

April 24, 2009

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BY ELECTRONIC MAIL AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Special Master
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Wilmington, DE 19801-4226

Re: ***in re Intel Corporation Microprocessor Antitrust Litigation (C.A. No. 05-441-JJF and C.A. No. 05-MDL-1717-JJF)***

Dear Judge Poppiti:

AMD seeks an expedited order directing that the deposition of Hewlett-Packard Company ("HP") employee Joseph Beyers proceed as scheduled on April 30 and May 1, 2009. Mr. Beyers is available on those dates, HP is happy to produce him then, and AMD is willing and able to conduct the deposition. AMD requests an immediate order so as to avoid any delay in this deposition, which is currently set to begin on Thursday of next week.

This motion is necessary because Intel contends that Mr. Beyers' deposition must be attended by a single one of its army of lawyers, Joe Ostoyich, who Intel claims cannot be available on those dates. While AMD has attempted to accommodate Intel's preferences, the fact that the parties are currently trying to schedule 8 to 10 HP depositions in the remaining weeks of fact discovery is largely due to Intel's own delaying tactics. As detailed below, Mr. Ostoyich and Intel's other lawyers have made themselves unavailable for critical periods of potential deposition time, and Intel now seeks further delays by claiming that not a single lawyer from the several large law firms representing its interests can cover an HP deposition on the dates proposed by HP. Given the looming discovery cutoff date in this case, the number of HP depositions that remain to be taken, and Intel's lack of cooperation in the scheduling process, the Court should direct that Mr. Beyers' deposition proceed as noticed on April 30 and May 1, 2009.

STATEMENT OF FACTS

HP is a Tier One OEM and a critical source of the evidence that AMD will need to prove its case against Intel. With barely seven weeks remaining before the discovery cutoff date, any delay in completing this important discovery will materially prejudice AMD.

The parties have long known that the depositions of HP witnesses would take place during the final months of fact discovery and should have planned accordingly. HP was the last Tier One OEM to produce documents. HP completed its initial production in September 2008, followed by supplemental productions on December 13, 2008 and February 5, 2009. Even before HP's productions were completed, much less fully reviewed, AMD began its efforts to schedule depositions of HP witnesses. AMD notified counsel for HP as early as November 2008 of the witnesses it likely would want to depose. Beginning in December 2008, AMD also requested the

depositions of HP witnesses in the discovery letters that AMD sent to counsel for Intel under the procedures for noticing depositions established in this case. See Declaration of Michael G. McGuinness ("McGuinness Decl."), ¶¶ 1-2 and Exhs. A, B, C and D attached thereto. Although AMD initially asked for depositions to begin in January 2009, the timing of the document production, and the schedule constraints of the first witness, Louis Kim, delayed the initial HP deposition to February 26, 2009.

While AMD has attempted to set depositions in a manner convenient for both HP witnesses and counsel for Intel, the process practically ground to a halt following Mr. Kim's deposition in large part due to the limited availability of Intel's counsel. The parties conducted only a single HP deposition in March. Even that deposition, which was noticed by Intel's counsel, was very nearly postponed because Mr. Ostoyich initially took the position that he was unavailable on the dates convenient to the witness. The deposition ultimately proceeded only after the witness, former HP executive Duane Zitzner, indicated that he had no further availability during the discovery period. McGuinness Decl. ¶ 2.

Following Mr. Zitzner's deposition during the last week of March, AMD has run into a brick wall in its attempts to schedule HP depositions at times convenient to Intel. During a deposition scheduling call held in March 2009 among counsel for HP, AMD and Intel, Mr. Ostoyich advised the parties that he was completely unavailable the first two weeks in April. When HP then offered to make Mr. Beyers available on April 30 and May 1, Mr. Ostoyich took the position that Intel was unavailable on those dates as well. AMD made it clear during that call that Intel's unavailability for HP depositions for nearly the entire month of April was unacceptable in light of the looming discovery cutoff date of either May 1 or June 12. McGuinness Decl. ¶ 3.

Although AMD normally prefers to accommodate counsel for Intel, and did so by not insisting on depositions the first two weeks in April, there is no more room for delay if the parties are to complete the remaining depositions of the eight to ten HP employees noticed by AMD, Class and Intel. AMD has asked for the depositions of HP employees Joseph Lee (set for May 7 and 8) and Jeri Callaway (set for May 12 and 13), as well as Richard Walker, Dan Forlenza, and Carly Fiorina. Depending on the outcome of Mr. Beyers' deposition, AMD also may notice the deposition of HP employee Jeff Groudan in the discovery letter to Intel set to go out on May 5.¹ Intel has asked for various HP employees but recently has indicated a desire to conduct the depositions of three current and former HP employees, and class has subpoenaed two HP employees for depositions. McGuinness Decl. ¶ 5. Given this large number of HP depositions, AMD cannot surrender the entire month of April to the schedule of a single Intel lawyer.²

¹ AMD is additionally scheduled to take the deposition of Intel's former HP Account Manager, Erik Steeb, on June 9 and Steven Fingerhut, an Intel employee responsible for servers on the HP Account Team, on a date yet to be determined.

² Although Intel claims that in seeking to move the deposition of Mr. Beyers it is merely asking for the same courtesy that AMD requested regarding the scheduling of the deposition of Dell witness Dan Allen, the situations are quite different. First, AMD sought to reschedule Mr. Allen's deposition when four months (later extended to five and a half months) of fact discovery were still available for deposition, not seven weeks. Second, AMD had been requesting Mr. Allen's deposition for several months and asked that it be moved only when Dell unilaterally set the deposition for December 30, 2008, right in the middle of the holidays. Even then, AMD sought to move the deposition to January 3, 2009, a matter of a few days. Third, AMD was not proposing that Mr. Allen's deposition be rescheduled to a compressed period in which Dell was trying to schedule the depositions of eight to ten other witnesses.

On April 9, 2009, AMD issued a deposition subpoena for Mr. Beyers, setting his deposition for the dates provided by HP (April 30 and May 1). The subpoena was served on the law firms of Howrey and Gibson, Dunn and Crutches, both of which represent Intel in this matter. McGuinness Decl. ¶ 4. AMD did not receive any objection from Intel to its deposition subpoena until a call with Intel's and HP's counsel on April 22, 2009, during which counsel for IIP disclosed that he had been in touch with Howrey associate Eduardo Ferrer earlier in the month to once again propose the April 30 and May 1 dates for the Beyers deposition. *Id.*

In the April 22 call, and in a subsequent email, Intel requested that Mr. Beyers' deposition be delayed. McGuinness Decl. ¶ 5. AMD indicated that given all of the discovery left on the table, it did not believe it could delay the schedule any longer. Counsel for EIP likewise expressed concern about HP's ability to produce the remaining witnesses for deposition by the discovery cutoff date if depositions were delayed further.

ARGUMENT

1. Mr. Beyers is an important witness whose deposition must be taken quickly.

Mr. Beyers was responsible for negotiating the "HPA," HP's first written commercial desktop agreement with Intel. As such, he has information critical to this case regarding the process by which this key agreement was negotiated, what the terms were, how its provisions were applied, and who the main players were in the negotiation and implementation of the agreement. His deposition has the potential to streamline the depositions of other HP witnesses as well as point to the need for depositions of other witnesses not yet noticed. McGuinness Decl. ¶ 6. AMD's window for noticing additional depositions during fact discovery ends on May 5, when it must notify Intel of depositions for June. AMD's interests will be materially harmed if Intel's delaying tactics succeed in pushing back Mr. Beyers' deposition.

2. The timing of the discovery cutoff and the number of depositions remaining do not allow for further delay.

Mr. Beyers has indicated that he is available on April 30 and May 1. At this point in the discovery process there is simply no room for further delay. Even if Mr. Beyers' deposition proceeds as scheduled, the parties have approximately 8 to 10 HP-related depositions left to conduct between May 18 (the first week after the already scheduled depositions of Joseph Lee and Jeri Callaway) and the close of fact discovery on June 12. McGuinness Decl. ¶ 5. Pushing back Mr. Beyers' deposition to this already overcrowded period will make it nearly impossible for EIP to schedule and prepare its witnesses. AMD's interests will also be prejudiced given the difficulty of adequately preparing for, and traveling to, back-to-back depositions. Intel should not be allowed to game the deposition schedule to the material harm of AMD.

3. Intel has an army of lawyers at its disposal to conduct this deposition.

Intel's purported unavailability is the primary reason why the parties are in this HP deposition crunch. And yet, Intel has no shortage of lawyers conducting the depositions it wants to take in this case. Lawyers from Howrey, Gibson and Bingham are busily crossing the nation to depose dozens of AMD witnesses in April and May. *See* McGuinness Decl. ¶ 7, Exh. E (Letter from Sogol K. Pirnazar to Bernard Barmann dated April 6, 2009). The current crisis regarding HP

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depositions has nothing to do with Intel's considerable resources, but rather the manner in which Intel has chosen to allocate, or, more accurately, withhold those resources. Intel's assignment of a single lawyer with little availability during this critical discovery period to be solely responsible for all FIP-related depositions is not reasonable and should not be countenanced by the court.

Respectfully.

A handwritten signature in cursive script, appearing to read "Adam Balick".

Adam Balick
(Bar ID#2718)

cc: Clerk of the Court
Richard L. Horwitz, Esq.
James L. Holzman, Esq.
Frederick L. Cottrell, III, Esq.