

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of

Illumina, Inc.
 a corporation,

and

GRAIL, Inc.,
 a corporation.

DOCKET NO. 9401

**RESPONDENTS' RESPONSE TO COMPLAINT COUNSEL'S MOTION REQUESTING
OFFICIAL NOTICE OF THE DEPARTMENT OF DEFENSE DESIGNATION
REGARDING BGI GENOMICS CO., LTD**

Complaint Counsel asks the Commission to take official notice of a United States Department of Defense (“DoD”) designation of BGI Genomics Co., Ltd. (“BGI”) as a company affiliated with the Chinese government operating in the United States (hereinafter the “Designation”). Respondents do not oppose Complaint Counsel’s motion for official notice, but file this response to rebut certain misleading assertions in Complaint Counsel’s motion.

Complaint Counsel offers no evidence that the Designation will materially affect the availability of BGI’s NGS systems in the United States. The Designation merely identifies BGI as one of over 40 companies affiliated with the Chinese government “operating directly or indirectly in the United States”. (Mot. Ex. A. at 1.) Contrary to Complaint Counsel’s suggestion that this affects BGI’s status as an alternative to Illumina’s NGS systems in the United States, BGI resolved its patent disputes with Illumina that had previously barred it from the market earlier this year and launched its NGS systems in the United States in August 2022.

I. ARGUMENT

A. There is No Evidence The Designation Will Materially Impact BGI's Entry into the U.S. Market.

Complaint Counsel has provided no evidence that the Designation will have any impact on the availability or viability of BGI's NGS technology as a platform for MCED development in the United States. Yet the record evidence shows that BGI has already entered the United States market, and the Designation does not require BGI to exit the United States market.

As the Initial Decision found, BGI announced it would “make its CoolMPS sequencing chemistry¹ and DNBSeg-G400 sequencer commercially available in the US starting Aug. 29, [2022] the day a certain Illumina patent is set to expire.” Initial Decision, *In re Illumina, Inc., and Grail, Inc.*, No. 9401, Findings of Fact ¶ 662 (F.T.C. Sept. 1, 2022) (hereinafter “Initial Decision”). There are also no longer any pending intellectual property disputes between BGI and Illumina in the United States, as on July 14, 2022, the two companies entered into settlement and license agreement that resolves certain patent and antitrust claims between them. Initial Decision Findings of Fact ¶ 663. Illumina and BGI also agreed to a

¹ Products that use the CoolMPS chemistry include the DNBSeg-G400 sequencer (*see* RX4062 (GenomeWeb, *MGI to Take Another Crack at US Next-Gen Sequencing Market This Summer*) at 1), which has a reported throughput between the NextSeq and the NovaSeq offering from Illumina. (*Compare* RFF ¶ 590, Table 5 *with* RFF ¶ 575, Table 3.) BGI had previously announced that its high-throughput DNBSeg T Series will launch in the United States in 2023. (RX4062 (GenomeWeb, *MGI to Take Another Crack at US Next-Gen Sequencing Market This Summer*) at 4.) BGI's DNBSEQ-T7, which is among the products in the T Series, has a reported throughput of up to 6 Tb per run, run time under 24 hours and accuracy of more than 80% of bases with a quality score greater than Q30—which is over 99.9% accurate. (RFF ¶¶ 590–91, Table 5 (RX3465 (MGI Tech); RX3067 (BGI).))

litigation standstill for patent and antitrust actions in the United States and its territories until October 1, 2025. (RX4064 (Illumina Form 8-K) at 2.)²

Complaint Counsel has not offered any evidence to show that the Designation would require BGI to exit the United States market. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition, many customers outside of China use BGI, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. CONCLUSION

For the foregoing reasons, Respondents file this response to Complaint Counsel's Motion.

² While the standstill covers all core sequencing patents it excludes certain other categories of patents. (See RX4064 (Illumina Form 8-K) at 2.)

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Respectfully submitted,

/s/ Sharonmoyee Goswami

Christine A. Varney
David R. Marriott
Sharonmoyee Goswami
Jesse M. Weiss
Michael J. Zaken
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
cvarney@cravath.com
dmarriott@cravath.com
sgoswami@cravath.com
jweiss@cravath.com
mzaken@cravath.com

Counsel for Respondent Illumina, Inc.

Michael G. Egge
Marguerite M. Sullivan
Anna M. Rathbun
David L. Johnson
LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
michael.egge@lw.com

Alfred C. Pfeiffer
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
al.pfeiffer@lw.com

Counsel for Respondent GRAIL, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Complaint Counsel

U.S. Federal Trade Commission

Susan Musser
Stephen A. Mohr
Jordan S. Andrew
Sarah Wohl
Stephanie Bovee
Peter Colwell
Eric Edmondson
Paul Frangie
Samuel Fulliton
Lauren Gaskin
David Gonen
James Wells Harrell
Matthew Joseph
Wade D. Lippard
Sebastian Lorigo
Dylan P. Naegele
Joseph Neely
Brian O'Dea
Nicolas Stebinger
Nicholas Widnell

Counsel for Respondent Illumina, Inc.

Cravath, Swaine & Moore LLP

Christine A. Varney
David R. Marriott
Sharonmoyee Goswami
Jesse M. Weiss
Michael J. Zaken

Counsel for Respondent GRAIL, LLC

Latham & Watkins LLP

Michael G. Egge
Marguerite M. Sullivan
Alfred C. Pfeiffer, Jr.
Anna M. Rathbun
David L. Johnson

November 14, 2022

/s/ Sharonmoyee Goswami

Sharonmoyee Goswami

Counsel for Respondent Illumina, Inc.