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By Electronic Filing and Hand Delivery

The Honorable Vincent J. Poppiti
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**Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al.,
C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF**

Dear Judge Poppiti:

Intel moves to modify the deadline for completion of expert witness depositions, and the schedule for summary judgment motion briefing, the pre-trial conference date and the trial date. In March, the Court set a schedule under its Case Management Order No. 7 ("CMO No. 7") that included deadlines for these dates. Approximately four months later, Intel was approached by AMD with a request to move the deadlines for service of the expert witness reports. Intel agreed to AMD's request inasmuch as AMD informed Intel that one of its key reports simply could not be completed by the deadline, and Intel recognized that the schedule the parties had been striving to meet was grueling. As a result, the parties submitted stipulated CMO No. 10, entered by the Court on July 27, 2009, that moved the expert witness related deadlines. CMO No. 10, however, did not adjust the deadlines for summary judgment motion briefing, the pre-trial conference date or the trial date.

On September 4, 2009, the parties agreed to further modification of some of the expert witness related deadlines, and submitted stipulated CMO No. 11 for the approval of Your Honor and the Court. However, the parties continue to disagree over the appropriate deadline for completion of expert depositions, as well as the schedule for summary judgment motion briefing, the pre-trial conference date and the trial date.

Time Period for Expert Depositions To Be Conducted. The parties have agreed in Proposed CMO No. 11, submitted Friday, September 4, that expert depositions should begin Monday, November 30, the first business day after service of AMD's expert rebuttal reports. Intel requests that the deadline for completion of the expert depositions be set for January 15, 2010, while AMD has requested that the depositions be completed by Sunday, January 3, 2010.

There will be only three weeks under the schedule set forth in CMO No. 11 to take expert depositions before running into the Christmas week and the week between Christmas and New Year when depositions will be extremely difficult to schedule. Intel submits that this does not provide the parties with nearly enough time to conduct the expert depositions in this case in light of the large number of experts and unprecedented length and scope of the reports already served by AMD. On August 3, AMD served eight expert witness reports, totaling 2,110 pages with 4,509 footnotes. Adjusting for the small fonts and spacing used in the reports, this is equivalent to closer to 3,000 pages of expert reports, excluding backup material. Intel plans to submit a number of expert reports to address all of the detailed issues raised by AMD's expert reports.¹

Having reviewed AMD's initial reports, and not having seen AMD's rebuttal reports, Intel believes it will need to conduct extended depositions of most of AMD's eight experts. To illustrate, without taking into account Prof. Bernheim's rebuttal report, if Intel were to cover 100 pages and 300 footnotes (with numerous record references) of his initial report per deposition day, Intel would need over 10 days to take his deposition. Since AMD undoubtedly will demand a number of days to take the depositions of Intel's expert witnesses, even if depositions are multi-tracked, there simply are not enough days, as a practical matter and in light of the holidays, to adequately complete the depositions. Intel respectfully requests that the deposition deadline be set for Friday, January 15, 2010, rather than Sunday, January 3, 2010.

Deadlines for Summary Judgment Motion Briefing. The expert report deadlines obviously impact the summary judgment motion briefing schedule. In CMO No. 7, the filing date for any summary judgment motion was set for approximately one month after service of rebuttal expert witness reports.² CMO No. 10 modified expert witness related deadlines, but did not change any of the other pre-trial deadlines (with the exception of discovery related to HP).

¹ In addition to the issues presented by the sheer length of AMD's expert reports, the scope of the reports is unprecedented in nature. Some of the reports contain an extended discussion and weighing of the evidence. Professor Bernheim's weighing of the evidence is exacerbated by the fact that he generally ignored relevant evidence contrary to his conclusions. Another AMD expert report authored by Stephen Martson constitutes little more than his weighing of selected evidence from depositions and emails and consequently raises similar concerns as Professor Bernheim's report. Inasmuch as the issues raised by AMD's experts' weighing of factual evidence will not be presented to the Court in pre-trial motions until after completion of expert depositions, and could not be resolved in a timely fashion at this juncture anyway given Intel's filing deadline for its responsive expert reports, Intel has no choice but to ask its experts, in responding to AMD's expert reports, to catalog at least some of the critical evidence that dispositively contradicts the selected facts cited by AMD's experts.

² CMO No. 7, filed on March 24, 2009, states that "AMD will serve any rebuttal expert witness reports in the AMD Action on Thursday, October 1, 2009." The Order also states
[Footnote continued on next page]

As a result, the current combined schedule of CMO Nos. 7 and 10 requires that summary judgment motions be filed on the same day the rebuttal expert witness reports are to be served – rather than a month later. Furthermore, with the expert witness related extensions requested in Proposed CMO No. 11, the current deadline for filing summary judgment motions would be more than three weeks before Intel's receipt of AMD's rebuttal expert witness reports. Neither schedule provides Intel with time to review, evaluate and analyze AMD's rebuttal expert reports to determine what impact, if any, the reports have on potential summary judgment motions. Consequently, Intel respectfully requests that the Court modify the schedule to provide approximately the same time interval between the deadline for service of rebuttal expert reports and the deadline for filing summary judgment motions that existed in CMO No. 7. Under CMO No. 7 the deadline for filing summary judgment motions was set for thirty-two days after service of the rebuttal expert reports. In this Motion, Intel requests that the deadline for filing summary judgment motions be set for twenty-eight days after service of the rebuttal expert reports (and that includes Thanksgiving and the Thanksgiving week-end).

Intel's request mirrors the position advocated by AMD in AMD's May 22, 2009 Opposition to Intel's Motion, Pursuant to Rules 16 and 56, For A Pretrial Conference To Seek The Court's Determination Of Key Issues Of Law That Will Govern Completion Of Preparation Of Trial ("Opposition"). AMD stated in its Opposition (which pre-dated CMO No. 10) that:

The right time and manner for addressing the issues raised in Intel's [Rule 16] motion is the standard process of summary judgment, upon conclusion of factual and expert discovery. That is what the repeatedly re-negotiated pretrial order in this case contemplates, and is what this Court's own standing order requires. (Opp. at. 3.)

Intel's [Rule 16] motion is, on its face, a premature and distracting effort to litigate issues that will be, should be, and typically are litigated through the standard process of summary judgment, *after* the parties have established the relevant factual context through factual and expert discovery. (Opp. at. 2.)

AMD further noted in its Opposition that resolution of the issues raised in Intel's Rule 16 motion (which AMD claims should be addressed by summary judgment) "require[s] serious expert economic analysis." AMD then noted that "Intel itself thus makes abundantly clear that the issues it seeks to raise are inextricably intertwined with the extensive and complicated discovery record still being developed, including the expert discovery that has not yet even commenced." (Opp. at. 2; emphasis added.)

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that "[a]ny motion for summary judgment in the AMD Action will be filed on or before November 2, 2009."

After making the points described above, AMD pointed out in its Opposition that "this Court has already established -- with the parties' agreement -- an orderly timeline that appropriately schedules summary judgment briefing after conclusion of discovery." AMD then referenced CMO No. 7, which schedules the deadline for filing summary judgment motions for thirty-two days after service of expert rebuttal reports. (Opp. at 4.)

Based, at least in part, on AMD's argument with respect to the appropriate timing and procedure for summary judgment motions, the Court denied Intel's Rule 16 Motion in its June 25, 2009 Order. The Court's Order, which was entered when CMO No. 7 was the operative scheduling order for expert witness related deadlines and summary judgment motion briefing deadlines (and before CMO #10), stated:

After considering the parties' submissions, the Court is persuaded that the issues suggested by Intel for early resolution implicate factual questions and may require expert opinion to be fully understood and decided. The Court had set a schedule for the filing of summary judgment motions, which allows for the completion of fact discovery and, at least, the exchange of expert reports. Accordingly, the Court believes that the current schedule for the filing of summary judgment motions remains the most effective and efficient manner to address Intel's concerns, and therefore, the Court will deny Intel's Motion. (Emphasis added.)

Obviously both CMO No. 7 and CMO No. 10 are out of synch with respect to the timing of summary judgment motions, as AMD's prior representations and the Court's June 25, 2009 Order make clear. As a result, Intel requests that the deadline to file summary judgment motions be moved to December 23, 2009, and that the deadline for completion of summary judgment motion briefing be moved to February 5, 2010.

Pre-Trial and Trial Dates. Intel recognizes that the schedule the Court adopted was designed around its March 29, 2010 trial date, to ensure that the Court had sufficient time to address summary judgment motions and other pretrial motions. These proposed schedule adjustments obviously impact the pre-trial-conference and trial dates by approximately seven weeks. Accordingly, Intel respectfully requests the Court, if it agrees with the proposed modified schedule, to consider resetting the pre-trial conference and trial dates as it deems appropriate, if the Court's other trial commitments permit. For the foregoing reasons, Intel requests modification of the schedule as follows:

Deadline to file summary judgment motions – December 23
Expert depositions to be conducted between November 30 and January 15, 2010
Deadline for completion of briefing on summary judgment motions – February 5, 2010
Pre-Trial Conference and Trial – To be determined by the Court

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Respectfully,

/s/ Richard L. Horwitz

Richard L. Horwitz

RLH:cet

cc: Clerk of Court (via Hand Delivery)
Counsel of Record (via CM/ECF & Electronic Mail)