

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, June 14, 2007, beginning at approximately 11:00 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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ALSO PRESENT:

Eric Friedberg, Straus Friedberg

1 APPEARANCES (Continued):

2 Jennifer Martin, Straus Friedberg

3

4 SPECIAL MASTER POPPITI: I think it would be
5 important to do a role call, please.

6 MR. SAMUELS: Your Honor, in Wilmington, for
7 AMD, Fred Cottrell. I am here with Steve Fineman.

8 From O'Melveny, Mark Samuels, David Harron,
9 and James Pearl.

10 SPECIAL MASTER POPPITI: Thank you.

11 MR. ATHEY: Your Honor, Clayton Athey for
12 the Class here in Wilmington, Prickett, Jones & Elliott.
13 Also on the line is Brent Landau with Cohen, Milstein.

14 SPECIAL MASTER POPPITI: Thank you. Good
15 morning.

16 MR. HORWITZ: Good morning, Your Honor.
17 It's Rich Horwitz in Wilmington at Potter, Anderson for
18 Intel.

19 With me, on the phone, I think, are at least
20 Bob Cooper and Dan Floyd from Gibson, Dunn, and Darren
21 Bernhardt from Howry. I am not sure if anyone else is
22 on.

23 MR. COOPER: Your Honor, we also have Rich
24 Levy on the phone here in L.A.

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1 SPECIAL MASTER POPPITI: Thank you all.

2 Good morning.

3 MR. FRIEDBERG: Good morning, Your Honor.

4 It's Eric Friedberg and Jenny Martin from Straus

5 Friedberg.

6 SPECIAL MASTER POPPITI: Thanks very much.

7 Good morning.

8 MS. MALONEY: Good morning, Your Honor.

9 It's Mary Maloney, from Blank Rome, in Philadelphia.

10 SPECIAL MASTER POPPITI: Thank you very

11 much. I think that includes everyone.

12 Thank you for accommodating the schedule
13 when I asked, I guess it was late yesterday morning,
14 that we keep this conference on. And I trust that you
15 have all had the opportunity to review the stipulation
16 and order that was sent last night and then again
17 amended this morning, the purpose of which is, I trust,
18 rather clear, and, that is, to assure that we are moving
19 forward with some dates certain, so that, as we move
20 parallel to whatever work is also being done in the case
21 in chief, we don't lose sight of the fact that I am very
22 concerned about dates that are already established in
23 the case in chief that we may have to be looking at in
24 short order in terms of suggesting to Judge Farnan we

1 are either on track or not on track, and I think we all
2 know part of the answer to that.

3 So, my suggestion, by virtue of generating
4 this stipulation and order, which is still proposed, I
5 took the proposed language out of the caption only for
6 purposes of saying, If there is consensus, I will
7 execute the order and move forward. But I would like
8 thoughts on establishing a cutoff dealing with the
9 remediation discovery that is expected to occur.

10 MR. SAMUELS: Your Honor, Mark Samuels for
11 AMD. If I may begin?

12 SPECIAL MASTER POPPITI: Please. Yes,
13 please.

14 MR. SAMUELS: Your Honor, from AMD's
15 perspective, we welcome the Special Master's
16 clarifications to the bifurcation stipulation and
17 especially the imposition of a deadline for completing
18 what the stipulation calls for mediation discovery.

19 We are very anxious to get this discovery
20 into the remediation plan done, as I indicated at our
21 last hearing. Indeed, we are anxious to get it started.

22 We served our remediation discovery a month
23 ago. So far, we have not received a single scrap of
24 paper, not one. In fact, we didn't receive, until

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1 yesterday, the list of custodians whose files Intel
2 proposes to produce in response to that discovery.

3 I think we have now resolved the various
4 disagreements and objections about that discovery. And
5 if I am -- if I am correct in my assumption, we should
6 have a stipulation to launch today or, perhaps, tomorrow
7 about that discovery, but if we don't, we will meet and
8 have some motion practice. And in order to meet the
9 July 31 deadline your Honor intends to impose, which we
10 applaud, we will need to get any motion practice
11 expedited.

12 If I might also say, your Honor, at our last
13 hearing, I indicated that it was AMD's preference to
14 have Intel's document production in hand before taking
15 the 30(b)(6) deposition we noticed a month ago, but in
16 light of a July 31 deadline for completing remediation
17 discovery and the long, and at least from our
18 perspective, quite unanticipated delay in Intel's
19 document production, I don't think we have that luxury
20 any longer. And as to certain of the topics in that
21 notice, we would like to proceed right away with the
22 deposition with or without documents. We just need to
23 get that started.

24 We have, at this point, almost two months,

1 since Intel filed its remediation plan, we have
2 fundamental technical questions about this plan, exactly
3 what Intel proposes to do, how those plans were
4 developed and by whom, how exactly it's going to be done
5 at a technical level, how long it's going to take, and
6 on and on.

7 And we also understand that Intel has not
8 been waiting for us to take discovery or to comment on
9 its remediation plan or for your Honor to approve its
10 remediation plan. Our understanding is that Intel has
11 gone full steam ahead, doing what it proposed to do, and
12 that's fine, and that's their risk. But we would like
13 to begin the 30(b)(6) deposition promptly with or
14 without documents.

15 There are several topics we can -- you know,
16 we can take deposition on right away right now. And the
17 other thing we'd like your Honor to consider is there
18 are -- there are many technical aspects to this
19 remediation proposal that will be quite cumbersome to
20 elicit through depositions. And, you know, we have a
21 technical consultant, Intel has a technical consultant.
22 The Intel technical consultant is carrying out this
23 remediation.

24 We would like to propose a technical

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1 exchange, either over the phone or across the table, our
2 consultant and their consultant, with or without
3 lawyers. As far as we are concerned, they are not
4 necessary, but if Intel wants them, that's fine.

5 We'd like to get the technical people,
6 though, in a dialogue so that we can gain a very
7 early -- well, nothing is early now -- but at least a
8 very prompt technical understanding of Intel's system,
9 the software being used, the data that's being captured,
10 how the remediation is taking place, the ability to
11 generate reports, and on and on, things that, you know,
12 the things that we really need to know in order to
13 comment on this remediation proposal, especially if we
14 want to put a hard deadline to it at the end of next
15 month, which we think is a grand idea.

16 SPECIAL MASTER POPPITI: Let me just ask a
17 couple questions before hearing any other comments.

18 Can I trust that the 30(b)(6) depositions
19 that would go forward, with or without documents, can I
20 expect that you are suggesting that you are not going to
21 be hampered by that? And, by that, I mean you are not
22 going to be coming back and saying, Now that we have
23 this piece and now that we have production of documents,
24 we have got to go back and revisit and conduct another

1 30(b)(6) deposition?

2 MR. SAMUELS: Your Honor, there are three
3 topics in the 30(b)(6) notice. There are topic Nos. 2,
4 3, and 9, and those topics we would like to proceed with
5 or without --

6 SPECIAL MASTER POPPITI: Okay.

7 MR. SAMUELS -- with or without documents.
8 And we don't envision, if we get a knowledgeable
9 witness, we wouldn't anticipate any need to come back to
10 your Honor with permission to delve back into those.

11 SPECIAL MASTER POPPITI: Okay. The other
12 question, and it's more of a comment, I would expect
13 that having a technical dialogue, if you will, that
14 certainly makes a great deal of sense to me and it will
15 be important for me to make sure that the experts that
16 the Court has are involved in that dialogue.

17 MR. SAMUELS: By all means, your Honor.
18 Mark Samuels.

19 SPECIAL MASTER POPPITI: Thank you.
20 May I have some comments, please.

21 MR. COOPER: Bob Cooper, Your Honor.

22 SPECIAL MASTER POPPITI: Mr. Cooper, thank
23 you.

24 MR. COOPER: Actually, we also agree

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1 wholeheartedly with your Honor's purpose and the
2 schedule, and I am pleased to hear Mr. Samuels talking
3 about some sort of an informal discussion.

4 We have been urging AMD and the plaintiffs
5 to try to go forward promptly with some of these
6 depositions because the document production problem is
7 enormous, I mean, in terms of the scope that they want.

8 We think that much of this will become
9 transparent and obvious when they take the depositions,
10 so I think the idea of moving forward on some of the
11 depositions makes sense.

12 I do not have in front of me, right now,
13 what 2, 3, and 9 are.

14 SPECIAL MASTER POPPITI: Nor do I.

15 MR. COOPER: I am going to have to look at
16 that.

17 The idea of a technical exchange, I think,
18 is a grand idea. That's something we have encouraged
19 and have been willing to do, and I think it would make
20 sense to do that and I think it would make sense to have
21 the Court's experts participate in that.

22 I truly believe that what we are trying to
23 do in remediation, no one is hiding the ball, it's
24 simply a matter of making sure they understand what we

1 are doing. We have made the gaps that would appear to
2 be present, which we are remediating, as clear as we
3 can.

4 Now, with respect to the actual document
5 production, we will turn every effort to achieving it.
6 Obviously, what's been going on since last month is
7 trying to determine what the scope of that will be. And
8 there has been a lot of negotiation back and forth.
9 Most of it is still fairly broad.

10 We have agreed upon a custodian approach.
11 We have -- we have taken a look at -- we have harvested
12 the custodians and we know what we are dealing with,
13 roughly. We have got -- to respond to the remediation
14 discovery that the plaintiffs want, we got to -- we have
15 to go through 6.2 million pages of materials for just
16 these selected custodians.

17 And that -- the problem is compounded by the
18 privilege issue, which I can go into, but, right now, we
19 are in a situation where what is being proposed by
20 plaintiffs is they will accept a waiver of non-core work
21 product and that production, but then they throw in the
22 language that it looks to us like sort of a got ya. If
23 we make any mistake and produce something that's
24 privileged, they are going claim there is a waiver of

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1 materials much more broadly.

2 So we have to, right now, do a document by
3 document review of these materials in order to produce,
4 but we may need some help on that front from your Honor
5 in terms of some way to deal with this.

6 I do think, frankly, that if, once we get
7 underway with some of these depositions, or, indeed, the
8 technical discussions, a lot of these issues may become
9 clear to AMD and Class counsel and they will find that
10 they are absolutely in a position to comment on the
11 remediation plan fully.

12 SPECIAL MASTER POPPITI: Just a question as
13 you proceed. You mentioned the privilege and waiver
14 issues. Are you in a position, and by "you," I mean all
15 the parties, in a position to frame those issues for
16 purposes of either getting a judgment for me or at least
17 getting some guidance?

18 MR. COOPER: Well, let me tell you where we
19 were, and I think it's fair to say that what we had
20 negotiated with the plaintiffs would take us longer than
21 the schedule your Honor has proposed in order to produce
22 the materials.

23 The reason for that is the size. We are
24 talking about 61 gigabytes, which we think is about 6.2

1 million pages of material we have to go through. And
2 what -- where we stand right now is I think we have an
3 understanding that we will produce what I will define
4 simply as non-core work product. And we also have
5 agreed on trying -- that we will try to agree to a word
6 search that will be done electronically, which will then
7 help us narrow that process.

8 I am still concerned it's going become very
9 intensive when we have to deal with the attorney/client
10 privilege issue, and I don't know how long that will
11 take. We are prepared to pull -- we will pull some
12 people off of our regular document production, we will
13 find the people, we will try to get it done as rapidly
14 as we can, but I do think that it probably cannot be
15 done as thoroughly as was contemplated by the
16 negotiations that have taken place between the parties
17 within the time frame your Honor has established.

18 Having said that, we are going to try to do
19 our best, and we may need to come to Your Honor to
20 suggest ways to modify it so that we can -- the
21 production burden will be less if we can't work that out
22 with plaintiffs' counsel.

23 In the meantime, I think that, in going
24 forward with these discussions, technical discussions,

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1 and some earlier 30(b)(6) depositions makes a great deal
2 of sense because I think that might remove a lot of the
3 mystery that is behind all of this, at least from AMD's
4 and Class counsels' viewpoint.

5 MR. FLOYD: Your Honor, this is Dan Floyd.
6 Since I have been responsible for a lot of the
7 negotiations, I got a little bit more background.

8 We have selected now, in response to the
9 request, 19 separate custodians. So, in and of itself,
10 this production will be almost analogous to productions
11 that might occur, in an ordinary case, the total
12 production on the merits.

13 So, one of the things -- we have had a
14 series of discussions and negotiations. I mean, our
15 view is we got the discovery on May 11th. We responded
16 within four days and we have engaged in, you know,
17 extended negotiations because it is not a simple matter
18 of just because we are not looking at producing
19 particular documents or particular categories, we are
20 looking at -- the plaintiffs have all along insisted
21 upon a custodian-based approach. We attempted to
22 negotiate a different approach. We were unsuccessful.

23 So we, essentially, compromised in a way
24 that -- you know, we have had reservations about the

1 scope, but, obviously, all the parties want to get
2 through this, and, so, we have -- we have agreed to
3 that.

4 And what Mr. Cooper pointed out, I think, is
5 correct. We are going to, you know, jump on this. We
6 are trying to come up with and finalize the word
7 searches. We don't know for sure exactly the number of
8 pages we are going to end up dealing with and the scope,
9 and, so, there may be issues that we will have to raise.

10 We also have the concern that, producing in
11 that context, that we are not -- you know, if there is
12 inadvertent production of privileged material or
13 something, we don't have a problem. We appreciate and I
14 think we are on, roughly on the same page. We have a
15 couple, you know, we have got a couple words we need to
16 talk about, but the basic concept of producing what we
17 characterize as non-core, meaning non-opinion work
18 product, in connection is that we would agree to that,
19 but we would preserve our objections to it and withhold
20 opinion work product and we would not be intending to
21 waive the attorney/client privilege.

22 SPECIAL MASTER POPPITI: I understand.

23 Let me just, then, pose another question. I
24 certainly would like to keep the date that I suggest in

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1 the order. I don't know whether you have all had the
2 opportunity, in advance of this quick noticed call, if
3 you will, to discuss that date, and I don't know whether
4 you want the opportunity to confer to suggest a
5 different date that is reasonable, and if you can't come
6 up with any consensus on your part, it would default to
7 the date that I propose.

8 MR. SAMUELS: I think that would be fine
9 with us. The July 31 date, if we understand you
10 correctly, that would become the date by default unless
11 we have agreed to something else and let you know by,
12 you know, say end of the day today or something like
13 that.

14 SPECIAL MASTER POPPITI: Exactly. And if
15 you need more time, end of the day tomorrow or first
16 part of the new week. I wanted to set the target. I
17 think the target makes sense. But it's got to make
18 sense in the context of the work that you -- the work
19 that has been done and the significant work that has yet
20 to be done.

21 MR. SAMUELS: Your Honor, yes, that's right.
22 And, you know, on the privilege question here, you know,
23 Intel has -- Intel is the one that has proposed a
24 non-waiver provision in this agreement, and, from our

1 perspective, it's not necessary, and it's especially not
2 necessary if we are going to be told by Mr. Cooper and
3 Mr. Floyd that, on a count of it, they are going to have
4 to do page-by-page review of 6.3 million pages. That's
5 not necessary. And, so, we will be working with Intel
6 to figure out some way to get this -- to get this word
7 searching done, which can all be done with a few clicks
8 on a mouse, and get that production going without the
9 overlay of a page-by-page privilege review.

10 So, that's what we will be aiming for and we
11 hope that July 31 will be a date that we can work with.

12 SPECIAL MASTER POPPITI: Good. I am glad to
13 hear you say that.

14 MR. COOPER: Your Honor, it strikes me that
15 everything you proposed is just fine. We will work to
16 achieve that date, and if we have any real issues where
17 we think we can't work it out, we will come to you to
18 help sort them out.

19 SPECIAL MASTER POPPITI: Okay. Well, I will
20 hold off, though, on entering the order until I get a
21 green light from everyone.

22 MR. SAMUELS: Your Honor, in terms of the
23 technical exchange -- which, by the way, we never heard
24 that suggestion from Intel, but I am glad that they are

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1 agreeable to it -- in terms of that, how do we schedule
2 that so that Your Honor's technical expert can
3 participate?

4 SPECIAL MASTER POPPITI: Here is what I
5 think makes sense. Eric, you are on the line with us;
6 correct?

7 MR. FRIEDBERG: Yes, I am here, Judge.

8 SPECIAL MASTER POPPITI: I think it makes
9 sense for us to -- for you to have communication now to
10 understand what the schedule of their team is both with
11 respect to deposition availability and with respect to
12 -- with respect to that technical dialogue.

13 I mean, there is no sense, in our hanging up
14 and then you re-instituting a call. So, it may be
15 important, if they can outline their availability now, I
16 have those dates, but let's just hear directly from
17 them, please.

18 MR. FRIEDBERG: Really, I don't know exactly
19 what --

20 SPECIAL MASTER POPPITI: Do the deposition
21 dates first.

22 MR. FRIEDBERG: Well, generally speaking, I
23 mean, we are available, if this is going to occur in
24 L.A., which I will be in L.A. on the 25th and 26th for

1 other business, we can do the 27th, the 28th, and the
2 29th of June.

3 We are open for the second week of July and
4 we are open for the -- I mean the weeks beginning July
5 2nd, Monday, July 2nd, the week beginning July 16th, and
6 July 30th and 31st. Essentially, we are not available
7 the week beginning July 9th. We are not available the
8 week beginning July 23rd.

9 MR. COOPER: That's very helpful. I have
10 those dates. I think what we need to do is talk with
11 Mark and his group and figure out exactly who are the
12 best people to get this underway.

13 MR. SAMUELS: Very good. We will consult
14 with our consultant on his availability, and then,
15 hopefully, we will find dates that work both for the
16 technical exchange as well as for the commencement of
17 the 30(b)(6) consistent with Mr. Friedberg's schedule.

18 SPECIAL MASTER POPPITI: And with respect to
19 the technical exchange and any dialogue that would
20 occur, I think it just makes sense for there to be some
21 direct contact with Eric and his team for the
22 availability of dates.

23 There is really no reason for that to come
24 through me either by convening a telecon or by sending

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1 mail to me and having me forward it to the team.

2 MR. FRIEDBERG: Also, with respect to the
3 technical conversations, if somebody wanted to get
4 something going earlier than that, we are available June
5 20th and 21st.

6 SPECIAL MASTER POPPITI: Okay.

7 MR. COOPER: Thank you.

8 MR. SAMUELS: Thank you.

9 SPECIAL MASTER POPPITI: Are there any other
10 matters, then, that we need to discuss with the order as
11 proposed?

12 MR. SAMUELS: Am I correct in understanding
13 that we are to get back to you by the end of the day
14 tomorrow if we wish to propose a date other than July
15 31?

16 SPECIAL MASTER POPPITI: Yes, please.

17 MR. SAMUELS: Thank you.

18 SPECIAL MASTER POPPITI: Thank you all very
19 much.

20 (The teleconference was concluded at 11:28
21 a.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 Certified Realtime Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the foregoing teleconference is a true record of the teleconference; 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 14th day of June A.D. 2007.

Renee A. Meyers

RENEE A. MEYERS
CERTIFIED REALTIME REPORTER
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(Expires January 31, 2008)

