

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

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IN RE )  
INTEL CORPORATION )  
MICROPROCESSOR ANTITRUST )  
LITIGATION )

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MDL No. 1717-JJF

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

Plaintiffs, )

C.A. No. 05-441-JJF

v. )

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

Defendants. )

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PHIL PAUL, on behalf of himself )  
and all others similarly situated, )

C.A. No. 05-485-JJF

Plaintiffs, )

CONSOLIDATED ACTION

v. )

REDACTED PUBLIC VERSION

OCTOBER 16, 2009

INTEL CORPORATION, )

Defendants. )

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**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**

I, Clara M. Pugsley, declare as follows:

1. I am an attorney admitted to practice law in the state of New York and before this court *pro hac vice*. I am an associate at O'Melveny & Myers LLP, counsel to Advanced Micro Devices, Inc. and AMD International Sales & Service Ltd. (collectively, "AMD") in this action. I have personal knowledge of the matters stated in this declaration and, if called as a witness, I would testify competently to them.

2. Attached hereto as **Exhibit 1** is a true and correct copy of Intel's Motion to Compel Production of Back-up Materials Related to Expert Report of Dr. Daryl Ostrander, dated September 9, 2009 (DM 40).

3. Attached hereto as **Exhibit 2** is a true and correct copy of Intel's Motion to Compel Production of AMD's "Back-end" Manufacturing data, dated September 2, 2009 (DM 39).

4. Attached hereto as **Exhibit 3** is a true and correct copy of the stipulation that resolved Intel's September 2, 2009 Motion to Compel (DM 39).

5. Attached hereto as **Exhibit 4** is a true and correct copy of AMD's Opposition to Intel's Motion to Compel Production of Back-up Materials Related to Expert Report of Dr. Daryl Ostrander, dated September 18, 2009 (DM 40).

6. Attached hereto as **Exhibit 5** is a true and correct copy of Intel's letter to the Court dated September 21, 2009 withdrawing its Motion to Compel Production of Back-up Materials Related to Expert Report of Dr. Daryl Ostrander (DM 40).

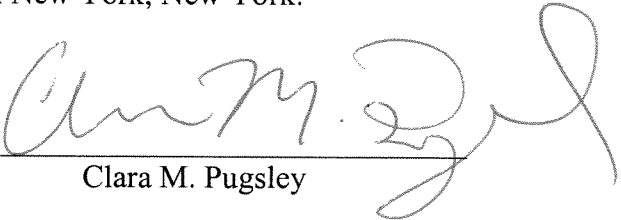
7. Along with other attorneys representing AMD, opposing counsel representing Intel, and consultants working with both parties, I participated in a

conference call on September 29, 2009 that was scheduled at Intel's request in part to discuss materials supporting the expert report of Dr. Daryl Ostrander.

8. During that call, Intel's attorneys and consultants raised only one issue concerning Dr. Ostrander's materials involving only a few cells of a file titled "Forward-looking Spreadsheet for Demand Statements A and B.xls." AMD agreed to investigate the answer to Intel's question and report back to them.

9. AMD responded to Intel's single question concerning Dr. Ostrander's materials in a letter dated October 6, 2009, a true and correct copy of which is attached hereto as **Exhibit 6**.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on October 10, 2009 in New York, New York.

  
\_\_\_\_\_  
Clara M. Pugsley

# **EXHIBIT 1**



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September 9, 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

**CONFIDENTIAL  
FILED UNDER SEAL**

**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 [REDACTED]

[REDACTED] 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, [REDACTED]

[REDACTED] (*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 [REDACTED] 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 [REDACTED] 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 [REDACTED] (*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 [REDACTED] 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 [REDACTED] [REDACTED] (*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

provide responses to its questions regarding [REDACTED] (*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.

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The Honorable Vincent J. Poppiti  
September 9, 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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)



# **EXHIBIT 2**



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September 2, 2009

**Via Electronic Mail and Hand Delivery**

The Honorable Vincent J. Poppiti  
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Wilmington, DE 19899-2323

**CONFIDENTIAL  
FILED UNDER SEAL**

**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") hereby move the Court to compel production of Advanced Micro Devices, Inc.'s and AMD International Sales & Service, Ltd.'s ("AMD") "back-end" manufacturing data.<sup>1</sup> Despite repeated requests from Intel for a complete production of data regarding AMD's back-end manufacturing, and repeated promises by AMD that it would complete its production, AMD has failed to comply with its discovery obligations. Intel has been exceedingly patient in working with AMD but Intel's impending expert report deadline now leaves it no choice but to file this motion and seek the Court's assistance.

AMD's manufacturing capabilities, including its back-end manufacturing, are a central issue in this lawsuit [REDACTED]

[REDACTED] Further, AMD's recently-served expert report of Daryl Ostrander relies on assumptions about AMD's historical back-end manufacturing data, but AMD has failed to provide the supporting data. Given the fast-approaching deadline for Intel's expert reports, Intel needs a complete production of this data immediately.

**Background**

[REDACTED]  
[REDACTED] Intel has sought AMD's back-end manufacturing data since

<sup>1</sup> Microprocessor manufacturing is divided into two general parts, the "front end" and the "back end." "Front end" refers to the production of a microprocessor "die," whereas "back end" refers to the testing of the die and its assembly into a package suitable for assembly into a computer.

early in the discovery period. In February 2008, Intel requested data from AMD about the microprocessors processed at its back-end facilities as well as AMD's "yields on a facility-by-facility, product-by-product and quarter-by-quarter basis." (Ex. 1 at 3 [02/01/08 Intel email].)<sup>2</sup>

In February 2009, AMD finally produced data about its front-end manufacturing processes but did not make a similar production of its back-end manufacturing data. On April 2, 2009, Intel renewed its request for "data on AMD's back-end manufacturing" by asking for "information, similar to what was provided for the front-end, that details the various back-end processes until a product ships to a customer (including inventory-related data)." (See Ex. 2 at 1 [04/02/09 Intel email].) AMD responded that it was gathering "the additional manufacturing data that you requested [i.e., the back-end data], and will produce it as soon as its collection is complete." (Ex. 3 at 1 [05/05/09 AMD email].) AMD did not follow through on its promise.

A month after AMD's promise, on June 4, 2009, Intel again requested AMD's back-end data. (Ex. 4 at 2 [06/04/09 Intel letter].) AMD promised that it would "get back to [Intel] on this issue by the end of next week." (Ex. 5 at 1 [06/16/09 AMD letter].) AMD then made another promise that the data would be forthcoming. Nearly a month later, on July 7, 2009, AMD told Intel that it would review the back-end data the following day, and produce it "to Intel shortly thereafter." (Ex. 6 at 1 [07/07/09 Intel letter].) No such production occurred, though AMD acknowledged that Intel had "made the urgency of this issue clear several times." (Ex. 7 at 1 [07/14/09 AMD email].)

On July 17, AMD's counsel offered a counsel-generated spreadsheet in lieu of the data. After Intel insisted on the production of the underlying data in addition to the spreadsheet, AMD withdrew its offer, but finally made a back-end data production in the last week of July (Ex. 8 at 1 [07/31/09 Intel letter]). This production, however, was substantially incomplete, missing much of the data sought by Intel and identified in its June 4, 2009 letter. (*Id.* at 1-2.) Intel then reiterated its request for a full production of AMD's back-end data. (*Id.* at 2-3.)

After further and repeated prodding (Exs. 9-11 [08/06/09 AMD email; 08/20/09 Intel letter; 08/21/09 AMD email], AMD made a series of productions culminating on August 25 (Exs. 12-13 [08/25/09 AMD letter; 8/25/09 AMD email]). But rather than make a full production, AMD produced a series of weekly reports that included only some of the data owed to Intel. For example, the reports entirely omit certain categories of back-end manufacturing data and do not cover the entire relevant period. A number of the reports are missing, and for some time periods, AMD has omitted key data. In addition, many of these reports are difficult to read, and the reports themselves rely upon – and present only a partial picture of – the underlying back-end manufacturing dataset that Intel is seeking. In short, these reports are no substitute for AMD's actual back-end data, the production of which AMD continues to evade without explanation.

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<sup>2</sup> The exhibits cited in this letter are appended to the Declaration of Jay Srinivasan, which has been filed with the letter.

### Argument

Federal Rule of Civil Procedure (“FRCP”) 26(b)(1) requires production of “any nonprivileged matter that is relevant to any party’s claim or defense.” *Daval Steel Products v. M/V Fakredine*, 951 F.2d 1357, 1365 (3d Cir. 1991) (“The discovery provisions of the Federal Rules of Civil Procedure are ‘designed to achieve disclosure of all the evidence relevant to the merits of a controversy.’”).

AMD’s back-end data is unquestionably relevant here. Notably, during the entirety of Intel’s efforts to obtain this data, AMD has never disputed the data’s relevance. Nor could it credibly do so. AMD claims that Intel denied AMD additional microprocessor sales. A critical part of Intel’s defense is that AMD’s did not have sufficient manufacturing capability to meet the demand that AMD actually enjoyed, let alone any additional demand. The discovery sought by Intel goes to the heart of this issue.

[REDACTED]

[REDACTED] FRCP 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.*” FRCP 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).

Dr. Ostrander’s report violates FRCP 26(a)(2)(B)(ii) because AMD has not produced the back-end manufacturing data that Dr. Ostrander must have relied upon in making assertions about AMD’s manufacturing capabilities (unless he considered no data or other evidence in making the assertions in his report).<sup>3</sup> 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). In his report, Dr. Ostrander relies upon AMD’s historical manufacturing capabilities – including AMD’s historical back-end manufacturing capabilities – to support his conclusions. (Ex. 14 at ¶¶ 40-50 [Expert Report of Dr. Daryl Ostrander].) But Dr. Ostrander’s report does not cite any evidence in support of his claims, rendering the discovery at issue even more essential for testing the validity of his assertions.

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<sup>3</sup> This defect is also a proper grounds to strike Dr. Ostrander’s report, which is woefully inadequate in a number of respects and consists entirely of conclusions that are unadorned by citation to a single piece of supporting data or, indeed, any other evidence. Intel will challenge this report at the appropriate time but, for the moment, Intel requires AMD’s back-end data to respond to Dr. Ostrander’s report and to otherwise defend itself in this case.

Intel's need to receive the back-end manufacturing data cannot be overstated. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Without a complete set of AMD's actual back-end yields (for the entirety of the relevant time period by product, by bin, by quarter), Intel cannot verify Dr. Ostrander's assertion [REDACTED]

Another example of the prejudice to Intel stems from Dr. Ostrander's assumption that [REDACTED]

[REDACTED] Without knowledge of the content, quality, and eventual disposition of AMD's microprocessor inventories by product, by quarter, and by bin, Intel cannot evaluate or respond to Dr. Ostrander's claim that [REDACTED]

A final example is Dr. Ostrander's assertion regarding [REDACTED]

[REDACTED] Without AMD's inventory data, including the data regarding down coring and down caching, Intel cannot evaluate [REDACTED]

Wholly apart from the need to respond to Dr. Ostrander's report, Intel needs the back-end manufacturing data to establish exactly how much AMD was able to produce. Without a complete set of AMD's back-end manufacturing data, Intel cannot fully respond to Dr. Ostrander's report or fully defend itself.

**Request for Relief**

Intel respectfully requests the Court to compel AMD to make an immediate production of a complete set of AMD's back-end manufacturing data.

Respectfully yours,

*/s/ W. Harding Drane, Jr.*

W. Harding Drane, Jr.

Page 5  
The Honorable Vincent J. Poppiti  
September 2, 2009

WHD:cet  
cc: Clerk of Court (via Hand Delivery)  
Counsel of Record (via CM/ECF & Electronic Mail)

931668v.1/29282

# **EXHIBIT 3**

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

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IN RE  
INTEL CORPORATION  
MICROPROCESSOR ANTITRUST  
LITIGATION

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) MDL No. 1717-JJF  
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ADVANCED MICRO DEVICES, INC., a  
Delaware corporation, and AMD  
INTERNATIONAL SALES & SERVICES, LTD.,  
a Delaware corporation,

Plaintiffs,

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)  
) C.A. No. 05-441-JJF  
)  
)  
)

v.

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

Defendants.

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PHIL PAUL, on behalf of himself  
and all others similarly situated,

Plaintiffs,

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)  
) C.A. No. 05-485-JJF  
)  
)  
)

v.

INTEL CORPORATION,

Defendants.

)  
)  
) CONSOLIDATED ACTION  
)  
)  
)

**STIPULATION RESOLVING DISCOVERY MATTER 39**

WHEREAS, in their responses to the Requests for the Production of Documents subject to the custodian stipulation, the parties agreed to produce non-privileged, responsive documents and things contained in (i) the files of the custodians designated pursuant to the custodian stipulation; and (ii) corporate or department files, databases or



shared servers, or other files maintained outside the custody of any particular custodian;  
and

WHEREAS, with respect to the production of information from databases, the parties have requested and exchanged information in good faith through a series of informal discussions, written questions and responses, and consultations with their respective consultants; and

WHEREAS, AMD has agreed to and has produced to Intel data generally relating to, among other things, AMD's manufacturing processes; and

WHEREAS, Intel filed a motion before the Special Master, which has been designated as Discovery Matter No. 39 (DM 39), arguing that the data AMD produced regarding its "back-end" manufacturing process is insufficient, and seeking to compel AMD to produce additional data related to its "back-end" manufacturing data; and

WHEREAS, the additional back-end manufacturing data that Intel seeks includes, but is not limited to: a) additional data similar to the back-end data contained in the weekly manufacturing reports that AMD already has produced but for periods for which AMD has not been able to locate any such weekly reports; b) additional data regarding AMD's back-end die-to-ship yield; and c) additional data regarding AMD's die bank, finished goods inventory, and other inventories; and

WHEREAS, Intel and AMD have engaged in meet and confer discussions regarding the level of detail or "granularity" of data that Intel has requested and have reached a common understanding of the type and level of detail or "granularity" of the additional data that Intel is seeking; and

WHEREAS, consistent with these discussions, Intel is willing to forego additional data or information that provides additional detail or “granularity” (e.g., information at the OPN level) about the data contained in the weekly back-end reports that AMD already has produced, but Intel is seeking additional data at approximately the same or lesser degree of detail or granularity as the data that is contained in the weekly back-end reports that AMD already has produced.

WHEREAS, AMD maintains that it has conducted a reasonable and good faith search for information responsive to Intel’s data requests and maintains that it already has made a sufficient and complete production of back-end manufacturing data in response to Intel’s requests.

NOW, THEREFORE, the parties through their respective counsel of record, hereby stipulate and agree as follows, subject to the approval of the Court:

1. AMD understands, consistent with the parties’ discussions, that Intel is seeking additional data that shows AMD’s back-end yield (also referred to as DTS yield or ATMP yield) between 2000 through 2008, beyond what AMD already has produced. AMD represents that it has engaged in a reasonable and good faith effort to identify data responsive to Intel’s request. AMD understands that the data reports it already has produced to date contain the data of record reported internally within AMD for AMD’s back-end yield and it has not been able to locate any additional data of record responsive to Intel’s manufacturing data requests.

2. AMD understands, consistent with the parties’ discussions, that Intel is seeking additional data that shows AMD’s die bank inventory, finished goods inventory, and other back-end inventories between 2000 through 2008, beyond what AMD already

has produced. AMD represents that it has engaged in a reasonable and good faith effort to identify data responsive to Intel's request. AMD understands that the reports it already has produced to date contain the data of record reported internally within AMD for AMD's die bank inventory, finished goods inventory, and other inventories and it has not been able to locate any additional data of record responsive to Intel's manufacturing data requests.

3. AMD represents that its manufacturing expert, Daryl Ostrander, did not rely in any respect in forming his expert opinions upon any back end manufacturing data that AMD has not produced to Intel by the date of this Stipulation. Intel states that it will object to any effort by Dr. Ostrander or any other AMD expert to rely on any additional back end manufacturing or other data that AMD has not produced to Intel by the date of this Stipulation and AMD represents that it is not aware of any such additional back end manufacturing or other data upon which Dr. Ostrander or any other AMD expert intends to or could rely.

4. Based on AMD's representations contained in this Stipulation, Intel agrees to withdraw its motion to compel and to resolve DM 39 pursuant to the terms of this Stipulation.

/s/ James L. Holzman

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Interim Liaison Counsel and Attorneys  
for Phil Paul, on behalf of himself a and  
all others similarly situated

/s/ Frederick L. Cottrell, III

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and AMD International Sales & Service,  
Ltd.*

/s/ W. Harding Drane, Jr.

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Attorneys for Intel Corporation and  
Intel Kabushiki Kaisha

**ORDER**

**SO ORDERED** this \_\_\_\_\_ day of October, 2009.

\_\_\_\_\_  
Vincent J. Poppiti (#100614)  
Special Master

# **EXHIBIT 4**

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September 18, 2009

**VIA ELECTRONIC MAIL AND HAND DELIVERY**

The Honorable Vincent J. Poppiti  
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**CONFIDENTIAL  
FILED UNDER SEAL**

**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 40)**

Dear Judge Poppitti:

Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. (“AMD”) oppose Intel’s motion to (1) either (a) compel production of discoverable materials related to Dr. Daryl Ostrander’s expert report or (b) require written confirmation from AMD that it has produced all such material, and (2) require AMD to provide certain other information, on the ground that the motion is moot. At the time Intel filed its motion, it knew that AMD had already responded in part to its inquiries, and was working diligently to complete the process. ( See Exhibit 1, e-mail dated September 9, 2009 from Shaun Simmons to Michael M. Lee.) By early this week AMD had provided Intel with all of the required documents, answered Intel’s questions, and provided the written confirmation Intel sought:

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”).

(Exhibit 2 at 1, September 15, 2009 letter from Shaun Simmons to Michael Lee.) Accordingly, the Court should deny Intel’s motion.

As explained in its September 15 letter to Intel, AMD learned when responding to Intel’s inquiries that certain exhibits attached to Dr. Ostrander’s report contained data based on a preliminary version of a spreadsheet that calculated AMD’s actual sales of microprocessors. AMD produced both the preliminary and final versions of the spreadsheet, as well as the original and final versions of intermediate spreadsheets based respectively on the preliminary and final

■ ■ ■

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RLF1-3436762-1

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versions of the actual sales calculations, and revised versions of Dr. Ostrander's exhibits reflecting the final sales numbers. (See Exhibit 2 at 1-2.)

Similarly, certain exhibits to Dr. Ostrander's report contained information based on a summary of historical capital expenditures provided by GlobalFoundries. In responding to Intel's inquiries, AMD learned [REDACTED]  
[REDACTED] AMD also voluntarily provided background information on how the data in the summary was obtained, as Intel had requested. (See Exhibit 2 at 2-3.)

As we have previously advised Intel, and as we reiterated to its lead counsel today, the corrected versions of documents AMD provided are entirely confined to the Ostrander backup materials, they are *de minimus*, and they are entirely immaterial to Dr. Ostrander's analysis.

“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.” (See Exhibit 3 at 1, September 18, 2009 letter from Charles P. Diamond to Robert E. Cooper.)

Finally, Intel's motion repeatedly asks the Court to compel AMD to identify more specifically a document referenced in Dr. Ostrander's report as [REDACTED]  
[REDACTED] and erroneously claims that AMD has refused to respond to Intel's questions about this document. In fact, AMD did so three days *before* Intel filed its motion, explaining that the reference should have been to [REDACTED]  
[REDACTED] and that the document had been included in Dr. Ostrander's original disclosures as AMD-F118-00000247. (Exhibit 4, September 6, 2009 e-mail from Shaun Simmons to Steven E. Sletten.)

Unfortunately, even though AMD has provided it with everything it sought, Intel has declined to withdraw its motion, stating that it has not yet completed its review of the material produced. (Exhibit 5, September 18, 2009 email from Michael Lee to Shaun Simmons.) Nor would Intel agree to continue the hearing date while it finishes its review. (*Id.*)

AMD has complied fully with its obligations under the Amended Stipulation and has confirmed in writing that it has done so. The Court therefore should deny Intel's motion as moot.

The Honorable Vincent J. Poppiti  
September 18, 2009  
Page 3

Respectfully,

*/s/ Frederick L. Cottrell, III*

Frederick L. Cottrell, III (#2555)  
Cottrell@rlf.com

FLC,III/afg

cc: Clerk of the Court (via electronic filing)  
Richard L. Horwitz, Esquire (via electronic filing)  
James L. Holzman, Esquire (via electronic filing)



# **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

---

**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>>

---

**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**

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue

Los Angeles, CA 90071

Phone: (213) 229-7937

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MLee@gibsondunn.com

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# **EXHIBIT 2**



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WASHINGTON, D.C.

September 15, 2009

OUR FILE NUMBER  
0008346-00163

VIA EMAIL & MESSENGER

WRITER'S DIRECT DIAL  
(213) 430-7645

Michael M. Lee, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197

WRITER'S E-MAIL ADDRESS  
ssimmons@omm.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] data [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**





## O'MELVENY & MYERS LLP

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WASHINGTON, D.C.

September 18, 2009

OUR FILE NUMBER  
008,346-163

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

Robert E. Cooper, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, California 90071-3197

WRITER'S DIRECT DIAL  
(310) 246-6789

WRITER'S E-MAIL ADDRESS  
cdiamond@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.**

---

**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 Poppiti'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

---

**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

---

**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

---

**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

---

**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**  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 430-7645  
(213) 430-6407 (Fax)

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# **EXHIBIT 5**



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**W. Harding Drane, Jr.**  
Partner  
Attorney at Law  
wdrane@potteranderson.com  
302 984-6019 Direct Phone  
302 778-6019 Fax

September 21, 2009

**By Electronic Filing 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 40 )  
Withdrawal of Motion To Compel Production of Back-up Materials Related to  
Expert Report of Dr. Daryl Ostrander**

Dear Judge Poppiti:

Upon reviewing AMD's letter opposition and the new materials produced by AMD last week in connection with Dr. Daryl Ostrander's expert report, and having received AMD's written confirmation that AMD has "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" (Opp. at 1), Intel respectfully withdraws its motion to compel the production of all back-up materials related to the expert report of Dr. Daryl Ostrander (DM 40).

Respectfully,

/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)

# **EXHIBIT 6**



O'MELVENY & MYERS LLP

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WASHINGTON, D.C.

October 6, 2009

OUR FILE NUMBER  
8,346-163

VIA E-MAIL & MESSENGER

WRITER'S DIRECT DIAL  
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Michael M. Lee, Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
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WRITER'S E-MAIL ADDRESS  
ssimmons@omm.com

Re: AMD v. Intel

Dear Mike:

This responds to your September 30, 2009 letter and follow-up email. It appears that the assumption underlying your letter, and the corresponding request for further information, is misplaced. You have incorrectly identified [REDACTED]

[REDACTED] Dr. Ostrander did not create those files, and he did not modify those files [REDACTED]

[REDACTED] We produced those to you on September 15, 2009. [REDACTED]

As promised, we have also followed up on the issues you identified during the September 29, 2009 conference among our legal and consulting teams. You are correct with respect to the discrepancy you identified in [REDACTED]

[REDACTED] We have included on the disc accompanying the hard copy of this letter a corrected version of [REDACTED]

In the process of investigating the discrepancy you identified, we identified two additional errors that should be corrected. First, [REDACTED]

[REDACTED]

Second, in re-reviewing his workpapers to answer the question you raised, [REDACTED]

[REDACTED]

[REDACTED] These files replace the files bearing the same names that were produced with Dr. Ostrander's report on August 3, 2009.

These adjustments necessitate minor revisions to Dr. Ostrander's report. We have included on the disc accompanying the hard copy of this letter corrected versions of five pages of Dr. Ostrander's report, one of which also corrects transposed numbers identified in paragraph 104.

The adjustments to Dr. Ostrander's manufacturing capacity analysis nominally affect some of the numbers generated by Dr. Watson and Dr. Lys but in the interest of accuracy, we have updated them as well. With respect to Dr. Watson, [REDACTED]

[REDACTED]

[REDACTED] We have included on the disc accompanying the hard copy of this letter: (a) revised individual pages of Dr. Watson's report that include the updated Figures; (b) revised Appendices that include the updated Figures; and (c) updated versions of the Ostrander input files used by Dr. Watson.

[REDACTED]

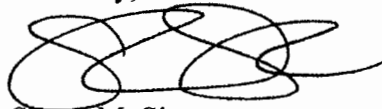
[REDACTED]

[REDACTED]

[REDACTED] The disc that accompanies the hard copy of this letter includes revised pages from Dr. Lys's report with the updated information. (For ease of reference, the Exhibits that have been revised are nos. 44, 46, 48-49, 64-66.) You will also find on the disc updated versions of support files initially produced as part of Dr. Lys' report.

To the extent that the original versions of the materials discussed above for all three experts are listed on Materials Considered lists, you should consider the updated versions to be included as well.

Sincerely,



Shaun M. Simmons  
for O'MELVENY & MYERS LLP

Encls.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by electronic mail to the following:

Richard L. Horwitz, Esquire  
Potter Anderson & Corroon, LLP  
1313 North Market Street  
P. O. Box 951  
Wilmington, DE 19899

James L. Holzman, Esquire  
Prickett, Jones & Elliott, P.A.  
1310 King Street  
P.O. Box 1328  
Wilmington, DE 19899-1328

I hereby certify that on October 10, 2009, I have sent by electronic mail the foregoing document to the following non-registered participants:

Darren B. Bernhard, Esquire  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2402

Robert E. Cooper, Esquire  
Daniel S. Floyd, Esquire  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, California 90071-3197

Daniel A. Small, Esquire  
Cohen Milstein, Hausfeld  
& Toll, L.L.C.  
1100 New York Avenue, N.W.  
Suite 500 - West Tower  
Washington, DC 20005

/s/ Frederick L. Cottrell, III  
Frederick L. Cottrell, III (#2555)  
cottrell@rlf.com