UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC., INSTAGRAM, LLC, AND WHATSAPP INC.,
Petitioners,

v.

EYESMATCH LTD., MEMOMI LABS INC.,
Patent Owners.

Case IPR2022-00489
Patent 8,982,109

PATENT OWNERS EYESMATCH LTD., MEMOMI LABS INC.'S PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,982,109

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List of Patent Owner's Exhibits

Ex. No.	Description
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I. INTRODUCTION

The Petition should be denied because Petitioners fail to demonstrate a reasonable likelihood of prevailing as to any of the challenged claims.

Each of the challenged claims, directly or via claim dependency, requires "varying rate at which the non-ordered steps are performed on the series of images according to the distance." Petitioners rely on a combination of references to meet this limitation but fail to show motivation to combine, or even that, if combined, that combination would disclose the challenged claims. Since a person of ordinary skill in the art would not be motivated to combine Petitioners' asserted references for this limitation, institution should be denied.

II. BACKGROUND

A. THE 109 PATENT

On March 17, 2015, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,982,109 (the "109 Patent"), entitled "Devices, Systems and Methods of Capturing and Displaying Appearances," to Nissi Vilcovksy and Ofer Saban. EyesMatch is the owner of the remaining right, title, and interest in and to the 109 Patent, with the exclusive right to enforce the 109 Patent.

The field of endeavor of the 109 Patent is digital mirror systems that emulate traditional mirrors. As the 109 Patent explains, a traditional video camera is a poor substitute for a mirror: while "[a] few alternatives have been proposed by prior art around the combination of a camera and a screen to replace the conventional mirror,"

it explains that "these techniques are not convincing and are not yet accepted as a reliable image of the individual as if he was looking at himself in a conventional mirror," primarily "because the image generated by a camera is very different from an image generated by a mirror." (Ex. 1001 (109 Patent) at 1:62-2:4.) For example, "When a user looks at himself in the mirror, what he actually sees is the reflection of himself as if he was standing at a distance that is double the distance from him to the mirror" (Ex. 1001 (109 Patent) at 2:4-6) but with a camera, "wherein as the user gets closer to the camera he appears larger in the image. This is mainly because the FOV of a camera is fixed and is determined mainly by the size of the camera lens, or focal length." (Ex. 1001 (109 Patent) at 2:23-27.) Similarly, "when the user approaches the mirror, the reflection of his eyes will always stay on the same virtual line into the mirror. Conversely, depending on a camera's height, as the user gets closer to the camera, the user's eyes may appear at different levels." (Ex. 1001 (109 Patent) at 2:29-33.)

The 109 Patent describes a solution to these problems by implementing a series of software transformations of the received image that cause a camera and convention computer to mimic a mirror with a captured video stream. First, the image is flipped. See, e.g., Claim 1. Then, a "transformation mapping" is applied to modify the image to mimic a mirror image; the 109 Patent specification explains that such "transformation mappings" can include an algorithm that moves the image of

the subject in the frame so as to keep their eyes consistently at the same level of the frame, as would occur with a mirror. (Ex. 1001 (109 Patent) at 19:31-52, Claim 1.) The image is then resized in accordance with changes in subject's distance from the camera; for example, this can cause the camera/computer to display the subject at a consistent size when they approach or move away from the camera, as a mirror does, instead of increasing in size to the point at which they take up the entire frame. *See, e.g.*, (Ex. 1001 (109 Patent) at Claim 1.) Finally, the system applies these transformations at a rate that varies based on the distance to the user in order to smoothly mimic a mirror. *See, e.g.*, (Ex. 1001 (109 Patent) at Claim 1.)

The 109 Patent includes 18 Claims, one of which is an independent claim. (Ex. 1001 (109 Patent).) Petitioners challenge six claims as unpatentable. Specifically, Grounds 1 and 2 of the Petition both assert obviousness of Claims 1, 2, 6, 8, 9, and 17. All of the challenged claims require a novel combination of elements.

Independent Claim 1 claims a method for operating a system with a monitor, camera, and processor to display a mirror-mimicking image on the monitor by performing non-ordered steps comprising: (i) obtaining a digital image from a camera; (ii) flipping the image about a vertical axis to reverse the right and left sides of the image; (iii) applying a transformation mapping to the image to modify it such that it appears to mimic a reflection of a mirror; (iv) resizing the image to reduce variations caused by changes in the object's distance to the camera; and (v)

displaying the image on the monitor after performing the flipping, transformation mapping, and resizing; (vi) the non-ordered steps are performed on a series of images of a live video feed from the camera; (vii) determining the distance to a user appearing in the live video feed; and (viii) varying the rate at which the non-ordered steps are performed on the series of images according to the distance. Claims 2, 6, 8, 9, and 17 all depend from Claim 1.

B. OVERVIEW OF THE REFERENCES

1. ROSENBERG

Rosenberg (Ex. 1003) discloses a "digital mirror system" which "emulates a traditional mirror by displaying real-time video imagery of a user who stands before it." (Ex. 1003 at Abstract.) The digital mirror system "include[s] a traditional mirror mode and a third person mirror mode." (Ex. 1003 at Abstract.) Rosenberg notes the "limitations" of traditional mirrors which can be "frustrating" such as inability to see a non-inverted representation and inability to see the user's appearance from behind. (Ex. 1003, ¶ 0003.) Rosenberg's digital mirror system is intended to address the "substantial need for a significantly more versatile digital mirror system with a variety of unique and useful digital mirroring features and functions." (Ex. 1003, ¶ 0005.) Additionally, Rosenberg's mirror system is also "adapted to provide real-time captured images that approximate what a user would see when viewing an ordinary mirror, with the additional of various other image processing features." (Ex. 1003, ¶

006.) However, Rosenberg does not disclose varying the rate of the processing steps applied to a stream of images as recited in the 109 Patent challenged claim, let alone doing so based on the distance of a user to the camera. Petitioners concede this point, noting that Rosenberg "does not expressly describe varying the rate at which the 'non-ordered' steps' (described above) are performed." (Pet. at 47.) Moreover, other than inverting the images, which the 109 Patent identifies as insufficient by itself to convincingly emulate traditional mirrors (*see* Ex. 1001 (109 Patent) at 1:62-2:6, 2:23-33), Rosenberg does not discuss performing other transformations on images captured by the device.

2. FRANCOIS

Francois (Ex. 1004) discloses "a handheld mirror simulation device" whose "continuous input video stream and tracker data is used to synthesize, in real-time, a continuous video stream displayed on the LCS screen. The synthesized video stream is a close approximation of what the user would see on the screen surface if it were a real mirror." (Ex. 1004 at Abstract.) Francois relies on 3-D geometry "synthesized and displayed in real-time" "to simulate a real mirror on a computer screen, images of the observed world, consistent with the viewer's position". (Ex. 1004 at p. 0021.) Petitioners concede that Francois "does not expressly describe varying the rate at which the 'non-ordered' steps' (described above) are performed." (Pet. at 47.)

3. VIDUNAS

Vidunas (Ex. 1005) discloses "systems and methods reduce the resolution of video before transference to a display system." (Ex. 1005 at Abstract.) Specifically, Vidunas address the mismatch between modern video cameras that "can capture video at resolutions greater than that which can be displayed by many modern display systems, such as computer monitors" (Ex. 1005 at 1:26-28) by "provid[ing] systems and methods reduce the resolution of video before transference to a display system." (Ex. 1005 at 1:39-40.) Vidunas is directed to systems having multiple displays and determining the appropriate resolution of the video stream directed to each display. (*See, e.g.*, Ex. 1005 at 5:34-36 ("Consequently, viewing station 303 may be located in a different part of a customer premises or in a different geographic location than video server 302 or viewing station 305."), *id.* at 6:1-2 ("The viewing parameters may differ for viewing areas 304 and 306 of viewing stations 303 and 305.") *See also*, *id.* at independent Claims 1 ("receiving viewing parameters for plural viewing areas"), 9 ("a network interface configured to receive viewing parameters for plural viewing areas"), 17 ("receive viewing parameters for plural viewing areas").) Petitioners concede that Vidunas "does not expressly describe varying the rate at which the 'non-ordered' steps' (described above) are performed." (Pet. at 47.) Vidunas is not related to digital mirror systems.

4. DUNTON

Dunton (Ex. 1006) discloses an imaging apparatus operable in two modes, the second mode of which "is suitable for video image capture and other rapid frame rate applications." Dunton discloses a reduction in the volume of image data in this second mode of operation by having lower resolution or "by either digital scaling, cropping, or a combination of optical scaling and selective readout of sensor signals." (Ex. 1006 at Abstract, 1:35-43.) As a result, "video images have a lower resolution but a greater angular field of view" meaning that close-up scenes can be captured and transmitted at a lower resolution at a higher frame rate. (Ex. 1006 at 2:60-67.) Dunton is directed to altering the video stream image frame rate, not the rate at which processing steps such as those recited in the 109 Patent Claim 1, limitations 1(b)-(e) are performed. Moreover, Dunton does not use distance in connection with altering the video stream frame rate. Dunton has application to video teleconferencing but is not related to digital mirror systems.

5. YONG

Yong (Ex. 1007) discloses a "method, apparatus, and software product for implementing algorithms for improving a frame rate by reducing a size and resolution of selected versus unselected image frames captured by a sensor in an image processing pipeline before displaying (or before encoding) in electronic devices." (Ex. 1007 at Abstract; 4:25-32.) The reduction in image size or resolution

will result in faster processing times for the video stream. (Ex. 1007 at 6:6-15.) Yong is directed to altering the video stream image frame rate, not the rate at which processing steps such as those recited in the 109 Patent Claim 1, limitations 1(b)-(e) are performed. Moreover, Yong does not use distance in connection with alternating the video stream frame rate. Yong is also not related to digital mirror systems.

III. PERSON HAVING ORDINARY SKILL IN THE ART ("POSA")

Petitioners propose a POSA as of December 2012 as having "at least a bachelor's degree in electrical engineering or computer science, and two years of work experience related to image capture and processing, and would also have familiarity with 3-D graphics programming and/or computer vision." (Pet. at 5-6.) Petitioners concede that "A person could qualify with more formal education and less technical experience, or vice versa." (Pet. at 6.) Patent Owner applies Petitioners' proposed level of skill for purposes of this Preliminary Response and reserves the right to propose a different level of skill should the Board grant institution.

IV. CLAIM CONSTRUCTION

Petitioner and Patent Owner have completed claim construction briefing of certain terms in the pending district court litigation. Patent Owner does not believe that resolution of any claim construction issues is necessary at this time to conclude that Petitioners have not shown that the challenged claims are unpatentable. Patent

Owner reserves the right to raise claim construction should the Board grant institution.

V. THE PETITION FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PREVAILING IN ITS CHALLENGES TO ANY CLAIMS

A. Ground 1: Petitioners Have Failed to Show a Motivation to Combine Rosenberg and Francois with Vidunas as to Claim 1(d)

Petitioners have failed to demonstrate why a POSA would be motivated to combine Rosenberg and Francois with Vidunas to meet the "resizing the image to reduce variations caused by changes in object's distance to the camera" limitation of Claim 1. First, Vidunas is not analogous art to Rosenberg and Francois. Second, Petitioners' reliance on Vidunas specifically for this limitation is misplaced because the motivation for resizing images in Vidunas is not the same as the need for resizing in the 109 Patent or in the combination of Rosenberg and Francois. (Ex. 2004 (Forsyth Decl.), ¶ 21.)

1. Vidunas is Not Analogous Art

"Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor [as the claimed invention], regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir.

2004). As explained above, the field of endeavor of the 109 Patent is digital mirror systems that emulate traditional mirrors.

Both Rosenberg and Francois are directed to digital mirror systems that emulate traditional mirrors. Rosenberg's mirror system is "adapted to provide real-time captured images that approximate what a user would see when viewing an ordinary mirror, with the additional of various other image processing features." (Ex. 1003, ¶ 006.) Francois relies on 3-D geometry "synthesized and displayed in real-time" "to simulate a real mirror on a computer screen, images of the observed world, consistent with the viewer's position". (Ex. 1004 at p. 0021.)

Conversely, Vidunas (Ex. 1005) is not at all related to digital mirror systems that emulate traditional mirrors. Rather, Vidunas is directed to "systems and methods reduce the resolution of video before transference to a display system." (Ex. 1005 at Abstract.) Vidunas addresses the mismatch between modern video cameras that "can capture video at resolutions greater than that which can be displayed by many modern display systems, such as computer monitors" (Ex. 1005 at 1:26-28) by "provid[ing] systems and methods reduce the resolution of video before transference to a display system." (Ex. 1005 at 1:39-40.) Moreover, unlike the 109 Patent, Rosenberg, and Francois, Vidunas is particularly focused on systems with multiple displays and ensuring the appropriate resolution is directed to each display. (*See, e.g.*, Ex. 1005 at 5:34-36 ("Consequently, viewing station 303 may be located in a

different part of a customer premises or in a different geographic location than video server 302 or viewing station 305."), *id.* at 6:1-2 ("The viewing parameters may differ for viewing areas 304 and 306 of viewing stations 303 and 305.") *See also*, *id.* at independent Claims 1 ("receiving viewing parameters for plural viewing areas"), 9 ("a network interface configured to receive viewing parameters for plural viewing areas"), 17 ("receive viewing parameters for plural viewing areas").)

Additionally, Vidunas is not reasonably pertinent to the problem of digital mirror systems accurately emulating traditional mirrors. Francois, which is directed to digital mirror systems that emulate traditional mirrors, does not address resolution at all, and Rosenberg, which also is directed to digital mirror systems that emulate traditional mirrors, addresses possible future high resolution screens only briefly in passing (Ex. 1003, ¶ 0059). On the other hand, the focus of Vidunas is "reduc[ing] the resolution of a video before transference to a display system." (Ex. 1005 at Abstract.) Notably, *reducing* the resolution of video and thus the resulting quality of the images is the opposite of what a POSA interested in having a digital mirror system emulate a traditional mirror would want. (Ex. 2004 (Forsyth Decl.), ¶¶ 22-26.)

Accordingly, a POSA would not be motivated to combine Rosenberg and Francois with Vidunas because Vidunas is not analogous art and is not reasonably

pertinent to the problem of digital mirror systems accurately emulating traditional mirrors. (Ex. 2004 (Forsyth Decl.), ¶¶ 22-26.)

2. Resizing in Vidunas is Premised on a Different Need Than in the 109 Patent, Rosenberg, and Francois

Petitioners rely on combining Vidunas with Rosenberg and Francois for Claim 1, limitation 1(d): "resizing the image to reduce variations caused by changes in object's distance to the camera". Specifically, Petitioners assert that a POSA would have been motivated to combine the explicit disclosure of cropping images in Vidunas with the combination of Rosenberg and Francois because it would have been obvious to a POSA "to crop the images of the mirror display system described in the Rosenberg-Francois combination to emphasize the user appearing in the image" and because a POSA "would have also appreciated the clear benefits of cropping an image, for example, and image enlarged based on increased distance." (Pet. at 40-41.)

However, as Petitioners admit, "Francois does not expressly state that it crops images that are transformed and scaled-up" but assert that "it would have been obvious to apply cropping to such images." (Pet. at 36.) Moreover, to the extent that Francois discloses scaling operations, such scaling is based on equations based on the subject object's distance to the camera. (Ex. 1004 at 22-23.) Conversely, Vidunas' disclosure of cropping images is ***not*** based on a need to resize based on the subject object's distance to the camera but rather with considerations of display size,

data transfer, and network bandwidth. (*See, e.g.*, Ex. 1005 at 1:63-65) ("In some embodiments modifying the video based on the viewing parameters to produce the modified video comprises scaling a resolution of the video and cropping the video."); (*Id.* at 11:42-46) ("Scaling the images before compression will dramatically reduce the bandwidth required to transmit the compressed images, and it will reduce the CPU power required to decompress the images on the workstation."); (*Id.* at 1:32-34) ("Since more data is needed to represent higher resolution video, it follows that more bandwidth is used to transmit the data of higher resolution video.").

A POSA would not be motivated to combine these references because perception and distortion correction based on the subject object's distance to the camera does not even factor into the considerations of cropping for Vidunas. (Ex. 2004 (Forsyth Decl.), ¶¶ 27-29.)

B. Ground 1: Petitioners Have Failed to Show a Motivation to Combine Rosenberg and Francois with Either of Dunton or Yong as to Claim 1(h)

Petitioners have failed to demonstrate why a POSA would be motivated to combine Rosenberg and Francois with either of Dunton or Yong to meet the "varying rate at which the non-ordered steps are performed on the series of images according to the distance" limitation of Claim 1. First, Dunton or Yong are not analogous art to either of Rosenberg and Francois. Second, and more importantly,

neither Dunton nor Yong disclose the elements of the limitation for which they are cited. (Ex. 2004 (Forsyth Decl.), ¶ 30.)

1. Neither of Dunton nor Yong is Analogous Art

"Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor [as the claimed invention], regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). As explained above, the field of endeavor of the 109 Patent is digital mirror systems that emulate traditional mirrors.

Both Rosenberg and Francois are directed to digital mirror systems that emulate traditional mirrors. Rosenberg's mirror system is "adapted to provide real-time captured images that approximate what a user would see when viewing an ordinary mirror, with the additional of various other image processing features." (Ex. 1003, ¶ 006.) Francois relies on 3-D geometry "synthesized and displayed in real-time" "to simulate a real mirror on a computer screen, images of the observed world, consistent with the viewer's position". (Ex. 1004 at p. 0021.) There is nothing in either Rosenberg or Francois suggesting varying either the frame rate or the rate of performing the processing steps. Nor is there anything in either reference identifying a problem or question which would require varying either the frame rate or the rate

of performing the processing steps. Consequently, a POSA would not be motivated to combine Rosenberg and Francois with either Dunton or Yong.

Unlike Rosenberg and Francois, both Dunton and Yong are directed to video frame capture rate, ***not*** digital mirror systems that emulate traditional mirrors. Dunton discloses an apparatus in which the volume of image data for video image capture is reduced by having lower resolution or "by either digital scaling, cropping, or a combination of optical scaling and selective readout of sensor signals." (Ex. 1006 at Abstract, 1:35-43.) As a result, "video images have a lower resolution but a greater angular field of view" meaning that close-up scenes can be captured and transmitted at a lower resolution at a higher frame rate. (Ex. 1006 at 2:60-67.) Yong (Ex. 1007) discloses a "method, apparatus, and software product for implementing algorithms for improving a frame rate by reducing a size and resolution of selected versus unselected image frames captured by a sensor in an imaging processing pipeline before displaying (or before encoding) in electronic devices." (Ex. 1007 at Abstract; 4:25-32.) The reduction in image size or resolution will result in faster processing times for the video stream. (Ex. 1007 at 6:6-15.) Neither reference discusses mirrors or using digital technology to approximate a mirror.

Additionally, neither Dunton nor Yong is reasonably pertinent to the problem of digital mirror systems accurately emulating traditional mirrors. In fact, neither reference mentions mirrors at all. And Rosenberg and Francois, which are directed

to digital mirror systems accurately emulating tradition mirrors, do not address varying the rate at which the steps to emulate traditional mirrors are performed. Petitioners admit as much. (Pet. at 47.)

Accordingly, a POSA would not be motivated to combine Rosenberg and Francois with either Dunton or Yong because neither is analogous art and neither is reasonably pertinent to the problem of digital mirror systems accurately emulating traditional mirrors. (Ex. 2004 (Forsyth Decl.), ¶¶ 31-35.)

2. Neither Dunton nor Yong Disclose the Elements of the Limitation for Which They are Cited

Petitioners' purported motivation for a POSA to combine Rosenberg and Francois with Dunton and Yong is based on Francois' discussion of scaling images based on the subject object's distance to the camera (Ex. 1004 at 22-23) which Petitioners assert would necessarily result in a reduction in the amount of data transferred in the data stream to the display (Pet. at 49-50).

First, it is important to note that varying the frame rate of a video stream is related to, but distinct from, varying the rate at which processing steps such as those recited in the 109 Patent Claim 1, limitations 1(b)-(e) are performed. Petitioners conflate the concept of frame rate (disclosed in Dunton and Yong) with the rate at which processing steps such as those recited in the 109 Patent Claim 1, limitations 1(b)-(e) are performed (not disclosed in either Dunton or Yong). The frame rate at which images are captured is different from the rate at which the processing steps

are performed such that varying the frame rate does not necessarily entail varying the rate at which the processing steps are performed. For example, one could vary the frame rate of a video stream but not vary the rate at which a set of processing steps is applied to those frames. Those steps could be omitted, for example, for some frames in a sequence, and so the frame rate of the video stream would not change but the processing rate would. Alternately, a method could process frames by inserting an intermediate frame between each frame in the video sequence; such a method would have a processing rate that was the same as the original frame rate, but would double the frame rate of the video stream. Consequently, the frame rate and the processing rate may be different and disclosure of varying the frame rate of the video stream does not, in itself, disclose varying the rate of processing. Dunton and Yong disclose varying the frame rate only. Nothing in either Dunton or Yong discloses anything about varying the rate at which processing steps are performed.

Additionally, without regard for either the distinction between frame rate and processing rate or for the truth of Petitioners' assertion, neither Dunton nor Yong discusses using distance as a factor in varying frame rate. Dunton's discussion of decreasing resolution of images or cropping and resizing images for video image capture is ***not*** based on distance of the subject object to the camera but rather on the goal of reducing data per image frame "so that a greater frame rate can be achieved between the digital camera and the host computer." (Ex. 1006 at 1:35-43.) Similarly,

Yong's discussion of reducing image size or resolution is based on the goal of reducing processing time and processing load (*see e.g.*, Ex. 1007 at 4:25-42; 6:6-15), ***not*** on the distance of the subject object to the camera. Thus, even assuming that Dunton and Yong related to varying the rate of the performance of processing steps (not simply frame rate), there is no disclosure of that variance being based on distance. A POSA would not be motivated to combine these references when distance based on the subject object's distance to the camera does not even factor into considerations regarding varying the rate of the steps performed on a video stream. (Ex. 2004 (Forsyth Decl.), ¶¶ 36-38.)

VI. CONCLUSION

None of Petitioners' grounds meet the institution standard. But even if the Board determined a claim or ground satisfied the standard, the vast majority of grounds fail, and thus instituting a trial on all claims and all grounds would not be an efficient use of the Board's resources. *See Chevron Oronite Co. LLC v. Infineum USA L.P.*, IPR2018-00923, No. 9 (Denying *Inter Partes* Review) (P.T.A.B. Nov. 7, 2018); *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, No. 7 (Denying *Inter Partes* Review) (P.T.A.B. Jan. 24, 2019).

Dated: May 9, 2022

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CERTIFICATION OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(b)(1) and (d), the undersigned hereby certifies that the Patent Owner's Preliminary Response complies with the type-volume limitation 37 C.F.R. § 42.24(b)(1) permitting a response of up to 14,000 words because, exclusive of the exempted portions, the response contains 4,336 words, as identified by Microsoft Word's word-counting feature.

Dated: May 9, 2022 Respectfully submitted,

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CERTIFICATION OF SERVICE (37 C.F.R. §§ 42.6(e), 42.107)

The undersigned hereby certifies that the foregoing document, including its supporting evidence (Exhibit 2004), was served in its entirety on May 9, 2022, upon the following parties via Electronic Mail:

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