

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

ADVANCED MICRO DEVICES, INC. and	)	
AMD INTERNATIONAL SALES & SERVICE,	)	
LTD.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C. A. No. 05-441 (JJF)
	)	
INTEL CORPORATION and	)	
INTEL KABUSHIKI KAISHA,	)	
	)	
Defendants.	)	

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IN RE:	)	
	)	
INTEL CORP. MICROPROCESSOR	)	MDL Docket No. 05-1717 (JJF)
ANTITRUST LITIGATION	)	

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PHIL PAUL, on behalf of himself	)	
and all others similarly situated,	)	
	)	C.A. No. 05-485-JJF
Plaintiffs,	)	CONSOLIDATED ACTION
	)	
v.	)	
	)	
INTEL CORPORATION,	)	
	)	
Defendant.	)	

**NOTICE OF SUBPOENA AD TESTIFICANDUM  
AND DUCES TECUM**

PLEASE TAKE NOTICE that, on or before April 14,2009, pursuant to Rules 26, 30, and 45 of the Federal Rules of Civil Procedure, Defendants Intel Corporation and Intel Kabushiki Kaisha, by their counsel, have issued a subpoena *ad testificandum* and *duces tecum* with accompanying schedule of document requests (attached hereto as Exhibit 1), which has been served on the third party listed below.

Defendants Intel Corporation and Intel Kabushiki Kaisha, will take the deposition upon oral examination of Custodian of Records of The NPD Group, Inc., regarding the subject matter set forth in the attached Schedule A attached to the Subpoena. The deposition will take place before an authorized court reporter, commencing at 9:00 a.m. on May 4, 2009, at the law offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, or at such other time and place as agreed to by the parties and will cover the subject matter set forth in the attached Schedule A. The deposition will continue from day to day until completed and shall be transcribed and videotaped. You are invited to attend and cross-examine the witness.

The subpoena commands the third party to produce documents and things, pursuant to Rule 45, Fed. R. Civ. P., concerning the categories identified in Schedule A attached to the subpoena. The document production will take place within 30 days of service of the subpoena, at the location listed below, or at such alternative dates, times, and/or locations as may be mutually agreed upon by counsel.

The subpoenaed party is:

<b><u>Name</u></b>	<b><u>Date/Location of Document Production</u></b>
The NPD Group, Inc. 900 West Shore Road Port Washington, NY 11050 Attn: Custodian of Records	May 4, 2009 @ 9:00 a.m. Gibson, Dunn & Crutcher, LLP 200 Park Avenue New York, NY 10166

OF COUNSEL:

Robert E. Cooper  
Daniel S. Floyd  
Gibson, **Dunn** & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 900071  
(213) 229-7000

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1299 Pennsylvania Avenue  
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Donn P. Pickett  
**BINGHAM McCUTCHEN LLP**  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Telephone: (415) 393-2000  
Facsimile: (415) 3952268

Dated: April 16, 2009  
**912157129282**

POTTER ANDERSON & CORROON LLP

By: /s/ **W. Hardina Drane, Jr.**  
Richard L. Horwitz (#2246)  
W. Harding Drane, Jr. (#1023)  
Hercules Plaza, 6<sup>th</sup> Floor  
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Attorneys for Defendants  
Intel Corporation and Intel **Kabushiki Kaisha**

# **EXHIBIT 1**

# GIBSON, DUNN & CRUTCHER LLP

## LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306

(202) 955-8500

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RGabbert@gibsondunn.com

April 13, 2009

Direct Dial  
(202) 887-3655

Fax No.  
(202) 530-4259

The NPD Group, Inc.  
900 West Shore Road  
Port Washington, NY 11050-4666

Client No.  
T 42376-00764

Re: *Advanced Micro Devices, Inc. v. Intel Corp., No. 05-441-JJF*

Dear Sir or Madam:

We represent Intel Corporation, a defendant in the above-referenced case.

Enclosed is a subpoena we are serving on The NPD Group, Inc. ("NPD Group") for the production of documents relating to a Brand Equalization Tool that was initially developed on behalf of Advanced Micro Devices, Inc. by ARS, Inc., which was at the time a subsidiary of Current Analysis, Inc. ("Current Analysis"). We are serving the subpoena on NPD Group because Current Analysis has informed us that NPD Group purchased the assets of ARS in 2007, including all materials, documents, and information relating to the Brand Equalization Tool.

We have drafted the subpoena to ensure that it does not place any undue burden on NPD Group. To that end, we are willing to discuss any concerns NPD Group may have or proposals for ensuring that Intel receives only those documents sought by the subpoena. A copy of the Protective Order that ensures confidentiality of your documents is also enclosed.

Lastly, while Intel's subpoena also requires a custodian of records to appear and testify to the authenticity of these materials, we are willing to consider an appropriate affidavit from NPD Group in lieu of such a deposition.

Sincerely,



Richard B. Gabbert

RBG/sap  
Enclosures

100634828\_1.DOC

UNITED STATES DISTRICT COURT

for the Southern District of New York

Advanced Micro Devices, Inc. and AMD International
Plaintiff
v.
Intel Corporation and Intel Kabushiki Kaisha
Defendant

Civil Action No. 05-441-JJF

(If the action is pending in another district, state where: District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: The NPD Group, Inc. 900 West Shore Road, Port Washington, NY 11050-4666 Attn: Custodian of Records

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Custodian of records for documents to be produced per Schedule A, attached hereto.

Table with 2 columns: Place (Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193) and Date and Time (05/04/2009 9:00 am)

The deposition will be recorded by this method: Audiovisual and stenographic

production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule A, attached hereto.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 04/13/2009

CLERK OF COURT

OR

Handwritten signature of Andrew Cline

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Intel Corporation and Intel Kabushiki Kaisha, who issues or requests this subpoena, are:

Andrew Cline
1050 Connecticut Ave., NW, Ste. 300, Washington, DC 20036
202-887-3698 acline@gibsondunn.com

Civil Action No. 05-441-JJF

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept **service** of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

(c) Protecting a Person Subject to a Subpoena.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) **Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



## SCHEDULE A

### DEFINITIONS

The following terms shall have the meanings set forth below whenever used in any discovery request.

1. The term "AMD" means Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd., and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd.

2. The term "NPD Group" means The NPD Group, Inc. and any affiliate entities, as well as the owners, employees, agents, and other representatives of The NPD Group, Inc.

3. The term "Current Analysis" means Current Analysis, Inc. and any affiliate entities, as well as the owners, employees, agents, and other representatives of Current Analysis, Inc.

4. The term "ARS" means ARS, Inc., a former subsidiary of Current Analysis whose assets were purchased from NPD Group on or about May 1, 2007.

5. The term "BRAND EQUALIZATION TOOL" or "TOOL" means any data, analyses, systems, software, programs, templates, methodologies, or set of procedures or formulae created or developed with or for AMD or used by AMD for any purpose, including the determination of pricing of AMD products or of computer systems containing any of AMD's products or in performing calculations related to the pricing of any of AMD's products or of computer systems containing any of its products.

6. The term "DOCUMENT" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or

computerized data compilations as well as data files **including email**, instant messaging and shared network files. A draft or non-identical copy constitutes a separate document within the meaning of the term.

## **INSTRUCTIONS**

1. Documents to be produced include documents in your possession, custody, or control wherever located.
2. Unless otherwise specifically stated, the time period covered by each of these requests is **from** January 2000 to the date this subpoena was issued.
3. Unless otherwise specifically stated, these Requests are limited in scope to **DOCUMENTS** that relate to communications, analyses, advice or work **performed** on behalf of AMD and no other entity.
4. Documents must be produced as they are kept in the usual course of business, or must be organized and labeled to correspond to the document requests by number.
5. To the extent that you withhold from production any responsive document on the grounds of a claim of privilege or attorney work product, please provide the total number of responsive documents withheld **from** production. You are not required to provide at the time of production a privilege log or other description of the nature of any such documents. Intel expressly reserves its right to seek a privilege log at a later date.

## **DOCUMENT REQUESTS**

1. **All DOCUMENTS** relating to the **BRAND EQUALIZATION TOOL**, including, but not limited to, all data collected for use by ARS, Current Analysis, NPD Group, or AMD for operation of the **TOOL**, data entered into the **TOOL** or data

produced by the TOOL.

2. All DOCUMENTS that reflect COMMUNICATIONS between Current Analysis, ARS, or NPD Group and AMD or any other entity regarding the TOOL.

3. Any DOCUMENTS that reflect analyses, reports, studies, advice, conclusions or recommendations involving AMD's business operations, pricing, or other processes related to the TOOL, including, but not limited to, such analyses, reports, studies, advice, conclusions or recommendations based on the data used in the TOOL or results from the TOOL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

INTEL CORP. MICROPROCESSOR : MDL Docket No. 05-1717-JJF  
ANTITRUST LITIGATION,

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ADVANCED MICRO DEVICES, INC. and :  
AMD INTERNATIONAL SALES &  
SERVICE, LTD.,

Plaintiffs,

v.

: Civil Action No. 05-441-JJF

INTEL CORPORATION and INTEL  
KABUSHIKI KAISHA,

Defendants.

CONFIDENTIAL-IN AGREEMENT AND PROTECTIVE ORDER

WHEREAS, plaintiffs Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd. and their subsidiaries, on the one hand, and defendants Intel Corporation and Intel Kabushiki Kaisha and their subsidiaries, on the other, compete in the development, manufacture and sale of microprocessors; and

[THE REMAINING PORTION OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

**WHEREAS**, a number of third parties, many of whom are competitors in, inter *alia*, the manufacture and sale of computer systems, will be the subject of document and deposition discovery in these actions; and

**WHEREAS**, the preparation for trial of these actions may require the discovery and use of documents and other information which constitute or contain commercial or technical trade secrets, or other confidential information the disclosure of which would be competitively harmful to the producing party; and

**WHEREAS**, the parties anticipate that this case will involve the production of hundreds of millions of pages of documents among and between actual and potential competitors and their customers: and

**WHEREAS**, the parties agree that their interests, the interests of the customers of the corporate parties and of other non-parties that may be requested to provide discovery, and the public interest can be accommodated by a stipulation and order facilitating a timely production and appropriately limiting the use and dissemination of proprietary and competitively sensitive non-public discovery information entitled to confidential treatment;

**NOW THEREFORE**, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, upon approval and entry by the Court, the following Confidentiality Agreement and Protective Order ("Protective Order") shall govern the handling-of all Discovery Material during the pendency of these litigations, as hereafter defined.

## DEFINITIONS

A. The "AMD **Litigation**" means the litigation captioned Advanced **Micro** Devices, *Inc. et al.* v. Intel Corporation et *al.*, Civil Action No. **05-441-JLF**, filed in the United States District Court for the District of Delaware, and all subsequent appellate or other review proceedings related thereto.

B. The "Class Litigation" means the **various** actions filed by or on behalf of putative classes of indirect purchasers of Intel microprocessors, including certain actions which have been or will be transferred to this Court by the Judicial Panel on **Multidistrict** Litigation under Docket No. 1717, together with **all** such actions originally filed in this Court.

C. "**Intel**" means defendants **Intel** Corporation and Intel Kabushiki Kaisha, together with their **respective** direct and indirect subsidiaries.

D. "**AMD**" means plaintiffs Advanced Micm Devices, Inc., and AMD International Sales & Service, Ltd., together **with** their respective direct and indirect subsidiaries.

E. "Party" means Intel or AMD. "**Class Party**" means any named plaintiff in the Class Litigation. "Parties" means Intel, AMD and **all** Class Parties.

F. "Outside Counsel" means the law **firm(s)** that are counsel of record for the Parties in the AMD Litigation or the Class Litigation, including their associated attorneys, and other persons regularly employed by such law **firm(s)**, and temporary personnel retained by such law **firm(s)** to perform legal or clerical duties, or to provide logistical **litigation support**; provided that no person who is or becomes a director, officer or employee of a Party shall be considered Outside Counsel.

G. "In-House **Litigation Counsel**" means any **attorney** who is an employee in the legal department of a Party whose responsibilities consist of overseeing the AMD Litigation or

the Class Litigation, and who shall not from the date of entry of this Protective Order through a period of one (1) year following the conclusion of the AMD Litigation or the Class Litigation, whichever occurs later, be engaged in: (a) the review and approval of competitive pricing or marketing programs; (b) the review of any aspect of microprocessor or chipset manufacturing. (c) the filing or prosecution of patent applications, (d) the review or negotiation of any contract with a Producing Party related to the sale or marketing of microprocessors, (e) counseling in connection with PC or server manufacturing or operating system or software design or development. and (f) the licensing of Microsoft software or technology.

H. "Producing Party" means a Party, Class Party or Third Party that produced or intends to produce Discovery Material in the AMD Litigation or the Class Litigation. "Receiving Party" means any Party or Class Party furnished Discovery Material in the AMD Litigation or the Class Litigation.

I. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to the AMD Litigation or the Class Litigation.

J. "Expert/Consultant" means experts or other consultants (and their assistants and staff) who are retained to assist Outside Counsel.

K. "Document" shall have the meaning ascribed to it in Federal Rule of Civil Procedure 34(a) and shall include all 'writings,' "recordings" and 'photographs' as those terms are defined in Rule 1001 of the Federal Rules of Evidence. Without limiting the generality of the foregoing, "document" includes the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegram, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index. computer readable media or other electronically

stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all **drafts** of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or **record** that contain any commentary, note, or marking whatsoever not appearing on the original.

L. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, and Documents (whether paper or electronic and whether generated or received by the party possessing them), including those produced pursuant to compulsory process or voluntarily in lieu thereof.

M. 'Confidential Discovery Material' **means** any Discovery Material consisting of or containing information falling into any of the following categories:

1. Non-public pricing **information**;
2. Non-public sales and marketing strategies, business plans and tactics, including **product roadmaps** and planned product introductions;
3. Non-public data concerning sales, revenues, profits, margin and variances;
4. Non-public contracts which by their terms are required to be maintained in confidence;
5. Non-public sales budgets, forecasts, and projections;
6. Non-public customer lists;
7. **Non-public** negotiations relating to the purchase or sale of **microprocessors**, chipsets, **PCs**, servers, operating systems, **software** licensing agreements or any other product manufactured or sold by a Producing Party;
8. Non-public strategic plans;



9. Non-public data concerning costs, capacity and ROI or other similar benchmarks;
10. Any invention, formula, pattern, compilation, program device, product design, method, technique, or process, and information relating to the same, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under *the* circumstances to maintain its secrecy;
11. Non-public information that concerns microprocessor, **chipset**, PC or server manufacturing, or operating system and software design and development, including capital expenditure plans, yields, capacity, costs. utilization, process and scale;
12. Non-public business or market research, whether acquired or generated internally;
13. Confidential personnel information whether contained in HR records or otherwise;
14. Information the disclosure of which **could** jeopardize the security of public or private Internet sites, confidential databases, networks or other sources of non-public information;
15. **Non-public** financial information the public disclosure of which is prohibited by law or regulation or which could jeopardize the integrity of public trading of the Producing Party's securities;
16. Other **information** or documents the disclosure of which the Producing **Party** can demonstrate would cause a clearly defined and serious injury.

N. "Disclose" means producing any "Discovery Material" directly and providing any description of its contents or in any way revealing the contents of any "Discovery Material."

O. "Non-public" documents and information are those (a) that the Producing Party maintains internally as confidential, and/or (b) that are not disclosed to third-parties except under written agreements requiring that they be maintained in confidence, pursuant to a course of dealing whereby such communications are maintained in confidence, or under compulsory process or involuntary seizure.

P. Time periods prescribed by this order shall be computed in accord with Federal Rule of Civil Procedure 6(a).

#### **TERMS AND CONDITIONS OF PROTECTIVE ORDER**

1. Except as set forth in this Protective Order, Confidential Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of the AMD Litigation or the Class Litigation, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media. Confidential Discovery Material that loses that designation, either by agreement of the Parties or the challenge process set out in Paragraph 16, may be used for any lawful purpose, unless such use is restricted by agreement or by the Court.

2. Nothing in this Protective Order shall be deemed to grant or create discovery rights to any Party, Class Party or Third Party in the AMD Litigation or the Class Litigation or in any other proceeding relating to or arising out of the subject-matter thereof, nor shall this Protective Order constitute a waiver of any rights to resist any discovery efforts that may be initiated in any other proceeding whether or not relating to or arising out of the same subject-matter.

Confidential Discovery Material

3. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive **confidentiality** examination of millions of Documents the disclosure of which is not likely to become an issue, a Producing Party may initially designate as "Confidential Discovery Material" any **Non-public** Discovery Material. This designation shall control unless and until a Designation Request is made by a Receiving Party under Paragraph 16.

4. Such a designation **shall be made at** the time of production by **marking** documents or other tangible Discovery Material by placing on or affixing, physically or electronically, in such manner as **will** not interfere with the **legibility** thereof, the notation 'CONFIDENTIAL - MDL 1717/JCCP 4443.' Such notation shall be sufficient to indicate that the documents contain 'Confidential Discovery Material' in the AMD Litigation or the Class Litigation. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a Producing Party that it is producing Discovery Material as Confidential Discovery Material shall suffice to require Confidential treatment.

5. To facilitate discovery, all deposition testimony **will** be presumed to constitute, and all transcripts **shall** be treated as Confidential Discovery Material, unless and until a Designation Request is made by a Receiving Party under Paragraph 16. Accordingly, no deponent may refuse to answer a deposition question on the ground that the answer would **disclose** confidential information or information subject to a nondisclosure agreement. Should a Receiving Party wish to disclose any deposition testimony to a person other than as permitted by Paragraph 6, it shall first make a Designation Request under the provisions of Paragraph 16. Such a request shall be made to the Party **and/or** Non-Party it reasonably concludes has the right to protect the information. The provisions of Paragraph 16 shall thereafter apply. This

paragraph will not restrict use of deposition testimony regarding witness background information or other information that could not reasonably be claimed to be Confidential Discovery Material by anyone.

Access to Confidential Discovery Material

6. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except to:

- (a) Outside Counsel;
- (b) **Experts/Consultants**, subject to the provisions and limitations set forth in Paragraph 11 herein;
- (c) Two In-House Litigation Counsel identified to the Producing Party;
- (d) The Court and other court personnel of any court having jurisdiction over any proceedings involving the AMD Litigation or the Class Litigation;
- (e) Court reporters, their staffs, and professional vendors to whom disclosure is reasonably **necessary** for this litigation and who have signed the "Acknowledgement of Protective Order" attached hereto;
- (f) **During** the deposition of any current employee, director, agent or Rule 30(b)(6) designee of the Producing Party, a Receiving Party may show the Producing Party's witness any document produced by the Producing Party; and during the deposition of any former employee of the Producing Party, a Receiving Party may show to **that** former employee any document of the Producing Party that the Receiving Party's Outside Counsel reasonably and in good faith believes the former employee to have received the **information** or document, or to have become familiar with its contents, in the ordinary **course** of his or her business duties, consistent, however, with the provisions of paragraph 10;
- (g) The author of a document containing Confidential Discovery Material or the original source of the information, as well as addressees, copyees or other persons whom the Receiving Party's Outside Counsel reasonably and **In** good faith believes to have received the information or document, or to have become familiar with its contents, in the ordinary course of his or her business duties, consistent, however, with the provisions of paragraph 10;
- (h) Any individual specifically retained for the preparation and dissemination of class notices **and/or** the administration **and/or** settlement of class **plaintiffs'** claims.

7. Any person, other than deponents and those identified in paragraph 6(d), who is shown or given access to Confidential Discovery Material will execute or agree to the terms of the "Acknowledgement of **Protective Order**" set forth and attached hereto. The Acknowledgements will not be exchanged, except pursuant to paragraph 11, but will be maintained and made available to the Court upon the Court's request.

8. Any **attorney** (including **In-House** Litigation Counsel) for any Party or Class Party who receives any technical document designated Confidential Discovery Material by a Producing Party other than his or her client shall not participate in the preparation or prosecution of any patent application or patent license relating to any aspect of microprocessors, chipsets, PCs, operating systems, **software** or servers discussed in any such technical **document**, from the time of receipt of such **information** through and including one (1) year following the conclusion of the AMD Litigation or the Class Litigation, whichever occurs later.

9. Confidential Discovery Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under **this** Order. In no event shall Confidential **Discovery Material** be stored at any business premises of the Receiving Party, or be made accessible electronically to employees of the Receiving Party, except that **In-House** Litigation Counsel may view, but not store, Confidential Discovery Material at his or her normal workplace by electronically and remotely accessing a Receiving Party's electronic document repository. **In-House** Litigation Counsel must implement and document reasonable precautions to prevent unauthorized persons from accessing or otherwise viewing Confidential Discovery Material.

10.

- (a) All depositions shall be conducted pursuant to subpoena or an equivalent agreement. This provision shall apply to all subpoenas, **including** those issued by an attorney as an officer of the Court. Whether testifying pursuant to a subpoena or voluntarily, each deponent who may be shown Confidential Discovery Material of a Third Party and who is not a current employee, director, agent or Rule **30(b)(6)** designee of **that** Third Party

shall be served with a copy of this Order by Outside Counsel that noticed the deposition and shall be advised by such Counsel of the existence of this Order, the confidential status of the information disclosed, and the restriction that the information not be further disseminated or used for any purpose other than the litigation; and Counsel shall inform the deponent that he or she is bound to the terms of this Order. Counsel for the Third Party shall be entitled to the identity of any deponent shown its Confidential Discovery Material within five (5) days following conclusion of the deposition, on the condition that both Counsel and the Third Party maintain the Information in **absolute** confidence. No copies of Confidential Discovery Material shall be provided to a deponent other than for purposes of the deposition examination **without** the written consent of the Producing Party. The Court Reporter shall be instructed not to provide copies of deposition exhibits to individuals deposed under this provision when the **final** transcript is provided.

- (b) Except in a deposition, before disclosing Confidential Discovery Material to any person pursuant to paragraph 6(g), counsel shall inform such person of the existence of this Order, the confidential status of the information disclosed, and the restriction that the information not be **further** disseminated or used for any purpose other than the litigation; and counsel shall request such person to execute and agree to the terms of the Acknowledgment of Protective Order set forth and attached hereto. Except in a deposition, a Party or Class Party shall not disclose Confidential Discovery Material of a Third Party to any person under paragraph 6(g) until that person has executed and agreed to the terms of the Acknowledgment of Protective Order. Except in a deposition, no Confidential Discovery Material shall be shown to a former employee of a Party employed by the opposing Party, except pursuant to separate written agreement.

**III.** Before any Confidential Discovery Material may be disclosed or otherwise provided, **directly** or **indirectly**, to an **Expert/Consultant**, such person must execute and agree to the terms of the Acknowledgment of Protective Order set forth and attached hereto, and shall:

- (a) maintain such Confidential Discovery Material in a manner calculated to prevent its public disclosure;
- (b) return such Confidential Discovery Material to counsel for the Party or Class Party that retained such **Expert/Consultant** within ninety (90) days of the conclusion of the **Expert/Consultant's** assignment or retention, but in no event shall the expert retain documents beyond the period set out in paragraph 24 herein;
- (c) not disclose such Confidential Discovery Material to anyone, or use such Confidential Discovery Material, except as permitted by the Protective Order;
- (d) submit to the jurisdiction of this Court for purposes of enforcing the Protective Order; and

- (e) use such Confidential Discovery **Material** and the information contained therein solely for *the* purpose of rendering consulting services to a **Party** or Class Party to the AMD Litigation or the Class Litigation, including providing testimony in any such proceeding.

Except with the consent of the Producing **Party**, however. Confidential Discovery Material shall not be disclosed to an expert or consultant who at the time of the intended disclosure is an **officer** or employee of a Party. The Acknowledgment of Protective Order signed and executed by a **Party's** or Class Party's **Expert/Consultant** shall be made available to Third Parties whose Confidential Discovery Material is disclosed to that **Expert/Consultant**, under the express agreement that such Third Parties maintain the information contained in the Acknowledgment in absolute confidence.

**12.** Confidential Discovery Material shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses, and all such copies or reproductions shall be subject to the **terms** of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not itself preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be appropriately marked **with** those confidentiality designations.

**13.** This Protective Order shall not apply to the disclosure or use by a Producing Party or its counsel of such Producing **Party's** Confidential Discovery Material.

**14.** The Parties agree to meet and confer prior to the **filing** of final exhibit **lists** to evaluate, on a document by document basis, which of the proposed exhibits require confidential treatment for purposes of trial. The confidentiality legend may be redacted by the Producing Party prior to **trial** for any use of the material at trial by any Party or Class Party. The **Parties** further agree to meet and confer with any Third Party whose documents will or may be used at trial concerning their appropriate treatment and to afford such Third Parties sufficient advance

notice of any such use such that they can move to have the materials received under seal. Should any material furnished by a Third Party and received under seal be the subject of a motion to unseal, the Parties shall give sufficient notice to the Third Party so that it may oppose the motion.

### Third Parties

15. Any Third Party that produces documents or provides testimony in the AMD Litigation or the Class Litigation, either voluntarily or by compulsory process, shall have the full benefits and protections of this ~~Protective~~ Order and may designate documents or deposition testimony as **Confidential** Discovery Material in the manner, and subject to the same protections, set forth above. Nothing in ~~this~~ Order shall be construed to allow any Third Party to obtain access to any Confidential Discovery Material produced by any **Party**, Class Party, or other Third Party.

### Designation Requests and ~~Resolving~~ Disputed Designations

16. The ~~parties~~ anticipate designating all Non-public Discovery Material as **Confidential** Discovery Material under Paragraph 3. Should a **Receiving** Party wish to disclose any such material to a person other than as permitted by Paragraph 6, it shall make a written Designation Request to the Producing Party, as set forth ~~below~~:

- (a) Designation Request: The Receiving Party shall identify with specificity (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means sufficient to easily locate such materials) ~~the~~ Discovery Material it intends to disclose and a representation that the material is probative of one or more ~~material~~ facts in this ~~litigation~~. A Designation Request ~~will~~ trigger an obligation on the ~~part~~ of the Producing Party to make a good faith determination of whether the Discovery Material is entitled to be



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treated as **Confidential** Discovery Materials under Paragraph R. Except in the case of a Designation Request for more than 250 documents or more than 250 pages of deposition testimony, within ten **(10)** days the Producing Party shall respond in writing to the Designation Request either agreeing to *the* disclosure or designating the material as Confidential Discovery Material. If a Designation Request **entails** more than 250 documents or more than 250 pages of deposition testimony, the Requesting **Party** and the Producing Party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

- (b) Court Determination: If the Receiving Party disagrees with a Producing **Party's** designation of material as Confidential Discovery Material following a Designation Request, it may apply to the Court for relief from the **Protective** Order as to the contested designations.
- (c) In any proceeding on such an application, the Producing Party **will** bear the burden to demonstrate that the designated Discovery Material qualifies as Confidential Discovery Material under Paragraph R. No presumption or weight will attach to the initial designation of Discovery Material as Confidential Discovery **Material**.
- (d) Pending a ruling, the Discovery Material shall continue to be treated as Confidential Discovery Material under the terms of this Protective Order.
- (e) With respect to Discovery Material the Producing and Receiving Parties agree does not constitute Confidential Discovery Material, or which the **Court** orders not to be treated as Confidential Discovery Material, within ten **(10)** days of such agreement or order, the Producing Party **shall** produce a new version with the **confidentiality** legend redacted.

- (f) Nothing in this Protective Order shall be deemed to prevent a Producing Party from arguing during the determination process for limits on the use or manner of dissemination of Discovery Material that is found to no longer constitute Confidential Discovery Material.

Disclosure Requested or Provided in Other Proceedings

17. In the event that any Party or Class Party gains access to Discovery Material of the other Party or a Third Party from another Producing Party or a U.S., state, or foreign governmental agency or court, that has not been designated as Confidential Discovery Material, the Receiving Party shall promptly notify, in writing, the party whose documents are implicated. The party whose documents are implicated shall be entitled, and shall be given a reasonable opportunity (not to exceed thirty (30) days following notice) prior to any non-confidential disclosure or use of such materials, to designate, as appropriate, such materials as Confidential Discovery Material pursuant to the terms of this Protective Order. Such designation shall be subject to the terms set forth in Paragraph 16. If any such Discovery Material has already been produced and designated as Confidential Discovery Material pursuant to the terms of this Order, then such material shall at all times be governed by the terms of this Protective Order even though also received from a Party, Third Party or a U.S., state or foreign governmental agency or court. Designation Requests regarding the Discovery Material described in this paragraph shall be made directly to the party whose documents are implicated, rather than the Party, Third Party or U.S., state, or foreign governmental agency or court from whom the Receiving Party received the Discovery Material.

18. Except as provided in this paragraph, a Party, Class Party or Third Party who is otherwise required in the AMD Litigation or the Class Litigation to disclose or produce documents shall not delay or refuse to do so on grounds that such documents contain information of another party (other than AMD and Intel) which is subject to obligations of

confidentiality in favor of that party ("Originating Party"). Instead, the Party, Class Party or Third Party from whom discovery is sought shall promptly notify the "Originating Party" in writing of the required disclosure. The Originating Party shall be given a reasonable opportunity (not to exceed thirty (30) days from the date of notice), prior to any production or disclosure of any such Discovery Material, to object to the production and until those objections are resolved, the Discovery Material will not be produced. In the event that such Discovery Material is produced, the Discovery Material produced shall be deemed Confidential Discovery Material pursuant to Paragraph 3 and shall be marked by the Producing Party in accordance with the requirements of Paragraph 4.

19. The production of documents designated as Confidential Discovery Material pursuant to this Protective Order by a Third Party in the AMD Litigation or the Class Litigation shall not constitute a violation of the confidentiality provisions of any nondisclosure agreement ("NDA") between any party and AMD or Intel. However such Third Party may consult, in a timely fashion, with AMD and/or Intel about the nature of the materials to be produced in advance of their production for the purpose of ensuring that the confidential materials are adequately protected from public disclosure.

20. If another court or any U.S. state or foreign governmental agency should request, subpoena, or order the production of Confidential Discovery Materials from any Party that have been produced by any other Party or Third Party, the Party receiving such a request shall promptly notify the Producing Party in writing. Should the Producing Party object to the production, it may seek appropriate relief from the appropriate court or agency, and pending such a request and, if necessary, the entry of an appropriate stay order, the Party receiving the request shall not produce the material in dispute so long as it may lawfully refuse.

Filina Confidential Discovery Material with the Court

21. In the event that any **Confidential** Discovery Material is contained in any pleading, motion, exhibit, or other paper (collectively "papers") filed or to be filed with the Clerk of the Court, the Clerk shall be so **informed** by the Party or Class **Party** filing such papers, and the **Clerk** shall keep such papers under seal until further order of the Court; provided, however, that such papers shall be furnished to the Court and Outside Counsel of the Parties.

22. Information filed under seal shall be placed **in** sealed envelopes on which shall be written the title to this action, the words "FILED UNDER SEAL." and a statement substantially in the following form:

"This envelope is sealed pursuant to order of this Court and **contains** confidential information filed in this case by [name of party] and is not to be opened or the **contents** thereof to be displayed or revealed except by order of the **Court.**"

23. Parties shall produce and file redacted versions of any papers in the District Court actions in accordance with the "Administrative Procedures Governing Filing and **Service** by **Electronic Means**" as issued by the United States District Court for the District of Delaware. such **that** there is no disclosure of any Confidential Discovery Material.

Duties Upon Conclusion of Litigation

24. Within one hundred **twenty (120)** days of the conclusion of the AMD Litigation or the Class Litigation, whichever occurs later, counsel for any Party or Class Party that has received **Discovery Material** shall **return** to the Producing Party, or destroy, all **originals** and copies of all documents and **all** notes, memoranda, or other papers containing Confidential Discovery Material, including any and all Confidential Discovery Material disseminated pursuant to the terms of this Protective Order. **Notwithstanding** this provision, Outside Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or **attorney** work product prepared or received in **connection** with the AMD

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Litigation or the Class Litigation, even if such materials **contain** protected material. Any such archival **copies** that contain or constitute protected material shall remain subject to this Order.

25. Counsel of record shall certify their compliance with the **terms** of this paragraph and, not more than one hundred and twenty (120) days after the conclusion of the **AMD** Litigation or the Class Litigation, whichever comes later, shall deliver the same to counsel for the Producing Party.

26. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material by any Party, Class Party, counsel, or expert witness shall, without written permission of the Producing Party or further order of the **Court**, continue to be binding after the **conclusion** of the **AMD** Litigation and the Class Litigation.

#### Remedies for Non-Compliance

27. The Parties agree that any disclosure of Confidential Discovery Material contrary to the terms of this Order by a Party or Class Party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the disclosure occurs.

28. Nothing contained in this Protective Order shall diminish any **attorney-client** privilege, attorney work product claim, or any **other** applicable privilege, or obligate any person to provide any discovery to which it asserts objections. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or any Third Party, for good cause shown, to move for **modification** of this Protective Order, or to apply for other protective orders unrelated to the confidentiality of Discovery Material.

### Inadvertent Production

29. In the event that a Producing Party discovers that it has failed to mark Confidential Discovery Material as required by Paragraphs 4 and 5, it may notify in writing the Receiving Party within a reasonable time of such discovery. So long as the unmarked Discovery Material has not already been disclosed to persons other than as permitted by Paragraph 6 such that it has entered the public domain, the failure to mark such Confidential Discovery Materials shall not be deemed to be a waiver of the confidential status of the materials, and the Receiving Party shall return all copies of such material to the Producing Party to allow the materials to be appropriately marked.

30. The production or disclosure of any Discovery Material made after the entry of this Protective Order, which disclosure a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege, will not be deemed to be a Waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed.

Dated: \_\_\_\_\_

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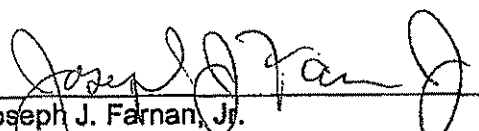
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SO ORDERED, this 26 day of Sept, 2006.

  
\_\_\_\_\_  
Joseph J. Farnan, Jr.  
United States District Court Judge

ACKNOWLEDGMENT OF PROTECTIVE ORDER

I, \_\_\_\_\_, am a \_\_\_\_\_ (employee, partner, associate, etc.) of \_\_\_\_\_, and I hereby acknowledge that:

1. I have read the Protective Order entered in the action captioned above, understand the terms thereof, and agree to be bound by such terms;
2. I will make only such copies or notes as are required to enable me to render assistance in connection with the matters for which I am engaged;
3. I will not disclose Confidential Discovery Materials to any person not expressly entitled to receive it under the terms of the Protective Order,
4. I will not use Confidential Discovery Materials for any purpose other than that authorized by the Protective Order; and
5. I agree to submit to the jurisdiction of the United States District Court for the District of ~~Delaware~~/Superior Court of the State of California, County of Santa Clara, for the sole purpose of having the terms of the Protective Order enforced.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

I, W. Harding Drane, Jr., hereby certify that on April **16,2009**, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CMECF which will send notification of such **filing(s)** to the following and the document is available for viewing and downloading from CMECF:

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I hereby certify that on April **16,2009**, I have Electronically Mailed the documents to the following non-registered participants:

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