

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
)
 INTEL CORP. MICROPROCESSOR)MDL Docket No. 05-MD-1717-JJF
 ANTITRUST LITIGATION,)
)
 - - - - -)
 ADVANCED MICRO DEVICES,)
 INC., a Delaware)
 Corporation, and AMD)
 INTERNATIONAL SALES &)
 SERVICES, LTD., a)
 Delaware corporation,) C.A. No. 05-441 JJF
)
 Plaintiffs,)
)
 v.)
)
 INTEL CORPORATION, a)
 Delaware corporation, and)
 INTEL KABUSHIKI KAISHA, a)
 Japanese coporation,)
)
 Defendants.)
 - - - - -)

PHIL PAUL, on behalf of)
 Himself and all others)
 similarly situated,) C.A. No. 05-485-JJF
)
 Plaintiffs,) CONSOLIDATED ACTION
)
 v.)
)
 INTEL CORPORATION,)
)
 Defendant.)

Thursday, January 25, 2007
11:00 a.m.

Blank Rome, LLP
1201 North Market Street, Suite 800
Wilmington, Delaware

1 BEFORE: SPECIAL MASTER VINCENT J. POPPITI

2

APPEARANCES:

3

 RICHARDS, LAYTON & FINGER
4 BY: FREDERICK L. COTTRELL, III, ESQ.

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 -and-

6

 O'MELVENY & MYERS, LLP
BY: LINDA SMITH, ESQ.
7 BY: CHRISTOPHER RUSSELL, ESQ.
BY: JAMES PEARL, ESQ.

8

 Counsel for AMD

9

10

 POTTER, ANDERSON & CORROON, LLP
11 BY: RICHARD L. HORWITZ, ESQ.
BY: W. HARDING DRAIN, ESQ.

12

13

 -and-

14

 HOWREY SIMON
BY: DARREN BERNHARD, ESQ.

15

16

 -and-

 GIBSON, DUNN & CRUTCHER, LLP
17 BY: DANIEL S. FLOYD, ESQ.

18

 Counsel for Intel

19

 PRICKETT, JONES & ELLIOTT
20 BY: JAMES L. HOLZMAN, ESQ.

21

22

 -and-

 COHEN, MILSTEIN, HAUSFELD & TOLL
BY: DANIEL SMALL, ESQ.
23 BY: BRENT W. LANDAU, ESQ.

24

 Counsel for Class Plaintiffs

1 SPECIAL MASTER POPPITI: Counsel,
2 good morning. It's Vincent Poppiti on the line.

3 (Everyone said, Good morning, Your
4 Honor.)

5 SPECIAL MASTER POPPITI: Do we know
6 whether everyone is on, as you all were
7 gathering, or do we not yet?

8 MS. SMITH: Your Honor, gathering
9 separately, Your Honor, so I'm not sure who's on.

10 SPECIAL MASTER POPPITI: Why don't
11 we start and do a roll call, please. We can do
12 it off the record for purposes of making sure
13 that Heather Triozzi, who is our court reporter,
14 can identify some voices with some names.

15 MS. SMITH: And, Heather, it's Linda
16 Smith of O'Melveny & Myers for AMD, and I just
17 wanted to tell you that during the course of this
18 we're going to be using a lot of computer company
19 names, and I'm happy to provide you afterwards
20 with a list of the names and the spellings,
21 because I have a feeling it might be somewhat
22 difficult to get them all as we're talking.

23 SPECIAL MASTER POPPITI: That's
24 great. Thank you.

1 (Whereupon the attorneys announced
2 their appearances off the stenographic record:)

3 SPECIAL MASTER POPPITI: Okay.

4 MR. BERNHARD: We can go ahead and
5 get started, Your Honor.

6 SPECIAL MASTER POPPITI: Then let's
7 do that, please. The purpose of today's call was
8 to status and see where we were with respect to
9 development of discovery, identification of
10 issues, and things of that nature, please.

11 MS. SMITH: Your Honor it's Linda
12 Smith. I think I'll kick it off.

13 SPECIAL MASTER POPPITI: Please.

14 MS. SMITH: I'm the one who promised
15 to provide this. I thought I would try to be as
16 brief as possible. As you know, for me, that is
17 difficult.

18 But I'll try to give you an idea,
19 try to give the Court an idea of what protocols
20 we're using and how far we've gotten.

21 SPECIAL MASTER POPPITI: Okay.

22 MS. SMITH: First, I'm going to
23 start with a quick background. All the way back
24 in September of 2005, AMD supplied Intel with

1 draft subpoenas and a list of the 32 third
2 parties it intended to serve. And AMD served
3 those 32 third parties during the first week of
4 October 2005.

5 From that point on, until Intel and
6 class served their subpoenas, AMD negotiated
7 vigorously with third parties, and these
8 negotiations produced some results. The Japanese
9 OEMs who contest the jurisdiction produced
10 documents relating to the JFTC proceedings and
11 the raids.

12 The European OEMs who also contest
13 the jurisdiction produced documents by using --
14 by the European Commission during the raid.

15 SPECIAL MASTER POPPITI: Okay.

16 MS. SMITH: Overall, companies
17 produced documents, including Appro, Averatec,
18 CompUSA, Sun, and Supermicro. And we reached
19 tentative written agreements or outlines of
20 agreements with Dell, HP, IBM, Rackable, Ingram,
21 and Egenera.

22 When Intel and the class did not
23 serve their third party request, AMD asked Judge
24 Farnan to set a cut-off date for the service of

1 all subpoenas to corporate third parties
2 acquiring a comprehensive production of their
3 relevant documents, and he did so.

4 And so pursuant to Judge Farnan's
5 May 16th, 2006 order, Intel served 68 third party
6 subpoenas in June of 2006. Class served 39, and
7 AMD served an additional 33 subpoenas, all in
8 June 2006.

9 That meant that collectively the
10 parties had served a total of 70-plus third
11 parties. And that doesn't include the various
12 subsidiaries and affiliating companies. So
13 sometimes there would be five subpoenas served on
14 various affiliates of one, and we're just
15 counting that as one third party.

16 Now, just so you have the breakdown,
17 almost all the third parties were served by both
18 AMD and Intel.

19 SPECIAL MASTER POPPITI: Okay.

20 MS. SMITH: The class served a more
21 limited set of subpoenas and has since added a
22 handful of additional third parties. And I think
23 they're going to tell you about that themselves.

24 And there were a handful of third

1 parties that were served only by Intel and the
2 class, including McKinsey, a company called UMC
3 and Apple.

4 So the bottom line is, and we -- so
5 I sent you a chart. I sent everyone a chart a
6 long time ago listing all the subpoenas of third
7 parties. I think there are a few in addition to
8 that chart, which I can send you as an update any
9 time you'd like. But there are now over 72 or 73
10 third parties, counting all the subsidiaries and
11 affiliates as one company.

12 There has been --

13 SPECIAL MASTER POPPITI: Yeah. The
14 update, as soon as you can turn to it, I would
15 appreciate that.

16 MS. SMITH: It can be to you during
17 this call, and I'll, of course, send it to
18 everyone on this call.

19 SPECIAL MASTER POPPITI: That's
20 perfect. Thank you.

21 MS. SMITH: Okay. And also, Teresa,
22 that will give you all the names of all these
23 computer companies, but it may be easier if I
24 just go ahead and give you the ones I'm

1 specifically referring to, whatever you'd like.

2 There have been some impediments to
3 these negotiations. That's sort of a euphemism,
4 I think.

5 First, we had to get a protective
6 order in place.

7 Secondly, we had the issue that the
8 Court will recall of the non-disclosure
9 agreement, the NDAs --

10 SPECIAL MASTER POPPITI: Right.

11 MS. SMITH: -- and reviewing that
12 issue.

13 And finally, and as we discussed
14 earlier, Your Honor, not surprisingly, the third
15 parties' disposition, which they will produce
16 documents, only ones that they could not finalize
17 any agreement with AMD and independently, but
18 would require Intel and the class to sign on.

19 And then in terms of cost
20 reimbursement, there would be one agreement, one
21 unified proposal from the parties. And just to
22 be clear, and I think it will be clear as I go
23 along, but the parties are AMD, Intel and the
24 class. And the third parties are everybody else,

1 the 72 non-parties who have been served with
2 subpoenas.

3 So AMD met with Intel and the class
4 to update them on the progress of the third party
5 negotiations that had gone on before the year
6 they served their subpoenas. And we shared the
7 six already executed and draft third party
8 agreements we had negotiated. We outlined the
9 protocols, which I'm going to get to in a moment,
10 Your Honor, that the third parties could choose.

11 And then class, Intel and AMD formed
12 a little triumvirate where they were -- there was
13 a negotiating team assigned to each one of the
14 70-plus third parties consisting of a
15 representative from AMD, one from Intel and one
16 from class.

17 Not surprisingly -- the thing, you
18 know, you can only imagine, and I know Your Honor
19 has considerable experience in this and probably
20 could teach a class on E discovery, but not
21 surprisingly each of the 70-plus parties is
22 unique in terms of the scope or the volume of
23 their respected production rights, --

24 SPECIAL MASTER POPPITI: Right.

1 MS. SMITH: -- the organization of
2 their database, the electronic tools they were
3 using. And, frankly, to the degree they have
4 raised in discovery and their sophistication, in
5 terms of the scope, the expected scope ranges
6 from millions of pages of electronic documents to
7 a few pieces of paper.

8 And as an example, Your Honor, Dell,
9 with whom the parties have concluded a written
10 agreement, promises 300,000 documents, which at
11 seven pages per document in the electronic world
12 could mean an initial production of 2.1 million
13 pages. And contrast this with LG Electronics,
14 which produced 220 pages of paper as its full
15 production.

16 SPECIAL MASTER POPPITI: Yeah.

17 MS. SMITH: So we've got a real
18 range here. We think it's reasonable to assume
19 that the total production could range from 250
20 gigabytes to a terabyte or more.

21 At 60,000 pages' worth of documents
22 per gigabyte, that means third party production
23 could be as high as one point -- as 15 million to
24 60 million pages of documents.

1 So, you know, sometimes we think
2 this is either, as I mentioned to Your Honor, the
3 largest electronic production in history or maybe
4 this will be the case that proves that you can't
5 do it.

6 So --

7 SPECIAL MASTER POPPITI: Right.

8 MS. SMITH: We certainly -- we
9 certainly hope that it's not the latter.

10 SPECIAL MASTER POPPITI: I would
11 hope it's not the latter.

12 MS. SMITH: On electronic tools,
13 here is what we've done: The parties and the
14 third parties are able -- only able to deal with
15 this influx of documents by using electronic
16 review tools. And AMD and the class, for
17 example, have selected tools that process the
18 electronic documents produced in either native
19 format, or in a common electronic format, PDF or
20 tiff by conceptually sorting them, arranging
21 documents electronically by like subject or
22 category. And we, like Intel, have engaged in a
23 number of contracts to review and call out the
24 documents relevant and important to the case.

1 These tools, of course, are not
2 cheap. There's a significant expense associated
3 with them. But as a practical matter, the
4 parties will be unable to, in a reasonable period
5 of time, sort through the third party productions
6 without utilizing these tools.

7 The other benefits are the tools can
8 be used to call out privileged materials, which
9 takes the burden off the third parties and the
10 parties alike. We can conduct searches only for
11 the key documents using search terms and restrict
12 searches to particular time periods.

13 And the biggest lesson of all the
14 tools, get rid of redundant documents, which in
15 the world of Emails is, as you know, very
16 important.

17 SPECIAL MASTER POPPITI: Right.

18 MS. SMITH: Here is the description
19 of the proposals that were made to the third
20 parties. The proposed -- there's two proposals
21 we made, and one proposal that third parties have
22 made.

23 Our proposals share common themes.
24 We cover significant or all of the processing

1 costs associated with the production and the
2 document review, utilizing very favorable rates
3 that the parties have negotiated with their
4 electronic discovery vendors.

5 Now, what we've done is these are
6 usually custodian based. Obviously, you can't go
7 to an HP, or a Dell, or IBM, say Give us all
8 documents that say AMD, Intel, or et cetera.

9 SPECIAL MASTER POPPITI: Right.

10 MS. SMITH: So what we've done is,
11 through negotiations and discussions with the
12 third parties, we have identified the document
13 custodians whose documents will be harvested.
14 And that's what we try to do is sort through the
15 most important custodians with knowledge to the
16 issues in these cases, and those we believe to
17 have the non-duplicative documents responsive to
18 all three parties' subpoenas. And so that's how
19 we proceeded.

20 The one exception to this, which is
21 another track, and we'll talk about it in a bit,
22 is transactional data.

23 This is not custodian based. This
24 is data that is often contained in separate

1 financial databases and not on one custodian's
2 hard drive. And this is where the parties, and
3 AMD certainly wants this information as well, but
4 this is most germane to the class action.

5 The parties intend to find the
6 documents that reflect the number of
7 microprocessors sold by AMD and Intel to the
8 manufacturers and its distributors. The net
9 price customers paid for microprocessors after
10 taking into account rebates, credits and other
11 forms of back end payment.

12 The net price at which those
13 distributors resold microprocessors on computers,
14 incorporating microprocessors to the retailers or
15 to the end users. And the number of units and
16 the net price at which retailers resold the
17 computers to the consumers.

18 In this regard, class, Intel and AMD
19 are seeking similar types of transactional data
20 and are cooperating in their efforts to gather
21 that data from the subpoenaed third parties.

22 And while the parties have made
23 progress in the transactional data negotiations,
24 the unique ways in which each company maintains

1 its transactional or financial data and the
2 differences in the time period covered by the
3 active data in each of the company's systems, it
4 has impacted what each third party is able and
5 willing to produce.

6 So what we've tried to do is have
7 two tracks, negotiations with each third party
8 where we have the custodian-based approach, and
9 sign-up agreements with third parties on that
10 basis, and have a separate negotiating team from
11 AMD, Intel and the class who we're dealing with
12 with each of the third parties with respect to
13 transactional data.

14 SPECIAL MASTER POPPITI: Okay.

15 MS. SMITH: Okay. Here's the
16 approaches: The first is what we call the we do
17 it approach. And this is an approach -- I know
18 this is sort of boring, but I think --

19 SPECIAL MASTER POPPITI: No. It's
20 important for me to understand, please.

21 MS. SMITH: Yeah. Sorry.

22 I just -- I feel like, you know, is
23 everybody awake on this call? Okay.

24 The first is the --

1 SPECIAL MASTER POPPITI: Well, the
2 question is whether anyone can summarize what
3 you've done at the end of it. That will be the
4 test.

5 MS. SMITH: There will be -- there
6 will be a test.

7 SPECIAL MASTER POPPITI: There will
8 be a test. No, please.

9 MS. SMITH: Okay.

10 SPECIAL MASTER POPPITI: Thank you.

11 MS. SMITH: The first is we do it
12 approach, and this approach requires the parties,
13 and again, that's Intel, AMD and the class, to
14 bear the vast proportion of the cost and review
15 burden.

16 And it has the following elements:
17 First, the third parties and the parties identify
18 an agreeable and properly representative set of
19 custodians, a non-duplicative responsive data.
20 That data is harvested, either by the parties at
21 their expense, or by the third parties.

22 Second, the third party produces
23 unreviewed electronic data to one of the parties'
24 vendors or the parties used and agreed set of

1 search terms against the harvested corpus to
2 identify potentially relevant documents. And
3 thereby presumably decrease the volume of
4 documents for their relevance review.

5 And some of these negotiations of
6 research terms have been ultimately very
7 productive. But as you can imagine, each company
8 refers to things differently.

9 SPECIAL MASTER POPPITI: Yeah.

10 MS. SMITH: And that is their own
11 sort of culture of the use of terms. And so
12 sometimes the search terms have to be very
13 carefully tailored to the specific company.

14 Third, the vendor then uses the
15 search terms to call out potentially privileged
16 documents using a attorney name or the words
17 attorney-client privilege, et cetera, and returns
18 that data to the third party for review. The
19 third party always has a claw-back right on any
20 documents that are missed in the electronic
21 privilege call.

22 Then the document remaining is
23 processed under the parties' tools. Parties'
24 favorable vendor rates are then reviewed by the

1 parties for relevance and in the native file
2 format.

3 Then, the parties identify the
4 relevant documents they wish to put into static
5 image, tiff format. They will be Bates stamped,
6 marked under the protective order and used as
7 evidence in this case.

8 The third party, if it chooses,
9 reviews the documents identified, and upon
10 agreements about relevance, the documents are
11 tiffed, and a copy of the tiff set is provided to
12 the party and the third party.

13 The benefits of this proposal is
14 it's designed to eliminate cost, including
15 attorneys fees. The privileged documents are
16 protected. All the processing review for
17 relevance and tiffing charges are absorbed by the
18 parties.

19 The third party incurs only those
20 expenses it chooses to absorb to review for
21 privilege and to review the tiff sets.

22 Confidentiality is, in any event, protected by
23 the protective order.

24 And as an example, Rackable and

1 Egenera have agreed to use this we do it
2 approach.

3 SPECIAL MASTER POPPITI: Okay.

4 MS. SMITH: Okay.

5 The second is the hybrid approach,
6 which, as you can imagine, probably encompasses a
7 multitude of things, but it has most of the
8 elements of the we do it approach with custodian
9 identification, privilege codes and the use of
10 the parties' vendors.

11 The only major difference is that
12 some third parties have chosen to assume the
13 burden of relevance review themselves. It's a
14 cost which the we do it approach alleviates.

15 THE COURT: Right.

16 MS. SMITH: So the privilege call
17 takes the potentially relevant documents that are
18 identified by the third parties, the potentially
19 relevant corpus and identifying to the parties
20 what they deem relevant. The parties then review
21 the documents, determine what portion will be
22 tiffed for use in the case.

23 And in this scenario, the third
24 party still uses the party vendors or a neutral

1 vendor, and the processing costs are split among
2 the third parties and the parties. The benefits
3 are the same as we do it except that this allows
4 third parties who do not wish to bear the burden
5 of relevance review --

6 SPECIAL MASTER POPPITI: They do
7 it --

8 MS. SMITH: So --

9 SPECIAL MASTER POPPITI: Okay. I
10 understand.

11 MS. SMITH: Those who do wish the
12 burden of relevance --

13 THE COURT: They do.

14 MS. SMITH: -- can do so, although
15 they have to incur costs that the we do it
16 approach allows them to avoid.

17 SPECIAL MASTER POPPITI: Right.

18 MS. SMITH: And Ingram Micro is, we
19 believe, on the verge of signing up for this
20 approach. And AMD and Intel have already signed
21 that agreement.

22 The third way is a proposal the
23 parties did not make, but what some third parties
24 have chosen to assume the burden of production

1 themselves with varying levels of party
2 involvement. Some of the third parties have
3 existing vendors in place they want to use.

4 And these agreements take a couple
5 of forms. It can be a custodian-based production
6 using search terms, following with production in
7 native file or productions that the third party
8 review remain entirely in tiff.

9 So those are sort of the we do it,
10 the hybrid and the you do it, or the third
11 agreement.

12 The proposals share common features.
13 You know, we tried -- the parties and the third
14 parties have reached a variety of cost sharing
15 arrangements, end costing, harvesting,
16 processing, tiffing and copying costs.

17 Parties have begun almost every
18 negotiation with the we do it approach since
19 virtually it eliminates for another third party
20 the cost sharing by the parties. It decreases to
21 the extent that the third party chooses to reject
22 production protocol that could alleviate burdens,
23 and assume those burdens and costs themselves.

24 And let me also add one other item,

1 which applies, and that is that the parties have
2 agreed, and in most of the agreements to use a
3 phased approach that reduces the number of
4 custodians or the number of search terms, in the
5 first instance, with a right to go back for more
6 documents after reviewing the first set of
7 documents.

8 That's intended to minimize the
9 third party's obligation, in the first instance,
10 and allow for a targeted, back-ended search after
11 the parties learn more about the third party.

12 So those are the -- those are the
13 proposals on the table. Okay.

14 And now, and finally, here's where
15 we are, and I have two issues for Your Honor on
16 this. And, of course, anyone else can and I'm
17 sure will say whatever they like.

18 For now we're going to divide up the
19 70 parties into the fully negotiated agreements,
20 the JFTC agreement, third parties who have
21 produced without a formal agreement, and the
22 parties with ongoing negotiations with no
23 agreement imminent.

24 And I do see -- and perhaps this

1 shouldn't be said on the record, but it usually
2 doesn't stop me. We do see some downside in
3 outlining for the Court in detail the status of
4 certain of the ongoing negotiations, because this
5 is a public record. And so what we'd like to do
6 in this round is give you these four buckets of
7 where we stand in terms of who's done, who's
8 imminent, who's produced voluntarily, who's not
9 imminent.

10 And then come back, and you'll see
11 at the end, and propose in another perhaps four
12 weeks or something like that, whatever the Court
13 is amenable to, we do this again. One of the
14 things I can say that has been very effective and
15 I think all three of the parties would agree is
16 having the dates by which motion practice can
17 commence was very effective in getting the third
18 parties moving.

19 SPECIAL MASTER POPPITI: Good.

20 MS. SMITH: And then we have
21 reported out to the third parties that, you know,
22 the dates on which we are providing reports to
23 Your Honor and, again, people that have, you
24 know, put pressure, frankly, on the parties and

1 the third parties to try to conclude negotiations
2 before the date of our hearing to report to Your
3 Honor on this.

4 SPECIAL MASTER POPPITI: Okay. Then
5 I'm happy to proceed in the fashion that you've
6 suggested.

7 MS. SMITH: Okay. And Your Honor,
8 if at some point -- you know, let me do it this
9 way for this time, and if Your Honor then wants
10 to go take the chart and go party by party, or if
11 that becomes -- or we can group them in a certain
12 way. And if that becomes more efficient down the
13 road, then we're happy to do that.

14 In terms of the fully negotiated
15 agreements, AMD, Intel and the class have reached
16 agreement with IBM and Dell in the production of
17 documents that it has anticipated that that
18 production will be huge.

19 It has -- AMD and Intel have
20 separately reached agreement with Rackable. The
21 parties are expected to reach agreement in the
22 next week with the distributor, Ingram Micro, and
23 the white box silver manufacturer, Egenera.

24 The parties are having very

1 productive negotiations with Best Buy, which
2 could result in an agreement in the next couple
3 of weeks. The framework of all these agreements
4 is similar.

5 First, the limited number of
6 custodians; and second, appropriate cost sharing,
7 which includes reasonable harvesting, processing,
8 tiffing and copying costs. None of these
9 agreements require any of the parties to pay the
10 attorneys' fees for review or otherwise.

11 And these proposals are designed to
12 provide the names by which third parties can
13 avoid virtually all expenses, including
14 attorneys' fees, if they so choose.

15 SPECIAL MASTER POPPITI: Okay.

16 MS. SMITH: Okay. The next category
17 is the JFTC OEM.

18 SPECIAL MASTER POPPITI: I don't
19 know whether somebody is joining or whether we're
20 losing folks.

21 MR. SMALL: This is Dan Small. I
22 apologize. That's my other line that keeps
23 ringing once in awhile.

24 SPECIAL MASTER POPPITI: Thanks,

1 Dan. Not a problem.

2 MR. SMALL: Thank you.

3 MS. SMITH: Okay. The AMD has
4 negotiated production of the Japan Trade
5 Commission documents, the Sony, Toshiba,
6 Fujitsu, NEC and Hitachi. While these companies
7 contest the jurisdiction of this Court, they have
8 each agreed to --

9 THE OPERATOR: The conference will
10 now end.

11 (Whereupon the conference call was
12 interrupted due to technical difficulties.)

13 SPECIAL MASTER POPPITI: Counsel,
14 Vincent Poppiti. We're back on.

15 I don't know what happened. Did you
16 get disconnected?

17 MS. SMITH: Yes, Your Honor. You
18 know, if you guys are bored with this
19 presentation, you can just say so. Hanging up on
20 me is really very harsh.

21 SPECIAL MASTER POPPITI: It didn't
22 happen from my end.

23 MS. SMITH: I'm incredibly insulted.
24 I went on for another 15 minutes.

1 SPECIAL MASTER POPPITI: I would
2 expect there was a period of time when you were
3 talking.

4 MS. SMITH: No, there was an
5 announcement that the leader had hung up.

6 SPECIAL MASTER POPPITI: I did not
7 hang up. I was -- I don't know who that is.

8 UNIDENTIFIED SPEAKER: It could have
9 been from our end. It could have been something
10 over here because our office set up the call, and
11 I apologize.

12 SPECIAL MASTER POPPITI: Right. Not
13 a problem.

14 Let's do this off the record.

15 (Following a discussion held off the
16 record:)

17 MS. SMITH: All right. I'm almost
18 done.

19 Hang on. I'm almost done.

20 Okay. This is just the business of
21 how the Japanese OEMs have produced the documents
22 that were produced to the JFC or seized in the
23 JFC raid.

24 AMD paid these third parties'

1 copying, and shipping costs, and negotiations for
2 the production of responsive documents that were
3 not produced to the JFC, were delayed awaiting
4 the Court's decision on foreign discovery. They
5 are now back up and running.

6 MR. HERON: It's David Heron. Can
7 you hit your conference button? I think someone
8 is not included yet.

9 MS. SMITH: Bo, are you on now?

10 MR. PEARL: Yes.

11 MS. SMITH: I'm sorry.

12 MR. PEARL: That's all right.

13 MS. SMITH: I said a lot of things
14 about you while you were off.

15 The Fujitsu-Siemens has also
16 produced documents seized by the European
17 Commission, and LG Electronics has produced
18 documents seized by the Korean Fair Trade
19 Commission.

20 Again, these parties have raised the
21 jurisdictional challenge, but they've agreed to
22 produce the documents connected to the European
23 and the Korean investigations of Intel.

24 SPECIAL MASTER POPPITI: Good.

1 MS. SMITH: Okay. Next category and
2 next to the last category is third party
3 productions without formal agreements: Appro,
4 Asus, Averatec, CompUSA, B & H, DivX, JEDEC,
5 which is the standard setting.

6 SPECIAL MASTER POPPITI: Right.

7 MS. SMITH: Lenovo, McKinsey, Sun,
8 Supermicro and Toys 'R Us have all produced
9 documents that are in response to the parties'
10 subpoenas.

11 In addition, Circuit City has
12 expressed its intention to produce responsive
13 documents without entering into a formal written
14 agreement.

15 And Tech Data has also agreed to a
16 general production protocol with AMD and Intel
17 that includes the cost sharing component on
18 process costs, but intends to proceed without a
19 formal agreement.

20 SPECIAL MASTER POPPITI: And by
21 proceeding without a formal agreement, maybe it's
22 not important for me to know about this, but I'm
23 curious, they're proceeding in a fashion,
24 alternative fashion as you have described, but

1 simply without a document.

2 Is that correct?

3 MS. SMITH: Yes. That is correct.

4 SPECIAL MASTER POPPITI: Okay.

5 MS. SMITH: And then that leaves the
6 ongoing negotiation with no agreement imminent,
7 or there are at least 40 or so third parties
8 where we're continuing to negotiate using some
9 variants of the proposals described above.

10 The parties have, mostly independent
11 of one another, prioritized negotiations with
12 these third parties where agreements seem likely
13 primarily to get the flow of documents moving.

14 And with the remaining third
15 parties, AMD seeks a quick resolution of the
16 subpoena and will continue to work diligently to
17 obtain these documents. We're not at impasse
18 with these entities yet.

19 SPECIAL MASTER POPPITI: Okay.

20 MS. SMITH: And I'm hopeful that
21 agreement can be obtained without motions. So in
22 the wrap-up, we -- this has been, frankly, an
23 excruciating process, I think, for everyone
24 involved on all parties. And probably the third

1 parties would chime in and agree.

2 We proposed that the three parties
3 to these proceedings meet, and prioritize, and
4 divide up the remaining third parties into three
5 groups, the near term, the intermediate and the
6 long term, and pursue negotiations and report
7 back to you whenever Your Honor is amenable. But
8 we're thinking, you know, four weeks to keep the
9 pressure on.

10 And at that time, we should report,
11 again, the status and negotiations, closed deals,
12 deals that are likely to close in the near
13 future. And by that I mean it's sort of getting
14 to the point where I think at this point, we need
15 to provide the Court with a list of third parties
16 as to whom -- as to which motions may be
17 required.

18 SPECIAL MASTER POPPITI: And that's
19 what I was just going to ask. I'm certainly
20 happy to do the four-week time frame that you
21 suggest unless you think any shorter time frame
22 makes sense.

23 The other question that I guess
24 relates to setting a date, would it be helpful,

1 and only if it's helpful, would it be helpful to
2 set a date for motion practice? I know we've
3 already done that with respect to when it can
4 commence, but would it be helpful to set a date
5 for motion practice where your efforts prove not
6 to be as fruitful as they have been with other
7 third parties?

8 MS. SMITH: I think our opinion at
9 this point is -- it's funny, because originally,
10 Your Honor, we wanted the date where if there
11 was -- if there wasn't an agreement, everyone had
12 to file.

13 SPECIAL MASTER POPPITI: Right.

14 MS. SMITH: And Your Honor changed
15 that.

16 SPECIAL MASTER POPPITI: Yes.

17 MS. SMITH: And now -- now, I agree
18 to the wisdom because --

19 SPECIAL MASTER POPPITI: That's nice
20 that you would say it that way.

21 MS. SMITH: Sorry. There's sort of
22 this tension between where we're not at impasse.

23 SPECIAL MASTER POPPITI: Right.

24 MS. SMITH: We don't want to require

1 a filing. On the other hand, there's clearly
2 going to be some subset of this group where we
3 will never either reach agreement and will be at
4 impasse, or they will just never join issue.

5 We won't reach impasse, but we
6 won't -- it's just sort of wandering sideways, so
7 we're not getting a response. I think at some
8 point, setting an end, a real end is a great
9 idea.

10 I think I'd like to propose, which
11 is contrary, as I said, to where I was last year
12 on this, that we, you know, give another hard try
13 at trying to get things done without a finality
14 date. But I think that is the next step.

15 SPECIAL MASTER POPPITI: That's
16 fine. So then perhaps --

17 MS. SMITH: The other thing is, Your
18 Honor, I think we have been somewhat successful
19 in getting -- what we've tried to do, frankly, is
20 pick off some of the key, like Ingram Micro is a
21 huge distributor and, obviously, Dell and IBM are
22 huge tier one. And I think that that strategy
23 may result in others falling into play as they
24 see that, you know, others -- you know, that the

1 momentum is going towards entering into these
2 agreements and getting them done.

3 And I do think we will be able to
4 provide Your Honor, as we promised to do all
5 along, with some sort of groupings of what's left
6 and what the issue is, whether it's
7 jurisdictional, or some sort of speed dispute, or
8 whatever it is.

9 SPECIAL MASTER POPPITI: Right.

10 MS. SMITH: So that we don't have --
11 we now clearly won't have 70 motions with the
12 third party, AMD, Intel and class filing briefs.
13 But I think we not only reduce the number of
14 motions, but I think we can -- we will be able to
15 provide some sort of grouping, so you can
16 consider common issues that people object on.

17 SPECIAL MASTER POPPITI: Good.

18 That's good.

19 And I gather by what you've just
20 said that no one is really in a position, for
21 purposes of my planning, if you will, to suggest
22 time frames at this status conference. It may be
23 that when we status again in the four weeks, that
24 you suggest you'll be in a better position to

1 begin to suggest what calendars I need to look at
2 over the ensuing months.

3 Is that fair?

4 MS. SMITH: Right, Your Honor. And
5 you know, I'm sure other people have their views.

6 SPECIAL MASTER POPPITI: Does anyone
7 disagree with what I've just said, because you
8 know, it is important for me to try and get some
9 handle at some point on what you expect to be the
10 incoming work load, so that I can make every
11 effort to do for you what I hope we've done up to
12 this point.

13 And that is bring work in and commit
14 to you, when we can, when work can come out of
15 here, so that the case still moves.

16 MS. SMITH: Understood. I totally
17 agree.

18 MR. BERNHARD: This is Darren
19 Bernhard for Intel, Your Honor. We're fine with
20 your proposal on the four weeks and then to go
21 forward from there.

22 SPECIAL MASTER POPPITI: Okay.

23 MR. SMALL: Likewise for the class
24 plaintiffs, Your Honor. This is Dan Small.

1 SPECIAL MASTER POPPITI: Okay.

2 MS. SMITH: I'm actually looking on
3 my calender exactly --

4 SPECIAL MASTER POPPITI: And what I
5 didn't bring into the room with me is I didn't
6 bring in Judge Farnan's overall scheduling order.
7 Do I need to be mindful of any dates approaching
8 in terms of discovery cut-offs and things of that
9 nature?

10 Because what I want to be in a
11 position to do for you is if you -- maybe you're
12 not in a position to do that today, but if it
13 looks like it is going to be important to suggest
14 any change to Judge Farnan's order, you know, and
15 I know that if you're doing it by stipulation and
16 it is not impacting on any other dates that are
17 critically important to the Court, then it is
18 likely that Judge Farnan is going to sign your
19 proposal, your stipulation.

20 If, on the other hand, there are
21 dates or you want me to be attending to that for
22 purposes of proposing something to the Court, I
23 just need to know that.

24 MR. SMALL: Your Honor, this is Dan

1 Small. What I was going to speak to a little bit
2 this morning, if Your Honor would like to hear
3 it, is a separate set of negotiations that Linda
4 Smith referred to, and that is more production of
5 third party transactional data.

6 SPECIAL MASTER POPPITI: Right.

7 MR. SMALL: And I don't think it
8 directly bears on Your Honor's proposal to set up
9 another conference in four weeks to consider
10 production of the documents, but I think there is
11 some relationship. And maybe it would be
12 important background to hear a little bit about
13 that.

14 SPECIAL MASTER POPPITI: Okay. I'm
15 happy to do that.

16 MR. SMALL: Okay. As I mentioned,
17 this is really a separate set of negotiations.
18 We haven't had to deal with the three types of
19 production that we have offered third parties for
20 their electronic documents. It's not a you do
21 it, hybrid or other type of approach.

22 SPECIAL MASTER POPPITI: Mm-hmm,

23 MR. SMALL: This is data relating
24 to, you know, purchases and sales of basically

1 computers that have Intel chips in them or the
2 purchase of the chips themselves.

3 And the data exists typically in a
4 single database. And to produce the data, it's
5 not a question of doing a privilege review or a
6 relevance review, it's basically a question of
7 agreeing upon which fields in the database would
8 be produced, and for which time period.

9 So once the parties are able to
10 agree with a third party as to those basic
11 parameters, the actual production of the data
12 after that should be able to occur quite quickly.

13 Now, we originally served, I think,
14 about 34 third parties back in June of 2006 with
15 subpoenas that, among other things, requested
16 production of data.

17 In November, and again earlier this
18 month, we served a few more subpoenas that also
19 asked for additional data on different third
20 parties. Now, the importance of this data to our
21 case is not minimal. We need this data because
22 the class that we're hoping to represent consists
23 of indirect purchasers of Intel's microprocessor.

24 So these are not customers directly

1 of Intel, but those who primarily are purchasing
2 computers that contain Intel chips. And we,
3 therefore, need to be able to prove, not just
4 what the overcharge was that Intel imposed on its
5 customers, but how much of that overcharge was
6 then passed on to the purchasers of their chips
7 that bought them when they bought a computer.

8 So that's a task that we need to
9 undertake and to prove in this case. And it's
10 going to come up twice.

11 It will come up when we go to prove
12 damages ultimately at trial, but it's going to
13 come up first when we deal with class
14 certification.

15 SPECIAL MASTER POPPITI: Right.

16 MR. SMALL: And as Your Honor may
17 recall, the Court has a scheduling for briefing
18 class certification that requires us to file our
19 brief, our opening brief on class certification
20 in the beginning of July. Now, that seemed a
21 long ways away at some point.

22 SPECIAL MASTER POPPITI: Not
23 anymore.

24 MR. SMALL: But it's seeming much

1 closer now.

2 SPECIAL MASTER POPPITI: Right.

3 MR. SMALL: And one of the things
4 we're going to need to do in addition to our
5 brief is to submit an economical report that we'll
6 talk about the economic issues relating to class
7 certification.

8 And one of those almost for sure is
9 going to be this pass-on issue, because we'll
10 need to be able to show the Court that we can
11 prove the pass on of the overcharge using an
12 appropriate formula or class-wide method that can
13 prove that it was passed onto the members of our
14 class.

15 And so we fully anticipate that
16 we're going to need to have access to the data
17 from third parties and from Intel to work with so
18 our economists can work on it for purposes of
19 class certification.

20 Now, we've been dutifully
21 negotiating with the various third parties to get
22 production of this data. And we have not reached
23 impasse with any third party.

24 But I would describe pretty much all

1 of the negotiations as suffering from
2 sluggishness. We just haven't made the kind of
3 progress we had hoped to make to date. And, in
4 fact, we have not received production of any data
5 from any third party yet.

6 So I actually think that just as
7 we've benefited from Your Honor's willingness to
8 set a target date, you know, back in December for
9 third parties to complete production agreements
10 with us, and that that really helped, I think,
11 jump start negotiations and picked up the pace of
12 those negotiations.

13 That if we could get a similar type
14 target date for the production of the data, that
15 it would hopefully have the same kind of
16 beneficial effect on the negotiations.

17 So it would be the class' proposal,
18 Your Honor, to set a target date of mid-February
19 for agreements with third parties on the
20 production of data, and then a target date at the
21 end of February for the actual production of the
22 data.

23 SPECIAL MASTER POPPITI: I don't
24 disagree. Does anyone want to weigh in on

1 whether that is going to even -- mid-February, is
2 that going to permit the kind of time you need to
3 do everything you need to do by the time that
4 first brief is going to be filed?

5 MR. SMALL: That's a good question,
6 Your Honor. Of course, we would always prefer
7 more time, but I think realistically we would
8 need, you know, those, what, three or four weeks
9 between now and mid-February, you know, to give
10 the third parties a fair and realistic
11 opportunity to complete the negotiations. And so
12 we're prepared to live with that, you know,
13 particularly if they understand that if we do
14 reach agreement, they then need to actually
15 produce the data promptly after that.

16 SPECIAL MASTER POPPITI: Any other
17 input with respect to that?

18 MR. FLOYD: This is Dan Floyd. Just
19 based on the experiences we've seen so far, and
20 given the number of parties, that just seems a
21 little bit tight. I mean, I understand what the
22 competing considerations are, but having
23 something that is actually realistic.

24 So to have all these various

1 conversations, to even communicate these facts,
2 may take longer than that.

3 MR. SMALL: Your Honor, this is Dan
4 Small. I mean, I agree, but I think once there
5 is a seriousness of purpose, you know, it's
6 amazing what can get done in a relatively short
7 period of time.

8 And it's not like these negotiations
9 just began recently. I mean, in some cases these
10 negotiations go back several months.

11 And we think, you know, it's going
12 to take a deadline that's, you know, not too far
13 in the distance to get the attention, frankly, of
14 the third parties to really focus on this. And
15 you know, in addition, as I mentioned, we really
16 do have to be able to deal with the data in time
17 to do an expert report for July -- I forget the
18 exact date. But it's shortly in July.

19 SPECIAL MASTER POPPITI: Well, I
20 mean, there's no question that I want you to be
21 realistic. I mean, I certainly understand the
22 concerns of Mr. Floyd. At the same time, I'm not
23 in a good position to suggest a date for you.

24 So if you're suggesting to me that

1 because you have been in negotiations, that this
2 isn't just starting afresh, and if you're looking
3 to want to establish a date for negotiations to
4 conclude by a date certain in February, with
5 production to follow by target date certain, then
6 suggest the dates and submit to me a form of
7 order, and I will execute it.

8 MR. SMALL: Thank you, Your Honor.
9 I think if, you know, we can sit down with AMD
10 and Intel and see if we can agree upon those
11 dates promptly and get something to Your Honor.

12 SPECIAL MASTER POPPITI: And the
13 other thing I think you may want to do is, even
14 though we're going to be statusing something in a
15 four-week time frame, it may be important, for
16 purposes of serving the purpose that you've just
17 suggested, that within that order also select a
18 status date to focus on that discrete discovery
19 that you're talking about.

20 I think that may be helpful.

21 MR. SMALL: I agree, Your Honor.

22 MS. SMITH: Your Honor, picking up
23 on the question you asked prior to the
24 transactional data.

1 SPECIAL MASTER POPPITI: Yes.

2 MS. SMITH: I was checking all of
3 the orders in this case. And March 27, 2007
4 is -- I guess, we're in 2007 -- is the date
5 scheduled for the completion of party production.

6 We'll see if that ends up holding.
7 But there does not appear, in all the orders I've
8 checked, to be a date by which third party
9 production needs to conclude.

10 If anybody disagrees, please jump
11 in. So I think what I would like --

12 SPECIAL MASTER POPPITI: When does
13 discovery close?

14 MS. SMITH: I don't know.

15 SPECIAL MASTER POPPITI: And I don't
16 either, as I'm sitting here, and I should.

17 MR. FLOYD: What I'm aware of is
18 just a date, current date for the documents,
19 which I think is subject to an agreed upon
20 extension.

21 SPECIAL MASTER POPPITI: Okay.

22 MR. FLOYD: But other than that, I
23 don't think there are any other.

24 SPECIAL MASTER POPPITI: Are you

1 mindful of that date?

2 MR. FLOYD: I thought it was now
3 March 30th.

4 MS. SMITH: It's March 27th.

5 SPECIAL MASTER POPPITI: The date
6 that Ms. Smith just referred to?

7 MS. SMITH: Right.

8 SPECIAL MASTER POPPITI: Okay.

9 MR. FLOYD: It's within the
10 contemplation of everybody that we're going to
11 take advantage of the agreed upon extension.

12 SPECIAL MASTER POPPITI: Okay.

13 MS. SMITH: I would agree with that.

14 Your Honor, it looks like if we --
15 so I don't think you, as the Special Master, in
16 terms of your reporting requirements to Judge
17 Farnan are, you know, under a looming deadline on
18 third parties. Nonetheless, we all want to
19 complete document review and commence
20 depositions, which is another scenario involving
21 zillions of potential deponents.

22 And so we do want the process to
23 move forward as efficiently as possible. And I
24 think Your Honor's been a big -- a great

1 assistance in trying to make that happen.

2 My proposal is that if we skip -- if
3 we keep to the every other Thursday scenario,
4 then on February 22nd, which is four weeks from
5 today, which is a Thursday, if Your Honor can
6 accommodate us, that we have our next report to
7 you on the status of all, I guess I would call
8 it, custodial based or non-transactional
9 negotiations with the 70-plus third parties.

10 SPECIAL MASTER POPPITI: Okay. That
11 works for me.

12 MS. SMITH: Okay. Excellent.

13 Thank you, Your Honor.

14 MR. SMALL: Your Honor, Dan Small
15 again. Just going back, I apologize, briefly on
16 the data production issue, it occurs to me that
17 really we have the same issue with Intel, because
18 Intel, of course, has its own sales database that
19 is just as relevant as the third party database,
20 and in some ways maybe even more so.

21 And I'm wondering whether it makes
22 sense to whatever schedule we come up with for
23 the target date for production -- well, for the
24 production agreement, and then production of the

1 data, should apply as well to Intel.

2 SPECIAL MASTER POPPITI: Any
3 response to that, please?

4 MR. FLOYD: I think what we're
5 talking about now is that there will be, based on
6 the parameters of this discussion, there will be
7 a further discussion which, frankly, will include
8 Mr. Ripley. And so I think that we're not -- you
9 know, I would acknowledge that at some point if
10 there's an issue regarding Intel's production
11 here, it would end up in front of Your Honor.

12 I think that should just be on the
13 agenda to discuss. I don't necessarily assume it
14 has to be under the same exact timetable.

15 But it's clearly something that
16 needs to be worked out and provide an opportunity
17 to reach some closure on the negotiation.

18 SPECIAL MASTER POPPITI: Well, and
19 rather than force you to address that issue
20 today, I would prefer that you meet and confer.
21 And to the extent that you need to engage me
22 before we status again, then you can certainly do
23 that.

24 MR. FLOYD: Okay. We're happy to do

1 that, Your Honor.

2 SPECIAL MASTER POPPITI: I mean, I
3 think that just makes sense to me.

4 MR. FLOYD: There's history of
5 negotiations with Intel, too, but I think we can
6 now focus those in terms of trying to figure out
7 when we can complete the negotiations.

8 SPECIAL MASTER POPPITI: Good. And
9 I think it's just more important for you all to
10 have the opportunity to have that conversation
11 without me, not that I'm not interested, love to
12 hear it.

13 MR. FLOYD: Even though it's data?

14 SPECIAL MASTER POPPITI: Right. But
15 I think it's better for you to have that
16 conversation.

17 The other thing I just want and
18 expect that you will make sure of, and that is
19 that you'll make sure that to the extent that
20 there are going to be issues, if there are issues
21 involving third party jurisdictional
22 issues/discovery, that you're all contemplating
23 enough time to permit that to occur.

24 Is that in your formula for purposes

1 of describing the path forward?

2 MR. FLOYD: I don't believe, Your
3 Honor, we're going to have any jurisdictional
4 issues with respect to production of data.

5 SPECIAL MASTER POPPITI: Okay.

6 MR. FLOYD: And as to the other
7 types of documents that Ms. Smith has talked
8 about, I don't think we're going to have a
9 problem with that for purposes of class
10 certification.

11 SPECIAL MASTER POPPITI: Okay. Does
12 everyone agree?

13 MS. SMITH: I agree. Clearly, I
14 think there will be some jurisdictional fights
15 unrelated to what the class needs, what Intel
16 needs for class certification.

17 SPECIAL MASTER POPPITI: Okay.
18 Anything else that we need to be addressing
19 today, please?

20 MS. SMITH: No, Your Honor. Thank
21 you for your patience.

22 SPECIAL MASTER POPPITI: No. It's
23 my pleasure.

24 Trust that I will review the

1 transcript and become much better informed than I
2 am now after the presentation. I appreciated it
3 sincerely.

4 When can I expect to see what we're
5 talking about with respect to class deadline in
6 February, and ultimately the deadline with
7 respect to production?

8 MR. FLOYD: Your Honor, I don't see
9 why we couldn't get something to you early next
10 week, you know, for a proposed order.

11 SPECIAL MASTER POPPITI: Okay. I'm
12 not going to give you a deadline, as I frequently
13 do in other matters, because I think you all are
14 attending to these issues and focused on them
15 rather precisely.

16 So I'll look for something during
17 the course of the new week.

18 MS. SMITH: Very good, Your Honor.
19 And Your Honor, just as an administrative thing,
20 we're going to circulate the list that adds the
21 additional subpoenaed third parties to everyone
22 pretty much after this conference call ends.

23 SPECIAL MASTER POPPITI: Excellent.
24 I appreciate that.

1 Next time in Paris.
2 MS. SMITH: Okay.
3 SPECIAL MASTER POPPITI: Thank you.
4 MS. SMITH: Thank you, Your Honor.
5 SPECIAL MASTER POPPITI: Bye.
6 (Teleconference concluded at 12:07
7 p.m.)
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1 State of Delaware)
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2 New Castle County)

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5 CERTIFICATE OF REPORTER

6

7 I, Heather M. Triozzi, Registered
8 Professional Reporter, Certified Shorthand
9 Reporter, and Notary Public, do hereby certify
10 that the foregoing record, Pages 1 to 53
11 inclusive, is a true and accurate transcript of
12 my stenographic notes taken on January 25, 2007,
13 in the above-captioned matter.

14

15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and seal this 26th day of January,
17 2006, at Wilmington.

18

19

20 Heather M. Triozzi, RPR, CSR

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