

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO	)	
DEVICES,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	05-441-JJF
v.	)	
	)	
INTEL CORPORATION,	)	
	)	
Defendants.	)	

A teleconference was taken pursuant to notice before Ellen Corbett Hannum, Registered Merit Reporter, in the law offices of Blank Rome, LLP, 1201 North Market Street, Suite 800, Wilmington, Delaware, on Thursday, May 15, 2008, beginning at 9:30 a.m.

In re: Intel Corporation, C.A. No. 05-441-JJF, Que Choisir Motion to Intervene and Application Pursuant to 28 U.S.C. 1782

- - -

BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

- - -

ALSO PRESENT: ELIZABETH A. OESTREICH, ESQ.  
Blank Rome LLP

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Page 2

1 APPEARANCES:

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and

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BY: MICHAEL L. DINGER, ESQ.  
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COHEN, MILSTEIN, HAUSFELD & TOLL,  
P.L.L.C.  
BY: JON T. KING, ESQ.

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California)

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Counsel on behalf of  
Proposed Intervenor  
Que Choisir

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1                   SPECIAL MASTER POPPITI: Let's start by  
2     indicating who is on the line and our court reporter is  
3     here with us this morning. So if we get it the first  
4     time, then we won't have to circle back. Why don't we  
5     start with the third party, please?

6                   MR. ATHEY: Clayton Athey with Prickett,  
7     Jones & Elliott for proposed intervenor Que Choisir.  
8     With me on the line is Jon King of Cohen, Milstein,  
9     Hausfeld & Toll. We had also hoped to have Vincent Smith  
10    of Cohen, Milstein's London's office on with us this  
11    morning to answer questions that Your Honor might have  
12    about the EC process.

13                  SPECIAL MASTER POPPITI: Okay.

14                  MR. ATHEY: Unfortunately, we were  
15    informed about ten minutes ago that Mr. Smith's wife was  
16    hospitalized earlier today with appendicitis.

17                  SPECIAL MASTER POPPITI: Oh my!

18                  MR. ATHEY: He will not be able to join  
19    us. We are prepared to proceed. Although, if Your Honor  
20    would prefer to adjourn the call until we are able to  
21    have Mr. Smith join us, we certainly are willing to do  
22    that.

23                  SPECIAL MASTER POPPITI: Yes. First of  
24    all, have you discussed that with your friends on the

Teleconference

Page 4

1 other side of the table? --

2 MR. ATHEY: No, Your Honor, we have not  
3 had an opportunity.

4 SPECIAL MASTER POPPITI: Here is what I  
5 would like you to do then. What I am going to do is put  
6 you all on hold for five minutes so you can both discuss  
7 it, and I will jump back on -- what time do you all have?  
8 We seem to have -- I have a watch saying one thing, a  
9 phone that says another and a Blackberry that says  
10 something else. So maybe I should just look up at the  
11 sun. My phone reads 9:34.

12 MR. ATHEY: Okay.

13 SPECIAL MASTER POPPITI: Why don't I get  
14 back on the line at 9:40 and see where you all are.  
15 Okay?

16 MR. ATHEY: Okay.

17 SPECIAL MASTER POPPITI: Thank you.

18 (Discussion off the record.)

19 SPECIAL MASTER POPPITI: I hope the  
20 rapidity is a good sign.

21 MR. HORWITZ: It is, Your Honor. What  
22 we have done is talked about a proposed schedule, and we  
23 have reached an agreement. And there is one thing on the  
24 end that we need to talk about, so what we propose to do

1 is for me to tell you what the schedule is on the record.

2 SPECIAL MASTER POPPITI: Okay.

3 MR. HORWITZ: And then to submit a form  
4 of scheduling order for going forward with the notice and  
5 the briefing and everything else.

6 SPECIAL MASTER POPPITI: Okay.

7 MR. HORWITZ: So our proposal is on May  
8 19, Intel will provide a draft proposed notice of QC's  
9 application and provide that to QC for comment with a  
10 copy to you.

11 SPECIAL MASTER POPPITI: Okay.

12 MR. HORWITZ: On May 21, QC would  
13 provide comments on that notice to you with a copy to  
14 Intel; on May 23, if Your Honor is available, you would  
15 rule on any issues that exist as to the form of notice,  
16 after a telephone conference, if you deem it necessary;  
17 on May 27, which is the Tuesday after Memorial Day,  
18 Monday, we would mail the notice to the third parties who  
19 have provided or who are to provide documents in response  
20 to previously served subpoenas; June 25 would be the date  
21 for third parties to file objections or comments in  
22 response to the notice; July 1 would be the date for  
23 Intel to file its opposition and comments -- it's  
24 opposition to the motion to intervene and for the release

Teleconference

Page 6

1 sought by QC and its comments on any positions taken by  
2 third parties; and then July 18, for QC to file its reply  
3 brief, which would respond to Intel's brief and any  
4 third-party comments; and then for Your Honor to conduct  
5 a hearing on the motion to intervene and the 1782  
6 application, whatever date after July 18 you pick, based  
7 on how long it's going to take you to look at the papers  
8 and see, you know, what you need from us, and then  
9 availability.

10 SPECIAL MASTER POPPITI: Okay.

11 MR. HORWITZ: The only issue that we  
12 talked about that we were unable to reach agreement on  
13 was the time period for any exceptions by either party to  
14 Your Honor's ruling. As you know, the federal rules  
15 provide for 20 days. In certain circumstances, you have  
16 limited the time period for exceptions in this case to  
17 five business days.

18 SPECIAL MASTER POPPITI: Right.

19 MR. HORWITZ: When Intel has had to  
20 fight this issue before, as you know, from our prior  
21 conversations with AMD, it went all the way to Supreme  
22 Court where we were successful. And we don't think we  
23 are going to lose, but because of the seriousness of the  
24 issues, if things happen to not go our way, I think that

1 we would consider that same path all the way. So we  
2 would not want to limit our time frame. So that's an  
3 issue that I don't think we need to discuss it now, but  
4 that's an issue that we could not agree upon.

5 SPECIAL MASTER POPPITI: Okay. Let me  
6 make one observation which may cause you to -- which will  
7 cause you, in place, to jockey your dates consistent with  
8 a schedule that I have. I will be out of the office, and  
9 literally only available if there becomes a need for  
10 attention in depositions or something like that, between  
11 May the 19th and returning to the office May 27th. So  
12 that literally takes away the front end of your proposal.

13 And the only other observation I would  
14 make, with respect to my own schedule upon returning to  
15 the office, is on June 5 Intel and AMD know that we have  
16 a hearing with Judge Farnan on rather substantial filings  
17 that you have just completed. And I'm going to need more  
18 than -- I'm going to need time to prepare for that  
19 hearing.

20 So my suggestion is accepting the  
21 synchronization of your schedule in terms of dates that  
22 you have landed on, I think you are going to have to slip  
23 it all to take into consideration vacation time which I  
24 have, and also to take into consideration, to some

Teleconference

Page 8

1 extent, that hearing on June 5.

2 MR. HORWITZ: Does Your Honor have some  
3 suggestions, taking into account your schedule -- this is  
4 Michael Denger from Gibson Dunn --

5 SPECIAL MASTER POPPITI: Yes.

6 MR. DENGER: -- as to how we might  
7 adjust the schedule to accommodate the other things going  
8 on in the litigation and the period Your Honor will not  
9 be available.

10 SPECIAL MASTER POPPITI: Well, my  
11 thought is, if -- and I didn't write everything down that  
12 Mr. Horwitz was talking about. I was just looking at a  
13 calendar.

14 MR. HORWITZ: Your Honor, would it be  
15 helpful for us to send this to you, and then maybe have a  
16 call that not necessarily everyone needs to be on so we  
17 can do it quickly to try to have the schedule in place.  
18 Really, I think the key date is the date that you feel  
19 comfortable considering any objections that may come into  
20 the form of notice.

21 SPECIAL MASTER POPPITI: Yes.

22 MR. HORWITZ: And then things on both  
23 sides of that date will just follow. And, really, I  
24 guess the question is, given your vacation schedule,



1 whether the date that you choose is going to be before or  
2 after the June 5 date.

3 SPECIAL MASTER POPPITI: Right.

4 MR. KING: Your Honor, it's Jon King for  
5 the proposed intervenor. I have a related suggestion  
6 which would be, I don't think we need to adjust the  
7 front-end dates, the first of which was May 19th, for  
8 Intel to get a proposed notice to our side and give up a  
9 couple days of comment, because it's possible we may not  
10 need to then utilize that May 23rd ruling period from  
11 Your Honor.

12 SPECIAL MASTER POPPITI: Right.

13 MR. King: The other possibility that  
14 maybe even shortcut any dispute is if we are unable to  
15 agree upon language jointly, I think we could just each  
16 have our own paragraph or something like that, one of  
17 those type of submissions, if we can't.

18 SPECIAL MASTER POPPITI: Yes.

19 MR. King: To be honest, realistically,  
20 we are not going to agree on every word and comma. But  
21 if we each have a paragraph, if we could just then mail  
22 it out and get rolling and then...

23 SPECIAL MASTER POPPITI: That may make  
24 some sense. And I think in light of what you've

Page 10

1 described, two things: Having the benefit of seeing that  
2 proposal and lay it across my calendar, that would be  
3 helpful. So, Mr. Horwitz, that makes a great deal of  
4 sense. The other thing that I think makes sense, in  
5 light of your comments, is if you still keep the schedule  
6 in place for the week of May 19, I would anticipate that  
7 I should be able to look at whatever you have submitted  
8 and make some determination -- we have a regularly  
9 scheduled status conference on May 29, that's scheduled  
10 for 11 o'clock. Why don't we use that date and time to  
11 permit, if needed, for me to address any issues that are  
12 in dispute with respect to the notice.

13 MR. KING: Okay. And if we have none --  
14 maybe I am a little over optimistic -- then we could  
15 still mail out --

16 SPECIAL MASTER POPPITI: Yes. If you  
17 have none, then you start to roll it out. I think that  
18 makes a great deal of sense.

19 MR. COTTRELL: Your Honor, it's Fred  
20 Cottrell. What was that date again?

21 SPECIAL MASTER POPPITI: May 29 at 11.

22 MR. DENGER: This is Mike Denger from  
23 Gibson Dunn again.

24 SPECIAL MASTER POPPITI: Yes, sir.

1 MR. DENGER: I am just trying to look at  
2 this from a practical standpoint. In the event that the  
3 notice is agreed upon, or Your Honor has to rule, we  
4 could set the rest of the dates based upon the date on  
5 which you approve the notice. In other words, we would  
6 mail out the notice to third parties within two business  
7 days after the form of notice has been ruled on by Your  
8 Honor, and then set the other dates based on so many days  
9 after that. Would that work?

10 SPECIAL MASTER POPPITI: Yes. It would  
11 be my intention -- because I don't expect that the, what  
12 you are going to be putting on my desk is going to be  
13 that complicated; my intention would be that were there a  
14 need for a hearing on the 29th, that I would make a  
15 determination on that date at the end of your respective  
16 presentations.

17 MR. DENGER: And Your Honor I was just  
18 thinking if we didn't have that and we did have that --  
19 again, this is Mike Denger from Gibson Dunn -- we could  
20 say, like, two days after the notice has been approved by  
21 Your Honor, Intel would mail it out, and then based on  
22 the times we have set forth in the schedule, we could  
23 have dates for the third parties filing objections, dates  
24 for Intel to file its opposition based on whether it was

Teleconference

Page 12

1 28 days after that or so forth.

2 SPECIAL MASTER POPPITI: That makes  
3 sense.

4 So if I understand that, if they don't  
5 go out by agreement before the 29th, I make a ruling on  
6 the 29th, they would start to go out on the 2nd of June.

7 MR. HORWITZ: Yes, Your Honor.

8 MR. DENGER: And then all the other  
9 dates we have set forth in here would be adjusted  
10 appropriately, so many days after the date of the notice  
11 went out.

12 SPECIAL MASTER POPPITI: I think that  
13 makes sense. And leave that to your further  
14 conversation, once we determinate this call.

15 MR. DENGER: And then we should, as I  
16 understand it, Your Honor -- Mike Denger again -- talk  
17 among each other and submit a proposed schedule to you.

18 SPECIAL MASTER POPPITI: Yes.

19 Are there any other questions or  
20 comments with respect to schedule?

21 MR. ATHEY: No, Your Honor, not from the  
22 proposed intervenor's side.

23 SPECIAL MASTER POPPITI: Let me ask this  
24 question or series of questions for purposes of perhaps

1 ultimately framing what y'all put in front of me. You  
2 clearly gave me a significant amount of material to get  
3 me over the learning curve as to what the processes are  
4 in the European Commission. And without making any  
5 judgments whatsoever -- because you are not asking me to  
6 at this juncture -- I have a couple of observations that  
7 may inform what this process ought to look like  
8 ultimately. For example, you have made me aware of and,  
9 of course, I have read and studied those cases where the  
10 European Commission articulates a certain position with  
11 respect to an application of this nature. And it seems  
12 to me, it may be important for purposes of your  
13 discussion in terms of what this rollout looks like to  
14 consider a couple of different things.

15 I am mindful of the fact that the  
16 European Commission got involved after the process was  
17 pretty far down chain, and the Court, at least the  
18 district court, had made some judgment that certain  
19 production would occur, and, in fact, did occur. And I  
20 am wondering whether it is more efficient to consider  
21 whether the European Commission should be invited, either  
22 by the mutual agreement of all the parties, or invited by  
23 the Court to, during this process, submit amicus, rather  
24 than doing it later.

Teleconference

Page 14

1                   The other thing that may be important  
2 from my perspective, in terms of rounding out any record  
3 that does involve what the European Commission may or may  
4 not be interested in, I am going to have some questions,  
5 I think, that it would be better for you to know what  
6 they may be now than know what they may be later. For  
7 example, understanding that QC was given the opportunity  
8 to attend/participate in the hearing that was conducted,  
9 I'm going to want to know what role QC played during the  
10 course of that hearing. In other words, was it attending  
11 the hearing and simply listening or was it attending the  
12 hearing, participating, offering views, offering  
13 information/evidence, offering any information about the  
14 case that is pending here in this district and, with  
15 respect to that issue, what the hearing looked like. I  
16 do understand that it is usually the case that  
17 transcripts -- I said that wrong -- that a recording is  
18 made for each hearing and that, upon request, a  
19 transcript can be secured. So it may be important for me  
20 to understand, No. 1, the degree of participation by QC,  
21 and No. 2, whether QC advised the European Commission of  
22 the pendency of the proceeding in Delaware, and whether  
23 the commission expressed any interest in securing  
24 information from the proceedings before the district

1 court.

2 MR. KING: This is Jon King for QC. I  
3 can address a bit of that now.

4 SPECIAL MASTER POPPITI: Mr. King, I  
5 don't mean to cut you off; it's not important for me to  
6 hear that now because I think you have literally taken  
7 things off the table for me today. I am just suggesting  
8 expecting that there is, that the European Commission  
9 discussion is still going to be part of the dialog that  
10 you all are going to engage in on paper and with me in a  
11 hearing, the answers to those questions may be important.  
12 You may convince me at some later point that they  
13 shouldn't be important, but I am just saying they may be  
14 important.

15 MR. KING: Okay. I see, Your Honor. I  
16 thank you for that clarification.

17 SPECIAL MASTER POPPITI: Yes. They  
18 would have been questions that I would have been asking  
19 you during the course of today's hearing for purposes of  
20 trying to make some judgment, if a judgment was  
21 appropriate, to see what the European Commission knew  
22 about the United States, this district's litigation, and  
23 whether it had an interest in securing production from  
24 this case, because what I have, at least I expect that I

Teleconference

Page 16

1 have, is I have no record of any communication between QC  
2 and the EC regarding the Delaware litigation and  
3 information that may be generated during the course of  
4 this litigation.

5 I hope that's helpful for purposes of,  
6 perhaps, framing some of the way you discuss these issues  
7 for me at a later time.

8 MR. HORWITZ: It is, Your Honor.

9 SPECIAL MASTER POPPITI: Okay. With  
10 respect to what you are going to send over, I would  
11 appreciate if you could get it over here sometime during  
12 the course of today or early in the day tomorrow so that  
13 I can at least, during my schedule tomorrow, turn my  
14 attention to it. And you can expect that you will have a  
15 final determination with respect to the schedule before  
16 close of business tomorrow.

17 MR. KING: It's Jon King. That sounds  
18 good, Your Honor.

19 Rich and Friends, do you guys want to  
20 e-mail something over to Clay, perhaps, we can refine it,  
21 if we need, a bit with you and then we will send it over  
22 to the special master.

23 MR. HORWITZ: Sure.

24 SPECIAL MASTER POPPITI: Yes. And if



1 there is a need, as Mr. Horwitz suggested, for me to be  
2 on the line with anyone tomorrow, I have got a pretty  
3 tight schedule tomorrow, but it would be important for  
4 me, if I need to reach out, can I expect that that can be  
5 with local counsel? If others need to be involved,  
6 that's fine, and regardless of whether it's with local or  
7 with everyone, does it need to be on record?

8 MR. KING: It's Jon. And that would be  
9 just in terms of if there is something that needs to be  
10 hashed out about the schedule?

11 SPECIAL MASTER POPPITI: Yes, that's  
12 correct.

13 MR. KING: I don't think that would need  
14 to be on our record from our perspective.

15 MR. HORWITZ: I think that would be  
16 fine, Your Honor.

17 SPECIAL MASTER POPPITI: That may be  
18 helpful, because it may be a matter of just trying to  
19 squeeze 10 or 15 minutes into my schedule tomorrow.

20 MR. HORWITZ: Okay.

21 SPECIAL MASTER POPPITI: All right.  
22 We've been on and off the record. Let's do this. No. 1,  
23 do you want a record of today's discussion? If so, Ellie  
24 would like us to go back and identify everyone who has

Teleconference

Page 18

1 spoken.

2 MR. KING: It's Jon. I have a question;  
3 when Your Honor was offering some thoughts on things that  
4 the parties should consider going forward, such as namely  
5 the QC's role and the commission proceedings.

6 SPECIAL MASTER POPPITI: Yes.

7 MR. KING: Was that on the record?

8 SPECIAL MASTER POPPITI: Yes. As a  
9 matter of fact, I think what Ellie did was, during the  
10 course of our discussion in an abundance of caution and  
11 very wisely, she has been taking everything down since we  
12 started.

13 MR. KING: Okay. In that case, I would  
14 like a copy of that.

15 SPECIAL MASTER POPPITI: Okay.

16 MR. KING: Because that will just help  
17 inform our thoughts going forward.

18 SPECIAL MASTER POPPITI: Okay. Let's go  
19 back then and identify everyone who is on and on what  
20 side of the table you are, please.

21 MR. ATHEY: Your Honor, Clay Athey from  
22 Prickett, Jones for proposed intervenor Que Choisir, and  
23 Jon King from Cohen, Milstein.

24 SPECIAL MASTER POPPITI: Thank you.

1 MR. HORWITZ: Your Honor, this is Rich.  
2 Horwitz from Potter Anderson & Corroon in Wilmington for  
3 Intel, and with me on the line from Howrey, Darren  
4 Bernard and Maren Schmidt, also Michael Denger from  
5 Gibson, Dunn & Crutcher, and James Bennett from Skadden,  
6 who was the lawyer who put in our declaration on the EC  
7 issues.

8 MR. COTTRELL: Your Honor, in Wilmington  
9 for AMD, Fred Cottrell, and I believe Mr. Diamond may be  
10 on the phone as well.

11 MR. DIAMOND: I am indeed, Your Honor.

12 SPECIAL MASTER POPPITI: Thank you,  
13 Mr. Diamond.

14 If there is nothing else, I will look  
15 forward to the submittal hopefully later during the day  
16 and, if need be, I will reach out to you during the  
17 course of the day tomorrow.

18 ALL COUNSEL: Thank you, Your Honor.

19 (The hearing adjourned at 10:09 a.m.)

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Teleconference

Page 20

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C E R T I F I C A T E

STATE OF DELAWARE:  
NEW CASTLE COUNTY:

I, Ellen Corbett Hannum, a Notary Public within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the statements of participants were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the transcript is a true record of the statements made by the participants; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 15th day of May A.D. 2008.

*Ellen Corbett Hannum*

Ellen Corbett Hannum, RMR, CMR  
Notary Public - Reporter  
Delaware Certified Shorthand Reporter  
Certification No. 118-RPR, Expires 1/31/11

