

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

BISWAMOHAN PANI,

Defendant

Case No. 4:08 CR 40034-FDS

VIOLATIONS:

18 U.S.C. § 1832 (Theft of Trade Secrets)

18 U.S.C. § 1343 (Wire Fraud)

18 U.S.C. § 981(a)(1)(C) (Forfeiture)

18 U.S.C. § 1834 (Forfeiture)

28 U.S.C. § 2461(c) (Forfeiture)

INDICTMENT

The Grand Jury charges that at all times relevant, unless specified otherwise:

PARTIES

A. Intel Corporation

1. Intel Corporation is one of the world's leaders in designing and manufacturing semiconductor (microprocessor) chips. A microprocessor is essentially a central processing unit ("CPU") on an integrated circuit chip that allows a computer to process information in an efficient and cost-effective manner.

2. Intel manufactures chips at its Hudson, Massachusetts facility, which also houses Intel's Massachusetts Microprocessor Development Center ("MMDC"), which engineers and develops the company's next generation of microprocessors.

B. BISWAMOHAN PANI

3. In May 2003, Intel acquired a facility in Massachusetts at which PANI was working and hired PANI as a Design Engineer in the MMDC. PANI remained as a Design Engineer throughout his tenure with Intel and was a relatively low-level engineer on the projects on which he worked.

4. From the outset of his employment with Intel, PANI was assigned to design small subsections of Intel's next-generation Itanium® microprocessors. This line of microprocessors is

designed for use in high-performance computer systems to ensure that data is not lost in mission-critical applications.

C. Advanced Micro Devices, Inc.

5. Advanced Micro Devices, Inc. (“AMD”), is another microprocessor designer and manufacturer, and is one of Intel’s major competitors.

PANI’S SCHEME TO OBTAIN INTEL’S TRADE SECRETS

A. Working for AMD and Intel Simultaneously

6. As early as February 2008, if not earlier, PANI was looking for jobs outside Intel. PANI’s managers did not know this at the time.

7. On or about March 27, 2008, PANI was offered a job at AMD. PANI and AMD initially negotiated a start date of May 1, 2008, but PANI moved that date a number of times. They ultimately settled on a start date of June 2, 2008.

8. On May 29, 2008, just four days before his June 2, 2008 start date at AMD, PANI resigned from Intel, saying that his last day at Intel would be June 11, 2008 and that he would spend his time away from the office using up his accrued vacation time, after which he would return to Intel for his last day on the 11th.

9. Explaining his resignation, PANI falsely told Intel that he was leaving because “a hedge fund had showed some interest in letting [him] apply [his] option-trading strategy for one of their multi-million\$ accounts,” he might “dabble in that for a few months,” and he needed time to “rest, reflect, and rejuvenate.” PANI also falsely told Intel said that he planned to use the first two days of his vacation investigating the hedge fund opportunity and the rest of his vacation helping his wife move from an Intel job in California to an Intel job in Massachusetts, which PANI had helped her secure.

10. Notwithstanding these statements to Intel, PANI started working at AMD on June 2, 2008. Yet PANI remained on Intel’s payroll and had access to Intel’s computer system through June 11, 2008. PANI’s access to the company’s facilities was not terminated before the 11th because Intel

did not know that PANI would be working for a competitor. Had Intel known, it would have terminated him immediately and cut off his access to the company's computer system.

B. Theft of Trade Secrets and Confidential Proprietary Business Information

11. From June 8 through June 11, 2008, while on both Intel's and AMD's payrolls, PANI used his Intel-issued laptop computer to access Intel's computer network from outside the company and thereby download 13 "top secret" (according to Intel's internal classification system) Intel documents.

12. PANI copied the downloaded files to an external hard drive, so he would have a copy after returning his Intel-issued laptop.

13. The downloaded documents included mission-critical documents describing in detail the processes Intel uses for designing its newest generation of microprocessors.

14. PANI had no work-related reason to view or download these documents between June 8 and June 11, 2008: he had not been in the office for several days, was no longer performing any Intel work, and was purportedly on vacation. Moreover, some of these documents were related to projects that he had never worked on.

15. PANI downloaded these documents while he was within the District of Massachusetts. The computers he downloaded them from were located in California.

C. False Statements During June 11 Exit Interview

16. On June 11, PANI returned to Intel and attended his exit interview. During this interview, PANI reaffirmed his confidentiality obligations and falsely told Intel that he had returned all of Intel's property, including any documents or computer data. Although PANI finally admitted that he was joining AMD after being asked about this by his exit interviewer, PANI did not tell Intel that he had downloaded and copied the top secret documents and other confidential information.

D. June 13 Attempt to Access Intel's System Again

17. The top secret documents that PANI downloaded had been encrypted by Intel, and therefore required special steps for PANI to review them after disconnecting from Intel's computer

network. During his accesses of Intel's system between June 8 and June 11, PANI had downloaded another document that explained how he could review them when not connected to Intel's computer network. But at that point, PANI did not complete all the steps necessary to review those documents offline.

18. On or about June 13, 2008, two days after PANI's final day as an Intel employee, PANI attempted to gain access to Intel's computer network once again. PANI passed the very first login step because a copy of his Intel laptop — which Intel had not known about or approved — supplied the credentials necessary for the very first login step. But PANI got no farther, because the subsequent login steps required PANI to use his user identification, which Intel had disabled on or around June 11, following PANI's exit interview and his last day as an Intel employee.

E. Intel Documents at PANI's residence on July 1, 2008

19. On and before July 1, 2008, PANI kept at his residence eight Intel documents that Intel had classified, according to its internal classification system, as confidential, secret, and top secret. Of those eight documents, two had no relevance to PANI's position at Intel. In addition, three of the documents concerned technology which had no AMD equivalence and had not been released to the marketplace. During his resignation and exit interview, PANI did not tell Intel that he still had these documents at home.

F. Intel's Trade Secrets and Confidential Proprietary Information

20. Through considerable investment in research and development and other resources, Intel has increased its microprocessors' capacity, functionality and speed over the years without increasing their physical size dramatically.

21. Intel is currently developing plans for building even more efficient and powerful microprocessors two generations out from its current technology. It is critical to Intel's success that the designs and manufacturing methods for its future products remain secret. Intel's competitors could benefit greatly from this secret knowledge by knowing what benchmark they will need to compete against and by possibly using Intel's secret methods and designs themselves without

incurring the research and development costs that Intel has expended.

22. The Intel documents that PANI downloaded, copied, concealed, and possessed, as described in the preceding paragraphs, included confidential proprietary information. They also contained trade secrets, in that they were secret, Intel took reasonable measures to keep them secret, they were not generally known or readily ascertainable to the public or people outside Intel in the field of microprocessor design or production, and they derived value from being kept secret.

23. This information was worth more than \$1 billion in research and development costs.

G. Intel's Security Measures

24. Intel takes many steps to protect its trade secrets and its confidential proprietary information.

25. Intel requires all employees – including PANI – to sign a confidentiality agreement to refrain from disclosing confidential information to third parties and from using such information for personal purposes. Intel also enforces an Information Security Business Code of Conduct, which employees – again including PANI – also must sign when their employment begins. Intel also requires employees to participate in annual security and confidentiality training.

26. Intel restricts physical access to its Hudson facility and requires visitors to register and wear badges.

27. Intel restricts access to its computer systems, by maintaining advanced computer security systems and by protecting all of its trade secret and confidential proprietary information with passwords.

28. Intel maintains an encrypted document management system, which serves as the secure repository for Intel's manufacturing, production, and development process documents that are classified as Intel Restricted Secret or Intel Top Secret, which are Intel's most restricted document classification levels. The system records an employee's access and downloading, and, in certain instances, viewing, of confidential and proprietary documents.

29. Intel permits authorized employees, which included PANI while he was solely an

employee of Intel, to access the system while off-site, through Intel's virtual private network ("VPN"). Intel's VPN uses encryption, security software, and other security devices, such as identification tokens and passcodes, to ensure that only authorized users can access Intel's network and that the data cannot be intercepted.

30. When an employee leaves the company, and that employee has had access to Intel's proprietary information and trade secrets, as PANI had, Intel asks the employee to acknowledge his or her confidentiality and trade secret obligations and to confirm that he or she has returned all confidential information and documents to the company.

H. AMD

31. AMD neither requested the information that PANI had downloaded and kept from Intel, nor knew that PANI had taken or would take this information.

32. Nevertheless, PANI planned to use this information to advance his career at AMD or elsewhere by drawing on it when the opportunity arose, whether with his employer's knowledge or not.

COUNT ONE
Theft and Attempted Theft of Trade Secrets
18 U.S.C. § 1832

33. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1-32 of this Indictment, and further charges that:

From approximately June 8 through July 1, 2008, in the District of Massachusetts and elsewhere, the defendant,

BISWAMOHAN PANI,

with the intent to convert a trade secret that is related to and included in a product that is produced for and placed in interstate and foreign commerce — specifically, documents in electronic and paper format describing in detail the processes that Intel Corporation uses for designing its newest generation of microprocessors — to the economic benefit of someone other than Intel — namely, PANI and AMD — and knowing and intending that the offense would injure Intel, did knowingly obtain by fraud and deception, steal, conceal, and without authorization appropriate, take, carry away, copy, duplicate, download, and replicate such information, and did possess such information knowing it to be stolen and appropriated, obtained, and converted without authorization, and attempted to do so.

All in violation of Title 18, United States Code, Section 1832.

COUNTS 2-5
Wire Fraud
18 U.S.C. § 1343

34. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1-32 of this Indictment and charges that:

On and about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

BISWAMOHAN PANI,

having devised and intending to devise a scheme to defraud Intel of its property — namely, its confidential proprietary information — by means of material false and fraudulent pretenses, representations, promises, and omissions, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, and pictures for the purpose of executing the scheme:

Count	Date	Wire Communication
2	June 8, 2008	Logging on from Massachusetts to Intel's computer system in California and downloading documents
3	June 10, 2008	Logging on from Massachusetts to Intel's computer system in California and downloading documents
4	June 11, 2008	Logging on from Massachusetts to Intel's computer system in California and downloading documents
5	June 13, 2008	Attempting to log on from Massachusetts to Intel's computer system in California for the purpose of accessing and downloading documents

All in violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATIONS

18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c); 18 U.S.C. § 1834

35. The Grand Jury realleges and incorporates by reference the allegations in paragraphs 1-34 of this Indictment, and further charges as follows.

36. Upon conviction of any offense in violation of 18 U.S.C. § 1343 alleged herein, the defendant,

BISWAMOHAN PANI,

shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses.

37. Upon conviction of any offense in violation of 18 U.S.C. § 1832 alleged herein, the defendant,

BISWAMOHAN PANI,

shall forfeit to the United States, pursuant to 18 U.S.C. § 1834(a), (1) any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as the result of such violation; and (2) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of such violation. Such property includes:

- a. An IBM Think Pad laptop computer;
- b. A metal 250GB external Iomega USB hard drive, silver in color, bearing serial number FRBG38044E.

38. If any of the property described in paragraph 37 hereof as being forfeitable, as a result of any act or omission of the defendant —

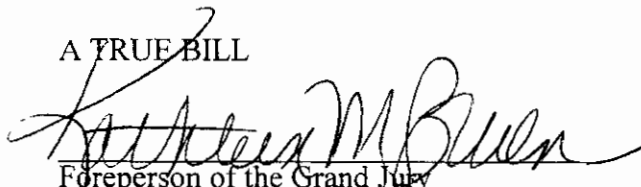
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or

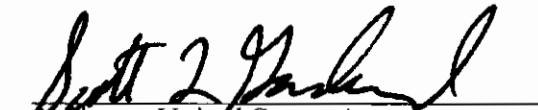
e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to 28 U.S.C. § 2461(c) and 18 U.S.C. § 1834(b), incorporating 21 U.S.C. § 853(p), to seek forfeiture of all other property of the defendant up to the value of the property described in subparagraphs a through e of this paragraph.

All pursuant to Title 18, United States Code, Section 981, Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 1834.

A TRUE BILL

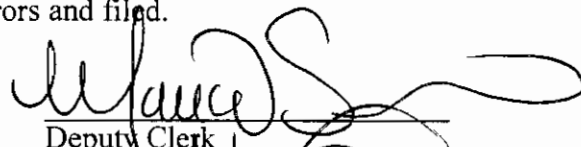

Foreperson of the Grand Jury


Assistant United States Attorney

DISTRICT OF MASSACHUSETTS

November 5, 2008

Returned into the District Court by the Grand Jurors and filed.


Deputy Clerk
11/5/08
1:07