



1313 North Market Street
PO. Box 951
Wilmington, DE 19899-0951
302 984 6000

www.potteranderson.com

Richard L. Horwitz
Partner
Attorney at Law
wdrane@potteranderson.com
302 984-6027 Direct Phone
302 778-6027 Fax

October 12, 2009

The Honorable Vincent J. Poppiti
Fox Rothschild LLP
919 North Market Street, Suite 1300
Wilmington, DE 19899-2323

PUBLIC VERSION
October 22, 2009

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; Phil Paul v. Intel; C. A. No. 05-485 JJF

Dear Judge Poppiti:

AMD agrees that Intel deserves more time to respond to the newly-amended Ostrander report. However, the week AMD proposes does not give Intel adequate time to respond to its eleventh hour amendments, which affects the majority of the scenarios discussed in the Ostrander report, nor does AMD's offer contemplate giving Intel any additional time to respond to the amendments of the Watson and Lys reports.

AMD admits that the Ostrander report is complex, acknowledging that it includes "quarter-by-quarter, part-by-part" analyses, which are "complicated" due to their dependence on multiple economic scenarios, and that have "generated a lot of numbers." (Opp. 1, 2.) AMD also concedes that a revision to any aspect of the Ostrander report has ripple effects on other aspects. (*Id.* 3.) The difficulty of analyzing and responding to these complex analyses is compounded by AMD's failure to detail the nature and scope of the revisions to a report that fails to cite evidence and to clearly document its assumptions. And while AMD claims that its amendment correcting errors was somehow optional, AMD's desire to avoid Ostrander's report from being impeached by errors has prejudiced Intel's ability to complete its reports. AMD's position is further undermined by the fact that AMD found the changes it made material enough to warrant service of an amended report, along with revised versions of supplemental materials.

AMD attempts to downplay the significance of its amendments, claiming that they do not change the calculation results by much. But whether the calculations have changed by 100% or 1% does not alter that AMD has changed numerous calculations and that Intel's expert must analyze all of them. Whether or not AMD likes it, Intel is entitled to perform its own analyses and submit its own expert reports, instead of simply accepting AMD's representations. As set forth in Intel's motion, AMD's prior representations regarding the Ostrander report – either that

it had no further backup materials to produce or that it had completely described all revisions from a prior report – were disproved by subsequent events. AMD does not and cannot take issue with those facts. While AMD claims that Intel was forced to withdraw its motions, in fact, Intel’s motions proved necessary to force AMD to comply with its basic disclosure obligations. Following Intel’s filing of DM 40, AMD produced back-up information that it previously claimed did not exist. Following the filing of DM 39, AMD affirmed for the first time that Dr. Ostrander would not rely on information that AMD had failed to produce to Intel in discovery.

Further, AMD’s representations regarding the nature of its revisions of the Ostrander report are inaccurate. For example, AMD claims that its [REDACTED] is the only product affected by the revisions to the Ostrander report. (Opp. 3.) But the early review of the report’s revisions has revealed that [REDACTED] are also affected. Intel necessarily must spend time and resources to carefully scrutinize this report, and the back-up material submitted with it, to determine the precise changes made. This process cannot be completed in a single additional week. The Declaration of Michael Quinn, an Intel consultant, details, on a general level, the reasons why responding to the amended Ostrander report will take significantly more time. (See Declaration of Michael Quinn, ¶¶ 5-10.)

AMD argues that Dr. Quinn’s declaration did not explicitly say that Intel would need three additional weeks to comprehensively rebut the revised Ostrander report. (See Opp. 3) Dr. Quinn has resolved this ambiguity in the attached Supplemental Declaration of Michael Quinn, in which he avers that his team needs at least three additional weeks to thoroughly and sufficiently analyze and respond to the Ostrander report in light of the recent revisions.

AMD’s position regarding responses to the Watson and Lys reports is perplexing. AMD admits that it revised these reports in light of its amending the Ostrander report, but takes the position that Intel’s experts who will be responding to Professors Watson and Lys should not have the benefit of any analysis of the amendments to Ostrander’s report before addressing the portions of the Watson and Lys report affected by the Ostrander amendments. To be clear, Intel asked only for an extension to respond to those portions of the Watson and Lys reports affected by the Ostrander revisions. It is entitled to nothing less.

Finally, AMD is wrong in claiming that Intel is attempting to “blow up” the existing pre-trial schedule. (Opp. 3.) Intel’s motion makes clear that Intel is *not* seeking an extension of anything but the dates to submit one report and portions of two other reports that are directly affected by the amendments to AMD’s reports. Intel asked that the Court “maintain all other expert report-related deadlines entered by the Court, as amended by agreement of the parties.” (Mot. 1.)

Finally, the Court should not grant AMD’s request to extend the deadline for the Ostrander rebuttal report because it would prejudice Intel. Such an extension would mean that Intel would be forced to move for summary judgment without having received the Ostrander rebuttal report. Sequencing AMD’s rebuttal reports before Intel’s summary judgment is a critical aspect of the current schedule, and AMD’s proposal would thwart that purpose to Intel’s detriment. Given that Intel is blameless and AMD is entirely responsible for creating the current situation, Intel should not be prejudiced by AMD’s behavior.

Respectfully yours,

/s/ Richard L. Horwitz

Richard L. Horwitz

RLH:cet

cc: Clerk of Court (via Hand Delivery)

Counsel of Record (via CM/ECF & Electronic Mail)