

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)	
)	
Plaintiffs,)	Civil Action No.
)	05-441-JJF
v.)	
)	
INTEL CORPORATION,)	
)	
Defendant.)	

Teleconference in above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, Wilmington, Delaware, on Monday, April 9, 2007, beginning at approximately 1:00 p.m., there being present:

BEFORE:

VINCENT J. POPPITI, ESQ., SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS
MARK SAMUELS, ESQ.
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for AMD

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1 MR. SAMUELS: Good morning, Your Honor.
2 This is Mark Samuels, and, with me, my partner, David
3 Harron, of O'Melveny & Myers for AMD.

4 SPECIAL MASTER POPPITI: Thank you.

5 MS. GAZA: Your Honor, Anne Gaza for
6 Richards, Layton & Finger for AMD.

7 SPECIAL MASTER POPPITI: Thank you.

8 MR. SMALL: Daniel Small with Cohen
9 Milstein for the Class Plaintiffs.

10 SPECIAL MASTER POPPITI: Thank you.

11 MR. LANDAU: Grant Landau with Cohen
12 Milstein for the Class Plaintiffs.

13 SPECIAL MASTER POPPITI: Thanks.

14 MR. BOLAND: Rich Boland with
15 Finkelstein Thompson for the Class Plaintiffs.

16 SPECIAL MASTER POPPITI: Thank you.

17 MR. HOLZMAN: Jim Holzman, Prickett
18 Jones, for the Class.

19 SPECIAL MASTER POPPITI: Thank you.

20 MR. HOROWITZ: Your Honor, Rich Horowitz
21 from Potter Anderson for Intel.

22 SPECIAL MASTER POPPITI: Thank you.

23 MR. FLOYD: Dan Floyd with Gibson, Dunn
24 & Crutcher for Intel.

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1 SPECIAL MASTER POPPITI: Thanks.

2 MR. BERNHARDT: Daron Bernhardt from
3 Howry for Intel.

4 SPECIAL MASTER POPPITI: Thank you.

5 MS. GRAHAM: Mary Graham from Morris
6 Nichols for Frys Electronics, and with me are Robert
7 Stone and Mike Powell from Quinn Emanuel.

8 SPECIAL MASTER POPPITI: Thank you.

9 MR. STONE: Good morning, Your Honor.

10 SPECIAL MASTER POPPITI: I guess it's
11 good afternoon, again, on this end, but welcome. Thank
12 you.

13 Let's then deal with Frys. I, of
14 course, signed an order last week that extended the time
15 to permit Frys to file their response, if any, and I
16 gather that communication may be still ongoing, but I
17 still want to make sure that we have a hearing date to
18 look forward to to keep things on track.

19 MR. STONE: Thank you, Your Honor. This
20 is Robert Stone of Quinn Emanuel. Discussions are still
21 ongoing, and with respect to a hearing date, we would
22 propose May 4.

23 MR. SMALL: Your Honor, this is Dan
24 Small for the Class Plaintiffs.

1 SPECIAL MASTER POPPITI: Yes.

2 MR. SMALL: Under the extended schedule
3 that Your Honor just put in place, the final brief on
4 this motion to compel would be filed with Your Honor on
5 the 18th of this month, which would be next Wednesday.

6 SPECIAL MASTER POPPITI: Yes.

7 MR. SMALL: A week from this Wednesday.

8 And we would certainly be available to have the matter
9 heard as soon as Your Honor is available after that date.

10 MR. STONE: Your Honor, I am,
11 unfortunately, out of the country from April 16 to April
12 23, and then would like to be able to have a chance to
13 confer with my client before I head East for the hearing,
14 which is why I proposed May 4.

15 SPECIAL MASTER POPPITI: Well, let me
16 ask a couple questions. You said, and you made reference
17 to heading East. I did, of course, ask, in the
18 correspondence that I sent last week sometime, I don't
19 have that in front of me, the location of the hearing. I
20 certainly can expect that, if everyone agrees, and for
21 the convenience of everyone, unless there is some good
22 reason to suggest that it should be an in person hearing,
23 I am happy to do it by teleconference. So, that may save
24 time, energy, efficiency, and permit me to move it closer

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1 to when you get back into the country.

2 MR. SMALL: And that's certainly
3 acceptable from our perspective, Your Honor, for the
4 Class Plaintiff.

5 MR. STONE: Given the importance of the
6 matter to my client, in the event that we are not able to
7 reach some compromise, I think that they would appreciate
8 the hearing taking place in person. And, so, that said,
9 you know, the week of April 30th certainly is better for
10 me if that would be acceptable to you, Your Honor, and
11 Class plaintiffs?

12 SPECIAL MASTER POPPITI: Well, if there
13 is a request for show up, I think it's important for me
14 to honor that. Does anyone disagree?

15 MR. SMALL: Your Honor, I think we are
16 talking about a difference of a few days, so we are not,
17 you know, worried about that unduly. And to the extent
18 Your Honor could set it early the week of the 30th, that
19 would be better from our perspective.

20 SPECIAL MASTER POPPITI: Just give me --

21 MR. STONE: And, Your Honor, I could do
22 May 1. This is Robert Stone again.

23 SPECIAL MASTER POPPITI: Thank you. May
24 1 would work. Just a second. May 1 works for me in the

1 morning, and if we are going to do it in the morning, I
2 have to do -- I expect to have to make sure that there is
3 a courtroom available for us, and if counsel would give
4 me some idea as to how long you expect that hearing would
5 take, that would be helpful as well because I have got
6 something in the afternoon beginning at 1:00, which means
7 I would need to be back to my office at 12:15 or so.

8 MR. SMALL: Your Honor, this is Dan
9 Small for the Class Plaintiffs. I can't imagine it would
10 take more than an hour, and I think there is a good
11 chance it would take substantially less than that.

12 MR. STONE: Your Honor, I would agree
13 that allotting one hour would be sufficient.

14 SPECIAL MASTER POPPITI: Okay. Then
15 let's do May 1. I will tentatively schedule the time for
16 nine a.m. to be in the courthouse, and I will advise once
17 I have confirmation of a courtroom. If there is a
18 problem with the courtroom, I will let you know.

19 MR. STONE: Thank you, Your Honor.

20 MR. SMALLS: Thank you, Your Honor.

21 SPECIAL MASTER POPPITI: Thank you,
22 Mr. Stone. Thank you, Mr. Small.

23 MS. GRAHAM: Your Honor, is it okay if
24 we, for Frys, to part the call?

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1 SPECIAL MASTER POPPITI: It is indeed.

2 Thank you very much.

3 MS. GRAHAM: Thank you.

4 SPECIAL MASTER POPPITI: Bye.

5 Let's talk some about the Court's
6 expert. I anticipate that local counsel translated our
7 conversation of last week into some issues that I think
8 are important to discuss for the purpose of permitting me
9 to ultimately frame a retention letter. And I think
10 maybe the basic general backdrop is I expect that it may
11 be important for you all to be involved in either -- in
12 helping me craft that letter.

13 MR. HOROWITZ: Your Honor, this is Rich
14 Horowitz. If I could report on what happened since the
15 call that you had with a few of us last week.

16 SPECIAL MASTER POPPITI: That would be
17 helpful.

18 MR. HOROWITZ: We reported back to our
19 respective co-counsel who then spoke on Friday. There
20 was agreement to general principles. There has been some
21 back and forth of a draft retention letter that I think
22 the parties would hope to provide to you for your review
23 to go out from you. I am not sure if it's been finally
24 agreed upon.

1 There were some minor changes that I saw
2 some morning, and maybe others can speak to the progress
3 and then we can get into the details of how the parties
4 collectively have reached their conclusions as to how we
5 think you should go forward with the expert.

6 SPECIAL MASTER POPPITI: Okay. That's
7 helpful.

8 MR. SAMUELS: Your Honor, Mark Samuels
9 where for AMD. Mr. Horowitz is correct. We did speak on,
10 I believe it was Thursday, it may have been Friday, and
11 we did come to agreement that, at least from the
12 perspective of the parties, we anticipated that
13 Mr. Friedberg, the neutral expert, upon whom we have
14 agreed, would serve at Your Honor's pleasure and perform
15 such tasks as Your Honor may direct. He would serve
16 either in a fashion customarily that a law clerk or a
17 consulting expert would serve, again, to perform such
18 tasks as Your Honor feels appropriate.

19 SPECIAL MASTER POPPITI: Okay.

20 MR. SAMUELS: We did receive -- and I
21 thank Mr. Bernhardt for taking the laboring -- we did
22 receive from Mr. Bernhardt on Friday a draft retention
23 letter for Your Honor's review and signature as
24 appropriate. We have made some comments, "we" being AMD

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1 and Class. We had some suggested edits, which I sent
2 over to Mr. Bernhardt and the other Intel counsel a few
3 hours ago, so I would anticipate that that letter will be
4 finalized, at least as far as the parties are concerned,
5 later today or early tomorrow morning.

6 SPECIAL MASTER POPPITI: Okay. Anything
7 else to add to that, then, please? Now, I think the
8 comments, Mr. Samuels, that you just made was that the
9 person would act similar to a law clerk or a consultant,
10 if you will.

11 Did you all discuss the issue of any
12 communication between the expert and me going forward?

13 MR. SAMUELS: Your Honor, yes, we did.
14 We agreed that -- we agreed on two things. No. 1, there
15 should be no ex parte communication between the parties
16 or their counsel and Mr. Friedberg, and, second, we
17 agreed that Your Honor need not make a record of his
18 communications with Mr. Friedberg unless, of course, Your
19 Honor wishes to do so.

20 If Your Honor wishes Mr. Friedberg to
21 prepare a report, that would be within Your Honor's
22 discretion and we would not -- we would not expect or
23 require it to be made available to the parties.

24 SPECIAL MASTER POPPITI: And that's

1 acceptable to everyone, as I understand it; is that
2 correct?

3 MR. SAMUELS: That's my understanding.
4 If I have got it wrong, I will be corrected, I am sure.

5 MR. SMALL: It's acceptable to the Class
6 plaintiff, Your Honor.

7 MR. FLOYD: Daron, are you going to
8 address that?

9 MR. BERNHARDT: Yes, Your Honor. From
10 Intel's perspective, I think that's acceptable as well.
11 What we talked about was Mr. Friedberg would act as a law
12 clerk, that his communications with you or his work at
13 your direction would not be discoverable through any
14 impetus of the parties; however, you would be free, if
15 you thought it was advisable, to have his work product
16 disclosed to the parties. I think that should accurately
17 describe where we are.

18 MR. SMALL: Yes, it does, Daron. Thank
19 you. One last item is I think the suggestion was made
20 that if Your Honor thinks it appropriate or useful,
21 Mr. Friedberg would be welcome to attend and participate
22 in any depositions that might occur relative to the
23 remediation and date of preservation issue.

24 SPECIAL MASTER POPPITI: I was just

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1 going to be asking that. I certainly would expect that
2 it would be helpful for him to be attending those
3 depositions. I think -- I can expect that he would want
4 to do that and I would want him to be doing that.

5 My question is: Do you all anticipate,
6 at some point, that he should be deposed?

7 MR. SAMUELS: No. We do not anticipate
8 that he should or ought to be deposed.

9 MR. BERNHARDT: Daron Bernhardt, Your
10 Honor, for Intel. I don't think we anticipate he should
11 be deposed.

12 On the deposition front, I think his
13 attending or reading transcripts, I think, is where Intel
14 is, I think the word is "participating" was used, and we
15 certainly don't expect that he will be asking questions
16 of our witnesses --

17 SPECIAL MASTER POPPITI: I understand
18 that.

19 MR. BERNHARDT: -- at those depositions.
20 I just wanted to make that clarification.

21 SPECIAL MASTER POPPITI: I understand
22 that. And with respect to, then, not wanting a
23 deposition from him, is it anticipated that he may be
24 called upon to ultimately testify at a hearing?

1 MR. SAMUELS: No. We would not
2 anticipate that he would testify. He would, again, just
3 be for Your Honor's use and benefit solely.

4 MR. BERNHARDT: I agree with that, Your
5 Honor. He is -- the way the parties, at least, have
6 envisioned it, before we had a chance to talk to you
7 about it, was that he would be more akin to a law clerk
8 supporting you in whatever role you deemed necessary,
9 and, therefore, it wouldn't really be appropriate for us
10 to be questioning him.

11 SPECIAL MASTER POPPITI: Okay.

12 MR. SMALL: For the record, Your Honor,
13 we concur that his function should be as an aid to you,
14 like a law clerk, and not someone who would be testifying
15 in the matter.

16 MR. BERNHARDT: Your Honor, if I could
17 just add one thing as a matter of disclosure.
18 Mr. Friedberg e-mailed John Rosenthal, one of my
19 partners, either Sunday or this morning, I am not sure
20 which, the e-mail just says, "What's going on? I haven't
21 heard from you. Am I going to be retained in this
22 matter"? We haven't responded yet.

23 SPECIAL MASTER POPPITI: Okay.

24 MR. BERNHARDT: I would suppose I

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1 wouldn't respond to that but that somebody ought to make
2 some contact with him shortly.

3 SPECIAL MASTER POPPITI: Well, let's do
4 this with respect to that: Knowing that the retention
5 letter is being circulated and drafted, when there was
6 conversation with him, how was that done? Was it a party
7 contact with one individual from the Class, somebody from
8 AMD, somebody from Intel talking with him?

9 MR. SAMUELS: From AMD's perspective, it
10 was, I guess, a happy coincidence. We had, "we," being
11 AMD, had identified potential neutral experts. We did
12 not contact them at all. We communicated with Intel
13 counsel. Intel counsel indicated that they had also been
14 considering some neutral experts, had contacted them, and
15 I believe this was the representation, they had contacted
16 the candidates solely for purposes of determining whether
17 there was a conflict, whether a conflict of interest,
18 whether the potential experts were available, and to
19 obtain a C.V.

20 When that was relayed to us by Intel
21 counsel, we did the exact same thing. We limited our
22 communication to those three topics. And in the course
23 of doing so, we learned, from Mr. Friedberg, that he had
24 been contacted by Intel for the same purpose we were

1 contacting him. And we then had a conversation,
2 Mr. Bernhardt and I, and agreed that since he was being
3 considered by both parties, we ought to just cut the
4 process off at that point and jointly propose him and
5 that's what we did.

6 SPECIAL MASTER POPPITI: Great. Here is
7 what I would suggest at this juncture: It doesn't matter
8 who, I expect, unless somebody thinks that there should
9 be several of you doing this, but I think the contact
10 ought to come from you all today, tell him that he is
11 going to be retained, that the retention letter is being
12 worked on for my review and signature, and that once that
13 occurs in the next several days, communication with all
14 of you will cease and communication from me be commence.
15 I think that's probably the best way to do it.

16 MR. SAMUELS: If I might suggest, just
17 because there was a reach out by Mr. Friedberg to
18 Mr. Rosenthal today, and I am sure there was -- it was
19 completely innocuous, but I think we would prefer, Your
20 Honor, if the call were to come from you to Mr. Friedberg
21 today to establish that, henceforth, the communication
22 will solely be between you and Mr. Friedberg and that
23 perhaps you might advise Mr. Friedberg that you expect to
24 have an engagement letter for him in the next day.

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1 SPECIAL MASTER POPPITI: I am happy to
2 do it in that fashion if everyone agrees.

3 MR. BERNHARDT: That's fine with Intel,
4 Your Honor.

5 SPECIAL MASTER POPPITI: Then I will
6 proceed in that fashion.

7 The other question is: With respect to
8 the frame around the expert, if you will, in terms of we
9 are all agreeing that he is acting as a consultant to the
10 Court and the detail with respect to that, can I expect
11 that our transcript forms the stipulation of everyone's
12 agreement, or do you all expect that it is important, for
13 record purposes, that I just don't docket the transcript
14 -- or the transcript of today's hearing, but it may make
15 some sense to compress it all into a written document?

16 MR. SAMUELS: Your Honor, we would be
17 fine with this transcript being docketed at Your Honor's
18 discretion, and I believe that the engagement letter that
19 the parties are working on will appropriately frame the
20 scope of Mr. Friedberg's engagement.

21 SPECIAL MASTER POPPITI: Okay. And I
22 guess one final question, then, with respect to that
23 retention letter, and I have not discussed this with
24 Judge Farnan: Do you all expect that that should or

1 should not be docketed?

2 MR. SAMUELS: Your Honor, I think it's
3 appropriate that it be docketed.

4 SPECIAL MASTER POPPITI: Does anyone
5 disagree? Okay. That's all very helpful. If there is
6 nothing else to add, I sincerely appreciate everyone's
7 work in drilling down through this over the last several
8 days. I will initiate a call and will advise and await
9 the format of the retention letter.

10 MR. SAMUELS: Your Honor, I believe
11 there is one blank in that engagement letter because none
12 of the counsel know what Mr. Friedberg's rate will be for
13 this engagement, and I just would like to suggest that
14 perhaps Your Honor ask Mr. Friedberg that when the call
15 is made today so that the engagement letter can be
16 finalized with that incorporated.

17 SPECIAL MASTER POPPITI: So he should
18 communicate that to you or do you want me to be
19 communicating that with you?

20 MR. SAMUELS: The latter, Your Honor.

21 SPECIAL MASTER POPPITI: Okay. I will
22 do that. Anything else, then, please? Thank you all
23 very much.

24 (The hearing was concluded at 1:26 p.m.)

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1 CERTIFICATE.

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional
5 Reporter, within and for the County and State aforesaid,
6 do hereby certify that the foregoing hearing was taken
7 before me, pursuant to notice, at the time and place
8 indicated; that the testimony of was correctly recorded
9 in machine shorthand by me and thereafter transcribed
10 under my supervision with computer-aided transcription to
11 the best of my ability; that the foregoing hearing is a
12 true record of the testimony given; and that I am neither
13 of counsel nor kin to any party in said action, nor
14 interested in the outcome thereof.

15 WITNESS my hand this 10th day of April A.D.
16 2007.

17
18 *Renee A. Meyers*

19 RENE E. MEYERS
20 REGISTERED PROFESSIONAL REPORTER
21 CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)



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