when Intel had not timely produced deposition witnesses and documents. AMD proposed this language in order to prompt Intel to expeditiously produce its witnesses for deposition and produce responsive documents.

10. Attached as Exhibit I is a true and correct copy of Intel's January 5, 2009 Letter Brief to this Court, regarding the scope of its 30(b)(6) Deposition Notice into AMD's document retention practices.

11. Attached as Exhibit J is a true and correct copy of the Court's Case Management Order No. 1, dated May 16, 2006.

12. Attached as Exhibit K is a true and correct copy of Intel's July 2, 2008 Motion to Compel and Opposition to AMD's Motion to Quash.

13. Attached as Exhibit L is a true and correct copy of a March 2, 2009 letter from Intel counsel Donn Pickett to AMD counsel Mark Samuels.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 12, 2009

  
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Jeffrey J. Fowler

**CERTIFICATE OF SERVICE**

I hereby certify that on June 12, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Hand Delivery and Electronic Mail to the following:

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I hereby certify that on June 12, 2009, I have sent by Electronic Mail the foregoing document to the following non-registered participants:

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