

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION)	
)	MDL No. 1717-JJF
)	
)	
)	
ADVANCED MICRO DEVICES, INC., a Delaware corporation, and AMD INTERNATIONAL SALES & SERVICES, LTD., a Delaware corporation,)	
)	
Plaintiffs,)	
)	C.A. No. 05-441-JJF
v.)	
)	
INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation,)	
)	
)	
Defendants.)	
PHIL PAUL, on behalf of himself and all others similarly situated,)	C.A. No. 05-485-JJF
)	
Plaintiffs,)	CONSOLIDATED ACTION
)	
v.)	
)	
INTEL CORPORATION,)	
)	
Defendants.)	

**AMD'S RESPONSE TO INTEL'S SUPPLEMENTAL SUBMISSION
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS, OR IN
THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON
AMD'S EXPORT COMMERCE CLAIM**

AMD respectfully submits this Response to Intel’s Supplemental Submission in Support of Defendants’ Motion to Dismiss, or in the Alternative, for Summary Judgment on AMD’s Export Commerce Claims.

INTRODUCTION

Intel’s Supplemental Submission proffers deposition testimony of former AMD executive Jerry Sanders. Intel contends that

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and not because (as AMD contends) Intel’s unlawful conduct restricted AMD’s market share. Intel’s Opening Brief relied heavily on evidence ostensibly indicating that

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See Intel Op. Br. 8-11. As AMD has already demonstrated, however, Intel’s Opening Brief—and hence its entire motion—relied on two fundamental errors, one legal and the other factual. Intel’s Supplemental Submission does nothing to resolve those legal errors, and thus does nothing to support Intel’s motion.

The legal error in Intel’s analysis was its failure to acknowledge that the basic question at issue here is what AMD could and would have done in 2001 *if Intel’s unlawful conduct had not artificially restricted demand for AMD’s products.* At that point, AMD’s opposition brief demonstrated, AMD’s only option would have been to deploy Fab 25 and to upgrade it as necessary in 2001 and 2002 to meet increasing demand. AMD Opp. 15-10. And even if AMD in 2001 *did* overestimate Fab 30’s production capacity *when it fully ramped two years later*, that error would have become immediately evident when AMD tried to meet increased demand through production at Fab 30. The deposition testimony cited in Intel’s Supplemental

Submission is thus wholly beside the point: no matter what AMD *believed* in 2001 about Fab 30's production capacity, if AMD had *actually* faced increased demand for its products, AMD could not in fact have met the demand through production at Fab 30, and thus would have been required to upgrade and continue producing at Fab 25.

The factual error underlying Intel's motion was its failure to disclose

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Id. at 9-10. Far

from supporting Intel's motion, the deposition testimony now proffered by Intel

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Intel's Supplemental Submission also ignores other deposition testimony further undermining its motion, including testimony

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Finally, beyond the issues concerning recent deposition testimony, AMD anticipates submitting expert testimony on damages that will

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To ensure a complete understanding of the issue, AMD submits that the Court should await the filing of that testimony to rule on Intel's motion.

ARGUMENT

I. To start, Intel's Supplement Submission is as off point as the motion it purportedly supports. The Submission proffers deposition testimony pertaining to

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Intel mischaracterizes

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..... but even on its own terms Intel's reliance on the deposition testimony is

misplaced. Intel continues to ignore the crucial point that its motion assumes, as it must, the truth of AMD's allegation that Intel committed unlawful conduct that artificially restricted demand for AMD products *in 2001*. Absent Intel's conduct, in other words, AMD would have experienced significantly increased demand for its products in 2001 and beyond. Thus, even assuming Intel is correct that in 2001 AMD overestimated the potential capacity of Fab 30 when fully ramped,¹ if AMD had actually been forced to meet true market demand for its products, the limitations of Fab 30 would have become immediately evident. AMD would have been compelled to reverse the decision to terminate microprocessor production at Fab 25, and would have upgraded the facility to produce adequate quantities of microprocessors. AMD Opp. 16-19.

The new deposition testimony is, in short, irrelevant to what AMD would have done between 2001 and 2003 *if Intel's conduct had not depressed demand for AMD microprocessors*.

2. Intel in any event continues to misstate the nature of AMD's statements about Fab 30's capacity. Intel's Opening Brief relied on a document quoting Sanders as stating, during a fall 2001 earnings conference call, that Fab 30 "can produce over 50 million units a year." Intel Op. Br. 9-10. Intel's Supplemental Submission now cites more recent deposition testimony from Sanders Deposition of Jerry Sanders, 111:11-112:10.² According to Intel, that testimony Intel Supp. 2. But as AMD has already shown,

..... AMD Opp. 8-9. At his AMD Opp. 9-10.

¹ The statements Intel cites
² A true and correct of the relevant pages from the Sanders Deposition transcript is attached as **Exhibit A**.

deposition, Sanders

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In other words, Sanders

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3. Intel's Supplemental Submission also cites Sanders'

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Intel Supp. 3. But Intel fails to

disclose deposition testimony from Rivet and Ruiz

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Intel's Opening Brief cited a statement, attributed to Rivet, that "[w]e can produce more than 50 million units a year in that fab," from the same earnings call Sanders was on. Intel Op. Br. 9-10.

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..... Deposition of Bob Rivet, 264:15-265:4, and 267:12-268:3.³ Again, that statement

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Intel's Opening Brief likewise attributed to Ruiz a statement that

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Intel. Op. Br. 10. At his deposition, Ruiz testified

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³ A true and correct of the relevant pages from the Rivet Deposition transcript is attached as Exhibit B.

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Deposition of Hector Ruiz, 798:15-23,

800:8-17, and 801:6-20; Ruiz Exhibit 6147.⁴

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Intel's Opening Brief also cited a second Ruiz statement,

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Intel. Op. Br. 10. Ruiz testified in his deposition that

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Deposition of Hector

Ruiz, 810:22-811:10.

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Id. at 810:6-21, and 1030:10-19.

4. In addition to omitting testimony establishing the context for these former AMD executives' statements

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Intel omits other deposition testimony from Sanders, Rivet,

and Ruiz clearly establishing that

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Deposition of Jerry Sanders, 113:19-115:1. Rivet explained that

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⁴ A true and correct of the relevant pages from the Ruiz Deposition transcript is attached as **Exhibit C**. A true and correct of Exhibit 6147 of the Ruiz Deposition is attached as **Exhibit D**. Exhibit 6147 of the Ruiz Deposition is identical to Exhibit 25 of the Floyd Declaration filed with this Court on November 21, 2008.

Deposition of Bob Rivet, 70:5-22. He further testified that

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..... *Id.* Rivet characterized

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Id. at 263:14-264:1.

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..... Ruiz testified that

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..... Deposition of Hector Ruiz, 497:1-16.

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Ruiz testified that

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..... *Id.* at 1033:4-1034:5.

5. Finally, AMD anticipates submitting expert testimony demonstrating that

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Intel's current motion

thus raises issues involving not only the FTAIA jurisdictional issue but also

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..... 'For that reason, the Court should defer ruling on Intel's motion until the Court has the full benefit of the experts' analysis of

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In sum, Intel's Supplemental Submission ignores the relevant legal question in this case, and repeats the key factual distortion underlying Intel's motion. Certainly nothing cited by Intel

eliminates any disputed factual issue, and hence any jury question, over the reasons AMD phased out its domestic microprocessor production at Fab 25, and whether it would have done so absent Intel's misconduct. And forthcoming expert testimony will only further undermine Intel's position on that question. The motion to dismiss or for summary judgment should be denied.

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Dated: May 26, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and have sent by Hand Delivery and Electronic Mail to the following:

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