

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW MEXICO

STC.UNM
Plaintiff
v.
Civil Action No. 10-CV-01077

INTEL CORPORATION
Defendant
(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sandia National Laboratories
1515 Eubank SE, Albuquerque, NM 87123

[X] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:
Please see Attachment A

Table with 2 columns: Place and Date and Time. Place: Atkinson, Thal & Baker, P.C. 505-764-8111, 201 Third Street, NW, Suite 1850, Albuquerque, NM 87102. Date and Time: April 4, 2012, 5:00 p.m.

[] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: March 30, 2012

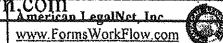
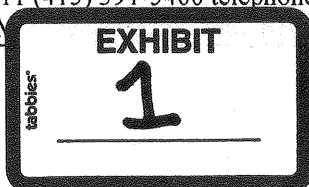
CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk
Attorney's signature
Paven Malhotra

The name, address, e-mail, and telephone number of the attorney representing (name of party) Intel Corporation

who issues or requests this subpoena, are:
Robert A. Van Nest, Brian L. Ferrall, Matthew M. Werdegar, Benedict Y. Hur, Paven Malhotra, Kecker & Van Nest LLP
710 Sansome Street, San Francisco, CA 94111 (415) 391-5400 telephone
RVanNest@kvn.com, BFerrall@kvn.com, M...@kvn.com, PMalhotra@kvn.com



Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A

Pursuant to Federal Rule of Civil Procedure 45, Sandia National Laboratories is requested to produce all documents requested below.

DEFINITIONS

1. "STC.UNM" means the Plaintiff and any of its present or former affiliates, predecessors, successors, subsidiaries, joint ventures, departments, divisions, assigns, any other legal entities that are wholly or partially owned or controlled by STC.UNM, either directly or indirectly, and the employees, agents, directors, officers, representatives, principals, consultants, accountants, and attorneys of those same entities.

2. "UNM" means the University of New Mexico and any of its present or former affiliates, predecessors, successors, joint ventures, subsidiaries, departments, divisions, assigns, the Board of Regents of the University of New Mexico, all schools and colleges within the University of New Mexico, the Center for High Technology Materials, and other legal entities that are wholly or partially owned or controlled by the University of New Mexico, and the employees, agents, directors, officers, representatives, principals, consultants, accountants, and attorneys of those same entities.

3. "'998 patent" refers to United States Patent No. 6,042,998.

4. "'998 inventors" refers to all alleged inventors of the '998 patent, including but not limited to the persons identified in the issued patent, the persons identified in the Certificate of Correction filed with the USPTO, and any other person who invented, in whole or in part, any invention allegedly disclosed by the '998 patent.

5. "'321 patent" refers to United States Patent No. 5,705,321.

6. "'321 inventors" refers to all alleged inventors of the '321 patent, including but

not limited to the persons identified in the issued patent and any other person who invented, in whole or in part, any invention allegedly disclosed by the '321 patent.

7. "835 patent" refers to United States Patent No. 5,415,835 and RE 36,113.

8. "835 inventors" refers to all alleged inventors of the '835 patent, including but not limited to the persons identified in the issued patent and any other person who invented, in whole or in part, any invention allegedly disclosed by the '835 patent.

9. "Related Patent" and "Related Patents" shall mean any patent or patent application that shares any part of its written description with the written description of any U.S. Patent, or shares, discloses, or claims any subject matter in common with any U.S. Patent. "Related Patent" and "Related Patents" includes both United States and non-U.S. patents and patent applications, without limitation.

10. "Counterpart" or "Counterparts" means and includes, with respect to any specific patent or application for a patent, all U.S. and non-U.S. patents and patent applications that claim a benefit from or to said patent or application or that share a common ancestor patent application.

11. As used herein, "all" and "any" mean all, any, each and every.

12. The terms "and," "or," and "and/or" shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive.

13. "Document" has the same broad meaning as used in Rule 34 of the Federal Rules of Civil Procedure and the Federal Rules of Evidence and shall include any written, printed, recorded, or graphic matter, regardless of the medium on which it is produced, reproduced, or stored, including without limitation, anything that can be classified as a "writing," "original," or "duplicate," letters, correspondence, memoranda, notes, reports, records, agreements, working papers, communications (including intradepartmental and interdepartmental communications),

summaries or records of conversations, calendars, diaries, forecasts, statistical statements, graphs, laboratory or research reports and notebooks, charts, minutes or records of conferences, reports or summaries of interviews, reports or summaries of investigations, opinions or reports of consultants, patent and patent application materials, patent appraisals, printed publications, certificates of registration, opinions of counsel, memoranda of agreements, assignments, licenses, reports or summaries of negotiations, bulletins, material and manufacturing Specifications, material packaging, manufacturing logs, functional specifications, equipment specifications and operating information. product packaging, designs, logic simulation or emulation materials, instructions, advertisements, literature, work assignments, drafts, data sheets, worksheets, charts, contracts, minute books of account, orders, invoices, statements, bills, checks, vouchers, photographs, drawings, presentations, spreadsheets, catalogs, brochures, computer files, computer disks, articles, manuals, pamphlets, knowledge base documents, technical support documents, application notes, circulars, press releases, books, web pages, instruments, tapes, electronic communications including but not limited to emails, telegraphic communications and all other material of any tangible medium of expression. Any document bearing marks, including without limitation, initials, stamped indicia, comments, or notations not a part of the original text or photoliaphic reproduction thereof, shall be considered a separate document for purposes of these requests.

14. "Communication" means any exchange or transmission of information by any means, including any form of telephonic, computer or face-to-face conversation, any type of written document in paper, electronic, telegraphic or other form, and any other type of electronic or computer exchange or transmission.

15. "You," "your" or "yours" means Sandia National Laboratories and its officers,

directors, employees, agents, representatives, attorneys, and assigns.

16. "Person" or "persons" shall mean an individual, company, corporation, proprietorship, partnership, association, or any other entity, including educational institutions and divisions, departments or other affiliates of any such educational institution.

17. "Prior art" encompasses all patents, publications, references, subject matter, events, or other matter set forth in or relevant under 35 U.S.C. §§ 102 and 103.

18. "USPTO" shall mean the United States Patent and Trademark Office.

19. "Howard Sobelman" refers to attorney Howard I. Sobelman, USPTO Reg. No. 39,038, an attorney involved with prosecution of the '998 patent, and his employees, agents, representatives and assigns.

20. "Snell & Wilmer" refers to the law firm of Snell & Wilmer LLP and its predecessors, successors, shareholders, partners, employees, agents, representatives and assigns.

21. "Timothy Hsieh" refers to attorney Timothy M. Hsieh, USPTO Reg. No. 42,672, an attorney involved with filing a Certificate of Correction relating to the '998 patent, and his employees, agents, representatives and assigns.

22. "MH2" refers to the law firm of MH2 Technology Law Group, LLP, the law firm of Min, Hsieh & Hack, LLP, and their predecessors, successors, shareholders, partners, employees, agents, representatives and assigns.

23. "Richard Lazarus" refers to attorney Richard Bernard Lazarus, USPTO Reg. No. 48,215, an attorney involved with filing a Certificate of Correction relating to the '998 patent, and his employees, agents, representatives and assigns.

24. "Barnes & Thornburg" refers to the law firm of Barnes & Thornburg LLP and its predecessors, successors, shareholders, partners, employees, agents, representatives and assigns.

25. "Stadheim & Grear" refers to the law firm of Stadheim & Grear LLP and its predecessors, successors, shareholders, partners, employees, agents, representatives and assigns.

26. "Bruce Draper" refers to Sandia National Laboratories employee Bruce L. Draper, who is named as an inventor of the '321 patent, and whose mailstop at Sandia National Laboratories is 1084.

27. "Sematech" refers to Sematech, Inc. and its predecessors, successors, parents, subsidiaries, officers, directors, employees, agents, representatives, attorneys, and assigns.

DOCUMENT REQUESTS

1. All documents relating to the '998 patent, the '321 patent, the '835 patent, and any Related Patents or Counterparts that have come into your possession since November 23, 2011.

2. All documents relating to or containing communications you have had with any person, including but not limited to the USPTO, STC.UNM, Howard Sobelman, Snell & Wilmer, Timothy Hsieh, MH2, Richard Lazarus, Barnes & Thornburg, Stadheim & Grear, the '321 inventors, the '998 inventors, and/or the '835 inventors relating to United States patent application 490,101, United States patent application 08/932,428, the '321 patent, the '998 patent, the '835 patent, and/or any Related Patent(s) or Counterpart(s) that have come into your possession since November 23, 2011.

3. All documents constituting or relating to any former or existing agreement between you and UNM, STC.UNM, any law firm representing UNM or STC.UNM, or any other entity with an ownership right in or a right to any proceeds or compensation from the licensing of or litigation relating to the '321 patent, the '998 patent, or the '835 patent that have come into your possession since November 23, 2011.

4. All documents constituting or relating to any former or existing agreement between Bruce Draper and UNM, STC.UNM, any law firm representing UNM or STC.UNM, or any other entity with an ownership right in or a right to any proceeds or compensation from the licensing of or litigation relating to the '321 patent, the '998 patent, or the '835 patent that have come into your possession since November 23, 2011.

5. All documents relating to any former or existing agreement between you, STC.UNM, UNM, and/or any '321 inventor, '998 inventor, or '835 inventor, on the one hand, and Sematech, on the other hand, relating to the subject matter, technology(ies) or invention(s) purportedly described in the '321 patent, the '998 patent, the '835 patent, any Related Patent(s), and/or any Counterpart(s) that have come into your possession since November 23, 2011.

6. All documents and communications relating to any litigation or threatened litigation involving the '321 patent, the '998 patent, the '835 patent, any Related Patents, and/or any Counterparts that have come into your possession since November 23, 2011.

7. All documents relating to any ownership interest in or assignment of any rights relating to the '321 patent, the '998 patent, the '835 patent, any Related Patents, and/or any Counterparts that have come into your possession since November 23, 2011.

8. All documents and communications relating to your financial interest in the '321 patent, the '998 patent, the '835 patent, including any financial interest in any licensing of one or more of those patents, and/or the outcome of any investigation, litigation or other proceeding involving one or more of those patents that have come into your possession since November 23, 2011.

9. All documents constituting or relating to any agreement between you and Bruce Draper that have come into your possession since November 23, 2011.

10. All documents and communications relating to your relationship with any of the '321 inventors, the '998 inventors, or the '835 inventors that have come into your possession since November 23, 2011.

11. All documents and communications relating to Bruce Draper's relationship with the other '321 inventors, the '998 inventors, or the '835 inventors that have come into your possession since November 23, 2011.

12. All documents constituting or relating to any invention assignments from Bruce Draper to you that pertain to the subject matter, technology(ies) or invention(s) purportedly described in the '321 patent, the '998 patent, the '835 patent, any Related Patent(s), and/or any Counterpart(s) that have come into your possession since November 23, 2011.

13. All documents relating to efforts to license or actual licensing of the '321 patent, the '998 patent, the '835 patent, any Related Patents, and/or any Counterparts that have come into your possession since November 23, 2011.

14. All documents relating to United States Department of the Navy Grant No. N 6600 1-96-C-8617 that have come into your possession since November 23, 2011.

15. All documents relating to the United States Department of Energy Contract No. DE-FI0404-93AL83300 that have come into your possession since November 23, 2011.

16. All communications you have had with the United States government, including but not limited to the United States Department of Energy, since November 23, 2011 that concern the '321 patent, the '998 patent, or the '835 patent.