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**VIA ELECTRONIC FILING AND HAND DELIVERY**

The Honorable Vincent J. Poppiti  
Special Master  
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REDACTED PUBLIC VERSION  
OCTOBER 16, 2009

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

Dear Judge Poppiti:

Intel is relentless in attempting to derail the pretrial schedule. Its latest initiative stems from corrections made by *one* of AMD's eight experts, corrections that generally range in the tenths of a percent, are largely in Intel's favor and were caught when Intel called discrepancies in the data to AMD's attention. Only extreme good cause should disrupt a pretrial schedule at this late date, and Intel fails to show any.

This last-ditch effort to buy time revolves around data supporting the report of Dr. Daryl Ostrander, a former AMD senior executive with over twenty-five years of microprocessor manufacturing experience but who is on his first outing as an expert witness. Dr. Ostrander will testify about (1) AMD's capacity to make more microprocessors had demand not been artificially constrained by Intel's marketplace misconduct and (2) the capital costs AMD would have incurred in doing so. Using projections of additional "but for" demand developed by AMD's economists and data provided to him about AMD's actual sales, Dr. Ostrander painstakingly analyzed quarter-by-quarter, part-by-part, whether AMD had, or could reasonably deploy, capacity to meet that demand. His task was complicated because the economists necessarily had to provide him different demand scenarios (e.g., with and without improved product mix, including and excluding post-discovery period projections, etc.) and because Intel's pending summary judgment motion -- seeking to exclude AMD's domestic Fab 25 from the analysis -- required Dr. Ostrander to do everything twice.



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Although Dr. Ostrander brought to the task an elegantly simple approach, his analysis generated a lot of numbers. From veritably the week AMD delivered his report to Intel, Intel besieged AMD counsel with questions and requests for documents and more underlying data. AMD could have declined, as was its right under the CMO, and deferred answering Intel's barrage of questions until the expert discovery window opened in December after the submission of rebuttal reports. Instead, AMD diligently responded to those inquiries -- through written responses, through productions of additional materials, by making teams of lawyers and consultants available for conference calls, and, where appropriate, through updates and corrections to previously-provided materials.

Intel's latest complaint arises from corrections that originated with a call convened at Intel's request on September 29, 2009. But most of Intel's current moaning concerns earlier perceived omissions and corrections. All of those, however, were detailed in support of Intel's unsuccessful request in DM 41 to push back the pretrial schedule, which the Court declined to do in its order following the hearing on September 22, 2009. Intel's current effort to recycle the same already-rejected arguments, based on the same alleged deficiencies in Dr. Ostrander's disclosures, bespeaks desperation and is an imposition on AMD and the Court.

Intel also initiated two DMs to compel the production of additional material related to the Ostrander report, DM 40 which generally sought production of material considered by Dr. Ostrander, and DM 39 which sought production of certain manufacturing data. Intel withdrew both after AMD demonstrated, either in formal opposition or during the meet and confer process, that Intel had what it was entitled to. (Pugsley Decl., Exhs. 1, 2, 3, 4 & 5.)<sup>1</sup> In neither case did Intel seek an adjustment of its expert report dates. It would be grossly unfair to allow it to wind back the clock and grant it relief that it never sought in the first place on closed DMs.

So what happened as a result of the September 29, 2009 conference call? The call was originally convened to address still further expert-related questions raised by Intel. (Pugsley Decl. ¶ 7.) During the course of that call, Intel asked only one question about a spreadsheet Dr. Ostrander prepared in the course of preparing his report pointing to a discrepancy between entries therein and in an earlier version.<sup>2</sup> AMD could have chosen to ignore the discrepancy, waited until Intel raised it in its expert reports and dealt with it on rebuttal. Instead, it had Dr. Ostrander investigate. In investigating the answer to Intel's question, AMD discovered that a total of only four numbers had to be corrected in the spreadsheet. As AMD has explained to

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<sup>1</sup> The Declaration of Clara Pugsley In Support of AMD's Opposition to Intel's Motion for an Extension of Time to Respond to AMD's Amended Expert Reports is being filed contemporaneously herewith.

<sup>2</sup> The day after the September 29 call, Intel sent a letter raising an additional question concerning Dr. Ostrander's materials and asked that AMD produce further information in response. AMD's responsive October 6 letter explained that the question was based on an erroneous assumption and that AMD had already produced the material Intel requested. (Pugsley Decl., Exh. 6.) That was the end of it.

Intel, these revisions do not affect Dr. Ostrander's methodology or conclusions in any way. (Pugsley Decl., Exh. 6.) AMD also discovered two other mistakes. First, Dr. Ostrander had overstated the capital costs associated with a single testing facility in Singapore that constitutes only a miniscule part of AMD's overall capital cost spending. Those corrections resulted in reducing AMD's total estimated capital expenditures by no more than 2.6%. Second, Dr. Ostrander discovered

Accordingly, he determined that in some quarters AMD would not have been able to make all the K7-Thoroughbred chips that the economists had forecast (an adjustment entirely in Intel's favor). These corrections changed by tenths of a single percent the total number of chips AMD would have produced in the "but for" world.

Intel wails that the sky has fallen in on them as a result. Absurd. Granted, the corrections do affect five of the eight scenarios Dr. Ostrander modeled. And granted, when one cell of a spreadsheet changes, it changes some others. But by how much? In total, the revisions reduce by less than 1% the volume of microprocessors AMD could have manufactured in the "but for" world the economists have modeled.

Despite the *sturm und drang* of Intel's papers, the Intel consultant charged with responsibility for rebutting Dr. Ostrander's work conspicuously fails to opine that he is unable to complete a response to Dr. Ostrander's report in the available time. Indeed, Dr. Quinn admits he cannot assess the changes (because he says he doesn't fully understand them), and he concedes that any he may discover in the future may be "trivial." To the extent Intel has not identified the changes, Intel's remedy was to make a call or send an email requesting another all-hands conference. As AMD has done repeatedly in the past, we would have been happy to walk Dr. Quinn through the changes. We still are. But Intel certainly does not have an excuse to "blow up" the schedule, particularly when the declaration from its responding expert, Dr. Quinn, doesn't even say he needs more time!

Finally, even if there were reasons to give Dr. Quinn more time, there is no reason to extend to November 9, 2009 the deadline for any other reports. Not surprisingly, the changes to Dr. Ostrander's "but for" production numbers have ripple effects in that they change Dr. Watson's estimate of "but for" revenues, which in turn changes Dr. Lys's estimate of AMD's lost profits. But those changes are simply spreadsheet-driven adjustments, and they require no different or additional analysis on Intel's part. Indeed, Intel submits nothing to justify a postponement of other reports; there is no Quinn equivalent from any of the experts rebutting Dr. Watson and Dr. Lys.

There has been no significant revision of any of AMD's expert reports or supporting schedules. For that reason, AMD believes that the schedule should remain as it is. But we would not be opposed to Dr. Quinn (or whoever else will be rebutting Dr. Ostrander) being given an additional week, until October 26, 2009, to file his report. That is the same extension AMD

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granted Intel for its damages expert in light of Intel's inability to get around to deposing two underlying fact witnesses who AMD agreed to make available back in July. We ask, in return, only that Dr. Ostrander's rebuttal be continued for an additional one week, thereby giving Dr. Ostrander the same amount of time he has under the current schedule to respond to the report of Intel's expert.

Respectfully,

*/s/ Frederick L. Cottrell, III*

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