

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

IN RE)
INTEL CORPORATION)
MICROPROCESSOR ANTITRUST)
LITIGATION)

MDL No. 05-1717-JJF

ADVANCED MICRO DEVICES, INC., a)
Delaware corporation, and AMD)
INTERNATIONAL SALES & SERVICES, LTD.,)
a Delaware corporation,)

Plaintiffs,)

v.)

C.A. No. 05-441-JJF

INTEL CORPORATION, a Delaware corporation,)
and INTEL KABUSHIKI KAISHA, a Japanese)
corporation,)

Defendants.)

**DECLARATION OF DONN P. PICKETT IN SUPPORT OF INTEL'S LETTER
BRIEF REGARDING THE APPROPRIATE SCOPE AND DURATION OF
FURTHER DEPOSITIONS ORDERED JUNE 22, 2009**

OF COUNSEL:

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Donn P. Pickett
BINGHAM McCLUTCHEN LLP
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Dated: July 15, 2009

Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
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*Attorneys for Defendant
Intel Corporation and Intel Kabushiki Kaisha*

I, Donn P. Pickett, declare as follows:

1. I am an attorney at Bingham McCutchen LLP, counsel of record for Intel Corporation and Intel Kabushiki Kaisha ("Intel") in this matter. I am licensed to practice law in the State of California. I have personal knowledge of the matters stated in this declaration and, if called as a witness, could and would testify competently to them.
2. I am submitting this declaration in support of Intel's letter brief regarding the appropriate scope and duration of further depositions ordered June 22, 2009.
3. Attached as Exhibit A is a true and correct copy of my June 18, 2009 letter to Mark Samuels.
4. Attached as Exhibit B is a true and correct copy of David Herron's June 30, 2009 letter to me.
5. Attached as Exhibit C is a true and correct copy of David Herron's July 2, 2009 letter to me.
6. Attached as Exhibit D is a true and correct copy of my July 2, 2009 letter to David Herron.
7. Attached as Exhibit E is a true and correct copy of David Herron's July 10, 2009 letter to me.
8. Attached as Exhibit F is a true and correct copy of my July 13, 2009 letter to David Herron.
9. Attached as Exhibit G is a true and correct copy of the relevant portions of the June 15, 2009 hearing transcript.

I declare under penalty of perjury that the foregoing is true and correct. Executed
July 15, 2009 in San Francisco, California.


Donn P. Pickett

Exhibit A

Donn P. Pickett
Direct Phone: 415.393.2082
donn.pickett@bingham.com

June 18, 2009

Via Email and U.S. Mail

Mark A. Samuels
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899

Re: AMD v. Intel: Follow-up to June 15, 2009 Hearing

Dear Mark:

This letter addresses certain issues raised during the June 15, 2009 hearing before Judge Poppiti on Intel's motion for further deposition testimony.

Deposition Schedule

During the hearing we agreed to meet and confer regarding the length and location of Intel's further depositions regarding AMD retention issues. To facilitate that discussion, we ask that you provide us with the names of the Rule 30(b)(6) witnesses that AMD intends to produce, and the subject matter(s) on which each will be designated. Once you provide that information, we will provide you with a proposal regarding the appropriate length and location of the depositions.

For scheduling purposes, please note that Intel would prefer to have Judge Poppiti available by telephone should any issues arise during the depositions. As such, we propose that the depositions be scheduled on the following days: June 29, 30 (before his vacation) and/or July 16, 17, 20, 23 (after his vacation).

Chart Item #45

Judge Poppiti asked the parties to meet and confer regarding the parameters of this issue, which concerns AMD's April 19, 2005 litigation hold notice (Exhibit 218). The specific deposition question states: "Do you know how many custodians who received the notice followed the direction regarding the creation of PST files and how many didn't?" See Chart Item #45 (Ozmun 69:5-14).

This line of questioning concerns the instruction in the FREQUENTLY ASKED QUESTIONS AND ANSWERS attachment to the notice which states: "For relevant emails and other electronic documents that you would otherwise discard, please create a new folder and label it 'Preservation Notice Documents.'" Ex. 218 at 4. So there is no misunderstanding, Intel does not seek a list of specific custodians that did (or did not) create a new PST folder as referenced in the attachment to the notice. Instead, Intel expects AMD to provide, at a minimum, a reasonable estimate of the number or percentage of custodians that did and did not create the PST folders.

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Mark A. Samuels
June 18, 2009
Page 2

Chart Item #93 (And Related Questioning)

Judge Poppiti granted Intel's request for further depositions on several questions related to the date on which AMD first reasonably anticipated litigation. *See* Court Chart dated 6/15/09 ("Anticipation of Litigation"; Items 40, 41, 67, 81, 82, 84, 85, 93, 96-99, 102, 110-111). Intel intends to ask these questions, as well as reasonable follow-up, and make use of any of the exhibits referenced in those questions.

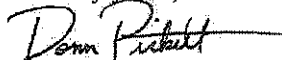
Judge Poppiti suggested that Intel, in advance of further depositions, may want to provide AMD with more information relating to the type of question included as Item #93. Here is some information that may help you prepare a witness:

- Intel is interested in learning the date AMD first learned certain facts alleged in its Complaint. If it is not possible to identify a specific date, we expect AMD to provide a reasonable estimate, or at least to confirm or deny whether AMD knew the information as of certain date(s) preceding the filing of the Complaint that Intel may reference during the deposition – specifically, November 2004, January 2005, February 2005, and/or March 2005.
- Intel will be asking about the following OEMs and allegations referred to in AMD's Complaint: Sony (¶ 40); HP (¶¶ 64, 80); Dell (¶ 38, 39); IBM/Lenovo (¶¶ 52, 76, 81, 84); Acer (¶¶ 79, 86); and Gateway/eMachines (¶ 50).
- We expect AMD to discuss these issues in advance of the deposition with: (1) the AMD employees responsible for the OEMs listed above, (2) relevant members of AMD's management team who are ultimately responsible for these types of business relationships; and (3) the sources of information AMD used as a factual basis for making the allegations noted above. We are confident that AMD has also identified during the course of this case (*e.g.*, during deposition preparation) certain documents that help identify the timing of AMD's knowledge of these issues.

* * *

We look forward to your responses on these issues.

Sincerely yours,



Donn P. Pickett

cc: Mr. Eric Friedberg (by email)
Ms. Jennifer Martin (by email)
Mr. David Herron (by email)
Mr. Jeffrey Fowler (by email)

Exhibit B



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June 30, 2009

OUR FILE NUMBER
008,346-163

VIA E-MAIL AND U.S. MAIL

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dherron@ommm.com

Re: *AMD v. Intel*

Dear Mr. Pickett:

We write regarding Intel's further deposition of AMD's evidence preservation witnesses. We are prepared to produce Mr. Halle on July 13 to respond to questions previously posed to him as well as select questions posed to Mr. Smith (i.e., approximately 15 to 20 questions). We are willing to hold this deposition in Los Angeles or Austin, Texas, but prefer the latter. We can also produce Tom McCoy for deposition on July 14 in Austin to respond to Intel's questions about "anticipation of litigation" (i.e., approximately 21 questions). We are working with Messrs. Smith and Meeker on their schedules and will update you shortly. While we recognize that the Special Master will not be available on these days, we wanted to give you the option of moving forward now and these are the earliest dates available.

With regard to deposition length, the Court has ordered AMD to provide further responses to 53 questions. AMD believes that two hours is ample time for these questions and any "reasonable follow-up."

Sincerely,

David L. Herron
of O'MELVENY & MYERS LLP

cc: Eric Friedberg, Esq. (by email)

Exhibit C



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July 2, 2009

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Re: *AMD v. Intel*

Dear Mr. Pickett:

This responds to your letter of June 18, 2009, regarding further deposition of AMD's preservation witnesses and, specifically, Question No. 93 (which concerns when AMD learned of Intel's illicit payments to Sony as alleged in AMD's complaint). Separate correspondence will follow concerning Question 45, which you also raised.


Your letter preceded by four days the Court's written order of June 22, 2009, on Question No. 93, and prematurely, and inappropriately, suggested a laundry list of burdensome tasks Intel would like AMD to undertake in order to obtain information to answer what appear to be a host of proposed "follow-up" questions. AMD will not conduct the investigation that Intel proposes and will not produce a witness to answer any such questions. First, as you know, the Court's order requires only that AMD "respond to question 93 *via interrogatory*." (See the Court's June 22, 2009 Order ¶ A, p. 2.) The Court has, therefore, made its judgment that Question No. 93 is to be answered, but precluded the numerous and time-consuming "follow-up" questions Intel proposes. Your proposed questions are out of bounds by Court order.

Intel also posed at deposition no questions concerning HP, Dell or the three other OEMs your letter identifies, instead expending its allotted deposition time on other issues. By failing to ask any such questions, Intel has waived its right to ask them now. Your attempt to circumvent the time and scope limitations the Court imposed is inappropriate.

Finally, we view your suggested "to do" list as yet another attempt to impose burden and expense on AMD incommensurate with any legitimate discovery need. Indeed, for AMD to interview, as you demand, all the "AMD employees responsible for the [six] OEMs," "relevant members of management," and cull the sources of information that outside counsel developed

when preparing AMD's complaint would take a tremendous amount of time, effort and money. And it would serve no useful purpose. When AMD "knew" or believed the matters alleged in the complaint has no bearing whatever on anticipation of litigation. If you know of authority that establishes otherwise, please provide it. In any event, AMD will not prepare or produce a witness to answer questions on the topics outlined in your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Herron". The signature is fluid and cursive, with a large initial "D" and a long, sweeping horizontal line at the end.

David L. Herron
of O'MELVENY & MYERS LLP

cc: Eric Friedberg, Esq. (by email)

Exhibit D

Donn P. Pickett
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donn.pickett@bingham.com

July 2, 2009

Via Email and U.S. Mail

David L. Herron, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071

Re: AMD v. Intel – Meet and Confer re Further Depositions

Dear David:

This letter (1) responds to your letters of June 30, 2009 and July 2, 2009, (2) summarizes our positions regarding the location, dates and duration of Intel's further depositions, and (3) addresses the parties' apparent dispute about one line of questioning.

Location. The need for additional deposition time was created by AMD's decision to block legitimate lines of questioning. As such, and as stated in our motion papers, we believe the depositions should take place in San Francisco. Alternatively, we would be willing to travel to Los Angeles, but strongly prefer San Francisco.

Dates. Intel continues to believe that the depositions should take place after Judge Poppiti returns from his vacation (*i.e.*, after July 15), so that he can resolve disputes during the depositions should they arise, as Judge Poppiti offered during the hearing. Of course, it is most efficient to schedule the depositions on the same day, or on consecutive days, to the extent possible. Here is an updated list of possible deposition dates for your consideration: July 22, July 30-31, August 3, and/or August 10-14.

Duration. We believe your two hour estimate is unrealistic and instead propose six hours of additional deposition time. First, we intend to ask the witnesses what they did to prepare for the further depositions and, with four witnesses, that will require additional time. Second, Intel was foreclosed from entire lines of questioning, and from exploring certain documents with the witnesses, and thus we will need sufficient time to conduct reasonable follow-up. As addressed next, it appears from your letter earlier today that the parties have a different view of what constitutes reasonable follow-up, and a different understanding of the Court's June 22 Order.

AMD's Knowledge of Facts Underlying Its Claims. AMD's antitrust claims are based on allegations of fact. The dates on which AMD learned those "facts" are relevant to the reasonable anticipation issue, and we will soon be presenting this matter to Judge Poppiti.

As noted in your letter, Judge Poppiti ruled that Question 93 was an appropriate question that seeks "factual information" that "is not protected by the attorney-client privilege." As

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David L. Herron, Esq.
July 2, 2009
Page 2

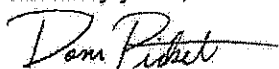
such, AMD's objection and instruction to this line of questioning was improper. We look forward to your interrogatory response to that question.

Your suggestion that Intel has "waived" further questions on this topic is unsupported by the record. As you know, Judge Poppiti also ordered AMD to answer the following question (#41) during deposition: "When did AMD become aware of Intel contracts that AMD disputed as anticompetitive?" Had AMD answered the question, as Judge Poppiti ruled it should have, the logical and reasonable follow-up would have involved the various contracts AMD disputes as anticompetitive. *See, e.g.*, Complaint re HP (¶¶ 64, 80); Dell (¶ 38, 39); IBM/Lenovo (¶¶ 52, 76, 81, 84); Acer (¶¶ 79, 86); and Gateway/eMachines (¶ 50). As noted in my prior letter to Mark, Intel intends to ask whether AMD knew the information referenced in those portions of the Complaint as of certain dates – specifically, November 2004, January 2005, February 2005, and/or March 2005. It appears from your letter that AMD will designate Mr. McCoy on this topic, and we expect that he will be prepared to address these issues during the deposition.¹

* * *

We should continue this discussion next week and reach agreement where possible. To the extent the parties' cannot agree, I suggest that the parties simultaneously submit letters (two pages max) to Judge Poppiti on July 15, 2009 at 5:00 p.m. EDT (the date he requested). I look forward to your response on these issues.

Sincerely yours,



Donn P. Pickett

cc: Mr. Eric Friedberg, Esq. (by email)
Ms. Jennifer Martin, Esq. (by email)
Mr. Jeffrey Fowler, Esq. (by email)

¹ Intel made a clear record during the deposition that AMD was going to foreclose the entire line of questioning similar to the Sony question, which the Court has now ruled must be answered. *See* Question 94 ("Have you learned anything about AMD contracts with OEMs outside privileged communications?").

Exhibit E



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July 10, 2009

OUR FILE NUMBER
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dherron@omm.com

Re: *AMD v. Intel*

Dear Mr. Pickett:

We write again about the further depositions of AMD preservation witnesses.

Your July 2 letter identified the parties' dispute about the scope of Intel's proposed follow-up questioning and the substantial investigation burden Intel apparently seeks to impose on AMD. In light of these issues and schedules, AMD has identified dates that can be utilized for further deposition from among those your July 2 letter proposes. Specifically, AMD is prepared to produce Messrs. Smith and Halle for deposition on Thursday, August 13, in Los Angeles. AMD would be willing to produce Mr. McCoy for deposition on Friday, August 14, in San Francisco, but would prefer that this deposition be held in your Silicon Valley office. These proposals are, of course, subject to the availability of the Special Master and Mr. Friedberg and his colleagues.

On a related matter, AMD believes that it would be inefficient and unnecessarily costly to produce Mr. Meeker for deposition to answer the two questions in issue. We therefore propose that, as with the Special Master's order concerning Question 93, AMD answer those questions (i.e., Questions 38 and 39) by way of an interrogatory response made under oath.

Sincerely,

David L. Herron
of O'MELVENY & MYERS LLP

cc: Eric Friedberg, Esq. (by email)

Exhibit F

BINGHAM

Donn P. Pickett
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donn.pickett@bingham.com

July 13, 2009

Via Email and U.S. Mail

David L. Herron, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071

Re: AMD v. Intel – Meet and Confer re Further Depositions

Dear David:

This letter responds to your letter of July 10, 2009 and continues the parties' dialogue regarding Intel's further deposition of AMD on document preservation issues.

Dates and Locations. It appears we are in agreement on the following (subject to the availability of Mr. Friedberg and/or Ms. Martin):

- The depositions of Messrs. Smith and Hall will take place on Thursday, August 13, 2009 at Bingham's downtown Los Angeles office (355 South Grand Avenue, Suite 4400). We tentatively propose a 10:30 a.m. start time.
- The deposition of Mr. McCoy will take place on Friday, August 14, 2009 at Bingham's San Francisco office (Three Embarcadero Center, 28th Floor). Please let us know your preference on a start time.

Mr. Meeker's Deposition. AMD now proposes to answer the remaining questions for Mr. Meeker by interrogatory response. We recognize the efficiency in avoiding travel in connection with this deposition. We do not agree with your proposal, however, and offer instead to conduct the remaining questioning telephonically. *See* FRCP 30(b)(4).

Duration. Your letter does not address our counterproposal on this issue. Unless we hear differently from you, we will assume the parties are at impasse and will submit a letter to Judge Poppiti on Wednesday, July 15.

AMD's Knowledge of Facts Underlying Its Claims. Your letter acknowledges the parties' dispute on this issue, but does not specifically address it. Again, unless we hear differently from you, we will assume the parties are at impasse and will submit a letter to Judge Poppiti on Wednesday, July 15.

Sincerely yours,



Donn P. Pickett

cc: Mr. Eric Friedberg, Esq. (by email)
Ms. Jennifer Martin, Esq. (by email)
Mr. Jeffrey Fowler, Esq. (by email)

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A73090544.1

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)	
)	
Plaintiffs,)	Civil Action No.
)	05-441-JJF
v.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

June 15, 2009

Teleconference in above matter taken pursuant to notice before Renee A. Ewing, Certified Realtime Reporter and Notary Public, in the offices of Fox Rothschild, 919 Market Street, Wilmington, Delaware, commencing at approximately 3:30 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

Corbett Reporting - A Veritext Company
230 North Market Street
Wilmington, DE 19801
(302) 571-0510

1 should have answered Intel's questions.

2 I am satisfied that questions with
3 respect to the timing of AMD's decision to institute its
4 litigation hold or when it first became aware that
5 litigation was likely or factual, that they are not
6 protected by the attorney/client privilege. I do not see
7 that these questions are designed to seek the mental
8 impressions of counsel.

9 With respect to questions 83 and then
10 94, I am inclined to deny that AMD should be required to
11 answer those questions. 83, I believe, implicates the
12 attorney/client privilege, and I preliminarily suggest
13 that 94 is just not very useful.

14 The litigation hold category continued,
15 and this relates to AMD approaching governmental
16 agencies. Those are questions, for the record, 68, 69,
17 70, 71, 73, 74, 75, 76, 77, and 79. I am sorry, I missed
18 one, 77, 78, and 79. Did I say 77? I didn't mean to say
19 77. It's just 76, 78, 79. I am satisfied that the
20 Noerr-Pennington Doctrine is inapplicable. I am
21 satisfied, preliminarily, that Intel is entitled to
22 answers regarding AMD's involvement with the
23 investigations by various governmental agencies and
24 whether records were retained for those investigations.

1 I think that we have given them plenty
2 of notice as to what we want. But the fact that they
3 objected to these things, and now have teed up the very
4 precise questions, it seems to me that rather than try
5 and handcuff my questioning of these witnesses, I'd just
6 as soon proceed as quickly as possible so that we can get
7 onto the motion for further remediation.

8 SPECIAL MASTER POPPITI: And I don't
9 mean to suggest that I want to be handcuffing you. And
10 if you are going to be, I will pick a strange word,
11 "satisfied" with the answer that you get, and, yet, it's
12 not the kind of answer that you would like to anticipate,
13 it may be that that just forms the basis of something you
14 are going to want to be making an application about
15 later.

16 I would note that with respect to
17 question 93, unless what you have given me is not a fair
18 characterization of what the record with respect to 93
19 was, the objection was attorney/client communications.
20 There was no objection, that I am mindful of, that talked
21 about the burden of it all.

22 MR. SAMUELS: Your Honor, you are quite
23 correct. I am thinking ahead now to preparing a witness
24 to actually answer that question and what we would have

1 to do in order to prepare the person. So, that's the
2 issue.

3 SPECIAL MASTER POPPITI: And I do
4 understand that. I made a suggestion to Mr. Pickett, and
5 he is, I think the way I heard him say it is he
6 respectfully declines the suggestion, so he would prefer
7 to get on with it. And I don't know that I am in a
8 position to say, Serve up your questions, and if he winds
9 up with a witness in the chair that you make a good faith
10 effort to prepare and he winds up with yet again another
11 "I don't know," I am not sure that that's going to get
12 any more attention from me.

13 So, from my perspective, it's not a
14 matter of either handcuffing you, Mr. Pickett. If you
15 are inclined to give more information before the next
16 30(b)(6) witness, I think that would be helpful, but I am
17 not going to force you to do that, sir.

18 MR. PICKETT: Let me consider what Your
19 Honor has said. I do think that there is some value in
20 live witness cross-examination.

21 SPECIAL MASTER POPPITI: Sure.

22 MR. PICKETT: I certainly think there is
23 some value to giving the party an opportunity to ask
24 probative follow-up questions, and that's exactly what

1 the District Court decided in that 2007 Cavanaugh case
2 that we cited at Page 2 of our April 24th brief.

3 SPECIAL MASTER POPPITI: Indeed, it did.
4 I am not suggesting anything to the contrary. I just
5 thought that perhaps by giving some better preview would
6 be helpful, but I am going to leave that to you.

7 I am certainly, at the end of this,
8 going to ask you to do some meet and confer before you --
9 and by that, I mean let's talk about you talk about the
10 mechanics of this and how much time you think you are
11 going to need before starting this process again.

12 MR. PICKETT: I appreciate Your Honor's
13 direction there, and we will, obviously, abide by it.
14 But I guess a point of inquiry, really, how much more
15 specific does AMD need to get? They know what contract
16 in 2003 he is talking about. It's specifically alleged
17 in paragraph 30. And I am not sure what the request is.
18 Is it for a list of all follow-up questions that we might
19 propose?

20 MR. SAMUELS: Your Honor, if I might
21 address that. The specific question that was asked,
22 question 93, as Mr. Pickett, I think, knows, the contract
23 that is the subject of that question is what the Japanese
24 Fair Trade Commission determined Intel to have done. So,

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

CERTIFICATE OF SERVICE

I, W. Harding Drane, Jr. hereby certify that on July 15, 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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I hereby certify that on July 15, 2009, I have Electronically Mailed the documents to the following non-registered participants:

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