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**VIA ELECTRONIC FILING  
AND HAND DELIVERY**  
The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre  
1201 Market Street, Suite 800  
Wilmington, DE 19801

**CONFIDENTIAL PURSUANT  
TO PROTECTIVE ORDER**

**FILED UNDER SEAL**

**Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF**

Dear Judge Poppiti:

This letter responds to AMD's January 7, 2009, motion to compel production of written statements or affidavits of Intel Japan employees prepared by the Fair Trade Commission of Japan ("JFTC") and submitted to the Tokyo District Court in Japan in April 2006, following a request made by AMD's Japanese counsel. As explained below, the terms on which Intel and AMD were granted access to the JFTC documents in the Tokyo District Court preclude disclosure or use of those documents in any other forum. Because Intel otherwise has no objection to producing these statements to AMD, [REDACTED]

[REDACTED] Intel intends to produce those statements to AMD by the end of this week. As a result, AMD's motion to compel is moot and requires no action by the Court. The following paragraphs and accompanying affidavit provide additional background information on AMD's motion and the treatment of the JFTC documents in the proceedings between Intel and AMD in Japan.

AMD's motion comes more than one year after its last communication with Intel concerning the JFTC witness statements, a December 7, 2007 letter from Michael S. Maddigan to Daniel Floyd. (Ex. C to January 7, 2009 Declaration of Michael S. Maddigan ("Maddigan Declaration")). That letter did not request that Intel produce the JFTC witness statements; it merely sought confirmation that Intel would produce all documents from the JFTC proceeding in its possession, custody or control other than those "that Intel is precluded from producing by confidentiality order or agreement." Intel provided that confirmation in a letter dated January 14, 2008, (Ex. D to Maddigan Declaration), and never heard a word of objection from AMD prior to

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the instant motion to compel. The basis on which AMD claims to have fulfilled its obligation to confer in good faith with Intel on this issue under FRCP 37(a)(1) is thus impossible to ascertain. In fact, after sending its December 7, 2007 letter, AMD gave Intel no reason to believe that it had any substantive disagreement with Intel's view that [REDACTED] prevented either Intel or AMD from making use of the JFTC-origin documents in this proceeding prior to filing its motion to compel.

Some background on the Tokyo District Court proceedings is also necessary to put AMD's motion in proper context [REDACTED]

[REDACTED] Both AMD and Intel subsequently made submissions to the District Court pursuant to Article 92 of the Japanese Civil Code identifying those portions of specific documents for which confidentiality should be maintained. Ex. A. Among the documents that Intel designated as confidential were three written statements prepared by the JFTC based on interviews with Intel Japan personnel.

In developing [REDACTED] the Tokyo District Court specifically considered and rejected arguments that the JFTC documents should be released for use in this litigation in the United States. During the four-month period between the JFTC's delivery of documents and the submission of [REDACTED] to the Japanese Court, AMD's Japanese counsel argued strenuously for an express right to use the JFTC documents in AMD's U.S. litigation efforts and proposed specific terms for handling the JFTC documents that would grant AMD that right. Ex. A. [REDACTED]

[REDACTED] (Ex. B to Maddigan Declaration).

Accordingly, Intel's consistent understanding has been that the [REDACTED] filed with the Tokyo District Court prohibited Intel from producing confidential documents originating from the JFTC in this litigation, regardless of the nature or origin of the confidential information in the documents. In fact, [REDACTED]

[REDACTED] Similarly, since the entry of the [REDACTED] in the Tokyo

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District Court, AMD has made no attempt to approach the Japanese Court for permission to use any of the JFTC documents in the U.S. litigation. In effect, AMD's motion to compel is an end run around a commitment into which it freely entered in Japan as a condition of access to the JFTC documents.

For the reasons noted above, Intel believes that production of the JFTC witness statements is inconsistent with the terms on which AMD and Intel both agreed to access to the JFTC documents in Japan. In the interests of avoiding needless disputes in these final months of discovery, however, [REDACTED]

[REDACTED] Ex. A. Those statements and accompanying exhibits will therefore be produced to AMD under separate cover in the form in which they were received at the Tokyo District Court from the JFTC.

Respectfully,

*/s/ W. Harding Drane, Jr.*

W. Harding Drane, Jr.

WHD:cet

Enclosure

cc: Clerk of Court (via Hand Delivery)  
Counsel of Record (via CM/ECF & Electronic Mail)


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# **EXHIBIT A**

**DECLARATION OF HISAYA KIMURA  
IN SUPPORT OF INTEL'S RESPONSE TO AMD'S MOTION TO COMPEL**

I, Hisaya KIMURA, make the following declaration:

1. I am a litigation partner of the law firm Nagashima Ohno & Tsunematsu in Tokyo, Japan and act for Intel K.K. ("Intel") in the Japanese legal proceedings (Tokyo District Court case number: Wa, 13151, 2005; and Tokyo High Court case number: Wa, 4, 2005) against AMD Japan, Ltd. ("AMD") in which AMD seeks damages from Intel for alleged breaches of Japanese antimonopoly laws ("Japan Litigation"). I make this declaration upon personal knowledge and on the basis of my understanding of the relevant facts and law. If called as a witness, I could testify competently to the facts set forth herein.
2. I below set out certain facts concerning the use by Intel and AMD in the Japan Litigation of documents which were collected or created by the Japan Fair Trade Commission ("JFTC") in relation to JFTC's investigation into alleged breaches by Intel of Japanese antimonopoly laws ("JFTC Documents"). A summary timeline of the various court filings of Intel and AMD referred to below is in the final paragraph to this affidavit.
3. On or about December 20, 2005, the Tokyo District Court ("Court") asked the JFTC to voluntarily provide the Court with the JFTC Documents at the request of AMD under Article 226 of the Civil Procedure Code of Japan.
4. On or about April 20, 2006, the JFTC forwarded the JFTC Documents to the Court. The JFTC Documents included three witness statements prepared by the JFTC based on interviews of Intel personnel during its investigation.
5. At the First Discussion Hearing held at the Court on or about April 25, 2006 and prior to the Court permitting Intel or AMD access to the JFTC Documents,  


[REDACTED]  
[REDACTED]  
[REDACTED]

6. On or about the following respective dates, Intel submitted a Written Report (*Joshinsho*) and Opinions (*Ikensho*) containing Intel's response to the [REDACTED] and negotiations with AMD to the Court:
  - May 9, 2006 -- first Opinion
  - May 22, 2006 -- first Written Report
  - June 6, 2006 -- second Opinion
  
7. On or about the following respective dates, AMD submitted Written Reports and Opinions containing AMD's response to the [REDACTED] and negotiations with Intel to the Court:
  - May 19, 2006 -- first Written Report
  - May 24, 2006 -- first Opinion
  - May 25, 2006 -- second Written Report
  - June 16, 2006 -- second Opinion
  - July 14, 2006 -- third Opinion
  - July 21, 2006 -- third Written Report
  
8. One of the main issues in the negotiations between Intel and AMD, as well as in Intel's and AMD's Opinions and Written Reports, was whether the JFTC Documents could be used in the U.S. legal proceedings between Intel and AMD (the "U.S. Litigation"). In the AMD Opinions, AMD consistently asserted that AMD should be permitted to use the JFTC Documents in the U.S. Litigation. In the Intel Opinions, Intel took the position that use of the JFTC Documents should be limited to the proceedings in which they were produced, *i.e.*, the Japan Litigation.
  
9. At the Third Discussion Hearing held on or about June 20, 2006, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Although the Court did not expressly reject AMD's request to use the JFTC Documents for the U.S.

Litigation, it is my opinion that [REDACTED]  
[REDACTED] clearly indicated that the JFTC Documents should not be disclosed or used in relation to the U.S. Litigation.

10. On or about July 14, 2006, AMD submitted its third Opinion to the Court in which AMD objected to the Court's view that the JFTC Documents should not be disclosed or used in relation to the U.S. Litigation.
11. At the Fourth Discussion Hearing held on or about July 18, 2006, in addition to the objection AMD presented in its third Opinion, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
12. On or about July 21, 2006, AMD filed AMD's third Written Report in which AMD withdrew its objection to the Court's view that the JFTC Documents should not be disclosed or used in relation to the U.S. Litigation, which AMD had stated in AMD's third Opinion.
13. At the Fifth Discussion Hearing held on July 28, 2006, Intel and AMD agreed [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
However, any part of the JFTC Documents not subject to the restrictions on disclosure under Article 92 of the Civil Procedure Code of Japan may be disclosed to third parties.
14. During the course of negotiating and drafting the [REDACTED] AMD appeared to be in close communication with its U.S. parent company. For example, in AMD's second Written Report dated May 25, 2006 but submitted to the Court on or about May 23, 2006 AMD requested an extension

of the deadline for submission of AMD's first Opinion dated May 24, 2006 because of the unexpected delays in consulting with its U.S. parent company. The U.S. parent company of AMD should therefore be well aware of the nature and contents of [REDACTED]

15. Both Intel and AMD executed the [REDACTED] under the authority of the Court. Intel and AMD filed the [REDACTED] with the Court on or about August 4 and August 2, respectively. Subsequently, both Intel and AMD inspected and copied the portion of the JFTC Documents that were released in accordance with the [REDACTED]

16. There are two points I wish to make concerning the above. First, the [REDACTED] is a quasi ruling of the Court. It should not be disrespected or broken. Second, AMD was intimately involved in both the drafting and execution of the [REDACTED] which it voluntarily accepted as a condition of access to the JFTC Documents.

17. [REDACTED]

18. A summary timeline of the above events and filings of Intel and AMD related to the JFTC Documents and [REDACTED] is set out below:

April 20, 2006: JFTC forwarded the JFTC Documents to the Court

April 25, 2006: First Discussion Hearing [REDACTED]



May 9, 2006: Intel's first Opinion  
May 19, 2006: AMD's first Written Report (request for extension of  
deadline for submission due to delays in consultation with  
U.S. Parent, amongst other reasons.)  
May 22, 2006: Intel's first Written Report  
May 24, 2006: AMD's first Opinion  
May 25, 2006: AMD's second Written Report  
May 26, 2006: Second Discussion Hearing  
June 6, 2006: Intel's second Opinion  
June 16, 2006: AMD's second Opinion  
June 20, 2006: Third Discussion Hearing [REDACTED]  
[REDACTED]  
July 14, 2006: AMD's third Opinion  
July 18, 2006: Fourth Discussion Hearing  
July 21, 2006: AMD's third Written Report  
July 28, 2006: Intel and AMD agree to [REDACTED]  
August 2, 2006: AMD files [REDACTED] with Court  
August 4, 2006: Intel files [REDACTED] with Court.

I declare under the penalty of perjury of the laws of the United States of  
America that the foregoing is true and correct. Executed this 10th day of February,  
2009, at Tokyo, Japan.

  
Hisaya KIMURA