

Court Orders Probe Into Intel's E-mail Loss

By **Christine Caulfield** , christine.caulfield@portfoliomedia.com

Thursday, March 08, 2007 --- A judge has ordered an investigation into Intel Corp.'s "document retention lapses" that resulted in the disappearance of potentially crucial evidence in the antitrust case launched by competitor Advanced Micro Devices.

Following Monday's admission by Intel that it had dropped the ball and lost an unknown number of e-mails, federal judge Joseph Farnan ordered that the matter be investigated by a court-appointed special master.

During Wednesday's status conference in the U.S. District Court of Delaware, the judge said the probe was necessary to determine the extent of the problem and its impact on the case brought by AMD.

"It appears on the surface to be a human lapse," Farnan said. "My intention, first, is to find out the extent and effect of the lapses (and) if necessary, fashion a remedy."

Special Master Vincent Poppiti, who was appointed by the judge to preside over the discovery process in the case, began preliminary interviews Wednesday with party attorneys and will report his findings to Farnan.

Intel has until April 10 to provide the court with a full accounting of the flaws in its document preservation system and an inventory of back-up tapes of e-mail correspondence that may yet be restored.

The company must also produce a plan to fix the deficiencies in its record-keeping, with a final hearing on the matter before Poppiti likely to be held mid-May.

The parties have also jointly requested the deferral of a document-exchange cut-off date until the investigation is concluded and recommendations made.

In its status report, AMD said Intel's lapses had contributed to the irretrievable loss of potentially massive amounts of critical evidence, including e-mails to and from top executives.

The company claimed Intel relied on a dangerously flawed "honor system" whereby individual employees were tasked with voluntarily saving e-mails that they themselves determined were relevant.

Intel also kept operative a system of automatic e-mail purging every 35 days,

even after the lawsuit was filed by AMD in June 2005, when the company was required to retain and produce documents in discovery.

AMD executive vice president Thomas McCoy said it was only proper that Intel be made responsible for the destruction of evidence.

“Given the obvious implications to the administration of justice, it is exactly right that Intel must now prepare a full accounting, fashion an effective remedy, and be accountable for the loss of evidence,” said McCoy.

Intel advised AMD of the e-mail bungle on Feb. 8, but AMD claims Intel’s lawyers discovered the communication breakdown late last year.

In its defense, Intel told the court that preservation of e-mails was an extraordinarily complex undertaking in light of the broad-ranging allegations leveled against it.

Lead counsel, Richard Horwitz of Potter Anderson & Corroon, said that while the company “very much regrets this happened,” it had the best intentions of implementing a comprehensive preservation system and had managed to retain millions of e-mails.

AMD filed its 48-page complaint against Intel in June 2005, accusing the company of engaging in anticompetitive tactics to maintain its monopoly on the sale of computer microprocessors.

Intel was sued again last month over allegations it paid kickbacks to Dell Inc. to ensure its computers would continue to use Intel chips exclusively.

The company did not respond to requests for comment Thursday.

AMD is represented in this matter by attorneys with O’Melveny & Myers LLP. Intel is represented in this matter by attorneys with Howrey LLP and Gibson Dunn & Crutcher LLP.

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.