

AMD Wins Foreign Discovery Battle With Intel

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Monday, January 01, 2007 --- The federal judge overseeing Advanced Micro Devices Inc.'s antitrust suit against Intel Corp. has entered an order directing Intel to turn over evidence the plaintiff says shows evidence of Intel's misconduct beyond U.S. borders.

The order comes on the heels of Intel's decision to accept the findings outlined in a report filed with the court on Dec. 15 by Special Master Vincent J. Poppiti, which recommended that Intel be compelled to comply with AMD's request for documents and other evidence related to Intel's dealings in foreign countries. AMD wants to use that evidence to bolster its assertion that it was unlawfully excluded from the global market for microprocessors.

In April, Poppiti was appointed to preside over all discovery disputes in the case.

In a letter dated Dec. 27, Intel informed U.S. District Judge Joseph J. Farnan Jr. that while it had hoped for a different outcome, it would not file an objection to the Special Master's report and recommendation. Had Intel opted to file an objection, the foreign discovery matter would have been decided at a hearing on Jan. 12.

Intel spokesman Chuck Molloy said on Tuesday that the special master's report was not a ruling on the claims on which AMD's lawsuit is based, and that Intel had reserved its right to challenge the admissibility of any evidence obtained by AMD.

"It was time to just go ahead and move on," Molloy said.

Molloy also said that the court had thrown out "significant portions" of AMD's case in a September ruling that led up to the foreign discovery debate. On Sept. 26, Judge Farnan ruled that AMD hadn't satisfied the Foreign Trade Antitrust Improvements Act's requirement that challenged conduct have a direct impact on U.S. commerce, and granted the defendant's motion to dismiss the foreign commerce claims.

But AMD contended that Judge Farnan's decision didn't preclude discovery of evidence that AMD says shows that Intel coerced foreign customers.

The foreign discovery will show that Intel violated not only U.S. antitrust laws, but internationally accepted competition protocols as well, AMD said in a statement.

"Intel's acquiescence to the special master's findings is a big win for AMD," said Thomas M. McCoy, AMD executive vice president, legal affairs, and chief administrative officer. "This case remains firmly focused on the worldwide misbehavior of a global monopolist. This ruling also removes any basis for Intel or its foreign customers to withhold evidence of Intel's exclusion, regardless of where it occurred."

The report and recommendation was a boon for AMD in its effort to frame Intel's overseas business dealings and sales transactions for so-called x86 microprocessors as monopolistic and exclusionary.

Poppiti based his decision on the global reach of the technology, noting that about 68% of the total worldwide production of computers powered by x86 microprocessors are sold to non-U.S. customers.

Such evidence of foreign exclusionary conduct is essential for AMD to demonstrate that Intel has violated U.S. antitrust laws, according to AMD.

Discovery in this case began in December. The case is slated to go to trial in April 2009.

The case is Advanced Micro Devices Inc. et al. v. Intel Corporation et al., case number 05-441, in the U.S. District Court for the District of Delaware.

--Additional reporting by Erik Larson