UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
Illumina, Inc., a corporation,	)	Docket No. 9401
and	)	
GRAIL, Inc., a corporation,	)	
Respondents.	)	

ORDER ON POST-TRIAL FILINGS

I. Post-trial filings schedule

Pursuant to Federal Trade Commission Rule of Practice 3.46(a), each party may file proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof, within 21 days of the closing of the hearing record; and each party may file reply findings of fact, conclusions of law, and briefs within 10 days of service of the initial proposed findings (collectively, "post-trial filings"). 16 C.F.R. § 3.46(a). Pursuant to Rule 4.3(b), for good cause shown, the Administrative Law Judge may extend any time limit prescribed by the rules in this chapter, except in circumstances not applicable here. 16 C.F.R. § 4.3(b).

At the conclusion of trial, the parties made a joint request to extend the deadlines for post-trial filings, to provide 25 days for the filing of concurrent post-trial briefs, proposed findings of fact, and conclusions of law, and 40 days for the filing of concurrent reply briefs and replies to proposed findings of fact and conclusions of law. The parties asserted that additional time for the post-trial filings would help ensure that they have adequate time to brief the issues and be thorough and careful in replying to each other's proposed findings. Moreover, the record from this multi-week trial is extensive, involving numerous witnesses, thousands of exhibits, and complex issues.

Based on the foregoing, good cause exists under Rule 4.3 to grant the parties' joint request to extend the deadlines for post-trial filings.

Accordingly, the deadlines for post-trial filings are as follows:

April 15, 2022	Deadline for filing concurrent post-trial briefs, proposed findings of fact, and conclusions of law; and
May 25, 2022	Deadline for filing concurrent reply briefs and replies to proposed findings of fact.

The parties shall provide to the Office of Administrative Law Judges ("OALJ") three hard copies, and one electronic version of the *in camera* versions of the post-trial filings.[1] All post-trial filings shall be printed double-sided and shall be spiral bound or coil bound. Velo binding or comb binding shall not be used. The electronic version shall be in MS-Word (.doc/.docx) format, using Times New Roman 12 point font. Electronic copies of post-trial filings shall be transmitted by email to OALJ@ftc.gov.

Except to the extent already provided, the parties shall provide to OALJ an electronic set of all exhibits admitted into the record, including any exhibits admitted through JX3 and JX4. The parties shall also provide electronic copies of any demonstrative exhibits that were used during trial and provide one hard copy of all expert reports. The foregoing materials shall be provided within seven days of the close of the hearing record.

II. Mandatory rules for post-trial filings

The following requirements apply to all post-trial filings and shall be strictly followed:

- 16 C.F.R. § 3.46 sets forth express requirements for proposed findings of fact and conclusions of law. In accordance with Rule 3.46(a), **Complaint Counsel shall provide a proposed order for relief, together with supporting facts and law, and Respondents shall specifically reply thereto**.

- All proposed findings of fact shall be supported by specific references to the evidentiary record.

- All legal contentions, including, but not limited to, contentions regarding liability and the proposed remedy, shall be supported by applicable legal authority.

- All factual assertions made in a party's brief shall cite to a corresponding proposed finding of fact. Citations to individual documents or items of testimony that do not also reference a corresponding proposed finding of fact may be disregarded.

[1] The parties need not provide hard copies of the public versions of post-trial filings to OALJ.

- The parties shall specifically include briefing in support of or in opposition to the proposed remedy, including each and every provision of the proposed order (other than definitions, boilerplate, or non-substantive provisions).

- Do not cite to testimony for the truth of the matter asserted if the testimony was admitted for a purpose other than for the truth of the matter asserted. If such testimony is cited, the party shall indicate in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.

- Do not cite to evidence that was admitted for a limited purpose for any purpose other than the theory under which it was admitted.

- Do not cite to evidence that was determined at trial to be "disregarded" or "not considered."

- Do not cite to documents that are not in evidence, documents that have been withdrawn, or documents that have been rejected.[2]

- Do not cite to demonstrative exhibits as substantive evidence.

- Do not cite to expert testimony to support factual propositions that should be established by fact witnesses or documents.

- Do not cite to an offer of proof, or to testimony or documents that were elicited as part of an offer of proof.

- Violations of the requirements of this Order should be pointed out by opposing counsel in the reply brief or the reply to proposed findings of fact.

- When citing to exhibits, the parties shall identify the document by the PX or RX number, followed by the name of the entity that produced the document, and the page number. An example of the format that shall be used is: (RX1807 (FDA) at 007; PX4115 (Company) at 010)).

- When citing to expert reports, the parties shall identify the report by the PX or RX number, followed by the name of the expert witness that produced the report, and the paragraph number. An example of the format that shall be used is: (PX5000 (Name Expert Report) ¶ 87)).

- When citing to trial testimony, the parties shall identify that testimony by the witness' name, the company or organization as to which the witness is testifying, the letters "Tr." and the transcript page number. Do not provide line numbers or the word "at" before the transcript page number. Do not use first

[2] The parties are directed to comply with the Order Granting Respondents' Motion to Strike, issued in *Chicago Bridge & Iron Co.*, Docket 9300. *See* 2003 FTC LEXIS 98 (June 12, 2003).

initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (Smith (Company) Tr. 1098). If more than one source is used for the same proposition, the format that shall be used is: (Smith (Company) Tr. 1098; Jones (Organization) Tr. 153).

- When citing to deposition testimony or testimony from an investigational hearing transcript ("IHT") that was admitted in evidence, the parties shall cite to that testimony by setting forth the exhibit number, and then, in parentheses, the deponent's name, the company or organization with which the deponent is associated, the letters "Dep." or "IHT," and the transcript page number. Do not provide line numbers. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (RX100 (Smith (Company) Dep. at 1098)).

- When deposition testimony or testimony from an IHT that was admitted in evidence has been cited by a party, and the opposing party has an objection to the use of such testimony, the opposing party shall point out its objection to such excerpt in its reply to the proposed finding, or such objection shall be deemed waived.

- Do not use "*Id.*" as a cite for proposed findings of fact or reply findings of fact.

- Do not cite to more than one copy of the same document (*i.e.*, if RX100 and PX200 are different copies of the same document, cite to only one exhibit number).

- Reply briefs shall be limited to refuting issues raised by the opposing side and should not be used merely to bolster arguments made in the opening post-trial briefs.

- Reply briefs shall reply to the arguments in the same order as the arguments were presented by the opposing party in its opening brief.

- Reply findings of fact shall set forth the opposing party's proposed finding of fact in single space and then set forth the reply in double space. Reply findings of fact shall be numbered to correspond to the findings that the reply findings are refuting and shall use the same outline headings as used by the opposing party in its opening proposed findings of fact. If you have no specific response to the opposing party's proposed finding of fact, set forth the opposing party's proposed finding of fact and then state that you have no specific response or do not disagree.

  An example of the format for reply findings of fact that shall be followed is:

39. Company Name, Inc. was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, publicly traded on the American Stock Exchange, with its principal place of business at 1740 Lake Needwood Drive, Suite 300, Arlington, VA, 22201. (CX328 (Company) at 1253; CX021 (Company) at 1003; Hanson (Company) Tr. 6732).

Response to Finding No. 39:
Respondent has no specific response.

- Reply findings of fact should be used only to directly contradict the other side's proposed findings of fact, and should not be used merely to restate the proposition in language which is more favorable to your position.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: March 23, 2022