

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

IN RE INTEL CORPORATION
MICROPROCESSOR ANTITRUST LITIGATION

PHIL PAUL, on behalf of himself and all others
similarly situated,

v.

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)
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)
)

Civil Action No. MDL No. 05-1717-JJF;
Consol. C.A. No. 05-485-JJF
(If the action is pending in another district, state where:
District of Delaware

INTEL CORPORATION

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Robert J. Herman, c/o Hayden J. Silver III, Kilpatrick Stockton LLP
3737 Glenwood Ave., Suite 400, Raleigh, NC 27612

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Huseby Reporting Office 3737 Glenwood Avenue, Suite 100 Raleigh, NC 27612	Date and Time: May 4, 2009, beginning at 9:00 a.m
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The deposition will be recorded by this method: Stenographic and videographic means.

Production: You, or your representatives, must also ***

*** produce the document, records and other materials described in Schedule A to this subpoena on or before April 27, 2009, at 9:00 a.m. (one week prior to the date of the deposition), at the offices of Cohen Milstein Sellers & Toll PLLC, 150 East 52nd Street, Thirtieth Floor, New York, NY 10022, or at such other time and place as agreed to by the parties.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 3/20/09

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Laina M. Herbert
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Class Plaintiffs

, who issues or requests this subpoena, are:

Laina M. Herbert (DE Bar # 4717), Prickett, Jones, & Elliott, P.A.
1310 King Street, P.O. Box 1328, Wilmington, DE 19899-1328
(302) 888-6500, LMHerbert@prickett.com

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.*

These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Schedule A

Lenovo International

Definitions

1. For purposes of this document request, "AFFIANT" refers to Robert J. Herman.
2. 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.
3. 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, etc.) stored as an "active" or backup file, in its native format.
4. For purposes of this document request, "MICROPROCESSOR" means general purpose microprocessors using the x86 instructions set (*e.g.*, Sempron, Athlon, Turion, Opteron, Celeron, Pentium, Core, Core Duo, Xeon, Crusoe, Efficeon, and Eden).
5. For purposes of this document request, "PERSONAL COMPUTER" means an x86-based desktop or mobile computer.
6. For purposes of this document request, "FINANCIAL INDUCEMENT" means any payment, subsidy, rebate, discount (on MICROPROCESSORS or on any other INTEL product), Intel Inside funds, E-CAP (exceptions to corporate approved pricing), L-CAP ("lump" rebates), Market Development Funds ("MDF"), "meeting competition" or "meet comp" payments, "depo" payments, program monies, or any advertising or pricing support.
7. For purposes of this document request, "NON-FINANCIAL INDUCEMENT" means any allocation preference, access to nonpublic technical or roadmap information, personnel support (engineering/technical/training) or any other non-cash benefit, perquisite or other consideration (including but not limited to bundling or packaging other products).
8. For purposes of this document request, "COMPANY" refers to LENOVO INTERNATIONAL and any of its controlled present or former subsidiaries, parents, and predecessor or successor companies.
9. "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.
10. "AMD" refers to Advanced Micro Devices, Inc., AMD International Sales and Service Ltd., and any of their present or formed subsidiaries, affiliates, parents, assigns, predecessor or successor companies and divisions thereof.

Instructions

1. To the extent any responsive DOCUMENT has already been produced during the course of this litigation, please identify it by beginning and end bates number.
2. To the extent responsive DOCUMENTS are maintained in AFFIANT's personal records, all requests are deemed made as to both COMPANY and to AFFIANT.
3. In responding to each request set forth below, please set forth each request in full before each response.
4. The time period, unless otherwise specified, covered by each request set forth below is from January 1, 2000 up to and including the present.
5. 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 your COMPANY asserts that the DOCUMENT was prepared in anticipation of litigation or for trial.
6. If your COMPANY objects to a request in part, please state specifically which part of the request your COMPANY objects to and produce all DOCUMENTS responsive to all other parts of the request.
7. 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.
8. 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.
9. In connection with your production of DOCUMENTS, please produce any relevant data dictionaries, data translations, lookup tables, and/or any other documentation designed to facilitate use of the data contained within the DOCUMENTS produced.
10. 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" or a custodian's hard drive, please organize DOCUMENTS for production by custodian with path information preserved, etc.).
11. To the extent response DOCUMENTS reside on databases and other such systems and files, your COMPANY shall either produce the relevant database in useable form and/or shall permit access for inspection, review, and extraction of responsive information.
12. At your 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).

Document Request

1. Source Material - Any DOCUMENTS, drafts, notes, or other material that either AFFIANT reviewed, considered, or relied upon in preparing their respective declarations. *See Generally* Declaration of Robert Herman, submitted with Intel's Opposition to Plaintiffs' Motion for Class Certification (hereinafter Decl. of R. Herman).
2. Personal Files - Any DOCUMENTS not yet produced that are (i) located in AFFIANT's personal files (i.e. files AFFIANT has personal access to, at any and all office locations), and (ii) relevant to the statements made in each respective declaration (i.e. documents describing the effect that INTEL's conduct, pricing practices, or dominant position in the MICROPROCESSOR market has had on your COMPANY's pricing, marketing, selling, or positioning of PERSONAL COMPUTERS, your COMPANY's business planning, or your COMPANY's competitive position relative to other PC manufacturers). *See Generally* Decl. of R. Herman.
3. All DOCUMENTS discussing the "[c]ircumstances that prompt a price change" for PERSONAL COMPUTERS sold by your COMPANY. *See* Decl. of R. Herman, Para. 4.
4. All DOCUMENTS discussing "the list price that Lenovo sets for its laptops and desktops," including but not limited to documents discussing the "100 index" and your COMPANY's "apples to apples comparison" of "similarly configured competitive products." *See* Decl. of R. Herman, Para. 5.
5. ALL DOCUMENTS discussing whether any FINANCIAL INDUCEMENTS offered by INTEL affect your COMPANY's "cost of goods sold," for the PERSONAL COMPUTERS it sells. *See* Decl. of R. Herman, Para. 5.
6. All DOCUMENTS discussing changes your COMPANY made in the prices it charges for PERSONAL COMPUTERS containing Intel MICROPROCESSORS "following a change in Intel's CAP." *See* Decl. of R. Herman at Para. 6.
7. All DOCUMENTS discussing the conditions under which your COMPANY adjusts the prices at which it sells PERSONAL COMPUTERS through promotions, discounts, product bundling, "competitive bid pricing," or other "mark downs" in both the consumer and business market segments. *See* Decl. of R. Herman at Paras. 7-9.