

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., :  
a Delaware corporation, and :  
AMD INTERNATIONAL SALES & :  
SERVICE, LTD., a Delaware :  
corporation, :  
: Civil Action  
Plaintiffs, : No. 05-441-JJF

vs.

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

Defendants.

IN RE INTEL CORPORATION : MDL NO. 05-1717-JJF  
MICROPROCESSOR ANTITRUST :  
LITIGATION :

PHIL PAUL, on behalf of :  
himself and all other :  
similarly situated :

Plaintiffs, : Civil Action  
: No. 05-485-JJF

vs.

INTEL CORPORATION,

Defendant.

A status conference was taken  
before The Honorable Vincent J. Poppiti on Wednesday,  
March 7, 2007, beginning at approximately 10:40 a.m.

Gail Inghram Verbano, CSR, RMR, CLR  
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1 APPEARANCES:

2 Attorneys for the Class Plaintiff:

3 Daniel Small, Esq.  
4 Brent W. Landau, Esq.  
COHEN, MILSTEIN, HAUSFELD & TOLL

5 James L. Holzman, Esq.  
6 PRICKETT JONES & ELLIOTT

7 Thomas P. Dove, Esq.  
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8 Steven Fimmel, Esq.  
9 HAGENS, BERMAN, SOBOL, SHAPIRO, LLP

10 Attorneys for AMD:

11 Frederick L. Cottrell, III, Esq.  
RICHARDS LAYTON & FINGER

12 Linda Smith, Esq.  
13 Chuck Diamond, Esq.  
14 Mark Samuels, Esq. (via telephone)  
Henry Thumann, Esq.  
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15 Attorneys for Intel:

16 Richard L. Horwitz, Esq.  
17 POTTER ANDERSON & CORROON LLP

18 Darren B. Bernhard, Esq.  
19 Peter Moll, Esq.  
HOWREY, LLP

20 Robert Cooper, Esq.  
21 Daniel Floyd, Esq.  
Kay Kochenderfer, Esq.  
22 Richard A. Ripley, Esq.  
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23

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ALSO PRESENT:

Beth Ozmun, Esq.  
Advanced Micro Devices

Eva Almirantearena, Esq.  
Intel

- - - -

JUDGE POPPITI: Why don't we proceed in the fashion that we usually proceed, advising who is around the table, please. Let's begin with AMD.

MR. DIAMOND: Chuck Diamond and Linda Smith and Henry Thumann. And on the telephone with us is Mark Samuels. And Fred Cottrell was here.

JUDGE POPPITI: And will be back.  
For Plaintiff?

MR. HOLZMAN: Dan Holzman, Prickett Jones & Elliott, for the plaintiff class.

MR. SMALL: Dan Small with Cohen Milstein for the plaintiff class.

MR. DOVE: Thomas Dove, with Furth Lehmann & Grant. Thank you.

MR. COOPER: Intel. Bob Cooper, Kay Kochenderfer, and Dan Floyd from Gibson, Dunn and Crutcher.

MR. BERNHARD: Darren Bernhard from

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1 Howrey.

2 MR. MOLL: Peter Moll from Howrey.

3 MR. RIPLEY: Richard Ripley from  
4 Bingham McCutchen.

5 MR. HORWITZ: And Richard Horwitz  
6 from Potter Anderson & Corroon.

7 JUDGE POPPITI: Also have the  
8 record reflect that we have two clients in attendance  
9 for AMD, Beth Ozmun; and for Intel, Eva  
10 Almirantearena.

11 MR. LANDAU: And in addition, from  
12 Cohen Milstein, for class plaintiffs, Brent Landau.

13 MR. FIMMEL: And one more class.  
14 This is counsel Steven Fimmel; Hagens Berman Sobol &  
15 Shapiro, Seattle.

16 JUDGE POPPITI: And for the record,  
17 we were off the record for a brief period of time to  
18 discuss agenda, and also to outline matters that have  
19 been -- where there have been substantial agreement.  
20 Most of those relate to dates, I expect. And we were  
21 beginning to talk about the first date for purposes  
22 of going forward.

23 MR. DIAMOND: This is Chuck  
24 Diamond. Let me just add something that my partner,

1 Linda Smith, reminded me when we were changing  
2 conference rooms. And you may have known this but  
3 may have forgotten.

4 The way the document exchange  
5 program is working is that Intel has identified a  
6 universe of custodians, which is now 1,023 in number,  
7 from which it was obligated to identify roughly  
8 20 percent, and be it identify 217 custodians as its  
9 party-designated custodian list. And it is in the  
10 process of producing documents from those custodians'  
11 files.

12 AMD has the right, over some period  
13 of time to be negotiated, to designate another  
14 15 percent of the big list; and we have thus far  
15 designated, I believe, 55 -- we're up to 74 of what  
16 will ultimately be something in the neighborhood of  
17 140, plus what we call various free throws that  
18 parties have during the course of the case.

19 MS. SMITH: It's Paragraph 4. And  
20 AMD is able to designate another hundred.

21 MR. DIAMOND: Up to another  
22 hundred. We might not utilize all of that, but that  
23 remains to be seen.

24 So we're talking about the

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1 preservation and restoration and ultimately  
2 production of some number of the Intel custodians  
3 which will be between 4- and 500, maybe slightly  
4 more. But with the exception of the roughly 300 thus  
5 far designated, we don't know who those custodians  
6 are going to be. It really depends on what we see in  
7 the initial crunches of documents.

8           It will also obviously depend on  
9 what Intel is able to tell us about its restoration  
10 efforts. As my partner, Mark Samuels, likes to say,  
11 we're not going to designate any custodians that turn  
12 out to be null sets, who are light on documents  
13 because there hasn't been a preservation.

14           So that's a factor we're going to  
15 have to take into account in doing our designations.  
16 But I think it would be useful for you to have that  
17 in mind when you talk about the path forward.

18           JUDGE POPPITI: Okay. Thank you.

19           MR. COOPER: And I think what we  
20 had just discussed and I think agreed upon is that in  
21 30 days, Intel will provide -- I'm sorry. Bob Cooper  
22 for Intel.

23           In 30 days, Intel will provide an  
24 accounting of where it stands with respect to the

1 restoration and identification of the custodians. I  
2 use that term to mean the 1,023 identified  
3 custodians. Part of where we stand in that process,  
4 the objective being to determine hopefully that we  
5 have all of the complaint freeze tapes of those  
6 custodians, and that we have the weekly backup tapes  
7 we think for many of those custodians. So that will  
8 be by custodian.

9           It is possible we will not be able  
10 to get that analysis with respect to the weekly  
11 backup tapes, which were started in October and  
12 November of 2005 within 30 days. But we will,  
13 nevertheless, be able to make a substantial report in  
14 that regard.

15           And what we are doing is looking at  
16 the first eight weeks of the weekly backup tapes on  
17 the theory that if those prove out to contain the  
18 names and are not in any respect corrupted and are  
19 usable, that we ought to be able to hopefully follow  
20 with the same level of success as we go through all  
21 the other weekly backup tapes.

22           MR. DIAMOND: Is there some  
23 agreement with respect to the -- all of the  
24 information to be contained in the report and/or with

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1 respect to the formatting of the report? Or isn't  
2 that important to forge at this juncture?

3 MR. COOPER: I think that's one of  
4 the agenda items that we have to define exactly,  
5 unless the 10,023,000 --

6 MS. SMITH: 1,000.

7 MR. COOPER: I'm sorry, 1000.

8 MS. SMITH: 1,000. The female  
9 voice is Linda Smith for AMD.

10 MR. DIAMOND: I'm sorry. This is  
11 Chuck Diamond.

12 JUDGE POPPITI: Is it important to  
13 do that now, Mr. Diamond?

14 MR. DIAMOND: I think it would be  
15 useful to sort of leave here with a meeting of the  
16 minds as to what we're going to get with respect --

17 MR. COOPER: I'm not sure what  
18 you're going to get, because the thousand you're  
19 going to get is 1,023 people.

20 MR. DIAMOND: I think what we've  
21 asked for is for each custodian -- it is in our  
22 status conference report on Page 7.

23 JUDGE POPPITI: There were seven  
24 discrete items with respect to the spreadsheet. Is



1 there a --

2 (Whereupon the phones were  
3 inadvertently placed on mute  
4 momentarily.)

5 JUDGE POPPITI: We're all looking  
6 at AMD status conference statement which was filed on  
7 March 5 -- that is put back to back, but I think it  
8 is a March 5 submittal.

9 It is. We're looking at Page 7.  
10 It's the first bullet point under Roman Numeral 3.  
11 And perhaps it would be important to focus on that  
12 for purposes of describing whether there's a  
13 consensus with respect to those seven categories.  
14 And there's a second bullet point that deals with the  
15 inventory of backup tapes.

16 MR. COOPER: Let me respond. With  
17 respect to the 1,023 custodians, with the information  
18 we would be providing is the name of the custodian --  
19 I think we all have agreement on that. But --

20 MS. SMITH: Well, the only thing we  
21 have to check is we may have a slight discrepancy in  
22 how many custodians are on your master list. But  
23 we'll --

24 MR. COOPER: Well, we'll sort that

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1 out.

2 MS. SMITH: 1,020-something.

3 MS. KOCHENDERFER: Sorry. This is  
4 Kay Kochenderfer. We're going to provide you with a  
5 corrected list and some corrected spellings and some  
6 duplications that have been deleted.

7 MS. SMITH: We should be able to  
8 get to the bottom of that easily.

9 MS. KOCHENDERFER: There's two  
10 No. 55s.

11 MR. COOPER: Yeah, we found that  
12 out.

13 JUDGE POPPITI: Okay. No. 2.

14 MR. COOPER: Okay, No. 2. No. 2 is  
15 no problem. Whether that custody has been designated  
16 by Intel on the 20 percent list, that will be  
17 obvious.

18 Or alternatively, adversely  
19 designated by an ADM -- that is, designated as an  
20 additional person by AMD; and that too will be  
21 obvious.

22 The harvest date --

23 JUDGE POPPITI: That's No. 3.

24 MR. COOPER: -- that is the date

1 that each custodian's data was collected if it has  
2 been collected. And that was no problem and that  
3 will be provided.

4 The date upon which the custodians'  
5 email was migrated to the dedicated server, that also  
6 I believe we can provide -- we should be able to  
7 provide that.

8 When it says "the useful  
9 description of the exact nature of any retention  
10 deficiency," that's an issue that I don't see how we  
11 deal with in 30 days. I think you agree, we don't  
12 have to try to do that in 30 days: It can't be done.

13 MR. DIAMOND: I agree, if we are  
14 at -- talking about our mediation plan, which is  
15 going to address all of the custodians anyway,  
16 because presumptively even those that are placed on  
17 the retention didn't get complete retention, then we  
18 don't really need to know at this juncture any more  
19 than you furnish us the nature of the problem,  
20 because you were going to be doing restoration for  
21 all custodians whether you identified a problem or  
22 not. Is that correct?

23 MR. COOPER: That's right.

24 MR. DIAMOND: When we get to the

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1 last step of this process, we're obviously going to  
2 be interested in compliance issues, as I think will  
3 be Judge Poppiti and Judge Farnan. So I don't rule  
4 out that we're going to want that information at some  
5 juncture, but we don't need it within 30 days.

6 MR. COOPER: That's good. Because  
7 we don't want to be sidetracked and deal with that in  
8 the next 30 days when we are doing this large  
9 project.

10 JUDGE POPPITI: No. 6? The same as  
11 for 5; right?

12 MR. COOPER: It's the same, yeah.

13 JUDGE POPPITI: And No. 7?

14 MR. COOPER: That's the same also.

15 MS. SMITH: There's one question I  
16 have. And that is, one of the things that we talked  
17 about is to the extent that -- take Paul Otellini,  
18 the CEO of Intel. We show, based on Intel's report,  
19 that he was harvested on July 12th, 2005. He is  
20 identified as an individual who was under the  
21 impression that IT was automatically backing up his  
22 email and so he did not need to retain them,  
23 according to Intel. And hopefully, he was migrated  
24 to a backup server in mid October -- in the period

1 between mid October and November.

2 One of the things that was  
3 mentioned is for -- and then there's the group of  
4 people who -- 300 something, 348, 327 -- who did not  
5 receive preservation notes and were not backed up  
6 because they weren't part of the process.

7 And my question about those two  
8 kinds of categories of people is, are you -- is part  
9 of this process where you're going back and looking  
10 at all the backup tapes and the complaint freeze  
11 tapes, which won't capture -- at least the backup  
12 tapes won't capture at least the 327 or 384. Are you  
13 going to harvest their hard drive to see what they  
14 retained as part of this process, or is this for a  
15 later time?

16 MS. KOCHENDERFER: Yes, we are  
17 going to harvest the material from all of the  
18 custodians. And we will be looking in the emails  
19 from the backup tapes and the other material from  
20 custodians with whom -- the people you just  
21 identified, just like having problems, to see if  
22 their emails are captured by other custodians. So  
23 that's going to put it together.

24 MS. SMITH: It is even possible for

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1 the 384 or 327, who never got the preservation  
2 notice, that they would have saved a lot of their  
3 emails just because they did. So you're going to  
4 look there first --

5 MS. KOCHENDERFER: Yes.

6 MS. SMITH: -- and then take other  
7 measures?

8 MR. COOPER: Yes. That we're  
9 definitely going to do. I can't commit that will be  
10 done within 30 days. We're dealing with a thousand  
11 custodians.

12 MR. DIAMOND: We understand that.  
13 We probably ought to jump to the second paragraph of  
14 this, because Linda's comment is implicated.

15 We would like, for each custodian,  
16 obviously, a fairly complete inventory of the backups  
17 that you have. You're talking about doing the first  
18 eight weeks as an initial matter. That's fine,  
19 although it seems to me that certain custodians --  
20 specifically the 384 who weren't put on retention  
21 until recently -- you're not even going to have eight  
22 weeks of backup.

23 MR. COOPER: We assume that's the  
24 case.

1 MR. DIAMOND: Right. But we would  
2 like information on what backups you have in the  
3 first eight weeks after they first began being backed  
4 up.

5 MR. COOPER: That's what we'll  
6 attempt to give you in 30 days. We will give you  
7 what we have -- what we have -- where we stand with  
8 respect to the weekly backup tapes. I'm hopeful  
9 we'll have eight weeks done by then, but I don't know  
10 for sure. And we may have more done by then.

11 MR. SAMUELS: I have a question.

12 I guess it is implicit in all of  
13 this that in the 30 days, or if not sooner, we're  
14 going to be told who the 384 individuals are as to  
15 whom there was no instruction to preserve and no  
16 weekly backups made. Otherwise, I'm not sure, at the  
17 end of 30 days, we're going to have really any useful  
18 information about the extent of data loss. That  
19 would be out of the custodians' files.

20 MS. KOCHENDERFER: One point that I  
21 wanted to make about the custodians that you just  
22 referenced who received the late notice who do have  
23 notice now is that they were not identified as  
24 potential custodians in this case until about May of

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1 2006. That's part of the process we've discussed  
2 before in terms of the ongoing efforts to identify  
3 custodians as we're going in this process.

4 I don't think there's any issue at  
5 all with us ultimately giving you the names of the  
6 people who recently were put on retention.

7 JUDGE POPPITI: Within 30 days'  
8 time frame?

9 MS. KOCHENDERFER: Yes.

10 JUDGE POPPITI: Okay. Thank you.

11 MR. DIAMOND: If I could just  
12 address Mr. Samuels' -- whether we have covered the  
13 waterfront of the information that we require?

14 MR. SAMUELS: What we ultimately  
15 need to know -- and I'm not sure what you all have  
16 been discussing off the record. But we do need to  
17 know what the nature is of the document retention  
18 deficiencies on a custodian-by-custodian basis so we  
19 can evaluate two things: First, so we can evaluate  
20 the extent of any data loss; and second so we can  
21 evaluation Intel's remediation plan to determine for  
22 ourselves -- through appropriate discovery, I would  
23 expect -- the extent to which that data loss can be  
24 ameliorated through the restoration of backup tapes



1 or the production from other or additional  
2 custodians.

3                   Until we get that, we're in -- we  
4 will be in the exact same position 30 days from now  
5 that we are in today; and that is, completely unable  
6 to make intelligent choices as to the custodians  
7 whose files we want produced.

8                   Because there are lurking -- on  
9 that list of 1,027 custodians, there are lurking at  
10 least 384 and possibly more custodians whose files  
11 are empty or essentially empty. And because this  
12 whole document production scheme is based upon  
13 representations as to their retention of documents  
14 and our ability to select from among the 1,027, we  
15 are at grave risk right now -- and, it seems to me,  
16 also in 30 days -- of getting a pie in the face when  
17 we identify additional custodians. Because we will  
18 be getting essentially nothing if we pick  
19 inadvertently from this big list some or many that  
20 are among the 384 whose documents have not been  
21 preserved.

22                   MR. COOPER: We can provide you the  
23 list -- I think it's 327, actually, but maybe I'm  
24 wrong. But we can provide you the list as we best

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1 understand it now.

2 We think it's accurate. There  
3 could be -- we could have an error here or there.  
4 We're happy to provide that to you now. And we'll  
5 take care of that so that you don't make any calls  
6 that are inappropriate.

7 Now, in terms of what we have to  
8 do -- obviously, we can stop what we're doing and we  
9 can go harvest from those 300 or so and see what we  
10 have right now. I'm not sure that's the best use of  
11 the time at the moment. Because those were the  
12 people who were added at the tail end of this  
13 process, and I would think it may be more valuable to  
14 concentration on the first tranche and completing  
15 that process for you.

16 But that would be --

17 MR. DIAMOND: I think what Mark is  
18 focusing on is, you have some number of individuals  
19 who were noncompliant, were put on retention  
20 appropriately early on, and who, it turns out, were  
21 noncompliant.

22 There will be gaps in their  
23 records, unavoidable gaps that we can't fill. In  
24 some cases, short gaps between the time they were put

1 on retention and the time we started doing backups.  
2 In the case of 151 custodians, or whatever that  
3 number now is, a much longer gap, because you are not  
4 likely to have backups for them.

5 The information that we thus far  
6 identified in Paragraphs 1 through 7 will tell us  
7 when the earliest backup is you have for that  
8 custodian. So that's a part of it. But it won't  
9 tell us which of those custodians were noncompliant  
10 at all.

11 We presume that those who were put  
12 on retention and given retention instructions all  
13 have issues with respect to outbound items.

14 MR. COOPER: Well, no, I don't  
15 think that's true at all.

16 MS. KOCHENDERFER: That's not  
17 accurate.

18 MR. DIAMOND: Well, may or may not.  
19 But we understand what the problem may be.

20 Mark is suggesting that, in order  
21 for us to continue the document-exchange process  
22 intelligently, we're going to need to know who else  
23 on our work chart is red -- i.e., was noncompliant --  
24 and then we'll have a sense of, looking at their

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1 backup tapes, how big a problem we have with respect  
2 to those individuals.

3 JUDGE POPPITI: May I ask a  
4 question? If I understood what Mr. Samuels was  
5 saying -- and correct me if I'm wrong, sir -- he was  
6 focusing on 5, 6 and 7 of the first bullet in terms  
7 of a time frame so that we're not waiting two months  
8 before you get a description -- a useful description  
9 of the exact nature of retention deficiencies.

10 But what I think I heard him saying  
11 was, It's important for us to focus on that deadline  
12 as well.

13 Is that -- am I missing something,  
14 sir?

15 MR. SAMUELS: No, your Honor. That  
16 was absolutely correct and put much better than I  
17 did, and I thank you.

18 JUDGE POPPITI: I don't think so.  
19 But if that's important to focus on now, then let's  
20 do just that.

21 So we have a 30-day time frame. If  
22 I understand correctly, you have reached substantial  
23 agreement with respect to the information that's  
24 going to be provided in the report that's described.

1                   And now I think we should turn to  
2   5, 6 and 7 for purposes of permitting you to have a  
3   better understanding as to what the nature of the  
4   problem is.

5                   MR. SAMUELS: And, your Honor, it  
6   seems to me that we can do this one of two ways, or  
7   in combination.

8                   We can get this information  
9   directly from Intel -- and we would, with respect,  
10   ask that it be under oath; or we can conduct a  
11   30(b)(6) deposition or two to learn the information  
12   that way; or we can wait until we get a report from  
13   Intel and then, if necessary, proceed with some  
14   discovery.

15                   MS. SMITH: I think the key is, all  
16   of the work we're doing is very useful and is going  
17   to give us a better understanding.

18                   There are three categories of  
19   people that it will be less useful for: One is the  
20   384 who were only recently put on notice so the  
21   backup tapes will not yield anything.

22                   I'm not sure if the 151 who were  
23   scheduled to go on backup but the tab was overlooked  
24   are in different categories that -- in other words,

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1 are there 535 if you add the 151 who were supposed to  
2 go on backup but the tab was overlooked? So, again,  
3 there -- there isn't any backup that's going to help.

4 And then the last category, which  
5 is the one that I'm -- those are all very troubling,  
6 of course. But the last category that I'm very  
7 worried about is the senior management -- and I'm  
8 talking executive level Barrett and Otellini.

9 (Interruption by reporter.)

10 MS. SMITH: Barrett and Otellini.  
11 Every time I put it in my spell check, it asks me if  
12 I mean "tortellini."

13 So it's Barrett, who is the  
14 chairman, Otellini who is the CEO, and a number of  
15 their direct reports, who are already identified as  
16 noncompliant, including Sean Maloney, who is the  
17 worldwide head of sales and marketing, and a number  
18 of other very critical guys.

19 And we have more and more charts  
20 about this. But this is the absolute top level. And  
21 these are the folks that, even if there's only a  
22 two-, three-, four-month gap, they're the major  
23 players who are communicating with the heads of other  
24 companies.

1                   So I mean, there's sort of a  
2 different -- we don't necessarily need the compliance  
3 information for all 1,020-something. But for certain  
4 people like -- that are clearly executive VPs or  
5 higher who have compliance problems, I don't want to  
6 wait any longer than we need to on those particular  
7 people. And I could probably identify them.

8                   JUDGE POPPITI: I was just going to  
9 ask, can you identify them?

10                  MR. COOPER: Obviously, we're  
11 dealing with a lot of people. If you want to put  
12 some priorities on it, we will then address those  
13 priorities.

14                  MR. DIAMOND: Why don't I propose,  
15 in the 30-day period, you go out and survey the VP  
16 and above.

17                  MS. SMITH: The VP is too low, I  
18 think. Don't you have tons of VPs at Intel? I have  
19 a feeling we have to at least go senior VPs or  
20 executive VPs.

21                  MR. SAMUELS: If I may, it seems  
22 like there are three categories of issues. The first  
23 category is the 384, or whatever the correct number  
24 is, individuals who were not put on retention until

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1 the last couple of weeks; and who, if anything has  
2 been preserved in the face of the automatic purge  
3 system at Intel it will be by chance or coincidence  
4 or whatever. That is the -- let me just finish  
5 here -- that's the first category.

6 The second category, and as to  
7 those 384 or whatever the correct number is, it seems  
8 that you ought to be able to give us that list today  
9 or very shortly, because that's known at this point  
10 to you.

11 MS. KOCHENDERFER: Yes. We said we  
12 will give you that list, and we will.

13 MR. SAMUELS: The second category  
14 is the 151, or whatever the precise number is, of  
15 individuals who were not moved to the dedicated  
16 server, and therefore, whose -- as to whom the weekly  
17 backup tape program that was intended has been  
18 compromised. It seems to me that those 151 ought to  
19 be identifiable right away because you know who they  
20 are.

21 The third category are individuals  
22 who, for whatever reason, because they were under a  
23 misapprehension that someone else was complying with  
24 the document retention instructions for them or for



1 whatever other reason have not been compliant with  
2 the document hold or the document retention  
3 instructions.

4                   And as to that third category, it  
5 seems that Intel would certainly need an appropriate  
6 amount of time to conduct the investigation. And it  
7 seems that we ought to start at the top and do it in  
8 tranches of perhaps, as Mr. Diamond suggested,  
9 vice president level and above first, and then we go  
10 down the list.

11                   But as to the first two, it doesn't  
12 seem like there should be any need to wait. And as  
13 to the third, it's going to -- the third category,  
14 it's going to require some investigation and  
15 diligence, and I think we ought to just come up with  
16 a reasonable schedule for getting that done.

17                   MR. COOPER: With respect to the  
18 300-some that were not put on retention in a timely  
19 manner, that is the list we can provide you, and I  
20 think we can provide that promptly.

21                   With respect to what you call the  
22 151, which I think is actually a lesser number --

23                   MS. KOCHENDERFER: I think it's  
24 127.

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1 MR. COOPER: It turns out it's 127.

2 MS. KOCHENDERFER: We found backup  
3 tapes for many of the -- we found backup tapes for  
4 some of the people that we previously thought we did  
5 not have backup tapes.

6 Which is another here issue that I  
7 think we all need to be aware of. And that is, we're  
8 having a very aggressive, ongoing effort to get the  
9 backup tapes, restore them, index them, and find out  
10 what we have.

11 JUDGE POPPITI: Let's hold that  
12 until we can get agreement on --

13 MR. COOPER: The point is, we can  
14 give you a -- we can give you a list now of who we  
15 think we don't have on the weekly backup.

16 We can do that, because -- as I  
17 said, I may be wrong, because we thought it was 151.  
18 And we are finding on the weekly backup tapes, that  
19 we have some of those.

20 MR. DIAMOND: And we would like, in  
21 addition with respect to that 115 -- with respect to  
22 the names of the 151, whatever the number is, what  
23 retention problems may exist.

24 Obviously, if those custodians were

1 perfectly compliant and there are no retention issues  
2 with respect to them, then restoration of their email  
3 becomes something of less significance and less  
4 moment with respect to AMD's ongoing custodian  
5 selections. We obviously would be less inclined to  
6 defer designating somebody who doesn't have backups  
7 but whose (unintelligible) represents would be  
8 perfectly compliant.

9           So I think the information about  
10 compliance issues with respect to that group is  
11 important to get early on.

12           It also is important to leave this  
13 and evaluate how severe is this data loss. If the  
14 vast majority of those people were compliant, then  
15 we're dealing with less of an issue. If the vast  
16 majority were noncompliant and we don't have backups,  
17 we're dealing with a bigger issue. So I think that's  
18 necessary in order to evaluate the remediation plan.

19           And then I would put in the tail  
20 end, as Mark, folks for whom you have backup and  
21 we're just worried about stub period retention  
22 issues. We will need to know which of those people  
23 ultimately have retention problems before we make  
24 final custodian designations.

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1 MS. KOCHENDERFER: I don't know  
2 whether that can be done in 30 days.

3 MR. COOPER: If that's a reasonable  
4 list, we will figure out a way to honor it. And we  
5 need to go back look and talk to the people. And  
6 indeed, we will figure out how to get that done and  
7 give you a time schedule. I see why you want that.  
8 It makes sense.

9 MS. SMITH: I would disagree,  
10 respectfully, with my partner. It's not just how  
11 many people are noncompliant.

12 I think Mr. Otellini and  
13 Mr. Barrett and Mr. Maloney -- and there's others who  
14 are the worldwide heads of Intel and running Intel  
15 and involved in many of our alleged events of  
16 anti-competitive activity -- are far more important  
17 in terms of whether they're compliant than others.

18 MS. KOCHENDERFER: Well, we've  
19 given you that information already. We've given you  
20 the compliance level for each of those individuals  
21 that you expressly articulated.

22 MS. SMITH: I was hoping that --

23 MR. SAMUELS: The list we've gotten  
24 is caveated up one side and down the other. So all

1 we want is just something that we can count on.

2 MR. COOPER: We will address what  
3 we can provide in the way of more detail with respect  
4 to those three individuals or anybody specific you  
5 identified. And we will work out a program to deal  
6 with what we'll call the 151, which I think is  
7 actually maybe 120-something. And we will --

8 MR. DIAMOND: We'll figure out if  
9 there's 120-something.

10 MR. COOPER: And we'll sort out a  
11 way to deal with it.

12 MR. DIAMOND: Can we do that within  
13 30 days, though?

14 MR. COOPER: That's what I don't  
15 know now. I just don't know now.

16 MR. BERNHARD: This is Darren  
17 Bernhard. I think it's going to require us to  
18 restore the tapes. And we have a program --

19 MR. DIAMOND: We haven't gotten to  
20 the tapes. We want to know if they were compliant.

21 MR. BERNHARD: But one issue for us  
22 is, do we have the tapes for those individuals? And  
23 we really need to restore them.

24 Originally we thought we didn't

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1 have any. We now discovered we have more of those,  
2 and we're in the process of restoring them. And it's  
3 unlikely we can do that in 30 days, but we should be  
4 far along the way of restoring all those tapes in the  
5 30-day period and able to provide an interim report  
6 on how far along we are in those tapes.

7 MS. KOCHENDERFER: One thing I  
8 could suggest that I could go back and look at  
9 relatively quickly is -- to figure out which of the  
10 people that you're concerned about -- of the 151,  
11 127 -- are within the top tier that we've already  
12 designated that we've given up the compliance  
13 information on.

14 Because if you look at the  
15 spreadsheet that we gave you, there are a number of  
16 those names where we have a blank for this backup  
17 tape. And so it may be that that information is  
18 contained, for the most part or in some part, in what  
19 we've given you.

20 So I could take a quick look at  
21 that to at least give you some preliminary telemetry  
22 on that issue. I was trying to figure out how we can  
23 best address those concerns that you have in terms of  
24 identifying who you want to pick next.

1 MS. SMITH: Maybe we can put  
2 together, which will be pretty self-evident, but the  
3 top 20 executives that you've indicated have -- or  
4 10, 20, whatever you think you can do in the first  
5 instance, that you have already indicated have  
6 compliance problems as the ones we would like  
7 addressed first among those with compliance problems.

8 MR. DIAMOND: I have a question.  
9 By virtue of "address," you mean all of the  
10 information contained in the first bullet, namely 1  
11 through 7?

12 MR. COOPER: 6 is not going to help  
13 you. I mean --

14 MS. KOCHENDERFER: Well, they're  
15 not going to be on the -- 1, 2 and 3 are known.

16 MR. SAMUELS: I think Ms. Smith was  
17 focusing on 5, 6 and 7.

18 MS. SMITH: Correct.

19 MR. COOPER: I don't know what 6  
20 means. But 5 -- I understand 5 and 7 is what we've  
21 been discussing.

22 MR. SAMUELS: No. 6 just says, "The  
23 date that Intel discovered the deficiency or data  
24 loss."

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1 MR. COOPER: What does that mean?  
2 The date somebody went out and interviewed somebody  
3 and --

4 MS. KOCHENDERFER: We're not going  
5 to know the data loss.

6 MR. COOPER: What did you mean by  
7 6?

8 MR. SAMUELS: Well, for example,  
9 Bob, as to individuals who were not put on retention  
10 until a couple of weeks ago -- as to those  
11 individuals, you can tell us the date when you  
12 realized they were not put under retention;

13 As to individuals who may not have  
14 abided by the preservation instructions, the date you  
15 learned of that failure;

16 As to individuals who were not  
17 migrated to the dedicated server, the date when you  
18 learned that.

19 That's what we mean by No. 6.

20 MR. FLOYD: This is Dan Floyd.

21 One thing that I think the reality  
22 is, at the end of the day, if you want to evaluate  
23 any custodian for any purpose, you have to have all  
24 the information.



1                   If you -- having partial  
2 information about one aspect of this or another won't  
3 answer any questions, won't push us any further.

4                   All it will do will be to say to  
5 somebody, We'll be able to create an argument, create  
6 speculation as to what about this, what about that.  
7 That can only be answered when all the information is  
8 put together at one time.

9                   So we recognize that some of these  
10 other issues are things that may be irrelevant later,  
11 once you know that you have a custodian who doesn't  
12 have complete information and you want to evaluate  
13 what happened, where the concerns are.

14                  So we see the whole picture. But  
15 what we're trying to do and I think our proposal here  
16 is to try to assemble all the information, which is a  
17 massive project, so that we know for each custodian  
18 where we have hard drives, where we have tapes, where  
19 the gaps are, if any, for all of them. And that's a  
20 major project.

21                  And a lot of these other issues we  
22 can continue to work on. But to suggest those should  
23 be done or could be done within that same time period  
24 or that will help move the ball forward I think is

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1 erroneous.

2 MS. SMITH: In terms of trying to  
3 figure out where we are, what's an appropriate  
4 remediation, whether there is a remediation plan --  
5 and by "remediation" I'm talking about how can this  
6 be fixed, as opposed to possible sanctions or other  
7 penalties.

8 I agree with what you're saying.  
9 The problem I have is that a lot of our focus is on  
10 the folks who aren't covered by this -- the 384, the  
11 120-something or 150-something -- and the people who  
12 are already identified as noncompliant.

13 That's where -- those are the most  
14 troubling in terms of -- not further designation of  
15 additional custodians by us in our adverse process or  
16 the possible hundred custodians, pursuant to  
17 Paragraph 4. But what do we do about the folks who  
18 aren't there?

19 JUDGE POPPITI: The question for me  
20 is, it's a difference between biting off chunks of it  
21 with respect to those that you've identified and for  
22 waiting to see the universe of information with  
23 respect to all of the problems.

24 And if it makes sense to at least

1 discuss what that means, so I hear what it means for  
2 my perspective of it, maybe the 30 days doesn't make  
3 sense. Maybe it is a 40- or 45-day path forward when  
4 we can expect the universe of information that you've  
5 described in the -- in your request as it relates to  
6 every custodian that, for whatever reason, is not  
7 compliant.

8 MR. DIAMOND: Let me try to bring  
9 some closure to this, because obviously there's  
10 endless amounts of information AMD and the class  
11 could ask for.

12 JUDGE POPPITI: Right.

13 MR. DIAMOND: And we want to be  
14 reasonable in the fact that we're very intent on  
15 trying to get this process rolling at the end of the  
16 30 days and have you guys start doing some  
17 restoration, if that makes sense to you and to us, if  
18 we can't reach agreement, for Judge Poppiti.

19 What I would ask is that the  
20 additional -- 6 is not very difficult. 6 you already  
21 have the information.

22 MR. COOPER: It is easy in terms of  
23 a glitch, like failing to put on the 300.

24 MR. DIAMOND: Right.

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1 MR. COOPER: It is a huge task when  
2 you start talking about individual custodians.

3 MR. DIAMOND: Understood.  
4 Understood.

5 And it really goes more towards  
6 culpability than it does to restoration. So I would  
7 be prepared to table the case-by-case answer to that.  
8 We'll obviously, as Mark Samuels points out, want  
9 that information.

10 At some point, we think we have an  
11 irrevocable loss problem.

12 (Interruption by the court  
13 reporter.)

14 MR. DIAMOND: We would like to know  
15 whether we're dealing with a noncompliance issue,  
16 other than the instructional problems that we already  
17 know about.

18 And you've given us -- as Mark  
19 points out, it would be useful to know that with  
20 respect to the 384. Are there -- we don't even need  
21 to know that for the 384. Because they weren't put  
22 on retention, they were given no instruction, so  
23 there's no issue of whether they were compliant or  
24 not.

1                   With respect to the 127, 151,  
2 whatever the number turns out to be, I suspect that  
3 many of those are covered by the data you already  
4 gave us.

5                   But I think we would like to know,  
6 are there compliance issues with respect to the folks  
7 for whom you don't have backups? People who were put  
8 on retention but who were not backed up, are there  
9 any gross compliance problems? Other than the fact  
10 that they didn't get instructed to retain outbound  
11 email.

12                   I think for the most part that's  
13 simply a matter of going through the spreadsheet that  
14 you gave us and completing it. You may need to add  
15 some names, because we don't know who the 127 are.  
16 But that seems to me to be a reasonable request to  
17 get done within 30 days.

18                   MR. FLOYD: As we've discovered  
19 additional people, part of the problem or issue is,  
20 do we finish that process so we can identify  
21 everybody who we do have tapes for, or do we come up  
22 with something where we may have more individuals?

23                   And that's really the main issue,  
24 is that we have found additional people, as we have

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1 found additional tapes as we've have gone into it.

2 So that's why these numbers have changed.

3 MS. KOCHENDERFER: It all goes back  
4 to the predicate of we're trying to inventory what we  
5 have. Because until we know what we have --

6 MR. DIAMOND: I think we're going  
7 to need to know what you have, or at least the first  
8 eight weeks of what you have with respect to the  
9 entire population of 1,023. And you've agreed to get  
10 that data to us within the 30-day period.

11 What I'm asking for is, in  
12 addition, take the footnotes off your spreadsheet.  
13 Do whatever due diligence is necessary to give us  
14 answers with respect to those people.

15 MR. COOPER: To the 127?

16 MR. DIAMOND: To the ones that  
17 you've already provided information about; and the  
18 127 to the extent they don't already appear on here.

19 MR. COOPER: Now, that's a  
20 reasonable request. Let us say, we will turn to how  
21 we will accomplish that and get back to you, because  
22 I don't know how much time it requires. We don't  
23 have existing information. It requires someone to go  
24 and do an interview.

1 MR. DIAMOND: Yes, it would.

2 MR. COOPER: And so if it's 100  
3 people, I'm not sure it can be done in 30 days all  
4 around the world. That's the only problem. We will  
5 see how far we can go in accomplishing it.

6 MR. DIAMOND: I'm sure there are  
7 ways to expedite it. You can probably poll people by  
8 email.

9 MR. COOPER: What we can do is a  
10 job that may not be a very good job, and we can hand  
11 you that information. And I just don't want to do  
12 that, because I'm concerned that down the road you'll  
13 say, Well, you misled us.

14 JUDGE POPPITI: And down the road,  
15 I may say that's not a record I work with.

16 MR. DIAMOND: I'm prepared to leave  
17 things today that Intel agrees that the request I  
18 just made is a reasonable one. You will confirm  
19 whether you could reasonably do that during the  
20 30-day period.

21 If you say you can't -- and we  
22 would expect you to answer that in good faith -- then  
23 we don't have a problem and we have a path forward.

24 If you say you can't, I suggest

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1 that the parties discuss it offline and we figure out  
2 how to stage this so that we get some information at  
3 the end of the 30 days and know what the endpoint is  
4 for at least this tranche of information.

5 MR. SAMUELS: And just  
6 clarification, Chuck, I think, as to the list of the  
7 384 and as for the list of the -- whether it's  
8 120-some, we're going to get that promptly -- i.e.,  
9 within the next several days.

10 JUDGE POPPITI: The answer was yes.

11 MS. SMITH: Yes.

12 MR. SAMUELS: Okay.

13 MR. DIAMOND: So with that  
14 information and the inventory of backups that you're  
15 going to provide us, I think there's one other thing  
16 that we would like to see at the end of the 30 days,  
17 and that is, what is your plan?

18 If I understand you correctly, as  
19 of today, you're talking about restoring whatever  
20 backups exist for the 1,023. And I think we've  
21 discussed that in the past and trying to  
22 repopulate --

23 (Whereupon the telephone connection  
24 to the court reporter was lost and



1                   there was an interruption in the  
2                   proceedings.)

3                   MR. COOPER: I think we agreed that  
4 we would provide them our plan, and we actually  
5 agreed upon dates. And we will be providing the plan  
6 along with the other report. I think that date is  
7 May 1 -- I mean April 1 -- April 10 -- I better not  
8 finish this.

9                   And then we had a discussion which  
10 resulted in the conclusion that there would be a  
11 response to our plan, if there were objections or  
12 changes that AMD and the class plaintiffs wish to see  
13 in it, by May 1.

14                   And that Intel would respond on  
15 May 11; and that Judge Poppiti would advise us when  
16 he would want to hold a hearing. And the purpose of  
17 the hearing would be to sort out any disputes we have  
18 as to what the plan should be going forward.

19                   MR. DIAMOND: Judge Poppiti posed  
20 the question, while we were waiting to regroup,  
21 whether this would be the end of the proceeding. And  
22 I think Mr. Cooper and I are in agreement that this  
23 hopefully will be the end of the proceeding in  
24 connection with what steps need to be taken to go

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1 forward and address or attempt to address the problem  
2 of potentially lost data.

3 We're leaving for a further date  
4 what ramifications should come of this, if any.  
5 Because we won't know, as of the middle of May, the  
6 extent to which restoration efforts had been  
7 successful, the extent to which they've been able to  
8 repopulate missing materials. And the gaps will be  
9 still somewhat theoretical at that juncture.

10 We will obviously have to come up  
11 with a process going forward at the point where the  
12 restoration work or the results of the restoration  
13 work are known to us to decide what, if any, further  
14 steps are appropriate.

15 And we're not prejudging -- you  
16 know, if Intel is able to address this  
17 satisfactorily, that will be the last you'll hear of  
18 us. If we think that there are problems that can't  
19 be addressed, rest assured you'll hear from us.

20 JUDGE POPPITI: Well, it may be  
21 appropriate at this juncture for me to re-pose the  
22 question that I did in our off-record session. And  
23 that is, the benefit, if any, for there to be an --  
24 for the Court to retain the services of an IT

1 specialist as all of this is being accomplished.  
2 Whether it's, No. 1, beneficial -- and I think there  
3 was some consensus that it would be beneficial. I  
4 think that's correct.

5                   And if that is the case, then the  
6 question becomes, when? Is it important to do that  
7 at the front door -- and we are at the front door.  
8 Is it important to do that soon, in a week or two?  
9 Is it important to wait until that hearing and have  
10 to have somebody in attendance with me that sits and  
11 listens to everything that has been said or, in  
12 advance of that, as papers are being filed?

13                   And if I can have some discussion  
14 on that, that would be helpful.

15                   Just the concept itself, and then  
16 the structure with respect to the concept we should  
17 talk about as well.

18                   If there is consensus, we should be  
19 doing that. Namely, how do I go about selecting? Is  
20 it a function of you all -- you each serving up some  
21 suggestions and my taking from a list or a  
22 combination of lists and me going out on my own?  
23 Please.

24                   MR. COOPER: I expressed the view

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1 earlier that it makes sense to me for you to make  
2 that call down the road.

3 Now, if there's going to be a  
4 dispute over proceeding with the efforts to  
5 repopulate, as Chuck Diamond talks about it, then I  
6 think when we tell you there's going to be that  
7 problem, then maybe you may want to bring someone in.

8 Otherwise, everything is down the  
9 road. And if we have disputes over the extent to  
10 which we've been successful and the testing that goes  
11 on to show the extent of our success, I view that as  
12 a point at which some sort of an IT specialist would  
13 be most desirable in resolving those issues and  
14 making recommendations to the Court.

15 MR. DOVE: Your Honor, Tom Dove on  
16 behalf of the class plaintiffs.

17 We were talking off the record  
18 earlier about the judge's indication that the second  
19 of three steps in this process was to test the theory  
20 or claim with regard to what the extent and effect of  
21 the lapse was with the document retention.

22 There is going to be an  
23 opportunity, apparently about 21 days at this point  
24 after the report comes through from Intel, during

1    which the AMD plaintiffs and the class plaintiffs  
2    will have an opportunity to examine questions of the  
3    IT skills and techniques and approaches that were  
4    utilized in providing that information in the report.

5                    I think it might be actually most  
6    effective in the long run to move the case more  
7    rapidly than to wait until the tail end to have the  
8    Special Magistrate identify an individual -- perhaps  
9    it could be done on the basis of suggestions from  
10   both sides and you could pick from suggestions or  
11   come up with your own -- have someone who is  
12   generally aware of what the issues are, based upon  
13   the reports that have been exchanged so far with  
14   regard to the indices and the like -- and have that  
15   person available to participate, if it is deemed  
16   necessary by AMD and the class plaintiffs, to  
17   conduct -- to the person most knowledgeable  
18   depositions with regard to the IT processes that  
19   Intel will have undertaken, and have your special  
20   representative present to ask questions at that time  
21   as well, perhaps to flesh out the concerns of a  
22   technical nature that would be forwarded to you and  
23   eventually to Judge Farnan on this whole question of  
24   whether or not the sampling has been done in the best

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1 possible fashion, whether or not the recovery steps  
2 that have been undertaken are the best that are  
3 really available.

4                   And without appearing or implying  
5 or indicating any absence of complete good faith on  
6 the part of Intel, there are many different ways in  
7 which this kind of electrically sorted information  
8 can be approached. And one of the things that may  
9 come into play are disaster recovery tapes. And  
10 that's a very specialized state-of-art phenomenon  
11 which is evolving rather rapidly.

12                   And I think for you to be in a  
13 position to indicate to Judge Farnan your  
14 satisfaction or dissatisfaction to the work product,  
15 as it were, of this process, it might be of great  
16 value to have your own independent check on the  
17 process.

18                   That person may have very little to  
19 do. It may turn out that Intel's efforts are so  
20 extraordinarily successful that there's very little  
21 that we would find concern with or issue with. It  
22 may be that we find a great number of questions that  
23 we need to answer of a technical nature.

24                   It may very well be valuable for

1 you to have your own representative available to  
2 participate as he or she wishes to do so during that  
3 sort of person-most-knowledgeable process, the 21  
4 days after.

5 JUDGE POPPITI: At the call of  
6 either party, expecting that there would be some  
7 monitoring that I would not be involved with?

8 MR. DOVE: Right.

9 JUDGE POPPITI: That, at the call  
10 of the individual saying I need to be involved with  
11 this.

12 MR. DOVE: Right.

13 JUDGE POPPITI: I understand.

14 MR. DIAMOND: You know, I think  
15 both positions are correct. You're not going to need  
16 this advice probably until the very tail end of the  
17 process.

18 On the other hand, I think Mr. Dove  
19 makes a very good point: If you wait until  
20 May 14th to bring somebody on board, there's going  
21 to be sort of a massive education project that you're  
22 going to have to undertake. That's going to delay  
23 things and you're probably not going to get the  
24 quality of input that you would have had if someone

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1 was up and running.

2 JUDGE POPPITI: And I'm not so much  
3 concerned about what information I'm going to be  
4 receiving, because I would expect I'm not going to  
5 get it until then. This is not going to be somebody  
6 that's seated at my right or left hand and my having  
7 the opportunity to have ex parte communication with  
8 that individual and ex parte direction to that  
9 individual. I think that -- I think that's  
10 inappropriate.

11 But to have someone that is  
12 involved all along the way, if there are disputes  
13 that ultimately I have to resolve and there is a  
14 divergence of views, it may be helpful to have a  
15 third neutral, if you will, party, although retained  
16 by the Court, to help me with that determination.  
17 That's the way I would envision someone like that to  
18 be working.

19 And I just have a sense that -- in  
20 the context of a dispute like this, I have a sense  
21 that sooner is better so that we don't get so far  
22 down the line that somebody coming in later says, I  
23 really would have liked you to have approached it in  
24 a different way.



1                   And I don't want to call it for --  
2    I don't want to be wasting important resources.  At  
3    the same time, I want to use a resource, if  
4    ultimately it's important to do this, as efficiently  
5    as possible.  It seems to me the efficiency is built  
6    in earlier than later.

7                   MR. COOPER:  I think that's just  
8    fine.  If you think it would be valuable to identify  
9    someone now so they're standing by, that's certainly  
10   satisfactory from Intel's point.

11                  MR. DOVE:  As you've just  
12   indicated, Judge Poppiti, someone who is acting as  
13   that independent agent, if given materials in  
14   advance, and then at the time the Intel report comes  
15   in, has an opportunity to review it -- wave a hand  
16   over it, bless it, say, It looks fine to me; here's  
17   what the systems were, the steps that were taken,  
18   here's what the work product was; and really have  
19   nothing more to say than, This is the kind of good,  
20   solid IT work product that should have been produced.

21                  Or they may be someone who will  
22   want to raise questions in addition to what we may  
23   wish -- that is, plaintiffs and/or AMD may wish --  
24   based upon the status of disclosure or the report or

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1 the restoration appears to be at the time.

2 So I would again endorse the idea  
3 of having someone sort of waiting in the wings and  
4 having had some briefing with regard to the exchange  
5 of information on these issues. Have that person  
6 make the determination and independently provide you  
7 with a report.

8 JUDGE POPPITI: Okay. And I would  
9 expect with a protocol, if you will, of call in terms  
10 of when that individual gets involved. I would  
11 like -- I'd like you all to think about that, not  
12 today, what that protocol should look like. Help me  
13 a little bit with how you would best see me going  
14 about this search. Because I think it should be done  
15 sooner than later.

16 MR. DIAMOND: Why don't we see if  
17 we can agree upon a candidate or group of  
18 candidates -- I don't think the IT experts have a  
19 philosophical bent that will cater to one side or  
20 another. We're dealing with a technical person who's  
21 involved in data recovery and discovery, and I can't  
22 imagine that we can't agree upon a panel from whom we  
23 should select --

24 MR. COOPER: It makes sense to me

1 if it makes sense to everyone else.

2 MR. DOVE: It's fine from the class  
3 plaintiff's point of view as well.

4 JUDGE POPPITI: Why don't you  
5 suggest some deadline when I will see either an  
6 agreement from everyone or a list of individuals that  
7 I can look at and select from.

8 MR. SAMUELS: Along with resumès, I  
9 would assume, your Honor.

10 JUDGE POPPITI: Precisely, yes.

11 MR. DIAMOND: Why don't we do it a  
12 week prior to your submission.

13 MR. COOPER: That's fine.

14 MR. DIAMOND: That will give you a  
15 week to make a selection and get somebody on board.

16 JUDGE POPPITI: And you will have  
17 already had contact, I would expect, with those on  
18 the list so that those you present would, by virtue  
19 of having wound up on the list, be available for --

20 MS. SMITH: Why don't we put it --  
21 I don't have a calendar, but since we're running into  
22 Easter, let's do it before Easter.

23 MR. MOLL: This is Peter Moll. The  
24 report is due on the 10th. If we do it a week

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1 before the report, it would be essentially  
2 April 3rd.

3 MR. DIAMOND: That's the Tuesday.

4 MR. COOPER: Yes, that's correct.

5 MR. DIAMOND: We should put one  
6 other matter on the record that Mr. Cooper and I  
7 talked about briefly.

8 We made a request in our papers  
9 that Intel cease the automatic purge of email  
10 communications with respect to the 1,023 custodians.

11 Mr. Cooper has represented to us  
12 that Intel has migrated the custodians to what's  
13 commonly known in the industry as a walled journaling  
14 system. And that system essentially creates a  
15 tamper-proof backup of individuals' exchange server  
16 mailboxes and, if it's journaled, does it on a  
17 sufficiently frequent basis that an individual can't  
18 short-circuit it by quickly deleting received email.

19 We've been previously told that  
20 that system was implemented but it was in beta  
21 testing.

22 We're comfortable that our request  
23 has been responded to, if Intel is able to represent,  
24 with respect to the 1,023, that, in fact, that system

1 is up and running and outside counsel has made a  
2 sufficient investigation to be able to comfortably  
3 represent that future email correspondence is being  
4 preserved.

5 MR. BERNHARD: This is Darren  
6 Bernhard. We are in the process of being in a  
7 position to make that representation, and we'll work  
8 with you to have a conversation next week to discuss  
9 the matter further. And we should be in a position  
10 to make a representation at that time.

11 MR. DIAMOND: That's satisfactory.

12 MR. SAMUELS: Just for  
13 clarification, are we then in agreement that within a  
14 week we will be told one way or another definitively  
15 whether all of these 1,023 custodians are being  
16 journaled or evaluated, as it were? Or that the auto  
17 delete will be turned off if that representation is  
18 not forthcoming next week?

19 MR. BERNHARD: Next week we'll be  
20 in a position to discuss the journaling issue. We  
21 haven't discussed any other potential remedies. But  
22 we don't anticipate that this is going be an issue.

23 We've got the software in place.  
24 We're testing it, we think it's going to work, and we

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1 think we're going to make a representation.

2 It has been working for some period  
3 of time. We just want it a little bit longer so we  
4 can make the representation that Mr. Diamond has  
5 requested.

6 MR. SAMUELS: Right. But just to  
7 avoid the need to come back to Judge Poppiti, if for  
8 some reason you are unable to make that  
9 representation next week, may we have your agreement  
10 that the auto delete will be turned off?

11 MR. BERNHARD: At this point, Mark,  
12 we're just not in a position to say that, simply  
13 because we have to talk with the IT individuals. We  
14 haven't had the conversation about whether we could  
15 do that in a week or not.

16 But, again, I don't anticipate that  
17 this is going to be an issue. If it becomes one, we  
18 can address it with your Honor at a later time.

19 JUDGE POPPITI: If it becomes one,  
20 you can get me on the line quickly. We are scheduled  
21 for status on the 22nd. I wouldn't expect that that  
22 would be soon enough if there was no agreement, but I  
23 can make myself available at other times.

24 Is there anything else then,

1 please?

2 MR. SMALL: We had a discussion off  
3 the record about Intel paying the cost of your Honor  
4 in connection with the document-retention issues. We  
5 should put that on the record.

6 JUDGE POPPITI: What would I like  
7 to do is for someone to take the laboring ore in  
8 putting together a form of order. And I would expect  
9 that that form of order would encompass what we've  
10 done on record and any agreements that you reached  
11 and advised me of before we went on record. I think  
12 that would be the most efficient way to do it, rather  
13 than take up everyone's time to look back.

14 Does that make sense?

15 ALL COUNSEL: Yes, your Honor.

16 JUDGE POPPITI: And I don't expect  
17 that I need to be concerned about a time frame in  
18 order to get the form of order. Sooner than later is  
19 certainly better.

20 (Interruption by the court  
21 reporter.)

22 JUDGE POPPITI: That was Mr. Cooper  
23 being concerned about the snow.

24 Is there anything else, please?

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1 All right. Thank you all very much  
2 for your patience in a forum that's a little bit  
3 unusual.

4 Madam Court Reporter, we appreciate  
5 your patience, and I think we can assure you that if  
6 you are assisting us in the future, this will never  
7 happen this way again.

8 THE COURT REPORTER: Thank you.

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