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December 4, 2008

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 King Street
Wilmington, Delaware 19801

VIA ELECTRONIC FILING

Re: In re Intel Corporation, C.A. Nos. 05-MD-1717, 05-441, and 05-485

Dear Judge Farnan:

Pursuant to Federal Rule 53(f), we submit the following letter brief to object to the Special Master's Report and Recommendation Regarding Threshold Jurisdictional Issue Raised by Current and Former Employees of Non-Party Dell Inc. (the "Recommendation") (D.I. 1139 in C.A. 05-MD-1717).¹ As Dell Inc. ("Dell") has stated in its previous submissions to this Court, in submitting this letter brief, Dell is not admitting that it is subject to the jurisdiction of this Court with respect to any issues that may arise.

Statement of the Issue in Dispute

Whether the Special Master wrongly concluded that this Court had jurisdiction to resolve any disputes relating to the subpoenas ad testificandum issued out of the Western District of Texas (the "Western District") by AMD (the "Subpoenas") and served on five current employees of Dell (collectively, "Dell Employees") where AMD and Dell, by express agreement, specified the Western District as the forum for resolving discovery disputes related to the Subpoenas, that agreement was proper, and that agreement was not superseded.²

Argument and Authorities

Jurisdiction over the Subpoenas issued out of the Western District and served upon Dell Employees, all of whom are non-parties to this litigation, resides with the Western District, and, by virtue of the provisions of 28 U.S.C. § 1407, this Court has concurrent jurisdiction over the Subpoenas. AMD has, however, waived any right to have this Court adjudicate discovery disputes relating to the Subpoenas by expressly contracting to issue all subpoenas to Dell out of

¹ We file this letter brief objection to the Recommendation today to comply with the Court's Order Modifying Time for a Party to File Objection to, or a Motion to Adopt or Modify, Special Master's Order, Report and Recommendation, dated December 4, 2008 (D.I. 1343 in C.A. 05-MD-1717).

² Current Dell Employees have filed a Motion to Quash the Deposition Subpoenas or, Alternatively, for Protective Order in the Western District. AMD's response is due on December 4, 2008, and the Western District has set the Motion for hearing on December 5, 2008. Another subpoena for former Dell CEO Kevin Rollins, originally issued out of the Western District, has been withdrawn and reissued out of the District of Massachusetts.

the Western District. The sole purpose for which Dell requested that provision, as is Dell's standard practice for the hundreds of subpoenas served on it each year, was to ensure that any discovery disputes would be adjudicated by the Western District, in accordance with Rule 45. By requesting these provisions, Dell sought to ensure uniformity for its various discovery obligations. Dell sought a similar arrangement with Intel, which Intel agreed to and issued subpoenas on that basis.

A. Background

Though it has never been a party to this litigation, Dell has been forced to participate in this litigation for several years. At least as early as September 2005, AMD was negotiating with Dell regarding the preservation and production of Dell documents. To date, Dell has produced over 86 gigabytes of data (nearly 450,000 documents)—at the insistence of AMD. Dell has also provided a corporate representative to testify on certain “transactional” (i.e., pricing) data at Intel's request.

Part of the document production negotiations between Dell and AMD concerned the situs of subsequent subpoenas AMD might serve on Dell. Those negotiations took place against a backdrop of AMD discussing various motions regarding preservation and document subpoenas issued out of Delaware. The negotiations resulted in a specific provision regarding the issuance of subpoenas to Dell: “AMD agrees that any subpoena for testimony or for the production of documents and/or testimony AMD may serve upon Dell will issue out of the United States District Court for the Western District of Texas.”³ September 2, 2005 Stipulation re: Preservation of Documents by Dell Inc., Exhibit A to the January 18, 2007 Document Production Agreement Between Dell and Requesting Parties (the “Stipulation”) (respectively, Exhs. A and 1). This Court entered the Stipulation as an Order on September 5, 2005.

During recent months, AMD and Dell have been negotiating the number and length of depositions of Dell witnesses. After several rounds of discussions, AMD agreed to depose only one former and five current Dell employees, five of whom are or were senior Dell executives.⁴

On November 4-5, 2008, AMD served the Subpoenas on the Dell Employees that are the subject of the present dispute. Per the Stipulation, the subpoenas were issued out of the Western District.⁵ Since that time, Class Plaintiffs have served tag-along subpoenas on the Dell Employees, also issued out of the Western District. All told, AMD, Class Plaintiffs, and Intel have indicated that they seek to depose the six current and former Dell employees for more than 129 hours.⁶

³ Dell's Corporate Headquarters are in Round Rock, Texas, within the jurisdiction of the Western District.

⁴ Kevin Rollins, former CEO; Michael Dell, CEO and Chairman of the Board; Jeff Clarke, Senior Vice President of Business Product Group; Dan Allen, Director of Worldwide Procurement; Alan Luecke, Director of CTO Strategy; and Jerele Neeld, Senior Manager of Product Group Quality Customer Experience. Mr. Neeld is not a senior Dell executive.

⁵ While Class Plaintiffs first issued a subpoena to Mr. Rollins out of the Western District, AMD had Mr. Rollins' subpoena issued out of the District of Massachusetts and Class Plaintiffs have now followed.

⁶ AMD has requested 96 hours with the six witnesses; Class Plaintiffs, 12 hours; and Intel, the greater of 21 hours or whatever time AMD receives.

After expedited briefing on the jurisdictional issue, the Special Master held a telephone conference on December 1, 2008, and concluded that this Court did have jurisdiction to resolve disputes under the Subpoenas. The Special Master found that: (1) the Stipulation required AMD only “issue” the Subpoenas out of the Western District, even if the Stipulation was intended to have the Western District, and not this Court, resolve disputes related to the Subpoenas, (2) the Stipulation was superseded, and (3) regardless of whether the Stipulation was superseded, parties should not be permitted to strip an MDL court of authority under the MDL statute. Recommendation at 3-4. Therefore, the Special Master recommended that this Court: (1) rescind the Stipulation; and (2) exercise jurisdiction as an MDL court and as a court in the Western District and the District of Massachusetts to resolve the dispute related to the Subpoenas. *Id.* at 4-5. The Dell Employees disagree and lodge these objections.

B. Standard of Review

Pursuant to Rule 53(f), this Court must decide de novo all factual findings and legal conclusions recommended by a master. Fed. R. Civ. P. 53(f)(3)-(4); *In re Vioxx Products Liability Litigation*, 501 F. Supp. 2d 789, 813 (E.D. La. 2007).

C. AMD Expressly Contracted Away Any Alleged Right to Have This Court Resolve Disputes Concerning the Subpoenas

The Federal Rules make clear that the court from which a subpoena is issued has jurisdiction to resolve any dispute that arises related to the subpoena. Fed. R. Civ. P. 45(c)(3); *see also In re Clients and Former Clients of Baron & Budd, P.C. & Occupational Med. Resources., Inc.*, 478 F.3d 670, 671 (5th Cir. 2007) (quoting 9 James W. Moore et al., Moore’s Federal Practice § 45.50[4], at 45-75 through 45-77 (Matthew Bender 3d ed. 2006) (“A motion to quash or modify a subpoena is to be granted by ‘the court by which a subpoena was issued.’”)).

In MDL matters, a number of courts have found that a judge presiding over an MDL matter may exercise jurisdiction under section 1407 as if it were a district judge in the issuing court.⁷ *Baron & Budd*, 478 F.3d at 671-72. Under those decisions, this Court and the Western District have concurrent jurisdiction over the Subpoenas. But as section 1407 was intended to “correspond with and complement, rather than disembowel, the Federal Rules of Civil Procedure regarding subpoenas of non-parties,” *id.* at 837 (Owen, P., dissenting), MDL courts, as transferee courts, exercise powers “only to the same extent as the transferor court could.” *In re Sterling Foster & Co.*, 222 F. Supp. 2d 289, 300 (E.D.N.Y. 2002); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230-31 (9th Cir. 2006) (“A transferee judge exercises

⁷ When there is a motion to quash subpoenas pending in the issuing court, some issuing courts have transferred the motions to the MDL judge. *In re Subpoenas Served on Wilmer, Cutler & Pickering and Goodwin Proctor LLP*, 255 F.Supp.2d 1, 2-3 (D.D.C. 2003) (“[I]t is entirely appropriate for this Court to remit this matter [to the MDL judge] for resolution.”); *In re Subpoena Issued to Boies, Schiller & Flexner LLP*, 2003 WL 1831426, at * 1 (S.D.N.Y. Apr. 3, 2003) (transferring a motion to quash to the MDL judge to further “the goal of judicial economy”); *but cf. In re Uranium Antitrust Litig.*, 503 F. Supp. 33 (N.D. Ill. 1980) (denying a motion to compel the subpoena-issuing courts to transfer all future discovery motions).

all the powers of a district judge in the transferor district under the Federal Rules of Civil Procedure and may make any pretrial order that the transferor court might have made in the absence of a transfer.”); *In re Showa Denko K.K.*, 953 F.2d 162, 165-166 (4th Cir. 1992) (“While § 1407 provides a procedure for transferring cases filed in different districts to a single district court for pretrial proceedings, nowhere does it expand the jurisdiction of either the transferor or the transferee court.”). In other words, an MDL court does not possess greater power than that of the courts that have transferred matters to it for pretrial purposes.

Here, AMD and Dell entered into the Stipulation, subsequently entered as an Order of this Court, that controls the present dispute. As the Special Master recognized, Federal Rule 29 encourages agreed-upon, lawyer-managed discovery to limit the cost, effort, and expense involved in court intervention in discovery motion practice. 12/1/08 Transcript 25:12-20; Recommendation at 4; *see also Lee v. Central Gulf Towing, L.L.C.*, No. 04-1497, 2004 U.S. Dist. Lexis 25773, at *4-5 (E.D. La. Dec. 9, 2004) (“[P]arties may by written stipulation . . . modify other procedures governing discovery.”). The orderly and efficient conduct of discovery depends to a large extent on the cooperation of counsel, who must be able to rely upon the agreements they make. *Id.* at *5. The Special Master erred by not honoring the Dell-AMD agreement.

That agreement, reached in September 2005, designated the Western District as the forum to resolve disputes relating to all subpoenas that might be served on Dell. And the Stipulation is clear that “any subpoena for testimony . . . will issue out of the United States District Court for the Western District.” Stipulation § 11 (Exh. A). That provision has no other reason to exist but to make sure that any future discovery disputes would be resolved by that and only that district court. In fact, Dell receives hundreds of third-party subpoenas every year. And Dell’s standard practice is to insist that all subpoenas are issued out of the Western District so that any disputes are resolved there.

Section 11 of the Stipulation must be given meaning. *See Lynch Prop., Inc. v. Potomac Ins. Co. of Illinois*, 140 F.3d 622 (5th Cir. 1998) (stating that contracts are construed “to give effect to each term in the contract and to avoid rendering any term a nullity”). Yet the Special Master’s conclusion renders the Stipulation provision meaningless since it would only dictate the geographical caption plastered across the top of the Subpoenas. Section 11 was intended to govern the location for the resolution of future disputes, just as Dell explained to Intel “that any disputes that arose regarding compliance with the subpoena would be resolved out of the Western District of Texas.” Intel Brief (D.I. 1327 in C.A. 05-MD-1717), ¶ 2. Intel agreed and issued the subpoena on that basis. *Id.*

To the extent that the Stipulation did designate the Western District as the only forum for resolving disputes related to the Subpoenas, the Special Master has recommended that this Court rescind the Stipulation. Recommendation at 4-5. AMD and Dell negotiated and agreed to that provision as part of a larger agreement obligating Dell to preserve, collect, and produce documents in this matter. After reaching agreement, AMD and Dell submitted the Stipulation to

this Court, which entered the Stipulation as an Order in September 2005.⁸ To rescind that agreement more than three years after it was entered and after Dell has performed its obligations thereunder would constitute an extreme and unfair remedy.

Finally, contrary to the Special Master's conclusion that the Stipulation was superseded (Recommendation at 4), the Stipulation, and specifically the provision at issue here, was not superseded in all respects by the January 18, 2007 Document Production Agreement Between Dell and Requesting Parties. (Exh. 1.) The Document Production Agreement is based on the document collection that Dell performed pursuant to the Stipulation.⁹ While the latter agreement did discontinue Dell's ongoing document preservation obligations, Dell remained obligated to preserve that which had already been preserved under the Stipulation and to search and produce documents based on a single, agreed-to search term set instead of the various parties' disparate document subpoenas.¹⁰ Further, Dell has continued to maintain and preserve a copy of its microprocessor procurement databases and, at great expense to Dell, continued to preserve an on-line database of the custodian's hard drives.¹¹

Conclusion

For the foregoing reasons, Dell and the Dell Employees object to the Recommendation and ask that this Court enter an Order finding that this Court does not have jurisdiction to resolve any disputes relating to the Subpoenas by virtue the Stipulation between AMD and Dell that specified the Western District as the forum for resolving discovery disputes related to the Subpoenas, that the Stipulation was proper, and that the Stipulation was not superseded.

Respectfully,

/s/ Lauren E. Maguire

Lauren E. Maguire

LEM: nml

Attachments

cc: Frederick L. Cottrell, III, Esquire (by hand; w/attachments)
Richard L. Horwitz, Esquire (by hand; w/attachments)
James L. Holzman, Esquire (by hand; w/attachments)

⁸ The fact that this MDL was established after the Stipulation was entered is irrelevant. AMD's action against Intel was pending in this same Court when AMD and Dell agreed that all subpoenas would be issued out of the Western District, and this Court entered that Stipulation as an Order.

⁹ "Dell will collect, process and review . . . (a) Active data files from the hard drives of the 28 'Custodians' defined by, and imaged pursuant to, the Preservation Stipulation." Document Production Agreement § III.A.1 (Exh. 1).

¹⁰ "In place of specific document requests, definitions, instructions, and other terms of the Subpoenas, the parties have agreed to use a custodian-based, search-term approach to electronically search Dell's data files." *Id.* at § II.F.

¹¹ The Stipulation cannot have been completely superseded since the parties to the Document Production Agreement were to "prepare a joint stipulation . . . to reflect the agreements herein that modify or supersede the Preservation Stipulation." *Id.* at § III.A.6.

EXHIBIT 1

MICROPROCESSOR ANTITRUST LITIGATION

DOCUMENT PRODUCTION AGREEMENT BETWEEN DELL AND REQUESTING PARTIES

I. Background

- A. This Agreement, effective January 1, 2007, is between Dell, Inc. ("Dell"); Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. (collectively "AMD"); Intel Corporation and Intel Kabushiki Kaisha (collectively "Intel"); and the parties in the MDL Action (claimants therein referred to as the "MDL Plaintiffs") and the California Action (claimants therein referred to as the "California Plaintiffs").
- B. This Agreement governs all subpoenas served on Dell in the following matters:
1. *Advanced Micro Devices, Inc. and AMD International Sales & Services, Ltd. v. Intel Corporation and Intel Kabushiki Kaisha*, No. 05-441-JJF, United States District Court, District of Delaware ("AMD Action").
 2. *In re Intel Corp. Microprocessor Antitrust Litigation*, MDL Docket No. 1717-JJF and *Phil Paul, et al. v. Intel Corp.*, Case No. 05-485-JJF, United States District Court, District of Delaware ("MDL Action").
 3. *In re Intel x86 Microprocessor Cases, Judicial Council Coordination Proceeding No. 4443*, Superior Court of California, County of Santa Clara ("California Action").
- C. The subpoenas served on Dell may be referred to herein as the "Subpoenas."
- D. AMD, Intel, the MDL Plaintiffs, and the California Plaintiffs may be referred to herein as the "Requesting Party" or "Requesting Parties."

II. Subpoenas to Dell

- A. Following the lawsuit filed by AMD against Intel, Dell and AMD entered into a September 2, 2005 stipulation for document preservation ("Preservation Stipulation") and an April 25, 2006 supplemental stipulation for document preservation ("Supplemental Preservation Stipulation") (Exhibits A and B).
- B. On October 4, 2005, AMD served Dell with a document production subpoena ("AMD Subpoena") (Exhibit C).
- C. On June 21, 2006, Intel served Dell with a document production subpoena ("Intel Subpoena") (Exhibit D).

- D. On June 22, 2006, plaintiffs in the MDL Action (“the MDL Plaintiffs”) served Dell with a document production subpoena (“MDL Subpoena”) (Exhibit E).
- E. On June 22, 2006, plaintiffs in the California Action (“the California Plaintiffs”) served Dell with a document production subpoena (“California Subpoena”) (Exhibit F).
- F. In place of specific document requests, definitions, instructions, and other terms of the Subpoenas, the parties have agreed to use a custodian-based, search-term approach to electronically search Dell’s data files, and the parties have agreed to use the data processing, review, and production protocols described in this Agreement to produce information relevant to the claims and defenses in the litigation.

In addition, Dell has agreed to produce certain transactional data relating to its purchase of microprocessors, its sale of computers, and the payments, rebates, subsidies, and marketing support provided by Intel. The parameters of this production will be reflected in a separate agreement.

- G. This Agreement supersedes the Subpoenas, the Preservation Stipulation, and the Supplemental Preservation Stipulation.

III. Procedures and Protocols

A. Media, data, metadata

- 1. Dell will collect, process, and review for possible production the following:
 - a. Active data files from the hard drives of the 28 “Custodians” defined by, and imaged pursuant to, the Preservation Stipulation.
 - b. Email on the current work hard drive of Gretchen Miller.

This data will be collected at Dell’s option either by using Encase Enterprise Edition (and collect only files that meet the date, file type, and First Search Term Set parameters set forth in this Agreement) or by re-imaging the hard drives.

- c. Exchange server email for Michael Dell and Kevin Rollins through January 1, 2007 (“the Dell/Rollins Second Harvest”).

After the Dell/Rollins Second Harvest, there shall be no ongoing preservation obligations as to Mr. Dell or Mr. Rollins under the Preservation Stipulation, the Supplemental Preservation Stipulation, or otherwise.

- d. Email on the current work hard drives of Dan Allen, Jeff Clarke, Glenn Neland, and Jerele Neeld through January 1, 2007 ("the Allen Second Harvest").

This data will be collected at Dell's option either by using Encase Enterprise Edition (and collect only files that meet the date, file type, and First Search Term Set parameters set forth in this Agreement) or by re-imaging the hard drives.

After the Allen Second Harvest, there shall be no ongoing preservation obligations as to Mr. Allen, Mr. Clarke, Mr. Neland, or Mr. Neeld under the Preservation Stipulation, the Supplemental Preservation Stipulation, or otherwise.

- e. The media and data described in Paragraphs III(A)(1)(a) – (d) above will be referred to as "Custodian Data."
 - f. Dell represents that, to the best of its knowledge, (1) the above-listed media are likely to contain most of the relevant, non-duplicative data stored on media preserved pursuant to the Preservation Stipulation for the Custodians, and (2) Dell does not believe that there are significant amounts of relevant, non-duplicative data stored on other such media. The Requesting Parties acknowledge that non-duplicative, relevant information may reside in other media that is not being processed, reviewed, or produced.
2. Subject to disclosure to and feedback or objection from the European Commission ("EC"), Dell will produce a copy of the documents provided to or seized by the EC in its investigation of Intel, except the following documents related to the investigation will not be produced:
- a. Correspondence to or from the EC;
 - b. Materials prepared for or at the request of the EC;
 - c. Attorney-client communications or materials covered by work product privilege, even if seized by or produced to the EC;
 - d. Questions or requests for information from the EC or responses to the EC's questions or requests for information;
 - e. Information protected from disclosure by EU or other applicable privacy laws or regulations; and
 - f. Materials provided to or seized by the EC after the effective date of this Agreement.

- g. The materials described in Paragraphs III(A)(2)(a) – (f) above will be referred to as the “EC Production.”

The Requesting Parties agree that the possession of materials by the EC, obtained by seizure or other means, does not constitute a waiver by Dell of any privilege or other exemption against production.

3. Only active, user-created, and non-deleted files will be processed and reviewed for possible production. Fragmented, shadowed, deleted, and similar non-active data will not be processed, reviewed, or produced. System files, program files, executable files, empty files, templates, and other files that come with system or application files will not be processed, reviewed, or produced.
4. Backup tapes, shared drives, home computers, and other media will not be processed, reviewed, or produced, unless a Requesting Party can establish a reasonable likelihood (a) that responsive data exists on such media that is non-duplicative of data available from any other source and (b) that such data bears a significant impact on the claims or defenses in the litigation.

The Requesting Parties shall have 90 days after Dell’s production of the First Inspection Set and the EC Production to establish that such media should be processed, reviewed, or produced. If no such showing is made, Dell shall have no further obligation to preserve backup tapes, shared drives, home computers, or other media under the Preservation Stipulation, Supplemental Preservation Stipulation, or otherwise.

The Requesting Parties shall bear all costs associated with the processing, review, and production of data from such backup tapes, shared drives, home computers, or other media.

5. Except to the extent the EC Production may consist of paper (or imaged static documents), Dell will not gather, review, or produce paper documents.
6. The parties will prepare a joint stipulation to file with the appropriate courts to reflect the agreements herein that modify or supersede the Preservation Stipulation and the Supplemental Preservation Stipulation.

B. Pre-culling

The data will be pre-culled by file type, de-duplication, and date.

1. File types

- a. The following file types will be processed and reviewed for possible production: (1) doc, (2) mpp, (3) msg, (4) oft, (5) ost, (6)

pdf, (7) pps, (8) ppt, (9) pst, (10) pub, (11) rtf, (12) tif, (13) txt, (14) vsd, (15) wbk, (16) wk1, (17) wks, (18) wpd, (19) xls, (20) xlw, and (21) zip.

b. Other file types will not be processed, reviewed, or produced.

2. De-duplication

a. De-duplication for e-mail and electronic documents will be done by custodian so that only one instance of a file has to be reviewed/produced for each custodian.

b. Near-duplicates will be culled out and not subject to review or production.

3. Dates

a. Data files before January 1, 2002 will be culled out, except as to Michael Dell, Kevin Rollins, and Kevin Kettler, whose files from January 1, 2001 forward shall be processed and reviewed for possible production.

C. **Search terms, review, and production**

Because Dell and the Requesting Parties have agreed to use search terms run against the Custodian Data in place of the specific document requests, definitions, and instructions in the Subpoenas, non-privileged data files that have search term "hits" shall be presumptively produced, but Dell is not required to produce files that are clearly not relevant to the litigation.

1. First Production Set

a. The Requesting Parties have developed a mutually agreed-upon list of search terms ("First Search Term Set") (Exhibit G), which is numbered and written/defined in dtSearch Boolean syntax to be run verbatim. Dell will run the First Search Term Set against the Custodian Data. If any of the search terms result in an inordinate number of hits, the parties will work together to narrow the search terms.

b. Dell will review all files with search term hits for relevance to the claims and defenses in this litigation. Files without search term hits will not be reviewed or produced. Non-privileged documents with hits shall be presumptively produced, but Dell may withhold documents that are clearly not relevant to the litigation. Non-privileged, responsive documents shall be produced to AMD and Intel in native format as further detailed in the Dell Stipulation Regarding Electronic Discovery and Format of Document

Production (the "Dell Native Production Stipulation") (Exhibit H), which is incorporated into this Agreement by reference. These documents shall constitute the "First Inspection Set." If a non-privileged file contains a search term hit and is going to be part of the First Inspection Set, that entire file, including attachments, shall be presumptively part of the First Inspection Set, but Dell is not required to include in the First Inspection Set attachments that are clearly not relevant to the litigation.

- c. AMD and Intel shall review the First Inspection Set on their vendors' systems consistent with the provisions of the Dell Native Production Stipulation (Exhibit H).
- d. No later than 60 days after receiving the First Inspection Set, AMD and Intel shall designate files for production. Using the reference file identifier supplied by Dell, AMD and Intel shall provide Dell a consolidated list of documents for production. The Requesting Parties will convert the designated native files to tiff format and Bates-number and brand the files as "Confidential" pursuant to the Protective Order entered in the AMD Action. The Requesting Parties will create a load file based on agreed-upon specifications to accompany the tiff images. The tiff images and load file shall constitute the First Production Set. The Requesting Parties shall jointly bear the costs of creating the First Production Set.

2. Second Production Set

- a. No later than 60 days after receiving the First Inspection Set, AMD and Intel may create another mutually agreed-upon list of search terms, which shall be numbered and written/defined in dtSearch Boolean syntax to be run verbatim ("Second Search Term Set"). Dell will run the Second Search Term Set against Custodian Data. If any of the search terms result in an inordinate number of hits, the parties will work together to narrow the search.
- b. Dell will review the non-duplicative files that contain hits from the Second Search Term Set for relevance to the claims and defenses in this litigation. Files without search term hits will not be reviewed or produced. Non-privileged documents with hits shall be presumptively produced, but Dell may withhold documents that are clearly not relevant to the litigation. Non-privileged, responsive documents shall be produced to AMD and Intel in native format as further detailed in the Dell Native Production Stipulation (Exhibit H). These documents shall constitute the "Second Inspection Set." If a non-privileged file contains a search term hit and is going to be part of the Second Inspection Set, that entire file, including attachments, shall be part of the Second

Inspection Set, but Dell is not required to include in the Second Inspection Set attachments that are clearly not relevant to the litigation.

- c. AMD and Intel shall review the Second Inspection Set on their vendors' systems consistent with the provisions of the Dell Native Production Stipulation (Exhibit H).
- d. No later than 60 days after receiving the Second Inspection Set, AMD and Intel shall designate files for production. Using the reference file identifier supplied by Dell, AMD and Intel shall provide Dell a consolidated list of documents for production. The Requesting Parties will convert the designated native files to tiff format and Bates-number and brand the files as "Confidential" pursuant to the Protective Order entered in the AMD Action. The Requesting Parties will create a load file based on agreed upon specifications to accompany the tiff images. The tiff images and load file shall constitute the Second Production Set. The Requesting Parties shall jointly bear the costs of creating the Second Production Set.

3. No further production

- a. After completing the First and Second Production Sets and the EC Production, Dell will have no further obligation to run additional search terms, to search for or produce other information, or to preserve any data, documents, or other information for possible production.
- b. No later than 30 days after Dell has notified the Requesting Parties that it has completed the First and Second Production Sets and the EC Production, all other Dell data and information, including the First and Second Inspection Sets, shall be returned to Dell and permanently deleted from all systems and media used to process, review, produce, store, or backup the data, except as may otherwise be agreed between the parties hereto. The Requesting Parties and their vendors shall certify deletion of this data.

D. **Privilege log**

1. The Requesting Parties may seek a privilege log as to no more than two mutually-agreed, three-month periods of the relevant time for production. If the Requesting Parties cannot agree, AMD and Intel may each select one three-month period. Dell is not obligated to provide any other privilege logs. If a privilege log is requested, it must be requested no later than March 1, 2007.

IV. Transactional Data

Notwithstanding any of the provisions detailed above, Dell will preserve its copies of the microprocessor procurement databases described in the Preservation Stipulation for production of transactional data.

The Requesting Parties will prepare a consolidated list of transactional data they seek. The parties will then negotiate the scope and protocols for production of that data.

V. Cost

AMD, the MDL Plaintiffs, and Intel agree to compensate Dell in the amount of \$890,000 for Dell's costs of collecting, processing, hosting, and producing data and documents under this Agreement and in response to the Subpoenas. AMD, the MDL Plaintiffs, and Intel shall each pay Dell \$296,667 within 15 days of Dell's production of the First Inspection Set. If Dell produces the Phase One Inspection Set on a rolling basis, this payment shall be made within 15 days of when Dell gives AMD, the MDL Plaintiffs, and Intel notice that production of the First Inspection Set is substantially complete.

As outlined above in Section III(C)(1)(d) and Section III(C)(2)(d), AMD, the MDL Plaintiffs, and Intel agree to pay the costs of creating and producing the First and Second Production Sets and for Dell to obtain a copy of the First and Second Production Sets in a format agreeable to Dell.

The payments in this Paragraph V shall constitute the only and final reimbursement by AMD, the MDL Plaintiffs, and Intel of costs incurred by Dell in complying with this Agreement or in responding to the Subpoenas. Dell will pay its own attorney review costs and any and all other additional costs incurred in collecting, processing, hosting, reviewing, or producing data or in otherwise complying with the terms of this Agreement or responding to the Subpoenas, with the exception of any costs incurred in the production of data pursuant to Paragraph III(A)(4) above.

VI. Production of Data to Other Requesting Parties

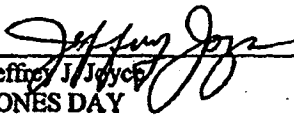
The Requesting Parties agree that Dell will not produce to any party other than AMD, the MDL Plaintiffs, and Intel the First and Second Inspection Sets, First and Second Production Sets, or the EC Production until the Requesting Parties have an opportunity to resolve any cost-sharing issues between or among themselves either through negotiations and agreement or through intervention of the Special Master.

VII. Alienware

The parties agree to negotiate a similar custodian-based, search-term production protocol for the subpoenas served on Alienware. Pending negotiation of that agreement, the Requesting Parties agree that Alienware may have an indefinite extension of time to object or otherwise respond to subpoenas to Alienware.


Dated: January 18, 2007

By:



Jeffrey J. Joyce
JONES DAY
2727 North Harwood Street
Dallas, Texas 75201-1515

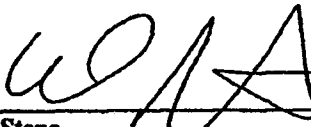
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ATTORNEYS FOR ADVANCE MICRO
DEVICES, INC. AND AMD INTERNATIONAL
SALES & SERVICES LTD.

By:



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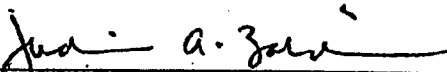
ATTORNEYS FOR INTEL CORPORATION
AND INTEL KABUSHIKI KAISHA

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ATTORNEYS FOR INTEL CORPORATION
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By:


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ATTORNEYS FOR MDL PLAINTIFFS,
ON BEHALF OF CO-LEAD COUNSEL, BY
PERMISSION

By:

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ATTORNEYS FOR CALIFORNIA PLAINTIFFS

MICROPROCESSOR ANTITRUST LITIGATION

EXHIBIT G TO DOCUMENT PRODUCTION AGREEMENT BETWEEN DELL AND REQUESTING PARTIES

FIRST SEARCH TERM SET

1. (meet* w/2 comp) or (meet* w/2 compet*)
2. mcp
3. mcap
4. ecap or "e-cap" or lcap or "l-cap" or "price exception"
5. moap or "mother of all programs"
6. iip or "intel inside"
7. mid w/2 comp
8. jumpstart
9. (amd or opteron) w/10 fund*
10. (bid or bridge) w/2 (fund* or bucket* or packet* or pot* or manag*)
11. except* w/2 fund
12. tracker
13. go w/2 fast*
14. "processor fund*" or (pric* w/3 fund*) or (Intel w/3 fund*) or (match* w/3 fund*)
15. D315
16. forward w/2 pric*
17. tactic*
18. (tell* or told or speak* or spoke* or commun* or inform* or meet* or met or confer* or call* or discuss* or share* or note or respon* or roadmap) w/5 (paul or ottelini or craig or barrett or andy or grove or art or intel)
19. fight* w/25 fund*
20. cassini

21. maid or bambino or robusto or "square hole"
22. maverick or renegade or nemo or lilo or stitch
23. project w/10 shanghai
24. amd* or (advanced w/2 (microdevices or devices))
25. opteron*
26. athlon* or A64* or duron or sempron or K-8
27. intel w/2 (approv* or guideline* or permi* or polic* or lever*)
28. amd or intel w/20 (share or position or percent*)
29. *processor* w/3 (strateg* or plan*)
30. etr or "executive technical review"
31. "processor landscape"
32. roadmap w/20 (intel or amd)
33. (amd or intel) w/20 (negotiat* or deal or strateg*)
34. intel w/10 (fud or threat* or withhold* or retaliat* or retribution* or fear* or afraid or *fair or harm* or hurt*)
35. intel w/10 (punish* or revenge or kill* or lever* or pressur* or compet* or obstruct* or kick* or aggress* or damag* or squeeze*)
36. (los* or loos* or *hold*) w/10 (fund* or mdf or rebate* or favor* or check)
37. "cliff discount*" or "first dollar" or "dollar one" or ber or "back end rebate" or predatory
38. (soft or sludge or discretion*) w/10 (money or dollars or *\$\$\$* or fund*)
39. (field* w/10 rate*) or ifr
40. intel w/10 ("below cost" or "below margin" or free or bundl*)
41. intel w/10 (incent* or rebate or discount or special or *\$\$\$* or dcp or "demand creation program")
42. intel w/10 ("supply line agreement" or sla)
43. intel w/10 (relationship* or partner*)

44. intel w/10 (exclusi* or *only* or *house or *shop or quota or restrict* or “loyal*” or “preferred” or promis* or “no choice”)
45. intel w/10 (scheme* or strateg* or agreement* or loi or “letter of intent” or loi or mou or “memo of understanding” or “memorandum of understanding” or contract*
46. intel w/10 (jedec or ieee or tgc or adt or pci-sig)
47. intel and (capacity w/5 problem*)
48. intel w/10 (refus* or angry or unhappy* or weak* or concern* or nightmar* or terribl* or fiasco* or disaster* or catastroph* or calamity or debacle* or disappoint* or frustrat* or furious* or upset* or livid or enrage* or poor* or uncomfortable or fault* or mistak* or miscalculat* or mismanage* or bad or risk* or lose or loose or lost or *happy* or pain* or hardball or “dirty trick**”)
49. (intel or microprocessor*) w/10 (“executive summary” or “executive report” or “board presentation” or bod or minutes or directors or management* or committee* or “white paper” or “task force” or consultan*)
50. (hector or ruiz or dirk or meyer or marty or seyer or dave or fionda or jerry or vogel) w/3 (clarke or koval or everett or vanderslice or kevin or rollins or zucker or stephan)
51. competition w/10 (*fair or attack* or harm* or hurt* or destroy* or disadvantage* or kill* or outspend* or bury or beat* or “shut out” or “keep out” or “lock out” or “squeeze out” or “at all costs”)
52. (cloran or wright or fionda) and (deal or mobile or laptop or desktop or server or sempron* or duron* or turion* or dual-core*)
53. (win or won or lose or lost or risk or bid) w/5 (pixar* or amazon* or monster* or egg or petrobas* or cybertrader or “american airlines” or aa or msn or eauction or belgacom or stockholm or “france telecom” or “bank of greece” or nec or statoil or volvo or fiat or supercomputer* or cluster*)
54. (bapco or sysmark* or ecost or e?cost) w/10 (*fair or *advantage* or *competiti* or complaint* or manipulate* or influence* or deceptive)
55. price/perf* or (price w/10 performance) and (amd or intel)
56. kadoka or (sweat w/10 tears)
57. point* w/10 indifference*
58. swot
59. jftc or “japan fair trade commission” or “european commission” or “eu” or “competition authorities”

60. intel w/10 (antitrust or anticompetitive or monopol* or litigation or sanction* or illegal or unfair)
61. (mccollam or savo or sant or lefree or kurtzer or kinoshita or hunter or harder or foote or el-dardiry or shah or timm or webb or lahr or larsen or kawamura or gleissner or fleck or fleig or aertebjerg) w/5 (*competi* or tell* or told or speak* or spoke* or commun* or inform* or meet* or met or confer* or call* or discuss* or share* or note or respon*)
62. ccp
63. mmbp
64. (5x5 or qbr or ebr) and (amd or intel)
65. otellini or grove or maloney or gelsinger
66. "guidance package"
67. (100* or pure or exclusive) and (amd or intel)
68. strat* buy
69. "tier 0 incentive"
70. "refuse to lose"
71. "orange book*" or "yellow book*" or "red book*"
72. "contingent upon" and (amd or intel)
73. "economic value" and (amd or intel)
74. spiff* and (amd or intel)
75. "bucket funds"
76. (free or "no charge") w/20 (amd or intel)
77. (D-350 or "commercial desktop") and (amd or intel)
78. "share the pain"
79. vendor w/ 10 "target income"
80. enhancement and (amd or intel)
81. allocation w/20 (amd or intel)
82. "hit the number*"

83. "sweetheart deal" and (amd or intel)
84. ("tier one" or "tier 1" or "tier zero" or "tier 0") and (amd or intel)
85. "mnc"
86. amd w/ 10 *suit or litigation
87. "Fat Tire" or Guinness or Sonic or Shiner or "Kirin Ichiban" or "Tsing Tao" or "Blair Bonnie" or Bristol or Humpback or Magnum or Bouillon or Vanguard or Octans

EXHIBIT A

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

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

STIPULATION RE: PRESERVATION OF DOCUMENTS BY DELL INC.

WHEREAS, an action was commenced in the United States District Court for the District of Delaware on June 27, 2005, Civil Action No. 05-441-JJF, by plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. (hereafter jointly, "AMD") against defendants Intel Corporation and Intel Kabushiki Kaisha (hereafter jointly, "Intel");

WHEREAS, Dell Inc. (hereafter, "Dell"), a non-party to this action, has in its possession, custody, and control documents and information maintained in electronic form, which may fall into one or more of the categories listed in Exhibit A to this Stipulation ("Responsive Documents");

WHEREAS, Dell has engaged in good faith efforts to identify a list of Dell's employees who, as of the date of this Stipulation, are or were involved in the negotiation and decision

making concerning x86 microprocessor procurement and selection and therefore would be most likely to have prepared or received Responsive Documents (hereafter, "Custodians" for purposes of this Stipulation). This list of Dell Custodians is attached as Exhibit B.

WHEREAS, Dell has agreed to take the various steps set forth in this Stipulation in order to preserve evidence in the possession of Custodians.

NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN AMD AND DELL, SUBJECT TO THE APPROVAL OF THE COURT, AS FOLLOWS:

1. To the extent Dell has not already done so, upon execution of this Stipulation, Dell will deliver a "Litigation Hold" notice to all Custodians, which shall direct the Custodians to retain and preserve Responsive Documents.

2. Dell will use good faith efforts to preserve the June 27, 2005 back-up tapes for any exchange (e-mail) servers assigned to any of the Custodians that are likely to contain Responsive Documents.

3. Dell will use good faith efforts to preserve the most recent back-up tapes on or prior to June 27, 2005 for any shared servers assigned to any of the Custodians that are likely to contain Responsive Documents.

4. To the extent Dell has not already done so, Dell will use good faith efforts to image the hard drive from the desktop or notebook computers used in the normal course of business by any Custodian that are likely to contain Responsive Documents and will use good faith efforts to preserve either the original hard drive or the image of the hard drive. To the

extent that a Custodian possesses unique Responsive Documents on a home computer, Dell will instruct that Custodian to preserve those documents for later possible production.

5. To the extent Dell has not already done so, Dell will use good faith efforts to suspend any auto-deletions of emails for each Custodian that have not otherwise been preserved, collected, or copied for production.

6. To the extent Dell has not already done so, Dell will make a copy of its microprocessor procurement databases and will use good faith efforts to maintain and preserve that copy.

7. As to Responsive Documents of the Custodians created or received after June 27, 2005, to the extent that Dell has not already done so, Dell shall send an electronic notice (e.g. Microsoft Outlook poll or any other notice which seeks electronic confirmation upon receipt) to the Custodians reminding the Custodians of their obligations set forth in the Litigation Hold. The Custodians shall confirm receipt of the Litigation Hold. Further, every one hundred and eighty days thereafter, Dell shall send out a similar electronic notice to the Custodians.

8. Dan Anderson and Alan Luecke were previously identified by AMD as Custodians. Dell has informed AMD that these individuals no longer are employed by Dell and that the Responsive Documents of these Custodians have not been systematically preserved. To the extent that Dell identifies any Responsive Documents created or maintained by those Custodians that still exist, Dell shall use good faith efforts to preserve those Responsive Documents for later possible production.

9. Nothing herein shall limit Dell's right to contest or otherwise object to a future subpoena for the production of documents. Dell is not waiving any objections to the scope of

discovery or relevancy or admissibility of any documents requested by any party to this action. Dell expressly reserves all objections available to it under the Federal Rules of Civil Procedure and the Federal Rules of Evidence. Dell enters into this Stipulation with the express understanding that the Stipulation should not be construed as an order by the Court regarding the scope of discovery or the relevancy or admissibility of any documents requested by an party to this action.

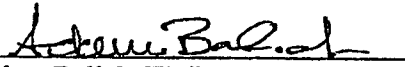
10. AMD agrees that it will use good faith efforts to avoid imposing excessive costs and burdens on Dell, and further that it will negotiate in good faith regarding any production requests as well as the allocation of expenses that may be incurred by Dell regarding preservation and production of documents pursuant to this Stipulation and any subpoena for the production of documents that AMD may serve upon Dell.

11. AMD agrees that any subpoena for testimony or for the production of documents and/or testimony AMD may serve upon Dell will issue out of the United States District Court for the Western District of Texas.

12. The parties recognize that Dell's obligations to preserve evidence does not extend beyond the Responsive Documents in the possession, custody or control of the Custodians as now identified or that may be identified in the future.

13. This Stipulation will remain in force pending further Stipulation or order of the Court or agreement of the parties to this Stipulation. AMD and Dell stipulate and agree that, upon request of the other, they shall, in good faith, confer about the contents and obligations under this Stipulation as appropriate.

BIFFERATO GENTILOTTI BIDEN & BALICK



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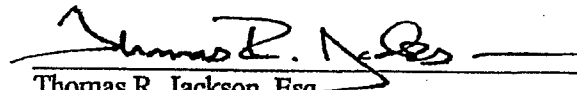
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Los Angeles, CA 90071
213-430-6340

Dated: September 2, 2005

JONES DAY



Thomas R. Jackson, Esq.
trjackson@jonesday.com
Daniel T. Conrad, Esq.
dtconrad@jonesday.com

2727 North Harwood Street
Dallas, Texas 75201-1515
Telephone: 214-220-3939
Facsimile: 214-969-5100

Attorneys for Dell Inc.

Dated: September 6, 2005

ORDER

It is so ordered this ___ day of August, 2005

United States District Judge

EXHIBIT A

Definitions

For purposes of this Stipulation, "DOCUMENT" includes, without limitation, any hard copy writings and documents as well as electronically stored data files including e-mail, instant messaging, and databases created or dated on or after January 1, 2000 unless otherwise agreed upon by the parties to this Stipulation or ordered by the Court for good cause shown.

With respect to electronically stored data, "DOCUMENT" also includes, without limitation, any data on magnetic or optical storage media, including removable storage, stored as an "active" file or backup file, in its native format. Absent agreement of the parties or order of the Court for good cause shown, "DOCUMENT" does not include deleted, shadowed, fragmented or other data that cannot be recovered by the Custodian in the ordinary course of business. However, to the extent AMD seeks to recover deleted, shadowed, fragmented or other data that cannot be recovered by the Custodian in the ordinary course of business, AMD shall have the right to ask for such discovery at its own cost and, if Dell does not agree AMD may move the United States District Court for the Western District of Texas for such production for good cause shown.

For purposes of this Stipulation, "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (e.g., Sempron, Athlon, Turion, Opteron, Celeron, Pentium, and Xeon).

For purposes of this Stipulation, "FINANCIAL INDUCEMENT" means any payment, subsidy, rebate, discount (on MICROPROCESSORS or on any other INTEL product), Intel Inside funds, e-CAP funds, MDF, "meeting competition" or "meet comp" payments, "depo" payments, program monies, or any advertising or pricing support.

For purposes of this Stipulation, "your Company" refers to Dell Inc. and any of its present or former subsidiaries, joint-ventures, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "INTEL" refers to Intel Corporation and any of its present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof.

For purposes of this Stipulation, "MDF" refers to market development funds.

Purchase Terms

1. DOCUMENTS constituting or reflecting communications with INTEL concerning actual or proposed terms and conditions of the sale of MICROPROCESSORS, including without limitation pricing, quantities, discounts, rebates, Intel Inside funds, E-Cap funds and MDF.
2. DOCUMENTS constituting or reflecting internal discussions or other communications within your Company concerning actual or proposed terms and conditions of sales of INTEL or AMD MICROPROCESSORS.
3. DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon the exclusive purchase of INTEL

MICROPROCESSORS, or upon the purchase of a minimum volume of INTEL MICROPROCESSORS, or upon the purchase of a minimum percentage of your Company's MICROPROCESSOR requirements.

4. DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon your Company's agreement to use only INTEL MICROPROCESSORS in a particular computer platform, computer model or computer type.

5. DOCUMENTS reflecting or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon your Company's agreement to use only INTEL MICROPROCESSORS in computers sold in a particular geographic region.

6. DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings pertaining to INTEL's pricing of MICROPROCESSORS including without limitation any FINANCIAL INDUCEMENT.

7. DOCUMENTS constituting, reflecting, or discussing any offer of a FINANCIAL INDUCEMENT by INTEL conditioned upon any restriction or limitation of your Company's purchases of AMD MICROPROCESSORS or conditioned upon any restriction or limitation of the sale or promotion of products containing AMD MICROPROCESSORS.

8. DOCUMENTS constituting, reflecting, or discussing any threat by INTEL to withdraw or withhold a FINANCIAL INDUCEMENT as a result of your Company's sale of products containing AMD MICROPROCESSORS, its purchases of AMD MICROPROCESSORS, or its plan to develop, release or promote a product containing an AMD MICROPROCESSOR.

9. DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to provide discounted or free chipsets, motherboards, or other components in connection with the purchase of, or as part of a package or bundle with, INTEL MICROPROCESSORS.

10. DOCUMENTS constituting, reflecting, or discussing any offer by INTEL to discount or subsidize or provide marketing support in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

11. DOCUMENTS constituting, reflecting or discussing your Company's product line that was being designed, planned or developed that would contain an AMD MICROPROCESSOR.

Purchase History

12. DOCUMENTS sufficient to show:

- a) the prices paid by your Company to INTEL for all MICROPROCESSORS since January 1, 2000.

- b) the aggregate amount by quarter of any payment, subsidy, rebate, discount, Intel Inside funds, E-Cap funds, MDF, "meeting competition" payments, or any advertising or pricing support provided to your Company in connection with its purchase of MICROPROCESSORS (by quarter) since January 2000.
- c) Historical MICROPROCESSOR purchase volumes (by quarter) from INTEL and AMD since January 1, 2000.
- d) Analysis of expected and realized revenue, cost, and profitability of product lines (by quarter) since January 1, 2000.
- e) The use or disposition of any discount, subsidy, or marketing support provided by INTEL in connection with the sale of servers containing INTEL MICROPROCESSORS for the purpose of competing against servers containing AMD MICROPROCESSORS.

Comparisons of INTEL and AMD MICROPROCESSORS

13. DOCUMENTS constituting or reflecting analyses, summaries, reports or studies prepared in connection with the consideration of the purchase or use of AMD and/or INTEL MICROPROCESSORS.

14. DOCUMENTS constituting or reflecting analyses, summaries, reports, studies or other writings prepared comparing INTEL and AMD MICROPROCESSORS whether from a price, quality or other standpoint.

Miscellaneous

15. DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning your Company's participation in or support of any AMD product launch or promotion.

16. DOCUMENTS constituting, reflecting, or discussing communications with INTEL concerning the allocation of microprocessors or other INTEL components.

17. DOCUMENTS constituting or reflecting discussions within your Company about unfair or discriminatory allocations of INTEL products or the fear of such unfair or discriminatory allocations.

EXHIBIT B

Document Custodians

**Allen, Dan
Anne, Seshu
Brown, Dave
Clarke, Jeff
Dell, Michael
Dixon, Eddie
Donnelly, Steve
Faulk, Brett
Garvin, Martin
Geerts, Scott
Gruzen, Alex
Hand, Neil
Kettler, Kevin
Malloy, Rich
McElroy, Terry
Medica, John
Melnick, Jon
Mette, Raven
Monk, James
Neeld, Jerele
Neland, Glenn
Nelson, Kevin
Poukter, John
Rollins, Kevin
Schuckle, Rick
Schweppe, Guy
Ward, Darrell
Woodruff, Nick**

CERTIFICATE OF SERVICE

I, Adam Balick hereby certify that on the 7th day of September, 2005 the attached Stipulation regarding Preservation of Documents by Dell Inc. was served electronically upon the following:

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ADAM BALICK