



third-party subpoenas set forth in paragraph 5(g) of Case Management Order No. 1. [D.I. 123] (the “CMO Deadline”).<sup>1</sup> The reasons for this motion are as follows:

1. On July 24, 2006, plaintiff Advanced Micro Devices, Inc. (“AMD”) and ATI announced that AMD would acquire ATI in a transaction valued at approximately \$5.4 billion (“ATI Acquisition”). Upon knowledge and belief, there was no public announcement of the ATI Acquisition prior to July 24, 2006.

2. According to a press release dated July 24, 2006, posted on the AMD website (the Press Release), “the combination will create a processing powerhouse by bringing AMD’s technology leadership in microprocessors together with ATI’s strengths in graphics, chipsets and consumer electronics.” A copy of the Press Release is attached as Exhibit A hereto. In the Press Release, AMD Chairman and CEO Hector Ruiz is quoted as stating: “Bringing these two great companies together will allow us to transcend what we have accomplished as individual businesses and reinvent our industry as the technology leader and partner of choice. We believe AMD and ATI will drive growth and innovation for the entire industry, enabling our partners to create differentiated solutions and empowering our customers to choose what is best for them.”

3. In light of the July 24, 2006 announcement of the ATI Acquisition, and its stated purposes to expand AMD’s ability to compete in the microprocessor business and the substantial technological scope and dollar value of the transaction, it is likely that ATI has within its possession or control documents that are relevant to claims or defenses of the parties in this action. As a result, Intel seeks leave to serve a subpoena that requests production by ATI of the categories of documents set forth in Exhibit B hereto. By way of example only, Intel seeks documents concerning:

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<sup>1</sup> By stipulation of the parties, the CMO Deadline was extended by one week to June 22, 2006. [D.I.168].

- the transaction's strategic rationale, growth opportunities, and financial projections of the transaction's actual or potential effect on any aspect of either company's or the combined company's business performance;
- any potential or actual effect of AMD's acquisition of ATI on competition in chipsets, graphics processors and/or microprocessors;
- the potential or actual effect of AMD's acquisition of ATI on Intel's or AMD's business or business practices;
- any actual or perceived underperformance by AMD in the consumer, corporate, and/or mobile market segments prior to AMD's acquisition of ATI;
- the potential or actual effect of AMD's acquisition of ATI on AMD's competitiveness, and the actual or perceived benefits AMD expects to enjoy in the consumer, corporate, and/or mobile market segments by acquiring ATI.

These requested documents relate specifically to AMD's past and future capabilities to compete with Intel, and thus are directly relevant to its claims that Intel is responsible, at least in part, for claimed competitive challenges, and to Intel's defense that AMD, not Intel, has been responsible for AMD's business failures and successes.

4. Because the ATI transaction was not publicly announced prior to July 24, 2006, Intel was not on notice prior to such date that ATI might have documents, such as the documents enumerated in Exhibit B hereto, that are relevant to claims or defenses of the parties in this action. Therefore, Intel did not have reason to serve a subpoena on ATI requesting such documents prior to July 24, 2006, more than a month after the CMO Deadline for serving third-party subpoenas.

5. Counsel for AMD and counsel for the class plaintiffs have stated that their clients do not object to the relief requested in the present motion, although plaintiffs have reserved all substantive objections to the requests.

WHEREFORE, Intel respectfully requests that the Court grant Intel leave to serve a subpoena duces tecum on ATI Technologies, Inc. ("ATI"), as requested herein.

OF COUNSEL:

POTTER ANDERSON & CORROON LLP

Robert E. Cooper  
Daniel S. Floyd  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 900071  
(213) 229-7000

Peter E. Moll  
Darren B. Bernhard  
Howrey LLP  
1299 Pennsylvania Avenue  
N.W. Washington, DC 20004  
(202) 783-0800

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744892

By: /s/ Richard L. Horwitz

Richard L. Horwitz (#2246)  
W. Harding Drane, Jr. (#1023)  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
(302) 984-6000  
[rhowitz@potteranderson.com](mailto:rhowitz@potteranderson.com)  
[wdrane@potteranderson.com](mailto:wdrane@potteranderson.com)

Attorneys for Defendants  
Intel Corporation and Intel Kabushiki Kaisha

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006

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United States District Judge