



1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
302 984 6000

www.potteranderson.com

W. Harding Drane, Jr  
Partner  
Attorney at Law  
wdrane@potteranderson.com  
302 984-6019 Direct Phone  
302 778-6019 Fax

June 5, 2009

**FILED UNDER SEAL**

PUBLIC VERSION  
JULY 13, 2009

**By Hand**

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre  
1201 Market Street, Suite 800  
Wilmington, DE 19801

**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--  
Response to AMD's Sur-Reply Letter re Intel's Motion to Compel  
Further Deposition Responses**

---

Dear Judge Poppiti:

On May 27, 2009, AMD, without leave of the Court, filed a letter brief in response to Intel's Reply in Support of its Motion to Compel Further Deposition Responses.<sup>1</sup> The briefing schedule proposed by the parties, and approved by Your Honor, did not authorize AMD's filing of this brief, nor did AMD advise Your Honor or Intel of its intention to file it.<sup>2</sup> Moreover, the brief is not responsive to Intel's Reply. Rather, it concerns a separate discovery matter not yet ripe for Your Honor's consideration, as the parties had not commenced, much less completed, any meet and confer regarding the new discovery issues when AMD submitted the letter. Intel therefore requests that Your Honor disregard the brief in its entirety. However, in the event Your Honor were to consider it, Intel, as the moving party, is compelled to briefly respond to a few points raised in AMD's sur-reply letter.

**Background.** On April 28, 2009, AMD served additional retention discovery on Intel, consisting of ten 30(b)(6) deposition topics and ten document requests. AMD acknowledges this discovery is solely a tit-for-tat response to Intel's ongoing investigation of AMD's retention practices. Intel served its responses and objections on May 26, 2009. Intel objected to AMD's discovery requests because they:

(1) violate the Court's June 20, 2007 Stipulation and Order Bifurcating Discovery into Evidence Preservation Issues, which governs AMD's discovery of Intel evidence preservation ("Bifurcation Order");

---

<sup>1</sup> The hearing on Intel's motion to compel is scheduled for June 15, 2009 at 3:00 p.m. EDT.

<sup>2</sup> See 5/12/09 email from Your Honor to counsel; see also Local Rule 7.1.2 and 5/18/09 Order at ¶ 1 (no sur-reply as a matter of right).

(2) are duplicative of, and unduly burdensome in light of, AMD's extensive discovery into Intel's preservation practices conducted to date, including over 45 hours of deposition testimony, 750,000 pages of retention documents produced, and detailed disclosures related to each and every Intel custodian; and

(3) seek to reopen discovery into topics about which AMD already had ample and repeated opportunity to inquire.

Intel also objected to the requests "to the extent" they seek attorney-client or work product protected information. Now, in what purports to be a "further response to Intel's motion to compel," AMD attempts to inject into the current dispute an unrelated, unripe discovery matter devoid of context.

First, AMD's use of Intel's discovery responses as a shield from Intel's motion to compel is a *non sequitur*. In Intel's motion that is before the Court, Intel obtained an Order from Your Honor, despite AMD's motion to quash, on specific 30(b)(6) topics. Intel seeks responses to actual questions on those topics that AMD inappropriately failed to fully answer, either on the basis of privilege or preparedness. Intel has therefore presented *specific* deposition questions and responses that are in the record, and in dispute. In contrast, AMD has served voluminous new discovery (which Intel believes to be improper) and Intel has objected on numerous grounds. Intel's privilege and work product objections are for preservation purposes and only "to the extent" protected answers may eventually be called for. With respect, Your Honor should not consider these objections – to potential questions that have not even been posed – when evaluating the specific questions and answers that are the subject of Intel's pending motion. Indeed, Your Honor has already expressed a reluctance to rule in advance on privilege assertions. See 1/22/09 Order at ¶ 2.

Second, AMD has provided only portions of Intel's positions. For example, regarding discovery on reasonable anticipation of litigation, AMD suggests that Intel is refusing to provide a witness based solely on the grounds of the attorney-client privilege and work product doctrine. That is not the case. Intel objected on those grounds to the extent the discovery seeks to invade those privileges. Moreover, Intel also objected on the grounds that this discovery is untimely, not likely to lead to the discovery of admissible evidence and beyond the scope of the Special Master's March 16, 2007 Order. See Intel's Response to AMD's Rule 30(b)(6) Notice at 6-7.

Intel is prepared to address these issues more fully, if necessary, at the appropriate time.

Respectfully,

/s/ W. Harding Drane, Jr.

W. Harding Drane, Jr.

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

919569/29282

PUBLIC VERSION  
JULY 13, 2009