

Intel Blames Inside Counsel For E-Mail Loss

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Friday, April 27, 2007 --- A stressed out Intel Corp. lawyer responsible for preserving company documents in the midst of antitrust litigation “lost track” of things and forgot to alert employees to keep their e-mails, the company has admitted.

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

The company has blamed Almirantearena for some of the “document retention lapses” that saw the loss of countless e-mails potentially crucial to an antitrust suit brought by rival Advanced Micro Devices.

“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 this week.

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 issued litigation hold notices to some 1500 employees thought to have potentially case-sensitive e-mails, saying it acted in “good faith” to send the notices to all identified custodians.

But in its report and proposed remediation plan to the U.S. District Court for the District of Delaware Monday, Intel admitted that approximately 378 employees selected in mid-2006 to be added to the 1090-strong custodian list did not receive the notices until February or March this year.

“This error of late notice, which was an unintentional oversight, arose in the context of a fast moving, constantly changing litigation landscape that involved ongoing efforts to identify appropriate employees to put on Intel’s custodian list,” the report stated.

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.

Other lapses identified were those by custodians themselves, some of whom saved potentially relevant e-mails they received but not those they sent, which were deleted within seven to 35 days pursuant to Intel's "aging" system.

Some custodians archived a portion, but not all, e-mails within the scope of the litigation hold notice they received, still other employees subject to the notice, including top Intel executives, believed their e-mails were automatically saved in a back-up file, relieving them of the burden of keeping copies on their computer hard drives.

Nevertheless, some lapses were bound to happen, given the mammoth job of retaining all relevant documents for the litigation discovery process, said Intel's counsel Richard Horwitz, of Potter, Anderson & Corron.

"Intel's intentions and plans were ambitious and laudable," he told the court. "Its missteps were the result of human error in attempt a challenging task."

Ultimately, the company insists, "nothing of any genuine significance will prove to have been lost."

The company has fought a war of words with AMD this week over its 42-page report, attached to which were numerous exhibits filed with the court under seal.

AMD accused Intel of abusing the court's order by keeping potentially key developments in the case hidden from public view, while Intel said it sealed the identities of key employees to protect their privacy.

"The public has every right to follow developments in this case, including embarrassing lapses like this one," AMD's lawyer, Frederick Cottrell, told the court-appointed special master Vincent Poppiti in a letter filed to the court this week. "Sooner or later the court will have to address an abuse of the confidentiality order that is calculated to permit Intel to litigate this case under cover of darkness."

Intel responded that it had filed sealed reports identifying the names, positions and employment status of 1,000 key company employees for privacy reasons.

"In the world in which we now live, Intel has compelling reasons for avoiding publication of such lists of its employees," Horwitz retorted.

AMD is suing Intel over allegations the company has engaged in dirty tactics to maintain its monopoly on microprocessors and keep prices artificially high.

The alleged misconduct has included kickbacks to computer maker Dell Inc. to ensure the exclusive use of Intel's microprocessor chips at the expense of competitors.

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.