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VIA EMAIL & HAND DELIVERY

The Honorable Vincent J. Poppiti
Blank Rome LLP
Chase Manhattan Centre, Suite 800
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PUBLIC VERSION

Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF; and Phil Paul, et al. v. Intel Corporation, C.A. 05-485-JJF; DM-19

Dear Judge Poppiti:

Intel made a few straightforward and persuasive points why modification of Local Rule 30.6 was necessary: (1) the multi-day depositions routinely conducted by AMD have led to several lengthy continuances; (2) the continual adding of new record documents means that, without modification, the witnesses may be deposed on documents counsel had no notice might be in the case. These two factors distinguish this case from the typical case where the universe of documents is fixed and seven hour depositions are the norm. And the risk on (2) is not theoretical. Each of the witnesses so far subject to continuances has hundreds of new potentially relevant documents.

AMD's approach is to attack counsel as attempting to "coach" witnesses, or seek an unfair advantage, implying somehow that the continuances are the "fault" of Intel's counsel. Given the tone, Intel will address each of the witnesses. Intel notes that AMD fails to mention Kevin J. Smith, co-director of Intel's compiler group, who was made available at AMD's request for two days, on July 24-25. AMD was unable to finish, requested an adjournment, and has not yet requested the additional date for completion. Mr. Smith will have at least a 5 month continuance between deposition sessions, all at AMD's request and control.

Ms. McCollam is part of the Intel team responsible for Dell, but is not directly involved in negotiations with Dell. AMD states it "sought to question her about spreadsheets that documented rebates paid by Intel to Dell [b]ut it became clear that Intel had not yet produced the final versions of those spreadsheets so the deposition was continued," implying that

Intel was responsible for the continuance. This is untrue. On June 12, AMD noticed Ms. McCollam's deposition and estimated it would take 10 hours. Intel then scheduled the deposition for two days, July 24-25. On July 14, AMD indicated that it was concerned its estimate was low and that the deposition could take longer, "possibly more than 14 hours." In response, despite the short notice from AMD, Intel made Ms. McCollam available for three days, July 23-25. AMD deposed Ms. McCollam for more than 17 hours of testimony over three days, but did not conclude the examination. The deposition was not continued because final spreadsheets had not yet been produced by Intel. The spreadsheets referred to by AMD in its letter are contained on a shared electronic drive that had not been produced because the parties had not yet negotiated the production of shared electronic drives. In the time since her deposition, roughly 575 separate items have been identified by AMD as either from her files or of which she is a recipient.

Mr. Schmisser is another Intel employee on the Dell account team. AMD estimated 14 hours for Mr. Schmisser's deposition and Intel accordingly made him available for two days, August 27-28. On the afternoon of the second day, counsel for AMD indicated he would need an additional day or more with Mr. Schmisser. Mr. Schmisser was not available the next day due to prior business commitments. Although AMD's counsel indicated he would call Intel's counsel to reschedule the deposition, he never did so. On September 17, Linda Smith sent the following email request to Rod Stone at Gibson Dunn requesting the resumption of the Schmisser deposition in October:

We had discussed finishing McCollam and Schmisser (and trying to have their depositions in the same week) during either the week of October 13th or the week of October 20th. I have not heard back from you on this. Let's shoot for the week of October 20th at least for McCollam. If Schmisser can not then, but can go the week before, that works also.

As requested by Ms. Smith, Schmisser has now been scheduled for two additional days (for a total of four days of deposition) the week of October 20. While it is true that Intel has taken the position that this issue should be resolved before any depositions that were continued are completed, AMD's attempt in its letter to portray Intel as somehow blocking AMD's attempt to promptly complete these depositions is a distortion of the record. In addition, AMD has added more than 350 items to the TIFF record either from Mr. Schmisser's files or of which he was a recipient.

This should put to rest any concern that Intel is somehow manipulating the deposition process in order to conduct additional preparations of witnesses. If necessary, Intel will submit the relevant transcripts for the Special Master's review, so the Court can have a complete picture. Intel is faced with the prospect of deposition sessions, conducted months apart, potentially including relevant documents that were not part of the record at the time of the initial session. Under those circumstances, a further preparation session is justified. As Intel

explained, attempting to craft a rule limiting the preparation is unworkable. Either party can avoid the issue – as Intel has – by making and adhering to reasonable time estimates.¹

On the issue of the order of examination, AMD argues that “for many months AMD has made clear its intention to depose Dell executives,” implying that it requested the depositions “first.” AMD argues that it alone negotiated with Dell to produce six witnesses for deposition in this matter. In fact, [REDACTED]

[REDACTED] But AMD was not the only party to speak with Dell's counsel regarding the scheduling of depositions. The issue being negotiated by AMD was not whether [REDACTED]

[REDACTED] As there was no dispute by Dell regarding the availability of the Dell witnesses sought by Intel, Intel took no position in the negotiations between AMD and Dell regarding whether any additional Dell witnesses would be made available for deposition.²

¹ It is ironic that AMD has adopted its tone in its letter concerning “coaching” of witnesses. In the deposition of Chris Cloran, Intel was subjected to the following coaching of the witness on the record: [REDACTED]

² In addition to the number of depositions, the negotiations between AMD and Dell also involved whether Dell would be required to produce a Second Inspection Set of documents pursuant to the parties’ document production agreement. Dell had completed the production of its First Production Set (comprising approximately 250,000 documents) in May and had objected to producing further documents without reimbursement for its costs. Intel informed AMD and Dell that in light of the substantial volume of documents already produced by Dell, it would waive its right to the Second Production Set. AMD and the class insisted on pursuing this further production from Dell and ultimately Dell agreed to produce the Second Inspection Set if it were reimbursed \$200,000 by the parties to cover some of its costs in connection with the production of the Second Inspection Set. [REDACTED]

The discussion concerning how the six Dell witnesses were arranged with Dell for deposition is ultimately beside the point. As Intel pointed out in its letter, the vast majority of the third-party depositions will be trial depositions as the witnesses will be outside the subpoena range for trial. Intel expects that some of third parties would testify first in its case, and allowing AMD to go first with the questioning of all third party witnesses as a default will adversely affect Intel's trial preparation. Some reasonable balance needs to be struck here, given the amount of testimony that will be admitted through deposition.

Thus, as set forth in its opening letter, Intel submits that a meet and confer process should be put in place. A simple solution when the process breaks down would be to alternate the option of proceeding first when a dispute arises. If such a protocol is not put in place, and simply listing a third party's name in a letter gives a party priority in the deposition, there will be an incentive to prematurely notice witnesses simply as a placeholder, which is not what was envisioned by CMO No. 6.

Respectfully submitted,

/s/ Richard L. Horwitz

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cc: Clerk of the Court (By Electronic Filing and By Hand Delivery)
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 This is the
"beneficial" agreement with Dell to which AMD refers in its letter