

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ADVANCED MICRO DEVICES, INC., a	)	
Delaware corporation, and AMD	)	
INTERNATIONAL SALES & SERVICE,	)	Civil Action No. 05-441 JJF
LTD., a Delaware corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
INTEL CORPORATION, a Delaware	)	
corporation, and INTEL KABUSHIKI	)	
KAISHA, a Japanese corporation,	)	
	)	
Defendants.	)	

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IN RE:	)	
	)	Civil Action No. 05-MD-1717-JJF
INTEL CORPORATION	)	
MICROPROCESSOR ANTITRUST	)	
LITIGATION	)	

**DECLARATION OF CHARLES P. DIAMOND IN SUPPORT OF OPPOSITION  
BY ERS GROUP AND ADVANCED MICRO DEVICES, INC. AND AMD  
INTERNATIONAL SALES AND SERVICES, LTD. TO INTEL'S MOTION TO  
COMPEL PRODUCTION DISCOVERY MATTER #8**

I, Charles P. Diamond, declare as follows:

1. I am a partner in the law firm of O'Melveny & Myers LLP, counsel for plaintiffs Advanced Micro Devices, Inc. and AMD International Sales and Services, Ltd. in this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto.

2. O'Melveny & Myers LLP hired Dr. Michael A. Williams and his firm ERS Group to assist counsel in understanding certain economic matters at issue in this litigation. As part of that retention, earlier this year, O'Melveny asked Dr. Williams to analyze and quantify the profits Intel had extracted from its x86 microprocessor monopoly that could not be attributed to pro-competitive justifications. This research was commissioned in part to respond to questions posed by several competition authorities, both here and abroad, that are investigating Intel's conduct. While AMD may seek to introduce this or similar analyses into evidence in this case, no decision has been made to do so or to designate Dr. Williams or ERS Group as testifying

experts. Indeed, the Court has not yet scheduled a date for the identification of testifying experts or the exchange of expert reports.

3. Because of the importance of the x86 market to the U.S. and world economies and continuing productivity gains, this lawsuit and the related competition authority investigations have captured substantial public interest. As developments warrant, AMD has publicized them, generally through press releases and interviews with the business and legal press. Intel has done the same. For example, attached as Exhibit A is a September 1, 2005 release Intel issued at the time of its answer, which characterized the AMD Complaint as “a case study in legal dissonance.” Intel has also issued releases seeking to minimize the significance of its agreement to comply with recommendations of the Japanese Fair Trade Commission after that agency issued a Statement of Objections (“SO”) against Intel (March 31, 2005), and to dismiss as “only preliminary” the SO issued by the European Commission’s Directorate General for Competition concerning Intel’s business practices (July 27, 2007).

4. Intel executives have also been aggressive in seeking out journalists willing to publish Intel’s “spin.” By our count, during July and August, 2007 alone, Intel’s corporate communications director, Chuck Mulloy, and its general counsel, Bruce Sewell, have appeared in the business press seventeen times claiming that competition in the x86 microprocessor market is fiercely competitive. At least twice, Intel executives attacked Dr. Williams’ report as “wildly speculative and based on flawed assumptions about Intel and the market” and, as a reporter summarized their views, constituting a “slanderous smear campaign.” A synopsis of these press accounts is attached as Exhibit B.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed November 9, 2007, at Los Angeles, California.

A handwritten signature in black ink, appearing to read "Charles P. Diamond". The signature is written in a cursive, flowing style with a large initial "C" and a distinct "D".

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CHARLES P. DIAMOND

# **Exhibit A**

## Intel Files Response to AMD Complaint

SANTA CLARA, Calif., Sept. 1, 2005 - Intel Corporation today filed its response to a lawsuit recently initiated by Advanced Micro Devices (AMD) regarding Intel's business practices. In the response, Intel refutes AMD's claims and states that its business practices are both fair and lawful.

The Intel response explains that AMD's claims are factually incorrect and contradictory. In addition, AMD's complaint -- by attempting to impede Intel's ability to lower its prices - - would hurt consumers, not help them.

"Innovation, investment, customer focus and great products have led to Intel's success over the years," said [Bruce Sewell](#), Intel general counsel. "These are the things that have been fundamental to our decision making as we've sought to move the industry and the pace of technology forward.

"Likewise, AMD has made its own business decisions and choices that have determined its position in the marketplace. Yet, with its lawsuit, AMD seeks to instead blame Intel for the many business failures AMD has experienced that are actually a direct result of AMD's own actions or inactions."

In its response filed today with the U.S. District Court in Delaware, Intel described the semiconductor industry business model that has led to phenomenal growth and steadily increasing value to customers over the years. That business model is based on three fundamental principles: production, product and price. The Intel response indicates that "AMD's choices and behaviors with respect to each of these core principles over the period covered by the complaint provide a compelling answer to the allegations it has made in this case."

Intel's response further states, "AMD's complaint presents a case study in legal dissonance. Although AMD has purportedly brought its complaint to promote competition, its true aim is the opposite. Under the cover of competition law, AMD seeks to shield itself from competition. AMD seeks to impede Intel's ability to lower prices and thereby to allow AMD to charge higher prices. AMD's colorful language and fanciful claims cannot obscure AMD's goal of shielding AMD from price competition."

### **About Intel**

Intel, the world leader in silicon innovation, develops technologies, products and initiatives to continually advance how people work and live. Additional information about Intel is available at [www.intel.com/pressroom](http://www.intel.com/pressroom) and [blogs.intel.com](http://blogs.intel.com).

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\* Other names and brands may be claimed as the property of others.

# **Exhibit B**

# Synopsis of Intel Press Accounts

**Intel Spokesman: “Microprocessor Market Is Fiercely Competitive.”** Chuck Mulloy, Intel Spokesman said, “The microprocessor market is fiercely competitive and is functioning properly and consumers are benefiting.” [Online Comment on 7/29 at 1:26 pm to Roger Parloff’s article in Fortune on 7/29/07]

**Intel SVP And General Counsel: Evidence That Industry Is Competitive Is “Compelling.”** Bruce Sewell, Intel senior vice president and general counsel said, “The evidence that this industry is fiercely competitive and working very well is compelling.” [Agence Europe, 7/28/07]

**Intel Spokesman: “Prices Of Microprocessors Continue To Go Down.”** Chuck Mulloy, Intel Spokesman said, “Prices of microprocessors continue to go down. That’s a sign of the market operating properly.” [Los Angeles Times, 7/28/07]

**Intel SVP and General Counsel: “Competition Is Working.”** Bruce Sewell, Intel senior vice president and general counsel said, “The basis of the complaint is that we are providing discounts, enabling our customers to produce their products more cheaply, and pass savings on to consumers. Competition is working; the only issue is whether AMD can make the margins it would like.” [BusinessWeek Online, 7/30/07]

**Intel Spokesman: Williams Report Purely Speculative, Unfounded.** “Intel dismissed the [Williams] report as filled with “wild” speculation and based on incorrect assumptions.” The only thing one can conclude from the study is that if you pay someone enough money you can get them to say almost anything,” said Chuck Mulloy, spokesman for the Santa Clara company. [...] In his response, Mulloy called the study “wildly speculative and based on flawed assumptions about Intel and the market.” The European Commission filed its charges in a 164-page confidential “statement of objections” that AMD has not seen, he said.” [San Jose Mercury News, 8/2/07]

**Intel SVP and General Counsel: “Case Is Based On Complaints from a Direct Competitor.”** Bruce Sewell, Intel senior vice president and general counsel said, “The case is based on complaints from a direct competitor rather than customers or consumers.” [Statement from Intel Press Release, 7/27/07]

**Intel Spokesman: Customers Aren’t Complaining.** Chuck Mulloy, Intel Spokesman said, “First, the Statement of Objection in no way changes the fact that AMD has been and continues to be the source of complaints about Intel’s business practices. There are no customers complaining, there are no consumers complaining.” [Online Comment on 7/29 at 1:26 pm to Roger Parloff’s article in Fortune on 7/29/07]

**Intel Spokesman: AMD Engaging In Slanderous Smear Campaign.** ““AMD is trying to damage Intel’s reputation. It’s determined that even if it loses the antitrust suit, in the end Intel will look like the bad guy to the consumer,” [Chuck Mulloy] said. What finally

got Intel's goat was an "economic study" that AMD was trying to "peddle to the press," Mulloy said, that makes it look like AMD is laying its claims for damages way this side of a trial that isn't supposed to begin until April of 2009." [Virtualization SYS-CON Media, 8/5/07]

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**Research Director: Customer Impact Disputed.** Chris Ingle, a consulting and research director at technology consultancy Interactive Data (IDC) said, "Prices are going down, both companies continue to innovate, and consumers are getting more for their money. It is difficult to see where consumers are losing out." [BusinessWeek Online, 7/30/07]

**Intel Spokesman: AMD Engaging In Slanderous Smear Campaign.** "AMD is trying to damage Intel's reputation. It's determined that even if it loses the antitrust suit, in the end Intel will look like the bad guy to the consumer," [Chuck Mulloy] said. What finally got Intel's goat was an "economic study" that AMD was trying to "peddle to the press," Mulloy said, that makes it look like AMD is laying its claims for damages way this side of a trial that isn't supposed to begin until April of 2009." [Virtualization SYS-CON Media, 8/5/07]

**Intel Spokesman: EC Made Errors of Fact.** Bruce Sewell, Intel senior vice president and general counsel said, "I can tell you that having read the SO there are factual assumptions which have been made which we think the Commission has simply gotten wrong – not intentionally...the Commission has simply misunderstood" [Reuters News, 7/27/07]

**Intel Spokesman: Discounts are Pro-Competition.** Bruce Sewell, Intel senior vice president and general counsel said, "We are confident that we can show the commission how the discounts we have offered our customers are actually pro-competition, rather than hindering it." [Dow Jones International News, 7/27/07]

**Intel Spokesman: We Have Other Facts.** Bruce Sewell, Intel senior vice president and general counsel said, "The commission has chosen certain facts which it uses to conclude that there is an exclusivity arrangement. We have other facts to dispute that." [Wall Street Journal Europe, 7/28/07]

**Intel Spokesman: We Can Correct Commission.** Bruce Sewell, Intel senior vice president and general counsel said, “The commission has made some assumptions and drawn some conclusions which we think we can correct.” [Wall Street Journal Europe, 7/28/07]

**Intel Spokesman: Intel Hasn’t Broken Laws.** Bruce Sewell, Intel senior vice president and general counsel said, “I don’t believe there is any kind of smoking gun. And the way the commission calculated costs is based on “factual errors and errors of assumption.”“ [BusinessWeek Online, 7/30/07]

**Intel SVP And General Counsel: “The Way Competition Is Played Out In This Market Is Through Price Discounts.”** Bruce Sewell, Intel senior vice president and general counsel said, “The way...in which competition is played out in this market is through price discounts by Intel and by AMD and there is nothing unlawful about those discounts. We believe that these rebates are lawful anywhere around the world. . . . We understand the rules, we’ve looked at the rules and we think we are well within them.” [Associated Press, 7/27/07]



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DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Hand Delivery to the following:

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*/s/ Steven J. Fineman*  
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