

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|-------------------------|---|------------------|
| 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, March 27, 2008, beginning at approximately 3:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 SPECIAL MASTER POPPITI: Counsel, as
2 everyone begins to join, are local counsel on yet for all
3 the parties? Just a quick question because I had
4 understood from my assistant, Mary, that there was a
5 request that the conference be conducted in such a
6 fashion that the parties would be able to caucus off line
7 without disconnecting from the call. Is that the case,
8 first of all?

9 MR. HORWITZ: Your Honor, I know that I
10 had made the suggestion, since there were references to
11 confidential materials in the submissions, that we
12 thought this call should be treated as one where people
13 who were not covered by the protective order would be
14 screened out and maybe there was some confusion about
15 that unless the other local counsel had a different
16 concern.

17 MR. HOLZMAN: Jim Holzman did not make
18 the suggestion.

19 MR. COOPER: Your Honor, this is Bob
20 Cooper. From our viewpoint, I am assuming we are going
21 to have a general conversation about exactly how you want
22 us to proceed, and under those circumstances, I don't see
23 any issue, but if something arose, we could obviously
24 discuss it.

1 SPECIAL MASTER POPPITI: Okay. The only
2 reason why I raised the concern was because my secretary
3 suggested that there may have been the concern, and,
4 Rich, that may have been yours. And I agree with Bob
5 Cooper. It may be that that will not occur during the
6 course of this teleconference.

7 If, in fact, something like that -- if
8 there is confidential information that should be
9 discussed, privileged information, then please alert me
10 to that, I will re-contact the operator, and they can
11 work their magic in terms of what they tell us we should
12 be doing.

13 But other than that, we are just on a
14 routine conference call with Conference America, if
15 that's acceptable.

16 MR. COOPER: That's fine, Your Honor.

17 MR. DIAMOND: Chuck Diamond and Linda
18 Smith have just joined and we heard the tail end of that.
19 That's fine. We will be careful about what we say.

20 SPECIAL MASTER POPPITI: Thank you very
21 much.

22 Let's go back for the record, please,
23 identify those that will be participating in the call.
24 And start with the Class.

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1 MR. HOLZMAN: Jim Holzman and Clay
2 Athey, Prickett, Jones, for the Class. And on the phone
3 with me are Brent Landau of the Cohen, Milstein firm,
4 Steve Fimmel of the Hagens Berman firm, and I believe
5 Rick Saveri of the Saveri firm.

6 MR. SAVERI: That's correct.

7 MR. SHANDLER: Your Honor, for AMD, it's
8 Chad Shandler from Richards, Layton & Finger.

9 MR. DIAMOND: And from O'Melveny &
10 Myers, you have Charles Diamond and Linda Smith on one
11 line and I believe Michael Madigan on the second loan.

12 MS. OSMOND: You also have Beth Osmond
13 from AMD on the line.

14 SPECIAL MASTER POPPITI: Thank you very
15 much.

16 MR. HORWITZ: Your Honor, it's Rich
17 Horwitz from Potter, Anderson for Intel. I think we
18 should have Bob Cooper, Dan Floyd, and Rich Levy from
19 Gibson, Dunn, and I think Darren Bernhardt from Howrey.
20 I am not sure if anybody else is on.

21 SPECIAL MASTER POPPITI: Apparently not.

22 (Discussion off the record.)

23 SPECIAL MASTER POPPITI: Counsel, the
24 purpose of this call was a little different when you

1 initially asked for findings and recommendations or, more
2 particularly, a determination as to how the deposition
3 discovery in this case should go forward and be managed.
4 And what I did recently is I sent to all of you a
5 proposed order that I would intend to enter after the
6 conference today that requires a preliminary pretrial
7 document that's designed to do a couple of things, but,
8 ultimately, to put me in the position of making sure that
9 the discovery plan, that the deposition discovery plan
10 that I propose makes sense given the moment of the case,
11 the significant number of documents that have already
12 been produced that are under review, the significant
13 number of documents that remain yet to be produced and
14 reviewed, and following that, of course, to see the
15 significant number of depositions that may be necessary
16 for purposes of developing your respective cases.

17 And what I would like to suggest at this
18 juncture is I'd like to just get your view of that
19 proposed order in terms of what it expects you to do,
20 No. 1, whether the expectation should be more precisely
21 defined, whether the timeline that I propose makes sense.

22 MR. COOPER: Your Honor, we think your
23 order is a very good way to proceed to nail down how the
24 deposition program should evolve, and the timeline, we

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1 believe we can meet. We have no issues with the order at
2 all other than I did have one question I wanted to ask at
3 some point in terms of what you expect from us.

4 MR. DIAMOND: Your Honor, from AMD's
5 standpoint, this is Charles Diamond.

6 SPECIAL MASTER POPPITI: Thank you,
7 Mr. Diamond.

8 MR. DIAMOND: From AMD's standpoint, we,
9 too, find the order to be appropriate and reasonable. We
10 have argued consistently that the discovery plan should
11 be tailored by the nature of the scope of the proofs that
12 are going to be required at trial and I think you have
13 asked all of the right questions. We, too, will work
14 diligently and meet your timeline, and we think we
15 understand what you are asking us to do and we will set
16 forth what you have requested.

17 SPECIAL MASTER POPPITI: Okay. Well,
18 then, in light of that, let me also ask the question
19 about the product of all of this. In looking at
20 calendar, expecting that you all can make your respective
21 filings consistent with the timeline that I have
22 proposed, I have two thoughts. One is that it would be
23 important for me to set a hearing for a final discussion,
24 if you will, of what the discovery plan should be absent

1 any agreement that you may forge between now and then,
2 and utilize that hearing really for two purposes: To
3 make sure that coming out of that hearing is an
4 appropriate and full discovery plan and one that has the
5 opportunity, if you will, to also have Judge Farnan's
6 view of it all at the same time.

7 And what I have done in advance of this
8 conference is I have secured from the Court a date, no
9 specific time yet, but I can do that even before week's
10 end, June the 5th for a hearing to occur in the
11 courthouse with Judge Farnan presiding and with me
12 assisting the Court.

13 I thought that that made some sense, and
14 if you all have some view of that, then I certainly want
15 to hear it, because I want, it makes sense to me for the
16 Court to have the opportunity, while I am studying your
17 reports, to also have the opportunity to look at those
18 because it may make sense for Judge Farnan to share his
19 views if not issue certain directions with respect to how
20 the discovery plan should progress in light of his view.

21 Now, I understand, you know, this is
22 certainly well in advance of any ultimate pretrials that
23 get submitted by you, but it seems to me that given,
24 again, the nature of the litigation, the size and moment

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1 of it all, that having Judge Farnan there may make a lot
2 of sense.

3 MR. COOPER: Your Honor, I think that
4 would be, from our viewpoint, probably would be the
5 preferable way to proceed. We can address both of you at
6 the same time.

7 SPECIAL MASTER POPPITI: Any other
8 thoughts on doing it in that fashion? From the Class,
9 please?

10 MR. FIMMEL: Steve Fimmel from Hagens
11 Berman in Seattle. We, first of all, Your Honor, if I
12 can ask a question about the proposed order, it appears
13 to me that it is directed primarily to the AMD and Intel
14 case, and I would like to get some clarification on what
15 his Honor was expecting with regard to the Class filing
16 on -- and ahead of that, or behind that question, it is
17 our intent to file a joint -- it would be our intent, if
18 his Honor is asking for Class input, to file a joint
19 report with the AMD counsel who we have been working very
20 closely with during discovery thus far.

21 SPECIAL MASTER POPPITI: And my intent
22 was certainly to embrace what the filing focused on, and
23 that was a, the filing represents, if I recall it
24 correctly, it represented the views of both AMD and the

1 Class and I am looking at the February 22nd filing.

2 So if the order should be tailored to
3 more specifically address that, then I am happy to either
4 entertain any proposed amendments today, or if you want
5 the opportunity to propose written amendments by end of
6 business tomorrow, I am happy to do it in that fashion as
7 well.

8 MR. FIMMEL: I think what we were
9 anticipating that, because, thus far, the selection of
10 the custodians and the depositions re-harvest are so,
11 appear to be so common, we jointly have come up with
12 these, the AMD counsel and ourselves, that a joint report
13 makes sense; however, some of the Class elements
14 contained in the Cartwright Act, the various state acts
15 might need to have an additional paragraph tied to each
16 of the, you know, sections of the overall report that I
17 think it makes sense, and we, therefore, would like to
18 request an additional 20 pages to the 100 maximum that
19 his Honor has proposed.

20 SPECIAL MASTER POPPITI: Does anyone
21 object to that at all?

22 MR. COOPER: Your Honor, no. I don't
23 know that -- we may then need some additional pages to
24 respond to it. I don't know that we would necessarily

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1 try to anticipate it in our initial brief.

2 SPECIAL MASTER POPPITI: And that makes
3 sense. I have no problem with the additional number of
4 pages, and, Mr. Cooper, if you have a proposal on the
5 additional number of pages that you may need to respond,
6 can you do it in ten pages?

7 MR. COOPER: Yes. Assuming they double
8 space everything.

9 SPECIAL MASTER POPPITI: That's why we
10 tried to spell that out.

11 MR. FIMMEL: And then, Your Honor, also,
12 with the 40-page response, that we would ask for an
13 additional ten pages.

14 SPECIAL MASTER POPPITI: Okay. That's
15 not a problem.

16 MR. DIAMOND: Your Honor, if I may
17 comment from AMD's standpoint. It's Charles Diamond
18 again. Linda is madly searching our son's high school's
19 website to find out exactly what day he graduates on. We
20 are a little concerned it may be June 5th. But hopefully
21 I will know that shortly.

22 MS. SMITH: My highest and best use,
23 Your Honor.

24 SPECIAL MASTER POPPITI: Thank you,

1 Linda.

2 MR. DIAMOND: Putting aside that, what I
3 think would make the June 5th hearing more helpful is if
4 the parties had, in advance of that, at least your
5 thoughts of how we should plan on going forward so that
6 we could be addressing something to both you and Judge
7 Farnan that might be specific rather than to try to deal
8 with all of this in the abstract. But, obviously, I
9 leave it to you to decide whether that would be
10 appropriate.

11 SPECIAL MASTER POPPITI: Well, you know,
12 that does make some sense, and I even have some thoughts
13 preliminary to even putting something in sandstone, if
14 you will, and what I think makes sense, if the proposals
15 are, it's on or before May 12th, I have one commitment
16 outside the office, called vacation, from the 19th
17 through the 26th, so what I will commit to you is that I
18 will have a document articulating my best proposed
19 thoughts to you not later than the 30th, close of
20 business.

21 MR. DIAMOND: I think that would be very
22 helpful for the parties.

23 SPECIAL MASTER POPPITI: Then I will
24 accomplish that no later than the 30th.

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1 Now, what I was thinking, between now
2 and the time that you accomplish all of this work, does
3 it make any sense, at this juncture, in light of your
4 reports to me about both third-party discovery and the
5 status report that you sent me regarding party discovery,
6 does it make sense for there to be any deposition
7 discovery between now and the time when we all focus more
8 precisely on this?

9 Because my thought is that, I am
10 thinking in terms of staging discovery, if you will, not
11 necessarily determining the number of stages, but staging
12 discovery in a fashion that may begin to focus on the,
13 for example, the more significant third parties, making
14 some determination that you have full production on a
15 particular third party that is considered, No. 1,
16 finished production; No. 2, a significant third party so
17 that you can begin to start the deposition process with
18 one, two, or three third parties.

19 And I don't know whether that can be
20 accomplished between now and the time you file the
21 statements that I am asking you to file. Another way of
22 doing that would be to begin to form, if you will, some
23 template as to how other stages may begin to work.

24 MR. DIAMOND: Your Honor, Charles

1 Diamond for AMD. What you are proposing is already
2 happening naturally.

3 SPECIAL MASTER POPPITI: I am not
4 surprised.

5 MR. DIAMOND: We have a modest number of
6 depositions already scheduled for the month of April. As
7 you may recall, we have a protocol in place which
8 requires each side to deliver a list of requested
9 depositions for the month during a prescribed week the
10 prior month. So we have already set in motion gears to
11 get a number of depositions done in April, and I
12 anticipate we will have probably an equally modest number
13 that we would propose to do during the month of May.

14 These, thus far, from the AMD
15 standpoint, are largely confined to dealings with IBM and
16 its successor, Lenovo, because our focus belonged with
17 the document production from those two third parties.

18 SPECIAL MASTER POPPITI: Okay.

19 MR. DIAMOND: And with respect to
20 certain custodians, we have already issued, to the extent
21 they are Intel custodians, we have issued re-harvest
22 requests, and those are being complied with, and we are
23 basically satisfied that we had a reasonably complete set
24 of materials for those witnesses.

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1 I think you should encourage us to get
2 as much done as we can in the time that's available to
3 us. I know we have gotten some re-harvest requests from
4 Intel for roughly a dozen or so AMD executives. I assume
5 that's a precursor to put them on the deposition list.
6 And, you know, we think that's appropriate and Intel
7 should go forward and take those depositions if they are
8 ready for them.

9 So, I think this is staging out the way
10 you suggest. I don't anticipate we will be expanding our
11 universe significantly beyond IBM/Lenovo transactions and
12 perhaps maybe some Dell transactions during the months of
13 April and May. Obviously, in May, we would have to
14 furnish names for people we would want to depose in June
15 and that could be a little bit broader. But, you know, I
16 think these are still going to be confined to the major
17 players who are substantially long in their document
18 production to us, and that's IBM, Lenovo, Dell, and one
19 or two of the more significant server manufacturers, and
20 perhaps one of the two biggest distributors. But I think
21 we are really going to be doing the large customers that
22 you envisioned first.

23 SPECIAL MASTER POPPITI: I am happy to
24 hear that. I do have one question. Can I anticipate

1 that the depositions that are being, that are set to
2 stage in April and beyond, can I expect that -- and in
3 light of the fact that production is either ongoing or
4 substantially complete or will have been completed, that
5 these depositions will likely occur only once and there
6 will not be a need to circle back?

7 MR. DIAMOND: Yes. That's our
8 expectation. We are not noticing anybody up who we are
9 not confident we can currently depose from start to
10 finish at this point in time.

11 The only exception is if somebody shows
12 up as a 30(b)(6) witness who we might not be in a
13 position, thus far, to depose as an individual witness,
14 that's the only exception I can think of.

15 SPECIAL MASTER POPPITI: That certainly
16 makes sense.

17 From the defendants' perspective, have
18 the defendants given any thought to the same process?

19 MR. COOPER: We did not schedule any
20 depositions for the coming month. There are -- I think
21 there were like three depositions that have been
22 scheduled by AMD.

23 In general, we don't have a problem with
24 proceeding at a reasonable pace, but we do have a problem

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1 if AMD is proceeding with depositions and they think they
2 are going to be able to take that deposition again, which
3 I understand they are suggesting they won't.

4 SPECIAL MASTER POPPITI: That's why I
5 asked the question, yes.

6 MR. COOPER: And, secondly, we do have a
7 problem if these depositions are going to go beyond
8 one day necessarily. One of the points, as I am sure
9 Your Honor is aware, is we want to have some rules
10 established with respect to length of depositions.

11 The third point I would make is that,
12 for example, I don't think we have all of the IBM
13 materials yet. I am not sure why, in that case, AMD has
14 chosen to go forward on that front, but I don't think we
15 are in a position yet to, ourselves, know that we have
16 everything we need for the depositions.

17 SPECIAL MASTER POPPITI: Let me ask,
18 then, two questions. No. 1, can there be some agreement
19 pending any ultimate decision on the length of the
20 depositions that have either already been scheduled or
21 you can expect will be scheduled between now and any
22 ultimate determination by me?

23 MR. DIAMOND: Your Honor, this is a very
24 important issue for us. This is potentially game

1 changing. There, obviously, are some witnesses who have
2 had limited engagement with Intel, and as to those, it
3 might be reasonable to expect to conclude their
4 depositions in one day.

5 When we are dealing with the OEM
6 customer folks and the Intel counterparts who do the
7 heavy lifting, who have been involved in the
8 relationships from quarter to quarter to quarter and for
9 whom there are mountains of materials that we need to
10 stitch together in some understandable way, it is
11 unreasonable to expect that those depositions are going
12 to be able to be completed in one day. For some of them,
13 it's unreasonable to expect they are going to be
14 completed in two days. We have no interest in belaboring
15 anything and I know Class feels the same way.

16 On the other hand, if we are not given a
17 sufficient opportunity to talk to these witnesses about
18 what they know, we are being asked to fight with one hand
19 tied behind our back, and, you know, the unfortunate fact
20 is that a lot of these witnesses have a long history with
21 Intel and a long history of dealings that is -- that will
22 have to be fairly, carefully, and methodically asked
23 about.

24 There is just no substitute because we

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1 don't have a clean record of the business transactions
2 between Intel and its customers.

3 SPECIAL MASTER POPPITI: And I
4 appreciate how you have described, from your perspective,
5 those transactions.

6 Mr. Diamond, have you given any thought
7 for purposes of these initial depositions that are either
8 scheduled or could be scheduled between now and the time
9 I make any final determination to scheduling those that
10 would only last a day? Or does that --

11 MR. DIAMOND: We are obviously starting
12 with some important people, and I don't think, at this
13 point, we could commit that any of these would last only
14 a day.

15 MR. COOPER: This is where our problem
16 begins. That's why I think we need to thrash this out
17 and decide on what the overall protocol is going to be.
18 There have to be some limits. We have to have some
19 constraints on how long depositions can go on and then
20 the parties have to make decisions about which ones they
21 want to extend. That's why we were reluctant to head
22 down this road before we had a protocol in place.

23 SPECIAL MASTER POPPITI: And I
24 understand that. I am just looking to have, if there can

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1 we are being dilatory or wasting anyone's time or
2 unnecessarily treading on water over and over again, I am
3 happy to tee it up for you and you decide. I just don't
4 think this is going to be an issue.

5 Again, we have no interest in belaboring
6 any of these. There are too many of them.

7 SPECIAL MASTER POPPITI: Here is what I
8 think, then, makes sense, and I have -- I hope you have
9 seen this from my perspective -- I have significant
10 respect for what you all bring to the courthouse, and I
11 have significant respect for what you say when you say
12 it.

13 What I would like to do is suggest that
14 the depositions that you intend to schedule go forward.
15 Any concern about whether time is being wasted or whether
16 the deposition could be conducted in a more efficient
17 manner, I have already indicated to you that I want to be
18 available if you need me to be available.

19 I really don't even expect that if a
20 deposition were in progress and if Intel believes that
21 the deponent's time is being wasted, I expect a phone
22 call. And I would prefer to deal with it right then and
23 there rather than waiting for a filing to resonate over.

24 With that understanding, I would expect

1 and encourage that you get as much deposition business
2 accomplished as you can between now and the time that I
3 am able to set in place what I think makes sense for a
4 full roll out of deposition discovery.

5 MR. COOPER: That's fine. But let me
6 just point out one thing that's sort of been -- that is
7 underlying our concern here. As you are probably aware,
8 I mean, our production alone is something like 145
9 million pages of materials. Obviously, someone could
10 take a deposition forever. And what we hope to do is
11 impose on both sides the obligation to decide what is
12 truly important and focus on that, and that's why we
13 think this constraint is important.

14 Now, perhaps we go forward on the basis
15 that where counsel on the other side thinks that the
16 deposition requires more than one day, they at least
17 ought to be required to try to complete it within two
18 days, that ought to be the goal, because they could sit
19 and ask questions about e-mails that they have and one
20 could say they are not wasting time probably for a week.

21 SPECIAL MASTER POPPITI: Counsel, there
22 may be, at the front end, something that you either
23 choose to bring to my attention or inefficiency that you
24 choose to simply slip, but the benefit of having some

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1 roll out is to permit me, when I am asked ultimately to
2 make some judgment about parameters, deposition length,
3 that I have some sense as to what has occurred between
4 now and then.

5 I certainly would encourage, and I
6 expect Mr. Diamond and others will be doing this, I
7 encourage them to focus on what they expect they
8 absolutely need because I expect that if they were
9 focused on other than that, No. 1, we wouldn't expect
10 that there is going to be a trial date any time in the
11 year 2009, and, No. 2, it seems to me you'd need a
12 year-and-a-half to try a case. And you and I know and I
13 am sure my colleagues at the local Bar will tell you that
14 you are not going to get a year-and-a-half to try a case
15 before Judge Farnan, the Judge of this District.

16 So, I have some confidence that the
17 moment of the work out there is necessarily going to
18 dictate some efficiencies; otherwise, the information
19 that plaintiffs are going to have to gather for purposes
20 of creating a bucket of evidence, it's going to be a task
21 that they are not ever going to be able to accomplish.

22 I mean, I do understand the significance
23 of it all and I trust that part of the reason why there
24 will be efficiencies necessarily built in by skilled

1 counsel is because if there weren't, you'd all drown in
2 it. And I don't expect that any of you will do that
3 because you are too talented.

4 MR. COOPER: We will do our best to
5 follow that rule and proceed on that basis.

6 I did have one other issue I wanted to
7 raise.

8 SPECIAL MASTER POPPITI: Please.

9 MR. COOPER: It's our view that a
10 30(b)(6) deposition of one of our employees, for example,
11 and an individual deposition of that same person should
12 be conducted at the same time, and I am not clear whether
13 AMD has in mind, taken the view that those are two
14 separate depositions or not, but if they are, that is an
15 issue we would want to raise with Your Honor.

16 MR. FLOYD: Your Honor, I wanted to just
17 give an example of a 30(b)(6) request. In one instance,
18 we have determined an employee who is the appropriate
19 person for the 30(b)(6) is now a subject of a deposition
20 re-harvest request that has not yet been fulfilled, so
21 our view would be that we'd like to have that person
22 taken at one time after the deposition re-harvest is
23 complete. That's just an example.

24 As a general matter, we think, to avoid

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1 burdening employees with multiple depositions that, in
2 situations like that, that it be consolidated and a
3 single deposition be taken.

4 MR. DIAMOND: I think there are
5 instances where we certainly can accommodate Intel and I
6 think we have been asked to accommodate them in one
7 recent case. There are other situations in which I don't
8 know that it is fair to compel us to postpone the
9 deposition until we get a complete production of the
10 custodian's records.

11 For example, I think we have noticed a
12 30(b)(6) or information about Intel's compilers, and that
13 deposition is intended to inform our judgment as to what
14 kind of additional discovery we are going to need to take
15 and to get some basic information that we don't need a
16 full catalog of documents for.

17 The individual who is likely to be
18 designated by Intel as their 30(b)(6) representative has
19 not yet had all of these documents produced and reviewed,
20 and, so, at this point, we are not prepared to say that
21 we won't come back to him in his individual capacity if
22 there are materials that we need to question him about
23 that weren't available to us or known to us at the time
24 of the 30(b)(6).

1 But if the Court just imposes a blanket
2 only once rule, it really means we are going to have to
3 postpone all the 30(b)(6) depositions, and I don't think
4 that's in anybody's interest. I think we can clear a lot
5 of the waterfront here if we are allowed to do some
6 canvas depositions without prejudice to our rights to go
7 back to those witnesses.

8 MS. SMITH: Your Honor, I just wanted to
9 add one thing, since I was involved in this
10 decision-making, is the 30(b)(6) deposition was designed
11 to give us information where we believe that the, to
12 date, our understanding of who was involved and what was
13 involved is incomplete.

14 We did not designate a 30(b)(6)
15 deposition thinking that they would designate the same
16 fellow who was also the subject of a deposition
17 re-harvest. So it wasn't intended as a second bite at
18 the apple. In fact, quite the opposite. It was intended
19 to garner information about who else -- who was involved
20 and in what capacity and what happened in a much more
21 generalized way.

22 It turns out, apparently, that the
23 person they intend to proffer for the 30(b)(6) is someone
24 who we have asked for a deposition re-harvest.

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1 MR. FLOYD: Obviously, you don't have
2 all of the materials in front of you. This is a
3 situation where in the informal discovery, we had
4 identified this person as one of the two people most
5 knowledgeable generally on this area of compilers, so,
6 you know, our view, in looking at the deposition notice,
7 whatever the stated intent is, it's quite broad. This
8 person is the best person to answer those questions.

9 Our view is that, in this context, I
10 mean, that's what he does, he is a compiler person.
11 That's the area that he is responsible for. The 30(b)(6)
12 notice is a comprehensive listing of categories relating
13 to compilers. They are seeking additional documents from
14 him, it seemed to us, in this context to be unfair to him
15 to potentially subject him to two different depositions.
16 So we had simply suggested, in this instance, for the
17 matter of efficiency, that they wait until they get the
18 re-harvest documents before taking him in an attempt to
19 take him once.

20 It's a technical area -- at that point,
21 when they take his deposition, to the extent they
22 identify other people, they will get them. We are really
23 in the process, and I think it is important to be
24 cognizant of the responsibilities of people in these

1 companies and not overburden them, and that was really
2 what that came from.

3 SPECIAL MASTER POPPITI: I understand
4 the concern on both sides. I understand the concern that
5 you don't want to, your employee, deponent in a chair
6 being whipsawed into another chair shortly afterwards or
7 later on. You'd like to have everything that he has
8 knowledge about. Whether it's a 30(b)(6) on behalf of
9 Intel or whether it's his individual capacity, you'd like
10 to have it all done at the same time. That makes sense
11 if all the information is available at that time for him
12 to be used efficiently.

13 If that's not the case and it's
14 important to have the 30(b)(6) deposition for purposes of
15 achieving some efficiency down the line, then I
16 understand that as well.

17 I think without having all, any paper on
18 any individual before me, it would not be wise for me to
19 give you a black and white rule one way or the other.

20 It seems to me the best thing to do is
21 to ask you to honor the fact, and I am speaking to AMD,
22 that you will accommodate where you believe accommodation
23 is the right efficient thing to do. Because I think
24 that's what you said.

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1 MR. DIAMOND: That's what we have said.

2 SPECIAL MASTER POPPITI: Yes.

3 MR. FLOYD: And in this instance,
4 because there is a pending deposition re-harvest that
5 will be complied with in the short term, we felt like it
6 would be appropriate to wait until that was done and I
7 don't think it would take a long time to review those
8 documents to schedule those particular depositions, but,
9 obviously, we also hear you in terms of having both sides
10 try to be reasonable and accommodate the different
11 considerations.

12 SPECIAL MASTER POPPITI: I would much
13 prefer you do that as this gets launched than expect -- I
14 am happy to make a judgment for you if the issue is fully
15 served up. I hope you know me that way. At the same
16 time, the better path forward is for you to reach
17 accommodation on issues like this so you don't have to be
18 tapping my line every once in a while.

19 MR. DIAMOND: I am happy to explore it
20 with Mr. Floyd.

21 SPECIAL MASTER POPPITI: If you reach
22 impasse, get it to me quickly and I will convene an
23 appropriate teleconference and decide it on the record.

24 MR. FLOYD: That's fine.

1 SPECIAL MASTER POPPITI: Okay? Just
2 give me one moment, please.

3 Counsel, the only other question I have
4 is that whatever proposed changes you want to the order,
5 even if it's adding the additional number of pages and
6 making sure that it reads that the joint submittal will
7 be by Class and AMD, do you want to be doing that or do
8 you want me to do that on this end?

9 MR. COOPER: That's fine. I was a
10 little unclear on Class counsel's request. What I
11 assumed we were going to do, which was not address the
12 Class discovery in our opening brief, deal with the AMD
13 case, and then when we see what Class counsel adds in
14 their extra 20 pages, respond to that. I didn't know
15 what it was Class counsel wanted to be responding to when
16 they asked for additional pages.

17 MR. FIMMEL: On the 50-page response?
18 Or additional ten pages?

19 MR. COOPER: Maybe we ought to talk this
20 through and make sure we know what we are going to do. I
21 had not envisioned addressing anything specific with
22 respect to the Class case, so maybe we should do that, in
23 which case I guess we'd need additional pages, too.

24 I was thinking we would submit, within

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1 100 pages, our brief, which would deal with the AMD case,
2 and then we would look at what it is you submitted, as
3 Class counsel, on the, you know, on the extra 20 pages,
4 and we would take an extra ten pages in our reply to
5 address it.

6 But if you want us to try to anticipate
7 what --

8 SPECIAL MASTER POPPITI: No. I think,
9 and, Class, if you have a different view of this, I think
10 what is being suggested by Intel makes sense, that the
11 initial filing addresses from their perspective the AMD
12 case, if you will, and the additional pages that the
13 Class takes in the joint filing, Intel can respond to
14 when they file the responsive document.

15 Does that make sense?

16 MR. FIMMEL: It does. I just wanted to
17 get clarification that, you know, the issues or elements
18 in the Class case or complaint are also going to have to
19 probably require an additional page of allocation to the
20 response to our 40 page, and that's what I was requesting
21 in advance was an additional ten pages to again address
22 the Class elements. So it would be a 120-page initial
23 joint filing and a 50-page response.

24 MR. COOPER: Your Honor, I guess I am

1 not clear. I was not intending to address the Class
2 issues at all in our opening brief. However, if that's
3 what they want us to do, I suppose we can try to second
4 guess what they -- my view has been that the discovery in
5 these cases, to the extent it's as common, will go
6 forward in preparing the AMD case for trial, and then
7 thereafter, to the extent there is unique discovery that
8 would be required by Class counsel, that would be
9 addressed later on.

10 I don't think the Class case would be
11 going to trial at the same time the AMD case is.

12 SPECIAL MASTER POPPITI: There is no
13 efficiency, and I understand what you just said, if it
14 doesn't make sense to address the differences in the
15 Class case in this process, then let's not do that. If
16 there is no need to address it, let's wait.

17 Why don't we do this: I certainly don't
18 want to be building a bridge for the Class case if we
19 don't have the materials yet, and we still have a little
20 ways to go before we understand what that case is going
21 to be.

22 MR. HOLZMAN: Your Honor, this is Jim
23 Holzman.

24 SPECIAL MASTER POPPITI: I have been

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1 watching deadlines, but I can't tell you I am on top of
2 everything for purposes of knowing whether -- is all
3 Class certification accomplished? I don't think it is;
4 correct? I have noted here you have the deposition of
5 certification expert on the 30th of May, so you still got
6 time developing issues surrounding certification; is that
7 correct?

8 MR. HOLZMAN: That's correct, Your
9 Honor. We have produced all kinds of witnesses that have
10 been deposed by our friends at Intel in connection with
11 Class certification.

12 What I started to say a minute ago is,
13 to be quite frank, I think that Class counsel need an
14 opportunity to caucus on this issue. We don't need to
15 take a break from this particular phone call, but I think
16 we need an opportunity to talk about what it is that we
17 think we need to be doing in connection with overall
18 scheduling in terms of what's sufficient in terms of the
19 management of the case, understanding the trial schedule
20 as it is presently contemplated by Judge Farnan.

21 It's a serious issue, and I think that
22 we need to talk about it, quite frankly.

23 MR. COOPER: Let me suggest we go back
24 to what I was suggesting, then. We will just address, in

1 our brief, the AMD case, with the common discovery, and
2 then Class counsel should address with their 20 pages
3 whatever comes out of their caucus and then we will
4 respond to that with our extra pages when we reply.

5 SPECIAL MASTER POPPITI: If Class
6 chooses to do anything. That makes sense.

7 MR. HOLZMAN: I am fairly certain we are
8 going to want to do something to state what our case is
9 all about. The question is the broader one on the timing
10 of discovery in respect to our own case. We don't want
11 to put this off for a year. I am, frankly, not prepared,
12 Judge, to get into the merits of that right now and I
13 need an opportunity to talk with my people.

14 SPECIAL MASTER POPPITI: I understand
15 that.

16 MR. HOLZMAN: Okay, sir.

17 SPECIAL MASTER POPPITI: I think we all
18 have come to some resolution, then, on the format of the
19 order. My only question is, again, do you want to be
20 drafting it or would you like me to do it on this end,
21 the changes to the order?

22 MR. HOLZMAN: I think you can do it,
23 Your Honor, because I think all we are talking about is
24 the change or two in the number of pages. That's it.

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1 SPECIAL MASTER POPPITI: Okay.

2 MR. HOLZMAN: I think everybody
3 understands what it is that the Court wants at this point
4 in time.

5 MR. COOPER: That's fine with us, Your
6 Honor.

7 SPECIAL MASTER POPPITI: Mr. Diamond.

8 MR. DIAMOND: I am not part of this
9 practice.

10 SPECIAL MASTER POPPITI: You will
11 receive that not later than sometime during the day
12 tomorrow. Thank you all.

13 (The teleconference was concluded at
14 3:49 p.m.)

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C E R T I F I C A T E

STATE OF DELAWARE:
:
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 28th day of March A.D.
2008.

Renee A. Meyers

RENEE A. MEYERS
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