

Intel Must Show Some Notes On Evidence: Master

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Wednesday, May 14, 2008 --- A special master recommended Friday that a court order Intel Corp. to turn over notes from interviews conducted by its lawyers with employees to identify holes in the company's evidence-preservation system in an antitrust dispute with Advanced Micro Devices Inc.

Special Master Vincent Poppiti said that only some portions of the notes were protected by attorney-client privilege. He recommended that the U.S. District Court for the District of Delaware order Intel to turn over a redacted version of the notes, which he prepared.

The dispute hinges on Intel's system for preserving its e-mails and other company communications, which are subject to discovery in the case.

When AMD and a class of consumers first sued Intel, alleging that it engaged in various unfair business practices to sell its x86 line of computer processors, Intel implemented a system through which all of its communications would be saved for possible discovery.

But in 2006, Intel revealed that it had lost some potentially relevant information. The chipmaker enlisted its lawyers to interview employees and agreed to turn over summaries of the interviews to AMD and the class plaintiffs.

Intel concluded that the gaps in its system were the result of individual employees' misunderstanding or failing to cooperate with Intel's plan along with a major technical error early in 2007.

AMD and the plaintiffs argued that they should be able to check Intel's summaries of its findings against the notes from the interviews themselves. Intel responded that the notes were protected by attorney-client privilege.

Poppiti said that Intel had to some extent waived the privilege by agreeing to produce the summaries, on which it relied to support its account of its discovery failures.

"AMD and the class plaintiffs cannot in fairness be expected to blindly rely on Intel's assertions in performing their critically important role of fully informing the court on the issue," Poppiti said.

However, he said, Intel should only produce the facts contained in the notes,

not portions of the notes that relate to attorneys' impressions or thoughts about the case. Those, Poppiti said, were still protected by privilege.

Intel representative Chuck Mulloy said the company was less concerned about breaching privilege than it had been in light of the limits Poppiti put on the discovery.

A spokesperson for AMD declined to comment.

AMD, along with the class of indirect U.S. purchasers, sued Intel in June 2005 for antitrust violations.

Intel is also facing accusations of monopoly abuse from regulators.

Japan's Fair Trade Commission concluded an investigation in March 2005 with an injunction against Intel. Korea's antitrust watchdog concluded its two-year probe with a statement of objections, as did the European Commission, last year.

The New York state attorney launched an antitrust probe in January.

And in February, Intel's shareholders filed a lawsuit against top executives for allegedly engaging in monopolistic behavior that put the company in the crosshairs of angry consumers and competition watchdogs across the globe.

The suit, filed derivatively on behalf of the company, accuses Intel's board of directors and senior officers of breaching their fiduciary duties by "threatening, coercing and bribing" customers in order to drive rivals out of the microprocessor market, exposing the computer-chip maker to litigation and regulatory investigations

The case is In Re Intel Corp Microprocessor Antitrust Litigation, case number 05-441, in the U.S. District Court for the District of Delaware.

--Additional reporting by Christine Caulfield