IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

RESPONSE OF DELL INC. TO AMENDED MOTION TO MODIFY PROTECTIVE ORDER AND APPROVE PROTOCOL FOR UNSEALING DOCUMENTS

Dell Inc. ("Dell"), one of several third parties that have produced large volumes of discovery pursuant to the third party discovery procedures in this case, respectfully submits this

response to the Amended Motion to Modify Protective Order and Approve Protocol for Unsealing Documents ("Motion") (D.I. 1193 in C.A. No. 05-441).[1]

Several months ago, the New York Times Company, Situation Publishing Ltd., Dow Jones & Co., Inc., The Washington Post, the Reporters Committee for Freedom of the Press, and the Computer & Communications Industry Association ("CCIA") (collectively, "Movants") filed a Motion (1) to Intervene for Purpose of Unsealing Judicial Records and (2) For Partial Reassignment ("Motion to Intervene") (D.I. 840), seeking an order requiring that "all non-confidential information" contained in the parties' preliminary case statements (D.I. Nos. 625, 627, 628, 629, 634, 635, 645, 646, 648) and transcripts of certain telephone conferences and hearings (D.I. Nos. 633, 637, 683) be unsealed and made available to the public. Because Dell understood that certain of the confidential documents and information it produced to the parties in this case were attached to or otherwise referenced in the parties' respective case statements, Dell argued that the Motion to Intervene should have been denied. *See* Response of Dell Inc. to Motion (1) to Intervene for Purpose of Unsealing Judicial Records and (2) For Partial Reassignment (D.I. 849).

Now Movants seek modification of the protective order to allow them access to the same preliminary case statements already filed with this Court and to provide them an "attorney eyes only" review of all documents to be filed under seal by the parties, which Dell understands to mean AMD, Intel, and the Class. The Movants' proposal was developed, it seems, among AMD, Intel, the Class, and Movants without any input sought from third-party Dell, despite the fact that Dell participated in the telephonic conferences concerning the Motion to Intervene.

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[1] Dell expressly preserves any objection it may have to the Court's jurisdiction over it with respect to any issues that may arise in the litigation. Dell further does not waive its right to have any and all subpoenas that are served on Dell be issued out of the Western District of Texas.

Considering Dell's voluminous production—over 89 gigabytes of data—much of which contains Dell confidential business information and trade secrets (such as sales, pricing and cost information; information regarding business strategy; product roadmaps; etc.), the uncontrolled dissemination of that confidential information would significantly and irreparably harm Dell. In fact, Dell produced this confidential information in reliance upon the terms, conditions, and protections afforded to third parties by the Confidentiality Agreement and Protective Order (the "Protective Order"). *See* D.I. 216 ¶ 15 ("Any Third Party that produces documents or provides testimony in the AMD Litigation or the Class Litigation . . . shall have the full benefits and protections of this Protective Order.").

Dell's reliance on those protections weighs heavily against modifying the Protective Order that has been in place for over two years and which induced Dell, as a third party, to produce confidential business information and trade secrets. *See Pansy v. Borough of Sroudsburg*, 23 F.3d 772, 790 (3rd Cir. 1994). Movants have not articulated a compelling reason for removing or fundamentally altering those protections, particularly as they relate to third parties such as Dell. Therefore, to the extent that the Motion seeks access to Dell's confidential information that was included in the preliminary case statements, it should be denied. Further, to the extent the Movants seeks access to Dell's confidential information in future filings, the Motion should be denied. At an absolute minimum, Dell should be consulted and have an opportunity to object before any Dell confidential information is provided to or reviewed by Movants in any form.

ASHBY & GEDDES

/s/ Lauren E. Maguire

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