UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

SOUNDCLEAR TECHNOLOGIES LLC,
Patent Owner

U.S. Patent No. 9,070,374
Issue Date: June 30, 2015

Title: COMMUNICATION APPARATUS AND CONDITION NOTIFICATION METHOD FOR NOTIFYING A USED CONDITION OF COMMUNICATION APPARATUS BY USING A LIGHT-EMITTING DEVICE ATTACHED TO COMMUNICATION APPARATUS

Inter Partes Review No. IPR2025-00344

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DIRECTOR REVIEW IS NOT WARRANTED 1

A. The Decision does not create any "de facto" rule, but analyzes the same considerations regarding a patent owner's settled expectations set out in prior decisions by the Acting Director. 1

B. The Decision properly applies the Acting Director's guidance on "settled expectations" and appropriately weighed *all* discretionary considerations, including the *Fintiv* factors. 4

C. There is no requirement for the Decision to address the merits of the Petition. 11

D. The Decision is within the USPTO's authority and is consistent with law. 14

III. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Activision Blizzard, Inc. v. Milestone Entertainment, LLC,
IPR2025-00708, Paper 13 (PTAB Aug. 14, 2025).....9

Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC,
IPR2025-00478, Paper 10 (PTAB July 31, 2025).....10

Amazon.com, Inc. v. VirtaMove, Corp.,
IPR2025-00561, Paper 7 (PTAB June 12, 2025).....8

Celgene Corp. v. Peter,
931 F.3d 1342 (Fed. Cir. 2019).....14

CommScope Techs. LLC v. Dali Wireless, Inc.
IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023).....13

Cuozzo Speed Techs., LLC v. Lee,
579 U.S. 261 (2016).....2, 12, 14, 15

Dabico Airport Sols. Inc. v. AXA Power ApS,
IPR2025-00408, Paper 21 (PTAB June 18, 2025).....2, 3, 4, 15

Globus Medical, Inc. v. Spinelogik, Inc.,
IPR2025-00226, Paper 8 (PTAB June 12, 2025).....9

HS Hyosung Advanced Materials Corp. v. Kolon Industries, Inc.,
IPR2025-00662, Paper 12 (PTAB Aug. 14, 2025).....7

Intel Corp. v. Proxense LLC.,
IPR2025-00327, Paper 12 (PTAB June 26, 2025).....3, 4

iRhythm Techs., Inc. v. Welch Allyn, Inc.,
IPR2025-00363, Paper 10 (PTAB June 6, 2025).....2, 3, 8

JinkoSolar Co. v. LONGi Green Energy Tech. Co.,
IPR2025-00859, Paper 10 (PTAB Sept. 3, 2025).....6

Kahoot! AS v. Interstellar Inc.,
IPR2025-00696, Paper 12 (PTAB July 31, 2025).....7, 8

Microsoft Corporation v. X1 Discovery, Inc.,
IPR2025-00253, Paper 13 (PTAB June 25, 2025) 9

Mylan Lab'ys Ltd. v. Janssen Pharmaceutica, N.V.,
989 F.3d 1375 (Fed. Cir. 2021) 14

Nintendo Co. v. Resonant Systems, Inc.,
IPR2025-00680, Paper 18 (PTAB Aug. 14, 2025).....9

ResMed Corp. v. Cleveland Medical Devices, Inc.,
IPR2025-00158, Paper 11 (PTAB June 13, 2025) 11

Sandisk Technologies, Inc. v. Polaris PowerLED Technologies, LLC,
IPR2025-00515, Paper 12 (PTAB June 24, 2025) 6

SAP America, Inc. v. Valtrus Innovations Ltd.,
IPR2025-00416, Paper 10 (PTAB July 10, 2025).....7

Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.,
IPR2025-00531, Paper 10 (PTAB July 17, 2025).....10

Stingray Group, Inc. v. Edwin Hernandez-Mondragon,
IPR2025-00349, Paper 19 (PTAB June 13, 2025) 11

Statutes

35 U.S.C. § 314(a) 12, 13, 15

35 U.S.C. § 314(c) 12, 13

35 U.S.C. § 314(d) 13

Pursuant to the authorization granted by e-mail on September 4, 2025 (Ex. 3103), Patent Owner SoundClear Technologies LLC ("SoundClear") submits this response to Petitioner's Request for Director Review (Paper 16, "DR Req.").

I. INTRODUCTION

Google's request for Director Review does not present arguments applicable to the holistic analysis underlying the Acting Deputy Chief Administrative Patent Judge's exercise of discretion. Instead, it relies on purported rulings the Decision[1] did not make and reconstructs arguments already considered and rejected. Indeed, the Acting Director correctly exercised discretion to deny institution of this *inter partes* review (IPR). The Decision appropriately took "a holistic assessment of all of the evidence and arguments presented," Decision, 3, by weighing the *Fintiv* factors, along with SoundClear's settled expectations. The Decision is within the USPTO's authority and consistent with law. Accordingly, Google's request for Director Review should be denied.

II. DIRECTOR REVIEW IS NOT WARRANTED

A. The Decision does not create any "de facto" rule, but analyzes the same considerations regarding a patent owner's settled expectations set out in prior decisions by the Acting Director.

Google alleges that the *Decision* "effectively creat[es] a *de facto* rule that the

[1] The Acting Director delegated authority to the Acting Deputy Chief pursuant to a Notice of Delegation. Paper 15 ("Decision"), 1 n.1.

Board will not consider petitions for IPR of patents older than a certain age." DR Req., 1. Not so. It applied established reasoning the Acting Director set forth in a number of discretionary decisions. One notable decision, *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, determined that age of a patent can create "settled expectations [that] favor denial of institution." IPR2025-00363, Paper 10 at 3 (PTAB June 6, 2025) ("*iRhythm*"). A patent owner's settled expectations are one consideration in the holistic assessment regarding discretionary denial. Based on that holistic assessment, the Acting Deputy Chief appropriately denied institution here. Google never contested any fact establishing settled expectations.

Google does not, even now, contest that the settled-expectations factor should be considered as part of the holistic analysis. The Acting Director has made clear that, where the length of time the challenged patent has been in force creates settled expectations for a patent owner, it is incumbent upon the *petitioner* to "provide … persuasive reasoning why an *inter partes* review is an appropriate use of Office resources." *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 3 (PTAB June 18, 2025) ("*Dabico*"). *Dabico* explained that a petitioner's arguments in its Opposition brief are not limited to responding to patent owner's arguments in the request for discretionary denial. A petitioner should also "identify reasons *not to exercise discretion to deny institution*." *Dabico*, Paper 21 at 2 (emphasis original); *see also* Stewart Memo, 2-3 (Mar. 26,

2025) (instructing parties to "address all relevant considerations … bearing on the Director's discretion"); FAQ 21[2] ("Parties are encouraged to address any fact or circumstance they believe bears on whether the Office *should* or should not institute trial." (emphasis added)). The Acting Director further emphasized the importance of petitioners presenting arguments in the context of "settled expectations" in *Intel Corp. v. Proxense LLC*. IPR2025-00327, Paper 12 (PTAB June 26, 2025) ("*Intel*"). She recognized that "[t]here may be persuasive reasons why the Board should review challenged claims several years after their issuance date," but emphasized that "*[i]n the absence of any such information*, however, … the Office is disinclined to disturb the settled expectations of Patent Owner." *Id.* at 2-3 (emphasis added).

Google had ample opportunity to present such arguments. Google filed its Opposition brief (Paper 9) on July 9, 2025. That was well after each of the *iRhythm*, *Dabico*, and *Intel* decisions issued. And yet Google did not meaningfully address "settled expectations." Sur-reply (Paper 13), 2-3 (providing minimal

[2] FAQs for Interim Processes for PTAB Workload Management, available at https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management. The FAQs were superseded by the Interim Director Discretionary Process webpage on August 13, 2025, but were in force at the time of Google's Opposition.

argument regarding settled expectations).

Google is also wrong about an allegedly *de facto* rule regarding the age of a patent. None has been applied here. The Acting Deputy Chief determined that, "*in the absence of sufficient explanation by Petitioner*, Patent Owner's strong settled expectations tip the balance in favor of discretionary denial." Decision, 3 (emphasis added); *see also id.* at 2 ("This determination is based on the totality of the evidence and arguments *the parties have presented*." (emphasis added)). Google did not present sufficient explanation or evidence here. *See Dabico*, Paper 24 at 3-4 (PTAB Aug. 21, 2025) (denying petitioner's request for Director Review of the decision discretionarily denying institution) ("That Petitioner failed to raise any arguments as to its own settled expectations or those of Patent Owner does not mean that Petitioner had inadequate notice or lacked an opportunity to be heard."). Google's plea for a do-over on this issue on Director Review should be rejected.

B. The Decision properly applies the Acting Director's guidance on "settled expectations" and appropriately weighed *all* discretionary considerations, including the *Fintiv* factors.

The Decision properly weighed settled expectations—amongst all applicable factors considered on Director Review. It should stand. Google argues that the Decision "abus[ed] its discretion" through "erroneous determinations of fact and law." DR Req., 2-6. Google *also* alleges the Decision mis-weighed Patent Owner's settled expectations (based on the age of the patent) over other discretionary

factors (such as the *Fintiv* factors). *See* DR Req., 7-11. It does not adequately articulate any of those positions. It does not identify any error of law. And, on the facts, it contests the manner in which the Acting Director *weighed* them. But Google only generically argues that settled expectations did not exist and would not outweigh the existence of a stay. DR Req., 2-3. It does not address the holistic analysis. And, even then, its overall posture now constitutes at most a disagreement with the Acting Director's holistic assessment.

It is undisputed that the challenged patent has been in force for more than 10 years and that the district court case is currently stayed. Those facts alone, and the Decision's analysis of them, preclude Google's assertion of erroneous determinations. In fact, the opposite is true. A review of discretionary decisions issued by the Acting Director under similar circumstances—namely, older challenged patents with a stay in the district court—confirms that the Decision is consistent with and properly applied the Acting Director's guidance on "settled expectations." And the Decision appropriately weighed *all* discretionary considerations, including the *Fintiv* factors and others Google does not address.

For example, in *Sandisk Technologies, Inc. v. Polaris PowerLED Technologies, LLC*, the challenged patents were nine, twelve, and twelve years old and the district court proceeding was stayed. IPR2025-00515, -00516, -00517, Paper 15 at 2 (PTAB July 16, 2025). The petitioner in *Sandisk* presented arguments

similar to those Google includes here. It argued, for example, that the challenged patent had been recently acquired by the patent owner (in 2022), that there was not evidence of commercialization (etc.), and that the challenged patent had not been asserted until recently. IPR2025-00515, Paper 12 at 18-19, Paper 14 at 1-3. The Acting Director rejected these arguments for the same reasons that apply here: because "Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources," "the Office is disinclined to disturb the strong settled expectations of Patent Owner." IPR2025-00515, Paper 15 at 2; *see also JinkoSolar Co. v. LONGi Green Energy Tech. Co.*, IPR2025-00859, Paper 10 at 2-3 (PTAB Sept. 3, 2025) ("Petitioner's unsupported argument that Patent Owner does not have strong settled expectations because the patent was not previously 'asserted, licensed, or otherwise applied' by Patent Owner or the prior owner of the patent does not defeat Patent Owner's strong settled expectations.").

Ironically, Google argues for its own *de facto* rule. It asserts that "settled expectations" cannot begin prior to a patent owner's acquisition of the patent. DR Req., 3-4 (arguing that SoundClear acquired the patent in September 2023). That rule would be inconsistent with prior decisions. For example, the petitioner in Sandisk made a similar argument. The Acting Director rejected it. There is no such requirement or limitation on a patent owner's settled expectations. *See* IPR2025-00515, Paper 15 at 2 (discretionarily denying institution based on the patent

owner's settled expectations, despite the petitioner's arguments that the current patent owner did not acquire the patent until 2022, Paper 12 at 18-19); *see also SAP America, Inc. v. Valtrus Innovations Ltd.*, IPR2025-00416, Paper 10 at 2-3 (PTAB July 10, 2025) (discretionarily denying institution based on the patent owner's settled expectations (patent 17 years old), despite the petitioner's arguments that the current patent owner did not acquire the patent until 2021, Paper 8 at 20).

Other decisions consistent with *Sandisk* support the Acting Deputy Director's Decision here. In *HS Hyosung Advanced Materials Corp. v. Kolon Industries, Inc.*, the challenged patents were six, seven, and nine years old (even newer than the patent here). IPR2025-00662, -00663, -00664, Paper 12 at 2 (PTAB Aug. 14, 2025). The district court litigation had been stayed, but (as here) the petitioner did not file a *Sotera* or *Sand* stipulation. *Id.* at 2-3. And the Acting Director similarly determined that because "Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources," "the Office is disinclined to disturb the strong settled expectations of Patent Owner." *Id.* at 2.

Similarly, in *Kahoot! AS v. Interstellar Inc.*, the challenged patent was six years old (again, even newer than the patent here) and the district court proceeding had been stayed. IPR2025-00696, Paper 12 at 2 (PTAB July 31, 2025). Consistent

with the Decision here, the Acting Director determined "Petitioner's argument that Patent Owner does not have settled expectations because Patent Owner did not previously assert the challenged patent against Petitioner *does not defeat* Patent Owner's settled expectations." *Id.* (emphasis added).

And in *Amazon.com, Inc. v. VirtaMove, Corp.*, the challenged patents were more than 14 years old and the district court proceeding was stayed. IPR2025-00561, -00563, -00566, Paper 9 at 2 (PTAB July 11, 2025). Again, the Acting Director determined that because "Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources," "the Office is disinclined to disturb the strong settled expectations of Patent Owner." *Id.* As here, the petitioner did not present arguments related to the patent owner's settled expectations in its opposition, despite filing its brief after the decision issued in *iRhythm*. *See generally* IPR2025-00561, Paper 7 (PTAB June 12, 2025).

In short, the same types of arguments Google presents have repeatedly been rejected as insufficient to overcome a patent owner's strong settled expectations. Simply because Google does not like the result here does not mean the Decision weighed the relevant considerations improperly or inconsistently with prior decisions. SoundClear has strong settled expectations in the '374 patent, and Google has not provided persuasive reasoning why an IPR is an appropriate use of

Board resources. Decision, 2.

To be sure, the Acting Director (or her delegate) has referred cases to the merits panel in other IPRs challenging older patents where there was a stay in the parallel district court proceeding. But in those proceedings, the Acting Director found that the petitioner presented *additional* arguments and evidence that persuasively *outweighed* the patent owner's settled expectations—in other words, the *Fintiv* considerations alone were not the reason for referral to the merits panel. For example, in both *Activision Blizzard, Inc. v. Milestone Entertainment, LLC* and *Microsoft Corporation v. X1 Discovery, Inc.*, the petitioners presented evidence of Examiner error under § 325(d). IPR2025-00708, Paper 13 at 2-3 (PTAB Aug. 14, 2025); IPR2025-00253, Paper 13 at 2 (PTAB June 25, 2025). In *Nintendo Co. v. Resonant Systems, Inc.*, the petitioner presented additional reasons to refer to the merits panel, i.e., similar claims in a continuation had previously been found unpatentable by the Board. IPR2025-00680, Paper 18 at 3 (PTAB Aug. 14, 2025). And in *Globus Medical, Inc. v. Spinelogik, Inc.*, the challenged patent had expired almost four years earlier due to non-payment of maintenance fees. IPR2025-00226, Paper 8 at 2 (PTAB June 12, 2025). Google does not argue similar facts here, nor are they present.

In *Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC*, the petitioner (as here) generically argued that the patent owner had "not commercialized,

marked, licensed, or otherwise applied the [challenged] patent in Petitioners' particular technology space." IPR2025-00478, Paper 8 at 24-25 (PTAB July 15, 2025). The Acting Director expressly determined, based on that generic argument, that "Petitioner ha[d] not provided enough information to weigh these circumstances in favor of referral." IPR2025-00478, Paper 10 at 2-3 (PTAB July 31, 2025). But, because other more newly issued related patents were referred, the Acting Director determined in that case it was efficient to refer the older patent as well. *Id.* at 3. Those facts are not present here.

Google cites *Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.* (cited at DR Req., 2, 4, 5, 14) in support of its position that lack of commercialization by a patent owner is sufficient to outweigh a patent owner's settled expectations and warrant referral to the merits panel. But in *Shenzhen*, the petitioner's lack-of-commercialization arguments did not stand alone weighing in favor of referral. IPR2025-00531, Paper 10 at 3 (PTAB July 17, 2025). Rather, four other more recent patents were also at-issue in related IPRs and were referred in the same decision. *Id.* at 2-3. "[M]ost of the challenged patents ha[d] not been in force" for a significant period of time—having issued between 2020 and 2024. *Id*. at 2. And there was a "large number and vast scope of the patents asserted in the district court litigation," which the Acting Director determined the Board was better suited to review. *Id*. at 3. Again, those facts are not present here.

Other cases Google cites are inapplicable. They were not decided under the interim process and only addressed the *Fintiv* factors. In *Stingray Group, Inc. v. Edwin Hernandez-Mondragon* (cited at Sur-reply, 3; DR Req., 8, 9)—which Google inaccurately characterizes as "*referring* and instituting IPR on seven year old patent" (Sur-reply, 3 (emphasis added))—the Board panel (not the Acting Director) analyzed the *Fintiv* factors and declined to exercise its discretion. IPR2025-00349, Paper 19 at 6-9 (PTAB June 13, 2025). Likewise, in *ResMed Corp. v. Cleveland Medical Devices, Inc.* (cited at DR Req., 10, 14), which Google alleges is inconsistent with the Decision, the Board panel (not the Acting Director) analyzed the *Fintiv* factors and declined to exercise its discretion. IPR2025-00158, Paper 11 at 7-14 (PTAB June 13, 2025).

Thus, as discussed, a review of discretionary decisions issued by the Acting Director under similar circumstances as here—namely, older challenged patents with a stay in the district court—confirms that the Decision is consistent with and properly applied the Acting Director's guidance on "settled expectations," and appropriately weighed *all* discretionary considerations including the *Fintiv* factors.

C. There is no requirement for the Decision to address the merits of the Petition.

Google asserts that the Decision "failed to address the merits of Petitioner's unpatentability grounds." DR Req., 11-13. The Decision is clear that "the determination to exercise discretion to deny institution is based on a holistic

assessment of *all of the evidence and arguments presented*," including the merits. Decision, 3 (emphasis added).

Contrary to Google's assertion, there is no requirement to specifically *discuss* the merits in a discretionary decision. *See* DR Req., 11 (quoting 35 U.S.C. §§ 314(a), (c), but mixing and matching language from subsections (a) and (c)).

As stated in 35 U.S.C. § 314(a):

> The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

And 35 U.S.C. § 314(c) continues:

> The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a), and shall make such notice available to the public as soon as is practicable. Such notice shall include the date on which the review shall commence.

The statute requires only that the Director cannot institute *unless* the petition meets the reasonable likelihood standard. 35 U.S.C. § 314(a). That does not mean the Director cannot *deny* institution without discussing why the petition does not meet the reasonable likelihood standard. *See Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (the Director's "decision to deny a petition is a matter committed to the Patent Office's discretion").

The plain language of the statute simply requires that (1) the parties are notified (2) in writing of the (3) Director's decision *whether* to institute review. 35 U.S.C. §§ 314(a), (c). The Decision here meets those requirements. Subsection (a) places limits on when review *may* be *instituted* (i.e., only if the Director determines that the information presented in the petition meets the reasonable likelihood standard), but does not place any requirements as to *what form* the required "notice" in subsection (c) takes beyond being "in writing."

Google points to the precedential decision in *CommScope Techs. LLC v. Dali Wireless, Inc.*, arguing "[t]o the extent the Decision considered the merits without discussing them in the Decision, it failed to provide the required 'reasoning sufficient to allow the parties to challenge' a finding that the discretionary denial factors favor denial and 'sufficient to allow for review of the Board's decision.'" DR Req., 12 (quoting IPR2022-01242, Paper 23 at 5 (PTAB Feb. 27, 2023)). But *CommScope*—which issued before the present bifurcated process was in place—requires only that a *Board panel* provide sufficient discussion in an institution decision to allow the *Director* to review the panel decision. *CommScope* does not impose such a requirement on the Director, who makes the final, non-appealable determination of whether to institute an *inter partes* review. 35 U.S.C. § 314(d).

Contrary to Google's assertion, there is simply no requirement that a

discretionary denial decision discuss the merits, and the lack of discussion in the Decision is not a sufficient basis for granting Director Review.

D. The Decision is within the USPTO's authority and is consistent with law.

Google contends that the purported "applied time-based bar is 'not in accordance with law' and cannot provide an APA-compliant basis for denying institution." DR Req., 6. As discussed above, no time-based bar exists nor was one applied.

Further, Google incorrectly contends that the Decision conflicts with the Federal Circuit's determination in *Celgene Corp. v. Peter*, 931 F.3d 1342 (Fed. Cir. 2019). DR Req., 6-7. According to Google, "[j]ust as the *Celgene* patent owner—as a matter of law—lacked an expectation that its patent would not be subject to IPR, so too did SoundClear." DR Req., 6.

In *Celgene*, the Federal Circuit determined that a patent owner of a pre-AIA patent did not have an expectation that its patent would not be subject to an IPR. 931 F.3d at 1361-63. In other words, patent owners do not have an unfettered expectation of immunity from IPR based on the issue date thereof. *Id.* But *Celgene* did *not* hold that a *petitioner* has any expectation to be able to challenge any particular patent in an IPR. Both the Supreme Court and the Federal Circuit have confirmed as much. *Cuozzo*, 579 U.S. at 273; *Mylan Lab'ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021) ("The Director is

permitted, but never compelled, to institute an IPR. And no petitioner has a right to such institution."). The Director retains broad authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314(a); *Cuozzo*, 579 U.S. at 273 (the Director's "decision to deny a petition is a matter committed to the Patent Office's discretion").

In any event, as addressed above, the current Decision does not say, imply, or stand for the proposition that *all* patents over a certain age are automatically exempt from being challenged in an IPR. Rather, where a patent owner *may* have settled expectations based on the age of the patent, petitioners can (and are encouraged to) submit arguments about "why an *inter partes* review is an appropriate use of Office resources." *Dabico*, Paper 21 at 3. Here, the Acting Deputy Chief was not persuaded by Google's arguments.

As such, the Decision is both within the USPTO's authority and consistent with law. Director Review is not warranted.

III. CONCLUSION

The Acting Deputy Chief properly determined "discretionary denial of institution is appropriate" for this IPR. Decision, 2. As discussed above, Director Review of the Decision denying institution is not warranted and Google's request should be denied.

Dated: September 11, 2025 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST was served electronically via email on September 11, 2025, on the following counsel of record for Petitioner.

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