

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)	
)	
Plaintiffs,)	Civil Action No.
)	05-441-JJF
v.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

Teleconference in above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, Wilmington, Delaware, on Friday, October 20, 2006, beginning at approximately 11:30 a.m., there being present:

BEFORE:

VINCENT J. POPPITI, ESQ., SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS
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15 for Class

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1 SPECIAL MASTER: Roll call. Start with
2 AMD, please.

3 MR. COTTRELL: Yes, Judge. Fred
4 Cottrell and Steve Fineman at Richards, Layton in
5 Wilmington, and, of course, from O'Melveny, Chuck
6 Diamond, Linda Smith, and Ilesha Hancock.

7 SPECIAL MASTER: For Intel, please.

8 MR. HOROWITZ: Good morning, Your Honor.
9 It's Rich Horowitz at Potter, Anderson here in
10 Wilmington, and on the line also, Daron Bernhardt from
11 Howry and Daniel Floyd from Gibson Dunn.

12 JUDGE POPPITI: Thank you.

13 Mr. Holzman for the Class.

14 MR. HOLZMAN: Yes, Your Honor. Jim
15 Holzman, Prickett, Jones for the Class, along with my
16 partner, Clay Athey. Also on the phone is Allison Baker
17 of the Cohen Millstein firm and Tom Dove.

18 JUDGE POPPITI: Thank you. And I do
19 sincerely appreciate all of you accommodating a quick
20 request that I made yesterday in spite of e-mail that you
21 saw -- actually, it was a telephone call that I received
22 late in the day from Mr. Dillon, Tim Dillon, requesting,
23 I guess help is the best way to describe it, and I didn't
24 want to have an extended telephone conversation with him,

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1 I thought that was inappropriate.

2 I did tell him that I thought, though,
3 it was important for me to have whatever document he was
4 referring me to so that I could respond in what I think
5 was an appropriate fashion and then engage all of you on
6 the issue that precipitated Mr. Dillon's telephone call,
7 namely, and perhaps I should add that I received, and I
8 think some of you may have received an e-mail late
9 yesterday night, late, not that late, 6:42, I was not in
10 the office, Wells Fargo, of a similar nature, namely,
11 copying me on correspondence in light of what I expect is
12 AMD's practice and what I expect may be Intel's practice
13 of trying to engage third parties with respect to
14 documents that you intend to divulge in third parties to
15 make appropriate responses, that is, objections, to me if
16 they have issue with respect to any individual document.

17 The concern is this: Knowing that, and
18 I think this is a fair way to say it, you don't want me
19 involved unless I need to be involved. I don't know that
20 I need to be involved at this stage of the game unless
21 there is an application that is made consistent with
22 everyone's expectation under the -- under the rules of
23 engagement, if you will.

24 And, yet, I have a sense that, by virtue

1 of AMD's letter to third parties, it may be that others
2 are going to make an effort to either contact me for
3 quote/unquote guidance, which I don't think is
4 appropriate, or at least contact me and ask me what, you
5 know, What is this all about? How can I get an extension
6 on the time that, for example, AMD is proposing in its
7 letter that initiated the contact from Mr. Dillon.

8 That's really the backdrop of some of my
9 concern to want to get you all on the line today to say,
10 you know, When is it appropriate to approach Vincent
11 Poppiti with a dispute and did you all intend that it be
12 this early and in this fashion?

13 MR. DIAMOND: Judge, this is Chuck
14 Diamond of O'Melveny. And probably, for purposes of this
15 call, you just need Dan Floyd and me because, in the
16 first instance, we have been the ones who have been
17 wrestling with the nondisclosure agreement issue, but I'd
18 like to just give you sort of some perspective on this.
19 This was an issue we anticipated, as did you, and it's
20 dealt with in our protective order.

21 JUDGE POPPITI: Yes.

22 MR. DIAMOND: The protective order
23 specifies that neither of us can withhold documents from
24 the other based on the existence of non-disclosure

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1 agreements that may cover them so long as we agree to
2 treat the documents as confidential discovery material.

3 JUDGE POPPITI: Yes.

4 MR. DIAMOND: And so long as we notify
5 affected parties.

6 JUDGE POPPITI: Correct.

7 MR. DIAMOND: We -- in trying to meet
8 the judge's new target date of March to complete our
9 document exchange among the parties, we are poised to
10 begin the initial exchange and we are talking millions of
11 pages.

12 JUDGE POPPITI: Yes.

13 MR. DIAMOND: Literally millions of
14 pages. It is -- and you need to understand that in the
15 -- in the high tech. business, virtually every
16 conversation or every exchange of documents between
17 corporations is accompanied by a nondisclosure agreement.
18 I think they print the terms on the toilet paper in Santa
19 Clara.

20 MR. FLOYD: Two or three ply?

21 MR. DIAMOND: In triplicate, probably.

22 We have a database, I remember giving
23 the Dan the number, and I think it's in the neighborhood
24 of -- or in excess of 8,000 nondisclosure agreements. I

1 can only imagine that Intel's is a multiple of that.

2 Unless we want to complete this document
3 exchange by March 27th, 2027, it is impossible for our
4 document reviewers to look at each page of AMD material,
5 hold it up against a list of 8,000 nondisclosure
6 agreements, and make a judgment as to whether anything on
7 that page may be covered by it.

8 JUDGE POPPITI: I understand.

9 MR. DIAMOND: So Mr. Floyd and I, being
10 what we consider reasonable people, decided that the best
11 way to deal with this problem was simply to call our
12 lists, try to identify the individuals and companies with
13 whom our companies had nondisclosure agreements, whose
14 material could reasonably conceivably be included in a
15 production --

16 JUDGE POPPITI: Yes.

17 MR. DIAMOND: -- and put them on notice
18 but with appropriate assurances that they were not going
19 to be compromised.

20 JUDGE POPPITI: I understand.

21 MR. DIAMOND: And I haven't seen Dan's
22 letter. I know they did send some of them out. Dan has
23 my letter.

24 MR. FLOYD: This is Dan Floyd. I

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1 believed that they had gone out yesterday, but I believe,
2 in fact, they are going to go out today, the first try.
3 So I just wanted to clarify that.

4 MR. DIAMOND: But, in any event, the
5 letter, as you can see, says we are bound to engage in a
6 mass of document exchange. It may include materials that
7 are subject to a nondisclosure agreement in every
8 company. It may not, but it may. The volume is really
9 too great for us to practically identify any documents.

10 Here is the protective order. Here is
11 how it's going to work. At a minimum, should anybody ask
12 that a document that contains your information be
13 de-designated, we will call that to your attention as
14 well as the document that they want to be designated and
15 give you an opportunity to participate and object.

16 Otherwise, you are safe to assume that
17 your documents are going to be treated pursuant to the
18 confidentiality order and they will remain confidential
19 and non-public and will not be exchanged to business
20 people of the non-producing party.

21 Needless to say, you know, with in-house
22 counsel at virtually all of these thousands of companies,
23 there are going to be a handful who are still nervous and
24 who don't appreciate the magnitude of the exchange we are

1 about to embark on and the impracticality of trying to
2 identify document by document what may be covered by
3 their agreement.

4 Ms. Hancock has been fielding all of the
5 telephone calls that AMD has received and that we at
6 O'Melveny have received, and, by and large, people are
7 being reasonable.

8 JUDGE POPPITI: Okay.

9 MR. DIAMOND: I assume there are going
10 to be a couple of outliers who are going to want you to
11 rewrite a new set rules just for them. And we have
12 already seen it with Kyocera, who would like to amend the
13 protective order and preclude the designated litigation
14 inside counsel from seeing Kyocera's documents. You
15 know, I am not asking you to prejudge any of this, but,
16 obviously, we will all be in turmoil if we have several
17 hundred different sets of agreements applying to
18 different people.

19 JUDGE POPPITI: I understand.

20 MR. DIAMOND: And we were hoping that we
21 will have a uniform regime. Virtually all of the
22 arguments that anybody could raise about the protective
23 order were raised by the subpoenaed third parties, so you
24 have probably heard from that constituency and -- and it

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1 was probably as voluble as it could have been.

2 You know, I doubt that anybody is going
3 to be able -- will make any argument for particularized
4 treatment that suggests that you should treat them
5 separately and you ought to have a different protective
6 regime for them. But we followed the protective order.
7 We gave notice to the parties, whose materials we think
8 we may be including in our production, we gave them a
9 reasonable period to object, sent them the rules for
10 proceedings before Special Master.

11 JUDGE POPPITI: Yes.

12 MR. DIAMOND: And, most importantly, we
13 have tried to head off any problems.

14 We are happy to get in touch with, and,
15 Ilesha can tell me whether she's had discussions with
16 Kyocera's counsel, we are happy to try to assuage their
17 concerns, but if not, they need to file a formal
18 objection and we will respond to it.

19 You know, I point out that, as a
20 practical matter, we can't start the production until the
21 last of the objections is resolved, and I understand
22 that, because we don't know, you know, whose material --
23 so one outlier could hold up this whole process.

24 Our letters went out in sufficient time

1 so that we will begin -- we will be ready to begin an
2 exchange absent any outstanding objections on the 1st of
3 November or shortly thereafter. I think Intel is a
4 little bit behind us because their letter is just going
5 out now.

6 JUDGE POPPITI: I think it's important
7 for me to say I certainly, by virtue of reading AMD's
8 letter, understand what you intend to do. I understand
9 how you -- I understand why you did it and the way you
10 are doing it. My concern is that I am not sure it's
11 clear to the third parties, at least based on my one
12 contact from Mr. Dillon, how I fit into the process of
13 before they raise a legitimate objection to a particular
14 document.

15 MR. FLOYD: This is Dan Floyd from
16 Intel. I would say that, for us, what we will do -- I
17 will just, our letters are going to go out -- I think
18 what we will want to do is make sure that, in the first
19 instance, if there is an issue, that they contact us
20 directly.

21 JUDGE POPPITI: I think that's --

22 MR. FLOYD: And then we can say that if
23 they have an issue, then we can try to work it out with
24 them and then we can work with them to present it to you

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1 in as expeditious a fashion as possible, something along
2 those lines. So, that way, in the first instance, they
3 are not just contacting you for advice or for
4 information. So at least we can deal with our side.

5 I think Mr. Diamond's explanation of the
6 circumstances was basically accurate. We are on board
7 with that. That's why we have this approach. They may
8 have some issues now. Unfortunately, we are trying to
9 deal with, maybe there will only be one or two and it
10 won't be an issue, but we will try to head that off in
11 terms of our letter so we don't create a further issue in
12 that regard.

13 SPECIAL MASTER: I think that will be
14 very helpful and I think that was really my concern. I
15 didn't want to be -- I didn't want there to be an
16 expectation that I was going to be receiving requests for
17 clarification, requests for assistance unless it was
18 within the process. And I wanted you all to be aware of
19 that sooner than later. And I think, with that, and I
20 would expect that Intel, by virtue of being on the
21 telecon and understanding my concern, will address it in
22 a similar fashion with their letters.

23 MR. DIAMOND: Yeah. And I don't -- I
24 think you have heard from everybody you are going to hear

1 from, barring, you know, those who, after, you know,
2 after we talked to are still dissatisfied. Ultimately,
3 we are going to have to tell them to file a formal
4 objection if they are not happy with this regime because
5 it's, as I say, for the reasons we have set out, it's
6 just impossible to have a separate scheme applied to each
7 and every disclosure agreement signatory. It will just
8 be nightmare-ish.

9 For the same reason, we are reluctant to
10 sort of liberally extend time because simply extending
11 the time for one objector has the impact of pushing back
12 the commencement of the document exchange because we
13 can't take the risk that we are going to inadvertently
14 produce somebody's confidential information while that
15 objection is outstanding.

16 SPECIAL MASTER: I understand that.

17 MR. DIAMOND: So we have been trying to
18 be reasonable, but, nonetheless --

19 JUDGE POPPITI: I understand that. Are
20 there any other comments, then, with respect to the issue
21 that I raised? Okay. If none, then I, to all, I expect
22 that got my correspondence of yesterday, and I will just
23 leave it to you all to update me by the end of business
24 today on the information I requested in that letter

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1 rather than asking you to do that now.

2 MR. DIAMOND: That's fine because we
3 need to talk.

4 JUDGE POPPITI: And I anticipated you
5 would. Thank you all for jumping on the phone as quickly
6 as you did from a request from yesterday. I sincerely
7 appreciate it. Have a great day.

8 (The teleconference was adjourned at
9 11:47 a.m.)

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