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August 11, 2009

By Electronic Filing and Hand Delivery

The Honorable Vincent J. Poppiti
Fox Rothschild LLP
Citizens Bank Center
919 North Market Street, Suite 1300
Wilmington, DE 19899-2323

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 Letter re Motion to Compel Discovery from Glover Park (DM 36)

Dear Judge Poppiti:

Three issues remain relating to Intel's discovery of Glover Park. First, the parties are unable to resolve their dispute about the meaning of the exclusion in the Lobbying Stipulation, limiting discovery "related to activities designed to influence government or agency action." As a compromise, Intel withdrew its request for a deposition and now seeks only documents related to Glover Park's acts in support of *public relations campaigns* against Intel and other efforts to influence *non-governmental actors*. AMD claims that efforts directed to non-governmental entities are the equivalent of efforts to influence the government or agencies and are barred. To resolve this dispute, Your Honor needs only to review the express language of the stipulation.

Second, the parties dispute the appropriate start date for document production. AMD has represented that Glover Park's activities began in November 2004, yet it insists it will produce, if any, only documents from December 1, 2004. The end date (March 31, 2005) is not in dispute, but Intel seeks documents starting November 1, 2004.

Third, the parties disagree about AMD's obligation to produce a privilege log of documents related to Glover Park's *litigation-related work*, including *jury consulting* and *litigation messaging*. AMD, through its counsel, has represented that these activities (distinct from the public relations activities addressed above) commenced as of January 1, 2005.¹ But it

¹ Starting in Nov. 2004, Glover Park worked on AMD's anti-Intel PR campaign. By Jan. 2005, Glover Park's role expanded to assisting AMD's counsel with preparations for this litigation. O'Melveny advised Intel in Sept. 2007 that they retained Glover Park as of Jan. 1, 2005 (months before AMD claims it reasonably anticipated litigation) "to provide such services as [O'Melveny] may require, including assisting in the testing and development of *litigation and jury themes*, preparing both AMD's legal and company spokespeople and written materials *concerning the litigation*; and providing expertise to *help make this dispute understandable* to legal and non-legal audiences." Ex. B at 2 (9/27/07 Smith Ltr) (emphasis added). Inquiry into these activities will confirm AMD anticipated litigation before its claimed date of April 20, 2005.

has not provided any detail concerning the timing or amount of Glover Park's litigation work, and in its briefing to Your Honor was deliberately vague about both issues. Intel therefore requests production of a standard privilege log concerning documents and communications dated January 1, 2005 through March 31, 2005 related to these litigation activities.

1. Glover Park's Document Production re Public Relations Work.

a. *Categories of Documents.* Intel seeks an order requiring Glover Park to produce non-privileged documents relating to AMD's public relations campaign against Intel, including efforts to influence *non-governmental* actors such as the general public, customers, opinion thought-leaders, technology leaders, columnists and other market participants. AMD does not deny that such documents exist; indeed, AMD has acknowledged Glover Park's general public relations work, grass roots advocacy, issues framing and management, commercial marketing and advertising, corporate branding, and strategic messaging. D. I. 1625 (Intel Reply at 3).

AMD's excuse for not producing these documents is an overbroad reading of the Lobbying Stipulation. D. I. 675 (12/7/07 Stipulation). By its express terms, this stipulation only forecloses discovery "related to activities designed to influence government or agency action." There is nothing in the stipulation related to *non-governmental* audiences. AMD, however, refuses to produce any documents—"regardless of the proposed audience"—concerning communications or activities "intended directly or indirectly to influence competition authorities or other public officials." Ex. A (8/3/09 Samuels Ltr) (emphasis added). There is no language in the stipulation to support AMD's all-encompassing interpretation.

AMD also suggests that Glover Park's public relations work is somehow immunized from discovery on privilege grounds merely because it may have involved attorneys at some level. But AMD's attempt to cloak public relations activities in privileged garb fails. Intel refers Your Honor to page 2 of its July 10, 2009 reply brief for a full discussion, *see* D. I. 1625, and respectfully requests an order providing guidance as to the scope and inapplicability of privilege over these materials so that AMD does not improperly exclude them from production.

b. *Date Range.* Glover Park began its work for AMD in November 2004. D. I. 1596 (AMD Opp. at 2). Intel thus requests production of documents from November 1, 2004 through March 31, 2005. This targeted five-month period is reasonable and narrowly tailored to elicit evidence relevant to the date on which AMD first reasonably anticipated this litigation. AMD has advised Intel that it intends to limit Glover Park's production to December 1, 2004 through March 31, 2005, but has provided no factual or legal support for this artificial limitation.

2. Privilege Log Re Glover Park's Litigation-Related Work. The timing and amount of Glover Park's work on litigation in Q1 2005 is directly related to Intel's position that AMD reasonably anticipated this case before April 2005. Intel anticipates that most, if not all, of this work may be privileged. Yet the timing of these activities and the general subject matter of documents and communications are not. Indeed, those details are obviously important to AMD's anticipation of the case. AMD, however, refuses to provide a log about Glover Park's litigation work.² AMD offers no justification for its unilateral decision to log some documents, but not others. Intel requests that Your Honor order production of a log with sufficient detail concerning the timing, subject matters and amount of Glover Park's litigation work during Q1 2005.

² Without explanation, AMD did agree to log with "conventional" fields any documents that fell outside its strained interpretation of the stipulation. Ex. A (8/3/09 Samuels Ltr and 8/4 response).

Respectfully,

/s/ David E. Moore

David E. Moore

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

928633/29282

Exhibit A

○

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OUR FILE NUMBER
8,346-163

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July 22, 2009

BY E-MAIL & U.S. MAIL

Donn Pickett, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067

Re: AMD v. Intel

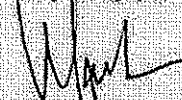
Dear Donn:

I write in response to your email correspondence of earlier this afternoon regarding topics on which Judge Poppiti has asked us to meet and confer.

With respect to the Glover Park motion, AMD renews its offer, set forth in our letter to Judge Poppiti of June 26, 2009, to review documents in the files of Glover Park sent, received or created during the first quarter 2005 and to produce therefrom any non-privileged documents that do not relate to activities designed to influence government or agency action. Within fifteen days of its production, AMD will provide a written privilege log identifying any materials withheld on the ground of privilege or work product protection.

Please let me know if this proposal is acceptable to Intel.

Very truly yours,



Mark A. Samuels
of O'MELVENY & MYERS LLP

BINGHAM

Donn P. Pickett
Direct Phone: 415.393.2082
donn.pickett@bingham.com

July 28, 2009

Via Email and U.S. Mail

Mark A. Samuels
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899

Re: AMD v. Intel: Meet and Confer re Glover Park

Dear Mark:

I write in response to your letter of July 22, 2009. In order to make our meet and confer scheduled for Thursday at 2:00 p.m. PDT more efficient, we are providing a written response. We generally agree with your proposal to review documents in the files of Glover Park and to produce a privilege log, but request clarification on three issues.

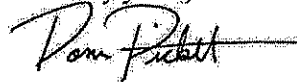
First, we need a better understanding of your interpretation, for purposes of this review, of "documents that do not relate to activities designed to influence government or agency action." If you intend to search for and produce documents that reflect public relations or marketing efforts aimed at commercial audiences and other market participants, rather than exclusively governmental audiences, then we are satisfied with your proposal. If you intend, however, to exclude those categories of documents from your review and production, then we may need Judge Poppiti to weigh in on this matter.

Second, we would like to discuss your plan to prepare a privilege log. For example: If your team identifies a document that addresses Glover Park's collaboration with your firm to develop and to test jury themes, or Glover Park's litigation-related messaging work, do you intend to log those documents? Will the log include the usual fields previously used in this matter?

Third, AMD has offered to review documents from the first quarter of 2005. Intel requests that AMD extend its search by two months to include documents from November 1, 2004 through March 31, 2005. We understand from your prior statements that Glover Park was working directly for AMD during the last two months of 2004 and see no basis to exclude those months from the review.

We look forward to discussing these issues with you on Thursday.

Sincerely yours,



Donn P. Pickett

cc: Mr. David Herron (by email)
Mr. Jeffrey Fowler (by email)

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August 3, 2009

BY E-MAIL & U.S. MAIL

Donn Pickett, Esq.
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Three Embarcadero Center
San Francisco, CA 94111-4067

Re: **AMD v. Intel**

Dear Donn:

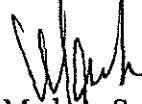
I write in response to your correspondence of July 28 regarding the Glover Park motion.

Relating to our interpretation of documents that "do not relate to activities designed to influence government or agency action," we mean any document other than those that discuss, strategize, document or concern communications or other activities, regardless of the proposed audience, intended directly or indirectly to influence competition authorities or other public officials to consider, question or investigate the status of competition in the x86 microprocessor market or potential Intel anticompetitive misconduct. Thus, by way of example, we would be willing to produce Glover Park documents that concern activities intended simply to promote AMD microprocessors or the AMD brand such as product or brand advertising materials, public relations campaign materials and similar documents.

Assuming we reach agreement on the above, we would be willing to log, using conventional privilege log fields, otherwise responsive Glover Park documents that fall outside the scope of the December 7, 2007 Stipulation as clarified above, and that have been withheld on privilege or work product grounds. In the interests of compromise, and in light of the burdens attendant to reviewing documents at this late date and in further view of your representations to the Court that you were interested in materials from the first quarter of 2005, we are also willing to review all Glover Park documents created or received between December 1, 2004 and March 31, 2005.

Please let me know if this meets your approval.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark A. Samuels', written in a cursive style.

Mark A. Samuels
of O'MELVENY & MYERS LLP

LA2:890103.2

From: Rocca, Brian
Sent: Tuesday, August 04, 2009 8:29 PM
To: 'Samuels, Mark'; Pickett, Donn
Cc: Herron, David; Fowler, Jeffrey; 'Dillickrath, Thomas'
Subject: RE: AMD v. Intel / 08-03-09 Letter to Donn Pickett, Esq.

Mark and David:

I write in response to your letter to Donn dated August 3, 2009 (attached to Mark's email below). It appears the parties will not be able to reach agreement on the appropriate scope of Glover Park's document production and AMD's production of a privilege log.

First, parsing through the language of your letter, it appears that Glover Park and AMD are refusing to produce several categories of documents that are not precluded by the lobbying stipulation. These documents include the following topics related to AMD's competition with, and public relations campaign against, Intel: general public relations work; grass roots advocacy; issues framing and management; commercial marketing; corporate branding and advertising; and other activities directed at opinion thought leaders, policy and technology leaders, columnists, customers, the general public and other market participants. From Intel's perspective, AMD has no basis to exclude such documents from Glover Park's production.

Second, Intel has requested Glover Park documents from November 1, 2004 (when AMD asserts Glover Park began its work for AMD) through March 31, 2005. This five month date range strikes us as reasonable. Your letter does not offer any substantive justification for excluding November 2004, nor does it explain why Intel's requested date range of five months is unduly burdensome.

Third, regarding the privilege log, AMD continues to evade Intel's inquiries regarding when Glover Park's work on this litigation commenced - namely, Glover Park's development and testing of jury themes and consultation on litigation-related messaging. Although AMD offers to provide a privilege log, your letter suggests that the log will not include any entries related to Glover Park's litigation-related work, and instead will be limited to documents which fall within AMD's incorrect interpretation of the lobbying stipulation and that are also subject to a claim of privilege. This proposal is unacceptable.

In light of the parties' continued disagreement, we intend to request (during the teleconference on Thursday) that Judge Poppiti establish a process to promptly resolve this dispute.

Regards,

Brian Rocca

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Three Embarcadero Center, San Francisco, CA 94111
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brian.rocca@bingham.com

-----Original Message-----

From: Samuels, Mark [mailto:MSamuels@OMM.com]
Sent: Monday, August 03, 2009 4:54 PM
To: Pickett, Donn
Cc: Rocca, Brian; Herron, David
Subject: AMD v. Intel / 08-03-09 Letter to Donn Pickett, Esq.

Please see attached - hard copy will be sent to you via U.S. mail.

Mark

Mark A. Samuels

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Exhibit B



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September 27, 2007

VIA E-MAIL & U.S. MAIL

Daniel S. Floyd, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

Re: **AMD v. Intel**

Dear Dan:

As with all else in this highly complex case, it is not easy to even write a letter that says "this letter is in response to your letter of X date." So here goes: This letter responds to your letter of September 14th responding to my letter of July 30th and the recently agreed to Case Management Order #3 entered on September 18, 2007 by Special Master Poppiti and So Ordered on September 19th by United States District Court Judge Farnan, plus the additional discussions that have taken place between you and Mike and between you and me.

I will address the issues in the order set forth in your letter:

Privilege Review and Logs

Pursuant to Case Management Order #3, paragraph 6, the parties have agreed to negotiate in good faith to arrive at significant modifications in approach, timing and number of privilege logs that will be required in the future. You and I have agreed to meet and confer on privilege log protocols on Monday, October 8, 2007.

Intel's Meet and Confer Regarding AMD's Document Responses

We confirm that to the extent AMD made objections to Intel's First, Second, and Third Requests for Production but nevertheless agreed to produce documents, AMD made a complete production notwithstanding those objections (other than for privilege).

Your September 14 letter raised several questions about AMD's responses to certain of Intel's document requests -- specifically, those requests to which AMD asserted objections and did not agree to produce documents. First, you asked whether AMD designated custodians to address those requests. The answer is that AMD did not separately designate custodians whom it

would not otherwise have designated solely for the purpose of responding to those requests. Second, you inquired whether documents responsive to those requests were produced from the files of custodians designated for those requests. Because no custodians were designated specifically for the purpose of responding to those requests, the answer is no. Whether AMD produced documents responsive to these requests from the files of custodians designated for other purposes, however, depends upon the particular request. For example, we produced documents from designated custodians' files that we believe would be responsive to a reasonable interpretation of Requests 161, 162, and 168. We would be pleased to discuss these requests, our interpretation of them, and what we have produced in response to them, further with you. We also would like you to provide the same information you have requested with respect to Intel's responses to AMD's document requests and look forward to discussing Intel's objections to AMD's requests at the same time.

Your September 14 letter also discusses "corporate requests" and asks us to confirm that AMD has been producing documents responsive to corporate requests from custodian files. We can confirm that AMD has been doing so, consistent with the terms of the parties' agreed-upon document production protocol. Please confirm that Intel has as well. We also agree with your suggestion that we need to reach closure as soon as possible on production from databases and shared drives, as well as on any remaining issues regarding the corporate requests. I understand that you and Mike Maddigan are planning on meeting tomorrow on these issues.

Glover Park Subpoena

In your September 14 letter, you also asked for information that you contend would help you evaluate AMD's privilege objections to the subpoena Intel issued to Glover Park. In response to your questions: (1) Glover Park was retained by O'Melveny & Myers LLP as of January 1, 2005; (2) AMD is asserting privilege with respect to documents from November 1, 2004, when Glover Park began working on AMD's behalf, through the present; and (3) the general purpose and scope of Glover Park's retention is to provide such services as O'Melveny & Myers LLP may require, including assisting in the testing and development of litigation and jury themes, preparing both AMD's legal and company spokespeople and written materials concerning the litigation; and providing expertise to help make this dispute understandable to legal and non-legal audiences. While we are not entirely sure what you mean when you refer to "responsive communications with third parties that would not be subject to any claim of privilege," we would indeed, as your letter anticipates, be willing to meet and confer with you regarding inquiry about those communications. We suggest that you and Mike address this issue as well.

ERS Subpoena

As pertains to Requests 257 and 258, Dr. Williams and the ERS Group are economic consultants retained by O'Melveny and Myers to assist counsel in understanding certain economic matters, including Intel's economic profitability. Intel's requests invade the attorney-client and work product privileges in seeking the premature and non-reciprocal disclosure of

O'MELVENY & MYERS LLP

Daniel S. Floyd, Esq.,
September 27, 2007 - Page 3

expert information in a manner and time that is inconsistent with the Amended Stipulation and Protective Order as entered by the Court on May 11, 2007, and with FRCP 26(a)(2)(B). Nor has AMD's public reference to certain of Dr. Williams's findings resulted in any override of these controlling provisions. Waiver is not the issue. The federal rules do not permit a party to conduct discovery for the purpose of publicly rebutting expert opinions its adversary may have injected into the public debate. Neither Dr. Williams nor ERS Group has as yet been designated as an expert witness by any party, and their opinion, whether or not publicly referenced, is presently immaterial to this action. Any ultimate materiality--together with Intel's concomitant right to inquire--will only ripen if and when Intel finds itself having to refute their opinion in this litigation. That will happen, if at all, only after the parties exchange their respective expert reports.

Rule 26

In your letter you write: "I wanted to clarify what our concerns are concerning the Rule 26 disclosure. We think the parties should agree to a timetable to update the disclosures. Our concern is two-fold: that AMD listed only a handful of third party witnesses, notwithstanding the many companies it has identified in its complaint and discovery responses, and our concern that the listing of the AMD related witnesses at this point are too broad and with boilerplate descriptions. A simple way to address the issue without having to fight about the adequacy of either party's initial efforts would be to select a date to supplement the disclosures under Rule 26(e), so the parties could rely upon the disclosures for purposes of deposition selection."

This is very puzzling to us given both the language of Rule 26(e) and the lengthy history of this case. The language of Rule 26(e) which addresses "Supplementation of Disclosures and Responses" provides that:

"A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing."

In this case, we negotiated the Custodian Stipulation and Order, which provided for each party's identification of the *Master Custodians pursuant to an articulated (and highly negotiated)* standard requiring the representation by both parties that "After reasonable investigation, AMD/Intel hereby represents that the individuals below are believed to comprise all of its and its subsidiaries' personnel in possession of an appreciable quantity of non-privileged, material, non-duplicative documents and things." It goes on to address former employees and to set out a four-pronged test for the 20% Party-Designated Production Custodians consisting of:

"The Party-Designated Production Custodian List shall constitute a representation by the party that the individual custodians are believed in good faith to include: (i) the most important custodians with knowledge of the issues framed by the pleadings; (ii) the custodians believed

likely to have the most non-privileged, non-duplicative documents responsive to the other party's Initial Document Requests; (iii) the custodians whose files, taken together, constitute a comprehensive response to the other party's Initial Document Requests; and (iv) all persons whom the party then reasonably believes likely to be called by the party as a witness at trial."

The Custodian Stipulation and Order further sets out an informal discovery process pursuant to which Intel and AMD exchanged both organization charts and 100s of pages of responses to two separate rounds of requests plus follow ups including detailed descriptions of each custodian's job responsibilities. See, for example, Intel's request which asks:

AMD ACCOUNT TEAMS//SALES & MARKETING GROUP

1. For each of the following accounts – Acer, Alienware Corporation, Appro International, Asus Computer International, Averatec, Dell, Egenera, Fujitsu, Fujitsu-Siemens, Gateway, Hewlett-Packard, Hitachi, IBM, Lenovo, LG, MPC Computers, MSI Computer Corp., NEC, NEC-CI, Network Appliance, Rackable Systems, Samsung, Solectron, Sharp, Sony, Sun Microsystems, Supermicro Computers, Toshiba, Trigem, ASI, Avnet, Bell Microproducts, D&H Distributing, Epox International, Foxconn, Hon Hai Precision, Ingram Micro, Intcomex, Mitex, Supercom, Synnex, Tech Data, Tyan, Aldi, Best Buy, Circuit City, CompUSA, Costco, Dixon's (DSG), Fry's, MediaMarkt, Office Depot, Office Max, Toys R Us, Vobis, Wal-Mart, Staples, Time Computers, Carrefour Conforama (PPRP), Yakamo – please answer the following questions:¹

¹ To date, AMD has provided the following information regarding its account teams: Barton Arnold ("works on the IBM account"); Donna Becker (Manager, Microsoft Alliance Marketing); James Beggans (HP Sales Development Manager); Christopher Calandro (Global Account Manager, Gateway); Jerome Carpentier ("he focuses on working with HP, IBM, and Sun"); Brian Casto (IBM Sales Development Manager); Walter Cataldo (Account Executive); Ted Donnelly (IBM Global Account Manager); James Elder (Account Exec., WW Avnet); Anne Flaig (Director, Sales for HP; Director, Sun); Jeff Fonseka (Senior Sales Rep. – Sony); Bradley Fryer (Channel Sales Manager – Fry's, Costco, Future Shop, Best Buy Canada, Amazon.com, Walmart); Jeff Hartz (Channel Sales Manager – Walmart, Sam's Club, Radio Shack, CompUSA, Office Depot, and Tiger Direct); Yoshimi Ikeda ("responsible for the Hitachi account in 2003 and also had a previous relationship with Toshiba"); Masato Ishii (Regional Sales Manager – Sony, Toshiba, Hitachi, PCS, NEC); Takayuki Kuroshima (Regional Sales Manager – Japan tier one OEM accounts); JD Lau ("manages the Lenovo account in China"); Makato Matsunaga ("worked on the Fujitsu account, among others"); Takamichi Miyamoto (FSE NEC); Tetsuji Murai ("worked on the Toshiba account"); Ken Oberman ("at various times had responsibility for the Averatec, Acer, Fujitsu, Sony, Sun Micro, and Toshiba accounts"); Naoko Ohgimi (Customer Support Engineer – Fujitsu); Gerard Poulizac (Regional Sales Manager – HP EMEA, NEC-CI); Derek Reaves (Distribution Business Manager – Avnet); Tom Rogers (Channel Sales Manager – Best Buy, Office Max, Micro Center); Claudia Santos (Business Development, Regional Manager – Toshiba, Sun, HP, IBM, Positive, Procomp, Novadata, Itaotec, Semp); Takeshi Shimizu (FSE – IBM, Sun and Cray (Japan)); Masahide Shuyama (Sales Manager – NEC); Kelly Talbot (Channel Sales Manager – Circuit City, Staples, Business Depot, Hartco); Adam Tarnowski (Senior Account Manager – Appro, Rackable); Dwight Tausz (Global Account

- a. Who is the current Account Manager or person at AMD with primary responsibility for managing the account? How long have they been in this role? What are their primary duties and responsibilities in this role? To whom do they report?
- b. Since January 1, 2000, what other individuals have served as Account Manager or had primary responsibility for managing the account? For each, please identify the time period during which they held this position, their responsibilities (if different from above), the person they reported to, and their current position.
- c. Since January 1, 2000, what other individuals have been assigned to the account or account team with responsibilities that included directly dealing with customers? For each, please identify the position held, their primary responsibilities, the time period during which they held the position, the person they reported to, and their current position.
- d. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for negotiating directly with the account regarding the sale of AMD microprocessors or products incorporating AMD microprocessors? Please identify the time period during which each individual was in this role.
- e. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for dealing or negotiating with the account with respect to any type of marketing or promotional program?

In addition to the footnote, AMD responded to this request with a 71 page spreadsheet response, which was then followed-up by further Intel requests and AMD submissions.

The Custodian Stipulation and Order established corporate requests, and a protocol for Adverse-Party Production Custodians and Free Throw Custodians. Intel altered its Master Custodian and 20% Party-Designated Custodian list to delete Intel custodians after the decision on Intel's Motion to Dismiss based on the Foreign Trade Antitrust Improvements Act and put them back on the lists after the decision on AMD's Motion to Compel. The Custodian Stipulation and Order has been the basis on which both parties have conducted document production since the middle of May 2006. The parties have laboriously worked to revise certain of these protocols (but not the manner and designation of the custodians) in Case Management Order #3. It is hard to imagine a case where the disclosure of the party witnesses and their roles and responsibilities is more complete than this one.

Manager – IBM, Lenovo); Chris Towne (Corporate Distribution Business Manager – ASI, Bell Microproducts); Keisuke Toyooka (Sales Manager – Sony); Renato Urani (Account Manager – Acer); Jeff Venditte (Sr. Sales Account Manager – HP); Lanzhi Wang (OEM Account Manager – China OEMs); Alan Windler (responsible for Gateway account).

O'MELVENY & MYERS LLP

Daniel S. Floyd, Esq.,
September 27, 2007 - Page 6

With respect to third parties, we have jointly -- with AMD taking the lead -- proceeded on a custodian by individual custodian basis to identify (and narrow) the list of key custodians for each of the subpoenaed third parties. Again, it is hard to imagine a case where the disclosure of third party witnesses is more robust than this one.

Accordingly, we do not believe that Rule 26(e) supplementation is required. That said, both parties have an interest once we commence the deposition phase of discovery and have made our way through the majority of the deposition process in making sure that the witnesses each party intends to call at trial have been identified and an opportunity provided for the other side to depose those witnesses.

I look forward to discussing these matters with you.

Very truly yours,



Linda J. Smith
of O'Melveny & Myers LLP

LJS:deb