

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, in the offices of Blank Rome, LLP, 1201 North Market Street, Wilmington, Delaware, on Thursday, May 3, 2007, beginning at approximately 11:00 a.m., there being present:

BEFORE:

VINCENT J. POPPITI, ESQ., SPECIAL MASTER

APPEARANCES:

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ALSO PRESENT:

Eric Friedberg
Jennifer Martin

1 SPECIAL MASTER POPPITI: Good morning
2 all. And I do sincerely thank you for pulling together
3 to make sure that we were going forward. It's my
4 understanding that we are not on an agenda, but I do
5 understand we are going to be discussing issues that may
6 relate to 30(b)(6) deposition and path forward for those
7 if there are any objections that need to be addressed
8 that cannot be resolved.

9 MR. SAMUELS: Mark Samuels here. May I
10 address that?

11 SPECIAL MASTER POPPITI: Yes, please.

12 MR. SAMUELS: Your Honor is correct.
13 When last we spoke a week ago today, we were -- we were
14 told that Intel would give us objections, whatever they
15 had, to our deposition notice and document request, we
16 would meet and confer, and then reconvene today to set a
17 briefing schedule if there were any issues that remained.

18 Intel did serve its objections to our
19 Rule 30(b)6 notice and document request on Thursday
20 evening. We take issue with Intel objections to four
21 deposition categories and objections to eight document
22 requests.

23 We met and conferred at some length
24 yesterday with Intel counsel. We also discussed the

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1 question of how documents will be produced and about a
2 privileged waiver agreement.

3 With respect to the four deposition
4 categories, I think we made progress, and if I am not
5 mistaken, I think we now have an understanding and can go
6 forward.

7 SPECIAL MASTER POPPITI: Okay.

8 MR. SAMUELS: Of the four categories at
9 issue, three of them, and those were categories one, two,
10 and ten, those categories involve Intel's standard
11 practices with respect to the auto deletion of electronic
12 data practices with respect to evidence preservation and
13 practices with respect to litigation holds, h-o-l-d-s,
14 and whether there have been departures or deviations from
15 those practices in connection with this and other
16 litigation.

17 I think we have reached an understanding
18 on these topics, and the understanding is that we will be
19 able to go forward with them, and in that connection, I
20 have represented to counsel that we do not intend to
21 spend a great deal of time going into the details about
22 other Intel litigations, especially those litigations
23 where Intel's practices have been the same as they have
24 been in this case.

1 SPECIAL MASTER POPPITI: Okay.

2 MR. SAMUELS: So, I think we are fine on
3 those three topics that we have an agreement to proceed.

4 SPECIAL MASTER POPPITI: Good.

5 MR. SAMUELS: As to the fourth
6 deposition topic on which we had disagreement, that was
7 topic No. 11, we left things yesterday with the ball in
8 Mr. Cooper's court that the essence of it, Your Honor, is
9 that Intel's general counsel, Mr. Sewell, was quoted in a
10 newspaper article discussing what he called Intel's,
11 quote, \$10 million discovery management program, unquote.
12 The topic simply sought to ascertain what that program or
13 system is, and in my discussion with Mr. Cooper and
14 Mr. Floyd yesterday, we said that if that is nothing more
15 than a shorthand reference by Mr. Sewell to something
16 that's already described in Intel's report, then he --
17 then Mr. Cooper can just make that representation to us
18 and we can forgo inquiry on that topic.

19 If it is something bigger or different
20 than what's been described, then we can go forward.

21 And maybe I should pause there to see if
22 I have accurately summarized where we are.

23 SPECIAL MASTER POPPITI: Mr. Cooper.

24 MR. COOPER: And I explained that we

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1 didn't really know for sure what Mr. Sewell had in mind
2 and had not yet had the opportunity to run it down in
3 terms of what he was speaking about when he made those
4 comments, but we will do that. And I think we can
5 probably work out something that will take care of the
6 issue. I mean, but, on the other hand, if it's some
7 program that was put in place very recently, I am not
8 sure how that bears on the issues if that's what it turns
9 out to be. I don't think that's what it is.

10 SPECIAL MASTER POPPITI: And when,
11 Mr. Cooper, when do you expect that you can have some
12 resolution to that?

13 MR. COOPER: Well, I, as soon as I can
14 catch up with Mr. Sewell.

15 SPECIAL MASTER POPPITI: Okay.

16 MR. COOPER: That will be very short.

17 If we have a problem on that, I would
18 think that's the sort of thing we can call Your Honor and
19 resolve at some point.

20 MR. SAMUELS: So I think we are, with
21 the exception of topic 11 where Mr. Cooper will get back
22 to us, I think we are good to go on the deposition
23 topics.

24 We also agreed, Your Honor, that, for

1 purposes of these depositions, we would conduct them at
2 my office here in Los Angeles. We are going to discuss a
3 bigger, better protocol for the location of depositions.

4 In principle, I think, we are agreed
5 that normally depositions should be taken where the
6 deponent lives at a location to be selected by the
7 noticing lawyer in that locale. There will certainly be
8 some exceptions from time to time, but I think that's our
9 operating premise, and, so, for purposes of this
10 deposition, Mr. Cooper and I agreed that it would not set
11 a precedent because these three individuals, probably
12 none of them live in Los Angeles, but we thought it would
13 be expedient to go forward with them here in any event.

14 MR. COOPER: That's correct, Your Honor.
15 Bob Cooper again.

16 SPECIAL MASTER POPPITI: Thank you.

17 MR. COOPER: We thought it was
18 particularly worthwhile to try to put it all together in
19 one location because we will have at least one, maybe two
20 court appointed experts present.

21 SPECIAL MASTER POPPITI: Okay.

22 MR. SAMUELS: So now let me turn to the
23 document request categories. There are eight of them.

24 SPECIAL MASTER POPPITI: Before you do

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1 that, let me just ask the question, or perhaps make the
2 comment: I certainly don't anticipate, given the way I
3 have experienced you all working together, that there
4 would be any issues that arise during the course of the
5 depositions, but knowing the time frame that we are on, I
6 would expect that there -- if there are any issues during
7 the course of the deposition that would put the
8 deposition on pause, if you will, or create some
9 significant road blocks in completing the deposition, I
10 would encourage you to make an effort to contact me
11 during the course of those depositions. And whether it
12 is during the course of East Coast normal office hours
13 when you can usually reach me at my desk or whether it's
14 after, you have got my cell number contact. There will
15 be a court reporter there, so that won't be an issue. I
16 would encourage you to do that so that the depositions
17 are able to conclude.

18 MR. SAMUELS: Your Honor, we appreciate
19 very much your making yourself available, and we hope not
20 to have to impose on your time.

21 SPECIAL MASTER POPPITI: Good.

22 MR. COOPER: Thank you, Your Honor.
23 That's very generous. Hopefully we won't have to chase
24 you down on your cell phone.

1 SPECIAL MASTER POPPITI: Hopefully you
2 won't. Thank you.

3 MR. SAMUELS: Your Honor, may I turn now
4 to the document requests?

5 SPECIAL MASTER POPPITI: Please do.

6 MR. SAMUELS: So there are eight
7 document requests that are at issue. We had some
8 productive discussion about them yesterday. Intel has
9 our positions under advisement, and with respect to one
10 of the requests, we have theirs under advisement, and our
11 suggestion would be that we go ahead and try to conclude
12 the meet and confer today on those eight topics. And if
13 there is -- if we are at loggerheads about them, that we
14 go ahead and submit simultaneous letter briefs with
15 respect to the matters in dispute, say, on Monday, and
16 then get a resolution from Your Honor as quickly as Your
17 Honor's schedule will allow.

18 SPECIAL MASTER POPPITI: Okay.

19 MR. FLOYD: This is Dan Floyd. I would
20 suggest there are a few issues that we have to track
21 down, and it's not a person and we have to, obviously, I
22 think, buy our -- the discussions, describe them, you
23 know, get decisions. I think it would be productive to
24 have this meet and confer process be wrapped up on

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1 Monday, and then if, you know, whatever -- I think the
2 time frame for the letters can be short. I think we are
3 going to be able to reach resolution, but I understand
4 the need to have a process in place.

5 SPECIAL MASTER POPPITI: Well, then
6 let's do this: If you expect that you need through end
7 of business on Monday, let's use end of business on
8 Monday. And then my next question would be: Does anyone
9 see any benefit, short of written submittals, to
10 scheduling a conference time with me with shorter
11 submittals, if you will, for purposes of getting my view
12 as opposed to a decision?

13 MR. COOPER: Yes. I think that may work
14 just fine. I think all of this suggests, at least to me,
15 that we ought to be seriously looking at moving the
16 deposition date one week at least so we can sort all
17 these things out. These depositions ought to go forward
18 smoothly.

19 There are some issues with respect to
20 privilege, too, that have to be sorted out, which we will
21 be discussing. We can put that on hold until we get to
22 everything else, but I think that's something we ought to
23 also discuss.

24 MR. SAMUELS: Your Honor, I have no

1 problem discussing it. I think the timing of the
2 deposition is sort of wrapped around the resolution of
3 the document production issue. It's also wrapped around
4 another issue, which is the scope of Intel's production,
5 meaning from whom is production going to be made. And,
6 so, if we could just sort of put a pin in that for a
7 minute, I think it will expedite this call.

8 I agree with Mr. Cooper, though, that I
9 think it would be beneficial, if we are still at
10 loggerheads on Monday, and I am hopeful we won't be, and
11 past history suggests we won't be, but if we are, I would
12 like to suggest that maybe we put in very short letter
13 briefs to Your Honor on Tuesday, you know, as early in
14 the day as Your Honor would like, and then set a time to
15 talk later in the day on Tuesday.

16 SPECIAL MASTER POPPITI: We can do that.
17 Why don't we then target -- I can do a 4:00. That gives
18 everyone the healthy chunk of the day to prepare if we do
19 need a teleconference. I can certainly do it later. If
20 doing it at 5:00 makes sense for everyone, I am happy to
21 do it then. I don't expect we will be that long.

22 MR. COOPER: Your Honor, I cannot do
23 anything from noon Tuesday through the evening,
24 unfortunately. I can do it earlier Tuesday or I can do

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1 it Wednesday morning.

2 MR. SAMUELS: Bob, are you referring to
3 East Coast time or West Coast time?

4 MR. COOPER: West Coast time.

5 MR. SAMUELS: So you would be tied up --

6 MR. COOPER: It's almost comical, but I
7 have a large group, which every two years, I have to
8 throw a party for 40 people which I host.

9 SPECIAL MASTER POPPITI: I guess we
10 didn't get the invitation.

11 MR. COOPER: There is no way -- I cannot
12 be there. It starts with lunch and goes through a golf
13 tournament and then I have a big dinner, so there is no
14 way I can do it.

15 MR. SAMUELS: Bob, it sounds like you
16 are going to have a much more fun Tuesday than I will
17 have. But how about if we do this: If Your Honor's
18 schedule allows, how about if we have the call first
19 thing in the morning on Wednesday, and the parties will
20 get their briefs in by, say, you know, 1:00 p.m. your
21 time, East Coast time.

22 MR. COOPER: That's good.

23 SPECIAL MASTER POPPITI: Aren't we
24 scheduled for a -- for some reason, I have a conference,

1 Intel conference on the 9th at 11.

2 MR. SAMUELS: We had discussed
3 potentially having a hearing on Wednesday.

4 SPECIAL MASTER POPPITI: Why don't we
5 just use the time that we have scheduled.

6 MR. SAMUELS: I don't know that we have
7 set a particular time, but whatever Your Honor's schedule
8 will accommodate is fine with us.

9 SPECIAL MASTER POPPITI: 11:00 on the
10 9th.

11 MR. SAMUELS: Very good.

12 SPECIAL MASTER POPPITI: And the
13 submittals can be midday my time, or if it needs to be
14 1:00 East Coast time on the 8th, for the filings, if
15 there are to be any?

16 MR. SAMUELS: And will Your Honor like
17 to set a page limit, say three pages?

18 SPECIAL MASTER POPPITI: I would think
19 three pages because, remember, my anticipation is this is
20 three pages of, "This is where we are," and the 11:00 is
21 not meant to be a final decision, if you will, because
22 it's not at the end of full briefing. It may be that
23 this is guidance. Unless you think that you are going to
24 be able to do, in the three pages, what you think you

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1 need to do and I should be able to turn it around with an
2 order, if you will, on the 9th.

3 MR. COOPER: Your Honor, that would be
4 Eastern time; right?

5 SPECIAL MASTER POPPITI: Yes, sir.

6 MR. SAMUELS: I think three pages should
7 suffice, Your Honor, and I think the parties, being
8 mature, will take their guidance from you.

9 SPECIAL MASTER POPPITI: Good. Then I
10 think we can do it in that fashion.

11 MR. SAMUELS: Your Honor, so then I get
12 to the question of whose documents are going to be
13 produced, and in the course of our discussion with Intel
14 yesterday, we learned that, in the course of counsel's
15 investigation, which, apparently, began sometime late
16 last fall, there were 17 Intel employees. We are not
17 exactly sure how they were chosen. That's sort of beside
18 the point. But those 17 employees gathered certain
19 documents and sent them to outside counsel to assist
20 counsel in conducting the investigation into Intel's
21 document retention problems.

22 I am not going to mention the 17
23 individuals by name because Intel has put that portion of
24 its submission under the protective order, but it's

1 important to note that these 17 individuals, apparently,
2 gathered these documents long ago, and, apparently, long
3 before Intel's problems were made known to us, and these
4 individuals gathered the documents not for purposes of
5 complying with our document requests. Indeed, our
6 document request postdated these individuals' gathering
7 of documents by several months.

8 It also appears to be the case that the
9 gathering of these documents was not done by Intel's
10 counsel but individuals did so themselves. And we are
11 not criticizing that because, for the purposes for which
12 that document gathering was done, that's totally
13 appropriate. But the bottom line to us is that there are
14 17 people who make different cuts, look for different
15 kinds of materials, search different kinds of files,
16 conducted their search for different time periods, and,
17 so, we are dealing with a self-selection by individuals
18 of documents from their files or certain of their files
19 for an entirely different purpose.

20 Now, we understand that the materials in
21 the aggregate amount to eight boxes, and in Intel's
22 objections served on Tuesday night, they proposed to give
23 us these eight boxes on the condition that they perform
24 no further searches for documents responsive to all

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1 requests; in other words, whatever is in those eight
2 boxes, we get. If it's not in those eight boxes, we
3 don't get. So, you know, to us, I don't mean to be flip,
4 it's sort of mystery meat.

5 Our view is that we are happy to receive
6 these eight boxes, but our discovery ought not be limited
7 to those eight boxes merely because that's what happened
8 to be the scope of Intel's internal investigation, nor do
9 we believe our discovery should be limited to what those
10 17 individuals self-selected out of their files for a
11 completely different purpose and without our document
12 requests in mind.

13 So, at a minimum -- and we discussed all
14 of this with counsel, and I don't think there is really
15 any big disagreement about it -- at a minimum, we feel
16 that we need to satisfy ourselves that these 17
17 individuals, or, for that matter, any other group of
18 individuals that we'd be asked to agree upon for purposes
19 of production, that they are the right individuals in the
20 sense that they are the key players in the design and
21 implementation and monitoring of Intel's document
22 preservation program in this case, that their electronic
23 and paper files have been reviewed by counsel in the
24 appropriate and required manner under the Federal Rules,

1 and that these individuals have, in fact, been preserving
2 their relevant documents.

3 Just as we did with respect to Merrick's
4 discovery, before either side can be asked to agree to
5 production by a limited subset of the others' employees,
6 we need these basic assurances. And we discussed this
7 with counsel yesterday, and they -- they agreed that some
8 set of representations would be appropriate. They asked
9 us to send over a list of the representations we thought
10 were appropriate, and we did so yesterday afternoon. We
11 have not heard back from them yet, so we really don't
12 know where we are at this point.

13 And the reason I wanted to put a pin in
14 Mr. Cooper's comment earlier about the scheduling of the
15 deposition is that we don't know where we are about
16 document production. And let me just stop there.

17 SPECIAL MASTER POPPITI: Mr. Cooper.

18 MR. COOPER: Yeah. Maybe Dan Floyd
19 would be the best person to respond.

20 SPECIAL MASTER POPPITI: Mr. Floyd.

21 MR. FLOYD: Yes, Your Honor. I think
22 that there is a few points. One is that I think that's
23 substantially correct in terms of we have gotten the
24 representations. We are going to look at them. I think,

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1 you know, we could end up in some sort of lengthy
2 discussion about, you know, what we did or didn't do in
3 terms of document collection. I guess I would like to
4 address a couple points.

5 The proposal we had was specifically
6 without prejudice in the sense that we recognized that
7 there may be follow-up that would -- that would result
8 from this, so the idea wasn't somehow a mystery meat
9 where there wasn't an opportunity to react.

10 We believed that these collections were
11 done, basically, by subject matter, that you have people
12 in this context who have jobs that, you know, have a
13 number of responsibilities over a long -- this is over a
14 long period of time, and that having comprehensive
15 document collections and searches for all these various
16 individuals, trying to sort out the small subset that's
17 relevant to here would be very challenging. And, so,
18 there were approaches taken that we thought were
19 appropriate and pragmatic to get it done.

20 You know, there are different time
21 frames which were measured by when people, we believed
22 people were involved, and at least for some of the core
23 people, the collections, I believe, went through the end
24 of January of '07, so they weren't done five or six

1 months ago and just put in a can. There were a series
2 of, you know, collections, and we had recognized the need
3 to describe them. We attempted to do that. Counsel had
4 a number of follow-up questions which we will try to be
5 addressing and get back to them on.

6 So I think that, at the end of the day,
7 this was a, we thought was a constructive proposal to try
8 and move this along, recognizing the various
9 considerations involved, you know, at the end of the day,
10 you know, we will have to determine whether or not they
11 think it's reasonable how we want to proceed.

12 Obviously, if we do proceed in a
13 different manner and it opens up, then it will just be a
14 lot more. We don't necessarily believe that it will be
15 more useful for anybody, but that's not a judgment we can
16 make unilaterally. We don't expect to.

17 So our view is we will, you know,
18 provide the information, we will talk through it. But
19 that was what was underlying the proposal and that's the
20 nature of the discussions we had.

21 SPECIAL MASTER POPPITI: Okay. In terms
22 of ultimate resolution, do you want to be setting any
23 time frames for that? And if the answer is yes, and I
24 expect it would be important to say yes, do we want to be

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1 using the same time frames that we established for the
2 submittals of next week, were there to be a need for
3 submittals?

4 MR. SAMUELS: Your Honor, yeah, I think
5 we do need to do that. It's really pretty much a case in
6 item here. We have made our position to the other side
7 clear that we are not going to accept a custodian based
8 production unless we can get the same sort of
9 representations and the same sort of diligence applied to
10 gathering custodian's files that we have with respect to
11 Merrick's discovery.

12 I don't expect that Intel is going to
13 resist that, but if they do, we need to get that resolved
14 pronto because it -- it sort of -- it sort of supersedes
15 everything else.

16 MR. FLOYD: Our intent would be, you
17 know, we will -- we have been accurate so far, we will
18 provide more information and be accurate as to what we
19 did and the scope of what we did, and if, as a result,
20 there is a belief or a need that we need to go beyond
21 that, then I think we will have to talk about what it is
22 we do to go beyond that.

23 I think that an overarching issue,
24 though, is just figuring out what, you know, what is the

1 level and amount of document search and production that
2 is appropriate here, and that's something we can't
3 resolve at this moment, but this was an attempt to
4 address that because, you know, theoretically, you could
5 have -- any number of people might have some tangential
6 involvement. This could take a very, very long time, and
7 I don't think it's in anybody's interest to do that so we
8 need to find ways to, I think, appropriately focus
9 searches, focus production to get it done.

10 MR. SAMUELS: Your Honor, I am more than
11 happy to talk to Mr. Floyd. He is one of my favorite
12 people to talk to. But at the end of the day, just so
13 it's clear, we just heard Mr. Floyd say that these were
14 materials gathered, in some cases, up through January of
15 '07.

16 Well, our document request wasn't even
17 served until the middle of April of '07, so it's clear
18 that at least up to this point in time, nobody at Intel
19 has lifted a finger to actually gather documents in order
20 to comply with our document request.

21 It's also clear that what gathering of
22 documents has been done was done for a different purpose
23 and was not done by counsel.

24 SPECIAL MASTER POPPITI: Well, counsel,

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1 I will certainly leave the opportunity to argue positions
2 to another day, but what I'd like to do is frame some
3 deadlines here. And if that frame is simply the same one
4 that we established, then let's use it. If it needs to
5 be a different frame of reference but in short order,
6 let's create that now.

7 MR. SAMUELS: Your Honor, we are
8 comfortable with the same schedule, letter brief on the
9 8th and discussion with Your Honor 11 a.m. Eastern on the
10 9th.

11 MR. COOPER: Your Honor, let me try to
12 cast a little more light on this. Basically, what we are
13 doing is we are making available the materials that were
14 collected for purposes of Intel and outside counsel to
15 try to figure out what happened and how to deal with it.

16 SPECIAL MASTER POPPITI: Yes.

17 MR. COOPER: And we think it is a
18 collection of materials that will fully provide the
19 players present with what happened and those underlying
20 facts.

21 It seems to me that what ought to be
22 done, when we have -- and we have to get over some
23 privilege issues, by the way, before we can complete this
24 production.

1 SPECIAL MASTER POPPITI: I understand
2 that.

3 MR. COOPER: What ought to be done is we
4 provide these materials to plaintiffs. They then take a
5 look at them, and if they think that this is inadequate
6 to go forward with these depositions, then we ought to
7 just stop everything right there and we will go back and
8 start negotiating and start -- and if we have to, we go
9 through some sort of a major document production. That
10 will take considerable time. But I think that's the only
11 way to foresee it. I am not all together sure what we
12 are going to be able to work out in terms of an argument
13 in front of Your Honor on the 9th on this issue, and I
14 think we are pushing it.

15 Probably what we ought to be doing, to
16 be realistic here, is work out what we can with O'Melveny
17 and Plaintiff's Class counsel and provide them with these
18 documents, let them look through them, and then come back
19 to us.

20 MR. SAMUELS: Your Honor, we are more
21 than happy to take this production. We have said that
22 from the beginning. But we are not willing to accept the
23 premise that this is the production we get, and unless we
24 ask -- unless we show good cause or make some other sort

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1 of showing, we don't get anything more.

2 SPECIAL MASTER POPPITI: I don't think I
3 heard that.

4 MR. COOPER: Your Honor, I am not
5 suggesting that at all.

6 SPECIAL MASTER POPPITI: I don't think I
7 heard that.

8 MR. COOPER: The idea here was to try to
9 accelerate up front, you know, their examination of what
10 occurred, where the lapse has developed, and that's what
11 we are trying to accomplish. What I don't want them to
12 be doing is go through a process, present the witnesses,
13 and then turn around and have to produce everything and
14 turn around and go through all these witnesses again. If
15 they want a much broader production or they think there
16 are holes in this that they want us to pursue, I want to
17 get that done first.

18 MR. SAMUELS: Your Honor, this is sort
19 of where the rubber meets the road. I mean, our document
20 request was served almost four weeks ago now, and I don't
21 want to cast dispersions on anyone, but nothing has been
22 done yet to gather documents in response.

23 We are, at a minimum, going to require,
24 and we told Mr. Cooper this, we are going to require that

1 for these 17 custodians, if this is the universe of
2 custodians whose documents are going to be produced in
3 response to these document requests, we are going to
4 require that those documents be reviewed by counsel and
5 harvested and produced in the normal fashion so that
6 counsel can make the certification they are required to
7 make about the diligence of the search for documents.

8 The eight boxes that are sitting at
9 Gibson, Dunn, we are more than happy to take, but at the
10 end of the day, we are -- we are going to require that
11 those custodians' files be searched. And if we are going
12 to have a fight about that, I'd just as soon have it
13 sooner rather than later because I don't think there is
14 really any, you know, there is really any grounds for
15 Intel to object to that. And if it means delaying the
16 deposition, our concern is that we don't want to, you
17 know, take this deposition off calendar while Intel
18 takes, you know, takes its sweet time complying with a
19 document request that's been out there for a month.

20 I mean, this should be --

21 SPECIAL MASTER POPPITI: Well, let me
22 ask this question, with respect to, literally, getting
23 this ball rolling: When can I anticipate that the
24 materials that you -- that have been segregated, boxed,

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1 if you will, when can that be accomplished?

2 MR. COOPER: Your Honor, that can be
3 accomplished very quickly. There is an issue whether we
4 have to go back through it with respect to privilege.

5 SPECIAL MASTER POPPITI: And when will
6 that decision be made?

7 MR. COOPER: Well, we need to talk about
8 that next, here, I think. I don't know where we -- we
9 have not yet reached an agreement on that, and that needs
10 to be addressed.

11 But let me just embroider a thought on
12 all of this. This all started off with our suggestion
13 that if plaintiffs want to proceed right away with some
14 discovery, it ought to be directed to the remediation
15 plan, which is the first order of business, that we have
16 been working full force in an effort to try to put
17 together a remediation plan and get that underway because
18 that's what's most important.

19 Plaintiffs, as I understand it, came
20 back and said, No, we want all this discovery on all
21 things so we can look at whether you did things that were
22 inadequate and we can make challenges in court down the
23 road. We said, If that's what you want to do, then that
24 ought to be split off and ought to come second.

1 The end result was a rough agreement
2 that we would try to go forward with three days of
3 depositions which would generally cover the subjects but
4 would be truncated. That's now falling apart, and I am
5 not sure how we should proceed, then, under those
6 circumstances.

7 Our objective right now is to get the
8 remediation plan approved and completed, and that's where
9 all efforts have been devoted, and I mean lots of people
10 have been involved in this effort and we are going
11 forward as quickly as we can on the assumption that the
12 remediation is what's going to prove to be desirable.

13 If we are going to go through a long
14 document search, produce documents, then start going
15 through a lot of witnesses, as far as I am concerned,
16 that ought to be second.

17 SPECIAL MASTER POPPITI: Well, let me
18 ask this question: I mean, clearly, the remediation plan
19 is, from my perspective, critically important to
20 accomplish. The issues with respect to what happened or
21 what should have been going on, what should have
22 happened, my question is: Why does that have to be on a
23 parallel track for purposes of the depositions going
24 forward on the issue of remediation?

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1 MR. SAMUELS: Two answers to that.

2 First, our report -- Intel's report, to which ours is
3 supposed to be responsive, you know, has 20 pages of
4 Intel's version of what happened.

5 SPECIAL MASTER POPPITI: Yes, it does.

6 MR. SAMUELS: And we are under the
7 impression that we get an opportunity to respond to that.

8 SPECIAL MASTER POPPITI: You certainly
9 do.

10 MR. SAMUELS: That's No. 1. No. 2 is
11 what happened and what the scope of remediation ought to
12 be are -- they are linked. The amount of remediation
13 that is required is a -- is related to the amount of
14 culpability or fault that caused the loss of data in the
15 first place.

16 Now, Intel's story, as laid out in their
17 report to Your Honor, is that they designed a perfectly
18 reasonable, responsible document preservation program at
19 the outset of the case and that that program was
20 undermined by a series of unintended, unforeseeable human
21 errors, but that those errors and lapses can all be
22 remediated and everyone can be happy and life can go on
23 and that there was no intention on Intel's part to cause
24 any loss of evidence.

1 We have a differing view, Your Honor,
2 and, that is, that Intel's preservation program was
3 flawed from the outset and destined to fail, that it was
4 a program no reasonable litigant intending to comply with
5 its legal obligations would have designed, and it failed
6 so systematically to execute and monitor.

7 Our view is that Intel made a faithful
8 and we think completely irresponsible decision at the
9 outset to leave its auto delete system running so that,
10 every day, it's custodian's electronic data would
11 disappear, and in lieu of doing the responsible thing,
12 Intel relied on custodians to self-select relevant data
13 and further relied on them to regularly move that data
14 out of their e-mail where it was subject to being auto
15 deleted and into archives or folders that would be beyond
16 the reach of the Grim Reaper auto delete.

17 The preservation instructions that we
18 have been told about never told the custodians that they
19 had to move their data or it would be lost. And those --
20 those who received these deficient instructions were only
21 slightly better off than the hundreds of custodians who
22 received no instructions at all.

23 So, in order for us to address the
24 remediation that ought to be required, we need to lay out

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1 for Your Honor what happened here, and to say that we can
2 take discovery about remediation without discovery about
3 how the data was lost in the first place, you know, puts
4 us in a position where Your Honor only hears half the
5 story and only hears it from Intel.

6 SPECIAL MASTER POPPITI: Here is what
7 I'd like to do just for purposes of today: I want to
8 recess the call for about 15 minutes, let's do it,
9 actually, for 20, get you all back on the phone at 12:00
10 because I want to be having some, if you will, my
11 in-house discussion.

12 So, let's recess this call -- I have 20
13 minutes to 12, about that, on my watch and phone, so
14 let's reconvene at 12:00. Use the same call in
15 information, if you will.

16 MR. COOPER: I take it you don't want me
17 to respond to Mr. Samuels?

18 SPECIAL MASTER POPPITI: Not at this
19 point. That's correct, sir.

20 MR. COOPER: All right.

21 MR. SAMUELS: Thank you, Your Honor.

22 SPECIAL MASTER POPPITI: Thank you.

23 (Recess taken.)

24 SPECIAL MASTER POPPITI: Counsel, let me

1 go back to the, I guess, the question that I raised in
2 terms of whether there has to be full, if you will,
3 discovery on parallel tracks.

4 I understand the way Intel approached
5 its submittal to me, and I do understand that AMD wants
6 and should have an opportunity to, if you will, respond
7 in kind, but let me ask a question against the, framed
8 against the following backdrop, if you will: We know
9 that what was done or what was not done resulted in the
10 potential loss of material, discoverable material in this
11 case and material that is important to view. That's No.
12 1. I don't think anyone disagrees with that.

13 We don't know, at this juncture, whether
14 that was as a result of a human error, a mistake, if you
15 will, as Intel characterizes it, or whether it was as a
16 result of negligence, gross negligence, or conscious
17 design. I mean, I think that's also fair to say.

18 We also know that Intel has proposed a
19 remediation plan, and we are all engaged on making some
20 determination as to whether that remediation plan
21 recaptures 100 percent of what was lost, 95 percent of
22 what was lost, or some percentage less than 100 percent.

23 It seems to me that whether or not the
24 loss was caused as a result of simple mistake or whether

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1 it was caused as a result of any degree of culpability,
2 if you will, negligence, gross negligence, conscious
3 design, I said "it seems to me," I guess it should be in
4 the form of a question: Does it matter, in terms of what
5 the remediation plan that Intel is proposing, that AMD
6 will have an opportunity to react to, and that I will
7 have the ultimate opportunity to either improve or
8 fashion differently, does it matter that it was as a
9 result of, from Intel's view, mistake, or from some
10 degree of culpability?

11 MR. SAMUELS: Your Honor, may I address
12 that?

13 SPECIAL MASTER POPPITI: Yes, please.

14 MR. SAMUELS: First, the law in the
15 Third Circuit seems to us to be clear that in deciding
16 what remedy to impose, the Court must consider how and
17 why the destruction or loss of evidence occurred.

18 SPECIAL MASTER POPPITI: I understand
19 that completely.

20 MR. SAMUELS: And, second, there is law
21 that we read to make clear that once there is evidence of
22 evident of destruction of evidence or loss of it,
23 discovery into the causes of that loss is appropriate.

24 SPECIAL MASTER POPPITI: I understand

1 that as well.

2 MR. SAMUELS: So, finally, Intel has
3 said that, and I am going to quote them here from their
4 submission of the 23rd, that it has a sound basis to
5 believe that, ultimately, nothing of any genuine
6 significance will prove to have been lost.

7 Now, I don't know how Intel can make
8 that statement, but I will accept it at face value and we
9 will conduct discovery and come to our own judgment, but
10 I don't think even Intel would argue that everything that
11 has been lost is going to be restored. There will be, no
12 question, there will be, at the end of the day, some
13 amount of data loss that will never, ever be recoverable.

14 SPECIAL MASTER POPPITI: And I
15 understand that and let me ask you to pause for a moment
16 there.

17 Would you agree with me that
18 remediation, in and of itself, is remedy?

19 MR. SAMUELS: Well, it may be if it --
20 that is among the remedies that Your Honor can impose.

21 SPECIAL MASTER POPPITI: Right. And
22 would you agree with me, then, that what Intel has agreed
23 to do is -- they have, in a sense, taken remedy off the
24 table insofar as it addresses the issue of remediation;

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1 they have said, We will make every effort to remedy what
2 was lost.

3 Now, whether, again, that's going to be
4 100 percent, and I think we all know that it's not,
5 whether it's going to be 95, 90, 80, we don't know where
6 that falls yet, but let me posit the question: I don't
7 disagree with anything you have said with respect to my
8 responsibility measured against your application when
9 there has been a loss. I have got to make some
10 determination as to how that loss occurred for purposes
11 of coming up with a remedy.

12 If, at the end of our work dealing with
13 the remediation plan, itself, if you all make -- by
14 "you," AMD and the Class, if you will -- if you all make
15 the judgment that what Intel has done gives you the best
16 picture of what they could -- they have done everything
17 they could do, they have delivered, whether it's 80
18 percent, whether it's 90 percent, it's 100 percent of
19 what they could do, you may very well take the position
20 that you shouldn't be asking me for any other remedy, if
21 you will; is that a fair statement so far?

22 You may say to me, Now we want to talk
23 about sanctions.

24 MR. SAMUELS: Yes. That's very likely,

1 Your Honor. I mean, it will depend, at the end of the
2 day, as we understand the law, it's a sliding scale from
3 the degree of the loss and the scope of the loss, and
4 until we know both of those things, we are not in a
5 position to advocate for what we think is an appropriate
6 remedy.

7 SPECIAL MASTER POPPITI: And that was --
8 and I understand that because I believe I understand the
9 state of the law and the law in the Third Circuit. My
10 question, then, becomes: Why do all of the discovery --
11 or why should I permit all of the discovery to occur that
12 would ultimately form the basis of any application for
13 sanction, if you will, that you may have if the
14 remediation program can be -- can be -- Intel's proposal
15 with respect to the remediation program can be examined
16 by you, you can inform me, I can have the Court's expert
17 inform me, and we can proceed with the best view of what
18 remediation can do, and then make a determination as to
19 what, if any, application you want to be making and, what
20 if any, further discovery you need. I mean, isn't that
21 the more efficient way to move this process forward?

22 MR. SAMUELS: Well, Your Honor, I guess
23 I have to say I don't think so.

24 SPECIAL MASTER POPPITI: Let me make one

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1 other observation. I can assure you that notwithstanding
2 the fact that Intel's papers hit my desk first and
3 notwithstanding the fact that Intel has described what
4 they -- what they intended to do for their litigation
5 hold, what they learned occurred, not withstanding what
6 they intended to do, I understand that their papers are
7 on my desk, and I have made absolutely no judgment and
8 have no inclination with respect to any judgment on
9 whether what they intended to do was appropriate slash,
10 you know, whether that was the best thing, whether it was
11 best practice, whether it met a standard, whether, what
12 they are describing in terms of what went wrong, whether
13 it is accurate or not, whether there -- whether it was a
14 function of pure mistake or whether it was a function of
15 some nefarious conduct or gross negligence or negligence,
16 I have made no judgment whatsoever.

17 And my only pause is I don't know that I
18 need to have any framework around that for purposes of
19 examining a proposed mediation plan, one proposed by
20 Intel, one proposed by you, and one examined by me.

21 How am I going to be informed by that
22 with discovery that's going to put me on a, me, if you
23 will, on a different track for ultimate consideration of
24 sanctions?

1 MR. SAMUELS: Your Honor, here is how I
2 would answer.

3 SPECIAL MASTER POPPITI: Yes, please.

4 MR. SAMUELS: First, what happened, the
5 facts of what happened and the efficacy of the
6 remediation plan are -- are flip side of the same coin.
7 In other words, I can't tell you much about the efficacy
8 of their proposed remediation plan unless I can get into
9 the facts of what actually happened.

10 To get into the facts of what actually
11 happened, without getting into the question of whether
12 there was culpability on the part of Intel, I don't know
13 how to parse that. That's No. 1.

14 SPECIAL MASTER POPPITI: May I ask a
15 question with respect to No. 1 before you move to No. 2?

16 So, what you are suggesting is, although
17 Intel, I think, is saying, This is what we propose and,
18 quite frankly, this is all that we can do, you can't
19 measure whether it is, in fact, all they can do unless
20 you make -- unless you develop some record on the issue
21 of what happened, why it happened, and whether there was
22 fault involved?

23 MR. SAMUELS: I think that's correct,
24 Your Honor. And it's not only -- from our perspective,

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1 it's not only a question of whether Intel's remediation
2 plan is the best that they can do. There is also a
3 question of whether that remediation plan will bring --
4 will make us 80 percent whole, 70 percent whole, or an
5 unknown percentage whole.

6 SPECIAL MASTER POPPITI: Let me ask this
7 question, Mr. Samuels: If you develop a record that,
8 with respect to the remediation plan, itself, that
9 suggests to me that what Intel is doing is not sufficient
10 because you believe that your plan could get to a
11 different percentage higher than where Intel is -- and we
12 don't know what percentage figures we are talking about,
13 we don't know whether it's running from 80 up to 85 or
14 whether it's from 97 to 98, but just assume, for purposes
15 of my question, that there is a difference -- if Intel
16 tells me, in the course of this teleconference, it
17 doesn't matter to them whether I conclude it was a
18 mistake versus whether there was some fault, if that's
19 not part of their argument to meet your presentation of a
20 different plan, then why do I need the drill down on
21 whether there was fault involved? Are you with me?

22 MR. SAMUELS: I am. But I -- I guess
23 I'd be surprised if Intel would make that representation.

24 SPECIAL MASTER POPPITI: Well, then,

1 maybe it's important for me to have an answer to that.

2 MR. COOPER: The question you asked,
3 Your Honor, seems to me to be very appropriate. I cannot
4 conceive of a basis on which we would contend that
5 whether or not there was a fault, with respect to the
6 gaps that we are trying to remedy with our remediation
7 plan, justifies what we are doing.

8 We tried to make it clear that we are
9 doing everything we can think of to, and at great cost,
10 to remediate any losses.

11 SPECIAL MASTER POPPITI: Let me ask
12 this, Mr. Cooper, then: I expect what you may be saying
13 is if AMD comes back and says, We think the plan ought to
14 be doing thus and so, Intel will not take a position that
15 I should not consider that because what Intel -- because
16 there is -- there is a premise, and that premise involves
17 some degree of fault?

18 MR. COOPER: The answer to that, Your
19 Honor, I think is yes, we would not take that position.
20 Indeed, what we are trying to do is craft as thorough and
21 complete a plan as we can.

22 SPECIAL MASTER POPPITI: Regardless?

23 MR. COOPER: Regardless.

24 SPECIAL MASTER POPPITI: Mr. Samuels.

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1 MR. SAMUELS: I appreciate that
2 statement by Mr. Cooper. The likelihood, Your Honor,
3 when we evaluate this remediation plan, I suppose,
4 without having taken discovery, I suppose it could come
5 out one of two ways: We could agree with Intel that this
6 is as much as they can do.

7 SPECIAL MASTER POPPITI: Right.

8 MR. SAMUELS: We can say, No, there is
9 more they can do.

10 SPECIAL MASTER POPPITI: Right.

11 MR. SAMUELS: And I -- and I think those
12 are the possibilities.

13 SPECIAL MASTER POPPITI: Right.

14 MR. SAMUELS: In either case, Your
15 Honor, we will need to preserve the question of whether
16 this remediation, as good and thorough as it -- as it is,
17 is still insufficient to overcome or to -- or to defeat a
18 claim for a -- for a different or more significant
19 sanction.

20 SPECIAL MASTER POPPITI: I don't
21 disagree with that, and I -- Mr. Cooper, do you disagree
22 with that?

23 MR. COOPER: No. As a matter of fact,
24 it's perfectly clear, from what Mr. Samuels said today,

1 if they have to head down that road, we are going to have
2 litigation over it.

3 SPECIAL MASTER POPPITI: Okay. And I
4 think that's what I was driving at when I asked my
5 initial question in our conference earlier today. I want
6 to be moving down the road to getting a plan in place
7 approved as soon as we possibly can, and whether or not
8 there is agreement with respect to the plan that Intel
9 offers, whether there is an application to do something
10 different, whether I, on behalf of the Court, accept the
11 plan or do something different than Intel proposes or do
12 something different than you both propose, that does not
13 foreclose a later application for sanctions or for
14 additional remedies.

15 So, having said that, it may be
16 important for either you all to, if you will, reconvene
17 for purposes of conferring on path forward, unless you
18 would like to take the time to do that now.

19 MR. COOPER: I think it probably makes
20 sense for all of us to sit down and talk and then get
21 back to Your Honor.

22 SPECIAL MASTER POPPITI: Mr. Samuels.

23 MR. SAMUELS: I would agree with that,
24 Your Honor.

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1 SPECIAL MASTER POPPITI: Okay. Any
2 other matters, then, for today, please?

3 MR. SAMUELS: I think not, Your Honor.

4 SPECIAL MASTER POPPITI: Mr. Cooper.

5 MR. COOPER: We have nothing further.

6 Thanks for your time.

7 SPECIAL MASTER POPPITI: Thank you all
8 and I appreciate your indulgence for that recess.

9 MR. COOPER: Actually, Your Honor, the
10 music was terrific.

11 SPECIAL MASTER POPPITI: Great. Thank
12 you all.

13 (The teleconference was concluded at
14 12:44 p.m.)

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C E R T I F I C A T E .

STATE OF DELAWARE:
:
NEW CASTLE COUNTY:

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

WITNESS my hand this 3rd day of May A.D. 2007.

Renee A. Meyers

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)

