February 11, 2008

Jennifer Choe Groves
Director for Intellectual Property and Innovation and Chair of the
Special 301 Committee,
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508
FR0606@ustr.eop.gov

RE: United States Trade Representative's Special 301 Request for Public Comment Submission by Intel Corporation - ***Indonesia***

Dear Ms. Groves:

Intel Corporation of Santa Clara, California hereby submits its comments concerning Indonesia in accordance with the United States Trade Representative's Request for Public Comment as referenced above.

Summary

Intel is independently valued as the 7th most valuable brand in the world at an estimated worth of USD 31.0 billion in 2007. It has been cited in various media as one of the top global brands for over a decade. However, for over a decade in Indonesia, Intel has suffered at the hands of infringers and an ineffective court system. Accordingly, since 2001, Intel has filed Special 301 Review submissions concerning Indonesia with the Office of the Trade Representative. Submissions were made on February 15, 2001, March 16, 2001 (a supplemental petition), February 13, 2002, October 29, 2002 (an Out-of-Cycle Review), February 12, 2003, February 13, 2004, February 11, 2005, December 2, 2005, September 20, 2006 (Out-of-Cycle Review) and 12 February 2007. In each of these submissions, Intel has highlighted the inadequate protection of well-known marks and trade names and the unreasonable delays in the Indonesian judicial process.

In our last submissions, Intel was pleased to inform that the Indonesian Supreme Court ruled in Intel's favor in the Intel Jeans case holding that that the INTEL mark was well-known at the time of the adoption of the Intel Jeans mark in 1996 and the INTEL mark should be protected regardless of the dissimilarity of the goods to those of Intel. With that decision, we were certainly hopeful that Indonesia had turned a corner towards being more transparent in its judicial process and adherence to international norms and trademark principles. Unfortunately,

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2200 Mission College Blvd.
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since our last submission, the Supreme Court rejected Intel's appeal in the Panggung case, confirming our reservations expressed in last year's USTR filing.

By way of background, Intel lost in earlier litigation filed in 1993 (including two appeals to the Supreme Court) challenging Panggung's infringing use and registration of the INTEL mark for TVs and other consumer electronics goods (hereafter "the Original Panggung Registrations"). This series of rulings against Intel was (and remains) contrary to Indonesian law and TRIPS because the decisions clearly fail to give adequate protection to well-known marks and trade names despite Indonesia's obligations to do so under Articles 6bis and 8 of the Paris Convention and TRIPS Articles 16 and 41.1. Furthermore, the Court's seven year delay in deciding the first case, nine-month delay in serving Intel's counsel with the final decision, and the Supreme Court's failure to set forth any reasoning behind its decision (in either its first or second opinion) are clear breaches of TRIPS Article 41.3 which states that decisions must be reasoned and made available to the parties to the proceeding without undue delay. However, Intel had no further avenue of appeal and has therefore been forced to tolerate Panggung's continuing ownership of a clearly infringing mark and registrations, which could preclude Intel's ability to expand the use of its INTEL mark to other electronics products in Indonesia, including those that are closely related to Intel's current business and are natural areas of expansion for Intel.

Thereafter, Panggung raised the stakes by applying to register a new stylized version of the INTEL mark in 2004 in a number of classes for a variety of goods (hereafter "the 2004 Applications").

In order to have any chance in successfully opposing or otherwise challenging the 2004 Applications, Intel needed to find a way to cancel the Original Panggung Registrations that were the subject of the 1993 proceeding, because these older registrations formed a basis for the Indonesian trademark office to accept the 2004 Applications. Therefore, in 2006, Intel filed new non-use deletion actions against the Original Panggung Registrations in the Commercial Court based on Panggung's failure to use the mark for the various registered goods for at least the three years prior to the filing of the actions, which is the legal standard for non-use.

Intel clearly proved non-use for the requisite period, and the court accepted Intel's compelling evidence of non-use for even longer than the required three-year period. Nevertheless, the Commercial and Supreme Courts refused to reach the correct ruling because Intel had not proved the precise date of last use, a nearly impossible burden of proof created by the courts and not required under Indonesian law or any international treaties or practice. Thus, as a last and final effort to try to recover its mark, on 8 December 2007, Intel filed a final reconsideration action before the Supreme Court arguing that both the earlier decisions erred in law by wrongly requiring Intel to prove an exact date of last use when the 3 year minimum period of non-use was more than satisfied. The final reconsideration action is pending before a different panel of Supreme Court judges and a decision is expected in 1 – 2 years.

Finally, because the court has allowed the Original Panggung Registration to subsist, Panggung has been able to oppose Intel's trademark application for its new Corporate Logo that also includes goods not listed in our original registrations, demonstrating the junior mark holder's

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(Panggung) ability to preclude the valid commercial use and expansion of the mark by the senior rights holder (Intel) of a famous global brand.

Intel's Request

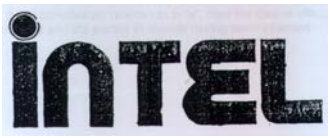
In November 2006, when Indonesia was removed from Priority to Watch List due to improvements in copyright enforcement, the USTR review also concluded that sustained efforts and continued progress would be essential to avoid a return to the Priority Watch List. With the decisions in the Panggung case, clearly progress has not continued in all aspects of IPR protection.

Therefore, Intel requests that Indonesia be returned to the Priority Watch List, or, alternatively, that conditions for remaining on the Watch List would necessarily require a transparent judicial and legal system not subject to undue influence and prejudicial delay, along with well reasoned application of the laws consistent with Indonesia's statutes, compliance with TRIPS, and international norms and practices. Doing so would make great strides in creating an economic climate that encourages foreign investment.

Accordingly, Intel asks that unless Indonesia can move forward to demonstrate continued IPR protection including for trademarks (a right that strives to protect consumers from making erroneous purchasing decisions because of a likelihood of confusion as to the source of goods/services), USTR should return Indonesia to the Priority Watch list. Intel further requests whatever assistance the Office of the U.S. Trade Representative can provide to bring Intel's untenable situation to the attention of IP and court authorities in Indonesia. It should also be noted that the deletion of Panggung's INTEL marks based on non-use would not impact the viability and/or sustainability of Panggung's business.

Detailed Analysis - The Panggung History

Intel has sought for fifteen years without success to remove the registrations of, and prevent use of, the INTEL mark on TV's and other consumer electronics by a large Indonesian company, P.T. Panggung. Intel registered the INTEL mark in Indonesia in 1984. PT Panggung registered its INTEL mark two years later in 1986 in Class 9 for TVs and other classes for a variety of other consumer electronics products:



1993 Prior Rights Cancellation Actions

Intel filed its first complaint in January 1993 to cancel Panggung's registrations on various grounds, including likelihood of confusion with Intel's well-known trademark and company name (*Intel v. P.T. Panggung Electronics Industries).* Despite numerous appeals, the Courts refused to cancel Panggung's registrations of the INTEL mark and, in so doing, effectively

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blessed the infringing registrations of the INTEL mark by Panggung. Thus, the decisions demonstrated the failure of the Indonesian Courts to give adequate protection to well-known marks and trade names despite its obligations to do so under Articles 6bis and 8 of the Paris Convention and TRIPS Articles 16 and 41.1. Moreover, the Court's numerous delays and lack of reasoning were further breaches of TRIPS Article 41.3, which states that decisions must be reasoned and made available to the parties to the proceeding without undue delay.

As a result, Intel has been forced to suffer abuse of its famous INTEL mark in that by granting rights to Panggung in the INTEL mark for TVs and consumer electronics products, the decision effectively prevents Intel from expanding use of its own INTEL brand to other electronics products in Indonesia, including those that are closely related to Intel's current business and are natural areas of expansion for Intel. In addition, Intel must face the prospect of eventual infringement by Panggung and confusion in the marketplace should it recommence use under any of its registrations (original and newly registered).

Panggung's New Applications and Intel's Second Round of Challenges

As noted in our last three Section 301 submissions, as a result of the decisions in the Prior Rights action, in 2004 Panggung filed new trademark applications for the INTEL mark in the same classes, specifically 7, 9, 10, 11, 15 and 20, also for a variety of goods such as miscellaneous household appliances, equalizers and related equipment, etc. in the stylization shown below:

Intel timely opposed these new 2004 Applications in 2006 by Panggung on 13 March 2006. However, the registrations were granted in record time. Intel understands that it takes about 12-18 months from the decision to register a mark to the certificates being ready for collection by the registrant. In the instant situation, the certificates were collected within 1 month of registration! Thus, a process that normally takes at least 2 years was completed in less than 1. Oddly enough, the certificates were issued 1 day after the decision in the non-use action was rendered (noted below) certainly inferring that they were ready in advance.

New Commercial Court Actions Against Panggung: Deletion Actions based on Non-Use.

Since the Original Panggung Registrations, which were the subject of the prior rights cancellations, still subsist and form the basis for Panggung to claim rights in the INTEL mark and any future use and/or registrations (e.g. the 2004 Applications), it was essential for Intel to cancel them. Accordingly, in May 2006, Intel filed two deletion actions before the Jakarta Commercial Court to delete the Original Panggung Registrations based upon Panggung's non-use of the INTEL mark for three (or more) years. Non-use is a separate legal ground provided under Article 61 of Indonesia's Trademarks Law. It states that a trademark may be removed if "the trademark has not been used for three consecutive years in the trading of goods and/or services as from the registration date or the latest use, except for reasons acceptable to the Director General".

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The cases filed were as follows:

> Case No. 44/Merek/06 relating to Panggung's 1986 registration in class 9 covering goods such as TVs, DVD players and Hi-Fi equipment. Panggung used INTEL mark for TVs and some Hi-Fi equipment but evidence shows that production stopped the end of 1990 and there had been no use for these goods since. Thus, there has been no use for much longer than the last three (3) consecutive years prior to the filing of the deletion action.
>
> Case No. 43/Merek/06 relating to Panggung's five other 1986 registrations in classes 7, 10, 11, 15 and 20 for various goods such as home appliances, medical equipment, musical instruments, audio & video racks etc., for which Panggung never used the INTEL mark, again clearly satisfying the non-use requirements.

In order to prove its case, Intel conducted extensive market surveys in 6 major cities (Jakarta, Surabaya, Medan, Makassar, Bandung and Pontianak) and hired an independent private investigator who interviewed Panggung's staff at various Panggung branches. The evidence confirmed that there had been no use at all in Classes 7, 10, 11, 15, 20 and no use for the class 9 goods other than for TVs which had ceased in late 1990 (clearly more than 3 years prior to the filing of the case).

Both cases were decided on 13 September 2006 and, inexplicably, Intel lost both because Intel had not proved the actual last date of use, a nearly impossible burden of proof understandably not required under the law. This decision was despite the fact that (1) the Court acknowledged that deletion is appropriate if there has been no use of the mark 3 years prior to the filing date of the deletion or since registration, (2) accepted the evidence submitted by Intel that there had never been any use in certain classes, and that to the extent there was use for TVs it had ceased sometime in the 1990s, (about 15 years ago) and 3) the required use of the mark is actual use in the production of goods and services which did not exist, and not the existence of old product or inventory that may still be in circulation.

However, the precise date of last use is irrelevant given the findings that whatever use was made was well over three years prior to the filing of the actions, or never. Thus, Intel clearly had met its evidentiary burden and the decisions clearly fail to comply with the legal standard required for non-use.

Appeal to the Indonesian Supreme Court; INTA Amicus Filing

Intel filed appeals before the Supreme Court on 11 October 2006 on the grounds that the Commercial Court erred in the interpretation of the Trademarks Law by imposing a requirement that Intel prove a precise date of last use, and that the Commercial Court's interpretation was inconsistent with Indonesian law and international principles pertaining to the calculation of the period of non-use.

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The International Trademark Association (INTA), a global association that has represented trademarks owners since 1878, filed an Amicus brief on 12 December 2006 in support of Intel's position, namely that all that is required is proof of non-use for three years prior to the filing of the deletion actions – the precise date of last use need not be proved.

Once again Intel lost both appeals, allegedly because Intel could not determine Panggung's actual last use date and therefore the court claimed (illogically) that it was difficult to determine the 3 year period to delete the registrations of the said marks. The three-year period was the three years prior to the filing of the deletion actions, which the court found Intel addressed, so requiring a date of last use as well had no legal foundation. Interestingly, though this decision was rendered in February, Intel was not provided with it until June, 4 months later and after Panggung's new INTEL registrations certificates were collected, once again demonstrating a lack of transparency in the system and a significant and potentially prejudicial delay.

Furthermore, and as a direct consequence of the Supreme Court's actions, Panggung has relied on these registrations to oppose Intel's new trade mark applications for its revised Corporate Logo and INTEL INSIDE filings.

Clearly, by not deleting Panggung's mark, Indonesia is allowing a junior registrant of a mark for which it either never had a commercial use, or no longer has a commercial interest, the ability to thwart the efforts of the rightful brand owner or to otherwise try to extort a significant payment.

With the convergence of consumer electronic devices, digital television and PCs, Panggung's registrations for the old marks and the new stylized marks and opposition to Intel's applications could severely limit Intel's ability to expand in these areas. Intel also has a Digital Health Group that strives to achieve technological solutions that would results in better healthcare services. These are just some examples of areas into which Intel may not be able to expand in Indonesia as long as Panggung continues to have unauthorized registrations of the INTEL mark in Indonesia.

Additionally, Intel is providing training directed at classroom teachers on how to use technology and computing to enable better teaching results and improved results for children. 2007 was the first year of this program for Indonesia in which 1,900 teachers across the country were trained. The goal for 2008 is to train 10,000 teachers throughout Indonesia. Further, Intel has donated 725 brand new systems to the Ministry of Education (MoE) for use in public schools under a program intended to run for years, as well as donating 50 laptops to two different schools in Jakarta. If the program is successful, and if the environment is appropriate, Intel will evaluate offering its classmate PC program in Indonesia. However, if it is precluded from using its mark in Indonesia due to Panggung's oppositions, these programs could potentially be impacted.

It should also be noted that Intel cannot begin a separate legal action to cancel Panggung's newly issued registrations for the new stylized marks until Panggung's old registrations are cancelled as Panggung can rely on these old registrations as a defense.

<u>Final Reconsideration Appeal to the Indonesian Supreme Court</u>

Intel Corporation
2200 Mission College Blvd.
SC4-203
Santa Clara, CA 95052

On 7 December 2007, Intel filed reconsideration appeals to the Indonesian Supreme Court on the grounds that the lower courts erred in law by requiring Intel to prove an exact date of last use when it is clear that the minimum 3 year period of non-use had been satisfied. The final reconsideration appeal to a different panel of the Supreme Court is pending and we expect a decision in 1 – 2 years.

If Intel loses the final reconsideration appeal, Indonesia will be the only country where Intel has been unable to protect its well-known mark and Indonesia's reputation for not protecting IP rights of foreign entities will rightly resurface.

While Intel knows its appeals are well grounded, considering Intel's experiences before the Indonesian courts, especially in the Panggung case, Intel is not confident that its case will be decided fairly based on the proven facts of the case and applicable law. Therefore Intel requests that Indonesia be returned to the Priority Watch List, unless Indonesia can meet the conditions of demonstrating significant improvement with respect to trademark rights, and judicial transparency.

Sincerely,

Ruby Zefo, Esq.
Director, Trademarks & Brands
Intel Corporation

cc: Bruce Sewell, Esq. Senior Vice President, General Counsel, Intel Corporation
Anne Gundelfinger, Esq. Vice President, Government Affairs, Intel Corporation
Greg Slater, Government Affairs, Intel Corporation
John E. Matheson, Esq. Asia-Pacific Legal, Intel Corporation
Jeffery Siebach, Esq. Director Asia Legal & Government Affairs

Intel Corporation
2200 Mission College Blvd.
SC4-203
Santa Clara, CA 95052