

Issued by the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Advanced Micro Devices, Inc., and
AMD International Sales & Services, Ltd.

SUBPOENA IN A CIVIL CASE

Case Number:¹ 05-441-JJF
United States District Court, District of Delaware

v.

Intel Corporation and Intel Kabushiki Kaisha

TO: Futuremark Corporation
12930 Saratoga Avenue, Suite C-2
Saratoga, CA 95070

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

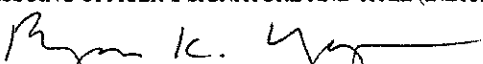
See Attached Schedule A

PLACE O'Melveny & Myers LLP 2765 Sand Hill Road Menlo Park, CA 94025-7019	DATE AND TIME February 18, 2009 5 p.m. (Pacific Standard Time)
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney For Plaintiffs	DATE January 13, 2009
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Ryan K. Yagura, Esq. 400 South Hope Street Los Angeles, CA 90071 (213) 430-6000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

SERVED ON (PRINT NAME)	DATE	PLACE	MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit A

Schedule A

Definitions

1. For purposes of this document request, "DOCUMENT" includes, without limitation, any hard copy writings and documents as well as electronically stored data-files including email, instant messaging, shared network files, and databases created, accessed, modified or dated on or after January 1, 2000.

2. With respect to electronically stored data, "DOCUMENT" also includes, without limitation, any data on magnetic or optical storage media (*e.g.*, servers, storage area networks, hard drives, backup tapes, CDs, DVDs, thumb/flash drives, floppy disks, or any other type of portable storage device) stored as an "active" or backup file, in its native format.

3. For purposes of this document request, "MICROPROCESSOR" means general purpose microprocessors using the x86 instruction set (*e.g.*, Sempron, Athlon, Turion, Opteron, Celeron, Pentium, Core, Core Duo, Core 2 Duo, and Xeon).

5. For purposes of this document request, "COMPANY" refers to Futuremark Corporation and any of its controlled present or former subsidiaries, joint-ventures, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "INTEL" refers to Intel Corporation, Intel Kabushiki Kaisha, and any of their present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "AMD" refers to Advanced Micro Devices, Inc., AMD International Sales and Service Ltd., and any of their present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "BAPCO" refers to Business Applications Performance Corporation, and any of its present or former subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof. "MEMBER(S) OF BAPCO" includes AMD, Apple, ARCintuition, Atheros Communications, CNET, Compal, Dell, Hewlett-Packard, INTEL, Lenovo, Microsoft, NVIDIA, Sony, Toshiba, VIA Technologies, VNU Business Publications Limited (UK), ZDNet, Ziff Davis Media and any other companies with past or present membership to BAPCO.

Instructions

1. The time period, unless otherwise specified, covered by each request set forth below is from January 1, 2000 up to and including the present.

2. In responding to each request set forth below, please set forth each request in full before each response.

3. If any DOCUMENT covered by these requests is withheld by reason of a claim of privilege, please furnish a list at the time the DOCUMENTS are produced identifying any such DOCUMENT for which the privilege is claimed, together with the following information with respect to any such DOCUMENT withheld: author; recipient; sender; indicated or blind copies; date; general subject matter; basis upon which privilege is claimed and the paragraph of these

requests to which such DOCUMENT relates. For each DOCUMENT withheld under a claim that it constitutes or contains attorney work product, also state whether COMPANY asserts that the DOCUMENT was prepared in anticipation of litigation or for trial.

4. If COMPANY objects to a request in part, please state specifically which part of the request COMPANY objects to and produce all DOCUMENTS responsive to all other parts of the request.

5. With respect to any DOCUMENT maintained or stored electronically, please harvest it in a manner that maintains the integrity and readability of all data, including all metadata.

6. Please produce all DOCUMENTS maintained or stored electronically in native, electronic format with all relevant metadata intact and in an appropriate and useable manner (e.g., by copying such data onto a USB 2.0 external hard drive). Encrypted or password-protected DOCUMENTS should be produced in a form permitting them to be reviewed.

7. Please organize electronic DOCUMENTS produced for inspection in the same manner that the COMPANY stores them (e.g., if maintained by a custodian, such as email residing on an email server, please organize DOCUMENTS for production by custodian; if maintained in a subfolder of "My Documents" on a custodian's hard drive, please organize DOCUMENTS for production by custodian with path information preserved).

8. To the extent responsive DOCUMENTS reside on databases and other such systems and files, COMPANY shall either produce the relevant database in useable form and/or shall permit access for inspection, review, and extraction of responsive information.

9. At COMPANY'S election, DOCUMENTS maintained or stored in paper, hard-copy form can be produced as searchable .PDF (i.e., portable document format files with embedded text) and in an appropriate and useable manner (e.g., by copying such data onto a USB 2.0 external hard drive).

DOCUMENTS TO BE PRODUCED

1. All DOCUMENTS constituting or reflecting communications with INTEL concerning COMPANY'S benchmarks, including without limitation 3DMark05 and 3DMark06.

2. All DOCUMENTS constituting or reflecting communications with members of the Performance Benchmarking and Competitive Analysis Lab at INTEL, including without limitation, Shervin Kheradpir, Sudeep Surender, Jeff Reilly, Sudha Ganesh, Matt Dunford, Ronen Zohar, and Tara Kalavade.

3. All DOCUMENTS constituting or reflecting discussions or other communications within COMPANY concerning any proposals, suggestions, or recommendations from INTEL related to modify, change, or alter COMPANY'S benchmarks, including without limitation 3DMark05 and 3DMark06, without regard as to whether such proposals, suggestions, or recommendations were actually adopted, executed, or implemented.

4. All DOCUMENTS constituting or reflecting any benchmark scores or benchmark testing based on any proposals, suggestions, or recommendations from INTEL related to modify, change, or alter COMPANY's benchmarks, including without limitation 3DMark05 and 3DMark06, without regard as to whether such proposals, suggestions, or recommendations were actually adopted, executed, or implemented.

5. All DOCUMENTS constituting or reflecting discussions or other communications within COMPANY concerning any actual or proposed modifications, changes, or alterations to COMPANY's benchmarks, including without limitation 3DMark05 and 3DMark 06, that had the effect or result of changing the performance results of systems with AMD or INTEL MICROPROCESSORS.

6. All DOCUMENTS constituting, reflecting, or discussing the actual or anticipated consequences, implications, or repercussions to COMPANY of not implementing any proposals, suggestions, or recommendations from INTEL related to COMPANY's benchmarks.

7. All DOCUMENTS constituting or reflecting any contracts or agreements, written or verbal, with BAPCO.

8. All DOCUMENTS constituting or reflecting communications with any MEMBER OF BAPCO concerning any business or potential business relationship with BAPCO.

9. All DOCUMENTS constituting or reflecting communications with any MEMBER OF BAPCO concerning the distribution of BAPCO products.

10. DOCUMENTS sufficient to show payments made by BAPCO to COMPANY by month and year and the reasons underlying such payments.

11. All DOCUMENTS constituting or reflecting communications with any employee of INTEL, including, but not limited to, Shervin Kheradpir, Sudeep Surender, Jeff Reilly, Sudha Ganesh, Matt Dunford, Ronen Zohar, and Tara Kalavade, concerning BAPCO.

12. All DOCUMENTS constituting, reflecting, or discussing any contracts, agreements, or projects, including without limitation joint development agreements involving INTEL.

13. All DOCUMENTS constituting, reflecting, or discussing any money, equipment, sponsorships, promotional support, or other assistance provided by INTEL to COMPANY.

14. All DOCUMENTS reflecting or discussing any intellectual property rights involving INTEL.

15. DOCUMENTS sufficient to show the steps taken by COMPANY to preserve documents relevant to the above-captioned litigation or related litigation or proceedings, including, without limitation, all DOCUMENTS that constitute, reflect or discuss COMPANY's DOCUMENT retention policy or policies from January 1, 2000, to the present.