

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

In the Matter of)
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At any time from the close of the hearing record pursuant to § 3.44(c) until the filing of his or her initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence for good cause shown.

16 C.F.R. § 3.51(e)(1).

in Rule 3.51(e)(1) require a showing that the action sought could not have been achieved despite the diligence of the party making the request. *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 207, at *10 (Oct. 22, 2009). Demonstrating due diligence in this context means demonstrating introduce the evidence

reported in RX4060 and 4061, cannot be assumed. In addition, the opinions of lay observers based on those claims are not relevant. *See, e.g.*, RX4061 (asserting Genomics Startup [is] mode by releasing NGS sequencer information for the first time). Moreover, because the hearing has been completed, such multi-level hearsay cannot be appropriately tested by cross-examination. Ultimately, any probative value of these documents is outweighed by the potential prejudice in admitting the documents at this late stage of proceedings.

RX4062

chemistry and DNBSeg-G400 sequencer commercially
RX4062.

The likelihood that BGI will in fact begin sales, as asserted in the article, and the truth of other details reflected therein, cannot be tested, and Complaint Counsel cannot respond on the merits at this late stage of the proceedings without suffering prejudice. However, RX4062 is sufficiently reliable to show that BGI, in fact, intends to begin making sales as announced, which has some independent relevance on the issue of the availability of alternatives to Illumina NGS. Moreover, the fact of announcement is not cumulative, and reopening the record to admit RX4062 for this limited purpose will not cause undue prejudice to Complaint Counsel.

RX4063, a press release issued publicly and directly by Exact, is sufficiently reliable to constitute evidence that Exact and Ultima have, in fact, entered into a long-term supply agreement under which Ultima will provide Exact access to its NGS products. This evidence is relevant, not cumulative, and allowing the document for this limited purpose will not cause undue prejudice to Complaint Counsel.

Accordingly, the record may be reopened to receive