General Docket United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 23-60167 Illumina v. FTC		Docketed: 04/05/2023
Appeal From: Federal Trade Commission Fee Status: Fee Paid		
Case Type Information: 1) Agency 2) Petition for Review 3)		
Originating Court Information: District: FTC-1: 9401		
Date Decided: 03/31/2023	Date Rec'd COA: 04/04/2023	
Prior Cases: None		
Current Cases: None		
Panel Assignment: Not available		
Illumina, Incorporated Petitioner	David Marriott Direct: 212-474-1000 Email: dmarriott@cravath.com Fax: 212-474-3700	

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Christine Varney Direct: 212-474-1000 Email: cvarney@cravath.com [COR NTC Retained] Cravath, Swaine & Moore, L.L.P. GRAIL, Incorporated, now known as GRAIL, L.L.C. Petitioner

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	Marguerite M. Sullivan Direct: 202-637-2200 Email: marguerite.sullivan@lw.com Fax: 202-637-2201 [COR NTC Retained] Latham & Watkins, L.L.P. Suite 1000 555 11th Street, N.W. Washington, DC 20004
v.	
Federal Trade Commission Respondent	Matthew Michael Hoffman Direct: 202-326-3097 Email: mhoffman@ftc.gov Fax: 202-326-3198 [COR LD NTC Government] Federal Trade Commission Office of the General Counsel 600 Pennsylvania Avenue, N.W. Washington, DC 20580
Washington Legal Foundation Amicus Curiae	John Mercer Masslon, II Direct: 202-588-0302 Email: jmasslon@wlf.org Fax: 866-241-5219 [COR LD NTC Retained] Washington Legal Foundation 2009 Massachusetts Avenue, N.W. Washington, DC 20036-0000

Le.

Illumina, Incorporated; GRAIL, Incorporated, now known as GRAIL, L.L.C.,	
Petitioners	
ν.	
Federal Trade Commission,	
Respondent	

04/05/2023	130 pg, 2.42 MB	AGENCY CASE docketed. Petition for review filed by Petitioners GRAIL, Incorporated and Illumina, Incorporated. Date received in 5th Circuit: 04/04/2023. Administrative Record due on 05/15/2023 [23-60167] (CAG) [Entered: 04/05/2023 11:52 AM]
04/05/2023	☐ <u>4</u> 1 pg, 135.37 KB	APPEARANCE FORM received from Mr. David Marriott for GRAIL, Incorporated and Illumina, Incorporated for the court's review. Lead Counsel? Yes. [23-60167] (David Marriott) [Entered: 04/05/2023 02:16 PM]
04/05/2023	5 35 pg, 439.94 KB	OPPOSED MOTION to expedite the appeal [5]. Date of service: 04/05/2023. Response/Opposition due on 04/17/2023. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Petitioner Illumina, Incorporated to expedite the appeal [5]. Date of service: 04/05/2023 via email - Attorney for Respondents: Abbott, Clark, Hippsley, Simons; Attorney for Petitioner: Marriott [23-60167] (David Marriott) [Entered: 04/05/2023 03:56 PM]
04/06/2023	6	ATTORNEY NOT PARTICIPATING. David Marriott is removed as counsel of record for GRAIL, Inc Reason: inadvertently added at case opening. [23-60167] (CAG) [Entered: 04/06/2023 03:04 PM]
04/06/2023	7	Attorney Marguerite M. Sullivan added as counsel of record for Petitioner GRAIL, Incorporated in 23-60167 [23-60167] (CAG) [Entered: 04/06/2023 03:07 PM]
04/10/2023	8	Attorney David Johnson added as counsel of record for Petitioner GRAIL, Incorporated in 23-60167 [23-60167] (CAG) [Entered: 04/10/2023 11:08 AM]
04/10/2023	9	The Motion to expedite appeal filed by Petitioner Illumina, Incorporated in 23-60167 [5] has been made sufficient. [23-60167] (CAG) [Entered: 04/10/2023 11:11 AM]
04/10/2023	1 pg, 170.74 KB	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [23-60167] (Matthew Michael Hoffman) [Entered: 04/10/2023 02:08 PM]
04/10/2023	12	Attorney Matthew M. Hoffman added as counsel of record for Respondent FTC in 23-60167. [23-60167] (SEP) [Entered: 04/10/2023 02:16 PM]
04/10/2023	13	APPEARANCE FORM FILED by Attorney David Marriott for Petitioner Illumina, Incorporated in 23-60167 [23-60167] (MAS) [Entered: 04/10/2023 05:06 PM]
04/11/2023	1 pg, 136.25 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Christine Varney) [Entered: 04/11/2023 04:20 PM]
04/11/2023	1 <u>19</u> 1 pg, 135.93 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Sharonmoyee Goswami) [Entered: 04/11/2023 04:24 PM]
04/11/2023	20 1 pg, 136.24 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Michael J. Zaken) [Entered: 04/11/2023 04:29 PM]
04/11/2023	21 1 pg, 136.33 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Jesse Weiss) [Entered: 04/11/2023 04:32 PM]
04/12/2023	22	INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [22] Initial AA Check Due satisfied. [23-60167] (MRW) [Entered: 04/12/2023 10:41 AM]
04/12/2023	23	APPEARANCE FORM FILED by Attorney Matthew Michael Hoffman for Respondent FTC in 23-60167 [23-60167] (MRW) [Entered: 04/12/2023 10:51 AM]
04/12/2023	25 1 pg, 86.44 KB	LETTER filed Advising of attorneys no long with the agency. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: LETTER filed by Respondent FTC advising Court that individuals listed as counsel are no longer with FTC. Date of Service: 04/12/2023 via email - Attorney for Respondent: Hoffman; Attorney for Petitioners: Johnson, Marriott, Sullivan [23-60167] (Matthew Michael Hoffman) [Entered: 04/12/2023 03:39 PM]
04/13/2023	26	APPEARANCE FORM FILED by Attorney(s) Christine Varney for party(s) Petitioner Illumina, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/13/2023 04:55 PM]
04/13/2023	28	APPEARANCE FORM FILED by Attorney(s) Sharonmoyee Goswami for party(s) Petitioner Illumina, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/13/2023 04:59 PM]
04/13/2023	30	APPEARANCE FORM FILED by Attorney(s) Michael J. Zaken for party(s) Petitioner Illumina, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/13/2023 05:01 PM]
04/13/2023	32	APPEARANCE FORM FILED by Attorney(s) Jesse Weiss for party(s) Petitioner Illumina, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/13/2023 05:03 PM]
04/14/2023	<u>34</u> 1 pg, 139.88 KB	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [23-60167] (Alfred Carroll Pfeiffer Jr.) [Entered: 04/14/2023 12:43 PM]

04/14/2023	<u>35</u> 1 pg, 153.06 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Michael Egge) [Entered: 04/14/2023 12:51 PM]
04/14/2023	36 1 pg, 139.95 KB	APPEARANCE FORM received from Ms. Marguerite M. Sullivan for GRAIL, Incorporated for the court's review. Lead Counsel? No. [23-60167] (Marguerite M. Sullivan) [Entered: 04/14/2023 12:58 PM]
04/14/2023	37 1 pg, 139.92 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Anna M. Rathbun) [Entered: 04/14/2023 01:04 PM]
04/14/2023	38 1 pg, 153.11 KB	APPEARANCE FORM received from Mr. David Johnson for GRAIL, Incorporated for the court's review. Lead Counsel? No. [23-60167] (David Johnson) [Entered: 04/14/2023 01:11 PM]
04/14/2023	39 1 pg, 108.22 KB	ATTORNEY NOT PARTICIPATING. Joseph J. Simons is designated as inactive in this case. Reason:No longer with the agency. [23-60167] (MAS) [Entered: 04/14/2023 05:15 PM]
04/14/2023	40	ATTORNEY NOT PARTICIPATING. Alden F. Abbott is designated as inactive in this case. Reason:No longer with the agency. [23-60167] (MAS) [Entered: 04/14/2023 05:16 PM]
04/14/2023	41	ATTORNEY NOT PARTICIPATING. Donald S. Clark is designated as inactive in this case. Reason:No longer with agency. [23-60167] (MAS) [Entered: 04/14/2023 05:17 PM]
04/14/2023	42	ATTORNEY NOT PARTICIPATING. Heather Hippsley is designated as inactive in this case. Reason:No longer with the agency. [23-60167] (MAS) [Entered: 04/14/2023 05:18 PM]
04/17/2023	45 123 pg, 3.09 MB	RESPONSE/OPPOSITION [45] to the Motion to expedite appeal filed by Petitioner Illumina, Incorporated i 23-60167 [5]Response/Opposition deadline satisfied. Date of Service: 04/17/2023. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by FTC [45] to the filed by Petitioner Illumina, Incorporated [5] Date of Service: 04/17/2023 via email - Attorney for Petitioners: Goswami, Johnson, Marriott, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman. [23-60167] (Matthew Michael Hoffman) [Entered: 04/17/2023 03:24 PM]
04/18/2023	49	APPEARANCE FORM FILED by Attorney(s) Michael Egge for party(s) Petitioner GRAIL, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/18/2023 09:11 AM]
04/18/2023	51	APPEARANCE FORM FILED by Attorney Marguerite M. Sullivan for Petitioner GRAIL, Incorporated in 23-60167 [23-60167] (MAS) [Entered: 04/18/2023 09:14 AM]
04/18/2023	52	APPEARANCE FORM FILED by Attorney(s) Anna M. Rathbun for party(s) Petitioner GRAIL, Incorporated in case 23-60167 [23-60167] (MAS) [Entered: 04/18/2023 09:16 AM]
04/18/2023	54	APPEARANCE FORM FILED by Attorney David Johnson for Petitioner GRAIL, Incorporated in 23-60167 [23-60167] (MAS) [Entered: 04/18/2023 09:19 AM]
04/18/2023	55	APPEARANCE FORM FILED by Attorney(s) Alfred Carroll Pfeiffer Jr. for party(s) Petitioner GRAIL, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 04/18/2023 09:25 AM]
04/18/2023	57 3 pg, 156.66 KB	COURT ORDER granting Motion to expedite appeal filed by Petitioner Illumina, Incorporated [5] [23-60167 (MAS) [Entered: 04/18/2023 04:20 PM]
04/20/2023	60 5 pg, 131.59 KB	BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 05/05/2023 for Petitioners GRAIL, Incorporated and Illumina, Incorporated Appellee's Brief due on 05/15/2023 for Respondent Federal Trade Commission. Reply Brief due on 05/22/2023 for Petitioners GRAIL, Incorporated and Illumina, Incorporated. [23-60167] (MAS) [Entered: 04/20/2023 03:20 PM]
04/25/2023	63	to suspend briefing notice dated 04/20/2023 [63] [23-60167] (MAS) [Entered: 04/25/2023 10:28 AM]
04/25/2023	65 4 pg, 121.44 KB	BRIEFING RESUMED. EXPEDITED SCHEDULE A/Pet's Brief Due on 06/05/2023 for Petitioners GRAIL, Incorporated and Illumina, Incorporated. Appellee's Brief due on 06/26/2023 for Respondent Federal Trade Commission. Reply Brief due on 07/11/2023 for Petitioners GRAIL, Incorporated and Illumina, Incorporated [23-60167] (MAS) [Entered: 04/25/2023 10:34 AM]
05/08/2023	68	ADMINISTRATIVE RECORD CORRECTION REQUIRED. The filing of the certified list has been deleted and must be refiled. Corrections Required: An incorrect filing event was used. Please use this filing event re-file the certified list: cer lst f [23-60167] (DDL) [Entered: 05/08/2023 01:19 PM]
05/08/2023	69 33 pg, 1.04 MB	CERTIFIED LIST filed. Date of Service: 05/08/2023 via email - Attorney for Petitioners: Egge, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (Matthew Michael Hoffman) [Entered: 05/08/2023 03:28 PM]
05/11/2023	70	Certified List FILED in lieu of record.Administrative record deadline satisfied. [23-60167] (CAG) [Entered: 05/11/2023 10:30 AM]

05/25/2023	<u>71</u> 13 pg, 217.5 KB	OPPOSED MOTION filed by Petitioners Illumina, Incorporated and GRAIL, Incorporated to file brief in excess of the word count limitation but not to exceed 16,000 (joint opening) and 8,000 (joint reply) words [71]. Date of service: 05/25/2023 via email - Attorney for Petitioners: Egge, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (David Marriott) [Entered: 05/25/2023 10:43 PM]
05/30/2023	74 1 pg, 139.57 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Gregory George Garre) [Entered: 05/30/2023 11:29 AM]
05/30/2023	79 12 pg, 205.07 KB	RESPONSE/OPPOSITION filed by Respondent FTC [79] to the Motion to file brief in excess of word count filed by Petitioners Illumina, Incorporated and GRAIL, Incorporated in 23-60167 [71]Response/Opposition to Incorporated Motion due on 06/09/2023 and INCORPORATED MOTION to remove case from expedited calendar [79], to extend time to file brief of appellee until 07/26/2023 [79] Date of Service: 05/30/2023. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Respondent FTC to extend time to file brief of appellee until 07/26/2023 [79]. Date of service: 05/30/2023 via email - Attorney for Petitioners: Egge, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (Matthew Michael Hoffman) [Entered: 05/30/2023 04:48 PM]
05/31/2023	80 15 pg, 199.33 KB	REPLY filed by Petitioners [80] to the Response/Opposition filed by Respondent FTC in 23-60167 [79]. Dat of Service: 05/31/2023. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: REPLY filed by Petitioners Illumina, Incorporated and GRAIL, Incorporated [80] to the filed by Petitioners Illumina, Incorporated and GRAIL, Incorporated [71]. Date of Service: 05/31/2023 via email - Attorney for Petitioners Egge, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman. [23-60167] (David Marriott) [Entered: 05/31/2023 10:26 AM]
05/31/2023	84 3 pg, 197.63 KB	CASE CALENDARED for oral argument on Wednesday, 08/09/2023 at 3:00 p.m. in the East Courtroom of the Wisdom Courthouse in New Orleans. [23-60167] (CBW) [Entered: 05/31/2023 03:36 PM]
05/31/2023	85 5 pg, 122.79 KB	REPLY filed by [85] to the Motion to continue oral argument filed by Respondent FTC in 23-60167 [79]. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: REPLY filed by Respondent FTC [85] to the filed by Respondent FTC [79], to the to continue oral argument filed by Respondent FTC [79], to the to extend time to file appellee's brief filed by Respondent FTC [79]. Date of Service: 05/31/2023 via email - Attorney for Petitioners: Egge, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman. [23-60167] (Matthew Michael Hoffman) [Entered: 05/31/2023 07:19 PM]
06/01/2023	86	APPEARANCE FORM FILED by Attorney(s) Gregory George Garre for party(s) Petitioner GRAIL, Incorporated, in case 23-60167 [23-60167] (MAS) [Entered: 06/01/2023 10:36 AM]
06/05/2023	93 3 pg, 134.56 KB	COURT ORDER: IT IS ORDERED that Respondent's motion to remove case this from the expedited calendar is DENIED. IT IS FURTHER ORDERED that Respondent's motion to extend time to file Respondent's brief until July 26 is GRANTED. filed by Respondent FTC [79]; [79] E/Res's Brief deadline updated to 07/26/2023 for Respondent Federal Trade Commission [23-60167] (MAS) [Entered: 06/05/2023 03:05 PM]
06/05/2023	94 1 pg, 136.59 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Antony Ryan) [Entered: 06/05/2023 04:42 PM]
06/05/2023	95 1 pg, 136.99 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [23-60167] (Benjamin Atlas) [Entered: 06/05/2023 04:46 PM]
06/05/2023	95 pg, 688.46 KB	APPELLANT'S BRIEF FILED Additionally the Brief requires corrections: exceeds the word count. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Sufficient Brief due on 06/20/2023 for Petitioners GRAIL, Incorporated and Illumina, Incorporated. [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Illumina, Incorporated and GRAIL, Incorporated. Date of service: 06/05/2023 via email - Attorney for Petitioners: Egge, Garre, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaker Attorney for Respondent: Hoffman [23-60167] (David Marriott) [Entered: 06/05/2023 08:25 PM]
06/05/2023	97 0 pg, 0 KB	MOTION AND/OR DOCUMENT UNDER TEMPORARY SEAL pending a ruling by the court filed by Petitioners Illumina, Incorporated and GRAIL, IncorporatedThis document is unopposed. Date of service: 06/05/2023 via email - Attorney for Petitioners: Egge, Garre, Goswami, Johnson, Marriott, Pfeiffer, Rathbur Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (David Marriott) [Entered: 06/05/2023 08:57 PM]

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06/05/2023	98 15 pg, 217.43 KB	UNOPPOSED MOTION to place record excerpts under seal [98]. Date of service: 06/05/2023 [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Petitioners Illumina, Incorporated and GRAIL, Incorporated to place the record on appeal under seal. Date of service: 06/05/2023 via email - Attorney for Petitioners: Egge, Garre, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (David Marriott) [Entered: 06/05/2023 09:14 PM]
06/05/2023	99 0 pg, 0 KB	RECORD EXCERPTS FILED by Petitioners GRAIL, Incorporated and Illumina, Incorporated. # of Copies Provided: 0 [23-60167] (MAS) [Entered: 06/06/2023 07:46 AM]
06/06/2023	100	APPEARANCE FORM FILED by Attorney Benjamin Atlas for Petitioner Illumina, Incorporated in 23-60167 [23-60167] (MAS) [Entered: 06/06/2023 10:30 AM]
06/06/2023	102	APPEARANCE FORM FILED by Attorney Antony L. Ryan for Petitioner Illumina, Incorporated in 23-60167 [23-60167] (MAS) [Entered: 06/06/2023 10:32 AM]
06/08/2023	1 pg, 211.03 KB	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [23-60167] (John Mercer Masslon II) [Entered: 06/08/2023 05:32 AM]
06/08/2023	108 32 pg, 273.9 KB	AMICUS CURIAE BRIEF FILED by Washington Legal Foundation. The Consent is Included in the Brief. # of Copies Provided: 0 [23-60167] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by Washington Legal Foundation. Date of service: 06/08/2023 via email - Attorney for Petitioners: Atlas, Egge, Garre, Goswami, Johnson, Marriott, Pfeiffer, Rathbun, Ryan, Sullivan, Varney, Weiss, Zaken; Attorney for Respondent: Hoffman [23-60167] (John Mercer Massion II) [Entered: 06/08/2023 05:37 AM]
06/08/2023	109	APPEARANCE FORM FILED by Attorney John Mercer Masslon II for Amicus Curiae Washington Legal Foundation in 23-60167 [23-60167] (MAS) [Entered: 06/08/2023 01:39 PM]
06/08/2023	<u>110</u> 2 pg, 81.99 KB	PAPER COPIES REQUESTED for the Amicus Brief filed by Washington Legal Foundation in 23-60167 [108]. Paper Copies of Brief due on 06/13/2023 for Amicus Curiae Washington Legal Foundation. [23-60167] (MAS) [Entered: 06/08/2023 01:40 PM]

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Ocuments and Docket Summary

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