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VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Special Master
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; C.A. 05-485-JJF; C.A. No. 05-MD-1717-JJF**

Dear Judge Poppiti:

This will reply to Intel's September 2 letter asking the Court to compel production of AMD's so-called "back-end" manufacturing data.¹ Intel's motion should be denied for at least two reasons: First, the motion improperly seeks to expand Intel's data requests by requiring AMD to produce data that is far more detailed and voluminous than the data Intel actually requested from AMD, and that AMD agreed to provide. Second, AMD already has made a substantial production of back-end data. This production consists of quarterly data reports as well as more than 400 weekly reports, prepared in the ordinary course of business over an 8 year period. These reports provide an extraordinary level of detail about AMD's back-end manufacturing processes, give Intel orders-of-magnitude more information than is contained in the back-end data that Intel itself produced to AMD, are far more voluminous than the front-end manufacturing data produced by either Intel or AMD, and include much of the information that Intel's motion claims is "missing" from AMD's production.

I. INTEL'S MOTION SEEKS BACK-END MANUFACTURING DATA THAT GOES FAR BEYOND BOTH WHAT INTEL ACTUALLY REQUESTED IN ITS DATA REQUESTS AND WHAT AMD AGREED TO PROVIDE.

Near the outset of discovery, AMD and Intel each requested that the other produce various types of data. At a broad level, the parties' data requests related to three aspects of AMD and Intel's operations: sales and rebates, costs, and manufacturing. The parties responded to these data requests both by literally producing data (*e.g.*, excel files) and also by producing documents that contained certain requested information. With respect to their manufacturing operations, the parties sought data relating to both the front-end and back-end of the manufacturing process. Because the parties' requests for cost data related primarily to the cost of manufacturing, however, there was a

¹ In general, as used in the parties' discussions, "front-end" data refers to data regarding the manufacturing of microprocessors in the parties' fabs, while "back-end" data refers to data relating to the assembly, testing, and packaging of those microprocessors after production.



substantial overlap between the cost data and the manufacturing data requested by the parties.

Indeed, despite the mistaken impression created by Intel's motion, Intel's actual data requests did not even refer to manufacturing data as a separate category of data to be produced. To the contrary, Intel's requests referred to manufacturing data as a narrow portion of some broader categories of cost data and capacity data. The requests also did not separately mention back-end manufacturing data at all, much less identify the specific, very detailed types of back-end information that Intel now claims AMD was required to produce.

Intel sought so-called "manufacturing" data as a part of its broader request for cost data. (*See* Exhibit 1 to the Declaration of Jay Srinivasan Declaration, filed in support of Intel's motion.) Specifically, Intel characterized its request for manufacturing data as a request for "Manufacturing Costs/COGS." As a result, Intel's request was limited to certain, specific, narrow categories of manufacturing data, including, data relating to (i) "[a]ggregate spending by cost category"; (ii) [a]ggregate actual production volume (*e.g.*, wafers processed per fabrication facility, die, or CPUs/Chipsets processed per assembly facility"; (iii) [a]ggregate capacity; (iv) [h]eadcounts; and (v) [i]dentification of the wafer size, process technology, and product names/numbers/descriptions produced by each facility in each period for which aggregate costs are provided." Intel also sought certain additional "Capacity/Output/Yield" information "sufficient to show and/or permit computation of AMD's planned and realized microprocessor and chipset production capacities and yields" AMD made parallel requests.

Similarly, the parties' initial discussions regarding manufacturing data focused on the production of front-end manufacturing data, not back-end information. Declaration of Michael Maddigan ("Maddigan Decl."), ¶¶2, 11, Ex. J. Consistent with that fact, Intel initially indicated that it would be satisfied with back-end
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See Srinivasan Decl., Ex. 2, David S. Han e-mail to Jennifer Laser). In response, AMD agreed to produce back-end manufacturing data that paralleled its production of front-end manufacturing data and began its efforts to try to obtain that information. (*See, e.g.*, Srinivasan Decl., Ex. 3, 5/2/09 J. Laser e-mail to S. Sletten and D. Han).

As even this brief summary shows, Intel's actual data requests did not identify any of the specific information that Intel now claims is "missing" from AMD's back-end data production. Nor did Intel indicate in the parties' initial discussions that it wanted or expected AMD to produce this information. Thus, it is not surprising that Intel's motion never points to any of its actual data discovery requests or explains how the information it now is seeking is called for by those requests. Intel also never explains how its motion is consistent with or required by Intel's request that AMD produce back-end data similar to its front-end production. Intel's motion does not do so because it cannot do so. Intel's motion is in fact seeking to compel AMD to produce back end data that is more voluminous and more detailed than Intel asked for in its actual data requests, than the parties agreed to in their discussions regarding data production, and than Intel itself produced to AMD.

II. AMD ALREADY HAS MADE A SUBSTANTIAL PRODUCTION OF BACK-END DATA THAT FULLY RESPONDS TO INTEL'S DATA REQUESTS, EXCEEDS AMD'S OBLIGATIONS UNDER THE PARTIES' AGREEMENTS, AND CONTAINS MUCH OF THE INFORMATION THAT INTEL'S MOTION APPARENTLY SEEKS TO COMPEL.

AMD and Intel engaged in extensive negotiations over many months regarding the mutual production of data to respond to their respective data requests. These negotiations included the

production of data samples, the exchange of detailed written questions and responses regarding those data samples, informal discussions between the parties' respective consultants regarding the samples, and the iterative production of responsive data and information. During these negotiations, the parties agreed, among other things, that -- consistent with their actual data requests -- they would produce data reported on a "rolled up" monthly or quarterly basis (rather than trying to gather the component weekly, daily, or other smaller pieces of data used to prepare or compile the monthly or quarterly reports). Maddigan Decl., Ex. A. Pursuant to their agreement, AMD and Intel both produced sales and rebate data on a quarterly basis, cost data on a monthly or quarterly basis depending on the nature of the information, and front-end manufacturing data on a quarterly basis.

Consistent with the parties' requests and agreements, AMD's made an initial production of back-end manufacturing data in July that paralleled Intel's own back-end data production. Intel's production consisted of a single Excel file that included both back-end cost information and back-end manufacturing data together. Only three fields in Intel's production related separately to its back-end manufacturing process --

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Maddigan Decl., Ex. B.

AMD's initial production of back-end manufacturing data was similar to Intel's, but arguably more detailed. Specifically, AMD produced data reporting its assembly outs, test outs, and pack-outs on a quarter-by-quarter and facility by facility basis, as well as, for more recent periods, more detailed information about binning and packaging. Maddigan Decl., Ex. C.

Despite the similarities in the parties' productions, Intel nevertheless contended that AMD's back-end data production was inadequate. Indeed, even as AMD was still attempting to gather the back-end data necessary to provide Intel with the production it initially had requested, Intel began to identify additional back-end data it wanted AMD to produce. For example, on June 4, Intel for the first time requested a series of specific types of back-end information it had not previously identified, including "yield calculations, yield metrics, speed binning, down-coring, or down-caching data and data regarding where and for how long units have been stored during various points in the process before being sent to a customer or otherwise disposed of (*e.g.*, assembly-outs, FUM, finished goods inventory, hub inventory, etc.). Srinivasan Decl., Ex. 4. On July 31, in explaining why it believed AMD's production was inadequate, Intel pointed to a weekly back-end report it had identified in AMD's custodial production as an example of the type of data that it wanted AMD to provide.

Although AMD disagreed with Intel's assertion that its production of back-end data was inadequate, and indicated that it did not believe it was appropriate for Intel to attempt to re-negotiate the parties agreements regarding data production, AMD nevertheless undertook to produce a complete set of those reports for the Q1 2000 - Q2 2008 period of the data production. Maddigan Decl., ¶5. Ultimately, AMD made a supplemental production of back-end data that included a back-end data report for nearly every week from Q1 2005 through Q2 2008. AMD also undertook the extensive effort of identifying the weekly reports for the 2000-2004 period in AMD's custodial production. After doing so, AMD provided Intel with a spreadsheet showing the document title and document control number for each of the back-end weekly reports that AMD produced for the period from Q1 2000-Q2 2008. All in all, after accounting for a small number of missing weeks over a seven and one-half year period, **AMD produced more than 400 such weekly reports to Intel.** Exhibit D to the Maddigan Declaration illustrates the great number of these weekly reports and the scope of AMD's production of this weekly back-end data.

The more than 400 weekly back-end reports AMD has produced contain an extraordinary amount of data and information. (For a representative sample of these reports, for work week 34 of 2005, see Exhibit E to the Maddigan Declaration. Indeed, these reports were distributed to AMD executives and were used to communicate relevant data regarding the back-end manufacturing process within AMD. Although the format of the weekly reports varied somewhat over the relevant time period, in general the reports consisted of REDACTED

Taken together, the report for WW 34 for 2005 alone, for example, contains 23 printed pages of data, including information on REDACTED On a cumulative basis over the 2000-2008 period, the amount of data contained in these reports is truly voluminous. These weekly reports contain far more data than Intel actually requested in its data requests, and also contain much of the additional information Intel requested on June 4 and now claims is missing from AMD's production.

In light of the volume and depth of AMD's back-end data production -- particularly when compared to the single, slim Excel file Intel itself produced -- Intel's claim that AMD "continues to evade" the production of back-end data is inexplicable and wrong. In fact, just the opposite is true. AMD has produced back-end data, and has done so in far more quantity and detail than either Intel requested or the parties initially agreed.²

CONCLUSION

As Intel's motion itself makes clear, Intel's request for additional back-end data is primarily motivated by its desire to obtain additional information to respond to the report of one of AMD's experts, Daryl Ostrander. That desire, however, does not provide a proper basis for belatedly expanding the data discovery process or unilaterally imposing on AMD data discovery obligations far beyond anything that AMD or Intel itself agreed to assume. AMD should not be required to produce any further back-end data, and Intel's motion should be denied.

Respectfully submitted,

/s/ Chad M. Shandler

Chad M. Shandler (#3796)

CS/ps

cc: Clerk of the Court (via electronic filing)
Richard L. Horwitz, Esquire (via electronic mail)
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² Intel's claim that AMD has not produced inventory information is equally puzzling. AMD long ago produced extensive inventory information to Intel as part of its cost data production. REDACTE

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