

1 LOWELL R. STERN
lowell.stern@usdoj.gov
2 United States Department of Justice
Antitrust Division
3 450 5th Street, N.W., Suite 8700
Washington, D.C. 20530
4 Telephone: (202) 307-0922
Facsimile: (202) 307-6283
5 Attorney for Plaintiff

6 MICHAEL E. ANTALICS
mantalics@omm.com
7 O'Melveny & Myers LLP
1625 Eye Street, N.W.
8 Washington, D.C. 20006
Telephone: (202) 383-5343
9 Facsimile: (202) 383-5414
Attorney for Defendant

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13	_____)	CASE NO.: 8:09-cv-00275-AG-AN
14	UNITED STATES OF AMERICA,)	
15	Plaintiff,)	STIPULATION REGARDING
16	v.)	PRESERVATION AND DISCOVERY OF
17	MICROSEMI CORPORATION,)	CERTAIN ELECTRONICALLY-STORED
18	Defendant.)	INFORMATION, DRAFT DOCUMENTS,
19	_____)	AND PRIVILEGED MATERIALS
)	DISCOVERY MATTER
)	Hon. Arthur Nakazato

20
21 WHEREAS, the United States and Microsemi Corporation
22 (collectively, the "Parties") are engaged in litigation in the
23 above-captioned matter;

24 WHEREAS, the Parties mutually seek to reduce the time,
25 expense and other burdens of discovery of certain
26 electronically-stored information and privileged materials, as
27
28

1 described further below, and to better define the scope of
2 their obligations with respect to preserving such information
3 and materials;

4 The Parties stipulate as follows:

5 1. Preservation Not Required for Not Reasonably
6 Accessible Electronically-Stored Information.

7 a. The Parties agree that except as provided in
8 subparagraph (b) below, the Parties need not
9 preserve the following categories of
10 electronically-stored information for this
11 litigation:

- 12 i. Voicemail messages;
13 ii. Electronic mail sent to or from a Personal
14 Digital Assistant (e.g., BlackBerry
15 handheld) provided that a copy of such
16 mail is routinely saved elsewhere;
17 iii. Other electronic data stored on a Personal
18 Digital Assistant, such as calendar or
19 contact data or notes, provided that a
20 copy of such information is routinely
21 saved elsewhere;
22 iv. Temporary or cache files, including
23 internet history, web browser cache and
24 cookie files, wherever located; and
25 v. Server, system or network logs.

26 b. Notwithstanding subparagraph (a), if on the
27
28

1 date of this stipulation either Party has a
2 policy established by management that results
3 in the routine preservation of any of the
4 categories of information identified in
5 subparagraph (a), such Party shall continue to
6 preserve such information in accordance with
7 its policy. The Parties shall have no
8 obligation, in response to general discovery
9 requests, to search for, produce, or create
10 privilege logs for electronically-stored
11 information covered by this subparagraph (b),
12 but each Party reserves the right to the search
13 and production of such information upon
14 specific request.

15 2. Obligations Related to "Draft" Documents Generally,
16 Draft Expert Reports and Disclosures, Expert Communications
17 with Counsel, and "Non-Identical" Documents.

18 a. The Parties agree for the purposes of this
19 litigation that the obligation to preserve
20 potential evidence extends to draft documents.
21 However, for the purposes of preserving
22 potentially discoverable information in this
23 litigation, and for the purposes of discovery
24 in this litigation, the Parties agree that a
25 "draft" document, regardless of whether it is
26 in an electronic or hard copy form, shall mean,
27
28

1 "a version of a document shared by the author
2 with, or viewed by, another person (by email,
3 print, or otherwise)." The Parties agree that
4 they need not preserve for discovery a document
5 before and after every change made to it, so
6 long as "draft" documents, as defined by this
7 paragraph, are preserved.

8 b. The Parties agree that drafts of any report or
9 disclosure required under Fed. R. Civ. P.
10 26(a)(3) need not be preserved, regardless of
11 the form of the draft.

12 c. The Parties agree that the following documents
13 need not be preserved, unless otherwise
14 required to be disclosed or produced under Fed.
15 R. Civ. P. 26(a)(2):

16 i. Any form of written communication or
17 correspondence between any Party's counsel
18 and its expert(s);

19 ii. Written communication or correspondence
20 between the expert(s) and their staff; and

21 iii. Experts' notes.

22 d. The Parties agree that they shall preserve any
23 presently existing "non-identical" documents
24 that are relevant to the subject matter
25 involved in this action. A "non-identical"
26 document is one that shows at least one facial
27

1 change such as the inclusion of highlights,
2 underlining, marginalia, attachments,
3 revisions, or the inclusion of tracked changes,
4 or has a difference in metadata.

5 e. Nothing in this agreement shall be construed to
6 limit the discoverability of documents, data,
7 or other information considered by any expert
8 in forming his or her opinions. Moreover,
9 nothing in this agreement shall otherwise
10 modify or eliminate any requirements with
11 respect to experts contained in Fed. R. Civ. P.
12 26(a)(2) or any applicable Local Rule.

13 3. Preservation Not Required for Certain Classes of
14 Privileged Documents. The Parties agree that they need not
15 preserve documents falling into the following classes:

- 16 a. Documents sent solely between outside counsel
17 for Microsemi;
18 b. Documents sent solely between outside counsel
19 for Microsemi and Microsemi;
20 c. Documents authored by Microsemi's counsel, that
21 were not directly or indirectly furnished to
22 any third party, such as internal memoranda;
23 d. Documents sent solely between counsel of the
24 United States;
25 e. Documents sent solely between counsel of the
26 United States Department of Justice, Antitrust
27
28

1 Division and employees of the United States;
2 and

3 f. Documents authored by counsel of the United
4 States that were not directly or indirectly
5 furnished to any third party, such as internal
6 memoranda.

7 The term "counsel" is understood to include counsel's
8 agents, employees, and representatives providing assistance in
9 the provision of legal services.

10 4. No Discovery of Material Not Required To Be
11 Preserved. The Parties agree not to seek discovery of items
12 that need not be preserved pursuant to paragraphs 1 through 3,
13 above. If any discovery request is susceptible of a
14 construction which calls for the production of items that need
15 not be preserved pursuant to paragraphs 1 through 3, such
16 items need not be provided or identified on a privilege log
17 pursuant to Fed. R. Civ. P. 26(b)(5).

18 5. Preservation Does Not Affect Discoverability or
19 Claims of Privilege. The Parties agree that by preserving
20 information for the purpose of this litigation, they are not
21 conceding that such material is discoverable, nor are they
22 waiving any claim of privilege. Except as provided in
23 paragraph 4, above, nothing in this stipulation shall alter
24 the obligations of the Parties to provide a privilege log for
25 material withheld under a claim of privilege.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of May, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson
Darin J. Glasser
O'Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660-6429

Michael E. Antalics
Benjamin G. Bradshaw
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

_____/s/_____
Lowell R. Stern
Attorney for Plaintiff

1 LOWELL R. STERN
lowell.stern@usdoj.gov
2 United States Department of Justice
Antitrust Division
3 450 5th Street, N.W., Suite 8700
Washington, D.C. 20530
4 Telephone: (202) 307-0922
Facsimile: (202) 307-6283
5 Attorney for Plaintiff

6 MICHAEL E. ANTALICS
mantalics@omm.com
7 O'Melveny & Myers LLP
1625 Eye Street, N.W.
8 Washington, D.C. 20006
Telephone: (202) 383-5343
9 Facsimile: (202) 383-5414
Attorney for Defendant

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 _____)
14 UNITED STATES OF AMERICA,) CASE NO.: 8:09-cv-00275-AG-AN
15 Plaintiff,) **ORDER APPROVING STIPULATION**
16 v.) **REGARDING PRESERVATION AND**
17 MICROSEMI CORPORATION,) **DISCOVERY OF CERTAIN**
18 Defendant.) **ELECTRONICALLY-STORED**
19 _____) **INFORMATION, DRAFT DOCUMENTS,**
AND PRIVILEGED MATERIALS
DISCOVERY MATTER
Hon. Arthur Nakazato

20 The Court has read and considered the Stipulation
21 Regarding Preservation and Discovery of Certain
22 Electronically-Stored Information, Draft Documents, and
23 Privileged Materials, filed on May 22, 2009, ("Stipulation")
24 by the United States of America and Microsemi Corporation.
25
26
27
28

1 For the reasons stated in the Stipulation and for good cause
2 shown, the Court hereby APPROVES the Stipulation.

3 SO ORDERED this ____ day of _____, 2009.

4
5 _____
6 Hon. Arthur Nakazato
7 United States Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28