

**In the Matter of Illumina, Inc. and GRAIL, Inc.
Docket No. 9401**



**Oral Argument by
Complaint Counsel
December 13, 2022**



ILLUMINA IS THE “ONLY GAME IN TOWN”

Mike Nolan, Freenome CEO:

10 You testified on direct that as of now,
11 Freenome cannot switch to another NGS platform other
12 than Illumina; right?

13 A. Yeah. We just don't have -- see a suitable
14 substitute to meet our highest-level requirements.

Dr. Darya Chudova, Guardant SVP Technology:

1 A. Illumina sequencers, as I mentioned earlier,
2 are the only game in town. There are other sequencers
3 on the market, but ultimately they don't perform
4 similarly. And the test has been optimized to work in
5 an Illumina environment.



MCED Test Developers Rely on Illumina Extensively

Bill Getty, Guardant SVP Commercial:

Technical Support:

4 and, you know, say simple things like, you know, "We
 5 can't get a technician out to your sequencers until next
 6 Friday" or "the Friday after," and that could create
 7 challenges around turnaround time and disappoint
 8 customers and therefore hurt us competitively.

Supply:

9 Q. If Illumina stops supplying Guardant with the
 10 reagents that Guardant uses for its cancer-screening
 11 tests, what would the impact be to Guardant's
 12 cancer-screening business?

16 THE WITNESS: It would be nonexistent.

Delayed Access to Technology:

22 development -- and they were able to share that
 23 technology ahead with GRAIL, ahead of the other
 24 companies in the space who are also going to be reliant
 25 on that technology, it would give GRAIL a significant

1 head start on the development of, say, a next version
 2 of that assay -- excuse me, test, I use those



MCED Test Developers Rely on Illumina Extensively

Bill Getty, Guardant SVP Commercial:

15 And so they are in a position where they could
16 take a significant advantage by kneecapping our ability
17 to run our lab, which would of course flow through to
18 our inability to compete in this larger blood-based



This Acquisition Gives Illumina The "Leading" Market Position

Francis deSouza to investors at the 2020 Cowen Liquid Biopsy Summit:

SEPTEMBER 24, 2020 / 11:30PM, 11 MIN OQ - Illumina Inc. at Cowen Liquid Biopsy Summit (Virtual)

Francis A. deSouza - Illumina, Inc. - CEO, President & Director

There are a number of things I'd like to highlight, Doug. First, our core business is strong. And if we look out into the coming years, we are confident that the core business will create a double-digit revenue CAGR even without GRAIL. So we have a strong core business.

Next, I'd like to point out that the GRAIL acquisition gives us a leading position in that very large market opportunity. And the early detection of cancer market dwarfs the clinical markets we see today, NIPT and therapy selection for oncology combined.

And then finally, by participating directly in that segment with our new business, it allows us to share in a larger percentage of the value created in that solution rather than just being a provider of a component of the technology to other players.

Specifically, the acquisition positions Illumina to participate in what we expect will be a \$75 billion market for NGS-based oncology tests by 2035, \$60 billion higher than our oncology TAM excluding GRAIL.

We've already had three present today. Exactly kind of put their flag in the ground if that's the metaphor or saying that indicated that they're focused on asymptomatic multi-cancer screening. That's just 3 of the few that are going to talk about that, and that's just today. I guess the question is, why GRAIL?

Francis A. deSouza - Illumina, Inc. - CEO, President & Director

Yes. There are probably 3 things we liked a lot about GRAIL. First is that it has a primary -- and has always had a primary focus on early detection of cancers across multiple cancers. And so as you said, there are a number of companies, some terrific companies, in the liquid biopsy space, and they focus on different parts of the market. Some do therapy selections, some do MRD and recurrence monitoring, some do single-cancer detection. What we loved was that GRAIL from the ground up was always focused on liquid biopsy for early detection pan-cancer. So we love the focus.

Second, it's clear to us and became clear over the last year that from that perspective, GRAIL is ahead of the market. It's ahead of the market in terms of the performance characteristics that its technologies have been able to achieve in terms of sensitivity, the ability to detect 50 cancers, sensitivity, identified tissue of origin, and it's also ahead of the market in terms of time lines. We expect that when Galleri comes out onto the market next year, it will be the first test of its kind to come on to the market.

And then finally, we love that it has a very differentiated offering. The GRAIL team has 230 patents issued already, 179 patents pending. And so the focus, the fact that they're ahead in the market and the fact that they have a very differentiated offering, were all really interesting to us.

SEPTEMBER 21, 2020 / 12:02PM, 11 MIN OQ - Illumina Inc. to Acquire GRAIL - M&A Call

Before we start, I want to acknowledge the GRAIL team for what they've accomplished. We spun out GRAIL 4 years ago to focus on an ambitious goal to revolutionize the way we detect cancer by developing a blood test that could find cancer earlier than is possible today. Their innovation and results since then have exceeded even our lofty expectations, setting the stage for early cancer detection to likely be the largest genomic market opportunity enabled by our technology.

Specifically, the acquisition positions Illumina to participate in what we expect will be a \$75 billion market for NGS-based oncology tests by 2035, \$60 billion higher than our oncology TAM excluding GRAIL.

Cancer is one of the greatest threats to human health. Despite the significant investments made over the important medical advancements achieved so far, when we diagnose cancer too late when it is metastatic, less than 20% of patients will survive more than 5 years. In contrast, if we diagnose cancer early, approximately 90% of patients are expected to survive beyond 5 years. About 73% of cancer-related deaths are attributable to cancer not being diagnosed early enough. GRAIL's technology characterizes the DNA that cancer cells shed into the blood, detecting unique signatures that identify both the presence and often the tissue of origin of the cancer.

Earlier this year, GRAIL shared positive results from its Circulating Cell-Free Genome Atlas, or CCGA study that has enrolled 15,000 participants. The study found that the first version of Galleri reported sensitivity of 44% for Stage 1 through 3 tumors for 50 different cancers and 67% sensitivity for the 12 deadliest cancers. And in 93% of the positive results, the test correctly identified the tissue of origin. All with the specificity of greater than 99% and from a single blood draw.

Arguably, one of the most important performance measures for doctors and payers is the positive predictive value, or PPV, which is the percentage of positive tests that are actually cancers. For Galleri, we predict a PPV of 43%. This represents a very significant step forward compared to today's most commonly used screening tests, which often have a PPV in the range of 2% to 5%.

The GRAIL team is preparing to launch Galleri as a lab-developed test, or LDT, in 2021. We believe that this is a remarkable advance in the ability to detect cancer earlier, which can transform cancer care and improve population health.

As noted earlier, most cancers are currently diagnosed in late stages, as shown by the gray bars in the chart on the left half of Slide 6. The limitations of current screening methods lead to only 31% of cancers being identified in Stages 1 and 2, when they're the most treatable. Based on GRAIL studies, this could increase to 62% with broad adoption of Galleri's blood test, complementing today's recommended cancer screening.

This matters because, as we mentioned earlier, survival rates are directly correlated with how early cancer is detected. Broad adoption of Galleri could avert nearly 40% of the 5-year cancer mortality or around 100,000 deaths annually in the U.S.

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PX2575-060

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CONFIDENTIAL TREATMENT REQUESTED

ILMN-FTCVOL_17680024
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Other MCED Companies Are Developing Competitive Tests

MCED Developer	Similar Patient Population*	Similar Objective: Detect multiple early-stage cancers affecting large population segments	Blood-Based Test	Diagnostic Follow-Up (Identification of the TOO)	Established Commercialization Plans
Grail	CCFF 75-76, 378, 381, 712, 714	CCFF 79, 377, 605, 669, 712	CCFF 77, 608-10, 616, 3437	CCFF 670, 712, 3565-69	CCFF 82-109, 5271-5381
Exact/Thrive	CCFF 378, 381, 2159	CCFF 414, 1938-40, 2124-26	CCFF 1908, 1912, 1936-37, 1940, 1942, 5999	CCFF 1963, 1966-68, 3282, 3551-54	CCFF 1990-2014
Freonome	CCFF 378, 381, 717	CCFF 439-40, 443, 2355-56, 2373, 2375, 3537-38	CCFF 439, 2363, 2392	CCFF 2385, 3555	CCFF 2368-69, 2386-88
Guardant	CCFF 378; 381, 716	CCFF 377, 426, 430, 2274, 2277-78, 3534-36	CCFF 619-20, 641-44, 935, 2258, 2343	CCFF 2315-16, 3299, 3549-50	CCFF 2285, 2294, 2318-22
MCED #5	CCFF 420, 2217, 2229	CCFF 420-22, 2211-12, 2221, 3541	CCFF 2213, 2250, 2255	CCFF 2236, 3548	CCFF 2213, 2256
Singlera	CCFF 2422, 2463, 2471	CCFF 447, 2418, 2421, 3539	CCFF 448, 2418, 2460	CCFF 2426, 3556	CCFF 2434-41, 2475-77
Helio	PX7077 at 30	CCFF 405-406, 455, 704, 2513-15, 3363, 3542-44	CCFF 406, 454, 2478, 2517	CCFF 2524	CCFF 2550-56, PX7077 at 81-82
MCED #8	PX7074 at 61, 204-05	CCFF 377, CCFF 2564, 3545	CCFF 2562, PX7074 at 61-64	PX7074 at 73	CCFF 2573-75, 2591-94

*(I.e., asymptomatic undiagnosed patients at average risk of cancer)

Sources: Compl. Counsel Post-Tr. Reply Br. at 38-57; Compl. Counsel Post-Tr. Br. 50-54.



Ordinary Course Documents Show MCED Competition

Selected Ordinary Course Evidence of MCED Competition

PX2009 at 019	PX4027 at 001-04	PX4198 at 005	PX4450 at 241-42
PX2013 at 010	PX4037 at 008	PX4207 at 013, 033, 052	PX4456 at 002, 005, 012-13
PX2026 at 002	PX4046 at 094	PX4241 at 002, 005	PX4473 at 003, 005, 012
PX2031 at 005 n.2	PX4048 at 002, 004-07, 015	PX4250 at 003, 009, 011	PX4476 at 002, 004
PX2043 at 001	PX4049 at 001-03	PX4259 at 001	PX4519 at 001
PX2054 at 001- 03, 05	PX4052 at 012, 039, 040, 044-45	PX4266 at 008, 045-046	PX4554 at 003-04, 008
PX2549 at 021	PX4053 at 001, 005	PX4267 at 009, 012, 032, 036, 048	PX4616 at 017, 030
PX2569 at 008	PX4054 at 008, 012	PX4284 at 012	PX6049 at 035-40
PX2575 at 064-65	PX4066 at 003	PX4288 at 001	PX8324 at 005
PX4006 at 001	PX4074 at 001, 099	PX4315 at 001	PX8368 at 079
PX4007 at 001-02	PX4075 at 009-10, 017, 027, 032-43, 046	PX4337 at 005-08	PX8458 at 001, 003
PX4011 at 003-005	PX4082 at 036	PX4340 at 004	PX8503 at 066
PX4016 at 006-07	PX4111 at 001	PX4350 at 001, 009	PX8530 at 003
PX4018 at 005-07	PX4129 at 001	PX4387 at 020, 043	PX8532 at 007
PX4021 at 001	PX4142 at 067	PX4441 at 002-04	PX8652 at 001
PX4023 at 001	PX4145 at 006, 009, 017, 021, 024, 033, 044	PX4442 at 001-03	PX8655 at 031
PX4025 at 001	PX4150 at 008, 032	PX4444 at 002, 009, 013	RX0894 at 24



Ability to Foreclose a Monopoly Proportion of the Market “Of Course” Violates the Clayton Act

“If the share of the market foreclosed is so large that it approaches monopoly proportions, the Clayton Act will, of course, have been violated”

U.S. v. Brown Shoe, 370 U.S. 294, 328 (1962)



Competition Between Grail and Exact/Thrive

May 2021 Grail AACR Conference Report:

EXACT
SCIENCES

General Overview of MCED Space Through Exact Sciences Lens

On Demand: *Noninvasive early detection of pancreatic and other cancers* Nickolas Papadopoulos

Summary

- No new data presented and no hints into future development efforts of Exact Sciences
- Highlighted paramount importance of specificity for screening test
- Overviewed CancerSeek data
- Mentioned Liu et al - case control studies not predictive of performance in target populations or predictive of harm
- Fewer late stage cancers rather than mortality should be endpoints in future studies

Impact to GRAIL

- Most significant competitor in MCED space
- AACR data release not pressurizing

Multi-Cancer Blood Tests are Here at the Bench – Case Control Studies

Cohen et al., <i>Science</i> , 2018 Detection and localization of surgically resectable cancers with a multi-analyte blood test	➔	Multi-analyte
Orntoft et al., <i>Nature</i> 570:285-89, 2019 Genome-wide cell-free DNA fragmentation in patients with cancer	➔	Fragmentomics
Li et al., <i>Annals of Oncology</i> , 2020 Sensitive and specific multi-cancer detection and localization using methylation signatures in cell-free DNA	➔	Methylation
Dauville et al., <i>PNAS</i> 117:1858-63, 2020 Assessing aneuploidy with repetitive element sequencing	➔	Aneuploidy

Tier: 2
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GRAIL

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GRAIL-IT-00242002
PX4616-030



Grail and Exact/Thrive Are Neck and Neck in Development of an MCED Test

Exact/Thrive: Grail's "most significant competitor in [the] MCED space"

Exact/Thrive CancerSEEK		Grail Galleri
8	Number of early-stage cancers detected in asymptomatic patients	7
<input checked="" type="checkbox"/>	Has undergone a prospective, interventional clinical trial	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Has multiple published studies on its MCED test	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Relies on Illumina NGS as a critical input	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Currently seeking FDA approval	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Currently developing next version of its MCED test	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Requires follow-up imaging tests to confirm cancer diagnosis	<input checked="" type="checkbox"/>



Respondents' Open Offer Does Not Change Illumina's Incentives To Foreclose Grail's Rivals

8 to be sure. But if the incentives aren't
9 right, then the contract is not going to be
10 successful in terms of promoting the business
11 effectively for both parties.

12 "And, sure, the parties try to build
13 in the protections that they think they can get
14 into the contract, but the real details of how
15 the business is going to work evolve from
16 appropriate business incentives shared between
17 the parties."

- Prof. Robert Willig, Expert for Respondents



The Open Offer Fails To Eliminate Illumina's Ability To Harm Grail's Rivals

Illumina Lever	Inadequate/Unworkable Open Offer Provision	Major Loopholes
<p>"Illumina Can Completely Foreclose Grail's Rivals" (CC Post-Trial Br. at § II.E.1.a.ii.a)</p> <p>"Illumina can impact supply" (CC Post-Trial Br. at II.E.1.a.ii.c)</p>	<p>Illumina must supply any and all sequencing instruments and core consumables ordered by the customer in a timely manner. (PFF ¶¶ 1000, 1037; RRF ¶¶ 2832, 2839, 2841, 2843, 2852, 2854, 2858.)</p>	<p>"A contract is only as good as it is enforceable. And ultimately [Guardant's ability] to investigate adherence to the terms of that contract is nearly impossible." (CCFF 4804); <i>see also</i> (CCFF 4806-07; 4993-5012)</p> <p>The provisions in the Open Offer that relate to customer access to supplied products and customer pricing do not include access to or pricing of library prep consumables. (CCFF 4553); <i>see also</i> (CCFF 4528-31; 4533; 4536-40; 4543; 4553-54)</p>
<p>"Illumina can increase prices" (CC Post-Trial Br. at § II.E.1.b)</p>	<p>Illumina cannot increase prices beyond inflation for the entire 12-year term of the Open Offer, until August 18, 2033. (PFF ¶¶ 1021–22; RRF ¶¶ 2705, 4363.) Illumina must lower sequencing prices by at least 43% by 2025. (PX0064 (Illumina) at 5; PFF ¶ 1023; RRF ¶¶ 4363, 4658.) And if Illumina offers GRAIL or any other oncology customer lower prices, it must offer those same lower prices to the customer. (PFF ¶¶ 1017–18 RRF ¶¶ 2750, 4361–63.)</p>	<p>Respondents' economic expert, Dr. Carlton, testified that "GRAIL doesn't technically pay a price. If you want to make up a scenario in which you force GRAIL to 'pay some price,' and you call that a transfer price . . . I'm happy to make that assumption." (CCFF 4652); <i>see also</i> (CCFF 4646-52; 4671-72)]</p> <p>The Open Offer takes away discretionary discounts that were available to customers pre-Acquisition. (CCFF 4641-43).</p> <p>Illumina publicly announced plans to reduce sequencing costs 83 percent, much more than the 43 percent decrease in the Open Offer. (CCFF 4660-62, 4655-4703). The 43 percent price decrease is the price <i>per gigabase</i> of sequencing, which is irrelevant to MCED test developers. (CCFF 4675-82)</p>

Sources: Resp. Post-Tr. Reply Br. at 51; Compl. Counsel Post-Tr. Br. 89-94, 172-173.



The Open Offer Fails To Eliminate Illumina's Ability To Harm Grail's Rivals

Illumina Lever	Inadequate/Unworkable Open Offer Provision	Major Loopholes
<p>"Illumina can diminish service and support" (CC Post-Trial Br. at II.E.1.a.ii.d)</p>	<p>Illumina must supply the same levels of service and support to the customer as it provided pre-merger and as it makes available to GRAIL. (PFF ¶¶ 1004; RRF ¶¶ 2855–57, 2868, 2871–73, 2878–93.)</p>	<p>"They [Illumina] could also, you know, one day turn around and, you know, say simple things like, you know, 'We can't get a technician out to your sequencers until next Friday' or 'the Friday after,' and that could create challenges around turnaround time and disappoint customers and therefore hurt us competitively." (CCFF 2919); <i>see also</i> (CCFF 4495-4510; 4808-10; 4813; 4825-4842)</p>
<p>"Illumina can delay or deny access to new technology" (CC Post-Trial Br. at at II.E.1.a.ii.e)</p>	<p>Illumina must provide the customer access to new technology at the same time—within five days—as it provides that technology to GRAIL. (PFF ¶¶ 1005, 1008; RRF ¶¶ 2810–25.)</p>	<p>Illumina's Nicole Berry testified that the Open Offer does not prevent Grail from having knowledge of Illumina's new technology before other companies. (CCFF 2810). Dr. Bert Vogelstein testified that advanced knowledge of "future product developments and refinements" from Illumina "could substantially alter research and development in the field and the nature of the test products that are eventually produced." (CCFF 2813); <i>see also</i> (CCFF 4594-4608)</p>
<p>"Illumina can develop products specifically for GRAIL" (CC Post-Trial Br. at II.E.1.a.ii.f)</p>	<p>Upon customer request, Illumina must enter into a development agreement on commercially reasonable terms relating to the design or modification of sequencing products to optimize interoperability with the customer's tests. (See PFF ¶¶ 1005, 1008, 1010; RRF ¶¶ 2825, 2830, 2986–97.)</p>	<p>When Illumina first formed Grail, it noted that "Illumina understands the sequencer better than anyone since they developed it and can in partnership with [Grail] optimize i[t] for ctDNA applications (e.g., improved error profile). This means that [Grail] can get better performance than someone who has to use the off the shelf version." (CCFF 2986); <i>see also</i> (CCFF 4609-14; 4545)</p>

Sources: Resp. Post-Tr. Reply Br. at 51; Compl. Counsel Post-Tr. Br. at 94-99.



Illumina's Spin-Off of Grail Levelled the Playing Field

Jay Flatley, former Illumina Executive Chairman and CEO:

Illumina/GRAIL Q&A

For Use with Investors + Media

v2 - Not For Distribution

Illumina/GRAIL Q&A

For Use with Investors + Media

Q: By creating and unleashing GRAIL have you created a competitor for your customers?

A: With ~~the result~~ **this change**, we have actually leveled **the playing field**. Previously GRAIL had access to

Q: By creating and unleashing GRAIL have you created a competitor for your customers?

A: With ~~the result~~ **this change**, we have actually leveled **the playing field**. Previously GRAIL had access to technology and pricing that was preferential to our customers, albeit just for the asymptomatic screening market. Today, GRAIL has access to technology on same terms and price as other large customers, and is funding to perform large scale studies. As a result, we believe this **will accelerate the liquid biopsy market for all.**

Q: What dilution will you have to recognize in Q1? Will there be a weighted average share count impact on the full year?

A: Depends when financing closes, but we will provide some boundaries when we provide EPS guidance for 2017. We will do so for both Q1 and FY'17.

Q: Has the timeline for the product been pushed out?



Appendix

Selected Sources of Additional Evidence



Illumina Is the Only Option for MCED Tests

MCED Developer	IH Testimony	Deposition Testimony	Trial Testimony
Grail	CCFF 1061, 1075-83, 2905	CCFF 1066, 1849-1852	CCFF 1057, 1071, 2902
Exact/Thrive	CCFF 1084, 1090, 1093-95	CCFF 1087, 1089, 2885	CCFF 929, 1084, 1087, 1091-92
Guardant	CCFF 1110, 1135, 1137, 1775	CCFF 1126, 1139, 4489	CCFF 1107-1108, 1116, 1129, 1130-34
MCED #4	CCFF 1104	CCFF 1099-1103	CCFF 1096-97, 1339
Freenome	CCFF 1151, 1157, 1159	CCFF 1143, 1150	CCFF 1140, 1145-46, 1727, 1729, 1155
Singlera	CCFF 1173-75	CCFF 1172, 1530	CCFF 1165, 1168, 2849
Helio	N/A	CCFF 1189, 1529	CCFF 1177-78, 1185, 1528
MCED #8	CCFF 1193, 1200	CCFF 3838-39, 4465	CCFF 1191, 1194-96



MCED Test Developers Rely on Illumina at Every Stage of Development and Commercialization

Reliance During Research, Development, and Commercialization	Supporting Testimony
Collaboration	CCFF 2829-36, 2873-80
Custom-designed library prep products	CCFF 2613-14, 2987
Support/service	CCFF 2829-36, 2892-94, 2896-2900, 2918
Installation and technical support	CCFF 2805-09, 2880-91 2895
Dependable and reliable supply	CCFF 2830, 2837-54
Advance notice of new technology	CCFF 2813-17, 2820-24, 4598-9, 4605, 4559
Assistance in switching or upgrading to new technology	CCFF 2736, 2805-07, 2887
FDA approval process	CCFF 2946, 2948-49, 2951, 2954, 2956, 2958-60, 2964-70, 2972-77, 4488-90



Open Offer Fails To Alleviate MCED Developer Concerns

MCED Developer	Testimony
Exact/Thrive	CCFF 4184, 4399, 4501-02, 4536-37, 4540, 4627, 4672, 4730-31, 4745, 4749, 4823, 4852-57, 4874-75, 4930, 5005, 5007-12
Guardant	CCFF 4507, 4603, 4732-44, 4804-08, 4829-33, 4837-42, 4847-51, 4876-78, 4938-41, 4962-65, 4993
MCED #3	CCFF 4178-79, 4485-86, 4528-34, 4613, 4670, 4685-86, 4693, 4708-11, 4729, 4747, 4809, 4844-45, 4929, 4933, 4997-5000
Freenome	CCFF 4189-90, 4504, 4579-83, 4633, 4636-37, 4834-35, 4846, 4994-96, 5006
Singlera	CCFF 4177, 4931
Helio	CCFF 4638, 4671
MCED #7	CCFF 4335, 4470-71, 4538-39, 4556-57, 4594-95, 4597, 4600, 4611-12, 4753, 4810, 4824, 5002



Respondents' Efficiencies Are Inconsistent and Illogical

Respondents argue...	...But also	Source(s)
Grail needs Illumina for recruitment	Illumina spun off Grail to enhance Grail's ability to recruit	RPFF 68.4, 1669; CCFF 3723, 5026
Grail needs Illumina for R&D	Illumina spun off Grail for Grail to be "more nimble" in its R&D efforts	RPFF 1136-1145.9; CCFF 28, 31, 3722-23, 5756
Grail will collaborate closely across business units of Illumina	Illumina is able to maintain a firewall with Grail	RPFF 800.1, 1143.1, 1176.2, 1946; RPFF 1039.2-1039.3, 1041.3-1041.4
Grail needs Illumina's clinical testing experience	Illumina is not a clinical testing company but a clinical tools provider	Resp. Post-Tr. Br. at 191-92; PX2169 at 038
Illumina has no incentive to help Grail's market access absent the merger	Illumina has the incentive to expand NGS use today	Resp. Post-Tr. Br. at 226; 111-12
EDM efficiency will lead to lower prices for customers	MCED test developers will not compete on price with Grail	RPFF 800.2, 1152.2; Resp. Post-Tr. Br. at 58-59