

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 Friday, June 20, 2008, beginning at approximately 2:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 SPECIAL MASTER POPPITI: If we could
2 start with the Class plaintiffs.

3 MR. ATHEY: Good afternoon, Your Honor.
4 Clayton Athey with Prickett, Jones & Elliott for Class
5 plaintiffs.

6 MR. SMALL: Good afternoon, Your Honor.
7 Dan Small with Cohen, Milstein for the Class plaintiffs.

8 MR. LANDAU: Good afternoon, Your Honor.
9 Brent Landau, also with Cohen, Milstein, for the Class
10 plaintiffs.

11 SPECIAL MASTER POPPITI: Thank you.

12 MR. FIMMEL: Good afternoon. Steve
13 Fimmel from Hagens Berman Sobol Shapiro in Seattle for
14 Class plaintiffs.

15 SPECIAL MASTER POPPITI: Thank you, sir.

16 MR. HORWITZ: Your Honor, it's Rich
17 Horwitz for Intel here in Wilmington.

18 SPECIAL MASTER POPPITI: Thank you,
19 Mr. Horwitz.

20 MR. RIPLEY: And Richard Ripley for
21 Intel in D.C.

22 SPECIAL MASTER POPPITI: Thank you,
23 Mr. Ripley.

24 Will any others be joining that you are

1 aware of from Intel?

2 MR. FLOYD: Judge Poppiti, this is Dan
3 Floyd from Gibson, Dunn and I am on the call.

4 SPECIAL MASTER POPPITI: Thank you,
5 Mr. Floyd. I appreciate it. Is that it? Okay.

6 And as you probably saw, AMD will not be
7 joining in on the call.

8 MR. HORWITZ: Your Honor, just so you
9 know, after the exchange of e-mails, I did send around
10 both to Delaware counsel for the Class and for AMD the
11 list of items that we wanted to flag for you to bring to
12 your attention, so I didn't want to provide things to you
13 in advance because I know that we have complained when
14 other parties have, what we thought, jumped the gun on
15 issues, but I just wanted you to be aware that we did
16 provide the information to both the Class and to counsel
17 for AMD.

18 SPECIAL MASTER POPPITI: Thank you very
19 much. I appreciate that.

20 MR. SMALL: Your Honor, we did receive
21 that information and we appreciate it. I do think there
22 are some issues that are unique to the Intel Class
23 plaintiff's case that we can address here, but I think
24 some of them are going to require AMD's participation.

1 At most, I think we could come up with
2 some sort of plan on how we will address those going
3 forward.

4 SPECIAL MASTER POPPITI: You expected
5 that AMD understood that by virtue of Mr. Horwitz's
6 circulation of the proposed topics for today?

7 MR. SMALL: Well, I hesitate to speak
8 for them, Your Honor. I am not sure what they
9 understood. I did, of course, see the correspondence in
10 which they asked to be excused from this call. I think
11 that request came before they received the list of
12 issues.

13 MR. HORWITZ: Your Honor, can I tell you
14 exactly what we talked about and then we can decide what
15 steps to take?

16 SPECIAL MASTER POPPITI: That may be a
17 good idea. And while we are doing that, it looks like I
18 caused my computer to do some funny things, so I can't
19 even access a calendar. I will need a moment.

20 My question is, really two questions.
21 No. 1: What do you expect we should be looking for in
22 terms of the time frame? And although you have left me a
23 blank indicating January, I want to pin that down a
24 little further. That's the first question.

1 And the second is: What are we looking
2 at in terms of the number of hours/number of days for the
3 hearing on Class certification?

4 I mean, I am mindful that some of these
5 things can run for days on end, and I certainly don't
6 have any sense from getting some review of the first
7 filed document, namely, the Class document, as to what we
8 all can expect going forward.

9 MR. SMALL: Your Honor, can I address
10 that?

11 SPECIAL MASTER POPPITI: Yes, please.

12 MR. SMALL: I had a conversation with
13 Mr. Ripley before the call, which I think was very
14 helpful, in which we exchanged our different views about
15 how the hearing should work. I would say, first and
16 foremost, of course, the hearing is for Your Honor's
17 benefit and whatever Your Honor would find helpful, we,
18 of course, would be prepared to do.

19 SPECIAL MASTER POPPITI: I understand.

20 MR. SMALL: The other thing I would
21 point out, as you probably have already have a sense of
22 from the discussion we had a few days ago about the
23 briefing schedule and what the scope of the Class papers
24 would be, there is going to be, and already has been, a

1 lot of discovery taken on the Class certification issues.
2 We filed a substantial brief with a substantial expert
3 report and a bunch of other attachments.

4 I am assuming, given the approach that
5 Intel wants to take here, that they are going to submit
6 to Your Honor a very full set of papers with an expert
7 report and I assume a lot of data analysis in there.

8 We would probably be forced to respond
9 in kind to meet Intel's arguments.

10 So, at the end of the day, there will be
11 a lot of Class certification discovery with a lot of
12 briefing and expert reports and data analysis that will
13 be before Your Honor at the completion of briefing.

14 In my experience in the situations where
15 the Court has asked for an evidentiary hearing, it
16 usually mostly involves, you know, additional
17 presentation of the same information that has been
18 presented in writing to the Court.

19 So, I think the Court just needs to keep
20 that in mind in terms of whether we need an evidentiary
21 hearing here, and if we do have one, what length it
22 should be.

23 What we had proposed to Intel was to
24 simply have oral argument at which the parties would be

1 able to synthesize and emphasize the key points that have
2 been made in the briefing and other submissions to date
3 as opposed to adding additional testimony to an already
4 very full record.

5 So, I think the first question before
6 the Court will be: Should this be an evidentiary hearing
7 or should this be oral argument because whichever
8 direction we go in will dictate how much time will be
9 needed.

10 SPECIAL MASTER POPPITI: And in your
11 discussions with Intel, have you both landed on some
12 common ground in terms of whether it should be an oral
13 argument or whether it should be an evidentiary hearing
14 followed by an oral argument?

15 MR. SMALL: Your Honor, we, the Class
16 plaintiffs, had proposed just oral argument.

17 SPECIAL MASTER POPPITI: All right.

18 MR. SMALL: And Intel had proposed a,
19 you know, full evidentiary hearing where I believe they
20 wanted two days just for their witnesses and we really
21 did not make progress beyond that.

22 MR. RIPLEY: Your Honor, this is Rich
23 Ripley. If I can respond?

24 SPECIAL MASTER POPPITI: Please,

1 Mr. Ripley.

2 MR. RIPLEY: Thank you. This is not
3 surprising, this is one of many points where plaintiffs,
4 Class plaintiffs and defendants and Class actions differ
5 in terms of how the Court should approach this.

6 As Mr. Small said, they filed a
7 substantial expert report, it's upwards of 70 pages, and
8 I am sure we are going to get a rebuttal report. It has
9 a lot of concepts in there about proposed benchmarks to
10 demonstrate impact and damages, proposed regression
11 analysis. We are going to be testing those
12 methodologies. We are not going to engage in arguing
13 that methodologies are inappropriate because that is --
14 you know, what the Court wants to know is will the
15 methodologies work in this fact pattern in this market
16 and that's what we are going to test.

17 SPECIAL MASTER POPPITI: Okay.

18 MR. RIPLEY: We will, we believe, and we
19 currently are going to use -- we know we are going to
20 have one expert but we may need to have an additional
21 expert, we haven't decided that yet, we are still
22 investigating that possibility, we believe that, for two
23 days, that you could hear from the expert from both sides
24 in a way that will help -- that they can best synthesize

1 the enormous amount of economic work that's going to go
2 into these reports and also be in a position to answer
3 questions that Your Honor may have.

4 I know, in my past experience with you,
5 that you come well prepared and you have often asked
6 questions, and I would much rather have our expert be in
7 there answering a question on a particular point than you
8 asking me and me giving it my best shot no matter how
9 prepared I am.

10 Also, I think the evidentiary hearing in
11 this case is going to be important because Mr. Small said
12 that they, although I don't think they are forced to file
13 a substantial reply brief, they can just agree with
14 everything that we say and that would be the end of it.

15 SPECIAL MASTER POPPITI: Right.

16 MR. RIPLEY: But they are going to file
17 something, in which case, I think the Court would benefit
18 from our expert or experts' reaction to that kind of
19 rebuttal to that opposition.

20 Without an evidentiary piece, you won't
21 be able to get from the defendants what criticisms we may
22 have of that second expert report that we imagine
23 Dr. Lefler is going to be filing on December 9th.

24 I had said two days. Mr. Small said two

1 days for us, but I think two days of all evidence that
2 either side would put in, plus that would also include
3 the arguments that we might make, would be enough to
4 present to the Court and help you understand the issues
5 that you are going to need to grapple with when you sit
6 down to resolve this Class certification motion.

7 MR. SMALL: Your Honor, can I just give
8 a brief response to that?

9 SPECIAL MASTER POPPITI: Please.

10 MR. SMALL: Two things, Your Honor. We
11 always hear from the defendant, not surprisingly, that it
12 wants a chance again to respond to what our expert says
13 in reply, but, of course, that's a never-ending type of
14 scenario. Someone has to have the last word, and, as is
15 traditional, the party with the burden of proof, which we
16 have on Class certification, gets the last word. So
17 their desire to present, through an evidentiary hearing,
18 a sur reply report, I don't think, is a good reason for
19 such a hearing.

20 And the other thing, it may be
21 premature, Your Honor, to decide right now what would be
22 helpful to you until you have seen the papers. You know,
23 there is the suggestion that it will be so complicated
24 that you will need to ask the experts a lot of questions

1 to understand what they are saying. I have greater
2 confidence that what the experts say will be sufficiently
3 clear and that Your Honor will be able to get through
4 that in a way that it may be something that can be
5 handled just with the papers and oral argument, but I
6 would at least encourage the Court to look at the papers
7 first and decide what would be most helpful at that
8 point, whether oral argument will be sufficient or an
9 evidentiary hearing would be necessary.

10 SPECIAL MASTER POPPITI: Let me suggest
11 that it certainly makes sense, in light of what you both
12 have just said, for me to certainly get through the
13 initial round of papers, that is, the initial filed paper
14 by Class, the answering paper by Intel, and that, at that
15 juncture, that may put me in a better position to make a
16 better informed determination as to whether I need an
17 evidentiary hearing or whether it should be a matter of
18 an oral argument.

19 At the same time, what may be important
20 for me to do is suggest that it, for purposes of planning
21 not only my schedule but certainly your schedule going
22 forward, it may make some sense for you to expect that it
23 would be a full blown hearing and argument, not believing
24 that that necessarily is going to have to occur, but

1 let's expect that for the moment, tell me either now or
2 inform me in due course as to what that does mean. Does
3 it mean two days total followed by an oral argument? Or
4 does it mean something other than that? So at least I
5 can make some judgment as to when to set the calendar of
6 the number of days that would be picked would be the
7 maximum number of days, and then, of course, we can -- I
8 can back off of that as I get farther down in reading at
9 least the first two submittals.

10 And I don't know whether the Class is in
11 a position to agree with Intel, now having heard what
12 Intel had to say, namely, two days total, even if it is a
13 full blown hearing.

14 MR. SMALL: I think Mr. Ripley's
15 suggestion that we could do all the evidentiary part of
16 the hearing and the oral argument in two days would set
17 the sort of outer limits that the Court would need to set
18 aside on its calendar.

19 SPECIAL MASTER POPPITI: Okay.

20 MR. SMALL: And, you know, we could go
21 ahead and reserve those two days and then see whether it
22 would take two days or one.

23 SPECIAL MASTER POPPITI: Okay. That's
24 fine. Then that helps me for purposes of looking down at

1 a calendar, and I will do that, although I have done it
2 already, I will do it in the beginning of next week,
3 advise as to when those dates would be, and then we will
4 make an ultimate judgment as to whether it's going to be
5 evidentiary plus argument or just argument somewhere down
6 the line. That's very helpful. I appreciate that.

7 Okay. Then let us move to Mr. Horwitz's
8 proposed agenda that he shared, as I understand it, with
9 Intel -- I am sorry, with Class and with AMD and we will
10 see how far we get depending upon whether AMD needs to be
11 involved, and if they do, you tell me how important it is
12 in terms of getting a turnaround and then we can find
13 some time on a calendar next week. Unless you think we
14 ought to try and get them on the line now?

15 MR. HORWITZ: Your Honor, I think it's
16 appropriate just to lay out what the issues are for you
17 right now. We do think that we need quick resolution and
18 it may be that some of the issues we can try to discuss
19 today with you and Class counsel, they are issues that we
20 have been discussing with them, and there may be some
21 that, you know, Your Honor feels should have a little
22 more time and maybe something submitted.

23 But let me just go through the list and
24 then we can go from there. And, basically, what I said

1 was, Here are the issues we want Judge Poppiti to be
2 aware of and which we think need resolution quickly.

3 The first one, Your Honor, deals with
4 what count, if any, the individual plaintiff's
5 depositions that we have taken already in 2008 of, you
6 know, the individual Class representatives, and there are
7 24 30(b)(6) third-party depositions on Class issues that
8 are set for this summer, and what effect they should
9 have, if any, on the budgeted hours that Your Honor and
10 Judge Farnan came up with on June 5th.

11 Intel did not believe that that was part
12 of the equation, and, apparently, we have a disagreement
13 over whether those hours should count against the merit
14 hours. So that's issue No. 1.

15 Issue No. 2, apparently, AMD takes the
16 position, and I am not sure where the Class comes in but
17 others can speak to it, that the 24 30(b)(6) depositions
18 that are coming up on Class issues, that they should be
19 governed by --

20 SPECIAL MASTER POPPITI: Mr. Horwitz,
21 would you repeat that again, please? I am sorry.

22 MR. HORWITZ: Sure. With respect to the
23 24 30(b)(6) third-party depositions that are coming up
24 this summer on the Class issues, AMD has taken the

1 position, and I am not sure where the Class comes out on
2 this, that those depositions should be governed by the
3 recent CMO No. 6, the notice and scheduling obligation.
4 And it was our belief that because of the time frame of
5 these depositions, in order to get the Class
6 certification briefing done, that the elaborate
7 scheduling bells and whistles of CMO No. 6 for merits
8 depositions would not apply to them. That's issue No. 2.

9 Issue No. 3, it comes back to a subject
10 that is near and dear to Your Honor's heart, and that is
11 the dispute that the Class has with Frys over its data
12 production. And the Class has the information and has
13 not shared that information with Intel, saying that Intel
14 should pay some of the costs of your work in the
15 discovery dispute, and it's our position that we
16 shouldn't, at least because the Class expert considered
17 the Frys' data, and, in connection with his report, and,
18 therefore, should disclose it under Rule 26, which talks
19 about what you should get when an expert considers and
20 relies on certain materials. That's No. 3.

21 SPECIAL MASTER POPPITI: Okay.

22 MR. HORWITZ: The last item, No. 4,
23 which is somewhat tied in, is that it's been nearly a
24 month after we got their expert report and the Class

1 still hasn't completed the disclosures that are required
2 under Rule 26(a)(2)(b) to produce the backup material.

3 So, those are the four issues. Some of
4 them, I think, are simpler. You know, I think we have
5 views that are all pretty clear on what they are, but
6 because there were no letters that were submitted,
7 because they related to the Class issues, we wanted to
8 raise them today, because they are percolating out there,
9 and see how Your Honor wanted to approach them for
10 resolution.

11 MR. SMALL: Your Honor, can I address
12 those?

13 SPECIAL MASTER POPPITI: Yes, please.

14 Let me ask, before you even address
15 those, because Mr. Horwitz laid them out rather
16 objectively, I guess my question is, at least with
17 respect to one and two, although one and two really do
18 focus on Class and how the discussion and ultimate order
19 on June 5th operates going forward and whether it reaches
20 back or not, although AMD is not directly tied into that
21 conversation, it seems to me that, and I will want to
22 hear what you have to say with respect to this, it seems
23 to me, in the interest of fairness, because there may be
24 some impact, that they should be involved in the

1 discussion.

2 Does that not make sense?

3 MR. SMALL: Your Honor, I think it
4 really would. I think you are correct, that issues one
5 and two do have an impact on AMD and I am sure they would
6 want the opportunity to weigh in on this.

7 SPECIAL MASTER POPPITI: Right.

8 MR. SMALL: You know, for instance, the
9 deposition hours issue, whatever hours aren't counted,
10 let's say, of the depositions that Intel has already
11 taken of the Class representative and that they are
12 intending to take of the 30(b)(6) third parties would,
13 presumably, end up being deposition time that would be
14 used instead to take additional depositions of AMD
15 witnesses.

16 So, you can see a direct impact there.
17 And I think it also affects the ratio. Your Honor picked
18 a ratio of 55/45 between plaintiffs on the one hand and
19 Intel on the other, and if you are not counting a whole
20 bunch of hours that they already spent, I think it
21 impacts that ratio.

22 SPECIAL MASTER POPPITI: I think they
23 need to be involved in the discussion.

24 MR. SMALL: So that's the first two

1 issues, I guess, which maybe we can come back to and talk
2 about how we pick a time to bring AMD into those issues.

3 SPECIAL MASTER POPPITI: Right.

4 MR. SMALL: The other two, I agree, are
5 limited to the Class and we can possibly at least begin
6 the conversation today. I am prepared to address the
7 Frys' issue, and Mr. Landau, of my firm, could address
8 the other issue, if that's acceptable.

9 SPECIAL MASTER POPPITI: Well, let me
10 just ask this question: I certainly understand what
11 Mr. Horwitz just said, and I don't know whether you want
12 simply to present your positions today without anything
13 further in terms of putting something on my desk, and
14 whether, with that presentation, you want my
15 determination today as to where this should go?

16 MR. SMALL: What my suggestion was going
17 to be, Your Honor, was more of a procedural approach to
18 you dealing with these issues that may help us through
19 them. And we will just throw them out for Your Honor's
20 consideration.

21 MR. HORWITZ: Your Honor, I appreciate
22 your comment. I thought I did present the issues fairly
23 objectively and I think we ought to decide now whether we
24 are going to argue them or not before Mr. Small does.

1 SPECIAL MASTER POPPITI: And that's what
2 I would like to address. And I guess my first question
3 is: Are you both realizing that other mechanical things
4 usually have to get done before we all wind up having a
5 discussion about this, and I hope you know me better,
6 form is important at some points, but substance is much
7 more important than others, particularly if this is the
8 most efficient way to do it.

9 Do you both believe that you have had
10 sufficient meet and confer for purposes of discussing
11 both issues three and four? It sounds like you have.

12 MR. SMALL: I believe we have, Your
13 Honor. What I was going to suggest, if I may, by issue,
14 is a way that we could get the data to Intel very
15 promptly and reserve for a more deliberate and normal
16 process the issue of whether there should be cost
17 sharing.

18 SPECIAL MASTER POPPITI: That would make
19 sense, Mr. Horwitz. Do you agree?

20 MR. HORWITZ: Your Honor, I think it's
21 cut and dry. I think if we are going to do it, we can do
22 it right now. I think the -- the facts are clear how
23 that went forward and the rule is clear.

24 So -- and, really, the argument on the

1 rule, I think, and I don't want to speak for Mr. Ripley,
2 who will give the details, but I think that kind of
3 resolves No. 3 as well.

4 So, I think we can be very efficient.

5 MR. SMALL: Your Honor, I can't imagine
6 any prejudice to Intel if we give them the data and
7 reserve the right on a normal schedule to brief the cost
8 sharing issue, and with all due respect to Mr. Horwitz, I
9 am not so sure it's such a straightforward issue. There
10 is certainly a disagreement between Intel and us as to
11 how the cost sharing should be handled.

12 MR. RIPLEY: Your Honor, if I can just
13 speak briefly, not argue the merits but just as a
14 procedural point, the reason why we have asked, why we
15 have teed up whether we should have to share in the costs
16 for the data on which their experts now have considered
17 and is in the report, is because if the Court says, if
18 Your Honor makes a ruling that says, If you want it from
19 the Class, you are going to have to give them some of the
20 money that they were assessed in resolving this, then,
21 you know, there is a, quite frankly, there is an option
22 for Intel, from Frys, what was produced to the Class.

23 And, you know, and there is -- so what I
24 am worried is if we get the data from the Class, and I

1 told Mr. Small this, if we get the data from the Class,
2 and there is this kind of presumption that it came from
3 the Class, so if there is -- if -- then you have to
4 decide this issue.

5 If you decide the issue first, then
6 Intel may say, You know what, we will get it from Frys
7 because they are -- you know, they are on a completely
8 different topic. We just can't understand how it is that
9 -- why data that's gotten from a third party, neither us
10 nor AMD has, but that gets to the merits, but I would
11 prefer that we decide this now, Your Honor, so we can
12 figure out how we want to do it.

13 If Your Honor says we have to pay the
14 Class, we can make a decision on, Do we -- do we want to
15 get the data? Is it worth the money that we are going to
16 have to pay for it? Or is there another way that we can
17 try to get it besides getting it from Mr. Small?

18 MR. SMALL: Your Honor, I don't think
19 it's such a simple solution to get it from Frys. As you
20 probably know, as well as anyone, I am not sure Frys is
21 just going to turn it over to Intel, and, more
22 importantly, perhaps, I am not sure that changes the cost
23 sharing issue. I mean, that would really be elevating
24 form over substance, you know, if they get it from Frys,

1 what they produce to us. It's certainly going to be
2 because of the benefit of the work that we put in and the
3 expense we incurred to get the data produced in the first
4 place.

5 Again, I just -- you know, even if we
6 turn over the data and Your Honor were to rule that Intel
7 has to share in the costs but would not have to share in
8 the cost if they were able to get it from Frys directly,
9 we would be happy to have Intel return the data to us
10 without paying for it and get it from Frys.

11 SPECIAL MASTER POPPITI: Let me do this
12 this way. I think what I hear is a dispute that may be
13 better informed with something extraordinarily brief. I
14 am sitting here, as you were speaking, with the Rules in
15 my hand open to the appropriate section, and it seems to
16 me, if there is a dispute, it would be ill-advised of me
17 to say, Let's do it this way, regardless of what you want
18 to be telling me more thoughtfully.

19 And it seems to me it's important enough
20 for me to say, Let's abbreviate both the schedule and the
21 page limitation and get something to me as early as, in
22 terms of full, by both sides, as early as the close of
23 business on Wednesday of next week.

24 We are -- are we regularly scheduled for

1 Thursday? Let me just look here a second.

2 MR. HORWITZ: Yes, Your Honor,
3 June 26th.

4 SPECIAL MASTER POPPITI: Is that going
5 to be soon enough for purposes of getting this data
6 moving, or if I understand what -- let me ask the
7 question two ways: If something is set for the 26th, is
8 it important to get the data moving before the 26th?

9 MR. RIPLEY: Your Honor, we have a
10 subpoena that's going to be -- we have a schedule that I
11 can share with Mr. Small, that I told you about on, back
12 a couple weeks ago, has the Frys deposition scheduled for
13 July 8th.

14 SPECIAL MASTER POPPITI: July 8th, okay.

15 MR. RIPLEY: You know, we could reissue
16 it but we are queued up pretty tight through July in
17 light of the schedule that's in place.

18 SPECIAL MASTER POPPITI: I can do it
19 sooner. I am not suggesting that --

20 MR. RIPLEY: I understand you -- please,
21 I am not suggesting that you push it, but if we -- if it
22 was -- if the Court was going to make the ruling on
23 Thursday and we are able to get, you know, the C.D. the
24 next day, but if there is going to be, you know, an

1 appeals process, then it could be that I will have to
2 move the schedule. But from where we are now, Your
3 Honor, I think if there is -- if the Class loses this and
4 then wants to take it up to Judge Farnan, I am going to
5 have to move the deposition anyway.

6 SPECIAL MASTER POPPITI: Sure.

7 MR. RIPLEY: We are willing to take
8 whatever Your Honor's decision is going to be on this.

9 SPECIAL MASTER POPPITI: I was just
10 going to ask that.

11 Is the Class willing to do the same
12 thing?

13 MR. SMALL: Yes, Your Honor. We are
14 fine with doing that. Again, though, you know, we would
15 be prepared today to turn the data over to Intel and then
16 just brief on a, you know, more normal schedule the issue
17 of cost sharing. I mean, it is a potentially significant
18 issue going forward. So it seems like if we can give the
19 data now to avoid this timing issue, that might be the
20 best way to go.

21 SPECIAL MASTER POPPITI: Intel.

22 MR. HORWITZ: Your Honor, this is Rich
23 Horwitz. I think if you are prepared to review letters
24 submitted on Wednesday, and maybe we ought to have a

1 specific time on Wednesday so that you will have time to
2 read them before 11:00 on Thursday, that would be great.
3 And that avoids the catch 22 that Mr. Ripley spoke about
4 a few minutes ago.

5 SPECIAL MASTER POPPITI: I am really
6 looking for something that is very short. I am going to
7 be in an afternoon hearing that day, so it would make --
8 I am not going to get to see it, whatever you file, if I
9 were going to be asking you to file something midday on
10 Wednesday. So as a practical matter, it's going to have
11 to be close of business either on Tuesday, maybe pressing
12 it, or on Wednesday, and I can leave it to you to either
13 say, We are going to do simultaneous or -- it seems to me
14 simultaneous is the best way to accomplish this because
15 you already talked about it.

16 MR. SMALL: Given the shortness of time,
17 I think it would be best if we could submit them both on
18 close of business Wednesday.

19 SPECIAL MASTER POPPITI: Close of
20 business Wednesday. And do you anticipate that it could
21 be done in three pages or less?

22 MR. SMALL: Yes, Your Honor.

23 MR. HORWITZ: Absolutely, Your Honor.

24 SPECIAL MASTER POPPITI: Then let's do

1 that. Close of business, three pages or less. We are
2 scheduled for an 11:00. I am not suggesting it's going
3 to take the morning to understand what you are saying,
4 but if we can move the 11:00 time to 1:00, that may be
5 better.

6 And that would also, it's also going to
7 permit whatever conversation needs to occur between now
8 and then with AMD so that we can really get to all the
9 issues that Mr. Horwitz identified today on Thursday.

10 MR. HORWITZ: Your Honor, since you
11 raised the other issues, how do you want us to address
12 them, if at all, in writing?

13 SPECIAL MASTER POPPITI: Mr. Horwitz,
14 let me ask this: As a practical matter, I mean, I think
15 it's important to make this determination sooner than
16 later because you got to plan how you are going to be
17 approaching the numbers of depositions you are going to
18 be taking.

19 MR. HORWITZ: Absolutely.

20 SPECIAL MASTER POPPITI: What I'd like
21 you to do, knowing that AMD is not on the line, is
22 propose the same schedule that I had just proposed,
23 three, four, and separate one, two.

24 MR. HORWITZ: So would that be a

1 separate maximum on three pages on one and two?

2 SPECIAL MASTER POPPITI: Separate
3 maximum on one and two.

4 MR. HORWITZ: We will talk to them about
5 that as soon as --

6 SPECIAL MASTER POPPITI: I expect that
7 that's going to give me enough time to see what your
8 respective views are and to put the matter at rest by mid
9 afternoon, late afternoon on Thursday.

10 MR. SMALL: Your Honor, just to be sure
11 I understand, what you are looking for is a three page or
12 less brief on issues three and four by close of business
13 Wednesday?

14 SPECIAL MASTER POPPITI: Correct.

15 MR. SMALL: And then a three page or
16 less brief on the first two issues by the same deadline?

17 SPECIAL MASTER POPPITI: Yes, please.

18 MR. SMALL: Okay.

19 MR. HORWITZ: And when we say
20 "three-page briefs," we are talking about the typical, as
21 we have been doing in this case, three-page letter single
22 spaced?

23 SPECIAL MASTER POPPITI: That's correct.

24 MR. HORWITZ: Thank you.

1 SPECIAL MASTER POPPITI: Okay. Is there
2 anything else, then, please?

3 MR. HORWITZ: I think that's it from
4 Intel's perspective.

5 MR. SMALL: Same for Class.

6 SPECIAL MASTER POPPITI: Thank you all.
7 Have a good weekend.

8 (The teleconference was concluded at
9 2:37 p.m.)

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STATE OF DELAWARE:
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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 teleconference was taken before me, pursuant to notice, at the time and place indicated; that the teleconference was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the foregoing teleconference is a true record; 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 20th day of June A.D.
2008.

Renee A. Meyers

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2011)

