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BY ELECTRONIC MAIL AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Special Master
Blank Rome LLP
Chase Manhattan Centre, Suite 800
1201 North Market Street
Wilmington, DE 19801-4226

Re: *Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al.*, C.A. 05-441-JJF; C.A. 05-485-JJF; MDL No. 05-1717-JJF, DM 19

Dear Judge Poppiti:

While this Court has the power to alter Local Rule 30.6, and to invert the natural order of questioning a witness, Intel has provided no compelling reason for doing so other than to advance its own strategic interests.

RE-PREPARATION OF WITNESSES IN CONTRAVENTION OF LOCAL RULE 30.6 WOULD UNDERMINE THE INTEGRITY OF DEPOSITIONS TAKEN IN THIS CASE

Intel asserts that Local Rule 30.6 is unfair and that the ends of justice would be served by amending it. To the contrary, Intel's proposal creates perverse incentives: it encourages delay by rewarding it with the opportunity to coach witnesses after AMD has already "shown its cards." The Delaware Court of Chancery Rule 30(d)(1) had been in effect for twelve years when this Court adopted Local Rule 30.6.[1] Yet this Court chose not to include the state courts' five day exception. Now Intel asks the Court to second-guess itself. Granting Intel's request, however, will do nothing to further the underlying purpose of the rule: to eliminate encumbrances upon the truth-seeking process. Instead, Intel's request would inhibit that process.

Intel is also mistaken when it represents that "Intel has completed its questioning of all AMD witnesses on consecutive days, with continuances being expressly for the purposes of allowing AMD to conduct a continued direct examination." (Intel's Ltr. Br. at 2.) In fact, Intel was unable to complete the Cloran and Ostrander depositions within the time it originally sought, but the AMD witnesses were flexible in allowing Intel to continue on additional consecutive

[1] *See* D. DEL., AMENDED LOCAL RULES (effective June 30, 2007); CT. CH. R. 30(d)(1), (amended effective Jan. 1, 2002); SUPER. CT. CIV. R. 30(d)(1) (amended effective Jan. 1, 1995).

days. To date, only three of AMD's nineteen depositions have been continued, and Intel itself has delayed resuming two of those depositions.[2] Retroactively allowing re-preparation would be fundamentally unfair because AMD never would have tolerated Intel's delays had it known Intel would be rewarded by getting to re-prepare its witnesses.

Intel also complains that a witness might be questioned about newly TIFFed documents at the continuation of a deposition. Yet, Intel rejected out of hand AMD's offer to allow deponent re-preparation solely on newly TIFFed documents. Intel's complaint that such an approach would be impossible to enforce is makeweight; it is no more or less enforceable than any other rule counsel is duty-bound to respect. Instead, Intel's approach is to remove all limits on re-preparation so that witnesses could be coached on topics and documents already introduced during a deposition -- in addition to newly TIFFed documents.

QUESTIONING OF THIRD-PARTY WITNESSES SHOULD PROCEED AS IT WOULD AT TRIAL

Both sides agree that third party depositions will likely be used at trial in lieu of live testimony. Intel, however, seeks to gain tactical advantage by being the first to question witnesses whom AMD would rightfully question first at trial. Intel makes no bones about its motive; it seeks to invert the normal order of examination so that it, and not AMD, will "frame the issues and questions for what will in most cases be the witness's trial testimony." (Intel's Ltr. Br. at 4.) This would not occur in a courtroom, and should not be permitted in depositions.

The current dispute concerns six Dell witnesses with information central to AMD's case in chief. AMD made it clear early on it wanted to depose these witnesses. Now, Intel wants the opportunity to "set the framework for the deposition[s]" and interfere with AMD's development of the evidence it needs to satisfy its burden of proof. Dell transacts over $10 billion of business a year with Intel. Of the hundreds of Dell employees who interact with Intel and likely have knowledge of Intel's practices, AMD has noticed six for deposition. AMD should not be denied the right to question these integral witnesses first as it would be entitled to do at trial.

AMD does not assert the right to question *all* third-party witnesses first. Rather, AMD seeks to conduct depositions in the same manner such witnesses' testimony would be elicited at trial. At trial, AMD would question third-party witnesses upon whom it relies, and Intel would cross-examine. The same rules should apply in the conduct of a deposition. In case of doubt, AMD is happy to meet and confer with Intel to determine who should question particular third-party witnesses first, such that Intel would be the first to interrogate third-party witnesses whom AMD does not expect to call as part of its case in chief.[3] In fact, Intel has actually already

[2] One was interrupted by an earthquake, another was not completed because Intel failed to produce documents in a timely manner, and a third has been held up by Intel while it debated whether to raise this very issue, re-preparation, with the Court.

[3] Intel suggests alternating priority in taking the depositions. Such an arbitrary solution creates another perverse incentive, encouraging a party to request depositions known to be integral to its opponent's case in order to proceed first half the time.

noticed and questioned some third-party witnesses first, without complaint by Plaintiffs.

For the reasons stated herein, AMD and the Class respectfully request that the Court deny Intel's request for a standing exception to Local Rule 30.6, and provide that AMD may question first third-party witnesses it has identified as part of its affirmative case.

Respectfully,

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cc: Clerk of the Court (By Electronic Filing)
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