

## AMD Subpoenas Intel Counsel In Antitrust Case

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*Friday, May 25, 2007* --- The dispute over lost e-mails at the center of an antitrust case against Intel Corp. just got nastier, with rival Advanced Micro Devices this week serving subpoenas for documents to Intel's outside counsel.

The subpoenas are just the latest installment in a growing saga over document preservation that appears to have become the preoccupation of lawyers involved in the stalled case in the Delaware district court.

AMD, which sued Intel for abusing its monopoly in the microprocessor market, filed notice with the court that subpoenas had been issued on Tuesday to Los Angeles-based firm Gibson, Dunn & Crutcher LLP and Howery LLP in Washington, D.C. for documents relating to the lost documents at the heart of the squabble.

The same day, AMD counsel Frederick Cottrell, of Richards, Layton & Finger advised the special master overseeing discovery in the case that Intel had declined its request to ensure its outside counsel retained the potentially relevant material.

AMD said Intel's lawyers were involved in monitoring the company's e-mail retention practices and in investigating the extent of Intel's reported preservation "lapses," and would doubtless have relevant documents in their possession.

"We believe that Intel's outside counsel were involved as actors in developing Intel's document preservation plans at the outset of the case," Cottrell said in the letter to special master Vincent Poppiti.

And yet, Cottrell said, Intel had "inexplicably" refused to "commit to the ongoing preservation by its outside counsel."

"Accordingly, AMD now faces the potential loss of relevant and likely critical evidence concerning Intel's evidence preservation lapses and remediation activities," he said.

AMD spokesman Michael Silverman said the subpoenas were served only after Intel refused to make a commitment to ensure documents were not destroyed.

"This is all the result of Intel's refusal to enter into agreements or make

representations that should be routine under the circumstances,” Silverman said.

Intel spokesman Chuck Mulloy said Friday documents in the possession of the company’s outside counsel were protected by attorney-client privilege.

“Essentially what AMD is attempting to do is pierce that privilege,” Mulloy said. “It is extraordinary that they would ask outside counsel to retain their documents.”

Intel recently admitted that an in-house lawyer responsible for preserving the lost e-mails “lost track” of things and forgot to alert employees to save their electronic correspondence.

The company said the pressure of trying to juggle multiple litigation tasks proved too much for counsel Eva Almirantearena, who “inadvertently” did not send so-called litigation hold notices to more than 370 employees.

“This was a single, unintentional human error, a failure to complete the last step of a lengthy process,” the company said in a report to the court in late April.

Intel said despite its early and aggressive efforts to timely notify relevant employees of their need to preserve documents in the wake of AMD’s complaint, it could not have foreseen human errors.

“These errors were independent of the plan itself, and were the result of misunderstandings or errors by Intel personnel who were working conscientiously to carry out their preservation obligations in Intel’s complex and dynamic business environment,” the company said.

The company acknowledged that it knew as early as last fall of lapses in the implementation of the document retention program it initiated after AMD filed suit in June 2005. Ultimately, the company insists, “nothing of any genuine significance will prove to have been lost.”

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.