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By Electronic Filing and Hand Delivery

The Honorable Vincent J. Poppiti
Fox Rothschild LLP
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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:

Intel submits this reply to AMD's opposition to Intel's motion for scheduling modification.

Deadlines for Summary Judgment Motion Briefing. AMD devotes a significant portion of its opposition to fighting an argument that Intel did not make. Intel did not request that the filing deadline for summary judgment motions be moved until after completion of the expert depositions. While Intel believes that would be a preferable outcome – and is consistent with AMD's position in a prior brief¹ – Intel recognizes that Case Management Order Nos. 5 and 7 did not contemplate such a schedule.

Instead, what Intel requested, and what AMD largely ignores in its opposition, is that the filing deadline for summary judgment motions be moved to a date approximately one month after service of the expert rebuttal reports. This is the scheduling sequence that the Court set forth in CMO Nos. 5 and 7.

However, as the chart below shows (in the ninth column, fifth row), the scheduling sequence is now backwards. The deadline for filing summary judgment motions is now three weeks and two days before Intel's receipt of AMD's rebuttal expert witness reports. This does

¹ AMD stated in its May 22, 2009 Opposition to Intel's Rule 16 and 56 Motion that: "The right time and manner for addressing the issues raised in Intel's [Rule 16] motion is the standard process of summary judgment, upon conclusion of factual and expert discovery. . . ." (Opp. at. 3)

not provide Intel with the opportunity to review, evaluate and analyze AMD's rebuttal expert reports to determine what impact, if any, the reports have on potential summary judgment motions. Consequently, it would be inefficient to require the summary judgment motions to be filed on the current schedule, particularly in light of AMD's contention in a prior brief that the issues to be addressed on summary judgment "require serious expert economic analysis." (AMD's May 22 Opposition at 2)

(05-441; 05-1717)	AMD Rpts	Intel Rpts	Time - Wks	Rebuttal Rpts	Time (Wks/ Days)	Expert Disc Period	SJ Mot Due	Wks/Days from Rebuttal Rpts to SJ Mot Due	Briefing Ends	Pretrial/ Trial
CMO #5 (707; 987)	6/8	7/27	7	8/20	3+3	8/21- 10/16	9/21	4+4	11/2	11/5 & 2/15
CMO #7 (1357; 1697)	7/20	9/7	7	10/1	3+3	10/2- 11/27	11/2	4+4	12/14	12/17 & 3/29
CMO #10 (1656; 2022)	8/3	10/5	9	11/2	4	11/3-12/7	11/2	0	12/14	12/17 & 3/29
CMO #11 (1707; 2094)	same	10/19	11	<u>11/25</u> ²	5+2	11/30-1/3	<u>11/2</u> 11/16 ³	<u>Minus 3+2</u> Minus 1+2	12/14 12/28 ⁴	12/17 & 3/29
Intel Prop (1704; 2091)	same	same	11	same	5+2	11/20- 1/15	12/23	4+2	2/5	TBD/ TBD

AMD claims that Intel promised in connection with CMO #10 not to seek a change in the schedule. Intel has in good faith attempted to manage the expert reports and discovery in the context of the existing pretrial and trial dates, and only sought this extension reluctantly. And CMO #10 was negotiated before Intel received AMD's truly massive and unanticipated eight expert witness reports, totaling 2,110 pages with 4,509 footnotes with small font and narrow spacing – and containing extended discussions and weighing of the evidence in the case. The current schedule is no longer feasible, and to point to the good faith efforts as a basis not to confront this reality directly is not constructive.

² The chart in AMD's opposition brief incorrectly states that the deadline for rebuttal reports in CMO #11 is 11/23, when the actual deadline is 11/25. In addition, footnote #2 of AMD's opposition is wrong with respect to the relative extensions of time for AMD's rebuttal reports and Intel's expert reports in CMO #11. Intel received a 14 day extension (not 28 days), and AMD received a 23 day extension (not nine days).

³ AMD proposed; not incorporated into the final order. (The current deadline is 11/2.)

⁴ AMD proposed, not incorporated into the final order. (The current deadline is 12/14.)

Time Period for Expert Depositions To Be Conducted. Intel anticipates it will need approximately 31 deposition days for the depositions of AMD's eight expert witnesses (three days for seven of the experts, and ten days for the eighth expert, Professor Bernheim, whose report is 1,077 pages with 3,865 footnotes.) AMD will need an unknown, but perhaps roughly equal, number of deposition days for the Intel expert witnesses. As a practical matter, there will only be three weeks (fifteen business days) under the current schedule to take expert depositions before running into the holidays. Even if the depositions are multi-tracked, it is clear now that this simply is not enough time, and Intel requests that the deadline to complete the depositions be moved to January 15, 2010. (Extension of this expert deposition deadline will not impact the summary judgment motion filing deadline sought by Intel, which is December 23, 2009.)

Pre-Trial Conference Date. The current pre-trial conference date of December 17 requires the parties to engage in an extraordinary, if not impossible, amount of work to meet their obligations in preparation for the conference in the midst of preparing for, taking and defending the numerous expert witness depositions on a very compressed, multi-tracked time table.

The parties have been working diligently on a very aggressive schedule to meet the pre-trial deadlines previously set by the Court. Discovery in this case, however, has been massive, including multi-tracking fact depositions routinely (at times conducting as many as eleven depositions simultaneously). Over 2,200 hours of fact depositions of more than 275 witnesses have been taken. The depositions have required the collection, organization and analysis of an unprecedented volume of documents, totaling approximately twenty million party-produced documents and over two million third-party documents – a combined production amounting to approximately 5 terabytes of data. AMD served eight expert reports of unprecedented length and scope, Intel is in the process of preparing its expert reports, and AMD will later serve its rebuttal reports. Following that, there will be an extremely aggressive schedule for the expert witness depositions.

This case is incredibly massive, and despite the parties' efforts, a modest modification to the pre-trial conference schedule is urgently needed. Intel respectfully requests that the pre-trial conference date be moved by approximately seven weeks. Alternatively, Intel requests that the Court set two pre-trial conferences. The first would be on the current date of December 17, but would not trigger the parties' obligations under the following three local rules: (1) LR 16.3 (requiring the filing of a proposed pretrial order that must include trial exhibit lists, witness lists, deposition designations, statements of admitted and disputed facts, statement of issues of law, statements of what each party intends to prove at trial, and other information); (2) LR 51.1 (requiring the filing of jury instructions and special verdict forms); and (3) LR 47.1 (requiring the filing of voir dire questionnaires). The second pre-trial conference would be set for early February 2010, and would trigger the parties' obligations under these local rules.

Trial Date. Intel requests that the Court consider resetting the trial date as it deems appropriate based on the foregoing.

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Respectfully,

/s/ Richard L. Horwitz

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