

# **EXHIBIT 1**

**Simmons, Shaun M.**

**From:** Simmons, Shaun M.  
**Sent:** Wednesday, September 09, 2009 2:25 PM  
**To:** 'Lee, Michael M.'  
**Cc:** Sletten, Steven E.; Kattan, Joseph; Denger, Michael L.; Darren B. Bernhard; Srinivasan, Jay P.  
**Subject:** RE: AMD v. Intel Letter

Mike:

We received your letter just before the holiday weekend and are working to respond to Intel's outstanding inquiries. We hope and intend to have a complete response by the end of this week.

Shaun

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**From:** Lee, Michael M. [mailto:MLee@gibsondunn.com]  
**Sent:** Wednesday, September 09, 2009 9:42 AM  
**To:** Simmons, Shaun M.  
**Cc:** Sletten, Steven E.; Kattan, Joseph; Denger, Michael L.; Darren B. Bernhard; Srinivasan, Jay P.  
**Subject:** RE: AMD v. Intel Letter

Shaun,

I have not heard back from you regarding my request that AMD provide written confirmation by yesterday that there are no back-up materials for the Ostrander report, other than the exhibits already provided, as well as a response regarding our other outstanding questions related to the report (as outlined in the letter attached). If AMD does not respond immediately with answers to these questions, we intend to go to the Special Master either later today or soon thereafter.

Thanks very much,  
Mike

<<MML 9-4-09 Ltr to S Simmons.pdf>>

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**From:** Lee, Michael M.  
**Sent:** Friday, September 04, 2009 1:25 PM  
**To:** Simmons, Shaun M.  
**Cc:** Sletten, Steven E.; Kattan, Joseph; Denger, Michael L.; 'Darren B. Bernhard'; Srinivasan, Jay P.  
**Subject:** AMD v. Intel Letter

Shaun:

Please see the attached letter.

Best,  
Mike

<< File: MML 9-4-09 Ltr to S Simmons.pdf >>

9/18/2009

**Michael M. Lee**  
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## **EXHIBIT 2**



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September 15, 2009

OUR FILE NUMBER  
0008346-00163

VIA EMAIL & MESSENGER

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WRITER'S E-MAIL ADDRESS  
ssimmons@omim.com

Re: *AMD v. Intel*

Dear Mike:

This responds to your letter to us dated September 4, 2009, and Intel's letter to Judge Poppiti dated September 9, 2009, relating to materials considered by Dr. Daryl Ostrander in connection with his expert report. As I told you by email shortly before you filed your motion, we have been working diligently to respond to your inquiries, and we simply needed some additional time to track down some answers.

As described below, we are also producing some additional electronic documents. These are being sent to you by messenger on a CD. We can now confirm, as you requested, that we have produced all data and documents considered by Dr. Ostrander in forming the opinions set forth in his report discoverable under the May 10, 2007 Amended Stipulation and Protective Order re Expert Discovery (the "Amended Stipulation"). We are available to meet with you after you have had time to consider this letter with its enclosures to discuss any remaining questions you may have.

[REDACTED]

Intel's letter to Judge Poppiti asks us to more specifically identify the document referenced in Dr. Ostrander's report as the [REDACTED]. As I explained in my September 6, 2009 email to Steve Sletten, the reference should have been to the [REDACTED]. We included that document in Dr. Ostrander's disclosures as AMD-F118-00000209 – AMD-F118-00000247.

**Historic Sales Data**

Exhibit E to Dr. Ostrander's report consists of two "forward-looking" spreadsheets. Those spreadsheets contain entries for "Total but-for unit demand plus buffer" for various years.

As explained generally in his report, Dr. Ostrander calculated "Total but-for unit demand plus buffer" by adding a ten percent buffer to the incremental "but-for" unit demand shown in the "demand statements" attached to Dr. Ostrander's report. This buffered incremental demand was then added to calculated actual sales, which Dr. Ostrander received from Dr. Watson, to arrive at the "Total but-for unit demand plus buffer" shown in the "forward-looking" spreadsheets. We neglected to produce the spreadsheet showing the calculated actual sales, and have done so now. The file name of the spreadsheet is: "2009 06 24 Actual.xls."

In reviewing materials to respond to your inquiries, we learned that Dr. Ostrander was provided a preliminary version of the calculated actual sales spreadsheet. We have included on the CD being sent to you the final and correct version of this spreadsheet, which bears the filename "AMD die distribution.xls."

Because his report deals with different scenarios, Dr. Ostrander utilized four different spreadsheets that calculate the "Total but-for unit demand plus buffer." Each utilizes data extracted from the "actual sales" spreadsheet. Accordingly, there are two sets, the first utilizing the preliminary actual sales data (labeled "Econometric Cutoff Totals.xls," "Econometric Ratio Totals.xls," "USE THIS AMD Base NO Mix Adj Totals.xls," and "USE THIS AMD Base WITH Mix Adj Totals.xls.") and the second using the revised data (labeled "Revised Demand Statement A Totals.xls," "Revised Demand Statement B Totals.xls," "Revised Demand Statement C Totals.xls," and "Revised Demand Statement D Totals.xls"). We also are providing a second set of forward-looking spreadsheets for Demand Statements A and B and Demand Statements C and D, which similarly utilize the revised "actual" sales data. They are "Revised Forward-looking Spreadsheet for Demand Statements A and B.xls" and "Revised Forward-looking Spreadsheet for Demand Statements C and D.xls." These supersede Exhibit E to Dr. Ostrander's report.

### **GlobalFoundries Information**

Exhibits G, I, K, and M to the Ostrander report contain information on historical capital expenditures from 2001 to 2008. That information comes from a document provided to Dr. Ostrander by GlobalFoundries personnel entitled "Manufacturing Capital Delivery Summary." A copy previously was included in Dr. Ostrander's disclosures as AMDX-F819-0027074.

The information appearing in the "Manufacturing Capital Delivery Summary" in turn comes from the business records of GlobalFoundries and AMD. Although not matters "considered" by Dr. Ostrander, and therefore not discoverable under the Amended Stipulation, in the interest of avoiding needless controversy we are pleased to provide you this background.

Data beginning in 2002 was extracted from AMD's SAP fixed asset accounting process module. Specifically, for each of the facilities (*e.g.*, Fab 30) referenced in Dr. Ostrander's report, AMD or Global Foundries employees ran SAP queries to obtain annual data on the value of AMD's fixed asset transactions (*e.g.*, equipment purchases, building improvements). Data for 2001 was obtained from AMD's audited financial statements for the two ATMP facilities (Penang and Singapore), and from a legacy data storage system named GEAC for Fab 30.

Though not considered by Dr. Ostrander in preparing his report, the complete set of actual capital expenditure data for 2001-2008 is contained in the spreadsheet titled "Mfg\_Capital\_Delv\_2001-2008\_Rev.xls," and we are happy to share it with you.

In collecting the information to disclose here, we identified [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] We are also producing revised versions of Exhibits G, I, K, and M that reflect the revisions. They are "Revised Demand Statement A - Historical Data Model - Discovery Period Lost Profits Only CapEx.xls," "Revised Demand Statement B - Historical Data Model - Lost Profits Through 2Q08 CapEx.xls," "Revised Demand Statement C - AMD Forecast model CapEx.xls," and "Revised Demand Statement D - Mix Improvements Model CapEx.xls." They supersede Exhibits G, I, K, and M to Dr. Ostrander's report.

#### **Path Forward**

Our opposition to Intel's motion is due before midnight tomorrow. To give you adequate time to digest this information and to study the documents, and to resolve informally any questions or issues that you think remain, we would ask for an extension of our response date. We would propose Friday of this week, but we are open to any other suggestion you might have.

Very truly yours,



Shaun M. Simmons  
for O'MELVENY & MYERS LLP

SMS:mrp

LA2:892894.3

# **EXHIBIT 3**





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September 18, 2009

OUR FILE NUMBER  
008,346-163

**VIA E-MAIL AND U.S. MAIL**

Robert E. Cooper, Esq.  
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WRITER'S E-MAIL ADDRESS  
ediamond@omm.com

Re: **AMD v. Intel**

Dear Bob:

Thanks for your letter of last evening. Although I can understand your displeasure with a supplemental production of any kind at this date, I think you've overreacted. Not a single line of Dr. Ostrander's expert report has changed. His conclusions remain his conclusions, and the basis for them remains entirely the same. Nor are the opinions of any other expert affected.

The corrections we made are entirely confined to the Ostrander backup materials, they are *de minimus*, and they are entirely immaterial to Dr. Ostrander's analysis. We apologize we didn't catch the mistake earlier, but here's what happened: While responding to Intel's request for additional backup for that report, we discovered that Dr. Ostrander utilized a draft compilation of AMD's actual sales Dr. Watson gave him, not Dr. Watson's final version. The differences between the two are wholly immaterial (about .1%) – hence, no changes to Dr. Ostrander's report – but in the interests of accuracy we felt it necessary to provide you the correct data. Since the actual sales data are replicated in the spreadsheets Dr. Ostrander prepared for each of the scenarios he considered, we also felt it necessary to provide corrected versions of these too. But the changes are all insignificant and do not affect anything.

We produced Dr. Watson's AMD actual sales data as part of the Ostrander disclosures on Tuesday, but in pulling together the additional Ostrander materials Intel requested, we realized we had failed to include the data in the Watson backup. We also decided that it would be useful for Intel to have the code Dr. Watson used to pull actual sales from the AMD database. Again, this changes nothing in the Watson report; it simply makes the backup production more complete.

The only other changes to Dr. Ostrander's back-up materials result from corrected historical capital expenditures data we received while following up on Intel's requests. Again,

these changes have no impact on Dr. Ostrander's analysis or conclusions. We just thought it made sense to include the information and advise you of the changes.

Though not related to any of the expert materials but so you are not taken by surprise, I need to advise you of one other change. At your team's request, we will be producing later today a disc of materials considered by Mr. Meyer in connection with the R&D File Mr. Meyer had prepared. When pulling those materials together, Mr. Meyer further scrubbed the data used in his analysis and made a couple of minor changes to his cost numbers. Again, the revisions have no effect on any of AMD's experts reports or their opinions.

As you know, we have produced reams of data over the past six weeks. As I'm sure Intel will discover, minor glitches are unavoidable despite all of our best efforts to make our disclosures to one another perfect. Our team will be available today and over the weekend to walk your team through the few rows that have changed in the Ostrander spreadsheets and the R&D File, and to respond to any other questions you may have.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles P. Diamond". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Charles P. Diamond  
of O'MELVENY & MYERS LLP

CPD:mos

# **EXHIBIT 4**

**Simmons, Shaun M.**

**From:** Simmons, Shaun M.  
**Sent:** Sunday, September 06, 2009 1:40 PM  
**To:** Sletten, Steven E.  
**Subject:** RE: Outstanding Issues

Steve:

With respect to your first follow up question, the document referenced as "September 2000 Executive Counsel presentation" was mislabeled. It should have instead been referenced as the "September 2000 Feasibility Study." The document was included in Dr. Ostrander's disclosures, and is Bates Labeled AMD-F118-00000209 - AMD-F118-00000247.

With respect to your second follow up question, we are still in the process of confirming the relevant information. We hope to be in a position to get back to you about this next week.

Enjoy the remainder of your holiday weekend.

Shaun

---

**From:** Sletten, Steven E. [SSletten@gibsondunn.com]  
**Sent:** Wednesday, September 02, 2009 10:38 PM  
**To:** Simmons, Shaun M.  
**Cc:** Kattan, Joseph; Denger, Michael L.; Darren B. Bernhard; Lee, Michael M.  
**Subject:** Outstanding Issues

**Shaun:**

**In response to your letter dated August 21, 2009, I follow up on two issues with which we still have questions.**

**First, with respect to vague references to documents mentioned within Daryl Ostrander's back-up materials, we still have one outstanding question, which is the specific example referenced in my August 18 letter. Dr. Ostrander refers to the [REDACTED] in footnotes to certain exhibits, but it is unclear to which document he is referring. Please identify the appropriate Bates number range for this document, or otherwise more specifically identify this document.**

**Second, we still await your response to our question regarding Dr. Ostrander's 39 references to data "provided by Global Foundries." Please inform us which documents contain those data, who prepared those data and for what purpose, and when those data were prepared. Please also prepare any data, programs, methodologies, or materials used in constructing or presenting those data.**

**We'd appreciate answers to these questions no later than Friday, September 4, 2009. Thanks very much.**

**Steve.**

**Steven E. Sletten**  
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9/18/2009

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# **EXHIBIT 5**

**Simmons, Shaun M.**

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**From:** Lee, Michael M. [MLee@gibsondunn.com]  
**Sent:** Friday, September 18, 2009 1:14 PM  
**To:** Simmons, Shaun M.  
**Cc:** Sletten, Steven E.  
**Subject:** RE: AMD v. Intel

Shaun:

We have not yet completed our review of what AMD has provided for Ostrander's materials, so we unfortunately are not in a position to withdraw our motion. Given Judge Pappiti's desire to hear this issue on Wednesday, the schedule does not allow for an extension. So we regrettably cannot withdraw the motion at this time, nor can we give an extension because it would not leave us with adequate time to file a reply.

Mike

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**From:** Simmons, Shaun M. [mailto:ssimmons@omm.com]  
**Sent:** Friday, September 18, 2009 12:41 PM  
**To:** Simmons, Shaun M.; Lee, Michael M.  
**Cc:** Sletten, Steven E.  
**Subject:** RE: AMD v. Intel

Mike or Steve:

It's approaching 4 p.m. EDT, and we've still not received a response from you on my email of this morning. We assume you are not going to hold us to the current deadline for our opposition.

Thanks,

Shaun

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**From:** Simmons, Shaun M.  
**Sent:** Friday, September 18, 2009 8:23 AM  
**To:** 'Lee, Michael M.'  
**Cc:** Sletten, Steven E.  
**Subject:** RE: AMD v. Intel

Hi Mike:

Can you advise whether Intel will withdraw its motion to compel re Dr. Ostrander in light of the letter and CD we provided on Tuesday? Alternatively, if you need more time to review the materials and make your decision, can you let us know if you are agreeable to a further extension of our opposition deadline and how much additional time you would need to complete your review?

Thanks,

Shaun

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**From:** Lee, Michael M. [mailto:MLee@gibsondunn.com]  
**Sent:** Wednesday, September 16, 2009 10:02 AM

9/18/2009

**To:** Simmons, Shaun M.  
**Cc:** Sletten, Steven E.  
**Subject:** RE: AMD v. Intel

Shaun:

Thank you for the letter and CD. We are reviewing the contents and will advise if we have further questions. In response to the last paragraph of your letter, we agree to your request to extend the deadline for AMD's opposition to this Friday.

Thanks,  
Mike

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**From:** Simmons, Shaun M. [mailto:ssimmons@omm.com]  
**Sent:** Tuesday, September 15, 2009 9:32 PM  
**To:** Lee, Michael M.  
**Cc:** Sletten, Steven E.  
**Subject:** AMD v. Intel

Mike:

Please see the attached letter. The original of the letter and the CD referred to therein are being sent to your office tonight via messenger.

Thanks,

Shaun

**Shaun M. Simmons**  
**O'Melveny & Myers LLP**  
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