

ORIGINAL



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

In the Matter of)
)
)

INTEL CORPORATION,)
Respondent.)
_____)

DOCKET NO. 9341

SCHEDULING ORDER

- January 29, 2010 - Parties jointly submit to the ALJ for approval an agreed proposal regarding Respondent's production of documents and electronically stored information in response to Complaint Counsel's first set of requests for production. If the parties have failed to agree upon such a proposal by January 29, 2010, briefs on the issues in dispute are due to the ALJ by Wednesday, February 3, 2010.
- February 16, 2010 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- February 23, 2010 - Respondent's Counsel provides preliminary witness lists (not including experts) with a brief summary of the proposed testimony.
- March 23, 2010 - Complaint Counsel provides expert witness list.
- April 6, 2010 - Respondent's Counsel provides expert witness list.
- April 20, 2010 - Complaint Counsel provides revised witness list, not to exceed 100 witnesses, including preliminary rebuttal witnesses, with a brief summary of the proposed testimony.
- April 27, 2010 - Respondent's Counsel provides revised witness list, not to exceed 100 witnesses, including preliminary sur-rebuttal witnesses, with a brief summary of the proposed testimony.
- May 4, 2010 - Deadline for issuing document requests, requests for admission, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.

- June 15, 2010 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- Counsel provide a courtesy copy to the ALJ of each party's answers to interrogatories and responses to requests for admissions.
- June 15, 2010 - Deadline for filing "[m]otions to dismiss filed before the evidentiary hearing, motions to strike, and motions for summary decision" pursuant to Rule 3.22(a).
- June 15, 2010 - Deadline for Complaint Counsel to provide Respondent's Counsel with Complaint Counsel's expert witness reports. Complaint Counsel to provide a courtesy copy to the ALJ.
- July 13, 2010 - Deadline for Respondent's Counsel to provide Complaint Counsel with Respondent's expert witness reports. Respondent's Counsel to provide a courtesy copy to the ALJ.
- July 20, 2010 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel serves a courtesy copy on the ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. In addition, Complaint Counsel serves a courtesy copy of testimony designated to be submitted by deposition.
- July 27, 2010 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Respondent's Counsel serves a courtesy copy on the ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief

summary of the testimony of each witness. In addition, Respondent's Counsel serves a courtesy copy of testimony designated to be submitted by deposition.

- July 27, 2010 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- July 30, 2010 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as filing a motion *in limine* to preclude all or part of Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondent).
- August 3, 2010 - Parties exchange deposition transcript counter-designations and serve courtesy copies of counter-designated deposition testimony on the ALJ.
- August 9, 2010 - Deadline of depositions of experts (including rebuttal experts) and exchange of expert related exhibits
- August 10, 2010 - Deadline for filing motions *in limine*.
- August 10, 2010 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- August 17, 2010 - Deadline for filing responses to motions *in limine*.
- August 17, 2010 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- August 20, 2010 - Complaint Counsel files pretrial brief supported by legal authority.
- August 30, 2010 - Parties exchange and serve courtesy copies on the ALJ of objections to final proposed witness lists and exhibit lists and objections to the designated testimony and counter designated testimony to be presented by deposition.
- August 31, 2010 - Respondent's Counsel files pretrial brief supported by legal authority.

- September 3, 2010 - Exchange proposed stipulations of law, facts, and authenticity.
- September 10, 2010 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- September 14, 2010 - Final prehearing conference to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed-to stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party with no signature for the judge required.

- September 15, 2010 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov by 5:00 p.m. on the designated date. This email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. All submissions shall bear the words "Docket 9341" in the subject matter line. Service by email shall be followed promptly by delivery of two hard copies by the next business day.

2. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

3. Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a signed statement representing that counsel for the moving party has

conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. Motions that fail to include such statement may be denied on that ground.

4. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

5. Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

6. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within five days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

7. Each party is limited to 75 document requests to the opposing party, 25 interrogatories, and 100 requests for admissions (which limits may be increased by the ALJ for good cause shown), except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such request. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits.

8. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed by the parties or ordered by the Administrative Law Judge.

9. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled.

10. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No

deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and three days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition as agreed to by all parties involved.

11. The revised and final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause.

12. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

13. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

14. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

15. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

16. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

17. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

18. Complaint Counsel's exhibits shall bear the designation CX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

19. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Additional exhibits may be added after the final

prehearing conference only by order of the Administrative Law Judge upon a showing of good cause. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will maintain as part of the record.

20. If a deposition is taken either within 48 hours before or any time after any deadline listed in the scheduling order, counsel shall have 48 hours after the deposition transcript is received to: (1) submit deposition designations and related exhibits; (2) submit a summary of testimony (if the deponent is being called as a live witness); (3) notify the deponent of any intention to use confidential material; (4) file motions for *in camera* treatment of any confidential material; and (5) file motions *in limine* and motions to strike the witness.

21. The parties agree that depositions of third parties (that is, persons deposed in any capacity other than as a current or former employee of Intel or AMD) taken and transcribed in the matter *Advanced Micro Devices, Inc., v. Intel Corporation*, C.A. No. 05-441-JJF, in the U.S. District Court for the District of Delaware (the “AMD Delaware” litigation) shall be included as part of the record in this proceeding and shall be treated by the ALJ and the parties as if they had been taken and transcribed in this proceeding. Nothing in this paragraph in any way limits either party from taking discovery in this proceeding, including discovery duplicative of that taken in the AMD Delaware litigation and made a part of the record in this proceeding. The court will accept designated excerpts of depositions only.

22. The parties shall serve each other by electronic mail as follows, shall include “Docket 9341” in the subject line, and all shall attach all documents in pdf format. Respondent’s Counsel and Complaint Counsel agree to waive their rights to service under 16 C.F.R. §4.4(a)-(b).

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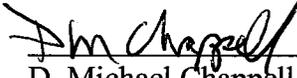
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23. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge or a service copy to counsel cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy and an electronically recorded copy of the document on the designated date.

24. At the time an expert is first listed as a witness by a party, the listing party will provide to the other party the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years; and transcripts of such testimony in the possession, custody or control of the listing party or expert.

25. Each expert report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data, materials, or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions. Unless otherwise agreed by the parties, draft reports and notes of experts need not be produced. In addition, communications between experts and counsel or consultants need not be produced unless relied upon by the expert in formulating an opinion in the matter.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: January 14, 2010