UNITED STATES DISTRICT COURT
for the
Southern District of New York

IN RE INTEL CORPORATION
MICROPROCESSOR ANTITRUST LITIGATION

PHIL PAUL, on behalf of himself and all others similarly situated,	)))) Civil Action No. MDL No. 05-1717-JJF;) Consol. C.A. No. 05-485-JJF
v.	) (If the action is pending in another district, state where:
INTEL CORPORATION	) District of Delaware

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

To: Toshiba America Information Systems, c/o JD Donaldson, White & Case LLP
    701 Thirteenth Street, NW, Washington, DC 20005

☑ *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: See Schedule A attached hereto.

Place: O'Melveny & Myers 610 Newport Center Drive, 17th Floor Newport Beach, CA 92660	Date and Time: June 5, 2009 at 9:00 a.m.

The deposition will be recorded by this method: Stenographic and videographic means

☐ *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:

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: 5/20/09

               CLERK OF COURT

                                     OR

_____   _____
Signature of Clerk or Deputy Clerk   *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)*   Class Plaintiffs
_____ , who issues or requests this subpoena, are:

Laina M. Herbert (DE Bar #4717), Prickett, Jones & Elliott, P.A.
1310 King Street, P.O. Box 1328, Wilmington, DE 19899-1328
(302) 888-6500, LMHerbert@prickett.com

Civil Action No.   C.A. No. MDL No. 05-1717-JJF; Consol. C.A. No. 05-485-JJF; C.A. 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 an 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 AND INSTRUCTIONS

1.   The term "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (*e.g.*, Sempron, Athlon, Turion, Opteron, Celeron, Pentium, Core, Core Duo, and Xeon).

2.   The term "TAIS" refers to Toshiba America Information Systems and any of its controlled present or former subsidiaries, parents, and predecessor or successor companies.

3.   The term "COMPUTER SYSTEM" means any product that utilizes a MICROPROCESSOR including, without limitation, desktop computers, notebook computers and workstations.

4.   The term "PURCHASE DATA" refers to the data files produced by TAIS in this litigation that reflect TAIS's purchases of x86 MICROPROCESSORS and x86 COMPUTER SYSTEMS.

5.   The term "SALES DATA" refers to the data files produced by TAIS in this litigation that reflect TAIS's sales of x86 MICROPROCESSORS and x86 COMPUTER SYSTEMS.

6.   The term "REBATE DATA" refers to the data files produced by TAIS in this litigation that reflect (i) any payment, subsidy, rebate, discount received by TAIS from a vendor, manufacturer, Intel or AMD in connection with TAIS's purchase of x86 MICROPROCESSORS and/or x86 COMPUTER SYSTEMS; (ii) as well as any rebates or discounts TAIS gave to their customers in association with the purchase of x86 MICROPROCESSORS and/or x86 COMPUTER SYSTEMS.

7.   The term "TAIS DATA" collectively refers to the PURCHASE DATA, SALES DATA, REBATE DATA, and all other data produced by TAIS in this litigation.

8.   The relevant time period for these topics is January 1, 2000 to the present.

DEPOSITION TOPICS FOR TAIS

1.   The TAIS DATA, including the definitions for all data fields, abbreviations or codes reflected as values in any data fields, and the interaction among the datasets produced.

2.   The geographic and product scope of TAIS DATA produced, including whether all sales of desktops and notebooks to U.S. customers are included in the TAIS DATA.

3.   The determination of the net price paid by the customer for a given sale (net of all rebates, discounts, and credits at the time of sale and after) and whether such a price can be captured in the TAIS DATA.

4.   The determination of the net cost (to TAIS) of a product (net of all rebates, discounts, and credits at the time of purchase and after) and whether such a cost can be captured in the TAIS DATA.

5.   Explanation of how TAIS's customers are classified in different segments or channels and how these are captured in the TAIS DATA.

6.   Descriptive information about the computer systems in the TAIS DATA, including the identification of notebooks and desktops; CTO/BTO and off-the-shelf models; and key components in the system.

7.   Observable patterns in the TAIS DATA, including multiple sales prices and cost for the same computer in the same time period and sales at prices below cost.