

## Intel Gets More Flak Over Discovery In Antitrust Suit

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*Wednesday, Jun 04, 2008* --- Plaintiffs in an antitrust class action against Intel Corp. have blasted the chip maker for dragging its feet in a discovery process already slowed by a yearlong spat over lost documents.

In a letter Tuesday to the special master overseeing the extended pretrial phase in the U.S. District Court for the District of Delaware, lawyers for rival Advanced Micro Devices Inc. said the company appeared to have overstated the extent of its document production and lied about its compliance with discovery deadlines.

“Intel's failure to adhere to court-ordered production deadlines has already undermined plaintiffs' ability to conduct depositions and now throws into doubt future discovery timelines,” wrote lawyer Chad Shandler, of plaintiffs' firm Richards Layton & Finger PA.

“So that the special master does not recommend, and so that the court does not establish, schedules and deadlines based on an erroneous belief that Intel has completed its document production, Intel needs to come clean on the state of its remediation and production,” he added.

Intel has been dogged by criticism from AMD over its document production since it admitted in March 2007 that it had lost 21 months of potentially relevant correspondence as a result of so-called email retention lapses.

Shandler said Intel's assurance to special master Vincent Poppiti that the court's Feb. 15 deadline for production of documents held by company custodians was false.

In an eleventh-hour letter to Poppiti on May 30, Intel “disclosed for the first time” that it had failed to hand over the contents of more than 900 computer folders from backup files, he said.

The timing was “regrettable,” the lawyer said, since Intel had negotiated a case management order implying compliance with the production cutoff date only hours before its admission.

“Intel must have known, certainly for weeks and probably months, about its missing folder problems, but remained silent,” Shandler said, calling on the court to direct Intel to come clean with a “detailed accounting” of documents still to be released.

“AMD and class plaintiffs do not know, and are entirely unable to assess now, the magnitude of this problem. Intel's letters tell enough of the story to suggest that this is another serious lapse,” he added.

In February AMD moved the court for an order forcing Intel to reveal whether an “auto-delete” function that rids e-mails from the company's computer system was ever disabled. It is this controversial purging system that is at the center of the heated battle that has stalled the litigation in discovery.

Intel's failure to keep records for discovery in an antitrust case has called into question the company's commitment to preserving potentially crucial evidence, AMD said. And the amount of evidence lost in the case as a result of Intel's e-mail retention lapses has far exceeded anything the company hinted at when it first made its admission, it added.

The parties in the case, which include a consumer class whose members claim they paid more for computers as a result of monopoly abuses by Intel, agreed last June to deal with the company's proposed strategy to fix the retention lapses before looking to lay blame.

In a stipulation filed in the court, the parties asked the special master overseeing discovery to issue an order splitting the process in two — addressing Intel's remediation plan first, then probing liability.

Neither the judge nor the special master has yet made any substantive ruling concerning the preservation failures, but AMD wants the court to set an outside date by which Intel's remediation goals must be accomplished.

The dispute over the e-mails intensified when AMD served subpoenas in late May to Intel's outside counsel demanding documents relating to the issue.

The subpoenas were issued to Los Angeles-based firm Gibson, Dunn & Crutcher LLP and Howrey LLP in Washington, D.C., after Intel declined AMD's request to ensure the lawyers retained the potentially relevant material.

AMD said Intel's counsel was involved in monitoring the company's e-mail retention practices and in investigating the extent of Intel's preservation lapses.

Intel has admitted that an in-house lawyer responsible for preserving the e-mails “lost track” of things and forgot to alert employees to save their electronic correspondence from being purged by the auto-delete system.

Ultimately, the company has insisted, “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.