

EXHIBIT A

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT B

From: Drane, Jr. W. Harding
Sent: Tuesday, April 21, 2009 3:15 PM
To: 'Cottrell, Frederick'; 'Shandler, Chad'; 'Fineman, Steven'
Cc: Horwitz, Richard L.
Subject: AMD v. Intel

Dear Counsel: Please note we will be advising Judge Poppiti today of a document production and claw back issue. The issue relates to an email and attachment produced by AMD during this litigation with the following document control numbers: AMDN-065-00028313. As we will advise Judge Poppiti by letter, we understand AMD previously clawed back a similar document and so may assert privilege with respect to this document.

Intel believes any privilege was waived because the document was sent to a third party. We are willing to meet and confer to discuss any claim of privilege that AMD may assert with respect to these documents, although we find it hard to see any valid privilege claim as to the vast majority of their content, waiver aside. We would like to meet and confer promptly. Please let us know your availability.

Hardy

W. Harding (Hardy) Drane, Jr.
Potter Anderson & Corroon LLP
302-984-6019 wdrane@potteranderson.com
~~~~~

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# **EXHIBIT C**



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**W. Harding Drane, Jr**  
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April 21, 2009

**FILED UNDER SEAL**

**By Hand**

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre  
1201 Market Street, Suite 800  
Wilmington, DE 19801

**Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF**

Dear Judge Poppiti:

The purpose of this letter is to advise the Court of a potential document production issue between the parties involving a document that AMD may claim is privileged. Intel believes that any privilege that may have attached (which Intel does not concede) was waived through disclosure to a third party.

Intel has advised AMD of its intention to submit this letter and will meet and confer with AMD promptly to attempt to resolve any disagreements. However, given the absence of any order explicitly governing the present circumstances and Intel's uncertainty regarding AMD's response under the document production Order's "clawback" provision, we believe it appropriate to advise the Court of the issue now and anticipate that the Court's assistance will be required to resolve the issue.

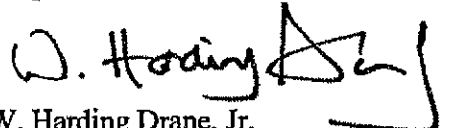
Attached hereto as Exhibit A is a cover email and two attachments produced by AMD to Intel during the course of this litigation. The cover email is dated May 4, 2005 and has a subject line that reads [REDACTED]. The first attachment, dated May 4, 2005, is a PowerPoint presentation entitled [REDACTED]. It has come to our attention that AMD, in January 2009, may have "clawed back" a document that is similar to this document in a number of respects, but given the clawback, we are not in a position to compare them. The second attachment, dated May 2, 2005, is another PowerPoint presentation entitled [REDACTED]. AMD has not attempted to claw back the email or either of the attachments included as Exhibit A.

April 21, 2009  
Page 2

As is apparent from the cover email in Exhibit A, the PowerPoint presentations were sent to, among other recipients, Anil Kumar of McKinsey & Company, a third party business consultant. There is no indication in the email or on the face of the documents, nor any other evidence suggesting, that McKinsey was employed to assist AMD in the provision of professional legal services, nor that the transmission of the documents to McKinsey was related to the provision of professional legal services. As such, AMD's transmission of the documents to McKinsey would have resulted in a waiver of any attorney-client privilege that may have attached to the documents. Intel believes AMD may have clawed back the prior document in error, and that Exhibit A hereto -- which has not been clawed back -- should be available for use by Intel in this litigation.

In the meantime, because AMD has previously asserted a claim of privilege over a similar [REDACTED] PowerPoint presentation, Intel has taken the following steps: (1) Intel has asked its electronic discovery vendor to immediately deactivate Exhibit A from Intel's review database; and (2) Intel has sealed the only hard copy printouts of these two documents in envelopes and has stored them in locations that will not be accessed by members of Intel's legal team until the matter has been resolved.

Respectfully,

  
W. Harding Drane, Jr.

WIID:cet

Enclosures -- Provided to Judge Poppiti and AMD Delaware counsel only

cc: Clerk of Court (via Hand Delivery)  
Counsel of Record (via CM/ECF & Electronic Mail)

912811/29282

# **EXHIBIT D**



RICHARDS  
LAYTON &  
FINGER

Frederick L. Cottrell, III  
Director  
302-651-7509  
Cottrell@rlf.com

May 1, 2009

REDACTED PUBLIC VERSION  
FILED MAY 13, 2009

VIA E-MAIL AND HAND DELIVERY

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre, Suite 800  
Wilmington, Delaware 19801-4226

Re: *Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF, In re Intel Corporation, C.A. No. 05-1717-JJF, and Phil Paul, et al. v. Intel Corporation, C.A. 05-485-JJF*

Dear Judge Poppiti:

This letter responds to Intel's letter of April 21, 2009, in which Intel raises a "potential production issue" and attaches a privileged and highly sensitive document that AMD inadvertently produced.

REDACTED

Intel's disclosure of this document -- even to Your Honor -- is, at the very least, troubling and a blatant violation of the Second Amended Stipulation Regarding Electronic Discovery and Format of Document Production (the "Native Stipulation") (D.I. 288 in C.A. No. 05-441-JJF; D.I. 396 in C.A. No. 05-1717-JJF)

We are confident that we can persuade Intel during a meet and confer that its rush to judgment that AMD waived the privilege is unfounded.

REDACTED

*Co.*, 16 F.3d 929, 937-40 (8th Cir. 1994).  
*Kovel*, 296 F.2d 918, 921 (2d Cir. 1961).

*In re Bieter*  
*United States v.*

■ ■ ■

One Rodney Square ■ 920 North King Street ■ Wilmington, DE 19801 ■ Phone: 302-651-7700 ■ Fax: 302-651-7701

The Honorable Vincent J. Poppiti  
May 1, 2009  
Page 2

REDACTED

*U.S. Information Sys., Inc. v. International Bhd. of Elec. Workers Local Union No. 3*, 2002 U.S. Dist. LEXIS 19363, at \*20 (S.D.N.Y. Oct. 10, 2002). It is well established that work-product protection is waived **only if** the disclosure is made to an adversary. *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, 1996 U.S. Dist. LEXIS 18849, at \*10 (S.D.N.Y. Dec. 19, 1996). Where the disclosure is made to a non-adversary, as is the case here, it does not result in waiver of the protection.

That Intel produced the . REDACTED to Your Honor even before receiving a claw back letter (AMD was unaware that it produced the presentation until it received its copy of the Intel letter) shows that Intel reasonably believed it to be arguably privileged. Rather than exposing the Court to a privileged communication, Intel should have raised the issue with AMD. The Court established a procedure for documents produced in discovery that may be subject to a claim of privilege. As set forth in paragraph 35 of the Native Stipulation:

**If a Receiving Party reasonably believes that the Producing Party has allowed access to any documents, data or information that is potentially privileged, *the Receiving Party shall notify the Producing Party and specifically identify the information. The Receiving Party shall cease any review of the potentially privileged material.***

(emphasis added). The parties have repeatedly followed this protocol and alerted one another to potentially privileged documents that may have been produced by the other during the discovery period. AMD has regularly sent Intel correspondence identifying, to date, a total of nearly 1300 Intel documents that may have been inadvertently produced.<sup>1</sup> Intel has similarly (and liberally) taken advantage of the claw back provision of the Native Stipulation, clawing back over 3700 inadvertently produced Intel documents over the course of over a dozen letters to AMD.

AMD plans to claw back the document and provide Intel with a redacted version. To the extent Intel still disputes the privilege assertion after the parties meet and confer, it can raise the issue with Your Honor in the proper manner. Jumping the gun was both inappropriate and premature. AMD respectfully requests that Your Honor disregard Intel's letter and its attachments, return the documents to Intel and expunge the record of copies of the attorney-client communication and work product protected document until the issue is properly before Your Honor.

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<sup>1</sup> In stark contrast, Intel has sent AMD just one letter (nearly two years ago) identifying 21 potentially privileged AMD documents. Despite objection by AMD's counsel, Intel's practice has been to review and use at deposition potentially privileged AMD documents without providing notice to AMD.

The Honorable Vincent J. Poppiti  
May 1, 2009  
Page 3

Respectfully,

*/s/ Frederick L. Cottrell, III*

Frederick L. Cottrell, III

FLC,III/afg

cc: Clerk of the Court  
Richard L. Horwitz, Esquire  
James L. Holzman, Esquire

# **EXHIBIT E**



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May 4, 2009  
Public Version 5/22/09  
**FILED UNDER SEAL**

**By Hand**

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre  
1201 Market Street, Suite 800  
Wilmington, DE 19801

**Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF**

Dear Judge Poppiti:

On April 21, 2009, Intel notified AMD and Your Honor about a document production issue and potential privilege dispute between the parties involving a document – consisting of a cover email and two attached PowerPoint presentations – previously produced by AMD. AMD responded by letter on May 1, 2009 and stated its intention to claw back some unidentified portion(s) of this document. Intel respectfully disagrees with certain factual and legal statements included in AMD’s letter and submits this brief letter in response.

*First*, AMD’s letter accuses Intel of violating paragraph 35 of the Second Amended Stipulation Regarding Electronic Discovery and Format of Document Production (the “Stipulation”). That is plainly incorrect. Consistent with the Stipulation, which AMD quotes in its letter, Intel notified AMD of the information at issue, specifically identified it, and ceased further review. Nothing more is required.

*Second*, AMD suggests that Intel acted improperly by notifying Your Honor of the situation and submitting the document under seal while the parties meet and confer about it. After carefully considering the issue, Intel proceeded in this manner because there are no established procedures addressing the present circumstances. Just as Intel anticipated, AMD disagrees with Intel’s position on the document and has now clawed it back in advance of the parties’ meet and confer. The claw back creates a challenging, if not impossible, situation for Intel to navigate during the parties’ forthcoming discussions and any potential motion practice. If Intel disagrees with the nature and/or extent of AMD’s redactions – which seems likely given that the document totals approximately 300 pages – Intel may not be able to reference the actual text of the document without subjecting itself to accusations of improper use or review of a “privileged” document. Without any specific procedures governing this situation – and AMD does not and cannot identify any – Intel believed the proper course was to notify Your Honor in advance of the meet and confer, and to provide the document to Your Honor (under seal) for safekeeping until the matter is ripe for resolution.

*Third*, Intel does not agree with AMD's summary of the applicable waiver law. In the Third Circuit, when a client voluntarily discloses privileged communications to a third party, the privilege is waived. *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1424 (3rd Cir. 1991); *U.S. v. Rockwell Intern.*, 897 F.2d 1255, 1265 (3rd Cir. 1990). Only in narrow circumstances can the privilege be extended to non-lawyers who are employed to assist the lawyer in the rendition of professional legal services. *Westinghouse Elec. Corp.*, 951 F.2d at 1424; *accord Blumenthal v. Drudge*, 186 F.R.D. 236, 243 (D.D.C. 1999). This exception must be strictly construed and should only apply when a confidential communication was made for the purpose of obtaining legal advice from the lawyer. *Westinghouse Elec. Corp.*, 951 F.2d at 1424; *see also Blumenthal*, 186 F.R.D. at 243 (citations omitted).

Here, the text and context of the communication demonstrate that the transmission of the document to the [REDACTED] consultant was *not* for the purpose of obtaining legal advice. AMD does not argue that it was; instead, it merely states that the consultant who received the communication is a "long-standing" consultant on "important" corporate strategy. [REDACTED] itself, through counsel, has previously represented that [REDACTED] was not hired for, and has not provided any consulting services in connection with, the present litigation. These facts do not fall within the "narrow" exception to the waiver rule.

*Fourth*, AMD's apparent claim of work product protection over portions of the document raises numerous questions. Do the portions of the document at issue subject to the claim actually qualify as work product? If so, are they core or fact-based work product? Under Federal Rule 26(b)(3), can Intel show a "substantial need" for the information and "undue hardship" to obtain it from other means? If necessary, Intel will seek an opportunity to brief these issues, and to request an *in camera* review of the document to the extent necessary and appropriate. We wish to note that AMD previously argued that Your Honor's oversight of a potential work product redaction issue was an appropriate "sanity check." 12/27/07 Hearing Tr. 36:12-23.

*Finally*, as Intel stated in its original letter, we are prepared to meet and confer regarding the document. Intel attempted to do so on April 30, 2009, the day before AMD submitted its letter to Your Honor. Intel therefore awaits the redacted version of the document, which AMD has promised to produce, so that the parties can meet and confer as soon as possible. If that process is hindered by, for example, AMD's refusal on privilege grounds to discuss the substance of its redactions with Intel, we intend, of necessity, to seek the Court's assistance to resolve the dispute.

Respectfully,  
/s/ W. Harding Drane, Jr.  
W. Harding Drane, Jr.

WHD:cet

cc: Clerk of Court (via Hand Delivery)  
Counsel of Record (via CM/ECF & Electronic Mail)

Public Version: 5/22/09

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

**CERTIFICATE OF SERVICE**

I, W. Harding Drane, Jr. hereby certify that on May 22, 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:

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Chad M. Shandler  
Steven J. Fineman  
Richards, Layton & Finger  
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James L. Holzman  
J. Clayton Athey  
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I hereby certify that on May 22, 2009, I have Electronically Mailed the documents to the following non-registered participants:

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By: /s/ W. Harding Drane, Jr.  
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# **EXHIBIT F**

Frederick L. Cottrell, III  
Director  
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May 7, 2009

**VIA E-MAIL AND HAND DELIVERY**

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
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Wilmington, Delaware 19801-4226

**REDACTED PUBLIC VERSION  
FILED MAY 13, 2009**

Re: **Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF and In re Intel Corporation, C.A. No. 05-1717-JJF**

Dear Judge Poppiti:

AMD submits this letter in response to Intel's letter to Your Honor of May 4, 2009 (D.I. 1417 in C.A. No. 05-441-JJF; D.I. 1760 in C.A. No. 05-1717-JJF). By its own admission, Intel knew that the document in question had been inadvertently produced and that AMD would claim privilege over it and claw it back. Under the clear terms of the Second Amended Stipulation Regarding Electronic Discovery and Format of Document Production (the "Native Stipulation") (D.I. 288 in C.A. No. 05-441-JJF; D.I. 396 in C.A. No. 05-1717-JJF), once Intel was aware of a potential claim of privilege, Intel was required to notify AMD and cease any review of the document.

Intel was fully cognizant of these requirements, as the parties have repeatedly adhered to this protocol for the past two years. In derogation of them, however, Intel chose instead to continue to review the document, use the document's content as the basis for a submission to the Court, and even go so far as to submit the document to Your Honor for purported "safekeeping." Intel neither contacted AMD nor asked to meet-and-confer -- as clearly required by the Native Stipulation -- until *after* Intel transmitted the privileged document to Your Honor.<sup>1</sup>

Intel circumvented the Native Stipulation for the obvious purpose of exposing the Court to privileged material inadvertently produced by AMD. Intel's intent is further evidenced by the fact that Intel has not requested any action by Your Honor.

Intel's violation of the Native Stipulation is not excused by the fact that it will apparently

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<sup>1</sup> In its April 21, 2009 letter, Intel represented that it "has advised AMD of its intention to submit this letter." Intel, however, did not provide any such notice to AMD until more than two hours *after* filing its letter.

■ ■ ■

The Honorable Vincent J. Poppiti  
May 7, 2009  
Page 2

REDACTED

dispute AMD's privilege claim,

. It suffices simply to point out that Intel's compliance with the Native Stipulation was not conditional upon its agreement with AMD's likely privilege claim -- it was clear and *unconditional*. If Intel wishes to challenge AMD's assertion of privilege as to the document in question, it will have ample opportunity to do so in the manner and according to the procedures set forth in the Native Stipulation.

AMD reiterates its request that Your Honor disregard Intel's April 21, 2009 submission and order the document at issue expunged from the record.

Respectfully,

*/s/ Frederick L. Cottrell, III*

Frederick L. Cottrell, III (#2555)

FLC,III/afg

cc: Clerk of the Court  
Richard L. Horwitz, Esquire  
James L. Holzman, Esquire