Phil Paul v.
Intel Corporation

Hearing
September 27, 2006

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORPORATION	)
MICROPROCESSOR ANTITRUST	) MDL No. 1717-JJF
LITIGATION	)
ADVANCED MICRO DEVICES, INC.,	)
and AMD INTERNATIONAL SALES	)
AND SERVICE LTD.,	)C.A. No. 05-441-JJF
Plaintiffs,	)
v.	)
INTEL CORPORATION and	)
INTEL KABUSHIKI KAISHA,	)
Defendants.	)
PHIL PAUL,on behalf of	)
himself and all others	)
similarly situated,	)
Plaintiff,	) C.A. No. 05-485-JJF
v.	)
INTEL CORPORATION.	)
Defendant.	)

Wednesday, September 27, 2006
11:00 a.m.
Courtroom 4B
844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

RICHARDS, LAYTON & FINGER
BY: FREDERICK L. COTTRELL, III, ESQ.
-and-
O'MELVENY & MYERS
BY: CHUCK DIAMOND, ESQ.
BY: LINDA SMITH, ESQ.
BY: MARK SAMUELS, ESQ.
BY: HENRY THUMANN, ESQ.
Counsel for the Plaintiffs

POTTER, ANDERSON & CORROON
BY: RICHARD L. HORWITZ, ESQ.
-and-
GIBSON DUNN
BY: DANIEL FLOYD, ESQ.
-and-
HOWREY
BY: PETER MOLL, ESQ.
BY: DARREN BERNHARD, ESQ.
-and-
BINGHAM McCUTCHEN, LLP
BY: RICHARD RIPLEY, ESQ.
-and-
INTEL
BY: EVA ALMIRANTEURENA, ESQ.
Counsel for Defendants

THE COURT: Good morning, be seated.

All right. If you want to announce your appearances, that way we'll have it for the court reporter.

MR. DIAMOND: Good morning, Your Honor. On behalf of AMD, Charles Diamond of O'Melveny & Myers. With me is Linda Smith and Mark Samuels and Fred Cottrell of Richards, Layton & Finger.

THE COURT: All right. Good morning to all of you.

MR. MOLL: Good morning, Your Honor. Peter Moll. With me are my partner Darren Berhnhard from Howrey, Dan Floyd from Gibson, I don't know who that gentleman is in this corner, he sort of followed us and sat at our table.

MR. HORWITZ: I'm just here for the beer.

MR. MOLL: And Eva Almirantearena who is in-house counsel with Intel.

THE COURT: All right. Good morning to all of you.

MR. SMALL: Good morning, Your Honor. Dan Small with Cohen Milstein for the class plaintiffs. I'm here with Clay Athey, Tom Dove and Allyson Baker.

THE COURT: Good morning to all of you.

MR. SMALL: Thank you.

THE COURT: All right. I have reviewed your proposed agenda for the conference today and I thought maybe I could give you some information first and then I'll listen to anybody that has something they want to present.

The request that we restart the clock to allow a full six months with the possibility of a reasonable extension will be granted, so we'll start that clock next Monday or so for the six months.

During that period you'll have the regularly scheduled conferences for purposes of case management and/or disputes with the special master. I would ask you if it's possible, he'll keep me advised of your progress and what I would appreciate is if we're going to need an extension, that you let him know in three or

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four months so that we can factor that in our other planning.
I know sometimes it's unavoidable that things come up at the last minute and we understand that, but if we can keep advised with regard to how things progress it will be helpful.
I'm going to add language to the order so that in addition to the ability of the special master to apportion billings on the basis of what I'll refer to as fault, that there can also on application of any party be an apportionment in the first instance by the special master of a billing.
And what I'll do if those disputes occur and they're resolved on a monthly basis by the special master, at the end of the case, either after the trial or at the end of the litigation, I'll review any objections to the apportionments that were made.
What I'm trying to do is keep you going so you get a decision, it gets paid and then we'll look at it. I don't want to look at it individually, I think it will take up too

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much of your time and you have got important things to be doing.
With regard to the dispute on the current protective order, I thought long and hard about this, and I'm going to divide it one-third, one-third and one-third.
You know, I feel terrible that sometimes these appear to be arbitrary apportionments. They really aren't. You know, I try to read what was going on, and that's the best I can come up with.
Now, if somebody wants me to reconsider that, feel free to file, don't make it a long paper, but if you think I have really missed something, let me know, but I'm just going to take that one and resolve it myself to get you on track so we don't have anything in the way of progress that you want to make.
Of importance to you all, I've selected the immovable trial date. This date, if you talk to the patent lawyers that come here or to your local counsel, you'll understand that a lot of things can move between now and the trial date, but this trial date will be firm.

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April 27th, 2009, trial will commence.
What I have done in selecting that date, I have given consideration to the need to move the case which is typically a plaintiff's interest. I have given consideration to the interest of defendants which is typically to be able to adequately defend and to develop defenses. I have looked at my own calendar and I have some idea how long this case would take to try if it was going to go to trial, so if I get into 2008, I already have stuff scheduled, so you're always running up against something.
This gave me the opportunity to have a clear path to allocate trial time to you for the whole case or if part of the case is tried. I think you have heard me say this before, at least your local counsel have, I don't push for settlement. If you want to settle, you can do it privately. We have a magistrate judge here, you have a special master in this case.
I really focus on being a trial judge here. So when I select this date, I'm thinking we have a trial and I'm presiding at it

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and that's what we're all about. And I'm happy to preside the trial. So anything you want to do in between is your business, that's the date.
I think I have touched on all the main points that I wanted to touch on. This would be the opportunity for the parties to make presentations.
MR. DIAMOND: Thank you, Your Honor. If I can begin on behalf of AMD, since we prepared the agenda there has been some significant developments in the case; notably I arrived in town to receive your order, which provided me with some interesting reading last evening and —
THE COURT: You know, I thought about that. I thought there you are in that hotel room all alone and wouldn't it be good to give you some companionship and what a great round for appeal. That's what you're probably thinking the whole time.
MR. DIAMOND: I was thinking you were really very considerate. One of the things you didn't realize was that I travel with my partners, but one of my partners happens to be

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my wife, so I actually had somebody.
THE COURT: So I made for a miserable spouse, and I apologize to you.
MR. DIAMOND: I had someone to share the pain.
But that raises a question that we have given considerable thought to about an hour-and-a-half this morning which means we haven't sorted it all out, but I want to raise the question of certification of your decision for interlocutory appeal.
And I know Ms. Smith wants to address the question of whether we can encourage the recalcitrant third parties who we have been negotiating with over subpoenas for the past ten months to finally come to the table by imposing some kind of deadline for negotiations, but I'll let her address that.
Your Honor, I have discussed this briefly with Mr. Moll, so I know AMD and Intel take different views on the subject, but the question arose as we read your order last evening and again this morning as to the impact of that concerning ongoing discovery, and the

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scope of discovery in this case.
Clearly we understand that we are not entitled to seek on behalf of AMD damages for lost sales that would have been made to foreign purchasers abroad, understood, the order was crystal clear on that account.
That doesn't necessarily resolve the issue of whether Intel's foreign conduct should or should not be part of this litigation. And for reasons that I can explain to you, it is our view that in order to prove a domestic violation actionable under Section 2, we do need to get in to discuss and make a showing to a jury ultimately about Intel's conduct in the 70 percent of the relevant market that lies outside of the US boarders.
I'm happy to discuss why that is if you want me to do that this morning. But suffice it to say that I expect that Intel will hold us up to the burden of proof under Section 2 that most people looking at a Section 2 case think appropriate, and that is, we have to prove that Intel acquired market power unlawfully in the relevant geographic and relevant product

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market.
By contrast to unlawfully, we have to discount that they acquired market power through superior skill, industry, or foresight which would be lawful.
The relevant geographic market as the parties concede is worldwide. For us, I suppose, and obviously this — Intel wants to make some concessions that we don't have this burden, I would be happy to hear them, but absent that I suppose we would be held to the burden of showing that Intel acquired its market power throughout the relevant geographic market unlawfully and that means that we have to show that with respect to the 70 percent of the relevant geographic market that lies outside of the United States that they acquired market power in that portion of the relevant market unlawfully and not by reason of superior skill, industry and foresight.
We view the foreign conduct as a necessary predicate to prove the underlying violation giving rise to US damages, and we are concerned that if we don't do that, we will be

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accused of a failure of proof ultimately.
I am not asking the Court to tell us today what you had in mind and how you think this impacts discovery, but the way we view it, the outcome of that issue significantly affects whether it makes sense to make a detour to Philadelphia and ask the Third Circuit to entertain an interlocutory appeal of your order.
If the order simply says that we can't recover damages for sales to foreign customers abroad and that's ultimately adjudicated as a mistake on the Court's part, then I suppose worse case scenario is we have a short retrial on the issue of damages following an appeal. That's manageable.
If we are precluded from developing the evidence we think we need to prove to make out the underlying violation and can't get into Intel's conduct outside of US boarders and that decision is overturned, then basically we have to redo this litigation from scratch, both in terms of going back and trying to do foreign discovery years and years later when it would be very difficult to do and

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retrying the entire liability case.
Obviously we would like some vehicle to get clarification as to the impact on discovery and I think probably what makes the most sense for us is to file a certification request under 1292(b) premised on various constructions of what you intended by your order, and that would be — that would probably be an appropriate vehicle to get that resolved.
As I say, I think if the order was not intended to preclude us from developing evidence of conduct outside of the United States and introducing that in support of our US claim, then certification is not nearly as indicated as the other situation.
And with Your Honor's permission we would propose to get something to you in a week's time to sort of tee up that issue.
THE COURT: All right. Let me hear from Intel.
MR. MOLL: Thank you, Your Honor. Certainly everything that the Court laid out as far as dates and what the Court intends to do is agreeable to us, and we accept it and that's

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fine as far as we are concerned.
We had raised an issue on the allocation of the fees to sort of make the point that perhaps there are other things that had to be looked at. We had no intention of bringing it to Your Honor's attention. We appreciate the fact that it got resolved and we'll proceed exactly on the framework that Your Honor just laid out.
As far as what Mr. Diamond has just suggested, we obviously oppose any effort to try to get a 1292(b) certification. Obviously one of the requirements for a 1292(b) certification is that there be some sort of real issue as to whether or not the law is correct.
And here Your Honor relied on a federal statute, the Foreign Trade Antitrust Improvements Act, it was passed in 1982, Your Honor relied correctly so on a United States Supreme Court opinion, Impagram, which interprets that act and Your Honor also had the Intrincinto case. Your Honor also had Third Circuit opinion. And Your Honor's opinion really is consistent with all of that law. So

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we don't think that was appropriate to grant 1292(b), but we would be happy to get counsel's brief and respond to it.
On this issue of discovery and damages, the statute is clear. Your Honor quoted the statute in Your Honor's opinion. It talks about the Sherman act shall not apply to conduct. That's what the statute says, that's what the case law says. That's why Your Honor correctly found that this conduct in the paragraphs that have been stricken is outside the scope of this case.
And, therefore, it does affect the scope of discovery. We said that at the first hearing before Your Honor that we thought it would reduce the scope of discovery in 70 percent according to AMD's own complaint, 70 percent of these sales are foreign sales. With the allegations being stricken and with the allegation of 70 percent of foreign, it does have an affect on discovery, and will dramatically narrow it.
I think the confines of how it gets narrowed on the parameters and the contours

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of it are something that are appropriately addressed when there is an issue before the Court, when we have something to talk about.
And if there are going to be discovery issues at the perimeter and undoubtedly there probably will be, then our position is they should be brought in the normal course to the special master and then if there is an issue or an appeal it can be brought to Your Honor when Your Honor has something before him other than dealing with this in a vacuum.
So that's our position on the 1292(b). And when Mr. Diamond files it, we would be happy to respond to it.
THE COURT: All right. Anyone else want to be heard?
MR. SMALL: Your Honor, Dan Small for the class plaintiffs.
We're obviously not directly involved in the issue that has been discussed with respect to the possible 1292(b) motion, but I do want to point out that our complaint has not been responded to yet by Intel necessarily because of circumstances, but now I believe

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Intel's date for responding to the complaint will be in November. And we have not had the issue or a similar issue raised in our case that has been ruled on by the Court in the AMD case.
And I just want to point out for the Court that we, of course, have state laws that we're dealing with that specifically provide for recovery for indirect effects of antitrust violations, and because there are state law, we're not dealing with the federal statute that was at the center of the Court's opinion as well as the Supreme Court cases interpreting that statute, so we feel it's an issue that's going to be different in our case and one which the Court has not yet addressed.
THE COURT: All right. As both AMD and Intel have acknowledged, there is really two issues. There is the certification issue of the order on dismissal, and there is the going forward, and they overlap as AMD has pointed out.
The way I think that they ought to be presented is that AMD ought to propound its discovery to Intel, because the scope of

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discovery question in the first instance, that is the impact of the order on the scope of discovery in this case now, I assume that some of that discovery will be objected to because as has been indicated, it will be broad enough to cover the foreign discovery, and the dispute will be presented to the special master who I believe is prepared to expeditiously address the dispute. And then if there are objections to that decision, it will come to me with the benefit of any fact finding made by the special master as well as the legal arguments that will be refined on the basis of the decision.
So that's the first thing. I think it gets resolved by AMD propounding its discovery. And if you need — I guess I would suggest since it's going to be a legal question in the first instance with some factual predicates, that somebody request on AMD's behalf that the time to answer be shortened so we can get the legal issue joined. In other words, instead of saying the normal time under Rule 26 or so, that we get it shortened up by a ruling of the special master so that the legal

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argument presents.
Second, I agree with both of you that the proper way to present the effort for certification is by a motion with an opening brief. That will come directly to me and we'll brief it under the rules, and get you a decision.
Now, the only question I might have is if you were successful in convincing me that the issue ought to go to the Third Circuit immediately, does that mean that the effort on the scope of discovery should be delayed until then? I don't think so. Because I want to get the case moving on discovery now that we have the protective order in place and you have the decision on the motion to dismiss, so I would say that you put it on a dual track and Mr. Poppiti and myself will work as quickly as we can to get you both answers.
MR. MOLL: That is fine with us, Your Honor.
MR. DIAMOND: Yes, Your Honor. Although I point out we have already propounded our discovery requests, they have been

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outstanding, they have been responded to, at least written responses have been provided by Intel, all of them require responses that include documents concerning Intel's foreign conduct. I think —
THE COURT: There is nothing you want to add so all they have to do then is respond.
MR. DIAMOND: They have already objected, I don't know that we have.
MR. MOLL: What we have done, Your Honor, is counsel in the course of this document program we have worked out and pursuant to Your Honor's order on that subject served us with a — gave us a document request, we gave them a document request.
When we responded, we responded with objections in that if the Court grants Intel's motion on foreign conduct, then we object to this. So we have a head start and now it seems to me it's a matter of us —
THE COURT: Now you just got to present the dispute to the special master.
MR. MOLL: Right, or sit down and

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see if there is any way to narrow it and get it to the special master. So we can, as Your Honor expressed the desire to have us do, we can short-circuit the process.
THE COURT: You may be able to short-circuit — I didn't realize that your objections contemplated the decision in any fashion, but you apparently responded in the alternative.
MR. MOLL: We objected, but again, I think now that we have the decision, we know where Mr. Diamond is, that it would make some sense to sit down and see if there is anything we can agree on and then expeditiously bring it to the special master.
THE COURT: For simplicity you may want to consider in this discussion a representative discovery request instead of presenting the whole package that basically touch on the heart of the focus, and it will make a clearer record for you when it comes to me as well as for other purposes, and give the special master an opportunity to be more efficient in addressing the real legal dispute.

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MR. MOLL: That's fine, Your Honor.
THE COURT: Sit down and talk and get up with the special master.
MR. MOLL: Fine, we'll do that.
MR. DIAMOND: I think that — I think we basically have the issue teed up, I will talk to Mr. Moll this week. And the special master has already instituted procedures for us which are fairly rapid fire, so I imagine the issue will get teed up and decided quickly.
The only thing I would ask the Court to consider doing is either hold off on deciding the certification request or perhaps delaying the date by which we file the certification request because quite frankly if the discovery issue turns out in a way favorable to us, I don't know that we will be asking the Court to certify.
THE COURT: Okay. I thought you were going to do that —
MR. DIAMOND: I think we would prefer to do it serially rather than simultaneously, but that means keeping your

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order outstanding until we resolve the scope of the discovery question. You can always amend your order to require the findings for certification, I don't think that's a problem.
MR. MOLL: Just so I understand, and we're fine with that, is it plaintiff's position that they're going to file the papers and then wait and see how discovery comes out?
MR. DIAMOND: We would prefer holding off having to file our certification request until after the discovery issue is resolved.
MR. MOLL: We have no problem with that, Your Honor, if that's fine with the Court or whatever the Court wants to do.
THE COURT: If you two agree, it's fine with me. It sounds like you agree.
MR. MOLL: We try to agree.
MR. DIAMOND: We need one procedural favor.
THE COURT: Okay.
MR. DIAMOND: We have ten days from entry of your order to file a motion with the Third Circuit for an interlocutory appeal.

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If you were to decree that your order is not final until we resolve the discovery question such that our ten days doesn't start running, then we're fine. I just want to make sure we don't violate any appellant jurisdictional rule.
MR. MOLL: Now, Your Honor —
THE COURT: This is like the legislature, but there are ways to — I mean, wouldn't a motion to reconsider unanswer hold my order.
MR. DIAMOND: I think it would, yes.
THE COURT: So although I want to be candidate for you, it's unlikely I would grant a motion to reconsider, why don't you put a one page piece of paper in place that says you're filing for me to reconsider and that stops the clock.
MR. MOLL: Can we then have an extension, Your Honor, on that, until after the discovery —
THE COURT: Yes.
MR. MOLL: That's fine.
THE COURT: You have an extension

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to answer the motion.
MR. MOLL: Thank you. And it.
THE COURT: Premised on the special master's decision.
MR. MOLL: That's perfect.
THE COURT: Is that wrong? We are going to get counsel here. We are going to get a real counsel now.
MR. DIAMOND: There is some question — I think we want to satisfy ourselves that we wouldn't be jeopardizing our appellate rights and that they will be preserved by a reconsideration. Let's assume that it would, if there is a problem, Mr. Moll and I will talk about it and if necessary we will file a short request for certification.
THE COURT: I'm experienced at appeals for a lot of reasons. A motion to reconsider essentially stays my order and your times don't run.
MR. DIAMOND: I understand that to be correct and the time starts to run once you entered the order even denying reconsideration, I once survived a late filed surcharge brief to

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the United States on that basis.
THE COURT: I actually understand that I can extend the time to appeal, in this circuit at least there are cases like that, why don't you all feel comfortable, I'll do whatever procedurally protects your ability to appeal on interlocutory basis, and your friends from Intel aren't objecting to that.
MR. MOLL: The only — I have no objection to filing any motion, any extension giving Mr. Diamond anything he wants in that. Obviously, you know, his notion that your order isn't a final order, hasn't been entered, we think it is and it should remain that way, and there is some way to work out the extension he desires, that's fine with us, we'll work it any way we can.
THE COURT: I think you have got a lot of opportunities to get it done and stay my order. If you need to get me on the phone to talk about if I need to do something for you, have your local counsel call up and we'll get you on the phone.
MR. DIAMOND: We appreciate that.

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I want to put a pin in one other issue that your order engendered and I didn't want our silence to be taken later on as acquiescence. But on page 16 of your order, you state accordingly the Court will dismiss AMD's claims based on alleged lost sales of AMD microprocessors to foreign customers and strike the allegations in the complaint forming the basis of those claims, namely — and you go on to name the paragraphs in which we discuss foreign customers.
That raises a question of what constitutes a foreign customer. Among the allegations that you struck were allegations that discuss Sony and LoNovo. Sony and LoNovo, there may be others, but these are the ones I know about. Sony and LoNovo although arguably foreign domicile corporations, meaning the parent is headquartered outside the United States, and in the case of LoNovo I don't think that's necessarily true, but both of them have manufacturing operations in the United States, and both of them purchase from both Intel and AMD microprocessors for use in the United States incorporated into computers manufactured here.

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Even within the framework of the ruling we would regard that as part of the domestic customers and just didn't want our silence to be taken later on as some sort of agreement that LoNovo and Sony are purely foreign purchasers.
MR. MOLL: We don't necessarily agree, but again, these are matters I think that can get resolved with the special master and then if necessary brought to Your Honor when they're properly teed up.
THE COURT: I understand your position, and it's on the record.
MR. DIAMOND: Thank you.
MS. SMITH: Your Honor, I'm the better half of the Diamond/Smith group.
THE COURT: I'll affirm.
MS. SMITH: Thank you, Your Honor. See, I won one.
MR. MOLL: You have heard no objection from this side either, Your Honor.
MS. SMITH: Okay. I'm just going to speak briefly about the request which I believe is contested, so we wanted to raise it

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here. We had asked for a third-party corporate subpoena negotiation cutoff.
And let me just quickly because this could be years, but I'll quickly tell you that on October 2005 AMD issued thirty-two subpoenas, then pursuant to the Court's case management order number one, you imposed a third-party corporate subpoena cutoff on class, AMD and Intel. AMD served thirty-three more subpoenas. The class served thirty-nine and Intel served sixty-eight.
AMD in the meantime since October of 2005 has made substantial progress in going through the protocols and negotiating individually with each one of these large corporate entities for production, custodian lists, search terms corporate or transactional data, and all the methodology of E discovery which some people, although not me, have become steeped in and could probably teach courses on E discovery at this point.
We have reached deals with several of the corporate third parties including Hewlett Packard and IBM. However, no third party will

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produce without agreement with Intel and the class. Not surprisingly, shockingly, no third party wants to produce twice or even three times, they are going to do this once because it's massive.
And so what we have done is set up an elaborate amazing chart with an AMD negotiator, an Intel negotiator, and a class negotiator for each one of the seventy — it turns out there are seventy separate parties who have been subpoenaed, and that tripartite group of parties will negotiate with the corporate third-party the agreement out.
And the reason we're asking the Court to set a cutoff on these negotiations is we would like third-party corporate discovery to bear some relationship to the discovery cutoffs that the Court envisions and the trial date that the Court envisions, are on the immovable trial date. And this could drag on for my lifetime if not beyond.
The thought was Intel is saying well, you don't need this because you could just write a motion, eventually someone will produce

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and you can't get a deal, you can bring a motion. The problem is that because there are three parties negotiating with the third party, that until we have an accord, nothing will happen.
And, for example, we have an agreement with IBM and so we have — but they won't produce to us. It's sort of silly for us to bring a motion to compel production when they have reached a full agreement with us, they just haven't reached a full agreement with Intel. So it doesn't quite work to say motion practice will take care of this.
And we're — there is also differing negotiations. The plaintiffs are very interested in third-party discovery. The defendant is less interested, although the third parties are customers of all of ours and etcetera cetera.
So we were thinking that by placing a cutoff date when there is either a deal that you would be essentially placing this cutoff on the parties that are in front of you, Intel, AMD, and the class, to get these deals in

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place with the third parties and yet we could also use it against the third parties to say, you know, if you can't reach a deal by this date, then someone is going to move against you and you're going to be involved in motion practice.
And that really was the basis, trying to alleviate the burden on the Court, on the special master where it will fall to coordinate this and get it organized so we can move.
Thank you.
THE COURT: All right.
MR. MOLL: If I may just briefly, Your Honor, as counsel indicated, there are seventy of these third parties. One of them within the last — fairly recently sent a letter to both us, and I won't disclose the name of that company, sent a letter to both us and to AMD saying they thought they had approximately 300 million pages, 300 million pages of documents to produce.
Each of these seventy third parties is in a different unique situation. And

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that's why I told Mr. Diamond, we were going to have to oppose any arbitrary deadline for any of these people.
The fact of the matter is that I'm sure a number of them who are referenced in a number of the paragraphs that Your Honor has stricken from the complaint now want to go back and read Your Honor's decision and evaluate their discovery responses in light of that. They are probably going to want to hear where the special master comes out and as we define the confines of this, and so while I think the appropriate, a more appropriate procedure in this case given the diversity we have and these issues now that they're going to need to look at is again to suggest that this issue get teed up at the appropriate time by AMD if they want, or by Intel and the class and AMD before the special master, we can then get into a little more of the details than I'm sure Your Honor would like to hear about this morning on all of these people and make a decision. And if he thinks some sort of a deadline is appropriate, establish one or have the flexibility to deal

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with it however he sees fit. And again, with ultimate resource to Your Honor.
MS. SMITH: I think in principle that sounds fine. The problem is in practice it means seventy, potentially seventy different motions. We're not asking the Court to impose a deadline for production or to impose any parameters on what each third party which is a unique entity produces. We're trying to keep everyone's feet to the fire, both the three parties in front of you and the seventy corporate third parties to try to get a deal in place.
The parameters of these deals, a lot of them are worked out and need to be augmented a little bit, but can go and we're trying to get a structure in place. It doesn't mean that a little tiny third party may be producing 10,000 documents where another party may be producing 300 million, they're not going to be under the same deadline, but we're trying to get the deals done as opposed to the production accomplished.
THE COURT: All right. Yes, go

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ahead.
MR. SMALL: Just briefly, Your Honor.
THE COURT: Sure.
MR. SMALL: In two sentences worth we would like to add, Your Honor, on behalf of the class is whereas AMD and Intel are preparing for trial that will be in April of 2009, we have class certification to deal with which will hopefully begin in July of 2007. Some very significant discovery for that is going to come from the third parties, not the least of which is transactional data that both the class plaintiffs and Intel want, so it would be very important to us for class certification purposes to be able to get production of that data and other materials properly so we can begin briefing class certification hopefully in July.
Thank you, Your Honor.
THE COURT: All right. Thank you. As I see the dispute, it's a question of setting a date possibly when any one of the parties before me would have to begin engaging in a motion practice as opposed to some

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accommodated practice that everybody has to some extent agreed to.
I'm actually starting to have — I usually don't get this, I'm starting to have some guilt about dumping this on Mr. Poppiti. It's not a lot of guilt.
MR. POPPITI: I know that. I know that.
THE COURT: But I'm having a pinch.
But I think that we — I'll leave it to his good judgment in the first instance to determine this question. When should we know as the case managers on this side of the bench that there is going to be a motion practice that has to be engaged in where there is some accommodating practice that's working.
In this first instance I'll leave that date to be set by the special master. What I'll suggest is that that be set by the beginning of December. So it's about sixty days that you have to talk with each other and get back and forth, present your positions to Mr. Poppiti, and then he'll decide if there is

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an immediate need for a date that determines it's going to be a motion practice as opposed to something else. Or if he wants to give a little more of an extension based on what he's hearing from you folks and then of course I'll review it.

So I'm answering your question by saying in the first instance we should have some idea by the early part of December by which you present the special master.

MS. SMITH: Thank you, Your Honor.

THE COURT: Anything further?

MR. DIAMOND: Not on behalf of AMD.

THE COURT: On defendants?

MR. RIPLEY: Just briefly, Your Honor, we read Your Honor's opinion with respect to the second consolidated class complaint denying that leave, meaning that the first amended consolidated class complaint that was filed by the interclass counsel is the operative complaint and our response will be due sixty days from yesterday, we just want to make sure, and that's the agreement we reached with

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Mr. Small, but it wasn't the opinion, since that wasn't really filed, it was attached to a motion, I just want — so we know exactly that's the one we can start responding to.

MR. SMALL: We agree with Mr. Ripley that the response to our complaint should be due sixty days from yesterday and just so it's clear, our understanding was in our first status conference with Your Honor, you had given us leave to file the new complaint to work out hopefully the problem that we ended up having to litigate before Your Honor, so we believe that the sixty days was triggered by the ruling yesterday on the second class complaint that was filed.

THE COURT: Just so we're not in any way confused, I don't know what sixty days is, but it's sometime around the beginning of December, isn't it?

MR. RIPLEY: Yes, Your Honor.

MR. SMALL: My calculation of the sixty days, Your Honor, is November 27, although I understand from Mr. Ripley they may respond even earlier than that.

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MR. RIPLEY: November 27 is the Wednesday after Thanksgiving.

THE COURT: The Wednesday after Thanksgiving.

MR. RIPLEY: Sorry, it would be the Monday, the Monday after Thanksgiving, so that's the sixtieth day, we're likely to file before the holiday.

THE COURT: So we'll say to make it real clear on the record, the answer or response is due no later than November 27th, 2006.

MR. RIPLEY: And we'll be responding to the first amended consolidated class complaints.

THE COURT: To the first amended consolidated class complaints.

MR. RIPLEY: Thanks for that clarification, Your Honor.

THE COURT: Make it easy, hopefully.

Anything else?

MR. MOLL: No, Your Honor.

MR. DIAMOND: We were going to

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suggest that perhaps the Court set another status conference just so that we can put it on our calenders and have it.

THE COURT: Did you have an idea when you would like to do that?

MR. DIAMOND: I would suggest in December.

MR. SMALL: I'm sorry, Your Honor, I should have raised this when I was up here last time. As part of the status conference report that we filed with Your Honor, Intel and the class plaintiffs agreed upon target dates for briefing. Now that discovery has been moved back and we just wanted to see if the Court wanted to hear any thoughts on that or what the Court's thoughts were about the new proposed schedule.

THE COURT: Well, you know, it would seem to me there has to be some push on your dates, but you can probably agree to that and I will approve it.

MR. SMALL: Your Honor, the proposal in the status conference report is agreed to by Intel and the class plaintiffs.

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THE COURT: That's what we'll put in place.
MR. SMALL: Thank you, Your Honor.
THE COURT: And that's agreed to?
MR. MOLL: Yes, Your Honor. We have negotiated that, yes, Your Honor.
THE COURT: All right. I have my December calendar. I'm going to leave a note, leave fruit instead of an opinion.
MS. SMITH: Thank you, Your Honor.
THE COURT: What are you thinking — what week are you thinking about you want to come back?
MS. SMITH: The second week or the first week.
THE COURT: Which is the week of?
MS. SMITH: Yes, if you can fit us in.
THE COURT: And I'm just picking, is Thursday okay, the 7th of December?
MR. DIAMOND: That would be fine.
MR. MOLL: Thursday is fine, Your Honor.
THE COURT: And we'll do it again,

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that will give you enough time to get travel and everything, 11 o'clock in the morning gives you enough time to get out?
MR. MOLL: That's fine, Your Honor.
THE COURT: We will do it December 7th, 11:00, and we'll follow the same procedure, you will submit a status report and proposed agenda.
MR. MOLL: By Monday the 4th.
THE COURT: Yes.
MR. MOLL: Fine.
THE COURT: Okay. I think that takes care of all of that.
Thank very much.
(Court adjourned at 11:49 a.m.)

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State of Delaware)
New Castle County)

CERTIFICATE OF REPORTER

I, Dale C. Hawkins, Registered Merit Reporter and Notary Public, do hereby certify that the foregoing record is a true and accurate transcript of my stenographic notes taken on September 27, 2006, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of September, 2006, at Wilmington.

Dale C. Hawkins, RMR

Lawyer's Notes

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Lawyer's Notes