

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, Certified Realtime Reporter and Notary Public, in the offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Thursday, September 27, 2007, beginning at approximately 11:30 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, ESQ., SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS  
MARK SAMUELS, ESQ.  
1999 Avenue of the Stars  
Los Angeles, California 90067  
for AMD

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<p>1 APPEARANCES (Continued):                  2 RICHARDS, LAYTON &amp; FINGER                  3 FREDERICK L. COTTRELL, III, ESQ.                  One Rodney Square                  4 Wilmington, DE 19899                  for AMD                  5                  6 POTTER, ANDERSON &amp; CORROON                  W. HARDING DRANE, JR. ESQ.                  1313 North Market Street, 6th Floor                  7 Wilmington, DE 19899                  for Intel                  8                  9 MORRIS, NICHOLS, ARSHT &amp; TUNNELL                  MARY B. GRAHAM, ESQ.                  1201 North Market Street                  10 Wilmington, Delaware 19899                  for Frys Electronics                  11                  12 QUINN EMANUEL                  MICHAEL POWELL, ESQ.                  865 S. Figueroa Street, 10th Floor                  13 Los Angeles, California 90017                  for Frys Electronics                  14                  15 PRICKETT, JONES &amp; ELLIOTT                  J. CLAYTON ATHEY, ESQ.                  1310 King Street                  16 Wilmington, DE 19801                  for Class                  17                  18 COHEN, MILSTEIN, HAUSFELD &amp; TOLL, P.L.L.C.                  DANIEL SMALL, ESQ.                  1100 New York Avenue, N.W.                  19 Suite 500, West Tower                  Washington, D.C. 20005                  for Class                  20                  21 FINKELSTEIN THOMPSON &amp; LOUGHRAN                  RICHARD VOLEN, ESQ.                  235 Pine Street, 15th Floor                  22 San Francisco, California 94104                  for Class                  23                  24</p>	<p>1 back at the e-mail from your assistant, it sounded like                  2 maybe you would want to be finished by 12 so then I                  3 e-mailed back to her.                  4 SPECIAL MASTER POPPITI: I was wanting to                  5 accommodate your respective schedules. I was pretty                  6 good today.                  7 MS. GRAHAM: Okay. Well, if he doesn't get                  8 on, I am pretty confident that he would be available,                  9 you know, within the next half hour, but he is the one                  10 that's really going to need to respond, I think, to your                  11 questions.                  12 SPECIAL MASTER POPPITI: Okay.                  13 MS. GRAHAM: Hopefully, you know, I called                  14 his office and his cell and I had e-mailed him this                  15 morning.                  16 SPECIAL MASTER POPPITI: And not heard back?                  17 MS. GRAHAM: And I haven't heard back, and I                  18 asked him to confirm that he was aware it was at 11:30.                  19 SPECIAL MASTER POPPITI: Okay. Does anyone                  20 have a problem with reconvening at 12:00?                  21 MR. SAMUELS: Your Honor, that would be no                  22 problem for me.                  23 SPECIAL MASTER POPPITI: Maybe what I should                  24 do is just tell you, between now and then, the reason</p>
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<p>1 SPECIAL MASTER POPPITI: If we could begin                  2 with a roll call, please. From the Class?                  3 MR. VOLEN: Richard Volen, Your Honor, and I                  4 believe that Dan Small and Clay Athey will be joining as                  5 well.                  6 MR. SMALL: Your Honor, this is Dan Small.                  7 I am on, too.                  8 SPECIAL MASTER POPPITI: Thank you.                  9 From Frys, please? Anyone from Frys on yet?                  10 I think I heard Fred Cottrell's voice?                  11 MR. COTTRELL: Yes, Your Honor, Fred                  12 Cottrell for AMD.                  13 SPECIAL MASTER POPPITI: Thank you. Any                  14 idea as to who else will be joining us? Will somebody                  15 be coming on other than --                  16 MR. COTTRELL: I think, today, for AMD, it's                  17 just me, Your Honor, because my understanding is it's                  18 more of the Class/Frys issue.                  19 SPECIAL MASTER POPPITI: Okay. That's good.                  20 MS. GRAHAM: Hi. This is Mary. Is Mike                  21 Powell on? I am not 100 percent sure that he knows this                  22 is at 11:30 and not a little later, like at 12:00. I                  23 spoke with him last afternoon and, you know, I was                  24 talking about, you know, 12:00, but then when I looked</p>	<p>1 for my call so you will be able to even have                  2 conversation while we are waiting.                  3 My question, quite simply, is focused on the                  4 issue of allocation of costs and fees. And my question                  5 is against the backdrop of wanting to make sure that                  6 whatever I have or whatever I will have, and I think                  7 it's really the latter than what I have presently, is an                  8 appropriate record for the Court to have were there to                  9 be any exceptions taken from whatever I do.                  10 And part of that question is I am not sure,                  11 based on what I have received, whether the term of the                  12 recommendation and -- the recommendation that Class has                  13 filed is in the nature of an application, and if it's                  14 considered to be in the nature of an application, to                  15 look at costs and fees more consistent with a Rule 37.                  16 I am concerned that I don't have a record that Judge                  17 Farnan could ultimately look at were there to be an                  18 exception, and that even if Judge Farnan looked at it a                  19 certain way, a record that could be taken to the                  20 Circuit.                  21 That's what I am going to want to be talking                  22 to you about, and what I intend to do, when everyone                  23 reconvenes, is, I think it's even fair to give you all                  24 some inclination as to what I am inclined to do so that</p>

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1 everyone can measure whether you want to gear it up for  
 2 discussion and battle or whether it doesn't make sense  
 3 in terms of my inclination.  
 4 MR. SAMUELS: I appreciate that, Your Honor,  
 5 giving us the heads up, what the issue will be. I can  
 6 try to get ahold from someone from Frys so they also  
 7 have the benefit of the preview before they get on the  
 8 call at noon.  
 9 MS. GRAHAM: I am on the phone, Dan. I  
 10 appreciate your offer.  
 11 MR. SMALL: Okay.  
 12 SPECIAL MASTER POPPITI: So we will redo at  
 13 12:00?  
 14 MS. GRAHAM: Yes. Thank you very much. I  
 15 appreciate the accommodation.  
 16 (Recess taken.)  
 17 SPECIAL MASTER POPPITI: I would expect that  
 18 perhaps Mary Graham gave you a preview of what I wanted  
 19 to discuss?  
 20 MR. POWELL: She tried to, Your Honor. It  
 21 was -- we didn't have much time to talk. I had to make  
 22 a few calls, so I would appreciate, actually, if maybe  
 23 if Your Honor could explain, you know, the nature of the  
 24 inquiry and what it is we are addressing.

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1 SPECIAL MASTER POPPITI: The only thing that  
 2 I want to address is the issue dealing with fees and  
 3 expenses that come as a result of my work.  
 4 MR. POWELL: Okay.  
 5 SPECIAL MASTER POPPITI: And my question is  
 6 really against the backdrop of wanting to make sure that  
 7 whatever record there is, it is a record that is  
 8 appropriate for any work that either of you ask, either  
 9 side ask Judge Farnan to accomplish after I do my work  
 10 on that particular issue.  
 11 MR. POWELL: Okay.  
 12 SPECIAL MASTER POPPITI: And I said earlier  
 13 that I am not sure that I have that record at this  
 14 juncture because what I see is certainly competing  
 15 language in your respective forms of the proposed  
 16 findings of the proposed -- proposed report and  
 17 recommendation.  
 18 I don't know whether the language in the  
 19 submittal represents, in their view, a Rule 37  
 20 application or whether it just represents where they  
 21 would like to be after a meet and confer, if you will.  
 22 I don't think it's appropriate for me to  
 23 simply pick one or the other because I do expect that  
 24 there needs to be some development of the record if

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1 there is, in fact, a dispute that needs to be played  
 2 out, if you will.  
 3 I don't think we are in the same position  
 4 that we were in when I originally, back in an invoice  
 5 some time ago, the fees were beyond that because now we  
 6 are at conclusion of the application to require the  
 7 discovery be produced. I think we are in a little bit  
 8 of a different posture at this point, and I'd like to  
 9 hear whether the Class thinks that the record needs to  
 10 be developed further, and if the Class agrees with me,  
 11 how you would intend to do that so that I have a full  
 12 record with respect to this issue.  
 13 I might add that notwithstanding whatever I  
 14 do with respect to those costs and fees, and even if I  
 15 have to take some more time to look at that, I certainly  
 16 intend to turn to the more important aspect of the order  
 17 before the weekend.  
 18 MR. SMALL: Your Honor, this is Dan Small  
 19 for the Class plaintiffs. You anticipated exactly where  
 20 I was going to start, which is to say the issue of what  
 21 portion of Your Honor's costs should be shared by Frys,  
 22 if any, is a discrete issue that can be separated, I  
 23 believe, from all the other issues that are covered by  
 24 the proposed report and recommendation.

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1 So we would agree, absolutely, that it would  
 2 make sense to have Your Honor enter a report and  
 3 recommendation that deals with all of the other issues,  
 4 and then as to the specific issue of Your Honor's costs  
 5 and expenses, we could provide additional submissions on  
 6 that.  
 7 I think it does make sense because it was  
 8 about three months ago, I believe, that we last  
 9 addressed this and a lot has happened since then, and I  
 10 believe it is appropriate to bring the Court up-to-date  
 11 on that so that you have the best record possible on  
 12 which to make a ruling.  
 13 SPECIAL MASTER POPPITI: And do you see your  
 14 request being in the nature of a Rule 37 request?  
 15 MR. SMALL: Your Honor, I would not actually  
 16 think it would be handled under Rule 37. You may  
 17 recall, when we addressed this issue before, back in  
 18 June, we did cite to you various case law. We cited to  
 19 Rule 53 and we cited to Rule 45. And I believe, subject  
 20 to any additional research that might uncover other  
 21 bases, that those would be the grounds for requiring  
 22 Frys to share in Your Honor's costs and expenses.  
 23 SPECIAL MASTER POPPITI: Does Frys have  
 24 anything to offer or --

Hearing

4 (Pages 10 to 13)

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1 MR. POWELL: Your Honor, if I might, I mean,  
 2 I think Frys would be prepared to revisit the briefing  
 3 that we put in previously on this issue. I think the  
 4 way the issue was teed up a while back, and then it got  
 5 tabled because we continued our negotiations, the way it  
 6 got teed up was simply whether or not the Court could  
 7 impose Special Master fees upon a non-party pursuant to  
 8 enforcement of a subpoena. And, you know, we felt that  
 9 the law clearly supported Frys' position was that, you  
 10 know, in a normal circumstance, Your Honor, Frys would  
 11 have been in front of a district judge in Northern  
 12 District of California, and I think it would be  
 13 unprecedented for such a situation to involve a Special  
 14 Master.  
 15 Now, this case is unique. It's an MDL  
 16 proceeding, and, obviously, it has some special  
 17 considerations.  
 18 We feel, though, that the Federal Rules  
 19 still don't permit the judge to award Special Master  
 20 fees or impose Special Master fees on a non-party. We  
 21 weren't provided the opportunity to object to the  
 22 appointment of a Special Master. And I think those  
 23 issues were addressed previously.  
 24 If Your Honor feels that they weren't

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1 addressed sufficiently, then I think Frys would go along  
 2 with some further submission on that issue separately  
 3 from what we think the Court can recommend to Farnan at  
 4 this juncture based on the parties' stipulation.  
 5 SPECIAL MASTER POPPITI: Well, then, it will  
 6 come down to whether the Class wants to be doing  
 7 anything to supplement the submittals that have already  
 8 been filed, and I think I heard that there is interest  
 9 in doing that; is that correct?  
 10 MR. SMALL: That is correct, Your Honor.  
 11 Dan Small for the Class. I don't think it has to be  
 12 anything particularly elaborate or extensive, but I  
 13 think there are particular materials and arguments,  
 14 particularly based on more recent events since June that  
 15 are appropriately brought to Your Honor's attention, and  
 16 I would suggest we set up a relatively quick briefing  
 17 schedule to have us, you know, first submit our  
 18 additional information and argument, have Frys respond  
 19 to it, and then we do a short reply and then it should  
 20 be ready for Your Honor's consideration.  
 21 SPECIAL MASTER POPPITI: Why don't you  
 22 propose some date, if you would, please.  
 23 MR. SMALL: I would think ten days for our  
 24 opening brief, ten days for Frys' reply, and then seven

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1 days for our response to that.  
 2 SPECIAL MASTER POPPITI: Calendar days?  
 3 MR. SMALL: Yes, Your Honor. Maybe, because  
 4 of the weekend, October 8th for our opening brief, the  
 5 18th for Frys' opposition, and the 25th for our reply.  
 6 SPECIAL MASTER POPPITI: Any comment from  
 7 Frys, please?  
 8 MR. POWELL: Your Honor, if you will, I am  
 9 checking my calendar right now. I know that Robert  
 10 Stone, who is the partner on this case, is out of the  
 11 country all next week, but let me just see what my  
 12 calendar looks like following the 18th. Just one  
 13 moment.  
 14 SPECIAL MASTER POPPITI: Okay.  
 15 MR. POWELL: I think the schedule proposed  
 16 is fine.  
 17 SPECIAL MASTER POPPITI: Okay. Then let's  
 18 do that. Do I need to establish a page limit? Because,  
 19 I agree with you, it doesn't need to be a lengthy  
 20 discussion.  
 21 MR. SMALL: Your Honor, I think, in the  
 22 past, something like five pages for the first two briefs  
 23 and three for the third brief would work.  
 24 MR. POWELL: That's fine with Frys.

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1 SPECIAL MASTER POPPITI: That's fine as well  
 2 with me. Let's operate with those dates, and I will get  
 3 something out with respect to the rest of the order  
 4 before the end of the day tomorrow.  
 5 MS. GRAHAM: What's the date for their  
 6 reply? Ours is due the 18th and then when is theirs  
 7 due?  
 8 MR. SMALL: The 25th, Mary.  
 9 MS. GRAHAM: Thank you.  
 10 MR. POWELL: Your Honor, would there be an  
 11 opportunity for us to request a hearing once we have the  
 12 briefing?  
 13 SPECIAL MASTER POPPITI: If there is a need  
 14 for that, please do that, yes, and I would expect that  
 15 that would not be lengthy either.  
 16 MR. POWELL: Okay.  
 17 SPECIAL MASTER POPPITI: Anything else,  
 18 then, please? I really appreciate your accommodating my  
 19 request and have a safe trip back to New York, sir.  
 20 MR. POWELL: You are welcome. Thank you.  
 21 MR. SMALL: Thank you, Your Honor.  
 22 (The hearing was concluded at 12:13 p.m.)  
 23  
 24

<b>A</b>	7:8,22 9:10 <b>appropriately</b> 11:15 <b>approximately</b> 1:11 <b>argument</b> 11:18 <b>arguments</b> 11:13 <b>ARSHT</b> 2:8 <b>asked</b> 4:18 <b>aspect</b> 8:16 <b>assistant</b> 4:1 <b>Associates</b> 1:23 <b>Athey</b> 2:15 3:4 <b>attention</b> 11:15 <b>available</b> 4:8 <b>Avenue</b> 1:16 2:18 <b>award</b> 10:19 <b>aware</b> 4:18 <b>A.D</b> 14:15 <b>a.m</b> 1:11	<b>briefs</b> 12:22 <b>bring</b> 9:10 <b>brought</b> 11:15	<b>C</b>	<b>concluded</b> 13:22 <b>conclusion</b> 8:6 <b>confer</b> 7:21 <b>confident</b> 4:8 <b>confirm</b> 4:18 <b>consideration</b> 11:20 <b>considerations</b> 10:17 <b>considered</b> 5:14 <b>consistent</b> 5:15 <b>continued</b> 2:1 10:5 <b>conversation</b> 5:2 <b>Corbett</b> 1:20,23 <b>CORPORATI...</b> 1:6 <b>correct</b> 11:9,10 <b>correctly</b> 14:8 <b>CORROON</b> 2:5 <b>costs</b> 5:4,15 8:14 8:21 9:4,22 <b>Cottrell</b> 2:3 3:11 3:12,16 <b>Cottrell's</b> 3:10 <b>counsel</b> 14:12 <b>country</b> 12:11 <b>County</b> 14:3,5 <b>Court</b> 1:1,23 5:8 9:10 10:6 11:3 <b>covered</b> 8:23	2:10 14:2 <b>developed</b> 8:10 <b>development</b> 7:24 <b>DEVICES</b> 1:3 <b>different</b> 8:8 <b>discovery</b> 8:7 <b>discrete</b> 8:22 <b>discuss</b> 6:19 <b>discussion</b> 6:2 12:20 <b>dispute</b> 8:1 <b>district</b> 1:1,2 10:11,12 <b>doing</b> 11:6,9 <b>DRANE</b> 2:6 <b>due</b> 13:6,7 <b>D.C</b> 2:19	
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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, Certified Realtime Reporter and Notary Public, in the offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Thursday, September 30, 2007, beginning at approximately 11:30 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, ESQ., SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS  
MARK SAMUELS, ESQ.  
1999 Avenue of the Stars  
Los Angeles, California 90067  
for AMD

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