

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

Teleconference in above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the offices of Blank Rome, LLP, 1201 North Market Street, Wilmington, Delaware, on Thursday, January 3, 2008, beginning at approximately 11:00 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 SPECIAL MASTER POPPITI: If you all don't
2 mind, start with the Class.

3 MR. HOLZMAN: Jim Holzman, Prickett, Jones,
4 for the Class. And on the phone with me is Brent
5 Landau, L-a-n-d-a-u, of the Cohen, Milstein firm.

6 SPECIAL MASTER POPPITI: For AMD, please.

7 MR. COTTRELL: Good morning, your Honor.
8 It's Fred Cottrell and I know Mark Samuels and Chuck
9 Diamond are on.

10 MR. PEARL: Bo Pearl and Jen Chang as well
11 for AMD and Beth Osman in-house from AMD

12 SPECIAL MASTER POPPITI: Thank you. Intel,
13 please.

14 MR. HORWITZ: Good morning, your Honor.
15 It's Rich Horwitz from Potter, Anderson here in
16 Wilmington, and I know Bob Cooper, Dan Floyd, and Kay
17 Kochenderfer are on from Gibson, Dunn, and I can't
18 remember if there was anyone else?

19 MR. BRODERICK: Ben Broderick.

20 SPECIAL MASTER POPPITI: Thank you very
21 much. Of course, this is the time that we set for
22 discussion or some information for me as a result of
23 your meet and confers regarding scheduling. You will
24 have to excuse me if I cough through some of this. I

1 have wound up with an office cold that's making its
2 rounds once again.

3 MR. FLOYD: Your Honor, Mr. Samuels and I
4 have had a couple conversations so it may make sense for
5 Kay Kochenderfer to address, you know, where we are and
6 what -- where we are in the matter right now and I think
7 we can then raise a few issues for discussion so we can
8 come up with a plan.

9 SPECIAL MASTER POPPITI: That's good. Thank
10 you.

11 MR. SAMUELS: Shall I go ahead or do you
12 want to go ahead?

13 MR. FLOYD: We can summarize where we are at
14 this point in terms of working materials and issues that
15 we have -- and that process, I think some of which we
16 have discussed a bit between the two of us, and then,
17 obviously, you can comment.

18 MS. KOCHENDERFER: This is Kay Kochenderfer.
19 We were in the process of gathering materials that we
20 spoke about during the last hearing.

21 SPECIAL MASTER POPPITI: Yes.

22 MS. KOCHENDERFER: And we are in the process
23 of, first of all, gathering the materials that go to the
24 issue that you raised, your Honor, about -- that you

1 wanted to look at for purposes of determining whether or
2 not the privilege attached in the first instance to the
3 interviews.

4 SPECIAL MASTER POPPITI: Yes.

5 MS. KOCHENDERFER: We have some of those
6 materials collected. We are in the process of
7 continuing to do that, but, for example, I believe one
8 of the things we spoke about last time was any materials
9 that show what information was conveyed either in
10 writing or orally to the actual custodians who were
11 being interviewed about the purpose of the interview.

12 SPECIAL MASTER POPPITI: Okay.

13 MS. KOCHENDERFER: So we do have, for
14 example, a script that was used by Intel paralegals,
15 in-house paralegals at Intel for purposes of introducing
16 the Weil attorneys to the custodian at the outset of the
17 interviews. This script was used by Intel paralegals
18 during the initial tranche of custodian interviews that
19 were done, I believe it was for the first approximately
20 200 interviews or so.

21 SPECIAL MASTER POPPITI: Okay.

22 MS. KOCHENDERFER: It was not used for every
23 single interview subsequently, there was a different
24 method then, but by way of example, that's one of the

1 things that we have collected.

2 We are in the process of collecting those
3 materials to address that particular issue that you
4 requested documentation on.

5 SPECIAL MASTER POPPITI: Okay.

6 MS. KOCHENDERFER: We also are in the
7 process of collecting the interview notes, the raw notes
8 that the Weil attorneys took during the time that they
9 were actually interviewing the custodians. That, in and
10 of itself, is relatively straightforward. We also are
11 in the process of collecting any follow-up materials in
12 terms of information that the Weil attorneys obtained
13 from the custodians during any follow-up communications.

14 SPECIAL MASTER POPPITI: Okay.

15 MS. KOCHENDERFER: That is a little more of
16 a lengthy process just because of the manner in which
17 those notes were taken and communicated and transmitted.
18 We are working on collecting that.

19 So those are the two main categories that we
20 understand are important and that are of interest here.

21 There also are what we have been referring
22 to as derivative materials, which would be materials
23 where an attorney worked with the primary interview
24 note, which, I believe, would be more in the nature of

1 work product and privilege materials, so we wanted to --
2 that's a little bit open in terms of materials.

3 And let me go back to one other thing that
4 we are collecting that I noted you explicitly asked for
5 before, and that is the templates that were used for
6 purposes of conducting the interviews, and there are
7 three different templates that we have collected that
8 are -- that were used for purposes of the Weil attorneys
9 using in connection with doing the interview.

10 SPECIAL MASTER POPPITI: Were they just, I
11 am sure you will describe this for me later, but were
12 they just a template that changed over time from the
13 first tranche until later?

14 MS. KOCHENDERFER: I believe that it's --
15 yes. There were -- different attorneys had slightly
16 different templates and we have been able to identify
17 for you the very first template that was used initially.

18 SPECIAL MASTER POPPITI: Okay.

19 MR. FLOYD: Your Honor, I wanted to -- I
20 spoke to Mr. Samuels yesterday a little bit about this
21 issue that Miss Kochenderfer was addressing, which is
22 what we have been attempting to collect are the
23 interview notes that, for example, a particular
24 individual may have taken in interview and then taken

1 notes, prepared a memo, perhaps done some follow-up, and
2 in each instance, may have obtained factual information
3 which then would have been embodied in some sort of
4 writing. And that's the information that we have been
5 pulling.

6 What we have discovered, not surprising, is
7 there is a large amount of material then that is created
8 or used by Weil for other purposes related to their
9 retention, and that is what we would view as more
10 derivative work product in the sense that it doesn't
11 reflect any additional factual information that was
12 obtained in the interview process. And, so, the
13 materials that we have collected and are in the process
14 of collecting in the interviews are quite voluminous and
15 would be multiplied in terms of their volume if we were
16 digging into that material. And we felt it was
17 important to raise the issue, the distinction of what we
18 felt was appropriate based on our last meeting that we
19 had with you in terms of the line that we were drawing
20 in terms of what we were collecting and planning to
21 provide.

22 SPECIAL MASTER POPPITI: And has there been
23 some discussion with respect to the category that we are
24 talking about now?

1 MR. FLOYD: Well, I raised it with
2 Mr. Samuels simply to alert him to the distinction that
3 we were drawing. I think -- I don't want to speak for
4 him in terms of his reaction to it.

5 MR. SAMUELS: Good morning, your Honor.
6 First, happy new year to you.

7 Yes, Mr. Floyd and I did discuss this
8 yesterday, and we didn't reach a resolution yesterday.
9 It was really the first indication we had that there
10 were these so-called derivative materials. And I'd like
11 to make a suggestion about those. If, as Mr. Floyd
12 believes, these derivative materials contain no factual
13 information that isn't otherwise contained in the
14 interview notes, the interview notes, themselves, and if
15 we can get a representation to that effect and a
16 representation that all the -- that the balance of these
17 derivative materials are core attorney work product, I
18 think we would be satisfied. But I think that they need
19 to finish the process of gathering materials so they can
20 make that representation to us.

21 MR. FLOYD: Your Honor, that would be fine
22 with us. We recognize that that would be essential in
23 any event in order to produce the relevant materials.

24 SPECIAL MASTER POPPITI: Okay.

1 MR. SAMUELS: Your Honor, if I could go
2 back? First, just a housekeeping item, I noticed in
3 reviewing the transcript of our conference last week
4 that I misspoke at one point, I don't think it was
5 material then or now, but I do want to point it out, and
6 that's at I believe page 19, line 19 of the transcript,
7 I mentioned that Mr. Lender had begun conducting
8 interviews in February of 2006. It was actually in
9 November of 2006. And I corrected that or I made the
10 correct attribution to him on the following page so I
11 did want to point that out.

12 Mr. Floyd and I did confer and I am not sure
13 we got as far as your Honor may have intended for us to
14 get, due, I think, principally, to the holiday, but we
15 do have agreement, I believe, that the materials, the
16 so-called set-up materials, the questionnaires, the
17 preinterview instructions, the scripts and so forth, all
18 of the materials we discussed will be provided to your
19 Honor in camera as well as the Weil, Gotshal notes,
20 themselves. It's a little bit vague to us, but it seems
21 as though the Weil, Gotshal notes consist of
22 handwritten, you know, contemporaneous or typewritten
23 notes taken by the interviewing lawyers at the time of
24 the interview and then more elaborate memoranda that

1 were prepared afterward, presumably, based on those
2 notes and follow-up, so those Weil, Gotshal materials
3 will also be submitted to your Honor in camera.

4 And what we don't have agreement on yet is
5 the timing of that submission, and, in particular, the
6 timing of Intel's suggested redactions to those
7 materials and I think that we need to address that on
8 this call.

9 We also have agreement, I think, that there
10 needs to be some transparency to AMD and Class with
11 respect to what materials are being submitted to Your
12 Honor. Though Mr. Floyd and I discussed either a letter
13 to Your Honor representing what the materials are or a
14 declaration certifying to what the materials are, but
15 it's important to us, Your Honor, that we know how the
16 materials are being described in a generic way to Your
17 Honor so there is some transparency there and there is
18 no -- there would be no necessity for ex parte
19 discussions about them, they would be -- whatever Intel
20 wants to say about those materials would be laid out in
21 a document that would be accessible to Class and to AMD.
22 I think we have agreement on that as well.

23 SPECIAL MASTER POPPITI: Did you discuss the
24 parameters of the description, itself, or you have not?

1 MR. SAMUELS: No, not in any specific way,
2 Your Honor, but, you know, our concept is that they
3 would be described in such a way as to make it clear
4 what is being submitted but they wouldn't be described
5 in so much detail as to, you know, expose the very
6 ostensibly privileged information to us. We, obviously,
7 don't want that or can't ask for that.

8 MR. FLOYD: Your Honor, I think one of the
9 challenges is that we are going to be producing a lot of
10 material because there were more than 1,000 people that
11 were interviewed. And, so, our conception was -- mine,
12 from Intel, was that we would come up with something
13 that would be fairly general in terms of categories, and
14 I think, in the conversation I had with Mr. Samuels,
15 part of my view is that we would welcome Your Honor's
16 view as to what we should do in that regard.

17 I would hope that whatever description we
18 have would be something that would probably be covered
19 in a page or two because we would be talking about
20 fairly broad categories, but, you know, we understand
21 and were -- understood the need to have some sort of
22 representation of what it was that we had done and what
23 it was that we were providing.

24 Our view is that it made most sense to have

1 that done in a letter because the material is going to
2 be collected from a number of different sources. So
3 that was our view on that point.

4 In terms of the issue of redactions, I think
5 from the conversation we had at the last hearing --

6 SPECIAL MASTER POPPITI: Counsel, let me ask
7 the question with respect to what was just said about
8 the categories.

9 Would it not make sense, then, to generate a
10 draft document to AMD for purposes of -- and the Class
11 for purposes of saying, This is what we intend to do so
12 that there can be a comment in the context of a meet and
13 confer to say, Yeah, that's fine, that's acceptable, or
14 there may be a proposal that it is approached in a
15 different fashion?

16 MR. SAMUELS: Your Honor, I think that's a
17 fine suggestion, and I don't anticipate that we are
18 going to have a long, drawn out, you know, problem with
19 this. I think we just -- I think Mr. Floyd knows
20 exactly what we -- what our concern is and he will be
21 able to address it.

22 SPECIAL MASTER POPPITI: It may make sense,
23 from my perspective, for you all to do that because if
24 you reach resolution, then I don't have to suggest what

1 is going to be needed from my vantage point, and if that
2 communication breaks down, and I wouldn't expect that it
3 would, then you can certainly access me at any time.

4 MR. FLOYD: That's fine. I don't anticipate
5 a problem here either.

6 One of our issues, and it runs through a lot
7 of what we are doing here, is the need to be careful in
8 terms of what we do in protecting privileged and work
9 product protections that we believe exist, and, so, we
10 appreciate the fact that everybody is trying to be
11 sensitive to that.

12 I think that raises an issue for us also
13 that I -- one issue that we have is that this production
14 in camera, we have had discussions, and it's obviously
15 pursuant to Your Honor's order, from our view, it
16 probably makes sense that that, itself, be memorialized
17 in writing so that -- so it's just absolutely clear that
18 the production in camera, itself, doesn't carry with it
19 any privilege or work product waiver implications.

20 SPECIAL MASTER POPPITI: What I would
21 expect, counsel, is once we have -- once you have
22 reached resolution as to all the issues that you are
23 outlining today, that the agreement be reduced to a
24 proposed stipulation in the form of an order for my

1 signature.

2 MR. SAMUELS: Your Honor, that would be fine
3 with us, or if Intel is comfortable, we'd also be --
4 we'd also be satisfied with this transcript being a
5 memorialization of that -- of that order and the
6 non-waiver associated with it, but either way, we are
7 fine.

8 There was one other item, though, that
9 occurs to us just as we heard Mr. Floyd and
10 Miss Kochenderfer. We were not aware until the mention
11 of it on this call that Intel paralegals were,
12 apparently, on at least some of these interviews along
13 with the Weil, Gotshal attorneys, and if those
14 paralegals prepared notes of the interviews, then we
15 would expect them to be submitted as well in camera.
16 They are clearly responsive to the document request.

17 MS. KOCHENDERFER: The way that I understand
18 it worked, and I will confirm this, but it is my
19 understanding that the paralegals participated in the
20 call in the sense that they were on the call at the
21 beginning for purposes of making introduction between
22 the custodian and the outside counsel of Weil, Gotshal's
23 firm, and they had a script that they followed to make
24 the introductions, and then it's my understanding they,

1 then, dropped off the call.

2 I will confirm that and I will also confirm
3 whether or not any of them took any notes that would
4 reflect anything that the custodian said in terms of
5 responding to the question about the retention
6 practices.

7 The reason I -- they may have taken notes
8 about scheduling and whether somebody showed up for the
9 call. I assume that's not something you are interested
10 in, but if it goes to what the custodian actually said
11 about the retention practices, I understand that's what
12 you are interested in knowing.

13 MR. SAMUELS: Your Honor, Miss Kochenderfer
14 is correct, that's what we are interested in.

15 MS. KOCHENDERFER: I will confirm.

16 MR. SAMUELS: Your Honor, so I think,
17 subject to reaching agreement, which I think should be
18 easily reachable about the format of the submission to
19 Your Honor, I think the issue that remains open is what
20 the timing is going to be, and we are concerned about
21 this thing dragging on much longer here and would like
22 to get some sort of direction as to when these materials
23 are going to be submitted.

24 Mr. Floyd indicated yesterday that they were

1 well along in gathering them, and what we would like is
2 for the submission to be made in as complete -- as
3 completely as it can be by a week from today, and if
4 there are more materials that dribble in afterward, that
5 that be the subject of a supplemental submission, but
6 we'd like to get this underway.

7 SPECIAL MASTER POPPITI: Has that date been
8 proposed before or is this the first time?

9 MR. SAMUELS: Your Honor, in the call
10 yesterday, Mr. Floyd indicated that he thought that he
11 would have the bulk of the materials in within a week,
12 so this was -- this was from his mouth, not mine.

13 SPECIAL MASTER POPPITI: Okay.

14 MR. FLOYD: Well, Your Honor, I did not
15 propose that we would be turning them over in a week.
16 One of the points that I made was that there are a lot
17 of materials and we have to -- we have to make certain
18 representations about the completeness, and, so, one of
19 the things we have to do is it's a fairly time intensive
20 process of comparing all the various notes with all the
21 various interviews, you know, there is a fair amount of
22 double-checking.

23 We have been working, I think, hard -- at
24 this point, we believe it's some 4,000 pages or more, so

1 I would say that it is correct that I indicated that we
2 thought we would have the bulk of the materials, and
3 given that we have, I think, reached an understanding of
4 the scope of those materials, that will be correct.

5 I think we will need a little bit more
6 additional time for us to do the cross-checking and
7 verification that we have everything because, obviously,
8 that's a critical element here that we are accurate and
9 complete in what we do.

10 I want to also address, and
11 Miss Kochenderfer, I think, will address maybe some of
12 the specifics on that in a moment, I also wanted to
13 address the issue of redactions, which my understanding
14 was that Your Honor had said -- or had inquired of us
15 whether or not, if Your Honor decided that, after
16 reviewing the materials, that there would be some
17 production of non-core work product, whether we wanted
18 the opportunity to suggest the redactions that the Court
19 could then consider as being the basis for that
20 determination.

21 SPECIAL MASTER POPPITI: Yes, I did suggest
22 that.

23 MR. FLOYD: And I think the answer is that
24 we, if that's where Your Honor ends up, that we would

1 want that opportunity, I think the question is where,
2 you know, what's the cart and what's the horse here in
3 terms of --

4 SPECIAL MASTER POPPITI: Well, I would
5 expect, and you have had a substantial cut at these
6 materials already, but it would seem to me that it would
7 make sense that you do the proposed redactions at the
8 front end so that if I am looking at page 1 of -- I
9 would expect to see a page that includes, in some
10 fashion, your proposed redactions, whether they are, you
11 know, whether they are highlighted or underlined,
12 whatever is going to be the most efficient for purposes
13 of my focusing on them. I think it makes sense to do it
14 at the front end.

15 MR. FLOYD: Your Honor, that's fine, we
16 understand what Your Honor would like.

17 SPECIAL MASTER POPPITI: I don't know
18 whether you all --

19 MR. FLOYD: That's going to require
20 additional work.

21 SPECIAL MASTER POPPITI: Right.

22 MR. FLOYD: We have not tried to do the
23 process, and, so, it's a little tricky for us at this
24 point to estimate exactly how long that will take us. I

1 am not, you know, I think in terms of having gathered
2 the materials, the time frame that we referenced is
3 probably accurate, I think it is accurate.

4 There is -- some of the follow-up materials,
5 because, as Miss Kochenderfer described, there is a
6 series of basic notes and then there is some follow-up
7 and maybe she can address that more specifically.

8 MS. KOCHENDERFER: In terms of gathering the
9 materials, gathering the original interview note is
10 relatively straightforward in terms of the time to do
11 it. What will take more time is, as I understand it,
12 some of the follow-up information is less easy to locate
13 because it's interspersed among voluminous e-mails.

14 SPECIAL MASTER POPPITI: Then would it make
15 sense to phase the middle?

16 MS. KOCHENDERFER: Yeah, we could do that.
17 One of the things that we wanted to raise with Your
18 Honor was to make sure that you were comfortable with
19 the volume of materials that this involved, and perhaps
20 we could start with saying that we would provide the
21 materials with respect to 25 custodians that AMD could
22 pick or Your Honor could pick, and, that way, we would
23 be able to go through and verify that we have a complete
24 set of the information on a more expedited basis.

1 SPECIAL MASTER POPPITI: I see what you are
2 suggesting. So, in other words, 25 complete as opposed
3 to phasing it with interview notes and then a second
4 round with derivative materials?

5 MS. KOCHENDERFER: Correct. I don't think
6 we were planning -- I think that derivative materials
7 is --

8 SPECIAL MASTER POPPITI: All derivative from
9 before I wouldn't see.

10 MR. FLOYD: We would include the follow-up
11 materials. It would include a complete set, including
12 the redactions.

13 MS. KOCHENDERFER: Let me give a specific
14 example that may help explain what I was trying to
15 convey.

16 Let's say, for example, that custodian A is
17 interviewed on January 1st, 2007, and we have the set of
18 interview notes that the Weil attorney took while
19 conducting that interview.

20 SPECIAL MASTER POPPITI: Right.

21 MS. KOCHENDERFER: And then that
22 subsequently -- that set of notes subsequently becomes
23 re-reviewed by one of the other Weil attorneys, David
24 Lender, for example, who was in charge of the project.

1 SPECIAL MASTER POPPITI: Right.

2 MS. KOCHENDERFER: And he concludes that,
3 perhaps, some follow-up is needed to clarify some issue
4 or for some other reason follow-up is needed and that
5 occurred in an e-mail state between the Weil attorneys,
6 and then the Weil attorney who was assigned to do the
7 follow-up then calls the custodian again, let's say, in
8 February of 2007, and obtains the clarification or
9 further information from the custodian and then puts
10 that in an e-mail back to David Lender, that that's why
11 the follow-up is going to be a little more time
12 consuming in terms of making sure that we -- that the
13 information that's contained is information obtained
14 from the custodian during the interview.

15 Now, in some instances, there is a set of
16 interview notes from the follow-up that is
17 self-contained but we are trying to make sure that we
18 get everything.

19 MR. SAMUELS: Your Honor, we are concerned
20 that this approach of, you know, 25 followed by another
21 25 and so forth, we are talking about over 1,000
22 custodians here and that 25 custodians a lap, this will
23 be months before all of these materials are in your
24 hands. We haven't asked Intel to organize the materials

1 by custodian and are really indifferent to whether they
2 are organized by custodian or not.

3 What we would like is for all of the
4 interview materials to be submitted insofar as -- to the
5 fullest extent Intel is able to get them assembled, get
6 all those materials to you at the earliest possible
7 time, and if there is a need to provide a supplemental
8 batch, then they are welcome to do that, but we'd like
9 to get these materials into Your Honor's hands as
10 quickly as possible.

11 If Intel is not prepared to submit their
12 proposed redactions at the same time that they submit
13 the materials, themselves, then we would be agreeable to
14 giving them some time within which to propose those
15 redactions, but we really don't want this process to
16 drag out until the very last document is located and
17 until the very last proposed redaction is ascertained.
18 That would be quite unfair to us given how long we have
19 been waiting for these materials now.

20 SPECIAL MASTER POPPITI: Well, let me ask
21 this question, and perhaps it's more in the nature of an
22 observation: Can I expect that the review of any
23 particular page and my determination as to, with respect
24 to that particular page, there are facts and there are

1 core materials, will not depend on looking at the
2 complete set of documents that you intend to submit for
3 in camera review with respect to any particular
4 custodian?

5 MR. SAMUELS: Your Honor, that's exactly our
6 view.

7 SPECIAL MASTER POPPITI: And, of course,
8 Intel has the benefit of knowing these documents, so is
9 my expectation a fair way to characterize it that, you
10 know, I am not going to need the last in time document
11 relating to custodian A to review the notes of the
12 initial interview for purposes of making the
13 determination that there are facts that can be
14 segregated from core material; is that a fair
15 characterization?

16 MR. SAMUELS: Your Honor, AMD thinks that's
17 fair.

18 SPECIAL MASTER POPPITI: Intel, please.

19 MS. KOCHENDERFER: I think, from our
20 perspective, we believed that if you had a set of the
21 25, that that, perhaps, would be enough of a foundation
22 for you to make your determination, and if not, we could
23 provide more.

24 SPECIAL MASTER POPPITI: Well, let me ask

1 AMD the question, then, because, and, certainly, I don't
2 have all the case law at my right hand for purposes of
3 our discussion today, but I am certainly mindful of at
4 least one, if not several cases that suggested a
5 sampling was not going to be sufficient if the request
6 was for everything.

7 MR. SAMUELS: That's our view, Your Honor.
8 I mean, we asked for them, there are 1,023 custodians,
9 we have got 1,023 attorney written summaries of the
10 facts pertaining to them, and we feel like we are
11 entitled to the -- we are entitled to the factual
12 material and the sampling won't do. I mean, it's a
13 document-by-document analysis.

14 MS. KOCHENDERFER: While there are 1,023
15 custodians on the custodian list, pursuant to the
16 stipulation of the parties and orders at this point,
17 only a subset of about a third of those ultimately will
18 be designated for purposes of producing documents.

19 At this point, there are 328 custodians that
20 have been designated for purposes of producing documents
21 from their files, and, so, I want to make sure that that
22 distinction is clear.

23 MR. SAMUELS: Your Honor, that distinction
24 is really quite irrelevant here. The remediation plan

1 that Intel has proposed calls for the production from
2 all 1,023 custodians to fill in the gaps that exist in
3 the subset of custodians' materials as a result of
4 Intel's preservation failure.

5 So, 1,023, all of those materials are in
6 play. They are all going into the global database,
7 unless I am mistaken, Miss Kochenderfer?

8 MS. KOCHENDERFER: The remediation plan
9 calls for the production of documents from the
10 custodians who are designated for production. In
11 addition to producing documents from those specific
12 custodians who have been designated, it is also agreed
13 that it will create the global database that contains
14 the documents of all 1,023 custodians, and to the extent
15 there are documents from or to the designated production
16 custodians within the documents of the 1,023 who have
17 not been designated for production, we, in fact, have
18 agreed to and will produce those documents.

19 MR. SAMUELS: So I think Miss Kochenderfer
20 has just confirmed what I told Your Honor.

21 SPECIAL MASTER POPPITI: That everything is
22 in play.

23 MR. SAMUELS: Yes.

24 MR. COOPER: Maybe it's all in play but we

1 are dealing -- we have got to look at what realistically
2 can be done. As a practical matter, if something is in
3 the, not the large group of custodians who are not
4 designated custodians, we are going to produce it. I am
5 not sure why an inquiry into their practices is going to
6 be particularly helpful one way or the other. At least
7 if they are trying to address this thing on some basis
8 which can be accomplished within our lifetime, I would
9 urge that we at least focus on the designated
10 custodians.

11 MR. SAMUELS: Your Honor, the fact remains
12 that all of the custodians' documents are in play.
13 Representations have been made to the Court about the
14 document preservation habits of all 1,023 custodians.
15 In fact, at the heart of the remediation plan is the
16 belief that we question whether it's well grounded, but
17 the belief that everything that a production custodian
18 neglected to say, one of the other 1,023 custodians did
19 say, and, therefore, when this global database is
20 searched and everything is outputted to us, we will have
21 a complete production from each of the production
22 custodians. That is the remediation plan.

23 So I don't know how Intel can escape the
24 necessity for us to inquire as to how well all of the

1 custodians were preserving materials. It's just
2 inescapable, I think.

3 SPECIAL MASTER POPPITI: It seems to me that
4 all of the documents are in play. If there is an
5 expectation that organizing the submittal to me in a
6 fashion that puts the designated custodian documents at
7 the front end makes sense, that's fine, but at the same
8 time, unless there is agreement among all the parties
9 that a smaller universe than the entire universe is
10 acceptable for purposes of the in camera review, and
11 although I understand that it does represent a
12 substantial number of documents, I don't believe it's
13 appropriate at all for me to be reviewing in camera a
14 sample when there is a request for the universe.

15 MR. COOPER: That's fine from our viewpoint.
16 We were really trying to come up with some device that
17 would allow you to take a hard look at this material and
18 not end up just reviewing endless --

19 SPECIAL MASTER POPPITI: And I understand
20 that, and that's why I want to make sure that whatever
21 lands on my desk, whether it is -- whether it's phased
22 or whether it all comes at once, I said to you, I
23 believe before, in the last teleconference, I am going
24 to want some suggestion from, primarily it's going to

1 have to be from Intel as to how long you think I am
2 going to have to live with these documents for purposes
3 of my setting my own deadline for you to hear and make
4 every effort to live by that deadline because I do not
5 want this to be dragging on either.

6 MR. COOPER: One of the efforts we were
7 engaged in or planned to engage in was to try to
8 organize these by custodian. We thought that would be
9 beneficial because that would allow you to focus on, for
10 example, the designated custodians, but I understand
11 what I am hearing from Mr. Samuels, he'd prefer that we
12 just compile the documents without even going through
13 that process to you, and we can certainly do that.

14 SPECIAL MASTER POPPITI: If organizing them
15 is not going to make, from your perspective, any
16 difference in terms of how I am going to view any
17 particular page, then I don't need you to be going
18 through the effort to organize custodian by custodian.

19 MR. SAMUELS: Your Honor, that's our view,
20 and to be clear, we are indifferent to whether they are
21 organized in some particular way or not. What we are
22 not indifferent to is a delay of this process while
23 Intel does some organization that we haven't asked for
24 and that's not necessary for Your Honor's review.

1 SPECIAL MASTER POPPITI: If it's not --
2 unless I can be shown in some fashion that it is
3 necessary for my review, I'd just as soon begin the
4 review as soon as the documents are ready for review
5 without any organization to them.

6 MR. COOPER: And, Your Honor, that would
7 also probably then include avoiding, at least at the
8 first state, trying to redact them in advance. That
9 way, we can get them to you much more quickly.

10 SPECIAL MASTER POPPITI: And I understand
11 that. I was expecting, however, that if you propose
12 redaction at the front end, that that, in fact, will
13 save time. I mean, I would expect that the time that's
14 used on the front end to do the proposed redactions is
15 going to be time well used.

16 The only effort at organization that I'd
17 like to see is the documents with the proposed
18 redactions in conjunction with any particular document.

19 MS. KOCHENDERFER: I think that it's helpful
20 to be able to produce them without organizing them. In
21 terms of the redaction process, that will add to the
22 front end time that we will need in order to get that
23 accomplished.

24 SPECIAL MASTER POPPITI: How much time would

1 you expect that would add?

2 MS. KOCHENDERFER: It is my understanding
3 that we have at least 4,000 pages and we are in the
4 process of still collecting some materials, so I think
5 -- I mean, we can start on the process of seeing how
6 long it's taking, but I would think that we are probably
7 looking at two to three weeks to make sure we have the
8 materials collected and redacted and prepared to get to
9 Your Honor.

10 SPECIAL MASTER POPPITI: Is there any reason
11 why we can't start them on a rolling basis?

12 MR. SAMUELS: That was our suggestion, Your
13 Honor.

14 SPECIAL MASTER POPPITI: And no one is
15 expecting one page at a time, but, I mean, it seems to
16 me if you are in a position to redact a substantial
17 number in a week, ten days, two-week time frame, at
18 least on this end I can begin to gauge what the effort
19 is going to have to be.

20 MS. KOCHENDERFER: What we can do is we can
21 provide to Your Honor what we have collected and
22 redacted in two weeks, and to the extent that there is
23 further follow-up, we will let you know and let counsel
24 for AMD and the Class know that we will be supplementing

1 that.

2 MR. SAMUELS: And, Your Honor, that would be
3 acceptable to us and then we would expect a
4 certification from Intel at the end of that, you know,
5 following that supplementation that it has, at that
6 time, submitted for Your Honor's in camera review all of
7 the responsive materials that have been withheld.

8 MS. KOCHENDERFER: I am sorry. Can you
9 repeat that one more time?

10 MR. SAMUELS: Yes, just a certification that
11 following the supplementation, if supplementation is
12 necessary, that the Judge has before him all of the
13 responsive materials.

14 MS. KOCHENDERFER: Understood.

15 SPECIAL MASTER POPPITI: And that's going to
16 be done in a two-week time frame. That would put it at
17 the 17th or the 18th?

18 MR. SAMUELS: That would be fine with us,
19 Your Honor, AMD.

20 SPECIAL MASTER POPPITI: The 18th would be
21 good?

22 MR. SAMUELS: Yes.

23 MS. KOCHENDERFER: On the 18th, we will
24 provide what we have collected and redacted as of that

1 point in time.

2 SPECIAL MASTER POPPITI: Yes.

3 MS. KOCHENDERFER: With a description of
4 where we are in the process.

5 SPECIAL MASTER POPPITI: Yes.

6 MR. SAMUELS: And, Your Honor, in the
7 meantime, we will work, plaintiffs and Intel will work
8 on a form of cover letter or affidavit, whatever we
9 agree to that is satisfactory to both sides and let you
10 know if we have any issue with that.

11 SPECIAL MASTER POPPITI: Okay. Then let's,
12 when they come in on the 18th, where are they going to
13 be coming from?

14 MS. KOCHENDERFER: They will probably be
15 coming from California.

16 SPECIAL MASTER POPPITI: Okay.

17 MR. HORWITZ: Your Honor, Rich Horwitz, if I
18 can raise one point?

19 SPECIAL MASTER POPPITI: Please.

20 MR. HORWITZ: And this goes to the sampling
21 issue but not as broadly as we have been discussing it
22 before. In order to do this most efficiently for you,
23 and, frankly, for us, would it make sense for you to at
24 least look at a sample of what the proposed redactions

1 are to be able to tell whether you think that we are
2 being fair or not fair before they are all done and you
3 may think a bunch need to be redone? That won't stop us
4 from giving you documents as we collect them in the
5 un-redacted form, but it -- it just seems to be a waste
6 of a lot of time and paper to give you 100 percent of
7 redactions when you could determine, presumably, we are
8 going to use the same methodology for redacting every
9 piece of paper.

10 SPECIAL MASTER POPPITI: I would expect.

11 MR. HORWITZ: If you want us to do it, we
12 will do it, but it just doesn't seem to make much sense.

13 MR. SAMUELS: Your Honor, you know, Your
14 Honor has been quite generous in giving Intel the
15 opportunity to propose redactions, and so long as -- so
16 long as the ultimate resolution of these matters is not
17 delayed, we -- and Your Honor's schedule permits, it
18 would be fine with us for Intel to submit the first
19 batch of these things -- I presume they could submit the
20 first batch of them tomorrow or Monday, even. I mean,
21 they are there in Intel's offices. If they want to get
22 a read of Your Honor's views as to what is appropriate
23 and what is inappropriate redaction and Your Honor's
24 schedule permits that assessment to be made next week,

1 we would not object.

2 But we keep hearing suggestion after
3 suggestion that we think are just delaying the ultimate
4 resolution of this matter in getting the factual
5 information into our hands. So we want to make sure
6 that there is no delay.

7 SPECIAL MASTER POPPITI: Well, then, maybe
8 what Mr. Horwitz is suggesting makes some sense, and if
9 you were proposing to tee up 25 in the first instance,
10 then what would make sense would be to -- if they are
11 ready to go, so to speak, with those redactions and I
12 have the opportunity to look at those next week, then
13 that may make some sense.

14 Are they essentially ready to go except for
15 the work on the redactions?

16 MS. KOCHENDERFER: There are some documents
17 that we have, but I can't make a representation that
18 there is a complete set for us to be able to provide.

19 SPECIAL MASTER POPPITI: Well, how, then,
20 would -- if Mr. Horwitz's suggestion makes sense, then
21 AMD doesn't object to it if it's going to provide some
22 efficiency, what would be the proposal?

23 I mean, I don't know whether it would be
24 helpful, whether Mr. Horwitz wants to talk off-line to

1 you for a couple minutes and we get back on; does that
2 make any sense?

3 MR. FLOYD: That makes sense. I think that
4 we may be able to come up with something, then, that
5 balances all these considerations.

6 SPECIAL MASTER POPPITI: Let's do this: Why
7 don't we all -- I mean, it's just as easy if we call
8 back in rather than put you on other phone lines, why
9 don't we all call back in at -- do you need until 12:15
10 or is that too long?

11 MR. SAMUELS: That would be helpful, I
12 think. Your Honor, if I might suggest that we convene
13 with Mr. Horwitz -- Your Honor intended for the parties
14 to confer among themselves first and then get back on?

15 SPECIAL MASTER POPPITI: Yes. I thought it
16 would be helpful for Mr. Horwitz to talk to his
17 colleagues, and if it's important for you all as parties
18 to talk, do that. In light of that, why don't we say
19 12:30.

20 MR. COOPER: Your Honor, let me make an
21 alternative suggestion. I thought we had a pretty good
22 plan in place. Why doesn't that remain the plan unless
23 we can work out something among the parties that would
24 be agreeable?

1 MR. SAMUELS: The 18th, Mr. Cooper?

2 MR. COOPER: Yeah. And if we can work out
3 something that will accommodate everybody's views, we
4 can do that off-line and we will get back to you, but
5 otherwise, we ought to just stay with the 18th.

6 SPECIAL MASTER POPPITI: We can do that.

7 MR. SAMUELS: I think that's a good
8 suggestion, Your Honor.

9 SPECIAL MASTER POPPITI: That is a good
10 suggestion.

11 The only question I am going to have, and it
12 really is for purposes of trying to look at the time
13 available that I have to me and set some reasonable
14 deadline when you can expect that the work on my end
15 will be accomplished, I don't know whether you are in a
16 position to do that now, but I certainly would like the
17 benefit of that -- of any thoughts you have in that
18 regard prior to the 18th.

19 MR. COOPER: Very good.

20 SPECIAL MASTER POPPITI: As soon as you
21 possibly can so I can begin to make sense of a schedule
22 in late January and early February.

23 MR. SAMUELS: Thank you, your Honor.

24 MR. COOPER: Very good.

1 SPECIAL MASTER POPPITI: Is there anything
2 else, then, please?

3 MR. SAMUELS: I think not.

4 SPECIAL MASTER POPPITI: Thank you all.

5 (The hearing was concluded at 11:52 a.m.)

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STATE OF DELAWARE:
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NEW CASTLE COUNTY:

I, Renee A. Meyers, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the teleconference was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the foregoing teleconference is a true record; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand this 3rd day of January A.D. 2008.

RENEE A. MEYERS
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