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**VIA ELECTRONIC FILING
AND HAND DELIVERY**

The Honorable Vincent J. Poppiti
Fox Rothschild LLP
919 N. Market Street
Suite 1300
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PUBLIC VERSION

August 25, 2009

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 the Special Master's request of July 31, 2009 that the parties provide the Special Master with their respective positions on the European Commission's July 14, 2009 response as it relates to pending matters before the Special Master and whether the parties believe follow-up correspondence with the EC is necessary.

Intel does not believe there is a need to submit any further requests to the European Commission ("EC") with respect to DM 26 and DM 27. The July 14 letter from the Director General of the Commission's Legal Service adequately sets forth the Commission's views on the discoverability of the documents at issue in DM 26 and DM 27 with reference to the European Commission Staff Working Paper ("Working Paper"), which the letter identifies as "the current position of the services of the European Commission with regard to disclosure of documents in the context of private litigation in third jurisdictions."

With respect to the inadvertently-produced copy of the Statement of Objections ("SO") that AMD has refused to return, the Commission's letter clearly supports Intel's request in DM 27 for the entry of a protective order. The Commission's letter states that "it is the European Commission's general policy that the SO and the information contained therein should be used only for the purpose of proceedings concerning the application of Articles 81 and 82 EC." The letter references the Commission's Working Paper, which further clarifies that position as follows:

The Commission's statement of objections and the full confidential version of the decision are documents prepared specifically for the antitrust proceedings and contain confidential information received

through investigative measures. Therefore, they and the information contained therein shall also be used only for the purpose of proceedings concerning the application of Articles 81 and 82 EC.¹

This unambiguous statement of the Commission's policy thus confirms that Intel did not possess the right to waive unilaterally restrictions on the use of the SO. It follows that AMD's continued possession of a document that Intel had no right to produce and that AMD had no right to receive is improper. Because Intel's inadvertent production of the SO is not a sufficient reason to override the legitimate policy interests of the Commission, an order should be entered requiring AMD to return the SO.

With respect to the discoverability of the NEC Computers SAS ("NECCI") materials² sought by AMD (including responses to questions from the Commission) in DM 26, the Commission's letter notes that there "might be grounds to exclude in specific cases from disclosure voluntary statements and submissions provided by an undertaking," but that the Commission is unaware of specific circumstances that would preclude discoverability of the NECCI materials in this matter. The Commission's Working Paper further notes that the "same [confidentiality] considerations apply to the disclosure of replies to statements of objection, requests for information and other documents depending on the individual procedure,"³ as are applicable to statements of objections. As these statements indicate, the Commission's position on discoverability in civil litigation of materials prepared specifically for Commission investigations appears to depend on case-specific facts and circumstances. Given that the Special Master has issued a request for assistance to the French courts, in which NECCI will presumably have an opportunity to raise any objections to discovery that it may have, Intel does not believe that further correspondence with the EC is necessary on this issue.

Respectfully,

/s/ David E. Moore

David E. Moore

DEM:cet

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

¹ Chapter 7.1 of the European Commission Staff Working Paper, SEC(2009)574 final, 29.4.2009, available at: http://ec.europa.eu/competition/antitrust/legislation/report_regulation_1_2003_working_paper.pdf. (internal citations omitted).

² DM 26 originally involved AMD's requests for issuance of letters rogatory seeking documents from NEC Computers SAS (NECCI) and ACER Italy Srl. (Acer). On August 4, 2009, AMD withdrew its request for international judicial assistance as to Acer, such that the only remaining issue involves NECCI documents.

³ European Commission Staff Working Paper, fn336.