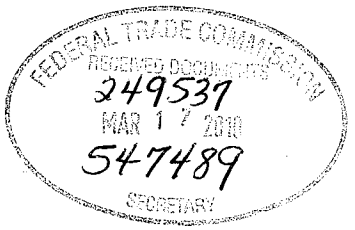
ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	
INTEL CORPORATION, a corporation	**DOCKET NO. 9341**
	PUBLIC DOCUMENT

MOTION OF INTEL CORPORATION FOR PROTECTIVE ORDER PURSUANT TO RULES 3.33(b) AND 3.31(d)

Respondent, Intel Corporation, hereby moves, pursuant to Rules 3.33(b) and 3.33(d) of the Federal Trade Commission's Rules of Practice, for a protective order to prevent the taking of its Deposition pursuant to Complaint Counsel's February 24, 2010 First Notice of Deposition of Intel Corporation.

Respectfully submitted,

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Attorneys for Intel Corporation

Dated: March 17, 2010

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**DOCKET NO. 9341**
INTEL CORPORATION,	)	
a corporation	)	**PUBLIC DOCUMENT**
	)	

MEMORANDUM IN SUPPORT OF INTEL'S MOTION FOR PROTECTIVE ORDER PURSUANT TO RULES 3.33(b) AND 3.31(d)

On December 16, 2009, Complaint Counsel filed what is likely the largest, broadest, and—from both a legal and factual perspective—most open-ended antitrust case ever brought by the Federal Trade Commission. Just over two months later, on February 24, 2010, Complaint Counsel served its First Notice of Deposition of Intel Corporation. That Notice sought to compel Intel to prepare and produce company witnesses to lay out through deposition testimony the legal and factual bases for Intel's defense of this entire action. And if that were not enough, it sought to compel Intel to do so within 13 days of the Notice, before Complaint Counsel had received Intel's interrogatory responses on many of the identical topics on which testimony is sought, before Complaint Counsel has completed producing materials from its Part 2 investigation, and before Complaint Counsel has taken any of the more than 60 depositions of Intel employees it has declared its intention to take.

Complaint Counsel's Notice is legally deficient and improper under the Commission's Rules for at least three reasons: ***First***, topics 1 through 4 of the Notice are entirely duplicative of interrogatories previously propounded by Complaint Counsel and therefore exceed the scope of permissible discovery under Rule 3.31(c)(2). ***Second***, topics 4 and 5 of the Notice are impossibly broad and vague, reflecting the unreasonable breadth and vagueness of the Complaint

itself. Topic 4 seeks testimony concerning Intel's legitimate business justifications for any and all of the innumerable business decisions it made over the ten-year period covered by the Complaint, and topic 5 seeks testimony concerning all of the factual assertions made in the first eight, single-spaced pages of Intel's Answer. ***Third***, the Notice seeks testimony concerning the substance of Intel's legal contentions, positions, and conclusions, as opposed to the facts supporting those contentions, positions, and conclusions, and therefore improperly seeks information protected by the attorney-client privilege and work product doctrine.

Accordingly, Intel respectfully requests that the Court enter a protective order to prevent the proposed deposition pursuant to Commission Rules 3.33(b) and 3.31(d).

BACKGROUND

Complaint Counsel served its First Notice of Deposition of Intel Corporation on February 24, 2010. *See* Attachment 1 to Declaration of Eric Mahr ("Mahr Declaration"). The Notice was served pursuant to Rule 3.33(c)(1), the equivalent of Rule 30(b)(6) of the Federal Rules of Civil Procedure, which allows a party to name a corporation as a deponent. Complaint Counsel unilaterally scheduled Intel's deposition for March 9, 2010, less than two weeks from the date of service of the Notice, and sought corporate designees to testify "as to matters known or reasonably available to Intel" concerning five topics. The first four topics in the Notice seek testimony regarding Intel's Second, Fourth, Seventh, and Eighth affirmative defenses. In these defenses, Intel alleges that the relief sought in the Complaint is not in the public interest (Second Defense), that the Commission lacks subject matter jurisdiction (Fourth Defense), that the Complaint is barred by laches (Seventh Defense), and that Intel is not liable because it acted in accordance with legitimate business justifications (Eighth Defense). Topic 5 seeks testimony regarding "Intel's purported assertions of fact in its preamble on pages 1-8 of its Answer."

The parties met and conferred concerning the Notice several times, including on March 11, 16 and 17; however, they were unable to resolve their differences.

DISCUSSION

Rule 3.33(c)(1) allows a party to name a corporation as a deponent as long as the party describes the matters on which examination is requested with "reasonable particularity." The named corporation must then designate individuals to testify on its behalf on the identified topics. *Id.* Rule 3.33(b), which was added to the Rules in 2009,[1] allows the Court to "rule on motion by a party that a deposition shall not be taken upon a determination that such deposition would not be reasonably expected to meet the scope of discovery set forth under § 3.31(c), or that the value of the deposition would be outweighed by the considerations set forth under § 3.43(b)." Thus, the Court may prevent the taking of a deposition if it would not comport with the limitations on discovery set forth in Rule 3.31(c), namely, that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) the burden and expense of the proposed discovery outweigh its likely benefit.

16 C.F.R. § 3.31(c)(2). When Rule 3.31(c) was amended in 1996, it was intended to "strengthen the ALJ's authority to prevent abusive discovery tactics by limiting the frequency or extent of

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[1] *See, e.g.*, 74 Fed. Reg. 1814 (Jan. 13, 2009) ("The proposed Rule added paragraph (b) to Rule 3.33, which allows the ALJ, upon a party's motion, to prevent the taking of a deposition . . . ."). Although there have been no decisions involving the new Rule 3.33(b), the legislative history surrounding the adoption of the new Part 3 Rules suggests that the intent of the amendments to the deposition Rule was to adhere to the model of the FRCP. *See id.* (defending proposed rule as consistent with the Federal Rules).

discovery under certain conditions (e.g., when it would be cumulative or duplicative)" and "track[] in relevant part the language of Fed. R. Civ. P. 26(b)(2), which sets forth similar limitations on discovery." 61 Fed. Reg. 50643 (1996).

Additionally, a party may seek a protective order to prevent the taking of discovery "to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding." 16 C.F.R. § 3.31(d).

1. The Notice Improperly Seeks Unreasonably Duplicative Discovery.

Rule 3.31(c)(2)(i) prohibits discovery that is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." Complaint Counsel has made this determination quite simple in this case, as it already has issued an interrogatory asking Intel to identify "every act, omission, practice, instance, document, and/or communication constituting or relating to the grounds for each of the Nine Defenses asserted by Intel in its answer." Interrogatory No. 1, Complaint Counsel's First Set of Interrogatories to Respondent Intel (1-16) (Feb. 10, 2010); Mahr Decl., Attachment 2. Topics 1-4 of the Notice, each of which seeks testimony concerning a specific one of those nine defenses, are therefore entirely and unambiguously duplicative. In addition, Complaint Counsel has "ample opportunity by discovery in the action to obtain the information sought," Rule 3.31(c)(2)(ii), including through the interrogatories already served, as well as through the depositions of the more than 60 Intel employees Complaint Counsel has declared it intends to take. Under these circumstances, the burden and expense of the proposed deposition is certain to outweigh any possible benefit. *See* Rule 3.31(c)(2)(iii).

While there have been no decisions on point under Rule 3.31(c), federal case law provides that, "in certain circumstances, a party may properly resist a 30(b)(6) deposition on the

grounds that the information sought is more appropriately discoverable through contention interrogatories." *SmithKline Beecham Corp. v. Apotex Corp.*, No. 99-CV-4304, 2004 WL 739959, at *2 (E.D. Pa. Mar. 23, 2004); *see also, e.g., 3M Co. v. Kanbar*, 2007 WL 1794936, at *2 (N.D. Cal. Jun. 19, 2007) (granting protective order because notice sought legal conclusions that should not form the basis for 30(b)(6) deposition topics and were more properly subject of contention interrogatories). For example, the court in *In re Independent Service Organizations Antitrust Litigation*, 168 F.R.D. 651 (D. Kan. 1996), granted Xerox's motion for a protective order where the plaintiff had served Xerox "with a Rule 30(b)(6) deposition notice requesting that Xerox produce a corporate witness to testify about *facts supporting numerous paragraphs of Xerox's denials and affirmative defenses in its Answer and Counterclaims*." *Id.* at 654 (emphasis added). The court did not require Xerox to produce a witnesses in response the notice, which sought legal conclusions and information that was otherwise discoverable through interrogatories and other means. *See also id.* ("Although we have no quarrel with CCS's contention that it has a right to discover the facts upon which Xerox will rely for its defense and counterclaims, CCS's attempt to discover those facts through a Rule 30(b)(6) deposition is overbroad, inefficient, and unreasonable.")

2. The Notice is Unreasonably Broad and Vague.

The Complaint in this action challenges virtually every significant aspect of Intel's design, manufacture, marketing and sale of microprocessors since 1999, including pricing decisions, innovations, standards, use of benchmarks, product roadmaps, and interoperability. The Complaint does not, however, stop with microprocessors, a product that in the *AMD v. Intel* litigation occupied four years of discovery and generated some 100 million pages of documents and 2,200 hours of deposition testimony. This Complaint also asserts claims regarding

compilers, benchmarks, product specifications standards, and both discrete and integrated graphics products. To further its sweeping goals, the Complaint relies on at least eight distinct theories of exclusionary conduct, which it pleads using open-ended and non-specific allegations lacking precisely those details that are necessary for Intel to formulate a targeted defense.

Particularly in light of the Commission's open-ended claims in this action, Complaint Counsel's failure to identify specific topics for testimony with the "reasonable particularity" required by Rule 3.31(c)(1) renders the Notice unreasonably broad and vague. For instance, topic 4, as posed, would require Intel to prepare and produce witnesses to testify as to the legitimate business justifications supporting any and all of the innumerable business decisions Intel has made over the more than ten years covered by the Complaint. Similarly, topic 5 would require Intel to prepare and produce witnesses to testify concerning every fact in the first eight (single-spaced) pages of Intel's Answer, which itself responds to the Commission's sprawling 106-paragraph Complaint. Because of this breadth, Intel would be forced to designate numerous individuals to testify regarding topics 4 and 5 alone. Even if the topics in the Notice were somehow appropriate, service of the Notice at this point in the litigation constitutes an improper attempt to circumvent Rule 3.35(b)(2)—which provides that contention interrogatories need not be answered until the close of discovery—by noticing what is in effect a "contention deposition." Complaint Counsel has identified 272 witnesses on its preliminary witness list, including some 126 Intel employees, and has declared its intention to depose as many as 67 of those employees. At a minimum, Complaint Counsel should be required to complete those depositions, and to identify any topics for further discovery with "reasonable particularity," before being permitted to proceed with any deposition under Rule 3.33(c)(1).

3. The Notice Improperly Seeks To Elicit Legal Conclusions and Expert Testimony.

Complaint Counsel's Notice is also flawed because it seeks to elicit testimony regarding Intel's legal contentions, positions, and conclusions. *See, e.g.*, Topics 2-3 (seeking testimony concerning Intel's subject matter jurisdiction and laches defenses, respectively). Intel has been unable to find any Part 3 decisions addressing this issue under Rule 3.33(c). Again, however, there is ample federal case law support for the proposition that "depositions, including 30(b)(6) depositions, are designed to discover facts, not contentions or legal theories, which, to the extent discoverable at all prior to trial, must be discovered by other means." *J.P. Morgan Chase Bank v. Liberty Mut. Ins. Co.*, 209 F.R.D. 361, 362 (S.D.N.Y. 2002); *Gossar v. Soo Line Railroad Co.*, No. 3:09-cv-9-RLY-WGH, 2009 WL 3570335, at *2 (S.D. Ind. Oct. 27, 2009) (a party "may not serve a Rule 30(b)(6) notice for the purpose of requiring [the opposing party] to marshal all of its factual proof and prepare a witness to be able to testify on a particular defense" (internal quotation marks and citation omitted)); *Captain Shontel Nicholas v. City of New York*, No. CV-07-134, 2009 U.S. Dist. LEXIS 4366, at *1-2 (E.D.N.Y. Jan. 22, 2009) (cliciting support for contentions "is not the purpose of Rule 30(b)(6), which is to discover facts, not contentions or legal theories"); *King Pharmaceuticals, Inc. v. Eon Labs, Inc.*, No. 04-CV-5540 (DGT), 2008 WL 5111005, at *1 (E.D.N.Y. Dec. 4, 2008) (seeking elaborations on legal issues "is an improper use of Rule 30(b)(6) depositions, which 'are designed to discover facts, not contentions or legal theories'"). Especially at this early stage of the litigation, Complaint Counsel should not be permitted to use the proposed deposition here "to explore opposing counsel's thought processes as to *which* facts support these contentions (and which do not), or what inferences can

be drawn from the evidence that has been assembled so far." *FTC v. Cyberspy Software, LLC*, No. 6:08-cv-1872-Orl-31GJK, 2009 WL 2386137, at *4 (M.D. Fla. July 31, 2009).[2]

Additionally, several of the topics in the Notice improperly demand what is more appropriately expert testimony. For example, topic 1 seeks testimony concerning Intel's position that the relief sought by the Commission is not in the public interest because of its negative economic impact. This is classically expert testimony and is therefore an inappropriate subject for a corporate deposition. *See, e.g., T & H Landscaping, LLC v. Colo. Structures Inc.*, Civil Action No. 06-cv-00891-REB-MEH, 2007 WL 2472056, at *4 (D. Colo. Aug. 28, 2007) (granting motion for protective order based on improper 30(b)(6) notice where plaintiffs sought defendant's position regarding assertions in expert reports). Indeed, Complaint Counsel in Part 3 proceedings has itself sought protective orders to "limit any deposition testimony to factual inquiries into areas within the witness' personal knowledge" when they believed that the "true purposes for . . . depositions [would be] to gain expert testimony." *See In re Basic Research, LLC*, Dkt. No. 9318, Complaint Counsel's Motion For Protective Order (Nov. 18, 2004), at 19-20. Mahr Decl., Attachment 3.

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[2] Indeed, protection from such improper use of deposition discovery may explain the only substantive difference between the Commission's Rule 3.33(c)(1) and F.R.C.P. 30(b)(6), *i.e.*, that while the Federal Rules permit a 30(b)(6) deposition of any "government agency," the Commission's Rule permits such a deposition of any "governmental agency *other than* the Federal Trade Commission, or any bureau or regional office of the Federal Trade Commission." 16 C.F.R. § 3.33(c)(1) (emphasis added).

CONCLUSION

For the foregoing reasons, Intel respectfully requests that the Court enter a protective order to prevent the proposed deposition pursuant to Commission Rules 3.33(b) and 3.31(d).

Respectfully submitted,

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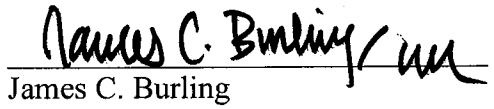

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Attorneys for Intel Corporation

Dated: March 17, 2010

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**DOCKET NO. 9341**
INTEL CORPORATION,	)	
a corporation	)	**PUBLIC DOCUMENT**
	)	

STATEMENT OF ERIC MAHR PURSUANT TO PARAGRAPH 3 OF THE JANUARY 14, 2010 SCHEDULING ORDER

Counsel for Intel Corporation hereby makes the following representations concerning the attached Motion of Intel Corporation For Protective Order Pursuant to Rules 3.33(b) and 3.31(d):

1. Counsel for Intel Corporation have conferred with Complaint Counsel in a good faith effort to resolve by agreement the issues raised by the attached Motion.

2. The conferences took place via conference call on March 11, March 16 and March 17 between Eric Mahr and Thomas Brock.

3. Counsel discussed but were unable to reach an agreement regarding the issues raised in the attached motion.

WILMER, CUTLER, PICKERING, HALE & DORR, LLP

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Eric.mahr@wilmerhale.com

Attorney for Intel Corporation

Dated: March 17, 2010

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**DOCKET NO. 9341**
INTEL CORPORATION,	)	
a corporation	)	**PUBLIC DOCUMENT**
	)	
	)	

DECLARATION OF ERIC MAHR

I, Eric Mahr Esq., under penalty of perjury pursuant to 28 U.S.C. § 1746, based on my personal knowledge, information, and belief concerning matters to which I am competent to testify, declare as follows:

1. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP and am a member of the Bar of the District of Columbia (#459350).

2. Attachment 1 is a true and correct copy of Complaint Counsel's First Notice of Deposition of Intel Corporation, served on February 24, 2010.

3. Attachment 2 is a true and correct copy of Complaint Counsel's First Set of Interrogatories to Respondent Intel (1-16), served on February 10, 2010.

4. Attachment 3 is a true and correct copy of Complaint Counsel's Motion For Protective Order in *In the Matter of Basic Research, LLC*, Dkt. No. 9318 (Nov. 18, 2004).

5. I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

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Washington, D.C. 20006
T: 202-663-6000
F: 202-663-6363

Date: March 17, 2010

Attachment 1

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
INTEL CORPORATION,	)	Docket No. 9341
Respondent.	)	

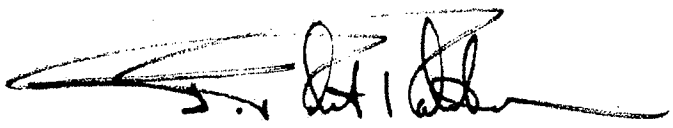
COMPLAINT COUNSEL'S FIRST NOTICE OF DEPOSITION OF INTEL CORPORATION

PLEASE TAKE NOTICE, that pursuant to Rules 3.33(a) and (c)(1) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a) and (c)(1)), Complaint Counsel will take the deposition of Intel Corporation or its designee(s), who shall testify on Intel's behalf, about matters known or reasonably available to Intel Corporation regarding the attached list of topics. The testimony will be taken at the Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, beginning at 9:00 am on March 9, 2010, and shall continue each business day until it is concluded.

Intel Corporation is advised that it must designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to Intel regarding the attached list of topics.

Dated: February 24, 2010

Respectfully submitted,



J. Robert Robertson
Complaint Counsel
Bureau of Competition, H-374
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

ATTACHMENT A TO COMPLAINT COUNSEL'S FIRST NOTICE OF DEPOSITION OF INTEL CORPORATION

Intel's designee(s) shall testify as to matters known or reasonably available to Intel concerning the following claims or defenses from Intel's Answer to the Complaint:

1. "The relief sought in the Complaint is not in the public interest because it would, among other things, harm competition, injure consumers, interfere with valid contracts, and abrogate valid intellectual property rights." (Second Defense)

2. "Pursuant to 15 U.S.C. § 45(a)(3), the Commission lacks jurisdiction over conduct that does not have a direct, substantial, and reasonably foreseeable effect on U.S. commerce." (Fourth Defense)

3. "The Complaint is barred in whole or part by laches, based on the Commission's prior investigations of the same conduct alleged in the Complaint and its decisions not to take action." (Seventh Defense)

4. "Intel is not subject to liability under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, because it at all times alleged acted in accordance with legitimate business justifications." (Eighth Defense)

5. Intel's purported assertions of fact in its preamble on pages 1-8 of its Answer.

CERTIFICATE OF SERVICE

I certify that I delivered via electronic mail one copy of the foregoing Complaint Counsel's First Notice of Deposition of Intel Corporation to:

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Counsel for Defendant
Intel Corporation

February 24, 2010

By: Terri Martin

Terri Martin
Federal Trade Commission
Bureau of Competition

Attachment 2

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
INTEL CORPORATION,	)	Docket No. 9341
Respondent.	)	

COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT INTEL (1-16)

Pursuant to Rule 3.35 of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby requests that Respondent Intel answer the following Interrogatories within 30 days from the date of service thereof.

1. Identify every act, omission, practice, instance, document, and/or communication constituting or relating to the grounds for each of the Nine Defenses asserted by Intel in its Answer.

2. Explain in full your basis for the statement on page 2 of Intel's Answer that Intel lacks "monopoly power in the market for CPUs" and identify every act, omission, practice, instance, document, and/or communication constituting or relating to the grounds for such statement.

3. For each year since 1999, identify every company that Intel contends constrained, constrains or has the potential to constrain the price of the x86 microprocessors Intel sells for use in netbooks, notebooks, desktops, or servers.

4. For each company identified by you in response to Interrogatory 3 above, state separately for each form factor (i.e., netbooks, notebooks, desktops, or servers) the sales volumes, in units and dollars, of microprocessors that are used in netbooks, notebooks, desktops, and servers for each year since 1999.

5. State separately Intel's average sales price for microprocessors that are used in netbooks, notebooks, desktops, and servers for each year since 1999.

6. Identify and describe in detail every Intel agreement to sell microprocessors used in netbooks, notebooks, desktops, or servers since 1999 that (1) in any way refer to or mention market share or market segment share, or (2) in which any term or condition, including unit price, is expressly or impliedly dependent upon market share or market segment share.

7. Identify and describe in detail every Intel agreement with a customer (including, but not limited to, the OEMs that you stated purchased "microprocessors solely from Intel" in response to paragraph 6 of the Complaint in Intel's Answer).whereby Intel would be the sole source of microprocessors used in netbooks, notebooks, desktops, or servers

8. For every instance between 1999 and 2009, inclusive, in which an agent or representative of Intel met with a member of the Federal Trade Commission or its staff, or filed a white paper, identify the meeting by date and participants (or authors and recipients) and describe the subject matter of the meeting or white paper including any action or forbearance sought by Intel.

9. Identify every Independent Software Vendor or Independent Software Developer that bought or used Version 7.1 of Intel's Compiler.

10. Identify every survey, study, analysis, instance, document, and/or communication constituting or relating to the support for your claim that Intel's complier has consistently "enabled software to run faster on non-Intel microprocessors than software compiled with non-Intel compilers." Intel Answer at ¶ 59.

11. Identify and describe the reasons for and amount of every discount Intel gave from its "CAT C" list price since 1999.

12. Identify and describe all of the computing applications that can be shifted from a CPU to a GPU as you admit in your answer at ¶ 77.

13. Identify and describe the reasons for Intel's failure to allow Nvidia chipsets to interoperate with its Nehalem CPU.

14. Identify and describe every instance (including the date and with whom) in which Intel revealed its discrete graphics processor technology development roadmap.

15. Identify and describe (and identify documents concerning or related to) each Intel microprocessor, microprocessor architecture, chipset, or GPU (including those currently in development by Intel) that experienced delays during its development, and identify the length and cause of each such delay.

16. Identify and describe (and identify documents concerning or related to) each instance in which Intel was unable to supply microprocessors and/or chipsets to a customer, or was delayed in supplying microprocessors and/or chipsets to a customer and identify the length and cause of each such failure or delay.

INSTRUCTIONS

The instructions set out in Respondent's First Set of Interrogatories Issued to Complaint Counsel are hereby incorporated by reference to the extent they are consistent

with the Federal Trade Commission's Rules of Practice. Federal Trade Commission Rule 3.35(a)(2) sets out the instructions for responding to Interrogatories: "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to on grounds not raised and ruled on in connection with the authorization, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within 30 days after the service of the interrogatories. The Administrative Law Judge may allow a shorter or longer time."

DEFINITIONS

The definitions set out in Respondent's First Set of Interrogatories Issued to Complaint Counsel are hereby incorporated by reference to the extent they are consistent with the Federal Trade Commission's Rules of Practice.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Interrogatories has been prepared by me or under my personal supervision from records of Intel Corporation, and is complete and correct to the best of my knowledge and belief.

(Signature of Official)	(Title/Company)
(Typed Name of Above Official)	(Office Telephone)

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
INTEL CORPORATION,	)	Docket No. 9341
Respondent.	)	

CERTIFICATE OF SERVICE

I, Kyle Andeer, hereby certify that on this 10th day of February, 2010 I caused a copy of the documents listed below to be served by email on each of the following:

James C. Burling
Eric Mahr
Wendy Terry
Wilmer Cutler Pickering Hale and Dorr LLP
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DOCUMENTS SERVED:

(i) Complaint Counsel's First Set of Interrogatories to Respondent Intel Corporation (Requests 1-16); and

(ii) this Certificate of Service.

February 10, 2010

By: Kyle Andeer /s/
Kyle D. Andeer
Federal Trade Commission
Bureau of Competition

Attachment 3

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS
NOV 18 2004
SECRETARY

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	
BASIC RESEARCH, L.L.C., **A.G. WATERHOUSE, L.L.C.,** **KLEIN-BECKER USA, L.L.C.,** **NUTRASPORT, L.L.C.,** **SOVAGE DERMALOGIC LABORATORIES, L.L.C.,** **BAN, L.L.C.,** **DENNIS GAY,** **DANIEL B. MOWREY, and** **MITCHELL K. FRIEDLANDER,**	**Docket No. 9318** **PUBLIC DOCUMENT**
Respondents.	

COMPLAINT COUNSEL'S MOTION FOR PROTECTIVE ORDER

Pursuant to RULE OF PRACTICE 3.22, Complaint Counsel moves for a *Protective Order* to limit the scope of Respondents' subpoenas *duces tecum* to two of Complaint Counsel's testifying experts; deny improper discovery demanded in 22 separate subpoenas *duces tecum* sent to Third Parties across the nation; and limit the scope of Respondent Dennis Gay's "Notice of Videotape Depositions" sent to 4 other Third Parties to protect these parties from annoyance, oppression, undue burden and expense. Respondents' subpoenas or notices are overbroad, unduly burdensome, harassing, seek information that is not reasonably expected to yield information relevant to this matter, and seek to gain expert testimony improperly. An *Order* limiting the scope of Respondents' subpoenas and depositions is appropriate.

BACKGROUND

The *Complaint* in this matter alleges, *inter alia*, that Basic Research and other related companies and individuals (collectively, "Respondents") marketed certain dietary supplements with unsubstantiated claims for fat loss and weight loss, and falsely represented that some of these products were clinically proven to be effective, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

The *Scheduling Order* in this matter set January 10, 2005, as the deadline for conducting all depositions, so the parties are preparing to depose witnesses while negotiating numerous outstanding discovery issues. In addition, the *Scheduling Order* set November 8, 2004, as the deadline for issuing subpoenas *duces tecum.*

Complaint Counsel has conferred with Respondents in an attempt to resolve the issues relating to the scope of these subpoenas discussed in this *Motion*. Although we were able to come to an agreement regarding two other testifying experts' subpoenas, Respondents declined to limit the two scientific substantiation experts' subpoenas *duces tecum* to areas of inquiry that the parties mutually agree are relevant and not unduly burdensome. Respondents further declined to withdraw their subpoenas to the 22 Third Parties, claiming that the inquiries are relevant to impeach one of Complaint Counsel's Expert Witnesses, Dr. Steven Heymsfield, regarding the use of double-blind clinical trials. As discussed below, the subpoenas seek documents that are completely outside the scope of the issues in this case. Finally, Respondents declined to limit the Notice of Videotape Depositions to the remaining 4 Third Parties to factual inquiry, as opposed to expert opinion. Respondents' positions necessitated the filing of the present *Motion*.