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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

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ADVANCED MICRO DEVICES, :
4 Plaintiff, :
 :
5 v. : Civil Action No.
 : 05-441-JJF
6 INTEL CORPORATION, :
 Defendant. :

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8 Teleconference in the above matter taken
9 pursuant to notice before Gloria M. D'Amore, Registered
10 Professional Reporter, in the law offices of Blank Rome,
11 LLP, 1201 N. Market Street, Suite 800, Wilmington,
12 Delaware, on Thursday, November 16, 2006, beginning at
13 approximately 11:05 a.m., there being present:

14

BEFORE:

 THE HONORABLE VINCENT J. POPPITI

15

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1 JUDGE POPPITI: Please do a roll call.
2 MR. COTTRELL: In Wilmington for AMD is
3 Fred Cottrell and Chad Shandler, and, of course, on the
4 West Coast from O'Melveny and Myers is Chuck Diamond and
5 Linda Smith.

6 JUDGE POPPITI: Next, please.
7 MR. FLOYD: Dan Floyd from Gibson, Dunn
8 and Crutcher for Intel.

9 JUDGE POPPITI: Next.
10 MR. HORWITZ: Your Honor, it's Rich
11 Horwitz in Wilmington for Intel, as well, with Potter,
12 Anderson. And Darren Bernhardt from --

13 JUDGE POPPITI: Mr. Horwitz, would you
14 go back over that. There was some interference on the
15 line. I didn't hear what you said.

16 MR. HORWITZ: Rich Horwitz from Potter
17 Anderson for Intel. And also on the line for Intel is
18 Daron Bernhardt from Howrey and Rick Ripley from Bingham,
19 McCutchen.

20 MR. HOLZMAN: Jim Holzman at Prickett,
21 Jones for the plaintiff, Class, along with Dan Small of
22 the Cohen Milstein firm in Washington.

23 JUDGE POPPITI: Thank you. Does that
24 round out everyone?

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1 Mr. Cottrell, are you taking the lead
2 today?

3 MR. COTTRELL: I think Chuck had a few
4 things, and then we can add, if necessary.

5 MR. DIAMOND: Judge, there were three
6 issues that it seemed appropriate to raise with you this
7 morning.

8 One is the status of the MDA responses
9 that both AMD and Intel have been receiving from parties
10 whose information we may be producing for one another.

11 The second is the letter that was sent
12 to you, at least, under Paul Weiss' letterhead --
13 JUDGE POPPITI: Yes. I have that.
14 MR. DIAMOND: -- dated November 13th and
15 what to do with that during the pendency of the currently
16 brief Intel -- I'm sorry -- our motion to compel foreign
17 conduct discovery.
18 And then, the third issue is sort of an
19 update as to where we stand with third-party
20 negotiations. You wanted to be able to monitor that.
21 JUDGE POPPITI: Yes.
22 MR. DIAMOND: So, I thought we ought to
23 give you sort of a thumbnail sketch of where we stand.
24 JUDGE POPPITI: That's great.

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1 MR. DIAMOND: We can do those in any
2 order you prefer.
3 JUDGE POPPITI: You call off the order,
4 follow the order that you suggested. I'm fine with that.
5 MR. DIAMOND: Let me start with the
6 MDA's then. I think there were about a half dozen --
7 four to a half dozen letters that were sent to you in
8 total. We received about a dozen or so letters from
9 recipients of our notification letter.
10 JUDGE POPPITI: Yes.
11 MR. DIAMOND: We have resolved those
12 issues with respect to everyone who has written to you.
13 JUDGE POPPITI: That's great.
14 MR. DIAMOND: At least we think so.
15 The last one we provided information to
16 about 10 days ago, we haven't heard anything further, and
17 they haven't returned calls or E-mails. So, I think that
18 one is resolved, as well.
19 However, we recently got it, and I just
20 confirmed that Intel received the same thing from -- you
21 will remember Mr. Holstein, who represented the
22 subpoenaed parties in connection with the protective
23 order.
24 JUDGE POPPITI: Yes.

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1 MR. DIAMOND: He has written on behalf
2 of his clients, HP and an HP subsidiary, objecting to the
3 way that AMD and Intel proposes to proceed and request
4 the right to inspect any document that is or contains any
5 materials subject to a nondisclosure agreement with HP.
6 For the reasons that we've discussed,
7 particularly with a company like HP, that will be so
8 dominant in both our corporate vials, that's, for
9 practical reasons, a nonstarter.
10 We have conveyed that to both
11 Mr. Holstein and the client level to the inside counsel's
12 office and are in discussions. I don't know where Intel
13 stands on that.
14 But we are desperate to get this
15 document exchange rolling. And I think we need to, or I
16 think you need to sort of set a fish or cut bait time
17 very soon, perhaps, as early as next week that -- you

18 know -- to the extent we haven't worked out any problems
19 with any of the recipients that we tee that up in front
20 of you and get it resolved.

21 I'm becoming increasingly concerned
22 about the April document exchange cutoff, if we are
23 continued to be delayed by these third-party objections,
24 which ultimately you will have to resolve, and we don't

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1 view as well taken in view of the protective order.

2 It is probably useful to hear from Intel
3 as to where they stand.

4 JUDGE POPPITI: I agree.

5 MR. BERNHARDT: This is Daron Bernhardt,
6 Your Honor.

7 I think, generally, we would be
8 amendable to some sort of cutoff date. I rather not do
9 it next week just because of the holiday, but if we can
10 do it the end of the following week.

11 We have not started the negotiations
12 with HP because I think we sent our letter after AMD did,
13 and we just received Mr. Holstein's letter.

14 We would hope to be able to do this
15 through some sort of negotiated resolution. Most of the
16 third parties have not raised any objection to the
17 production of documents given that there is a protective
18 order in place. And we are going to try to engage with
19 HP to see if we can alleviate their concerns either by
20 agreeing to give them some sort of truncated list, some
21 word searches or something, or a date cutoff, or getting
22 them to have a better understanding of the protections
23 the protective order provides.

24 But in any event, if we could have a

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1 little bit of time to do that, I'm optimistic that we
2 would be able to resolve it with them short of a motion.
3 If there has to be a motion, there has to be a motion.

4 I agree with what Mr. Diamond has said,
5 that for all practical purposes, having to identify every
6 single document from every third party just would not be
7 workable for either AMD or Intel.

8 JUDGE POPPITI: Any other comments about
9 that issue?

10 Well, it seems to me that if next week
11 doesn't work because of the holiday, certainly pick any
12 day in the following week that makes sense to the both of
13 you to permit the amount of discussion, dialogue,
14 negotiation that you need. And then, once that date
15 passes, permit there to be motion practice on the issue.

16 And I'm happy to let you pick that date.

17 MR. DIAMOND: This is Mr. Diamond.

18 In light of Mr. Bernhardt's comments, I
19 don't know that we need a hard-and-fast date. I think if
20 you tell us this needs to be resolved by the end of the
21 week of November 27th, if we reach impasse with HP
22 earlier than that, we're just going to tee this up and it
23 will get resolved when it gets resolved.

24 We'll file on Monday the 27th, but I

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1 don't know that you'll want, necessarily, to wait until
2 Friday, December 1st. If we know we are not going to get
3 anywhere, we will go ahead and tee this up.

4 JUDGE POPPITI: Then here is what I
5 would --

6 MR. BERNHARDT: Your Honor, could I just
7 mention one other point. This is Mr. Bernhardt again.

8 JUDGE POPPITI: Yes, please.

9 MR. BERNHARDT: I should have mentioned
10 this before.

11 As a result of getting AMD's MDA list
12 and some additional work that we have done, we may have a
13 few more letters that have to be sent out. I just want
14 to alert the court to that. There ought not to be too
15 many and, hopefully, they won't raise objections.

16 But given that we have been given two
17 weeks' time to get that notice to get a response back for
18 every third party, the last week of November may not work
19 for us. Certainly, for those where the letters have
20 already been sent, it would work.

21 JUDGE POPPITI: Mr. Diamond.

22 MR. DIAMOND: Unless --

23 JUDGE POPPITI: We don't want to be
24 doing these piecemeal.

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1 MR. DIAMOND: Unless Mr. Bernhardt can
2 filter out any documents from those companies, what this
3 means is, the date last for the last objector to file the
4 last objection is really the first date that we can begin
5 the document exchange.

6 I would think that under these
7 circumstances, maybe what we ought to do is propose that
8 we agree that seven days to object in the case of these
9 outliers be the notice period rather than the 15. So, if
10 they go out now, we can tee this up quickly. Obviously,
11 if somebody needs more than seven days to sort out their
12 difficulties, they can come back and ask Daron for some
13 additional time, and we can discuss that.

14 But, again, if we start a 15-day clock
15 running the end of this week, given the fact that
16 unresolved objections are going to take two weeks to
17 resolve, potentially an appeal to the District Court --
18 we will be putting off this exchange until some time in
19 mid-January. And that's just hopeless, from our
20 standpoint.

21 Any objection that we just give seven
22 days notice on the last couple of letters that go out.

23 MR. BERNHARDT: No objection from us,
24 Your Honor.

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1 JUDGE POPPITI: Well, if you think it's
2 going to work given the holiday, then I will let you
3 drive the train, so to speak.

4 And what I would like, because I think
5 it's important for whatever order that gets entered, I
6 would like you to draft the form of order that would be

7 entered so that the third parties, I expect they're
8 monitoring the docket, can see whatever language you
9 choose.

10 MR. DIAMOND: I will undertake to draft
11 something and shoot it by Mr. Bernhardt and Mr. Floyd.

12 JUDGE POPPITI: Should I look for that
13 by date certain or just leave it to your energy to get it
14 done and in due course?

15 MR. DIAMOND: We will probably have
16 something to you by Monday.

17 JUDGE POPPITI: That's fine.

18 MR. DIAMOND: I will certainly have
19 something to Daron by tomorrow.

20 JUDGE POPPITI: Okay. That's fine.
21 And I think what we may want to be sensitive to, knowing
22 everyone's concern about getting this rolling and getting
23 it accomplished by the date that the court has already
24 set, should we discuss now whether there -- with respect

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1 to motion practice, are we satisfied that the process for
2 motion practice should stay as it is in terms of the time
3 frames involved, or should there be a separate schedule,
4 if you will, and truncated?

5 MR. DIAMOND: With respect to the MDA
6 issue?

7 JUDGE POPPITI: Yes. I anticipate that
8 whatever motion practice there is, the way I would like
9 to approach it, and this is best circumstance, is it
10 opens and closes as quickly and efficiently as possible.
11 And we set a date when there can be a telephonic hearing
12 on those motions and a decision can be made during the
13 course of the hearing with a form of order as we've
14 contemplated in earlier discussion drafted by you, so
15 that I don't have to take the time necessary to create
16 the kind of record that the court would expect me to
17 create with any motion on a finding and recommendation.

18 I mean, I don't know whether you want to
19 discuss that now, or you want to give it some thought.
20 What I don't want to do is to set forth in a process that
21 is going to get in any sense bogged down. I don't want
22 it to be.

23 MR. BERNHARDT: Your Honor, this is
24 Daron Bernhardt.

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1 JUDGE POPPITI: Yes, please.

2 MR. BERNHARDT: What I would suggest is
3 that we consult with AMD's counsel on this and get back
4 to you. I think we actually are consulting with them on
5 some other issues tomorrow and maybe we could put that on
6 our agenda. But I would like the chance to think about
7 it and to talk to them about it -- the proposal.

8 JUDGE POPPITI: That's fine. And,
9 perhaps, if you all agree, then, I know you'll tell me
10 that. If you can do it by Monday, that would be great
11 because I think I would like to wrap whatever we do into
12 the order that I'm going to be entering.

13 And if necessary, during your meet and

14 confer, although I got a fairly busy schedule tomorrow,
15 if you all put out a call for me, I'll find a way to get
16 back to you.

17 MR. DIAMOND: We will put it on the
18 agenda for us to discuss between ourselves.

19 JUDGE POPPITI: Next matter, please.

20 MR. DIAMOND: The November 13th letter
21 from Paul Weiss' firm.

22 Let me say for the record, I am speaking
23 on behalf of AMD only with respect to Fujitsu and NEC.

24 JUDGE POPPITI: Yes.

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1 MR. DIAMOND: AMD is separately
2 represented in connection with negotiations by two firms
3 with respect to Sony, and one of Mr. Cottrell's partner's
4 is handling the Toshiba negotiations.

5 I don't know, quite frankly, Your Honor
6 what to make of this letter. Let me just give you the
7 background.

8 We, after serving subpoenas on the
9 Japanese OEM, the four named here and the one additional
10 one, we entered into an agreement that, in substitution
11 for compliance with the subpoena, each of the Japanese
12 OEM's could produce to AMD, in the first instance the
13 documents that they gave or had collected from them by
14 the Japanese Fair Trade Commission, which conducted an
15 investigation into Intel's practices in 2005.

16 JUDGE POPPITI: Yes. I'm aware of it,
17 and I'm familiar with it.

18 MR. DIAMOND: The understanding was, we
19 would use that collection of documents, which, obviously,
20 would be very easy to collect and produce to narrow the
21 universe of our request both in terms of custodians who
22 we were interested in the subject matter.

23 We bore all of the expense for the
24 copying of production of those materials. And we agreed

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1 to discuss in the future an allocation of expense with
2 respect to any further production.

3 About three to four weeks ago, we sent
4 to each of the four signatories to this letter a revised
5 proposal significantly narrowing the scope of our
6 request, in light of what they had already produced to
7 us.

8 We have not heard back from a single one
9 of them. No objections. No proposal to narrow. No
10 discussions whatsoever as to scope.

11 And I had assumed that was because they
12 are all hanging fire waiting for the outcome of our
13 motion to compel. Intel's production of foreign conduct
14 documents.

15 This letter, as far as I'm concerned, is
16 wholly out of compliance with what we would have
17 expected.

18 JUDGE POPPITI: It looks like an
19 uninvited amicus.

20 MR. DIAMOND: Well, I won't put Dan and

21 Daron on the spot, but I suspect it was invited.

22 JUDGE POPPITI: Okay.

23 MR. DIAMOND: But in any event, your
24 Rule 3 of your June 28th procedures --

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1 JUDGE POPPITI: Yes.

2 MR. DIAMOND: -- is quite expressed that
3 there has to be a meet and confer. If we're going to go
4 to war with the Japanese OEM's over compliance, number
5 one, we're happy to talk to them both about narrowing
6 scope and assuming some portion of the costs of
7 collecting documents as both we and Intel have done with
8 respect to all of the subpoenaed parties. And Linda can
9 comment more on those. But we haven't foreclosed that.

10 But it seems to me that if we're going
11 to litigate this now, each of these can be litigated on a
12 case-by-case basis. There's history behind each of the
13 negotiations, and we're going to get into burden
14 questions and cost allocation questions that may be
15 rendered mute by -- well, that may well largely be
16 disposed of by your ruling on our motion to compel
17 Intel's production.

18 JUDGE POPPITI: Well, certainly that's
19 going to be a significantly umbrella and it may be.

20 MR. DIAMOND: I think we can all agree
21 that if we are not entitled to foreign conduct discovery,
22 bearing on Intel's activities with respect to purely
23 foreign companies, we are probably not entitled to it
24 from the purely foreign companies themselves. I put a

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1 pin in that because companies like Sony are both domestic
2 and foreign. They operate and purchase microprocessors
3 for use here in the United States, as well as Asia.

4 JUDGE POPPITI: I understand.

5 MR. DIAMOND: But by and large, it seems
6 to me that it is premature to go litigate these things.
7 There is nothing raised with respect to the foreign
8 conduct issues in this letter that's not already on the
9 table by virtue of Intel's opposition.

10 And what I would propose is that we
11 contact, through the appropriate counsel, each of these
12 four parties and tell them that we have been instructed
13 to meet and confer with respect to the burden issues
14 before we litigate that. But in any event, it's your
15 preference to decide the foreign conduct discovery issue
16 in the context of the Intel motion, and then we will
17 visit these as necessary.

18 JUDGE POPPITI: Any other comments?

19 MR. BERNHARDT: Daron Bernhardt for
20 Intel, Your Honor.

21 I have two overall comments. One
22 procedural and one substantive.

23 The Japan OEM's have moved the court and
24 asked the court to address the jurisdictional decision

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1 that Judge Farnan made and the impact that has on
2 discovery as it applies to them.

3 And in their letter brief they state
4 that Your Honor's decision on AMD's discovery motion to
5 compel will have a great impact on them. They asked the
6 court to consider that letter now, and they set out all
7 of the reasons why they think it ought to be considered
8 now.

9 Now, outside of their presence, what AMD
10 is effectively doing is saying defer or strike their
11 motion and we'll put it off. And, I think, that, with
12 all due respect to Mr. Diamond, that procedurally that's
13 not the appropriate way to go. Intel ought not to be in
14 the position of speaking on behalf of the third parties
15 simply because they agree with our interpretation of The
16 Court FTAIA decision.

17 And if AMD has a motion that it wants to
18 bring to strike or defer against that third party letter
19 brief, it ought to bring it, give the third parties the
20 opportunity to be heard on the issue, allow Intel to be
21 heard on it, and then the court can make a decision in
22 that fashion. I think that can be done very quickly.
23 AMD could get that on file in a day or two and the third
24 parties and Intel can respond certainly by the end of the

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1 day Wednesday of next week.

2 JUDGE POPPITI: And let me make an
3 observation about that. I mean, it does seem to me that,
4 if you will, an amicus submittal may serve some purpose.

5 And yet, at the same time, if I were to
6 view this document as an amicus submittal, the document
7 is filed against some background of those facts contained
8 in the November 13th correspondence.

9 So, it really isn't, if you will, a
10 traditional amicus focused squarely on the issue that you
11 are teeing up for me. It does have, if you will, some
12 legs of its own. And if that's the case, should there
13 not, at least be requirement, if you all don't agree that
14 this letter should stand, and they should be permitted to
15 participate, if you will, in the fashion of an amicus, do
16 you not agree that they should, at least, fulfill the
17 requirement of meet and confer.

18 MR. BERNHARDT: Your Honor, I think,
19 certainly, they could have a very quick conversation with
20 AMD about whether AMD is willing to completely forego
21 foreign conduct discovery. I think we know what the
22 answer already to that is. And, therefore, it would be a
23 proforma meet and confer, but the result would be that
24 they want to participate and have their views heard, as

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1 Your Honor adjudicates AMD's motion to compel against
2 Intel.

3 JUDGE POPPITI: And I'm not one for form
4 over substance. And yet, at the same time, I would be
5 very concerned at the front end of the process that I
6 will be involved with, I would, by virtue of in action
7 suggest that meet and confer isn't important because it
8 will be.

9

MR. BERNHARDT: One way to deal with

10 that, then, Your Honor, would be to ask AMD to try to
11 have that meet and confer in the next couple of days and
12 to report to the court some time next week about whether
13 any resolution is possible.

14 If the answer is, no, the court can then
15 take under submission this letter brief, have an amicus
16 filing and use it for whatever value The Court deemed
17 that it has. And the court could separate out those
18 parts that are relevant to a filing as an amicus and
19 those parts that the court thinks raised separate issues
20 that could be deferred.

21 JUDGE POPPITI: Mr. Diamond.

22 MR. DIAMOND: Your Honor --

23 JUDGE POPPITI: And Mr. Diamond, before
24 you respond, let me just make another observation.

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1 If an amicus makes any sense, and help
2 is always sensible, if it's helpful, I don't want to have
3 to perform the task of parsing out those sections that
4 are focused on the OEM's concerns themselves. If it's
5 supposed to be a pure amicus and it is expected to be
6 helpful, then I want it to be an amicus. I want it
7 focused on the issue that is before me. At least it
8 seems to me.

9 MR. DIAMOND: And I was going to sort of
10 raise the same objection to Mr. Bernhardt's last comment.
11 What parts of this are amicus and what parts of these are
12 motions.

13 I am happy to begin the meet and confer
14 process. Obviously, we are singularly focused in getting
15 a reply done and to you on Tuesday, and given the holiday
16 next week, this is not likely to happen until the
17 following week.

18 I have no objection if you treat the
19 portion of these letters dealing with the purely legal
20 issue of foreign conduct discovery and take those into
21 account, if you think that there's anything worth taking
22 into account.

23 But a good portion of this letter is
24 devoted to the burden arguments. And those ought to be

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1 the subject of meet and confer because nobody knows how
2 burdensome this discovery is going to be because the
3 parties haven't defined what they need to do and what AMD
4 and Intel will pay for and what we won't pay for.

5 So, I think it's totally premature to
6 litigate those issues.

7 And I'm sensitive to Mr. Bernhardt's
8 comments about procedural niceties.

9 But on its face, this letter violates
10 your June 28th order. And I'm happy to write a letter to
11 you to that effect and ask you to strike it until such
12 time.

13 JUDGE POPPITI: Yes. And I was just
14 going to suggest that the procedural posture of the
15 letter, if you will, at least places before me the
16 argument being made on behalf of the OEM's.

17 And I think it's important for them to
18 have some voice in the matter, other than the letter. At
19 this juncture, we are on the phone without them. And it
20 seems to me that for purposes of making any judgment,
21 rounding out the record is important to do.

22 So, I will leave it to you, Mr. Diamond,
23 to do whatever you think is appropriate with respect to
24 this letter. And depending upon what you do, I think it

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1 may be important for me to convene, if necessary, a
2 conference, so that I can have the OEM's voice or argue
3 their position.

4 And I think it is also important that in
5 having whatever you filed with me, not necessarily in
6 conjunction with that, but I believe it is important for
7 the OEM's to have a copy of this transcript insofar as it
8 deals with the November 13th letter. And I would look to
9 counsel to make sure that that occurs.

10 MR. DIAMOND: Why don't I attach that to
11 the letter I will send you next week.

12 JUDGE POPPITI: Please.

13 MR. DIAMOND: I am not quite sure what
14 time frames apply to this letter because the letter is
15 not in conformance with your rules either in procedure or
16 length.

17 JUDGE POPPITI: I understand what you're
18 saying.

19 MR. DIAMOND: I don't know whether we're
20 operating under the Delaware local rules, your rules, but
21 we are not going to address the merits of this. We are
22 simply going to address the procedural deficiencies, and
23 I will attach the transcript.

24 And if Counsel for the OEM's want to

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1 have a hearing on the propriety of the motion in its
2 current form, we can do that.

3 I will need until next week, because, as
4 I said, I only represent AMD with respect to some of, but
5 these not all of these OEM's, and I need to get the other
6 Counsel on board. I will get that to you before you
7 leave for the holidays.

8 JUDGE POPPITI: That's fine. What you
9 are saying is Wednesday of next week, that's fine.
10 That's fine with me.

11 MR. BERNHARDT: Your Honor, Darren
12 Bernhardt.

13 Can I make one other point?

14 JUDGE POPPITI: Yes, please.

15 MR. BERNHARDT: We have a hearing
16 scheduled, I believe, on November 29th. And it is quite
17 clear that the third parties want to have their voice in
18 adjudication of this motion and, therefore, we are under
19 some time pressure here.

20 If AMD is going to say, Look, you should
21 have had a meet and confer, and, therefore, your letter
22 is procedurally inappropriate, again, the meet and confer
23 is going to be proforma because AMD is not going to agree

24 with the third parties position that no foreign conduct
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1 discovery should go forward.

2 So, if the court could impose some
3 deadline on that meet and confer, that would give the
4 parties an opportunity to refile before the hearing.

5 MR. DIAMOND: I totally object to that.
6 We are under orders from Judge Farnan to properly dispose
7 of the foreign conduct discovery issue. We have adopted
8 a schedule for that. This is going to be briefed by next
9 Tuesday. It will be argued on the 29th. There is no
10 right of these OEM's to inject themselves into that
11 process, either on their own, or if, it was the case, by
12 invitation of Intel.

13 We have enough lawyers on this dispute
14 as it is and don't need another legion.

15 If the Japanese OEM's wanted to
16 crystallize this issue in a time frame that would have
17 paralleled the Intel motion, they certainly had every
18 ability to do so and do so in an appropriate way.

19 I don't think that Mr. Bernhardt ought
20 to shoehorn them in so that it's five against one instead
21 of one against one.

22 JUDGE POPPITI: I expect the OEM's,
23 through their able counsel, know how to serve up a
24 request to participate in briefing -- an amicus briefing,

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1 if you will.

2 Although, this letter, as I said,
3 suggest that this is an uninvited amicus, there has been
4 no request appropriately filed for them to participate.

5 So, it was important for me to read the
6 letter, for purposes of having this conversation. But I
7 can say, at this juncture, I don't intend to do anything
8 with that letter until I see what Mr. Diamond's submittal
9 is going to be, responding, if you will, to same.

10 Intel, if you choose, you can also file
11 a simultaneous view, if you will, of that letter, and I
12 will make some judgment as to whether the letter stands
13 and whether there is even sufficient time to permit
14 amicus filings.

15 We're rolling toward a hearing date.
16 Your final brief is due next week. Again, I expect the
17 OEM's have been monitoring the docket. So, it should be
18 no surprise to them, and it appears not to be a surprise,
19 if they know we're in briefing.

20 I am not going to make any judgement
21 with respect to this letter at this juncture. But I
22 think you can hear my concerns about it.

23 MR. SMALL: Your Honor, this is Dan
24 Small. If I may interject something for the Class

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1 plaintiffs.

2 JUDGE POPPITI: Yes, please.

3 MR. SMALL: We have our next brief due
4 in this process for the motion to compel on Tuesday. And
5 we are working very hard to deal with the legal issues

6 that have been raised by the motions to compel.

7 The letter that was submitted by the
8 Japanense OEM's, in addition to raising that legal issue,
9 raised factual and different legal issues relating to
10 burden. And for us to be able to address that, we
11 certainly could not do it by Tuesday.

12 JUDGE POPPITI: And I understand that.
13 And that is why I say the letter certainly had some focus
14 on the briefing that is soon to be closed before me. But
15 it also had square and sharp focus on their own interest.
16 And that's not what this briefing and what these issues
17 are designed to do, or to address in this first round of
18 briefing.

19 It may be that whatever decision I make
20 impacts on the OEM's. But we are not going know that
21 until a decision is issued. And I don't want to wrap in
22 to this journey focus on the OEM's from their individual
23 perspectives. That's not the purpose of this briefing.

24 MR. SMALL: Your Honor, for the Class

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1 plaintiffs, we may be able to ride the coattails of AMD's
2 very able counsel.

3 But if we find it necessary to submit
4 our own submission to you on Wednesday, can we do that?

5 JUDGE POPPITI: I did not mean to
6 exclude you.

7 MR. HORWITZ: Your Honor, this is Rich
8 Horwitz.

9 Having not been involved directly in any
10 of the meet and confers in the past that the parties have
11 had, I just wonder if it would be appropriate, based on
12 what --

13 JUDGE POPPITI: Mr. Horwitz, you are
14 cutting off again.

15 MR. HORWITZ: Somebody must have a
16 Blackberry close to their phone.

17 It sounds like based on the conversation
18 today, if a meet and confer happens, and Mr. Diamond
19 hasn't suggested anything to the contrary, that it is
20 going to be perfunctory. And I have no idea when it
21 would happen, but I just hope it won't be delayed, if, in
22 fact, it is just going to be perfunctory, so if the OEM's
23 want to take a position, there won't be any efforts by
24 the parties from here on out that would make that delay

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1 even further out, if you understand what I'm saying.

2 JUDGE POPPITI: I do. And what I would
3 expect is, even understanding your respective positions,
4 I certainly would not appreciate a discussion later on
5 suggesting to me that the reason why we are having a late
6 discussion is because a meet and confer that could have
7 been accomplished in short order didn't occur.

8 I'm not going to push you -- I think it
9 would be inappropriate for me to push to a meet and
10 confer as a result of this November 13th letter. But
11 there are issues raised in that November 13th letter that
12 should be addressed. There should be a meet and confer

13 and that may help round out the record that I need to
14 deal with the substance or the process of a November 13th
15 letter.

16 So, I would urge that that occurs as
17 quickly as possible without directing it.

18 MR. DIAMOND: Your Honor, the third
19 point concerns the status of the third-party
20 negotiations. And I think I ought to let Linda talk
21 about that because she and Dan have been principally
22 involved in it.

23 JUDGE POPPITI: Please. Ms. Smith.

24 MS. SMITH: Yes, Your Honor. Basically,
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1 I think we've made considerable progress.

2 And what I would like to do is not go
3 through on a third party by third party basis, but on
4 several of the large OEM's, I think we're about to
5 conclude agreements which will result in production
6 finally.

7 But I would like at some point, perhaps,
8 once we get past the foreign conduct briefing and hearing
9 to actually take the list that we have provided to you
10 and give you a quick summary of both the way we're
11 addressing the negotiations in terms of we have a
12 bifurcated approach.

13 One is, to designate custodians as a
14 third party and search terms and limit the search to
15 IMB's designated custodians, and within that have
16 custodian search terms.

17 And then, the other piece, which is,
18 perhaps, more germane to Intel and the Class Action
19 Plaintiffs is what we call transactional data, which has
20 to do with a very detailed series of questions about
21 sales and pricing, et cetera, which are what we call
22 corporate request.

23 And what we would like to do at some
24 point is to go through the protocols on the way we've

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1 negotiated these, so you'll have a general understanding,
2 unless Your Honor is desirous having a three-hour seminar
3 on E-discovery and all of the issues involved, which I
4 would have to get other forensic people from my firm to
5 participate on my behalf.

6 JUDGE POPPITI: No. I am happy to do
7 the general discussion. I've had pleasure of teaching
8 some E-discovery courses. I haven't done one this year,
9 but the general understanding will be good enough.

10 MS. SMITH: Otherwise, I am still
11 pushing for the meeting in Maui.

12 JUDGE POPPITI: I will tell you what.
13 If it's in Maui, we can be as specific as we need to be.

14 MS. SMITH: I think what the parties
15 would like to do, once we get this briefing behind us is
16 go through -- you know -- this is concluded. This is
17 outstanding. This is an impasse. Just so you have a
18 general sense of what's coming.

19 And I think that is something that Your

20 Honor expressed a desire to understand before we get to
21 this December 22nd motion practice commencement date so
22 you are not surprised. And we can, perhaps, organize it
23 into some groupings that makes sense in terms of the
24 briefing if there remains to be a briefing to be done.

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1 So far, we are making very good
2 progress, and as I said, about to, it looks like,
3 conclude deals with very -- agreements with very big
4 players like IBM, HP and Dell.

5 JUDGE POPPITI: Great. That all makes
6 sense. And I think I would leave it, certainly, to you
7 to suggest when we do that. And I expect we will use one
8 of our Thursdays for that purpose, correct?

9 MS. SMITH: Yes, Your Honor.

10 JUDGE POPPITI: Do you want to suggest a
11 date now, or do you want to wait until all of your work
12 is completed next week?

13 MS. SMITH: Yes. We don't have that
14 much time. I think it should be either the first week of
15 December, or the first session we have in December, or
16 the second.

17 What I would like to give Your Honor
18 sufficient time to do is decide the pending motion.

19 JUDGE POPPITI: I agree.

20 MS. SMITH: Then we will move on.

21 JUDGE POPPITI: That's good. Any other
22 matters, then, please. Then, I will be looking for a
23 form of order. And I am going to be expecting some
24 submittal with respect to the November 13, 2006 letter.

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1 MR. DIAMOND: Then you will have both
2 next week.

3 JUDGE POPPITI: That's great. Thank
4 you, all. Have a pleasant, safe and plentiful
5 Thanksgiving.

6 (Teleconference was concluded at,
7 approximately, 11:50 a.m.)

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C E R T I F I C A T E

2 STATE OF DELAWARE:
3 :
4 NEW CASTLE COUNTY:
5 I, Gloria M. D'Amore, a Registered
6 Professional Reporter, within and for the County and
7 State aforesaid, do hereby certify that the foregoing
8 Teleconference was taken before me, pursuant to notice,
9 at the time and place indicated; that the statements of
10 said parties was correctly recorded in machine shorthand
11 by me and thereafter transcribed under my supervision
12 with computer-aided transcription; that the
13 Teleconference is a true record of the statements given
14 by the parties; and that I am neither of counsel nor kin
15 to any party in said action, nor interested in the
16 outcome thereof.
17 WITNESS my hand and official seal this
18 17th day of November A.D. 2006.
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