PUBLIC VERSION

[redacted]

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

CIRRUS LOGIC, INC.; AND
OMNIVISION TECHNOLOGIES, INC.,
Petitioners,

v.

GREENTHREAD LLC
Patent Owner

_____

Case: IPR2024-00021
U.S. Patent No. 11,121,222

_____

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE EXHIBIT 2072 (RAO DECLARATION)

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EXHIBIT LIST

Exhibit No.	Description	Submitted Previously
Ex. 2001	Greenthread, LLC v. Intel Corp., No. 6:22-cv-00105-ADA, Dkt. 1 (Complaint) (W.D. Tex. Jan. 27, 2022)	X
Ex. 2002	Definition of "privity" in Black's Law Dictionary (11th ed. 2019) available from Westlaw at westlaw.com	X
Ex. 2003	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 38 (First Amended Complaint for Patent Infringement) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2004	Greenthread, LLC v. Intel Corp., No. 6:22-cv-00105-ADA, Dkt. 113 (Redacted Memorandum Opinion and Order) (W.D. Tex. Dec. 27, 2022)	X
Ex. 2005	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 38-8 (Greenthread's Amended Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2006	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 38-12 (Exs. D-1, D-2, D-3, D-6 to Greenthread's Preliminary Infringement Contentions) (W.D. Tex., filed Apr. 29, 2022)	X
Ex. 2007	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 49 (Notice of Appearance of Additional Counsel) (W.D. Tex., filed June 9, 2022)	X
Ex. 2008	Petition (Paper 1) in Sony Group Corp. v. Greenthread, LLC, IPR2023-00376	X
Ex. 2009	Greenthread, LLC v. Dell Inc., No. 6:22-cv-105-ADA, Dkt. 120 (Second Amended Complaint)	X
Ex. 2010	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 135 (Motion for Admission Pro Hac Vice of L. Popovski on Behalf of Sony) (W.D. Tex., filed January 30, 2023)	X
Ex. 2011	Email communication from Patent Owner's counsel to Petitioner's counsel dated October 20, 2023	X
Ex. 2012	Email Attachment – Cirrus Logic Technical Support Article Number 000207340	X
Ex. 2013	Email Attachment - Cirrus Logic Investor Presentation as of April 28, 2015	X
Ex.	Email Attachment - GlobalFoundries 2022 Capital Markets	X

2014	Day, available at https://investors.gf.com/static-files/65f5f1b9-2aea-47a3-8455-10413c6560f4	
Ex. 2015	Email Attachment - Intel RealSense Product Family D400 Series, dated 2019	X
Ex. 2016	Email communication from Petitioner's counsel to Patent Owner's counsel dated October 24, 2023	X
Ex. 2017	Email communication from Patent Owner's counsel to Board, copying Petitioner's counsel dated November 1, 2023	X
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Ex. 2020	Article entitled "Cirrus Logic Helps Ease PC Industry Transition to New MIPI SoundWire® Interface" available at https://investor.cirrus.com/news-and-events/investor-news/news-details/2023/Cirrus-Logic-Helps-Ease-PC-Industry-Transition-to-New-MIPI-SoundWire-Interface/default.aspx	X
Ex. 2021	Greenthread, LLC v. Intel Corp., 6:22-cv-00105-ADA, Dkt. 120-8, Greenthread's Amended Preliminary Infringement Contentions (W.D. Tex., filed Jan. 23, 2023)	X
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Ex. 2048	Greenthread, LLC v. Samsung Electronics Co., Ltd. et al, EDTX-2-19-cv-00147, Dkt. 1 (Complaint) (E.D.Tex., April 30, 2019)	X
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Ex. 2050	Correspondence from Patent Owner's counsel to Petitioner's counsel dated May 4, 2023	X
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Ex. 2056	Excerpts of the Deposition Transcript of Scott Warrick taken on June 7, 2024 along with marked Exhibits 3-5 in Greenthread, LLC v. Cirrus Logic, Inc., 1:23-cv-00369-DC (W.D. Tex.)	X
Ex. 2057	Declaration of Dr. Alexander Glew	X
Ex. 2058	Transcript of Deposition of Dr. Sanjay Banerjee taken on July 19, 2024	X
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I. INTRODUCTION

Petitioners are at a loss to explain why [redacted], two large sophisticated semiconductor companies, would pay collectively $10,000,000 for licenses to the family of challenged patents—*and no other patents*—when Greenthread had never threatened litigation or even contacted either company. Either company or both could have joined or copied [redacted] then-pending IPR petitions at little cost, if they considered Greenthread's patents invalid. The simplest explanation for [redacted] decision to take a license is that they believed that Greenthread's patents were valid and valuable. Unfortunately for Petitioners, that conclusion is inconsistent with the result they want here. To avoid the facts, Petitioners seek to exclude a declaration from Dr. Rao, the patent's inventor and Greenthread's founder, by claiming that Dr. Rao has no personal knowledge of the licenses.

Petitioners' motion can be denied for at least two reasons. First, the rules of evidence Petitioners invoke, (Federal Rule of Evidence 602, requiring personal knowledge, and 802, barring hearsay) do not apply to testimony as a corporate representative. Dr. Rao's testimony is offered as an employee and representative of

Patent Owner Greenthread. Therefore, the rules that Petitioners invoke are simply inapplicable.[1]

Second, even if Rules 602 and 802 applied, Petitioners' argument has no basis in the record whatsoever. Petitioners make the blanket assertion that Dr. Rao knows nothing of Greenthread's patent licenses or business affairs and therefore his declaration should be stricken in its entirety. But Dr. Rao's deposition testimony tells a very different story. Dr. Rao testified that he was and is involved in all of Greenthread's business decisions and provided detailed answers to Petitioners' questions about Greenthread's licenses and his personal involvement with Greenthread's decision to enter them.

The only place where Petitioners address *specific* facts of which Dr. Rao purportedly lacks personal knowledge is a "*see*, *e.g.*" string cite to statements in Dr. Rao's declaration. But Petitioners do not explain why they think Dr. Rao has no personal knowledge of these facts other than his supposed general ignorance of Greenthread's business. Any explanation Petitioners might offer would be implausible because Dr. Rao's testimony and declaration make clear the basis of his

[1] Although Petitioners mention Rules 402 and 403 in passing, they make no separate argument to support striking Dr. Rao's testimony under those rules, except their irrelevant arguments under Rules 602 and 802.

knowledge for each of the statements in the string cite. Moreover, during Dr. Rao's deposition Petitioners failed to *ask* Dr. Rao about any of statements in their string cite. If they believed Dr. Rao had no personal knowledge of these statements, they could have and should have asked him about them at his deposition. Since they did not, their motion should be denied.

II. RELEVANT BACKGROUND FACTS

Dr. Rao is the inventor of each challenged patent (*see* Ex. 1001). He is also the co-founder and a corporate representative of Greenthread. Ex. 2072, ¶ 1. Dr. Rao has "been familiar with [Greenthread's] business affairs since its creation." *Id.*, ¶ 2. "[O]nly one part of" Dr. Rao's job is technical. Ex. 1066, 19:20. Dr. Rao also makes "sure that correct business decisions are made at the appropriate time," such as when to enter into a patent license. *Id.*, 20:1-6. Dr. Rao testified that he reviewed each of Greenthread's patent licensing opportunities with Greenthread's then-President Phil John. *Id.*, 27:11-19 ("Mr. John and I reviewed each case.").

In his declaration and deposition testimony, Dr. Rao explained how, through RPX, Patent Owner negotiated and secured a license with each of [redacted] and [redacted] despite Greenthread having never threatened *either* company with litigation. Ex. 2072, ¶ 4-5; *see* Ex. 1066, 34:11-16.

When Petitioners asked, Dr. Rao also provided details about specific licensing opportunities he analyzed. For example, Dr. Rao testified that he analyzed two

patents Greenthread received as part of the consideration for its license with AMS-OSRAM. Ex. 2072, ¶ 3; Ex. 1066, 30:2-6 ("I recommended to Mr. John … that my reading is the patents have some potential future value."). *Id.*, 32:6-9 ("Mr. John, who understands some of the business and market, agreed with me that there's a potential, and we both agreed with the conclusion.").

Finally, Dr. Rao testified to the circumstances giving rise to Patent Owner's license with [redacted] and the fact that Greenthread never threatened litigation against those companies. *See* Ex. 2072, ¶ 4-5; Ex. 1066, 34:10-16 ("[S]ome of the licensees, we never approached them. They took their license. We did not contact them.").

III. THE BOARD SHOULD DENY PETITIONERS' MOTION

The Board should deny Petitioners' Motion to Exclude ("Mot.") Dr. Rao's declaration in its entirety. As the moving party, Petitioners bear the burden to show that Dr. Rao's declaration (or some part thereof) should be excluded. 37 C.F.R. § 42.20(c); *e.g.*, *Meta Platforms, Inc. v. Eight kHz, LLC*, IPR2023-01003, Paper 61 at 80, 2025 WL 43710, at *34 (P.T.A.B. Jan. 7, 2025). Since Petitioners seek to exclude Dr. Rao's declaration *in its entirety*, they have the burden to show that each and every statement must be excluded. Petitioners come nowhere close to meeting that burden.

A. Rules 602 and 802 do not apply to testimony from corporate representatives.

Petitioners' motion should be denied, because the personal knowledge and hearsay rules do not apply to testimony offered as a corporate representative. *Humphreys v. Bank of Am.*, 557 Fed. Appx. 416, 424 n.6 (6th Cir. Feb. 11, 2014); *Univ. Healthsystem Consortium v. UnitedHealth Grp., Inc.*, 68 F. Supp. 3d 917, 921 (N.D. Ill. 2014) (stating there is "little principled distinction" between allowing a 30(b)(6) witness to testify at trial without personal knowledge and allowing him to testify at deposition without personal knowledge); *Persian Gulf Inc. v. BP W. Coast Prods. LLC*, 632 F. Supp. 3d 1108, 1128 (S.D. Cal. 2022) ("By definition, corporate witnesses … testify regarding the company's knowledge, not the individual's personal knowledge."); *Parker v. Freedom Mortg. Corp.*, 2020 WL 13605540, at *3 (E.D. Va. Oct. 22, 2020) (holding that "[s]o long as the testimony falls within the corporate knowledge" of the witness, the testimony was admissible); *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 2008 WL 1977522, at *7 (E.D. Pa. May 7, 2008) ("[T]he testimony of the [corporate representative] is deemed to be the testimony of the corporation itself."). Since Dr. Rao's testimony was offered in his capacity as an employee and representative of Greenthread, the rules under which Petitioners' made their motion do not apply.

B. Petitioners' Motion is unsupported by the record.

Petitioners' motion should also be denied because it has no basis in the record. Since Petitioners seek to strike Dr. Rao's declaration in its entirety, they bear the

burden to show that he has no personal knowledge of *any* statement it contains. The motion fails, because Petitioners' generalized assertion that Dr. Rao lacks any knowledge of Greenthread's business affairs is totally baseless. His declaration and deposition testimony say the exact opposite. The only *specific* statements Petitioners claim Dr. Rao has no personal knowledge of are listed in a "*see*, *e.g.*" string cite in Petitioners' brief. *See* Mot., 5-6. Petitioners offer no explanation for why they think Dr. Rao lacks knowledge of these statements other than their generalized claim that he knows nothing of Greenthread's business affairs. At Dr. Rao's deposition, Petitioners failed to ask Dr. Rao about any of these statements and his other testimony makes clear that his testimony is based on personal knowledge.

1. Petitioners' personal knowledge arguments are baseless.

"[T]he threshold for admitting testimony under Rule 602 is 'low,'" and Dr. Rao easily clears it. *DataMill, Inc. v. U.S.*, 91 Fed. Cl. 722, 734-35 (Fed. Cl. 2010). First, Petitioners argue that Dr. Rao must lack personal knowledge of *any* of the facts in his declaration, because he is "primarily a technical person." Mot., 2. It should go without saying that being "a technical person" does not preclude a witness from also having personal knowledge of business affairs. Dr. Rao said he is "*primarily*" a technical person, not exclusively a technical person. Ex. 1066, 12:16-17 (emphasis added). As Dr. Rao went on to explain, he was and is involved in all of Greenthread's business decisions. *See* Ex. 1066, 20:1-2.

Likewise, Petitioners' assertion that Dr. Rao "simply" interacted with Mr. John on business matters is incorrect and inconsistent with Dr. Rao's testimony. *Petitioners*, not Dr. Rao, inserted the word "simply" as their self-serving characterization of Dr. Rao's activities. Mot., 4, 6. Dr. Rao did not say that he "simply" interacted with Mr. John or that those interactions would not have been a basis for personal knowledge. To the contrary, Dr. Rao said he personally analyzes every patent licensing opportunity Greenthread has and makes "sure that correct business decisions are made at the appropriate time." Ex. 1066, 20:1-2. Moreover, even if Dr. Rao had no substantive input and "simply" shadowed Mr. John as he made all the decisions, Dr. Rao would still have personal knowledge based on his observations of Mr. John. Petitioners' blanket claim that Dr. Rao is ignorant of Greenthread's business affairs is not supported by anything in the record.

Petitioners also assert that Dr. Rao does not have personal knowledge of Greenthread's patent licenses, because he did not sign them. But personal knowledge of contracts is not limited to the signatories. A "witness does not need to have witnessed the execution of a contract in order to possess personal knowledge about that contract." *Dan Ryan Builders W. Va., LLC v. Main St. Am. Assurance Co.*, 452 F. Supp. 3d 411, 422 (D.S.C. 2020); *see also City of Chicago v. Reliable Truck Parts Co., Inc.*, 822 F. Supp. 1288, 1296 (N.D. Ill. 1993) (holding that "[s]uch a

requirement would be ludicrous"). Petitioners cite no authority that only a signatory has personal knowledge of a license.

Furthermore, *Petitioners never asked* Dr. Rao whether or how he had personal knowledge for the licenses. Petitioners never asked, because it was obvious from his other testimony that he was very personally familiar with the licenses. Dr. Rao testified that he analyzed the licensing opportunities, including license terms and discussed the licenses with Mr. John. *E.g.*, Ex. 1066, 27:11-19, 29:19-30:6, 30:17-31:1, 32: 5-9, 34:10-16, 41:14-42:1. That is personal knowledge of the licenses.

Similarly, Petitioners assert, without any support, that Dr. Rao lacks knowledge of Greenthread's licensing, because communications with licensees were channeled through attorneys. Mot., 5. Communicating through its attorneys is normal industry practice and does not mean that Dr. Rao has no personal knowledge of Greenthread's "licensing activities" generally. Petitioners' leap in logic is contradicted by the record. Dr. Rao testified that he was responsible for ensuring that Greenthread makes good business decisions *See* Ex. 1066, 20:1-2. Greenthread's attorneys were, by definition, Greenthread's agents taking direction from Dr. Rao. Dr. Rao obviously knows how he instructed them and whether they followed his instructions. If they had failed to follow Dr. Rao's instructions, the licenses never would have been signed.

Finally, Petitioners provide a laundry list of statements in Dr. Rao's declaration of which they claim Dr. Rao could not have knowledge. *See* Mot., 5. But, Petitioners *did not ask* Dr. Rao the basis of his knowledge for *any* of these statements. Petitioners cannot allege that Dr. Rao does not have personal knowledge of these facts, when they never bothered to inquire whether he did. Furthermore, the basis of Dr. Rao's knowledge of these facts is clear from his declaration and deposition testimony.

In their "*see*, *e.g.*" string cite, Petitioners claim that Dr. Rao lacks personal knowledge of his statement that "[e]ach licensee has performed as agreed"—*i.e.*, that they paid the license fees. Mot., 5 (citing Ex. 2072, ¶ 2). Petitioners did not ask Dr. Rao about this statement, but if they had, he could have told them that the licensees' payments are reflected in Greenthread's banking records, and Dr. Rao's personal banking records, because he is a member of Greenthread. Ex. 2072, ¶ 2. Furthermore, Dr. Rao testified that he is generally responsible for Greenthread's business decisions. *See* Ex. 1066, 19:13-20:10. Ensuring that Greenthread was paid $10,000,000 from [redacted] as agreed is presumably high on the list of its business priorities that would concern Dr. Rao.

Petitioners' string cite also claims that Dr. Rao cannot know if certain terms are "standard" in RPX licenses. Mot., 5 (citing Ex. 2072, ¶ 3). But again Petitioners never asked Dr. Rao the basis for this statement. If Petitioners had asked Dr. Rao,

he could have pointed out that he had analyzed multiple RPX agreements for Greenthread and that many of the terms were the same. *See* Ex. 1066, 27:18-19, 30:2-6; Ex. 2072, Appx. A, B.

Petitioners claim that Dr. Rao could not know if Greenthread "threatened litigation" against [redacted] or whether they approached Greenthread. Mot., 5 (citing Ex. 2072, ¶ 4). But these are facts that would obviously be known to Dr. Rao. If Greenthread had threatened litigation, Dr. Rao would have been involved in the decision to make the threat. Ex. 1066, 21:12-14, 23:11-13. If the companies approached Greenthread—as they did—he would have analyzed (and did analyze) the licensing opportunity. *Id.*, 27:11-19, 29:19-30:6, 30:17-31:1, 32: 5-9, 34:10-16, 41:14-42:1. Again, however, Petitioners never asked Dr. Rao how he knew that Greenthread never threatened [redacted].

Finally, Petitioners claim that Dr. Rao has no personal knowledge of the reasons for the [redacted] payment schedules under the license. Mot., 5 (citing Ex. 2072, ¶ 6). But again, Petitioners never asked about the schedules. If they had, Dr. Rao could have pointed out that the schedules (and the reason for them) are described in the licenses he analyzed for Greenthread. Ex. 2072, ¶6, Appx. A § 1.1; *see also* Ex. 1066, 27:18-19, 34:10-35:2, 37:19-22, 38:12-39:4.

2. Greenthread's licenses are not hearsay.

Petitioners attempt to exclude Greenthread's licenses as hearsay fails. Hearsay is a statement offered to "prove the truth of the matter asserted." Fed. R. Ev. 801(c)(2). Contracts, like Greenthread's licenses, are verbal acts, and are not offered to "prove the truth of the matter asserted." Thus, Rule 802 against hearsay does not apply and Petitioners' argument fails. *See generally*, *Kepner-Tregoe, Inc. Leadership Software, Inc.*, 12 F.3d 527, 540 (5th Cir. 1994) (recognizing that "[s]igned instruments such as … contracts … are writings that have independent legal significance, and are nonhearsay. A contract is a verbal act. It has legal reality independent of the trust of any statement contained in it.") (internal citation omitted); *Id.* ("The admission of a contract to prove the operative fact of that contract's existence thus cannot be subject of a valid hearsay objection.").

Petitioners' argument that Greenthread's licenses fall outside the business records exception to hearsay in Rule 803(6) is irrelevant. Rule 801 defines hearsay. Rule 802 makes hearsay inadmissible, and Rule 803 allows certain evidence to be admitted, even though it is hearsay defined in Rule 801. But, Greenthread's licenses do not need a hearsay exception under 803, because they do not meet the definition of hearsay in 801. *See Izett v. Crown Asset Mgmt., LLC*, 2019 WL 4845575, at *7 (N.D. Cal. Oct. 1, 2019) (finding that contractual provisions were "admissible as

contracts (falling outside of the definition of hearsay), or alternatively through the business records exception").

Finally, Greenthread's licenses would also qualify for the business records exception under Rule 803(6) if they needed to. Petitioners' only argument to the contrary is that the licenses were not created pursuant to a written licensing policy. Mot., 7. But Petitioners' point to no authority that Rule 803(6) requires a written policy governing the business records. There is no such requirement. *E.g.*, *U.S. v. Skeddle*, 981 F. Supp. 1069, 1073 (N.D. Ohio 1997) (holding that "although there was no formal policy" regarding document creation, this did not preclude admissibility under the business records exception).

3. Petitioners' other hearsay arguments are baseless.

Petitioners seek to exclude Dr. Rao's declaration on the ground that it constitutes inadmissible hearsay. Mot., 6-7. However, Petitioners argument fails because Petitioners do not explain what the "hearsay" is. Hearsay is an out of court "statement" of a non-witness that is offered "to prove the truth of the matter asserted in the statement." Fed. R. Ev. 802(c)(2). However, Petitioners do not point to any "statement" of a non-witness that Dr. Rao repeated in his declaration or deposition. Petitioners argue that Dr. Rao "could only have learned of the *facts* alleged in his declaration through another person's communications," but do not identify any "statement" from third parties that Dr. Rao is seeking to introduce. Mot., 6 (emphasis

added). Since Dr. Rao's declaration does not repeat any "statement" of a non-witness there is no "hearsay." Petitioners' hearsay argument is simply a reprise of its flawed "personal knowledge" argument. As explained above, Dr. Rao has personal knowledge of the matters in his declaration and Petitioners failed to make any serious attempt to inquire about the basis for Dr. Rao's knowledge. *Supra* III.B.1.

C. Petitioners' arguments go to the weight of evidence, not it's admissibility.

Petitioners' motion can also be denied, because "the Board is capable of assessing the weight to be given [Dr. Rao's] testimony without excluding it." *Machinex Indus., Inc. v. JJG IP Holdings, LLC*, IPR2020-00899, Paper 45 at 103-104, 2021 WL 4876262, at *42 (P.T.A.B. Oct. 4, 2021). "Proceedings before the Board … are not jury trials; in the absence of a jury, the risk of unfair prejudice against which Rule 403 guards is diminished, if not eliminated entirely." *Microsoft Corp. v. Parallel Networks Licensing, LLC*, IPR2015-00485, Paper 81 at 24-25 (P.T.A.B. Aug. 11, 2016). Furthermore, because there is no jury and the "Petitioner ha[s] the opportunity to address any alleged deficiencies regarding [the witness's] personal knowledge … during a deposition," challenges under Rules 602 properly "implicate the weight and sufficiency of the testimony, rather than its admissibility." *Incyte Corp. v. Concert Pharm., Inc.*, IPR2017-01256, Paper 119 at 44 (P.T.A.B. Apr. 8, 2019). Here too, Petitioners *had the opportunity* to ask Dr. Rao directly

regarding the basis of his knowledge for each of the statements in his declaration, but chose not to do so. *See* § III.B.1

IV. CONCLUSION

For at least the reasons above, the Board should deny Petitioners' Motion, as they have not carried their burden under 37 C.F.R. § 42.20(c).

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Respectfully submitted,

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CERTIFICATION OF PAGE LIMIT

The undersigned hereby certifies that the above-captioned **PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE** complies with the page limits of § 42.24(a) because it does not contain more than 15 pages. This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and the type style requirements of 37 C.F.R. § 42.6(a)(2)(iii) and (iv).

Dated: January 17, 2025

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CERTIFICATION OF SERVICE

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