

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

INTEL CORPORATION,

a corporation.

DOCKET NO. 9288

INTEL CORPORATION'S ANSWER TO COMPLAINT

Intel Corporation ("Intel") answers the Complaint in this matter as follows:

Intel has not monopolized any market, attempted to monopolize any market, or used any unfair methods of competition. Intel has not violated Section 5 of the Federal Trade Commission Act or any other antitrust law.

This is not an appropriate matter for action by the FTC. The allegations in this matter arise out of intellectual property disputes between Intel and three other major high technology companies. Two of those disputes have been settled on mutually agreeable terms among the parties. The third dispute is currently in litigation in Alabama. In each of these cases, Intel took reasonable, measured steps under the law and its contracts to protect its intellectual property and its core business. In none of these cases did Intel deny anyone a supply of microprocessors or any other product. Intel's actions did not and could not harm competition in any relevant market.

Intel answers the specific allegations of the Complaint as follows:

1. Intel admits the allegations of the first sentence of Paragraph 1. Intel further admits that for the fiscal year ended December 27, 1997, it reported revenues of approximately \$25 billion and net income of approximately \$6.9 billion.

2. Intel admits the allegations of Paragraph 2, but alleges that microprocessors also perform other functions not identified in Paragraph 2.

3. Intel admits the allegations of Paragraph 3.

4. Intel denies that the relevant market includes "future-generation microprocessors," which, by definition, are products that do not exist. Intel is without knowledge sufficient to admit or deny the allegations of Paragraph 4 that relate to the alleged existence of "narrower markets" that may be contained within the alleged market for general-purpose microprocessors and on that basis denies them. Intel denies each and every remaining allegation of Paragraph 4.

5. Intel admits the allegations of Paragraph 5.

6. Intel denies the allegations of Paragraph 6, including, but not limited to, the allegation that its own market studies reflect its alleged market dominance and that market dominance can be inferred from market share, and further alleges that it does not have monopoly power.

7. Intel denies the allegations of Paragraph 7.

8. Intel denies that the development of a relevant microprocessor product would require several years of engineering work and that the entry cost required for developing a new high-performance microprocessor would likely exceed \$250 million. Intel denies that the development of a high-performance microprocessor product comparable to Intel's current Pentium® II device or the Alpha microprocessor products currently sold by Digital Equipment Corporation would likely require at least four years. Intel admits that it began development of the IA-64 in 1994, and that the device known as "Merced"™ is not expected to be commercially

available until the year 2000. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 8 and on that basis denies each and every one of them.

9. Intel denies that new entry is deterred by the minimum viable scale requirements for a modern semiconductor fabrication facility and further denies that a new entrant would have to construct or acquire a semiconductor fabrication facility. Intel admits that construction of a 0.25 micron wafer production facility with capacity of 5,000 wafer starts per week and required assembly/test capacity built to Intel specifications would cost approximately \$1.6 billion to develop, build, and equip, of which approximately \$1 billion would be for fab construction, machinery, and equipment and the remaining approximately \$600 million would be for assembly/test equipment and process development, but Intel denies that ownership of such a facility is required to enter into any relevant market. Intel admits that an owner of such a facility would probably not expect to begin shipping revenue microprocessor products in less than four years from groundbreaking. Intel admits that a new entrant could avoid significant fixed costs in buildings or equipment by contracting with an existing microprocessor producer to provide manufacturing and development services. Intel further admits that fabless entry might require approximately 6 months and involve approximately 30 staff committed to the manufacturing area. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 9 and on that basis denies each and every one of them.

10. Intel denies that a new entrant would have to establish both product reputation and technical compatibility with a computer operating system and the applications software desired by a significant number of computer users. Intel admits that consumers prefer computer systems and microprocessor components that are capable of running the computer operating systems and

applications software programs that are desired by consumers. Intel further alleges that a new entrant could enter with a microprocessor that is capable of running the computer operating systems and applications software programs that are desired by computer end-users, such as by imitating an existing microprocessor product or family. Intel denies that a new entrant must attract support from software developers. Intel admits that consumers typically have existing software applications that were written for a particular microprocessor architecture and also that there would be some cost for consumers to switch to an incompatible microprocessor architecture. Intel further admits that if there were a need simultaneously to secure a large number of users in order to make a product attractive to software developers and to secure the efforts of software developers in order to make a product attractive to users, this would be a form of what is sometimes referred to as "network effects." Intel denies that the importance of network effects is illustrated by its success in obtaining commitments from computer manufacturers and software vendors to build computers and write software for the Merced™ microprocessor. Intel denies each and every remaining allegation of Paragraph 10.

11. Intel denies the allegations of Paragraph 11.

12. Intel admits that it provides certain customers with certain technical information about new products in advance of the products' commercial release. Intel admits that it regards certain advance technical information to be proprietary and provides it subject to formal nondisclosure agreements, which prohibit recipients from disclosing such information to unauthorized persons or from using it for unauthorized purposes. Intel denies that it makes such information widely available to customers. Intel admits that its relationships with customers to whom it provides advance technical information generally have a commercial benefit for both

parties, but denies that such provision of information is always mutually beneficial. Intel admits that sometimes customers benefit because the advance technical information enables them to begin work earlier on certain aspects of the development of new computer products which incorporate the disclosed technology and that Intel sometimes benefits because some customers design new computer systems so as to incorporate new Intel products. Intel denies each and every remaining allegation of Paragraph 12.

13. Intel denies the allegations of Paragraph 13.

14. Intel is without knowledge sufficient to understand what the Complaint means by the terms "firms that are . . . commercially dependent upon Intel" and "innovations relating to microprocessor technology" and on that basis denies the allegations to which they relate. Intel denies that the conduct alleged in the Complaint diminishes the incentives of any firm to develop new innovations of any kind. Intel denies each and every remaining allegation of Paragraph 14.

15. Intel admits the allegations of the first two sentences of Paragraph 15. Intel further admits that for the fiscal year ended June 28, 1997, Digital reported total operating revenues of approximately \$13.1 billion. Intel denies each and every remaining allegation of Paragraph 15.

16. Intel admits the allegations of the first sentence of Paragraph 16 and admits that Digital reports that in fiscal 1997 sales of Intel-based computers accounted for approximately \$2 billion of its revenues, which is approximately 15% of Digital's total operating revenues for the fiscal year. Intel denies that Digital purchased approximately \$250 million worth of Intel microprocessors for each of the last few years. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 16 and on that basis denies each and every one of them.

17. Intel admits that Digital designs, develops, manufactures, markets and sells some semiconductor products, including microprocessor products that are generally known, marketed, and sold under the trade name Alpha. Intel admits that Digital's Alpha microprocessors have had relatively little sales success, either as separate components or in computer systems sold by Digital. Intel admits that Digital's Alpha microprocessor has been among the microprocessors that offer high performance. Intel admits that the words "strategic emergency" and "miracles" appear in one slide presentation, but denies that the company declared a strategic emergency and denies that the company viewed the performance of the Alpha microprocessor as a "miracle." Intel admits that it analyzed the performance of the Alpha microprocessor. Intel admits that Alpha provides the only alternative microprocessor platform that runs Windows NT, but denies that compatibility with Windows NT is competitively significant. Intel admits that the development of IA-64 microprocessors is a current major goal of Intel, but Intel denies that competing with Alpha is a current major goal of its development of IA-64 microprocessors. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 16 and on that basis denies each and every one of them.

18. Intel admits that it introduced the Pentium Pro microprocessor in 1995, that the Pentium Pro offered better performance than the Pentium microprocessor, and that in 1995 Digital's Alpha microprocessor performed better in some respects than Intel's Pentium microprocessor. Intel further admits that on May 12, 1997, Digital sued Intel for patent infringement, alleging that Intel's Pentium microprocessors infringed 10 Digital microprocessor patents. Intel denies that it was using Digital microprocessor technology in its Pentium Pro or

other Pentium microprocessors. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 18 and on that basis denies each and every one of them.

19. Intel denies that it "publicly" denied Digital access to any information, and Intel further denies that it denied Digital access to technical information that it needed to develop new computer systems in a timely and efficient manner. Intel admits that, as a result of the lawsuit filed by Digital, Intel exercised its contractual and intellectual property rights to demand the return of certain advance confidential technical information and microprocessor prototypes and declined to give Digital advance access to certain confidential technical information and microprocessor prototypes. Intel further alleges that its actions were protected by the First Amendment to the Constitution under the Noerr-Pennington doctrine. Intel denies that there were any computer manufacturers similarly situated to Digital and further denies that it had no reasonable belief that Digital had ever misused, could misuse, or would misuse such information or prototypes. Intel denies that it acted to create uncertainty about Digital's future source of supply of Intel microprocessors. Intel denies that it otherwise engaged in conduct to create a perception in the industry that Digital was no longer capable of bringing to market in a timely manner new products that incorporate Intel's latest microprocessor technology. Intel denies each and every remaining allegation of Paragraph 19.

20. Intel denies the allegations of Paragraph 20.

21. Intel denies the allegations of Paragraph 21.

22. Intel admits the allegations of Paragraph 22.

23. Intel admits that in or about 1987 Intergraph Corporation acquired from National Semiconductor Corporation assets of the Advanced Processor Division of Fairchild Semicon-

ductor relating to microprocessor devices known by the trade name Clipper. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 23 and on that basis denies each and every one of them.

24. Intel admits that Intergraph developed a family of workstations and servers based on Intel's Pentium microprocessor and Microsoft's Windows NT operating system. Intel further admits that Intergraph was one of several manufacturers to offer a workstation based on Intel's Pentium Pro microprocessor, and one of several manufacturers to offer a single- and dual-processor 3-D graphics workstation based on Intel's microprocessors. Intel alleges that other manufacturers have developed such products and further that there is substantial competition in the markets in which Intergraph competes and that Intergraph is not essential to competition in any market. Intel is without knowledge sufficient to admit or deny the allegations of the last sentence of Paragraph 24 and on that basis denies them. Intel denies each and every remaining allegation of Paragraph 24.

25. Intel is without knowledge sufficient to admit or deny the allegations of Paragraph 25 and on that basis denies them.

26. Intel denies the allegations of Paragraph 26.

27. Intel denies the allegations of Paragraph 27.

28. Intel admits that in 1997 Intergraph began falsely asserting that third parties using Intel-based technology were infringing certain Intergraph patents. Intel further admits that some of those manufacturers sought indemnification from Intel against Intergraph's claims for patent infringement. Intel denies that it increased pressure to force Intergraph to grant Intel a royalty-

free license to Intergraph's microprocessor-related patents. Intel denies each and every remaining allegation of Paragraph 28.

29. Intel admits that when Intergraph continued to press its baseless intellectual property claims, Intel declined to license certain of its own intellectual property to Intergraph and requested the return of certain microprocessor prototypes. Intel alleges that these actions were within Intel's contractual and intellectual property rights and were also protected by the First Amendment of the Constitution under the Noerr-Pennington doctrine. Intel denies that there were any computer manufacturers similarly situated to Intergraph and further denies that it had no reasonable belief that Intergraph had ever misused, could misuse, or would misuse such information or prototypes. Intel denies that it acted to create uncertainty about Intergraph's future source of supply of Intel microprocessors. Intel denies that it otherwise engaged in conduct to create a perception in the industry that Intergraph was no longer capable of bringing to market in a timely manner new products that incorporate Intel's latest microprocessor technology. Intel denies each and every remaining allegation of Paragraph 29.

30. Intel denies the allegations of Paragraph 30.

31. Intel denies the allegations of Paragraph 31.

32. Intel admits the allegations of Paragraph 32, except that Intel is without knowledge sufficient to admit or deny the allegation that Compaq Computer Corporation designs, develops, manufactures and sells "a full line" of computer system products and on that basis denies that allegation.

33. Intel admits the allegations of the first sentence of Paragraph 33. Intel admits that computer systems that incorporate Intel microprocessors constitute a significant part of

Compaq's business and that Compaq in 1997 was Intel's largest dollar and volume customer for microprocessor products. Intel denies that Compaq purchased more than \$2 billion worth of Intel microprocessors during 1997. Intel is without knowledge sufficient to admit or deny the other allegations of Paragraph 33 and on that basis denies each and every one of them.

34. Intel admits that Compaq brought a lawsuit as alleged in the first sentence of Paragraph 34 and that Intel intervened on Packard Bell's side after the subject of indemnification was raised. Intel denies each and every remaining allegation of Paragraph 34, including that Intel components were infringing and that Compaq's patents were valid.

35. Intel admits that after Compaq sued Intel alleging that Intel's products violated Compaq's intellectual property rights, Intel declined to provide Compaq with certain advance confidential technical information. Intel denies each and every remaining allegation of Paragraph 35.

36. Intel denies the allegations of Paragraph 36.

37. Intel denies the allegations of Paragraph 37.

38. Intel denies the allegations of Paragraph 38.

39. Intel is without knowledge sufficient to understand what the Complaint means by the terms "microprocessor-related technologies" and "related technologies," and on that basis denies the allegations to which they relate. Intel denies each and every remaining allegation of Paragraph 39.

40. Intel denies the allegations of Paragraph 40.

41. Intel denies the allegations of Paragraph 41.

42. Intel denies the allegations of Paragraph 42.

Except as specifically admitted and denied, Intel is without knowledge sufficient to admit or deny the allegations of the Complaint and on that basis denies them.

First Additional Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Additional Defense

The Complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act because the Federal Trade Commission has no reason to believe that Intel has violated the Federal Trade Commission Act.

Third Additional Defense

The Complaint fails to comply with 16 C.F.R. § 2.3 because this is a matter of private controversy and does not tend adversely to affect the public interest.

Fourth Additional Defense

Intel's efforts to protect its intellectual property rights through the judicial system, including discussions and negotiations in anticipation of litigation or in attempts to avoid litigation, are protected by the First Amendment to the United States Constitution and the Noerr-Pennington doctrine.

Fifth Additional Defense

Intel does not have a monopoly, is not likely to obtain a monopoly, and has never attempted to obtain a monopoly in any relevant market.

Sixth Additional Defense

Intel had legitimate business justifications for all of its conduct at issue in this matter.

Seventh Additional Defense

Intel has an absolute right to refuse to license or share its intellectual property, including confidential information.

Eighth Additional Defense

Intel's products, intellectual property, and proprietary information are not essential facilities in any relevant market.

Ninth Additional Defense

Intel did not infringe any valid patent belonging to companies named in the Complaint and one or more of such companies infringed valid patents belonging to Intel.

Tenth Additional Defense

Intel's conduct did not adversely affect competition in any relevant market.

WHEREFORE, Intel demands judgment dismissing the Complaint with prejudice and with costs and such other and further relief as is deemed just and proper.

Dated: July 13, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July, 1998, a copy of the foregoing Intel Corporation's Answer To Complaint was served by hand and U.S. Mail, first class postage prepaid, upon the following:

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