

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., :
a Delaware corporation, and :
AMD INTERNATIONAL SALES & :
SERVICE, LTD., a Delaware :
corporation, :
: Civil Action
Plaintiffs, : No. 05-441-JJF

vs.

INTEL CORPORATION, a Delaware :
corporation, and INTEL :
KABUSHIKI KAISHA, a Japanese :
corporation, :

Defendants.

MDL NO. 05-1717-JJF

IN RE INTEL CORPORATION :
MICROPROCESSOR ANTITRUST :
LITIGATION :

PHIL PAUL, on behalf of :
himself and all other :
similarly situated, :

Plaintiffs,

Civil Action
No. 05-485-JJF

vs.

INTEL CORPORATION,

Defendant.

A status conference was taken
before The Honorable Vincent J. Poppiti on Thursday,
May 24, 2007, beginning at approximately 11:00 a.m.

Gail Inghram Verbano, CSR, RMR, CLR
CORBETT & WILCOX
230 N. Market Street - Wilmington, Delaware 19801
(302) 571-0510

Corbett & Wilcox is not affiliated with
Wilcox & Fetzer, Court Reporters

Conference

Page 2

1 Attorneys for the Class Plaintiff:

2 Brent W. Landau, Esq.
COHEN, MILSTEIN, HAUSFELD & TOLL

3 James L. Holzman, Esq.
4 PRICKETT JONES & ELLIOTT

5 Attorneys for AMD:

6 Frederick L. Cottrell, III, Esq.
Steven Fineman, Esq.
7 RICHARDS LAYTON & FINGER

8 Chuck Diamond, Esq.
Mark Samuels, Esq.
9 James Pearl, Esq.
David Herron, Esq.
10 O'MELVENY & MYERS

11 Attorneys for Intel:

12 W. Harding Drane, Esq.
POTTER ANDERSON & CORROON LLP

13 Robert Cooper, Esq.
14 Daniel Floyd, Esq.
Kay Kochenderfer, Esq.
15 Richard Levy, Esq.
BINGHAM, McCUTCHEN

16 ALSO PRESENT:

17 Beth Ozmun, Esq.
18 Advanced Micro Devices

19 Mary Mullaney, Esq.
BLANK ROME

20 Eric Friedberg,
21 Jennifer Martin
STROZ, FRIEDBERG, LLC

22

23

24

1 JUDGE POPPITI: Okay. There is no
2 set agenda, but I have been advised that there are
3 some issues you've all brought to my attention
4 through a letter that I received from Mr. Cottrell
5 dated May the 22nd and a response to that -- email
6 response from Mr. Drane dated the same day, the email
7 coming in at around 6:05 that evening. And perhaps
8 it would be important to focus on the issues raised
9 in those pieces of correspondence first.

10 MR. SAMUELS: Your Honor, it's Mark
11 Samuels. May I may I begin?

12 JUDGE POPPITI: Yes, please.

13 MR. SAMUELS: Your Honor, to sort
14 of level-set here, Intel's document preservation
15 lapses were discovered last fall and disclosed to AMD
16 in February and to the Court in March.

17 As best we can tell at this point,
18 from the reports dribbling in -- and we have not had
19 a single bit of discovery yet -- there have been
20 thousands of man-months' worth of data that was not
21 preserved as it should have been. Whether and to
22 what extent that can be remediated remains to be
23 seen.

24 Intel has promised AMD and the

Conference

Page 4

1 Court both a full accounting and transparency.

2 As for the accounting, Intel has
3 submitted, as you know, a lengthy report to the
4 Court, which makes many assertions of fact, all of
5 them, I might add, without supporting declarations.
6 It contains, in our view, broad subject matter,
7 privilege waivers and attempts to lay at the feet of
8 a single in-house lawyer at Intel responsibility for
9 much of the fiasco. And it attempts to explain what
10 happened with respect to Intel's evidence
11 preservation lapses, and it proposes a plan of
12 remediation that is claimed to make AMD whole.

13 From AMD's perspective, this report
14 raises as many questions as it answers.

15 It is full of spin. And with
16 respect to the assertion that Intel's remediation
17 plan will make AMD whole, it is, in our view,
18 conclusory and speculative. And it presents no
19 factual basis for the optimistic "no harm, no foul"
20 story that it presents.

21 We need discovery to ferret all of
22 this out, and we're prepared to move swiftly to
23 conduct our discovery and submit our response to the
24 Court.

1 We have, at this point, Your Honor,
2 three issues. The first is Intel's refusal for many
3 weeks even to give us the simple assurance that it is
4 preserving, and its lawyers and consultants are
5 preserving, all of the documents relevant to the
6 document preservation lapses and the remediation
7 proposal that is now under investigation.

8 We asked politely and
9 professionally for the simple representation over a
10 month ago. We begged Intel to confirm that they were
11 not, so to speak, failing to preserve documents about
12 the failure to preserve documents. We didn't get it.
13 And we don't know what has been lost or destroyed
14 since last fall when the problems first surfaced.

15 It will concern us greatly if it
16 turns out that, after Intel's document preservation
17 problems surfaced and it became clear that there were
18 issues that would need to be addressed by the Court,
19 Intel and its counsel neglected to preserve documents
20 about those problems.

21 Now, we go Mr. Cooper's email
22 shortly after we sent our letter to Your Honor on
23 Tuesday, I believe.

24 I am hopeful that we have now got

Conference

Page 6

1 that particular issue behind us, but frankly, we're
2 not exactly sure what we've gotten. But I want to
3 make sure that that issue is effectively resolved so
4 that we don't have that -- we don't have that concern
5 going forward.

6 JUDGE POPPITI: Let me ask this
7 question about that, then.

8 In looking at Mr. Cooper's email,
9 which was ultimately forwarded on to me, I note that
10 the language that is used in his email is, as it
11 indicates -- and I'm looking at the third full
12 paragraph -- so Intel and outside counsel took
13 reasonable steps to maintain materials relating to
14 Intel's retention and remediation.

15 My question is, have you had
16 conversation with Mr. Cooper to get a clearer
17 understanding of what he says, or are you satisfied
18 with the words as written?

19 MR. SAMUELS: Well, thank you, Your
20 Honor.

21 Your Honor, the direct answer to
22 your question is "no." I was on a plane all day
23 yesterday and have not had the opportunity to speak
24 to Mr. Cooper, and we would accept his representation

1 if that's what Mr. Cooper intended.

2 What we asked Mr. Cooper and really
3 Intel to represent was that its outside counsel and
4 consultants are preserving all materials that relate
5 to the Intel evidence preservation program and the
6 discovery of lapses in it and the remediation or
7 proposed remediation of it. And if that's what
8 Mr. Cooper intended by his email, we will accept
9 that, and we will regard it as having mooted the
10 issue that we addressed to Your Honor.

11 JUDGE POPPITI: Then let's deal
12 with that first, Mr. Cooper.

13 MR. COOPER: Yes. Thanks, Your
14 Honor.

15 I'm frankly unclear about what
16 Mr. Samuels is complaining about. All the way along
17 we told him that we have materials that relate to all
18 of this. We've never told him that they're being
19 destroyed; and to the contrary, we've made every
20 effort to make sure that we have that sort of
21 material retained.

22 There are endless privilege issues
23 that strike through all of that material. We've had
24 some discussions about how we can sort that out,

Conference

Page 8

1 unsuccessfully.

2 Now, we -- I was frankly stunned
3 with the position AMD took with respect to serving
4 subpoenas on Gibson, Dunn and Howrey, and I want to
5 make it clear that we intend to oppose those
6 subpoenas to the fullest extent, for reasons of
7 principle and for compelling practical reasons. We
8 see no justification for the offensive and intrusive
9 attack that AMD is taking here.

10 JUDGE POPPITI: Mr. Cooper, if you
11 would, though, let me see if I can, at least with
12 respect to -- with respect to the first point that is
13 raised, I'm not sure that I'm hearing that there is a
14 meeting of the minds. Or is there?

15 MR. COOPER: Well, I don't know if
16 there's a meeting of the minds or not. They said
17 they wanted an order issued by Your Honor against us.
18 We will oppose that.

19 JUDGE POPPITI: I know. But it's
20 my understanding that if there is -- if they
21 understand your correspondence to be that you are --
22 regardless of whether or not there are privilege
23 issues that may ultimately have to be addressed, you
24 are, in fact -- and Intel is, in fact -- preserving

1 everything and outside counsel is preserving
2 everything that I expect that AMD is looking for.

3 MR. COOPER: I think that is a fair
4 statement of what we are doing, Your Honor.

5 Now, I can't say that -- we've
6 focused on outside counsel prior to this recent
7 dustup, but I don't think there is any reason to
8 think that anything has been lost.

9 I would make a simple point,
10 though, that we are involved in coping with the
11 retention issue, as outside counsel. And it's
12 obvious now that we're going to be engaged in the
13 defense of Intel, not only on the merits but also
14 with respect to what is going to be a series of
15 attacks involving retention. So we have no choice
16 but to insist on the privilege as outside counsel,
17 and we intend to do so.

18 JUDGE POPPITI: I understand.

19 MR. COOPER: And I think that
20 should be clear from the outset.

21 JUDGE POPPITI: I understand that.
22 And I expect that that issue may be joined, and it
23 may have to be joined sooner than later.

24 MR. COOPER: Now, one thing I did

Conference

Page 10

1 ask for in -- the email I sent, by the way, I
2 literally was finishing it when I got the letter that
3 was sent to your court. I immediately sent the email
4 on as written. I notice I had a typo in it, even.

5 But in that email, I also made the
6 point that if AMD intends to insist on this
7 condition, we think they should reciprocate
8 similarly. Because although they tell us that they
9 did not have an auto delete function, we know that
10 they were looking at this lawsuit at least as early
11 as March of 2005, months before it was filed.

12 And we will be very interested in
13 the preservation activities that they put in place
14 and how effective they were with respect, in
15 particular, to those early months, which are quite
16 important to us. Because our defense, in many
17 respects, is based on the fact that AMD is
18 responsible for its own failures in the marketplace
19 by reason of its ineffective marketing, its poor
20 products and its failure to execute in terms of being
21 able to deliver product.

22 That was part of the email I sent,
23 and I would hope that AMD would give us the same
24 assurance insofar as it is concerned.

1 MR. SAMUELS: Your Honor, may I
2 address that? It's Mark Samuels.

3 JUDGE POPPITI: Please,
4 Mr. Samuels.

5 MR. SAMUELS: Intel is apparently
6 subscribing now to the school that the best defense
7 is a strong offense.

8 After Intel came forward six months
9 after discovery of its problems and revealed what may
10 be the most massive document preservation failure of
11 all time, we get a lengthy letter from Mr. Cooper
12 asking us all sorts of intrusive questions, many of
13 them seeking plainly privileged information about
14 AMD's own document preservation program.

15 The letter was clearly intended, by
16 Mr. Cooper, to deflect attention from Intel's own
17 shortcomings that had been just recently been
18 revealed.

19 We responded promptly, told
20 Mr. Cooper in no uncertain terms that we are unaware
21 of any systemic failure or lapse of AMD's
22 preservation plans or efforts. We have
23 double-checked. That remains the case today.

24 There is absolutely no basis for

Conference

Page 12

1 concern on Intel's part about AMD's document
2 preservation activities. There has been no privilege
3 waiver on our part, and there is no reasonable cause
4 to think that AMD has been derelict in the slightest.

5 If Mr. Cooper has some basis, he
6 can come forward with it. But in the meantime, we
7 don't believe it's reasonable or appropriate to ask
8 AMD outside counsel to undertake a preservation
9 program with respect to their documents on this sort
10 of tit-for-tat basis.

11 There's no issue as to them. There
12 is no reasonable cause, and we regard it as
13 unreasonable and burdensome and simply a sideshow.

14 JUDGE POPPITI: Let me just say
15 this: My focus, by virtue of what Intel brought to
16 the Court's attention, is to focus on the process
17 that we established to make every effort to
18 understand what was supposed to have occurred with
19 document preservation; of what the process was in
20 that respect; what went wrong; why it went wrong;
21 what impact that may have had ultimately on documents
22 that were not preserved; what, if any, remediation
23 program may put everyone in the position of saying,
24 We have full faith and confidence in what has been

1 preserved; make a judgment if it's appropriate at
2 some point that it is either -- it's enough or it's
3 not enough; make some judgment at some point if it's
4 appropriate as to whether we should be proceeding to
5 consider a sanction.

6 But it is all Intel-focused. There
7 is nothing in this record that would suggest to me
8 that I should be focused on the document retention
9 activity of AMD. And I do not intend to get
10 sidetracked unless there is a reason to turn my
11 attention to that or a reason why I should be paying
12 attention to both.

13 At this juncture, it is
14 Intel-focused, and that's what I intend to continue
15 to do unless there is cause for me to do otherwise.

16 MR. SAMUELS: Mark Samuels, Your
17 Honor. Thank you.

18 May I address the point Mr. Cooper
19 made concerning the subpoenas that we were forced to
20 serve on his firm and on the Howrey firm the other
21 night?

22 JUDGE POPPITI: Well, I want --
23 what I -- the answer is of course at some juncture
24 during the course of this teleconference today. But

Conference

Page 14

1 I want to make sure that we move through the issues
2 that you've identified, one by one, and come to
3 resolution, if we can, with respect to each one or,
4 if we can't come to resolution, set up a process
5 where I can be fully informed of the dispute placed
6 before me and I can make a finding and appropriate
7 recommendation.

8 MR. SAMUELS: Mark Samuels, Your
9 Honor. Thank you.

10 I take from Mr. Cooper's comments
11 that he made the representation for which I asked
12 during the call. And if that's the case, then I
13 think we can move along from that first issue.

14 JUDGE POPPITI: Then that's fine.
15 And in light of that, there is no reason for me to be
16 issuing any order. Do you both agree?

17 MR. SAMUELS: We will accept
18 Mr. Cooper's representation about preservation by
19 Intel and its outside counsel.

20 JUDGE POPPITI: Okay. Good. Then
21 let's move on, please.

22 MR. SAMUELS: Your Honor, the
23 second issue -- and this is really more or less in
24 the nature of a heads-up -- is that Intel is

1 apparently insisting that it can waive privilege
2 selectively, use privileged information affirmatively
3 when it's convenient or useful and withhold
4 information on the same subject matter when it's not.

5 Intel is taking the position that
6 its waiver to date is limited to the work of its
7 outside -- sorry -- to the work of its in-house
8 counsel and that it is entitled to assert the
9 privilege with respect to outside. Intel is even
10 refusing to provide a privilege log so that these
11 privilege assertions can be tested.

12 First, Your Honor, we are going to
13 have an issue about what is or is not privileged
14 where Intel's outside counsel are involved.
15 Obviously, not everything a lawyer says or is told is
16 privileged, and not everything a lawyer does is
17 covered by absolute work-product protection.

18 And, second, we're going to have an
19 issue about whether Intel is entitled to maintain
20 this line that it's attempting to draw between the
21 work of inside counsel and the working communications
22 of outside counsel.

23 Now, both we and Intel knew as soon
24 as these preservation problems surfaced that there

Conference

Page 16

1 were going to be privilege issues, and we engaged
2 Intel about it very early on.

3 I told Your Honor during a call
4 about a month ago that we were trying to work with
5 Intel on a stipulation that would make clear where
6 the privilege line is to be drawn so that discovery
7 could proceed efficiently and without unnecessarily
8 requiring Your Honor's involvement.

9 The ball is in Intel's court on
10 that, as Mr. Floyd acknowledged to me and class
11 counsel the other day. But at this point, we have no
12 privilege waiver agreement, and so we're apparently
13 going to have to battle this out on a
14 document-by-document, question-by-question kind of
15 basis. So that is apparently going to head to Your
16 Honor.

17 Now, in the meantime, we asked
18 Intel to agree that the document requests we
19 served -- the ones we served on April 10 and the ones
20 we served on May 15 -- that those document requests
21 were sufficient to reach -- not necessarily to
22 require production, but to reach responsive documents
23 in the hands of its outside lawyers, as being within
24 the client's possession, custody or control.

1 Again, after lots of delay, Intel
2 told us the other day that it was taking the position
3 that our document requests to Intel were not
4 effective to reach all responsive documents in the
5 possession of its outside counsel, and that those
6 document requests were effective only to reach what
7 Intel unilaterally deemed to be nonprivileged and
8 nonwork product documents in the possession of its
9 counsel.

10 In other words, the subtext being
11 that its outside lawyers would feel free not to
12 produce, not to preserve, and not to even log
13 responsive documents that they unilaterally felt were
14 privileged or work product.

15 And, of course, especially given
16 that there is going to be a heated debate about what
17 is, in fact, privileged or work product in light of
18 Intel's waiver, we simply could not abide by that.

19 Thus, we were forced to do
20 something we warned Intel repeatedly we didn't want
21 to do and we don't want to do, and that is we were
22 forced to put Intel's lawyers under subpoena to make
23 it clear that those documents, responsive documents
24 in the possession of Intel's lawyers, were covered by

Conference

Page 18

1 subpoena and could not be destroyed.

2 And that was the reason we were
3 forced to serve subpoenas on Gibson and Howrey. We
4 regret that we had to do it, but really Intel's
5 position left us no choice.

6 MR. COOPER: Your Honor, Bob
7 Cooper. Let me try to deal with each of the points
8 Mr. Samuels made here in seriatim.

9 He pointed out that it is their
10 position, I gather, that Intel, by reason of what it
11 has stated in its report, has waived privilege. We
12 think that is absolutely incorrect.

13 To the contrary, we had discussions
14 with AMD and proposed that we were prepared to waive
15 privilege as to Intel's inside counsel in connection
16 with the issues involving the retention plan, and
17 that we were unable to arrive at a stipulation.
18 Indeed, up to the night we filed our report, we were
19 trying to get that worked out.

20 It was rejected by AMD. We
21 actually had to rip the report apart last night, cut
22 out significant materials. We carefully wrote that
23 report so that it did not constitute a waiver in any
24 respect.

1 Now, we were prepared at that time
2 to waive as to inside counsel but not outside
3 counsel. That was rejected. Now it is apparent,
4 from everything that we're seeing, that AMD intends
5 to not only pursue this case on the merits but to
6 pursue a massive lawsuit effectively involving
7 retention.

8 Under those circumstances, I do not
9 see any reason why we should, under any circumstance,
10 agree to any waiver. And our present inclination is
11 not to do so.

12 Then he talks about batting out the
13 documents on a document-by-document basis with
14 respect to privilege and requirement of a privilege
15 log.

16 Mr. Samuels forgets that, at the
17 outset of this case, there was a stipulation that
18 effectively said privilege logs would not be
19 required.

20 And in any event, I would simply
21 point out that what we're talking about here is
22 massive. The other day I sat down and tried -- just
23 in terms of retention, I sat down and tried to
24 determine how many outside lawyers have been involved

Conference

Page 20

1 in this overall effort to deal with this.

2 And many -- a number have been
3 involved full time, but up to some 20 lawyers have
4 been involved. Just the preservation process we now
5 have to go through with respect to all the lawyers
6 will be very significant. If we're going to go down
7 this road, it is going to be a huge piece of
8 litigation unto itself.

9 Now, with respect to the service of
10 the subpoenas duces tecum on the two law firms,
11 Mr. Samuels, I think, has the facts wrong.

12 After the hearing we had with Your
13 Honor last time around, it was left that AMD would
14 get us a 30(b)(6) notice and document request. Then
15 they took eight business days to put that together
16 after the hearing.

17 We responded to that notice in four
18 days. And that's when we made it clear to them that
19 we did not accept the proposition that the request
20 applied to internal documents of outside counsel.

21 There's never been an issue that,
22 to the extent outside counsel might have any
23 documents that are Intel's, for example, that are
24 called for, that they'll be produced -- not that I

1 think that there's anything necessarily in that
2 category.

3 So this business about a long delay
4 before we responded is simply inaccurate.

5 Now, we now have a subpoena duces
6 tecum that has been served. That will have to be
7 dealt with, and we intend to deal with it and oppose
8 it fully.

9 JUDGE POPPITI: Well, I think what
10 I'm hearing is that there are issues that have to be
11 joined. And my expectation is that it makes sense to
12 be joining them sooner than later, because we've got
13 to get squarely focused on merits as well.

14 So I'd like to hear some proposals
15 as to what issues you expect are ripe for briefing
16 now and the time frame in which we'd all like to see
17 that occur.

18 MR. COOPER: Your Honor, Bob
19 Cooper. Let me respond by saying, I think what's
20 happening here is we're being -- we're headed off on
21 an issue that is a secondary issue that should come
22 after we sort out the remediation plan. The issue
23 before the Court immediately is whether to approve
24 Intel's remediation plan.

Page 22

1 JUDGE POPPITI: I understand that.

2 MR. COOPER: And the plan is simple
3 and straightforward. The issue is whether AMD thinks
4 more could be done or should be done. We don't know
5 of anything more that could reasonably be done.

6 We don't think there's need for
7 endless discovery on the remediation plan. We are
8 prepared to provide 30(b)(6) witnesses covering the
9 general subject matters on which plaintiffs seek
10 discovery.

11 The problem here is that AMD, I
12 suppose, understandably is somewhat in the dark. And
13 if they'd take these depositions, they'd have a
14 better understanding of exactly what the
15 circumstances are.

16 They should depose these witnesses,
17 and then hopefully they'll be in a position to
18 respond as to whether they have any ideas about
19 anything else we should do that would further the
20 remediation.

21 Now, the remediation plan wasn't
22 arrived at by testing various alternative plans,
23 evaluating costs and benefits.

24 We told AMD, the Court and Your

1 Honor up front that we intended to use all available
2 data and do everything we could do remediate. And
3 Judge Farnan had encouraged a three-phrase approach,
4 as I recall: Get a remediation plan together; then
5 test it; and then, if necessary, proceed as to
6 culpability.

7 JUDGE POPPITI: Right.

8 MR. COOPER: What's happened here
9 is that these document requests that we're receiving
10 from AMD not only addressed legitimate issues with
11 respect to the remediation plan -- as to those, we've
12 said, we'll of course produce that material and move
13 forwardly as quickly as we can. But they go far
14 beyond that.

15 Document Request No. 3, for
16 example, asks for all documents that evidence,
17 discuss, identify or concern the preservation lapses
18 or document losses that the remediation plan is
19 intended to remediate. That is effectively
20 everything that occurred leading up to the
21 remediation plan.

22 Document Request No. 10 is very
23 similar.

24 We've taken big steps in an effort

Page 24

1 to move this forward. For example, we provided and
2 are in the process of providing summaries for all of
3 these thousand-some custodians as to what their own
4 preservation situation or position is. That will
5 enable plaintiffs to make decisions that they can
6 make.

7 When we get of in discovery on the
8 merits of what AMD obviously intends to turn into yet
9 another lawsuit, it's going to be enormous. It's
10 going to take a lot of time.

11 It is not discovery, by the way,
12 that's calculated to lead to discovery of evidence on
13 the merits of the case. It's for a special, limited
14 purpose. That has got to be, I think, delayed until
15 we sort out whether there is, in fact, a real problem
16 with respect to remediation.

17 I think that's what Your Honor had
18 in mind. That's certainly what we had in mind.

19 And to that end, I would urge that
20 what we do is move forward. Let's take these
21 30(b)(6) depositions. And then let's have AMD and
22 the plaintiffs come back and tell us what they think
23 they need in addition to address the remediation
24 plan.

1 After that's done, let's find out
2 where we stand in terms of remediation before we head
3 down the road of another massive lawsuit in and of
4 itself.

5 MR. SAMUELS: Your Honor, Mark
6 Samuels. May I respond?

7 JUDGE POPPITI: Yes, please.

8 MR. SAMUELS: Your Honor --

9 MR. DIAMOND: I wonder if Chuck
10 Diamond could get a word in edgewise?

11 JUDGE POPPITI: Absolutely.

12 MR. DIAMOND: And, Mark, I
13 apologize for cutting you off.

14 As the author of Request No. 3, I
15 take exception to Mr. Cooper's remarks.

16 We cannot address the adequacy of
17 the remediation plan without knowing what it's
18 remediating.

19 We don't know whether their attempt
20 to fill in the holes is a viable one, is a sensible
21 one, is proportionate, until we know exactly what the
22 holes are.

23 For us to simply confine our
24 discovery to their plan of remediation without being

Conference

Page 26

1 able to inquire into what's being remediated is like
2 shaking hands with one hand: It's only half the
3 story. So clearly, we need the other half.

4 And I think Mr. Samuels is about to
5 say we're prepared to tee that up and tee that up for
6 decision promptly.

7 MR. SAMUELS: Your Honor, Mark
8 Samuels. Mr. Diamond is right. And I could not
9 agree more with what Mr. Cooper said at the end of
10 his remarks: We do want to get on and conduct our
11 discovery about this remediation and to get on with
12 it.

13 But the problem is, to this point,
14 we are not being given any discovery.

15 And I can say that Intel seems to
16 be taking a Burger King approach: It wants to have
17 it its own way. It seems that Intel thinks it can
18 ignore what we ask for in discovery, unilaterally
19 rewrite our document requests, and then tell us that
20 we'll get only what Intel feels like giving us.

21 So far, not a single document, not
22 even the eight boxes that Intel apparently assembled
23 back in February that Mr. Cooper told Your Honor
24 about two weeks ago that could be provided to AMD in

1 a matter of days.

2 Now, we have a meet and confer
3 scheduled with Intel this morning, shortly after this
4 call, and perhaps we'll make discovery and finally
5 get this discovery off the ground and get a
6 bifurcation stipulation finalized and in Your Honor's
7 hands.

8 If not, we're going to have to file
9 a motion. We had hoped to have a bifurcation
10 stipulation before the Court by now, but we now seem
11 to have a fundamental issue.

12 We can't even seem to agree with
13 Intel on what is appropriate discovery for purposes
14 of permitting us to evaluate and respond to the
15 remediation proposal and what discovery should be
16 reserved for the second phase of causation and
17 culpability.

18 So we would ask, Your Honor, that a
19 schedule be set for expedited briefing. If we're
20 unable to resolve the issues on our call this
21 morning, we intend to file a motion and get this
22 before Your Honor and have Your Honor decide what
23 discovery is appropriate for purposes of permitting
24 us to respond to the remediation report.

Conference

Page 28

1 JUDGE POPPITI: Well, I think it
2 makes a great deal of sense to get something before
3 me as soon as possible if you are unable, through the
4 efforts of the meet and confer, to come to some
5 resolution on the phasing of discovery.

6 Now, if you've got your calendars,
7 I expect, in front of you or handy, let's look at
8 that.

9 MR. SAMUELS: Your Honor, it's Mark
10 Samuels. I would propose that the parties submit
11 their letter briefs to Your Honor on whatever issues
12 remain unresolved following today's call and that we
13 have those in to you -- well, Monday is a holiday, so
14 let's say Wednesday, this coming Wednesday, the
15 30th.

16 MR. COOPER: This is Bob Cooper.
17 I'm not altogether clear what it is we will be
18 submitting briefs on and whether they should be
19 staggered in any way.

20 But why don't we -- we will talk
21 with plaintiff's counsel and try to arrive at some
22 schedule that makes sense with respect to what
23 remains to be resolved by Your Honor. And if we
24 can't agree on that, I would suggest that we submit a

1 letter to Your Honor about what the issue is and let
2 Your Honor sort it out.

3 JUDGE POPPITI: We can do it in
4 that fashion. The only thing I would suggest to you
5 in terms of -- if we're going to be -- if the
6 expectation is I'm going to be seeing either a paper
7 to decide what we're going to be -- what you're going
8 to be putting before me and in what time frame or you
9 are able to decide what you're going to put before me
10 and you're going to establish a time frame, I would
11 suggest that if you're going to be doing anything on
12 the 30th, I'm really not going to be able to turn
13 my attention to it until the 31st, and early into
14 the new month.

15 So the 30th is a complete
16 out-of-pocket day for me, as a result of other
17 commitments.

18 MR. COOPER: Okay. That's very
19 helpful, Your Honor.

20 JUDGE POPPITI: So at least if next
21 week is a time frame you need to be working with, the
22 31st or beginning in the new month.

23 MR. SAMUELS: Your Honor, that's
24 fine.

Conference

Page 30

1 JUDGE POPPITI: And if you all
2 decide that it is more efficient -- even if you
3 remain in dispute, if it's more efficient to schedule
4 another brief teleconference rather than submitting
5 papers to have me define the parameters of what I
6 think the dispute may be or the disputes are, then
7 please don't hesitate to request a brief
8 teleconference so we don't all get stalled, if you
9 will, over the creation of papers and my review of
10 them.

11 MR. SAMUELS: Your Honor, just to
12 bring a slight focus to this, the issue is the -- the
13 30(b)(6) notice and document request that we served
14 on the 15th, as for the 30(b)(6) notice, I think
15 Intel is prepared to comply.

16 There are 13 document requests. In
17 response to each of them, I believe, Intel refused to
18 comply and said that it would give us a different
19 category of documents instead. That's what we'll be
20 talking about during the call later on today, and I
21 would expect that Your Honor will need to be
22 addressing some subset of those 13 document requests.

23 JUDGE POPPITI: Okay.

24 MR. FLOYD: This is Dan Floyd.

1 Yeah, we will be talking about those. I guess it
2 probably doesn't help too much to have an argument in
3 advance.

4 We went through and identified
5 various categories of documents that we believe were
6 taken directly from the requests and indicated in one
7 place the areas, the documents that we felt would be
8 appropriately produced; and obviously we have some
9 disputes about that.

10 But I wanted to make clear that it
11 wasn't as if we just made up the categories of
12 documents that we were going to produce from, but
13 they were from plaintiffs' request. We just put them
14 all in one group and then incorporated that by
15 reference into each of the responses.

16 JUDGE POPPITI: Okay. And what
17 about the outstanding subpoenas?

18 MR. SAMUELS: I think really the
19 ball is in Mr. Cooper and Mr. Bernhardt's court.
20 They know why we served the subpoenas. We told them
21 why we were going to have to do that. And if they
22 want to talk with us about it, they can. And
23 otherwise, I suspect they'll want to file a motion of
24 some kind.

Page 32

1 JUDGE POPPITI: Well, in any event,
2 there would have to be the anticipated meet and
3 confer with respect to joining an issue by motion.
4 So I would anticipate that there would be some
5 conversation and discussion before that motion is
6 filed.

7 MR. SAMUELS: Of course, Your
8 Honor.

9 JUDGE POPPITI: Okay. Well, in
10 light of that, I guess my question with respect to
11 the scheduling of depositions, am I to take from all
12 of this that a track for scheduling is not
13 immediately in the offing?

14 MR. SAMUELS: Your Honor, I think
15 that until we get the threshold document production
16 issues squared away, it would be pretty wasteful to
17 apply --

18 JUDGE POPPITI: I expect so. Okay.
19 Well, then with that, is there anything else for
20 today's teleconference?

21 MR. SAMUELS: Your Honor, not for
22 AMD.

23 JUDGE POPPITI: Okay.

24 MR. COOPER: Bob Cooper, Your

1 Honor. I'm not aware of anything else either.

2 MR. HOLZMAN: Not for the class,
3 Your Honor. Jim Holzman.

4 JUDGE POPPITI: Thank you all,
5 then. I look forward to hearing from you by virtue
6 of receiving papers or a request to teleconference.
7 And, again, with respect to teleconference, I
8 certainly can make myself available on Monday,
9 certainly tomorrow -- Monday or Tuesday. Wednesday
10 I'll be in the courthouse all day, so it will be a
11 little bit more difficult on Wednesday.

12 MR. COTTRELL: Judge, it's Fred
13 Cottrell. I'm sorry to interrupt. Real quick, we're
14 still on for 5 o'clock today for Fry's?

15 JUDGE POPPITI: We are. Thank you.
16 Have a great long weekend.

17

18

19

20

21

22

23

24

CERTIFICATE OF SHORTHAND REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I, Gail Inghram Verbano, CSR, RMR,
the officer before whom the foregoing proceedings
were taken, do hereby certify that the foregoing
transcript is a true and correct record of the
proceedings; that said proceedings were taken by me
stenographically and thereafter reduced to
typewriting under my supervision; and that I am
neither counsel for, related to, nor employed by any
of the parties to this case and have no interest,
financial or otherwise, in its outcome.



Gail Inghram Verbano

Gail Inghram Verbano, CSR, RMR
CSR No. 8635
Certification No.: 220
(Expires 1-31-2008)