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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3
4 ADVANCED MICRO)
5 DEVICES, INC., a)
6 Delaware)
7 corporation, and AMD) Civil Action No.
8 INTERNATIONAL SALES) 05-441-JJF
9 & SERVICE, LTD., a)
10 Delaware)
11 corporation,)
12)
13 Plaintiffs,)
14)
15 v.)
16)
17 INTEL CORPORATION, a)
18 Delaware)
19 corporation, and)
20 INTEL KABUSHIKI)
21 KAISHA, a Japanese)
22 corporation,)
23)
24 Defendants.)
25)
26 IN RE INTEL)
27 CORPORATION)
28 MICROPROCESSOR) MDL No. 05-1717-JJF
29 ANTITRUST LITIGATION)
30)
31 PHIL PAUL, on behalf)
32 of himself and all)
33 other similarly)
34 situated,)
35)
36 Plaintiffs,)
37)
38 v.) Civil Action
39) No. 05-485-JJF
40)
41 INTEL CORPORATION,)
42)
43 Defendant.)
44)

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1 A teleconference was taken pursuant to notice
before Ellen Corbett Hannum, Registered Merit Reporter,
2 on Thursday, October 5, 2006, beginning at approximately
11:00 a.m., there being present:

3

4 BEFORE: The Hon. Vincent J. Poppiti

5

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1 JUDGE POPPITI: Good morning.

2 Let's go back for Ms. Corbett and do a
3 roll call, please. Let's start with AMD and that case
4 and then we will go back through Class.

5 MR. DIAMOND: On behalf of AMD, you have
6 Chuck Diamond of O'Melveny & Meyers.

7 MS. SMITH: Linda Smith of O'Melveny &
8 Meyers.

9 MR. HERRON: David Herron, O'Melveny &
10 Myers.

11 MR. COTTRELL: And, Judge, in Delaware,
12 Fred Cottrell and Chad Shandler for AMD.

13 MS. OZMUN: You also have on the line
14 Beth Ozmun for AMD as well.

15 MS. BAKER: On behalf of Class, Allyson
16 Baker from Cohen, Milstein in Washington.

17 MR. BELL: Thomas Dove from The Furth
18 Firm in San Francisco.

19 MR. HOLZMAN: James Holzman and Clay
20 Athey, Prickett Jones & Elliott, Wilmington.

21 MR. HORWITZ: Your Honor, for Intel,
22 this is Rich Horwitz from Potter Anderson here in
23 Wilmington, and on the line from Howrey in D.C., Darren
24 Bernhard, and from Gibson, Dunn in Los Angeles, Daniel

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1 Floyd.

2 JUDGE POPPITI: Thank you all. And
3 please, I know that not everyone will be speaking
4 throughout the course of our meeting today, but when you
5 do, please identify yourself, and if that doesn't happen,
6 Ellie, please do us the courtesy of interrupting us.

7 THE COURT REPORTER: I will, Your Honor.

8 JUDGE POPPITI: Certainly I thought
9 yesterday that it was important to send out at least a
10 proposal with respect to some of the things that we
11 should begin to discuss today. It doesn't mean that we
12 need resolution on those things that I propose or on
13 issues that you intend to serve up, but I think it is
14 important, given Judge Farnan's decision and the
15 expectation that things will be rolling forth apace, that
16 we begin to focus on those issues that I propose and that
17 you periodically serve up things that are important to
18 discuss on the times that we have set.

19 With that, let me ask if there is any
20 disagreement that we should at least look at the proposed
21 agenda that was set yesterday and whether or not we can
22 use that as a beginning template for today's discussion.

23 Does anyone disagree?

24 MR. DOVE: I note on behalf of the Class

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1 plaintiffs I did not receive the agenda, so I will sit
2 and listen.

3 JUDGE POPPITI: We can take care of that
4 momentarily.

5 MS. BAKER: Tom, I can send it to you.
6 It's Allyson Baker.

7 MR. DOVE: Okay. Send it to my e-mail
8 account.

9 JUDGE POPPITI: Thanks for doing that.

10 MS. BAKER: That's all right.

11 JUDGE POPPITI: First item on the
12 agenda -- let me just read that to you while you are
13 waiting for it. There are three topics. The first is
14 current discovery; the second is emerging issues, and
15 they reflect squarely on Judge Farnan's decision and what
16 impact that may have on discovery; and the third are a
17 number of procedural matters that I think are important
18 to begin to discuss and bring to some resolution.

19 So let's start then with current status
20 of discovery.

21 MS. SMITH: Your Honor, Linda Smith,
22 AMD. Let me address that briefly and everyone else I'm
23 sure will respond.

24 Your Honor, I set forth at the hearing,

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1 which you attended before Judge Farnan, but let me
2 just -- I have a few things to add and I have a proposal
3 in terms of at least getting something before you that
4 you can take a look at.

5 I noted at the hearing that we
6 collectively, the three parties, if you will, Intel, AMD
7 and Class have issued subpoenas on 70 third-party
8 corporate entities, that AMD has concluded agreements
9 with IBM and HP, Hewlett Packard, and is very close to
10 agreement with Dell, Ingram, Egenera, Rackable, and Micro
11 Center. As I think Your Honor is aware, there are the
12 OEMs, which are the tier-one equipment computer
13 microprocessor manufacturers; there are the retailers;
14 there are the distributors or what we call the disDs;
15 there are the ODMs, which are the manufacturers of mother
16 boards and chip sets; and then there are some software
17 companies and a couple of outliers in terms of putting
18 them in a box like JEDEC, which is the standard setting
19 authority.

20 Documents have been produced from -- and
21 no one needs to write this down, I can provide a list if
22 anybody wants it -- from: Appro, Asus, Averatec,
23 CompUSA, DivX, Fujitsu Siemens, JEDEC, Lenovo, Sony, Sun,
24 Supermicro and Toshiba. Those are not complete

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1 productions, in our view, but there has been production.

2 There are a whole bunch of issues, which

3 I will not go into here because otherwise we will be on

4 this call until tomorrow, but there are -- we have sort

5 of broken it down and because AMD was the first one to

6 serve 32 subpoenas before anybody else, we have had

7 substantial negotiations about protocol and have -- there

8 is sort of a two-pronged approach. One is to do it by

9 custodians that are identified at the third party and

10 search terms that are run through the custodian files.

11 And the other piece is to do it by

12 corporate data request or transactional request.

13 Something that is particularly near and dear to the heart

14 of the Class action plaintiffs and Intel so that they can

15 get the purchase data on the individual sales,

16 particularly from the retailers. I will let them speak

17 to that.

18 So there are sort of two sets of

19 information that Your Honor will be dealing with.

20 JUDGE POPPITI: Okay.

21 MS. SMITH: What we did is, for the 70

22 entities, not everyone served everyone, but most of us

23 served most of them. And so what we decided to do, in

24 order to get this done in our lifetime, is to have a

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1 negotiating representative from AMD, one from Intel, and
2 one from the Class, and the tripartite or triumvirate
3 would them negotiate with a third party to get the
4 individual deals done.

5 And the hope was that each negotiating
6 team, like the negotiating team with, you know, Appro or
7 with anybody who you wanted to call would have sufficient
8 authority within the confines of their own client to put
9 the deal to bed. And, as I said, some of them are
10 substantially far along and some of them are not. And
11 what we were thinking of supplying, Your Honor, was
12 simply a list of the 70 subpoenaed third parties in
13 alphabetical order so you would have -- or we can split
14 them by just DOMs, retailers, ODMs, and software
15 companies, so that at least the Court would have sort of
16 a checklist of how many are out there and as they get
17 resolved, if they get resolved.

18 JUDGE POPPITI: It's a good idea. And I
19 think I would prefer to see it categories because I want
20 to talk to you about even how issues are going to be
21 served up, and it may be that we want to be looking at
22 categories when we talk about issues.

23 MS. SMITH: That's fine, Your Honor. I
24 agree with that. And other people can jump in if they

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1 have a different take on this.

2 JUDGE POPPITI: Yes. Please do.

3 Does anyone disagree with serving those

4 up in categories as opposed to alphabetical listing?

5 Does anyone disagree?

6 MR. BERNHARD: Your Honor, Darren

7 Bernhard, there was some interference, I didn't hear you.

8 JUDGE POPPITI: My question was: Does

9 anyone disagree that they should be served up in

10 categories as opposed to alphabetically just to be

11 advised of status?

12 MR. BERNHARD: I think that's fine.

13 JUDGE POPPITI: Thank you.

14 MR. SMALL: Your Honor, this is Dan

15 Small. I don't have any problem with that either. I

16 just wanted to let you know I joined the call. I

17 apologize for being late.

18 JUDGE POPPITI: Thank you.

19 MS. SMITH: This is Linda Smith, again.

20 Let me go on for one more minute and you direct us as you

21 will.

22 JUDGE POPPITI: Please.

23 MS. SMITH: The proposal, which we don't

24 have to take up now, and Your Honor was present, is that

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1 we develop some mechanism for reporting into you either
2 deals that are done, which of course don't require action
3 on your part.

4 JUDGE POPPITI: Right.

5 MS. SMITH: Or that we have what AMD
6 proposed and Intel objected to at the hearing, and we
7 talked about that and the Court put it squarely in your
8 lap, I think by the beginning of December is setting a
9 cut-off to try to make the deals so that -- and I really
10 -- AMD regards this as a way to discipline ourselves,
11 Intel and the Class into getting these negotiations
12 concluded or reaching impasse. And also, since the third
13 parties, of course, you know, are not thrilled about the
14 possibility of producing this quantity of materials, that
15 there be some cut-off date that they are looking at as
16 well where they can know that if it's not achieved there
17 will be motion practice.

18 As I mentioned, it's not clear,
19 depending on what's holding up -- so the idea would be,
20 and this can be briefed and however the Court wants to do
21 this or maybe in the next two months before the early
22 December time frame we can get all these deals done and
23 you won't have anything to do, but I mean that's probably
24 wishful thinking, that we would want -- we are looking

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1 for some sort of mechanism by which the deals have to be
2 done.

3 Obviously, each third party is unique
4 with the unique requirements, it's not a cookie-cutter
5 process. And so there will be different deals and there
6 will be different productions and staged productions of
7 documents pursuant to those deals. But some people will
8 want to bring, some of the parties may want to bring a
9 motion to compel while others won't because they are,
10 they have agreement -- we have agreement with a number of
11 the third parties and maybe that agreement is not
12 achieved with Intel. So that there would be various of
13 us that would be bringing motions.

14 And the thought was if we can apply some
15 sort of discipline to this process so that Your Honor
16 isn't faced with 70 different sets of motions to compel
17 brought by different folks at different times. I'm not
18 saying they all have to line up, but once it's concluded,
19 perhaps, that the deals either are done or won't be done
20 that we think of -- and I have been actually trying to
21 think of, Your Honor, and maybe you can come up with
22 something other than everyone files their motion on the
23 remaining, you know, unresolved negotiations or impasse
24 negotiations -- some way to process this so you don't

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1 have 70 sets of papers with potentially four briefs on
2 each one, one by Class, AMD, and the third party. Maybe
3 that's inevitable, and I think some of this will get
4 done, but we are trying to impose some sort of order on
5 ourselves and, perhaps, for your convenience in terms of
6 process.

7 JUDGE POPPITI: Okay. Let me just make
8 just a couple of observations before opening it up to
9 some discussion. I certainly am wanting to look for
10 efficiency in process. And that means that setting some
11 target dates for -- this is to approach it -- for the
12 beginning of the expectation of motion practice is saying
13 the same thing that you are saying. By a certain date
14 deals will have either been made or where there are deals
15 that have not been made motion practice with respect to
16 those entities can begin. And we can discuss how that or
17 whether it's at this conference or once I give it a
18 little more thought in a couple of weeks.

19 It seems to me by virtue of focusing on
20 the kind of time frame that everyone expects may be
21 needed to negotiate deals, puts us in a position to
22 describe for me and ultimately for the Court, because the
23 Court is going to want to know what is going on, whether
24 it's a report or whether it's just in a conversation,

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1 when this is going to occur. My first inclination is to
2 say there needs to be a start date when I can expect that
3 motion practice will begin. And I think that frames what
4 we need to discuss here. How we go forward to permit
5 enough time, as is being suggested, so that some
6 discipline is brought to the process of negotiating these
7 deals with an end date in sight, knowing certainly that
8 the deals can be made even after the end date, but motion
9 practice can begin after that date is past.

10 I think that's what you were proposing,
11 it certainly makes some sense to me. And perhaps we
12 should discuss that. And I guess the other question is,
13 do I need to understand how that negotiation structure
14 works or is it best left to what you have been doing and
15 what you intend to be doing?

16 MR. BERNHARD: Your Honor, this is
17 Darren Bernhard for Intel.

18 The one obvious complicating factor in
19 these negotiations is the subject matter jurisdictional
20 ruling. Our expectation is, although we haven't engaged
21 with the third parties on this issue, that many of them,
22 particularly the foreign ones are going to take the
23 position that the allegations that related to their
24 conduct are out of the case.

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1 JUDGE POPPITI: Right.

2 MR. BERNHARD: Obviously that has an
3 impact on the discovery that they need to provide and
4 many will probably take the position that they ought not
5 to provide anything and would certainly want to be
6 involved in the decision-making process on that issue,
7 the briefing process.

8 The other issue is, with regard to
9 domestic OEMs, Miss Smith raised AMD and IBM, for
10 example. I don't know this for a fact because I haven't
11 talked with them, but I would expect that their agreement
12 with AMD may be subject to renegotiation as a result of
13 Judge Farnan's decision. That decision also, of course,
14 impacts the discovery that Intel will seek.

15 And so the time frame under which we
16 engage in these negotiations certainly is going to be
17 affected by item 2 on your agenda and how that all gets
18 resolved.

19 MR. DIAMOND: This is Mr. Diamond.

20 I agree with Darren. I don't want to
21 jump to item 2 ahead of time, but the early and quick
22 resolution of that issue, I think, is important. I would
23 disagree with Darren in one respect in that this seems to
24 me in the first instance to be a party's issue and will

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1 be framed by --

2 JUDGE POPPITI: I just talked through
3 you, Mr. Diamond; what was your comment?

4 MR. DIAMOND: I was saying that I think
5 the issue of the scope of foreign discovery is a party
6 issue, not a nonparty issue.

7 JUDGE POPPITI: Okay.

8 MR. DIAMOND: And whatever the ruling is
9 with respect to the parties' obligations to make foreign
10 conduct discovery obviously will flow to nonparties, but
11 I think we do need to tee that up very, very quickly
12 because it will stall both the negotiations and, more
13 importantly, the commencement of production by various
14 third parties.

15 MR. BERNHARD: One other point in
16 response to Mr. Diamond. This is Darren Bernard.

17 I think it's our expectation that the
18 third parties will have some different perspectives on
19 this subject matter jurisdiction issue, they may raise
20 some burden arguments that may or may not otherwise be
21 raised. And that, one way or other, they are going to
22 want to have a say on these issues.

23 MR. DIAMOND: I certainly anticipate
24 that.

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1 MS. SMITH: This is Linda Smith. We
2 have no, we have no expectation that either IBM or HP
3 will want to renegotiate their agreement. Those
4 agreements are signed, sealed, and delivered, and they
5 are, you know, U.S. companies. So I am not concerned
6 about that aspect.

7 I also think that while there may be --
8 I think that the Court's ruling with respect to the
9 discoverability of foreign conduct will govern the
10 third-party discovery and that this is an issue between
11 and among the parties and the Court, and that the third
12 parties will comply with whatever ruling is made. And I
13 don't see the efficacy of asking 70 third parties to
14 participate in the briefing on this issue, which is
15 supposed to be resolved as expeditiously as possible.

16 At this point we are going forward in
17 the negotiations, the tripartite negotiations, plus the
18 third party, under the expectation that everything that
19 has been asked for will be produced. If that is limited
20 by the Court as a result of, Judge, your decision, then
21 that will be communicated to the third parties and result
22 in limitation in the initial production request.

23 JUDGE POPPITI: Let's do this. I mean,
24 I certainly understand the import of what was suggested

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1 with respect to negotiation of these deals.

2 I understand the need to set some
3 parameters for purposes of disciplining the path forward.

4 I understand the need to set a start
5 date for the work that you expect that I am going to be
6 doing with any fallout from deals that are not closed;
7 but you are absolutely correct, the second proposed
8 agenda item, if you will, on my agenda, is one that has a
9 significant impact on all of this. And maybe it is
10 important to jump to that at this point.

11 And I might add as a footnote before we
12 do this, these issues and the way we should be conducting
13 these, certainly you know this case a lot better than I
14 know it at this point. I can assure you that I will
15 spend all the time that is necessary for me to understand
16 the process, the issues. When we sit down to talk it
17 will be critically important for you to do for me what
18 you do for Judge Farnan, and that is, advise him in
19 advance of what you think needs to be discussed. To the
20 extent that it's important, meet and confer about the
21 agenda and the discussion. Give it some good thought
22 before we all sit down and convene on any Thursday of any
23 week or any other day.

24 Having said that, I certainly have given

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1 the issue with respect to how to join foreign
2 conduct/discovery some thought, but I expect that y'all
3 have given it much more thought. And I think it's
4 important for us to discuss that now, not necessarily ask
5 me for some resolution as to how it's going to be dealt
6 with now, but expect a resolution with respect to how
7 it's going to be dealt with in the next several days, if
8 not the beginning of next week.

9 So let's talk about that in terms of how
10 you all see that issue being joined. You know, I don't
11 know, for example, whether I should be ruling on the
12 scope of that discovery in a vacuum. I am a little bit
13 concerned, and you can allay those concerns for me if,
14 depending upon how you talk about it, whether I'm giving
15 an advisory opinion, if you will. It will certainly be
16 important to discuss whether or not third parties have
17 any right to make input on the issue other than joining
18 discovery disputes at the back end of any decision that I
19 make and any decision that Judge Farnan makes with
20 respect to my view of the matter.

21 So with that, who wants to take leading
22 oar on this?

23 MR. DIAMOND: Your Honor, let me start
24 on that. It's Chuck Diamond for AMD.

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1 JUDGE POPPITI: Please.

2 MR. DIAMOND: I know Fred Cottrell sent
3 you, with Intel's blessings, the correspondence that
4 Intel and AMD has exchanged since the hearing.

5 JUDGE POPPITI: Yes.

6 MR. DIAMOND: Just to clarify -- because
7 I don't think Judge Farnan was clear on this point -- we
8 commenced discovery of Intel and the third parties now a
9 year ago.

10 JUDGE POPPITI: Yes.

11 MR. DIAMOND: The discovery that we
12 requested clearly contemplates discovery concerning
13 Intel's conduct with respect to foreign entities.

14 JUDGE POPPITI: Right.

15 MR. DIAMOND: We have and Intel have
16 been proceeding on the basis of identifying, harvesting,
17 collecting, and producing documents that include foreign
18 conduct materials. So unless something else happens, you
19 know, our view is that Intel is under an obligation to go
20 forward with the production that it has agreed to make.

21 Intel did reserve the right to amend its
22 responses in light of any decision on its FTAIA motion.
23 And we fully expect and anticipated that by now Intel
24 would have amended its responses to tell us what it's

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1 going to do in response to the motion. But as far as we
2 are concerned, the issue is joined.

3 We are dealing with a purely legal
4 issue, and that is, the permissibility and in fact the
5 necessity of getting involved in conduct outside of U.S.
6 borders when you are dealing with a Section 2 claim
7 involving a worldwide relevant geographic market. It
8 seems to us it doesn't need very much factual background
9 to decide that issue. It requires some understanding of
10 the mechanics and the policies behind Section 2. And it
11 will ultimately turn on how a court harmonizes Section 2
12 and the law that's grown up under it and the FTAIA.

13 But from AMD's position, the issue has
14 been joined. Mr. Floyd set forth Intel's preliminary
15 view quite clearly, and that is, foreign conduct cannot
16 be offered to prove wrongful acquisition or retention of
17 monopoly power. We believe to the contrary. And, you
18 know, our take on this is let's get to it. We are happy
19 to file a letter brief forthwith under the procedures
20 that you have already promulgated, and I see no reason
21 why this issue can't be fully briefed and decided in the
22 next two weeks.

23 As a start, though, I think it's
24 incumbent upon Intel if they are going to amend their

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1 responses to our document requests that they do so and
2 they do so promptly or that they just simply tell us that
3 an amendment really isn't necessary, they are just not
4 going to produce foreign conduct discovery. That's our
5 view on the matter.

6 I don't think third parties have a right
7 to participate in a discussion of what's relevant or not
8 in a litigation, that is not an appropriate issue for
9 third parties to weigh in on. That's an appropriate
10 issue for the Court to determine when there is a dispute
11 among parties as to the scope of discovery. The third
12 parties may well have some burdensome arguments to make
13 in the context of a ensuing ruling.

14 JUDGE POPPITI: Right.

15 MR. DIAMOND: But it seems to me that's
16 clearly the tail of the horse and not the front end and
17 that ought to come after there has been a decision on the
18 dispute between the parties.

19 MR. FLOYD: This is Dan Floyd. If I can
20 set forth Intel's position.

21 I think that one -- one issue that I
22 think we need to put on the table is that this process
23 with Your Honor here is in part or largely a case-
24 management process, which has legal issues that are part

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1 of it. So I think that it's not going to be -- and I
2 will try to articulate why, while there are legal issues
3 that we would agree are going to have to be resolved, are
4 going to have to be addressed by you as part of this
5 process, it's not a simple matter of saying, Well, here
6 is an advisory opinion, now go and implement it in the
7 course of, in connection with discovery here.

8 We have a couple points: One is the
9 letters that we have addressed, four requests out of, I
10 don't know the exact number, we will assume it's in the
11 hundreds. We have a custodian-based approach here where
12 we have been, part of our jobs have been to identify
13 custodians who might have relevant documents. And one of
14 the specific explanations there, we are supposed to
15 identify those custodians with knowledge of issues framed
16 by the pleadings. And now there has been, we believe as
17 a result of the striking of the allegations, a material
18 change in the pleadings.

19 So what we have here is we have got an
20 issue of, which frankly takes some time to work through,
21 which is we designated, on behalf of Intel, the number of
22 custodians who we believe are relevant, only relevant
23 really to pleadings or allegations in the pleadings that
24 have now been stricken.

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1 And ultimately, then, we have a scope of
2 custodians we have to produce from, we have to determine
3 the total scope of production that needs to be done, so
4 we really have to deal with all the requests. As a
5 straightforward matter, I understand now Chuck's position
6 here that he would like us to either -- in terms of
7 filing some sort of amendment. We are happy now to
8 attempt to amend our responses. I think it will take us
9 at least a week to do that, but I think the problem that
10 we have is that there are some legal issues that
11 presumably if they are resolved one way or another there
12 could be a simple response, but we think much more
13 likely, because the issue of discovery is sort of this
14 broader case- management perspective, there is going to
15 be degrees of relevance, there is going to be degrees of
16 importance, there is going to be burden issues, there are
17 going to be third-party issues.

18 And so determining exactly how much
19 should be produced and where the lines ought to be drawn
20 in these hundreds of requests and, also, determining, in
21 light of our obligations under the custodians agreements,
22 which custodians -- we believe that's just not something
23 that's going to be able to be addressed by a couple of
24 letter briefs, but requires both an understanding, some

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1 of which would be done through this process of before
2 Your Honor here of figuring out what the legal standards
3 are, but also determining the specific implications of
4 those standards on the custodian lists and the responses.

5 So I think we are not adverse to, we
6 understand there needs to be a process that needs to be
7 put in place in a reasonable manner to get this resolved.
8 In the meantime, though, I want to point out that we also
9 believe that there is a large segment of discovery that
10 will be unaffected that can proceed so that the parties
11 aren't simply stuck while this process is going through;
12 but because of the importance of it, we think that it's
13 important that it be done on a full record and address
14 the full scope of discovery and be done in a deliberative
15 fashion and not rushed, because it's the implications for
16 the case as a whole.

17 JUDGE POPPITI: I certainly anticipate
18 that what you have just suggested is something that I'm
19 going to need to be concerned about, and that is, I don't
20 think -- it was certainly not my impression in listening
21 to y'all with Judge Farnan in the courtroom a week and a
22 half or two weeks ago that this was going to be a simple
23 review of some letter documents with my advice or
24 recommendation to Judge Farnan. I do expect that there

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1 may have to be or there will have to be some specificity
2 with respect to categories of discovery.

3 At the same time, I am mindful that
4 whatever I do at the front end of this, whether your
5 request to me is a broad focus, with broad brush or
6 whether it is a tight focus with a little more time
7 permitted to develop it, it certainly has an impact on
8 the present status of the case, as I understand it.
9 Namely, that Judge Farnan's decision is sitting there
10 awaiting some judgment as to whether there is going to be
11 a request for interlocutory or an interlocutory appeal.

12 MR. DIAMOND: That's very true and that
13 sort of underscores our view of the need to get this
14 decided quickly. And, quite frankly, I disagreed with
15 Mr. Floyd that we are going to be dealing with various
16 shades of gray instead of black and white. I think, at
17 least at the front end, we have a pretty black and white
18 question, as Mr. Moll said at the hearing, a week ago
19 Wednesday, the Intel folks are taking a very literal view
20 of the FTAIA. And, one, that precludes foreign conduct
21 discovery in their estimation. We think that that's not
22 correct. And that that's purely, as I think Judge Farnan
23 observed, a legal issue in the context of a Section 2
24 case involving a worldwide market is a plaintiff entitled

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1 to inquire into foreign monopolizing conduct, it's a yes
2 or it's a no.

3 JUDGE POPPITI: I think that question is
4 easily framed.

5 MR. DIAMOND: And it may well turn out,
6 during the development of this at the briefing stage,
7 that, you know, there are particular requests that may go
8 beyond what is necessary to prove a Section 2 violation.
9 I can't think of any, but there may, but that's something
10 that can be developed as we go along. But I really do
11 urge you, Judge Poppiti, that it's been a year. The case
12 has now been on file for close to a year and a half. For
13 all intents and purposes, we have not gotten a single
14 document, a single piece of paper from Intel.

15 It's going to be very difficult to go
16 forward with discovery with this issue hanging out,
17 because even if you are dealing with a custodian, who has
18 got basically domestic responsibilities, intermixed in
19 those documents are going to be e-mails from other people
20 involving other subjects, and it is just physically
21 impossible for us, at any reasonable cost, at any
22 reasonable time parameter, to try to go through those
23 documents and cull documents which may involve foreign
24 conduct as opposed to domestic conduct.

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1 This is just something that our contract
2 attorneys and Intel's contract attorneys can't do. So
3 until we get this resolved, we are not going to get any
4 additional pieces or any pieces of paper from Intel and
5 discovery will remain stalled as it has for a year and a
6 half.

7 JUDGE POPPITI: Mr. Diamond, let me ask
8 this question. You suggested that you anticipated that
9 Intel would be amending based on Judge Farnan's opinion.
10 Do you expect that is to important to occur before I set
11 any schedule for briefing of the issue that we are
12 describing?

13 MR. DIAMOND: That question was
14 addressed to me?

15 JUDGE POPPITI: Yes, sir.

16 MR. DIAMOND: You know, I think we need
17 a statement of position that gives the AMD side some
18 traction. We have a statement from Mr. Floyd in a
19 letter, but it's one of many statements; we have a
20 statement from Mr. Moll in open court, but it's one of
21 many statements. You know, I think they need to take a
22 position on foreign conduct discovery, are they going to
23 make it or are they not going to make it? And that seems
24 to me to be a fairly simple proposition. They may have

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1 to do some difficult soul-searching, but they have had
2 already had this decision in hand for a week and a half.

3 I would suggest that sometime next week
4 they amend their responses, if that's what they are going
5 to do, to set forth what their position is going to be on
6 foreign conduct discovery and that, you know, we promptly
7 thereafter we will submit a brief in support of a motion
8 to compel and be off and running.

9 JUDGE POPPITI: And, Mr. Floyd, if I
10 heard you correctly, you said that it would be your
11 intent to do just that within about a week time frame.

12 MR. FLOYD: We would amend the
13 responses.

14 A couple of just quick responses. I
15 don't think -- talking about the fact the case has been
16 pending for a year, the decision came down literally
17 about a week ago and it has a number of effects so this
18 is not anything about trying to stall anything here. We
19 are trying to deal with it. I think one of the issues is
20 that it is -- this deals with the substance, and I don't
21 want to go too far down that road because we really need
22 to tee it up in the right way.

23 On this issue of conduct, just to say is
24 conduct admissible or not -- or discoverable? Well, it

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1 may be that the relevance, there can be different types
2 of relevance and for different purposes, and then the
3 scope of that discovery and the burden and all of that
4 can all be dependent on the purpose for which that
5 discovery may be obtained.

6 So, now, I think that even under
7 Mr. Diamond's formulation, it's just -- in our view, I
8 guess there could be an answer that is relatively simple,
9 but there isn't necessarily an answer that is that way.
10 And I think that in order to decide this, you can't just
11 assume that the answer is going to be simple given that
12 there is a possibility that it could be much more complex
13 if the potential relevance of some information is for a
14 narrower purpose.

15 MR. DIAMOND: I just think the Intel
16 side is the incompleteness that don't exist. We are
17 entitled to discoverable evidence and that's anything
18 that's reasonably likely to lead to admissible evidence.
19 So the question is: Is foreign conduct evidence
20 admissible in a Section 2 case like this one? If it is,
21 then we are entitled to conduct discovery of anything
22 that might be reasonably likely to lead to it. So we
23 have to answer that first threshold question. Is it
24 admissible? That seems to me to be a perfectly simple

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1 question -- not necessarily a simple question, but a
2 straightforward question to deal with. And one that you
3 can get your arms around, Judge, pretty quickly and could
4 go up to Judge Farnan, because I'm sure that neither side
5 will be -- one side will be disappointed with your
6 ruling.

7 JUDGE POPPITI: Whatever I do I want to
8 get my arms around quickly because I understand what
9 Judge Farnan was saying when he said that this is
10 something that has to be dealt with right away. I
11 understand the implications of it for the case itself as
12 it moves forward. And I understand the implications that
13 it has for the posture of the case, if you will.

14 MR. DIAMOND: Yes. And so I think we
15 tee up the one question of whether this is -- whether
16 foreign conduct, under these circumstances, is admissible
17 evidence. We can haggle over the next coming weeks and
18 months over, you know, what's reasonably likely to lead
19 to that if the Court determines that it is admissible
20 evidence; but, you know, I think we need a threshold
21 determination of how you and how Judge Farnan come out on
22 this issue.

23 JUDGE POPPITI: Let me do this: I don't
24 think it would serve any good purpose for me to -- I

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1 don't think, and I am going to say it now and I am going
2 to give myself some time to think about it, and that may
3 mean literally an overnight or into Monday. I don't
4 think it would serve me any purpose to describe for you
5 precisely how you need to be framing this issue for
6 purposes of serving up the issue at hand.

7 I mean, I expect that you will take
8 different views of it; I have heard that already today.
9 It will then become my responsibility, I expect, to look
10 at your various perspectives and make some determination
11 as to whether it is a broad brush, if you will, is the
12 foreign conduct "discoverable," and that is it or whether
13 there has to be a drill down through precisely what that
14 means.

15 I'm not sure it serves me any purpose
16 for me to try and limit the way you come at me with your
17 respective submittals. I think it would be a mistake for
18 me to do that, at least that's what I think.

19 Having said that, it seems to me that it
20 would be wise for Intel to do what it suggests that it
21 can do in the course of a week. If it's important for me
22 to give you an actual deadline, I will do it; if a week
23 fits, that's fine. If it doesn't fit and you need more
24 time, tell me because I think I certainly have the clear

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1 message from Judge Farnan, and I expect that everyone in
2 the courtroom did as well, he does expect me to be
3 managing this case going forward as it relates to
4 discovery and other issues. So if we need a date
5 certain, tell me, and I will give you one.

6 Let's start with that first with respect
7 to what Intel --

8 MR. DIAMOND: We can certainly live with
9 Mr. Floyd's representation that this will happen within a
10 week.

11 JUDGE POPPITI: Mr. Floyd?

12 MR. FLOYD: Yes, that's fine.

13 JUDGE POPPITI: And do you want the
14 week, end of business next Thursday or the week, end of
15 business next Friday?

16 MR. FLOYD: I think we would always like
17 an extra day, so we will take Friday, if that's all
18 right.

19 JUDGE POPPITI: That's fine.

20 MR. SMALL: This is Dan Small for the
21 Class plaintiffs. With respect to the Class case, we, as
22 I mentioned at the hearing last week, are in a different
23 position --

24 JUDGE POPPITI: You are.

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1 MR. SMALL: -- than with respect to
2 AMD's case, because the issue about foreign conduct has
3 not been raised at all in our case. And we are not sure
4 that Intel will do it, although I suspect they will when
5 they move to dismiss in November. But the question is
6 what do we do in the meantime.

7 And I think to have any clarity in our
8 case, we need to start with knowing what Intel's position
9 is with respect to discovery in the Class case. And so I
10 would ask that Intel formalize its position on that issue
11 with respect to the Class case, also by the end of next
12 week.

13 JUDGE POPPITI: Mr. Floyd.

14 MR. FLOYD: That's fine.

15 JUDGE POPPITI: It will be the same time
16 frame, then.

17 MR. FLOYD: Well, we will be amending
18 our responses. I mean, I think what we have discussed --
19 I believe our position will be that, yes, that we would
20 attempt to move that we believe that the scope of
21 discovery would be the same. I mean, we obviously have
22 to -- there would be a ruling by Judge Farnan. We also,
23 I think, contrary to what Mr. Diamond thinks, we do
24 believe there will be discovery that will be able to go

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1 forward and document production that don't implicate this
2 issue. So I don't think we will be running into any
3 situation where there would be any ultimately meaningful
4 delay in the ultimate production, events may affect that,
5 I don't know, as we go forward, with the third parties.
6 That's where we are.

7 But the issue, I guess, is we are going
8 to file this or serve this response. I don't know if
9 there is some other method by which we would alert the
10 Class plaintiffs to our position; I guess we could
11 provide them a letter, something like that.

12 MR. DIAMOND: It's Mr. Diamond again.

13 Probably the cleanest way to do this is
14 to amend your responses to the Class request deal.

15 MR. FLOYD: Yeah. I was thinking --
16 because most of the requests are the same, but that's
17 fine.

18 MR. DIAMOND: And, Your Honor, I do
19 think Mr. Small raises a very good point because, as you
20 are well aware, although the Class may also have Section
21 2 claims, by and large these are state causes of action.

22 JUDGE POPPITI: Yes, I am aware of that.

23 MR. DIAMOND: And the FTAIA obviously
24 doesn't amend state laws, so it would be useful to have

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1 in the hopper in deciding the foreign-conduct issue
2 exactly what's going to happen on all fronts.

3 JUDGE POPPITI: I don't disagree with
4 that.

5 Mr. Small, how do you see participating
6 in this?

7 MR. SMALL: Well, we can certainly
8 present to Your Honor our position about what state law
9 provides. I mean, Mr. Diamond is absolutely correct that
10 the issue is going to be different under state law
11 because there is no equivalent to the FTAIA for these
12 state statutes that we have sued under, and so we will
13 have to deal with that.

14 We don't want to delay discovery to wait
15 for Judge Farnan to address that issue if it's raised by
16 Intel in a motion to dismiss towards the end of November.
17 So I think we are going to have to deal with that in the
18 meantime before Your Honor. And I guess that will just
19 be part of the briefing on a motion to compel.

20 JUDGE POPPITI: Is there any objection
21 to having the Class participate in the briefing that we
22 have been talking about?

23 MR. BERNHARD: Your Honor, this is
24 Darren Bernhard for Intel.

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1 Yes, there is. We are going to file a
2 motion to dismiss addressed to the Court on all of these
3 issues, some or all of that complaint may get dismissed.
4 Until that issue is decided, it's really premature to
5 address issues of Class, Class issues with respect to
6 motions to compel.

7 On the other hand, I would assume that
8 Your Honor's decision in the AMD and Intel matter would
9 inform his decision, should one be necessary on the Class
10 issues; but I do think it's just premature to address
11 those now since we don't know what the scope is of our
12 legal arguments that there is no jurisdiction over
13 foreign conduct on the Class complaint.

14 MR. SMALL: Your Honor, I'm not sure I
15 understand what the scope issue is. We are not talking,
16 of course, about any other grounds that Intel may raise
17 on its motion to dismiss besides this foreign conduct
18 issue. The only question is, you know, if this issue is
19 going to be squarely addressed in the AMD case should it
20 be addressed at the same time in the Class case? And
21 certainly for efficiency reasons, I think it makes a lot
22 of sense to do it together.

23 MR. BERNHARD: I would just add, though,
24 that Your Honor has the benefit of Judge Farnan's

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1 opinion.

2 JUDGE POPPITI: I do.

3 MR. BERNHARD: On the FTAIA, and ought
4 to have the benefit of Judge Farnan's opinion on whether
5 there is subject matter jurisdiction over the foreign-
6 conduct claims that the Class has brought. And that
7 issue will be joined in the November motion to dismiss
8 that Intel files. And the Class will respond on, at that
9 time, in an appropriate manner on the legal issues.

10 JUDGE POPPITI: Let me give some further
11 thought to whether having the Class speak to me about
12 their view about these issues is important at this time.

13 MS. SMITH: Your Honor, this is Linda
14 Smith.

15 JUDGE POPPITI: Yes.

16 MR. SMITH: I just wanted to add
17 another -- since this is not sufficiently complex as it
18 is: Obviously, the Class is the part of the third-party
19 negotiating triumvirate that is trying to close all these
20 deals, so it would be very difficult to know what to do
21 if they are not sort of involved in this process. As I
22 said, we are proceeding until -- we are proceeding on the
23 presumption, until the Court rules, that foreign conduct
24 is discoverable, but the Class is an integral part of

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1 these negotiations.

2 MR. SMALL: Your Honor, just to follow
3 up on that. This is Dan Small.

4 Several of the third parties have taken
5 the position that they are not prepared to enter into
6 agreements, for instance, with AMD unless they know that
7 the Class is on board for that same scope of production
8 and the same limitations are in the agreement. And,
9 really, it would create tremendous problems for
10 coordination of discovery and reaching agreements with
11 the third parties if we can't proceed at the same time
12 with AMD and Intel.

13 JUDGE POPPITI: Let me suggest this: I
14 am inclined to want to be informed of the Class's
15 position, I just want to give it some additional thought.

16 MR. HORWITZ: Your Honor, this is Rich
17 Horwitz.

18 I just don't want Intel to be put in a
19 position where either we or Your Honor feel whipsawed by
20 the procedural setting that we are in right now where
21 it's not our fault that the status of the pleadings for
22 the Class is behind the status of the pleadings for AMD
23 and Intel.

24 There was a dispute between a few groups

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1 of Class counsel, the Court has resolved that. The
2 parties have talked about when a response is due, and we
3 are going to respond then. So it's just something that
4 should be noted that we are in the position where we are,
5 not because of anything that we have done, and as
6 Mr. Floyd has indicated, whether Mr. Diamond agrees with
7 it or not, and I hope we can come to some accommodation
8 so the discovery will go forward, we think that there
9 will be domestic discovery that will go forward.

10 And if you throw the Class issues into
11 this before the Court has informed you as to the
12 boundaries of claims that the Class can bring, to me it
13 just creates a quagmire...

14 (THE COURT REPORTER WAS DROPPED OUT OF
15 THE CALL.)

16 MR. DIAMOND: It's Mr. Diamond.

17 I would just suggest that if we are
18 going to get amended responses next week, the parties to
19 whom those amended responses can and then join the issues
20 and the Class chooses to join the issue, that's fine, you
21 may well decide to stay a portion --

22 JUDGE POPPITI: Exactly.

23 MR. DIAMOND: -- of the ruling that you
24 might otherwise make until other issues were resolved.

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1 But, you know, I can't imagine that these are not going
2 to crop up during the briefing of this on the Class side
3 and if, in fact, you have to put a pin in some issues,
4 then you have to put a pin in some issues, but at least
5 we have clarity with respect to the other issues and, you
6 know, necessary to get the certification process under
7 way.

8 JUDGE POPPITI: All right.

9 THE COURT REPORTER: Your Honor, excuse
10 me. This is Ellie Corbett Hannum. I don't know
11 what happened, but I got popped out of the call when Mr.
12 Horwitz was speaking, and the last thing I got in his
13 statement was "quagmire" and then I got popped out. I
14 came back in and got Mr. Diamond's statement and your
15 response.

16 Is there anything we need to do to
17 protect the record?

18 JUDGE POPPITI: Is there anything we
19 need to do for the record, please?

20 MR. DIAMOND: I don't think so. This is
21 just idle chitchat to some extent. I think there was
22 just some further statements amplifying what Mr. Horwitz
23 said.

24 MR. HORWITZ: I am happy to rest with

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1 with where Ms. Corbett ended the record, Your Honor.

2 JUDGE POPPITI: And we will fondly
3 remember Mr. Diamond's "idle chitchat" phrase.

4 THE COURT REPORTER: I'm very sorry; I
5 have no idea what happened.

6 JUDGE POPPITI: That's probably okay.

7 Now, let's talk about schedule then,
8 please. We have got a date for next Friday of next week.
9 Let me hear some proposals.

10 MR. DIAMOND: What I would propose, Your
11 Honor -- and it's Mr. Diamond -- since I anticipate being
12 a moving party sometime next week is that as soon as
13 practical after we get the responses, we expect we will
14 be filing a motion and unless we need relief from it, we
15 would anticipate abiding by the procedures you
16 established for briefing disputed issues.

17 I think the time frames might be tight
18 on the response side for Intel.

19 JUDGE POPPITI: I think space and time.
20 I mean, I just want to hear if you think that space and
21 time presents a problem, then let's deal with that right
22 now so I can listen to what you think.

23 MR. DIAMOND: And I guess what I'm
24 proposing is if we need more space, we will let you know

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1 that. And once Intel gets our papers, you know, I don't
2 know that I would ask either Darren or Dan to speculate
3 now as to how much time they need to respond to something
4 they haven't seen.

5

6 MR. BERNHARD: Your Honor, it's Darren
7 Bernhard.

8 I will say that my expectation is that
9 we would need more time and more space, and that it might
10 make more sense to use the regular briefing schedule
11 rather than the truncated briefing schedule in Your
12 Honor's order for discovery disputes on this one.

13 MR. DIAMOND: We are happy to do that if
14 you want us to be guided just by the normal Delaware
15 rules, we will agree that that would apply.

16 JUDGE POPPITI: I think that makes
17 sense. I think if there is any truncating to be done, it
18 could be done on the back end of anything that I do in
19 terms of serving something up to Judge Farnan, because I
20 will know that he knows the case. Then let's do it in
21 that fashion. And I think it will also be important,
22 once there is a filing, to contact my offices right away
23 so that we can reserve time for oral argument. And
24 please tell me whether or not that should be done the way

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1 we are doing it today, in a teleconferencing fashion, or
2 whether you expect it needs to be live.

3 Okay. Having done that, does it serve
4 us any purpose, then, to circle back through and deal
5 with any other issues involving discovery? Do we need to
6 go back and talk about the deadline, if you will, for
7 negotiating a hearing so we can at least set some dates
8 going forward even if those dates have to be revisited in
9 light of the issue you are going to be serving up?

10 MR. DIAMOND: I think it probably would
11 make sense, but I would invite Ms. Smith to address that
12 because for AMD she is responsible for the third-party
13 discovery.

14 MS. SMITH: I think, I still think that
15 our position remains the same. This issue, hopefully,
16 will be resolved.

17 JUDGE POPPITI: Right.

18 MS. SMITH: And I would still be very
19 much in favor in the discipline and efficiency reasons
20 for setting a deal cut-off or the initiation of motions
21 practice along the same lines. I think early December
22 probably still works assuming this is resolved among the
23 parties.

24 JUDGE POPPITI: I don't disagree with

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1 that, but I certainly want you all to be heard with
2 respect to that. Maybe what should be done, Ms. Smith,
3 is if you propose then a date so that we can focus on
4 that date.

5 MS. SMITH: All right. Should I do that
6 right now?

7 JUDGE POPPITI: Please. Unless you
8 think it's important to meet and confer about it.

9 MR. BERNHARD: Your Honor, it's Darren
10 Bernhard.

11 I would like to meet and confer. I
12 think that in part the third-party discovery negotiation
13 deadline will turn on when there is a final decision on
14 what we are talking about now in terms of the scope of
15 the discovery and foreign conduct. And so to just impose
16 a deadline of early December presupposes we have that
17 completely resolved. It may make sense to impose a
18 deadline and early December might make sense, it just
19 depends on when we get this all resolved.

20 I think it's probably premature to do it
21 now because we will just be coming back asking for
22 extensions.

23 JUDGE POPPITI: Here is what I think may
24 be helpful, even helpful for me to suggest time frames

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1 when I will issue a decision. Not knowing when you are
2 going to file and rolling it all out, I certainly would
3 anticipate that if you file next week that everything
4 would be before me by, I don't have the rule in front of
5 me, I don't know whether you all are in your respective
6 offices to pull the rule down, but I would expect
7 everything would be before me by the second -- yes --
8 third week of November or so.

9 Does that sound right? If any of you
10 are near your -- we are really going to be looking at --

11 MS. SMITH: It sounds wrong. Fred, are
12 you quickly calculating?

13 MS. BAKER: This is Allyson Baker for
14 the Class.

15 I think it's ten days for the response
16 and five days for the reply, under the local rules in
17 Delaware.

18 MR. HORWITZ: It's probably a little
19 quicker than that, Your Honor.

20 MR. COTTRELL: Your Honor, it's Fred
21 Cottrell.

22 I would think we would like, if it fits
23 with Your Honor's schedule, to have a hearing before the
24 Thanksgiving holidays. I don't know whether that's

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1 doable.

2 JUDGE POPPITI: That's what I would like
3 to shoot for.

4 MR. COTTRELL: And I think briefing
5 certainly will be done within the local rules before that
6 time, so Your Honor has a chance to read everything.

7 JUDGE POPPITI: That's why I think the
8 end of November.

9 Rather than give you a date now, I would
10 like to focus, for purposes of y'all discussing this, I
11 would like to focus on trying to get us, get you in to
12 have an argument before the Thanksgiving holiday, if not
13 the immediate week afterwards. And if that's the case,
14 without tying my hands, I would like to expect the matter
15 can be resolved in the third week of December, second or
16 third week of December.

17 And I can assure you that what I would
18 -- I expect that Judge Farnan is going to want to look at
19 this matter as quickly as possible. I realize that
20 allocation of fees is not the same thing that we are
21 talking about here, but I hope everyone understood the
22 way that all occurred in terms of Judge Farnan making a
23 decision on allocation of fees. It was a function of
24 some discussion saying this is a matter, it's simple, it

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1 needs to be put to rest, let's deal with it right now.

2 That's why it got done that way.

3 So make no mistake about it, as these
4 matters go forward, my responsibility, I think, will be,
5 to the extent that it is appropriate as a Special Master,
6 engage the Court in conversation about schedule and about
7 decisions.

8 So if that makes sense, then once I get
9 the first filing on the brief, I will have some better
10 sense as to how -- what date I will be looking for for
11 oral argument. And that will then drive the date,
12 perhaps, that Ms. Smith is looking for.

13 MS. SMITH: And, Your Honor, this is
14 Linda Smith.

15 What I would like to reiterate for those
16 on the phone is that, yes, there is the pendency of this
17 issue, but I do not want to put 70 sets of third-party
18 negotiations on hold until this is resolved. I think we
19 can keep making progress and in some cases substantial
20 progress and even finalizing some deals.

21 JUDGE POPPITI: I don't see any reason
22 why it should be put on hold. Does anyone?

23 MR. DIAMOND: No, we agree with
24 Ms. Smith on that point, Your Honor.

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1 JUDGE POPPITI: So do I understand then,
2 Ms. Smith, that you don't want to set a date at this
3 point?

4 MS. SMITH: I'm happy to set a date,
5 Your Honor.

6 JUDGE POPPITI: Propose one.

7 MS. SMITH: Well, based on the timing, I
8 would like to set a date that is before the first of the
9 year. And I have an assumption that this is going to
10 move slightly faster than Your Honor does, and I would
11 propose that we at least have the deal cut-off date in
12 the third week of December, before Christmas.

13 JUDGE POPPITI: Okay. Do you have a
14 date in mind?

15 MS. SMITH: Yes. Hold on. Just let me
16 turn to my calendar. I would suggest -- just because I
17 don't want it to be the Friday before the Christmas
18 holiday, I would suggest Thursday, December 21st.

19 JUDGE POPPITI: Any comments with
20 respect to that date?

21 MR. BERNHARD: Darren Bernhard, Your
22 Honor.

23 I think it's just premature to set a
24 date without knowing when we are going to have a final

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1 decision, and a better approach would be to say 30 days
2 after a final decision on this issue.

3 MR. SMALL: Your Honor, this is Dan
4 Small for the Class.

5 I think what Ms. Smith proposes is a
6 good idea. I view it or it could be viewed as a target
7 date that sort of gives us a frame of reference to shoot
8 for here. You know, to keep people moving, not to say
9 that events couldn't cause that to change, but at least
10 so everyone knows we are trying to complete this by the
11 21st.

12 JUDGE POPPITI: I am going to keep it
13 moving. The 21st is a good date. Let's look at -- we
14 will set the date as the 21st. I understand that these
15 dates are -- that that date in particular may not be
16 sandstoned, but I think it's important to write it.

17 MR. DIAMOND: Your Honor, I suspect if
18 we publish that to the third parties, it's going to light
19 a lot of fires.

20 JUDGE POPPITI: That's why I think it's
21 important to set that date.

22 MS. SMITH: Thank you very much, Judge.

23 JUDGE POPPITI: Did we lose somebody
24 else again, do you think? I hear a weird telephone

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1 ringing on this end.

2 MR. HORWITZ: I don't think so.

3 JUDGE POPPITI: Okay.

4 MS. SMITH: Yeah. I hear it. I hear a
5 phone ringing in the background.

6 JUDGE POPPITI: We haven't lost anyone?

7 MS. SMITH: I think we are intact.

8 JUDGE POPPITI: Okay.

9 The next issue is -- I don't think it's
10 premature to begin to discuss, as the discovery issues
11 are being served up, how you view them coming to me. Do
12 you expect that there will be categories that we can be
13 looking at for purposes of picking off some issues? And
14 by "categories," I mean categories of third parties,
15 common issues. Things that we can bundle.

16 MR. DIAMOND: Your Honor, it's
17 Mr. Diamond.

18 I have discussed this with Intel's
19 counsel, so I think we share a common view.

20 JUDGE POPPITI: Do you need more time to
21 do that?

22 MR. DIAMOND: No. I think we are -- we
23 actually like the status quo. We like that you are
24 making yourself available on a biweekly basis, if

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1 necessary.

2 The AMD view is that as between AMD and
3 Intel and the Class, we are all grownups and need, if
4 any, just a modicum of parental supervision. Obviously,
5 there are legal issues that will crop up like the FTAIA
6 that may divide us, but with respect to the mundane
7 day-to-day routine of discovery, we are going to be able
8 to resolve most of our disputes amicably. There may be
9 some issues of principle that come up, but I think those
10 would be few and far between.

11 JUDGE POPPITI: Good.

12 MR. DIAMOND: So I think the business
13 you could anticipate getting is going to be largely
14 confined to the third parties, and I don't want to speak
15 for Intel, but our sense is that those are likely to be
16 sui generis, very fact specific and very tied to unique
17 circumstances of particular third parties. Again, FTAIA
18 will affect certain of the third parties, but that's an
19 exception; but I think by and large you are not going to
20 be able to bundle because the disputes that are going to
21 arise are going to be very fact bound and fact specific.

22 We think the best way to proceed is to
23 maintain these biweekly calls. It gives us an
24 opportunity to provide you with a heads-up if it's

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1 necessary that we are moving to impasse with someone and
2 we could tee that up and talk about a schedule. But our
3 sense is to try to impose more infrastructure on this
4 would produce less benefit and more cost and probably is
5 not justified, at least at this stage of the proceeding.

6 JUDGE POPPITI: Okay.

7 MR. Diamond: We are happy to submit to
8 you, if you would like it, joint reports on weeks in
9 which we may not chat on the phone.

10 JUDGE POPPITI: I think that would be
11 helpful.

12 MR. DIAMOND: But beyond that, I think
13 these conferences ought to be held on an as-needed basis.

14 JUDGE POPPITI: Mr. Floyd.

15 MR. FLOYD: That's fine. Mr. Bernhard,
16 I think, has been addressing these issues on this.

17 MR. BERNHARD: I concur with Mr. Diamond
18 that the current status quo as set out in your June 28th
19 order is working. It's a flexible approach and we ought
20 to maintain it.

21 JUDGE POPPITI: Good.

22 From the Class, please.

23 MR. SMALL: Yes, Your Honor, this is Dan
24 Small. That makes sense to us.

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1 JUDGE POPPITI: My intent in setting
2 these things up is to be helpful, certainly, and not
3 burdensome in the least.

4 The only question I have is should,
5 though, I anticipate conference dates, since we are set
6 every two weeks, do you think it would be important or
7 prudent to preserve any of those hearing dispute dates or
8 just leave it be and try to expect that I'm going to be
9 able to grab time off of a calendar if you do what
10 Mr. Diamond just suggested, and that is, either describe
11 something that looks like it's going to be on the horizon
12 and rely on your telling me two weeks before we may need
13 a hearing?

14 MR. HORWITZ: Your Honor, this is Rich
15 Horwitz.

16 I think that the current status where at
17 least locally, and then reaching out to our respective
18 co-counsel, we have been e-mailing at the beginning of
19 the week when a conference may be held on that Thursday
20 to see if there is anything that we think needs your
21 attention. I think if we continue that practice, we'll
22 be fine. And, naturally, if there are papers that are
23 filed, we will know that that process has started and
24 then by the time the parties are done with the briefing,

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1 either under the procedures that have been set in general
2 or if we opt for some different procedure for a
3 particular dispute, we will have something teed up far
4 enough in advance to know whether Your Honor can
5 accommodate us on a particular Thursday or if we need to
6 get on the phone locally with you to try to schedule
7 another time because it may need more time than you have
8 on your schedule for that particular Thursday.

9 JUDGE POPPITI: Fine. Good.

10 I think in looking through my letter,
11 the only other question I would have -- and we don't need
12 to resolve this now -- this allocation --

13 MR. DIAMOND: It's Mr. Diamond, Your
14 Honor.

15 Your Honor, this is a very interesting
16 issue that you raise, Mr. Moll and I wish you had raised
17 it prior to the hearings on the protective order.

18 JUDGE POPPITI: I understand.

19 MR. DIAMOND: Because there were a lot
20 of deep pockets in the room that day and we could have
21 shared the pain. We have taken a preliminary look at --

22 JUDGE POPPITI: It was less painful?

23 MR. DIAMOND: It wasn't painful being
24 there, it was just painful paying the bill.

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1 JUDGE POPPITI: I understand.

2 MR. DIAMOND: We have taken a
3 preliminary look at the question of whether you can
4 allocate a share of the Special Master expenses with
5 third parties. And absent sanctionable conduct, we have
6 been unable to find a clear answer to that question.

7 JUDGE POPPITI: That's why I asked you.

8 MR. DIAMOND: I think the better
9 practice would be, although I don't know that Judge
10 Farnan would be interested in it, is to amend the
11 reference order to say that with respect to third-party
12 disputes, he is referring all of those to the Special
13 Master, and third parties will be anticipated to bear
14 their fair share of the expense. And if they don't wish
15 to, they can opt out of the reference and he will decide
16 their disputes.

17 But I think short of that, it is unclear
18 to us, at least, whether you can saddle a third party,
19 who is simply responding to a discovery request and
20 thereby precipitates a discovery dispute with Special
21 Master's costs.

22 I don't know if the Intel folks have a
23 different view on that.

24 MR. BERNHARD: Darren Bernhard, Your

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1 Honor.

2 I haven't looked at the law on this as
3 Mr. Diamond has. Would it be possible to defer a
4 response on this one and get back to you the next time we
5 are together?

6 JUDGE POPPITI: Absolutely. That's why
7 I put it on the agenda. I think it's important to have
8 your view of it. If it is important for me to visit that
9 issue, if you will, literally with Judge Farnan, I can do
10 that. I certainly don't expect that he would want to
11 create a process for opt-out so that things wind up on
12 his desk. I think you have got a pretty good, clear
13 picture of what he would prefer to do and that is permit
14 the matters to be marshaled for trial and for him to
15 preside over trial. But it's an important issue to at
16 least address as we go forward.

17 MR. DIAMOND: And I agree, I think we
18 need to look at that a little more carefully.

19 JUDGE POPPITI: Are there any other
20 issues then, please?

21 MS. SMITH: No, Your Honor. This is
22 Linda Smith.

23 I will be sending you the list of the 70
24 subpoenaed third parties grouped by category after I run

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1 it by, for approval, counsel for Intel and the Class.

2 JUDGE POPPITI: And thank you.

3 And we will send a letter confirming
4 some of the issues that have been addressed with the
5 deadlines that have been set.

6 MR. DIAMOND: Thank you.

7 MS. SMITH: Thank you, Your Honor.

8 MR. HORWITZ: Thanks, Judge.

9 MR. BERNHARD: Thank you.

10 (The teleconference concluded at
11 12:27 p.m.)

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C E R T I F I C A T E

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3 STATE OF DELAWARE:

4 NEW CASTLE COUNTY:

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I, Ellen Corbett Hannum, a Notary Public within and

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for the County and State aforesaid, do hereby certify

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that the foregoing teleconference was taken before me,

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pursuant to notice, at the time and place indicated; that

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the statements of participants were correctly recorded in

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machine shorthand by me and thereafter transcribed under

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my supervision with computer-aided transcription; that

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the transcript is a true record of the statements given

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by the participants; and that I am neither of counsel nor

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kin to any party in said action, nor interested in the

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outcome thereof.

16

WITNESS my hand and official seal this 6th day of

17

October A.D. 2006.

18

19

Ellen Corbett Hannum, RMR, CMRS

20

Notary Public - Reporter

21

Delaware Certified Shorthand Reporter

22

Certification No. 118-RPR

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