

Frederick L. Cottrell, III
Director
302-651-7509
Cottrell@rlf.com

February 23, 2009

VIA ELECTRONIC MAIL & HAND DELIVERY

The Honorable Vincent J. Poppiti
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. No. 05-441-JJF; and *In re Intel Corporation*, C.A. No. 05-MD-1717-JJF

Dear Judge Poppiti:

Yesterday, the parties submitted an agreed-upon draft order requiring Intel to supplement its responses to the Court's March 16, 2007 Order Regarding Intel's Evidence Preservation Issues. As the Court can see, the proposed order grants the two primary forms of relief AMD sought in its motion: 1) correction of the evidentiary record created by Intel's materially misleading Paragraph 8 Summaries; and 2) an update of any known preservation issues Intel has, to date, failed to disclose. The only matter remaining to be decided is AMD's request for an award of costs and fees pursuant to Rule of Civil Procedure 37. AMD believes that the record on its request for fees and costs in connection with these motions is ripe for decision; however, AMD would like to take this opportunity to clarify its position on a matter raised by Intel's counsel at the January 23, 2009 hearing.

Counsel for Intel suggested that AMD was not entitled to an award of fees and costs because it had not suffered any harm as a result of Intel's noncompliance. Intel's counsel argued that because AMD already had the original Paragraph 8 summaries and Weil Interview Notes in its possession, there were no further disclosures to compel. This argument fails for two reasons. First, the only reason AMD had the notes, and the facts contained therein, is because it moved to compel their production. As the Court observed, there were "serious omissions" from Intel's Paragraph 8 summaries and, on the whole, those summaries were "not compliant" with the Court's March 16, 2007 Order. January 23, 2009 Hearing Transcript at 6:17-23, 10:1-3. AMD should not bear the costs of uncovering facts Intel concealed in the first instance. Second, the agreed-upon order also establishes, as AMD's motion requested, that the Weil Interview Notes, Paragraph 8 summaries, and any supplemental disclosures be deemed Intel party admissions, thereby correcting the misleading and incomplete record created by Intel. Thus,

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One Rodney Square ■ 920 North King Street ■ Wilmington, DE 19801 ■ Phone: 302-651-7700 ■ Fax: 302-651-7701

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AMD clearly prevailed on the present motion to compel, and the only relevant inquiry now is whether Intel's conduct was substantially justified. Intel made several arguments both in its papers and in oral argument as to its purported justification. But, Intel has not and can not point to any authority or justification for omitting material facts from a court filing nor for concealing key facts in discovery.

On this point, AMD wishes to direct the Court's attention to a recent case from the Southern District of Ohio: *In re National Century Financial Enterprises, Inc. Financial Investment Litigation*, No. 2:03-md-1565, 2009 U.S. Dist. LEXIS 5772 (S.D. Ohio Jan. 8, 2009) (Exh. A). In *National Century*, the plaintiff provided evasive responses to deposition questions and then sought to justify those responses based on a narrow reading of the questions posed to it. The Court was not impressed. It characterized the plaintiff's approach as "gamesmanship" and further observed that, even if the responses were technically correct, they "were less than forthright" and not at all consistent with "the spirit of the Federal Rules of Civil Procedure in any circumstance." Similar to the plaintiff in *National Century*, Intel provided evasive disclosures to the Court's March 16, 2007 Order, and it is now attempting to justify those disclosures based on a nonsensical reading of the order. January 23, 2009 Hearing Transcript at 16:14-16 ("I do not think it is in any way appropriate for there to be an expectation that the Court would be expected to draw inferences.") Intel's conduct in this regard has been evasive at best, if not intentionally misleading. *Id.* at 8:22-23 ("Mr. Blanch's summary is ambiguous, at best, confusing, at best, if not something else.")

In sum, AMD has been required to bring this motion to obtain a factually correct record of Intel's preservation problems, which should already have been fully disclosed under any reasonable reading of the Court's March 16, 2007 Order. Had Intel simply been forthright in its summaries as it should in any Court filing, this motion could have been avoided. The fees and costs incurred in filing this motion should therefore not be absorbed by AMD and the Court should grant AMD its requested fees and costs pursuant to Rule 37.

In the meantime, AMD continues to await receipt of Intel's final, post-remediation file counts. We requested this information and have been waiting for it for two months. Most recently, Intel has promised to provide this data by March 2. Once that data has been received and analyzed, AMD will assess the appropriate remedy for Intel's overall preservation failures and AMD reserves its rights in that regard.

Respectfully,

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)

FLC,III/afg

cc: Clerk of the Court (via electronic filing)

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Richard L. Horwitz, Esq. (via electronic filing)

James L. Holzman, Esq. (via electronic filing)