



1313 North Market Street  
PO. Box 951  
Wilmington, DE 19899-0951  
302 984 6000

[www.potteranderson.com](http://www.potteranderson.com)

**W. Harding Drane, Jr.**  
Partner  
Attorney at Law  
[wdrane@potteranderson.com](mailto:wdrane@potteranderson.com)  
302 984-6019 Direct Phone  
302 778-6019 Fax

September 9, 2009  
Public Version Dated: September 25, 2009

**Via Electronic Mail and Hand Delivery**

The Honorable Vincent J. Poppiti  
Fox Rothschild LLP  
Citizens Bank Center  
919 North Market Street, Suite 1300  
Wilmington, DE 19899-2323

**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;  
Phil Paul v. Intel; C. A. No. 05-485 JJF (DM )**

Dear Judge Poppiti:

Intel Corporation and Intel Kabushiki Kaisha (“Intel”) move the Court to compel production of all supporting and back-up materials related to Advanced Micro Devices, Inc.’s and AMD International Sales & Service, Ltd.’s (“AMD”) expert report of Dr. Daryl Ostrander. AMD has orally represented that no other back-up materials supporting Dr. Ostrander’s report exist, but has not confirmed that representation in writing. Given that AMD belatedly produced a single spreadsheet page prepared by Dr. Ostrander even after its oral representation that no other back-up materials existed, Intel does not know whether it has received all the back-up materials related to Dr. Ostrander’s report. Because AMD has not agreed to confirm in writing that there are no further back-up materials for Dr. Ostrander’s report, Intel has no choice but to file this motion and seek the Court’s assistance in compelling AMD to produce all the back-up materials, or to confirm in writing that no other back-up materials for Dr. Ostrander’s report exist.

Intel also requests the Court to compel AMD to provide responses to Intel’s other outstanding questions related to the Ostrander report, including specifically identifying a document that Dr. Ostrander vaguely refers to as the “September 2000 Executive Council presentation” (for which there is more than one possible match) and providing further information about Global Foundries data that Dr. Ostrander refers to in his report. After repeated requests, AMD still has not provided answers to these questions. Intel seeks the Court’s assistance to compel AMD to respond to these questions, and, if necessary, produce any back-up materials related thereto.

### **Background**

On August 3, 2009, AMD served upon Intel eight expert reports, including the “expert report” of its former manufacturing chief, Dr. Daryl Ostrander. (Lee Decl. ¶ 3; Ex. 1 [Expert Report of Daryl Ostrander].) Along with Dr. Ostrander’s report, AMD served an additional disc containing spreadsheets constituting electronic exhibits to his report. Upon receipt of the reports and supporting materials, Intel and its consultants began diligently reviewing their contents.

In its review, Intel determined that the supporting materials appeared to be deficient, and on August 10, 2009, Intel notified AMD of certain deficiencies in the reports. With respect to Dr. Ostrander’s report, Intel noted that the figures within his spreadsheets contained no underlying formulas or calculations, thus preventing Intel from determining from where the values came. (*Id.* ¶ 4; Ex. 2 at 1 [8/10/09 Intel Letter].) In response, on August 13, 2009, AMD stated, “Turning to the materials supporting the Ostrander report, there are no further spreadsheets supporting the ones already provided to you. If Intel has questions about the information in those spreadsheets, it can certainly explore them at Dr. Ostrander’s expert deposition.” (*Id.* ¶ 5; Ex. 3 at 2 [8/13/09 AMD Letter].) Subsequently, on August 18, 2009, during a telephone conference between the parties, AMD orally represented that there were no further materials supporting the spreadsheets already provided for Dr. Ostrander’s report, as the figures within those spreadsheets were entered in directly and reflected the expert’s judgment and experience. (*Id.* ¶ 6.)

Later that day, Intel raised new questions related to the Ostrander report. Intel requested that AMD more specifically identify the document referred to by Dr. Ostrander in his exhibits as the “September 2000 Executive Council presentation,” for which there is more than one potential match. (*Id.* ¶ 7; Ex. 4 at 3 [8/18/09 Intel Letter].) Intel also requested further information related to Dr. Ostrander’s 39 references in his exhibits to data “provided by Global Foundries,” and asked that AMD produce any data, programs, methodologies, or materials used in constructing or presenting the Global Foundries data. (*Id.*)

On August 21, 2009, AMD responded to Intel’s letter, but did not answer Intel’s specific question related to the “September 2000 Executive Council presentation.” (*See id.* ¶ 8; Ex. 5 at 2-3 [8/21/09 AMD Letter].) AMD also stated that it was “in the process of confirming all of the relevant information to respond to [Intel’s] inquiry about the data from Global Foundries,” and that it would “get back to [Intel] as soon as [AMD could] on this point.” (*Id.* ¶ 8; Ex. 5 at 3 [8/21/09 AMD Letter].) Also in this letter, despite its prior representation that there were no other materials supporting the spreadsheets already provided for Dr. Ostrander’s report, AMD disclosed that it had “inadvertently omitted” from Dr. Ostrander’s disclosure a spreadsheet page prepared by Dr. Ostrander and belatedly produced it almost three weeks after the original deadline for expert disclosures. (*Id.*)

Having still not heard from AMD regarding its outstanding questions related to the Ostrander report, Intel again followed up with AMD on September 2, 2009 and asked that AMD

Page Three  
The Honorable Vincent J. Poppiti  
September 9, 2009  
Public Version Dated: September 25, 2009

provide responses to its questions regarding the “September 2000 Executive Council presentation” and the Global Foundries data. (*Id.* ¶ 9; Ex. 6 [9/2/09 Intel E-mail].) On September 4, 2009, Intel also sought written confirmation from AMD that “no further data, documents, files, or spreadsheets containing formulas, methodologies, or calculations for Dr. Ostrander’s expert report exist, aside from the spreadsheets already provided.” (*Id.* ¶ 10; Ex. 7 at 1 [9/4/09 Intel Letter].) AMD did not respond to this correspondence, nor to Intel’s warning that it would raise these outstanding issues with the Special Master. (*Id.* ¶ 11; Ex. 8 [9/9/09 Intel E-mail].)

### **Argument**

Federal Rule of Civil Procedure 26(a)(2)(B) requires that a party who has designated an expert witness for trial provide a report that contains, among other things, a “complete statement of all opinions the witness will express and the basis and reasons for them,” and “*the data or other information considered by the witness in forming them.*” Fed. R. Civ. P. 26(a)(2)(B)(i), (ii) (emphasis added); *see also Dunkin’ Donuts Inc. v. Patel*, 174 F. Supp. 2d 202, 211 (D.N.J. 2001) (“The test of a report is whether it [is] sufficiently complete, detailed and in compliance with the Rules so that surprise is eliminated, unnecessary depositions are avoided, and costs are reduced.”) (citation and internal quotation marks omitted).

Here, AMD has refused to confirm in writing that no further back-up materials related to the Ostrander report exist. While AMD originally represented that “there are no further spreadsheets supporting the ones already provided to you” for the Ostrander report (Lee Decl. ¶ 5; Ex. 3 at 2), it reversed this position shortly thereafter when it belatedly produced a spreadsheet prepared by Dr. Ostrander, a spreadsheet that should have been provided in its original disclosure. Since that supplemental production, Intel has been left to wonder whether AMD has satisfied its Rule 26(a)(2)(B) obligations in producing all “the data or other information considered by” Dr. Ostrander in forming his opinions. To resolve this question, Intel asked AMD to confirm that “no further data, documents, files, or spreadsheets containing formulas, methodologies, or calculations for Dr. Ostrander’s report exist, aside from the spreadsheets already provided.” (Lee Decl. ¶ 10; Ex. 7 at 1.) AMD has thus far failed to provide this confirmation, and thus Intel still does not know whether it has received *all* the back-up materials related to Dr. Ostrander’s report. This has prevented Intel from confirming whether it has all the necessary materials to respond to Dr. Ostrander’s conclusions. If AMD has not produced all the back-up materials, it should be compelled to produce all the back-up and supporting materials for the Ostrander report, as it should have over a month ago in its original disclosure. *See Johnson v. Gonzalez*, 191 F.R.D. 638, 646 (D. Kan. 2000) (“the language of amended Rule 26(a)(2)(B) [is] clear and plain – *all* data or information considered by the expert must be disclosed”) (emphasis in original). If it has no back-up material for this report, which consists entirely of conclusions with no citations to supporting data or evidence, it should say so expressly. Intel should not be left guessing, especially as it must file a responsive report of its own expert.

Page Four  
The Honorable Vincent J. Poppiti  
September 9, 2009  
Public Version Dated: September 25, 2009

In addition, AMD has yet to provide any answers to Intel's outstanding questions regarding the Ostrander report. First, Dr. Ostrander merely refers to a "September 2000 Executive Council presentation" in his exhibits without providing any further information. Intel cannot determine to which document he is referring, as more than one possibility exists. Second, AMD still has not provided further information related to the data "provided by Global Foundries," even though AMD previously promised to do so. Dr. Ostrander broadly references this data in his spreadsheets, but provides no further information on where this data is located, who prepared the data and for what purpose, and when the data was prepared. Intel has repeatedly asked AMD to provide any data, programs, methodologies, or materials used in constructing or presenting the Global Foundries data, but to date, AMD has ignored this request. Again, without this information, which is required under Rule 26(a)(2)(B), Intel cannot adequately analyze and respond to the findings within Dr. Ostrander's report.

**Request for Relief**

Intel respectfully requests the Court to compel AMD either to immediately produce all the back-up materials related to Dr. Ostrander's report or to confirm that no back-up materials, other than the spreadsheets already provided, exist for Dr. Ostrander's report. Intel also respectfully requests the Court to compel AMD to provide answers to its outstanding inquiries related to the "September 2000 Executive Council presentation" and Global Foundries data and to produce any additional data, programs, methodologies, or materials used in constructing or presenting this data, if necessary.

Respectfully yours,

*/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)  
935077/29282